

Oneida Nation

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center
April 20, 2016 9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved

1. April 6, 2016 LOC Meeting Minutes

III. Current Business

1. Petition: Debraska – Health Board
2. Fitness for Duty
3. Marriage Law Amendments
4. Garnishment Amendments
5. Landlord-Tenant Law
6. Per Capita Law Amendments
7. Leasing Law
8. Code Reorganization Project

IV. New Submissions

1. Election Law Emergency Amendments

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

Oneida Nation

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

April 6, 2016 9:00 a.m.

Present: Jennifer Webster, Tehassi Hill, and David P. Jordan

Excused: Brandon Stevens, Fawn Billie

Others Present: Taniquelle Thurner, Krystal John, Douglass McIntyre, Maureen Perkins, Rae Skenandore, Danelle Wilson, Bonnie Pigman, Dianne McLester-Heim, Ed Delgado, Rebecca Webster and Rhiannon Metoxen

I. Call to Order and Approval of the Agenda

Tehassi Hill called the April 6, 2016 Legislative Operating Committee meeting to order at 9:01 a.m.

Motion by David P. Jordan to adopt the agenda with moving the Leasing Law to be the first item; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be approved

1. March 22, 2016 LOC Meeting Minutes

Motion by David P. Jordan to approve the March 22, 2016 LOC meeting minutes; seconded by Jennifer Webster. Motion carried.

III. Current Business

1. Back Pay Law Amendments (31:00-31:27)

Motion by David P. Jordan to prepare the Back Pay Law Amendments for a public meeting scheduled May 5, 2016; seconded by Jennifer Webster. Motion carried unanimously.

2. Marriage Law Amendments (31:30-34:05)

Motion by Jennifer Webster to defer the review of the Marriage Law Amendments - public comments to a work meeting to be scheduled; seconded by David P. Jordan. Motion carried unanimously.

3. Per Capita Law Amendments (34:06-34:35)

Motion by Jennifer Webster to prepare the Per Capita Law Amendments for a public meeting to be held on May 19, 2016; seconded by David P. Jordan. Motion carried unanimously.

4. Leasing Law Amendments (2:29-30:55)

Motion by David P. Jordan to accept the update and defer the Leasing Law Amendments back to the Legislative Reference Office with the noted changes to make section 65.6-5 more clear and remove “document” in section 65.8-1 and prepare for a public meeting to be held on May 19, 2016; seconded by Jennifer Webster. Motion carried unanimously.

Motion by David P. Jordan to have the legislative analysis updated based on the discussion at the meeting, be included in the public meeting packet; seconded by Jennifer Webster. Motion carried unanimously.

IV. New Submissions

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

Motion by David P. Jordan to adjourn the April 6, 2016 Legislative Operating Committee meeting at 9:34 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee

April 20, 2016

Petition: Debraska Health Board

Submission Date: 3/9/2016

LOC Sponsor: Jennifer Webster

☐ Public Meeting: N/A
☐ Emergency Enacted:
 Expires:

Summary: This petition seeks to:

- 1) A Health Care Board be created to oversee the Oneida Health Care Center and its staff, along with the Anna John Residential Community Care Center (AJRCCC); and
- 2) GTC select and appoint all Health Care Board members, set their stipends, approve their by-laws and resolutions and that this Health Care Board reports only to General Tribal Council to prevent politics of the health care system of who receives treatment by any single or multiple board, committee or commission; and
- 3) To change the Contract Health Services Delivery Area (CHSDA) that is currently limited to Brown and Outagamie Counties but rather make it state-wide within Wisconsin; and
- 4) All enrolled members of the Oneida Tribe of Indians of Wisconsin receive medical care first and payment of the enrolled member(s) medical bill(s) be paid first within forty-five days of receipt by the tribe, regardless of where care was received within the State of Wisconsin; and
- 5) GTC determine and limit, if necessary, the descendancy lineage to receive care and their medical bills being paid; and
- 6) GTC select and hire an administrator to oversee the Oneida Health Center and AJRCC based upon qualified applications received after notice is approved by GTC to post for hiring until the Health Care Board is established and then they can take over the duties of overseeing the staff; and
- 7) No action be taken by any other individual(s), department(s), board(s), committee(s), or commission(s) on any of these matters until GTC has heard this petition; and
- 8) Any other issues GTC deems necessary and appropriate on this topic for the health, safety, and welfare of the Oneida Tribe of Indians of Wisconsin.

3/9/16 OBC: Motion by David Jordan to accept the verified petition submitted by Michael Debraska regarding establishing a Health Care Board; to send the verified petition to the Law, Finance, Legislative Reference, and Direct Report Offices for the legal, financial, legislative, and administrative analyses to be completed; to direct the Law, Finance, and Legislative Reference Offices to submit the analyses to the Tribal Secretary's Office within sixty (60) days, and that a progress report be submitted in forty-five (45) days; and to direct the Direct Report Offices to submit the appropriate administrative analyses to the Tribal Secretary's Office within thirty (30) days, seconded by Brandon Stevens. Motion carried unanimously.

3/22/16 LOC: Motion by David P. Jordan to add the Petition: Debraska Health Board to the active files list; seconded by Tehassi Hill. Motion carried unanimously.
 Note: Jennifer Webster will be the sponsor.

Next Steps:

- Accept the update of the progress of the Statement of Effect and forward to the Oneida Business Committee.

Oneida Nation Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Maureen Perkins, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4375
(800) 236-2214

<https://oneida-nsn.gov/Laws>

Memorandum

TO: Legislative Operating Committee
FROM: Douglass A. McIntyre
DATE: April 20, 2016
RE: Petition: Debraska Health Board Statement of Effect Update

On February 20, 2016, a Petition was submitted to the Tribal Secretary's Office and has since been verified by the Trust Enrollment Department. On March 9, 2016, the Oneida Business Committee accepted the receipt of the Petition and forwarded the petition to the Legislative Reference Office for a Statement of Effect with a due date of the May 11, 2016 Oneida Business Committee meeting. This memorandum is to serve as the required forty-five (45) day update.

The Petition is comprised of eight (8) separate requests centered on the subject of health care. #1, #2 and #6 concern the establishment of a Health Care Board and an interim administrator until the Board is in place. These requests read:

- 1. A Health Care Board be created to oversee the Oneida Health Care Center and its staff, along with the Anna John Residential Community Care Center (AJRCCC); and**
- 2. GTC select and appoint all Health Care Board members, set their stipends, approve their by-laws and resolutions and that this Health Care Board reports only to General Tribal Council to prevent politics of the health care system of who receives treatment by any single or multiple board, committee or commission; and**
- 6. GTC select and hire an administrator to oversee the Oneida Health Center and AJRCC based upon qualified applications received after notice is approved by GTC to post for hiring until the Health Care Board is established and then they can take over the duties of overseeing the staff; and**

#3, #4, and #5 concern changes to the current service area, payment and eligibility. These requests read:

- 3. To change the Contract Health Services Delivery Area (CHSDA) that is currently limited to Brown and Outagamie Counties but rather make it state-wide within Wisconsin; and**

4. **All enrolled members of the Oneida Tribe of Indians of Wisconsin receive medical care first and payment of the enrolled member(s) medical bill(s) be paid first within forty-five days of receipt by the tribe, regardless of where care was received within the State of Wisconsin; and**
5. **GTC determine and limit, if necessary, the descendancy lineage to receive care and their medical bills being paid; and**

#7 and #8 are general statements. These requests read:

7. **No action be taken by any other individual(s), department(s), board(s), committee(s), or commission(s) on any of these matters until GTC has heard this petition; and**
8. **Any other issues GTC deems necessary and appropriate on this topic for the health, safety, and welfare of the Oneida Tribe of Indians of Wisconsin.**

Given the number of specific requests within the Petition, the Legislative Reference Office is still in the process of determining what effect, if any, each would have on current law. A completed Statement of Effect is on track to be completed in time for the May 11, 2016 meeting of the Oneida Business Committee.



Legislative Operating Committee

April 20, 2016

Fitness for Duty Policy

Submission Date: 9/17/14

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: Jennifer Webster

Summary: *This item was carried over into the current term by the LOC. Employees who are not fit for duty may present a health and/or safety hazard to themselves, to other employees, to the Tribe and to the general public. Since no policy exists currently, supervisors either do nothing and let the issues continue; force an employee on a leave of absence, adversely modify job duties, and/or terminate the employee.*

9/17/14 LOC: Motion by Jennifer Webster to add the Fitness for Duty Policy to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously.

Note: Jennifer Webster will be the sponsor for this item.

2/11/15 OBC: Motion by Lisa Summers to accept the Legislative Operating Committee priority list , seconded by Trish King. Motion carried unanimously.

8/5/15: Work meeting. Attendees include Leyne Orosco, Robert Keck, Mary Cornelissen, Kristi Giltner, Kelly McAndrews, Michelle Mays, Rae Skenandore, Candice Skenandore, Douglass McIntyre.

1/26/16: Work meeting held. Attendees include Matthew Denny, Eric Bollinger, Robert Keck, Mary Cornelissen, Kristi Giltner, Kelly McAndrews, Rae Skenandore, Maureen Perkins, Douglass McIntyre.

2/17/16 LOC: Motion by Jennifer Webster to forward the Fitness for Duty Policy to the Legislative Reference Office for a legislative analysis and to the Finance Department for a fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Accept the legislative analysis, approve the public meeting packet and set a public meeting date for May 19, 2016.

NOTICE OF
PUBLIC MEETING
TO BE HELD
THURSDAY, May 19, 2016 at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: FITNESS FOR DUTY

This is a proposal (to create a new Tribal Law) which would:

- ◆ Help ensure a safe work environment and the safety of employees and the broader public;
- ◆ Create a process and protocols to determine if an employee is un-fit-for-duty;
- ◆ Provide a list of triggering events which may trigger an assessment;
- ◆ Require the Nation to pay the initial cost of the medical assessment;
- ◆ Provide responsibilities for an employee, supervisor and the Employee Health Nursing Department.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL May 26, 2016

During the Public Comment Period, all interested persons may submit written comments until the close of business on the final day of the public comment period. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidanation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



Fitness-For-Duty Analysis

Analysis to Draft 14

<i>Analysis by the Legislative Reference Office</i>					
Title	Fitness-for-Duty (law)				
Requester	Matthew J. Denny	Drafter	Douglass McIntyre	Analyst	Maureen Perkins
Reason for Request	To guide employees, supervisors, Human Resources Department (HRD) and the Nation's entities where employees are not fit-for-duty and may present a health and/or safety hazard to themselves, others or the Nation.				
Purpose	Provide a safe work environment, understanding that employees who are not fit-for-duty may present a health and/or safety hazard to themselves, to others and/or to the Nation, and/or the general public [see 307.1-1(a)]. This law is a supplement to the Nation's laws, rules and policies governing employment, meaning that this law will not negate an employee's duties set forth under the employment laws of the Nation [see 307.1-2(b)].				
Authorized/Affected Entities	This law will affect all the Nation's employees. It will also affect the employee's supervisors and area managers, Employee Health Nursing (EHN), HRD, Employee Assistance Program (EAP), and Employee Resource Center.				
Due Process	An employee cannot appeal a directive to submit for a fit-for-duty test but if the employee is deemed not fit-for-duty and is terminated, the employee can appeal that decision in accordance with the Nation's laws, rules and policies governing employment [see 307.12].				
Related Legislation	Drug and Alcohol Free Workplace Policy, Nation's laws, rules and policies governing employment, Early Return to Work				
Policy Mechanism	When an employee makes a fraudulent report and the assessment was found to be unnecessary, the employee must be disciplined pursuant to the Nation's laws, rules and policies governing employment, up to and including termination [see 307.10-1].				
Enforcement	An employee can have his/her employment terminated if he/she refuses to undergo an assessment or refuses treatment [see 307.8-7 & 307.8-8].				

Overview

This is a new law that will require the Nation's employees to report fit-for-duty. An employee is anyone that works for the Nation which includes temporary employees and political appointees, but does not include appointed or elected officials [see 307-1(d)]. If the employee has a triggering event (workplace accident, problems performing his/her work) the supervisors or their designees can refer the employee for an assessment. If the triggering event meets the reasonable suspicion standards of the Drug and Alcohol Free Workplace Policy (DAFWP), then the supervisor must send the employee for drug/alcohol testing pursuant to the DAFWP [see 307.5-1, 307.5-2, 307.5-3 and 307.5-4]. The employee will also have his/her fitness for duty tested; however, if the employee's drug/alcohol test is negative, then the employee will be placed on paid leave [see 307.5-4]. When a triggering event occurs or a triggering event is reported, the supervisor must immediately initiate an investigation of the employee and, if necessary, fill out the assessment form, discuss the form with the employee and immediately place the employee on paid leave. The form and employee's job description are forwarded to EHN where EHN will review the forms, schedule an appointment and notify the employee of his or her assessment appointment. After the assessment, EHN will receive the results and notify the supervisor whether the employee is fit-for-duty and forward the medical provider's recommendations to the



Fitness-For-Duty Analysis

Analysis to Draft 14

supervisor. EHN maintains the employee's fitness-for-duty file [*see 307.8-1(i)*].

The Tribe pays for the initial assessment and the employee is placed on paid leave until he/she can return to regular duty, be placed on modified duty, be placed on medical leave/disability or his/her employment is terminated. If the medical provider makes recommendations, the supervisor must attempt to make reasonable accommodations. An employee that has been found to have made a fraudulent report will be disciplined in accordance with the Tribe's personnel policies and procedures. Information received about the employee is confidential and cannot be released without the employee's written consent or a court order. The employee cannot appeal the decision to refer him/her for an assessment but he/she can appeal a termination decision if found not fit-for-duty [*see 307.8-12*].

Considerations

The LOC may want to consider the following:

Second Opinion

This law does not address second opinions. There may be times when the employee does not agree with the medical provider's assessment results/recommendations and would like to get a second opinion but because assessment is defined as an "evaluation . . . of an employee by a medical provider assigned by EHN . . ." it appears the employee cannot get a second opinion from a medical provider of his/her choice without EHN assigning the medical provider [*see 307.8-1 (c) & (e)*].

Supervisor's Designee

The supervisor has a predominate role in the fit-for-duty process. Supervisors or their designees are required to investigate and determine if an employee should be referred for an assessment. If the determination is to refer the employee for an assessment, the employee is immediately placed on paid leave. Depending on the results of the assessment, the supervisor or his/her designee can possibly terminate the employee [*see 307.7-3(f)(5)*]. Because these responsibilities can have a great effect on the employee, it may be important to specify who the supervisor can designate to fulfill these responsibilities.

Miscellaneous

A public meeting has not yet been held. Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. This law has changed from a policy to a law in alignment with the LOC's directive that all policies are classified as laws moving forward. In addition, revisions have been made to improve the flow and sequence of the law without changing the intended content. Please refer to the fiscal impact statement for any financial impacts.

Chapter 307

Fitness-for-Duty

307.1. Purpose and Policy
307.2. Adoption, Amendment, Repeal
307.3. Definitions
307.4. Applicability
307.5. Triggering Events
307.6. Employee Responsibility

307.7. Supervisor Responsibility
307.8. EHN Responsibility
307.9. Fitness-for-Duty Assessment
307.10. Fraudulent Report
307.11. Confidentiality
307.12. Appeal Rights

307.1. Purpose and Policy

307.1-1. *Purpose.* The purposes of this law are to:

- (a) provide a safe work environment, understanding that employees who are unfit-for-duty may present a health and/or safety hazard to themselves, to other employees, to the Nation, and/or to the general public; and
- (b) supplement the Nation's laws, rules and policies governing employment. This law shall not negate an employee's duties set forth under the employment laws of the Nation.

307.1-2. *Policy.* It is the policy of the Oneida Nation to:

- (a) minimize health risks to employees and Nation liability by maintaining the highest level of safety in the work environment; and
- (b) assist employees when the employee may have an underlying health condition that affects the employee's ability to perform the employee's job duties.

307.2. Adoption, Amendment, Repeal

307.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

307.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

307.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

307.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

307.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

307.3. Definitions

307.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Assessment" means the evaluation, initial or otherwise, of an employee by a medical provider, defined herein assigned by the EHN to determine an employee's ability to perform the required functions of the job as outlined in the employee's job description.
- (b) "Danger to self or others" means a substantial and/or imminent risk of harm or threat of harm to self, others or property established through a recent act, attempt or threat of the same.
- (c) "EHN" means the Employee Health Nursing Department.
- (d) "Employee" means any person working for the Nation in its programs, enterprises and/or governmental functions. This shall not include appointed officials or elected officials. This shall include temporary employees and political appointees.
- (e) "Fit-for-duty" or "fitness-for-duty" means the state of an employee where he or she has no present physical, mental, nervous, organic, or functional disease or psychiatric disorder which is likely to interfere with his or her ability to productively perform the

assigned functions of the job, and does not pose a direct threat to his or her own safety or the safety of others.

(f) “Leave of Absence” means an approved absence from work without loss of seniority or benefits.

(g) “Medical Provider” means a licensed health care evaluator assigned by EHN with appropriate expertise in one or more the following areas: medical, psychological, alcohol or drug conditions.

(h) “Modified duty” means temporary, transitional work within the healthcare provider’s prescribed activities, restrictions and other recommendations for the employee which reflects that individual’s functional capacity and/or rehabilitative needs.

(i) “Nation” means the Oneida Nation.

(j) “Supervisor” means the person or entity responsible for directly overseeing the employee and who is responsible for taking corrective actions when employees fail to meet their responsibilities.

307.4. Applicability

307.4-1. This law shall apply for all employees of the Nation unless:

(a) the department, agency or employee position is specifically exempted from this law by another law of the Nation or Oneida Business Committee Resolution; or

(b) the department, agency or employee position has received an exemption from the Human Resource Department because there is a more restrictive policy in place for employees on file .

307.5. Triggering Events

307.5-1. A triggering event may require an employee to undergo an assessment by the Nation’s contracted medical provider.

307.5-2. A triggering event shall include, but is not limited to the following:

(a) a workplace accident;

(b) good faith reliable observations by other person(s) that address issues including, but not limited to, an employee’s problem during the performance of work with:

(1) manual dexterity;

(2) coordination;

(3) alertness;

(4) speech;

(5) vision acuity;

(6) concentration;

(7) suicidal or threatening statements;

(8) presence of condition likely to lead to foodborne disease transmission;

(9) memory problems;

(10) excessive number of errors in job duties;

(11) continued reduced productivity in job duties;

(12) frequent injuries; or

(13) observed health problems (i.e. seizures, falling asleep, trouble breathing, low blood sugar reactions, etc.).

307.5-3. *Drug and Alcohol Free Workplace Trigger.* The above listed triggering events may also be a trigger for the Drug and Alcohol Free Workplace Policy. Therefore, if the reasonable suspicion standards of the Drug and Alcohol Free Workplace Policy are met, the supervisor or designee is required to, pursuant to the Drug and Alcohol Free Workplace Policy, send an

employee for alcohol/drug testing. During the time of alcohol/drug testing, the Drug and Alcohol Free Workplace Policy will govern as to the receipt of pay by the employee.

307.5-4. The supervisor or designee shall also follow section 307.7 below and have the employee tested as to his or her fitness-for-duty. If the employee's alcohol/drug test returns as a negative result, then this law will be reinstated as the governing law as to the receipt of pay by the employee.

307.6. Employee Responsibility

307.6-1. An employee shall:

(a) Report to work able to safely perform the functions of his or her job according to his or her specific job description;

(b) Notify his or her supervisor or designee when the employee believes that his or her performance of the required job functions may be compromised:

(1) from a medical condition; or

(2) from any other condition, medication or event that has the potential to impact the safe conduct of his or her job duties;

(c) Notify the supervisor or designee of any concerns in the workplace of another employee's fitness-for-duty. If the concern involves the employee's supervisor, the employee shall make the notification to the next highest level supervisor;

(d) Cooperate with a supervisor's or designee's directive and/or referral for an assessment;

(e) Sign the informed consent and disclosure form that allows:

(1) the employee to be evaluated by the contracted medical provider, if required to do so by the provider;

(2) the contracted medical provider to receive medical and/or mental health records that pertain only to the condition that triggered the referral for an assessment; and

(3) EHN to receive the assessment pertaining to the fit-for-duty request;

(f) Cooperate with EHN in scheduling appointments, attending scheduled appointments and notifying EHN if there is a concern or conflict with scheduled appointments.

(g) Meet with the supervisor or designee to discuss the results of the assessment and the actions being taken.

(h) Complete all physicians' recommendations as approved by supervisor or designee and submit physician's verification of completion to the supervisor or designee.

307.6-2. Where an employee fails to comply with these responsibilities he or she may be subject to discipline under the Nation's laws, rules and policies governing employment, up to and including termination.

307.7. Supervisor Responsibility

307.7-1. A supervisor or designee shall utilize this law in a fair and consistent manner, respecting the employee's privacy and the confidentiality of medical information. A supervisor or designee shall not use this law as a disciplinary tool.

307.7-2. Upon the occurrence of a triggering event or where a triggering event has been reported to the supervisor, the supervisor, or his or her designee if the supervisor is unavailable, shall immediately initiate an investigation of the employee who is alleged to be unfit-for-duty. When possible, EHN shall be immediately contacted for a consultation. If the investigation results in a belief that the employee is fit-for-duty, the matter is at an end.

307.7-3. *Fit-For-Duty Assessment.* When the investigation of the employee results in a belief

that a fit-for-duty Assessment is appropriate, the supervisor or designee shall:

- (a) Fill out the fit-for-duty assessment form;
- (b) Immediately place that employee on paid leave pending the results of the assessment, and enter the employee on immediate paid leave status within forty-eight (48) hours;
- (c) Discuss the assessment form with the employee and have the employee sign the informed consent and disclosure form, the request for fit-for-duty assessment form and any other appropriate documents;
- (d) Send the following documents to EHN via fax or email:
 - (1) the completed assessment form;
 - (2) a signed informed consent and disclosure form;
 - (3) any other necessary documents along with the current job description.
- (e) Complete any mandatory reporting required under the employee's license, certificate, or ethics code;
- (f) When the assessment results are received, meet with the employee to discuss the results and the actions being taken, which may include any of the following:
 - (1) immediate return to regular work duties; or
 - (2) return to work with reasonable accommodations. If the reasonable accommodations are due to physical restrictions, the employee shall be placed in the Early Return to Work Program; or
 - (3) the option for the employee to apply for a medical leave of absence; or
 - (4) the option to resign and apply for disability; or
 - (5) termination of employment.
- (g) Be responsible for determining what reasonable accommodations for his or her department would be acceptable related to a medical provider's fit-for-duty recommendation.
- (h) Communicate with the Human Resources Department the actions taken in section 307.7-3(f).
- (i) Retain a copy of all documents for the employee file.

307.7-4. *Emergency.* If the employee poses a danger to himself or herself or others, the supervisor or designee shall contact law enforcement and take whatever emergency steps are available to protect himself or herself, the employee or others from immediate harm.

307.7-5. When a supervisor or designee receives a self-referral, the supervisor or designee shall refer the employee to the Employee Assistance Program or to the Employee Resource Center.

307.7-6. If an employee is relieved of duty for an assessment and the employee could pose a threat to the safety of other employees, the public or the Nation, the supervisor or designee shall arrange transportation or ensure the employee has adequate transportation. If necessary, the supervisor or designee may arrange transportation with the Nation's contracted transportation provider.

307.8. EHN Responsibility

307.8-1. EHN shall be responsible for coordinating the fit-for-duty program and if a referral is received, shall do the following:

- (a) Review the assessment form and job description as needed for clarification;
- (b) Contact the supervisor or designee if there are questions or additional documentation that is needed, as is necessary;
- (c) Contact the appropriate medical provider and schedule an assessment for the next available appointment;
- (d) Send the assessment form and authorization for release of information form to the

- 185 medical provider along with the employee's job description;
186 (e) Notify the employee of the assessment appointment date, time and location;
187 (f) Notify the referring supervisor or his or her designee of employee's assessment
188 appointment date, time and location;
189 (g) EHN may arrange transportation to and from the Fitness-for-Duty assessment
190 location as necessary;
191 (h) Receive the assessment results and:
192 (1) Send the notice to the employee's supervisor that the employee is fit-for-duty;
193 or
194 (2) If the employee is unfit-for-duty, forward the results and any
195 recommendations made by the medical provider to the referring supervisor or
196 designee with respect to reasonable accommodations or other restrictions for the
197 employee.
198 (i) Maintain the employee's fit-for-duty file;
199 (j) Obtain appropriate authorizations for the release of information. Unless an additional
200 authorization is obtained, the information available to the employee's supervisor or
201 designee will be limited to:
202 (1) Whether the employee is fit to resume his or her job duties; and/or
203 (2) Whether the provider has restrictions and/or recommendation.
204

205 **307.9. Fitness-for-Duty Assessment**

206 307.9-1. *Payment for Assessment.* The Nation shall pay the cost of the initial assessment.

207 307.9-2. *Paid Leave for Assessment.* When an employee is referred for an assessment under
208 this law, that employee shall receive paid leave until such time as the employee is:

- 209 (a) Returned to regular duty; or
210 (b) Placed on modified duty pursuant to the Early Return to Work law; or
211 (c) Placed on medical leave or disability; or
212 (d) Terminated from employment.

213 307.9-3. *Exceptions for Paid Leave.* Paid leave shall not be available and the employee will
214 have to seek other paid time off options such as accrued paid time off, medical leave, or unpaid
215 time off with supervisor or designee approval if the employee:

- 216 (a) is referred for an assessment regarding the same physical or mental health issue a
217 second or subsequent time.
218 (b) cancels or fails to show for the initial assessment date, the employee's paid leave will
219 stop.

220 307.9-4. *Leave of Absence.* If a medical provider recommends a leave of absence from work,
221 the supervisor or designee shall:

- 222 (a) Provide his or her supervisor(s) with written documentation as to why he or she can
223 or cannot accommodate a Leave of Absence, explain the findings with the employee and
224 place a copy of the written documentation in the employee's personnel file.
225 (b) Collaborate with the Oneida Human Resources Department to establish an
226 appropriate resolution, explain the findings of that collaboration, and place a copy of the
227 resolution in the employee's personnel file.

228 307.9-5. *Treatment.* If a medical provider recommends counseling sessions or other medical
229 treatments, the supervisor or designee shall allow the employee to attend the counseling,
230 treatment and/or appointment.

- 231 (a) The cost of any counseling or medical treatment after the initial assessment shall be
232 the responsibility of the employee.

(b) The remaining follow-up counseling, treatment and/or appointments shall be conducted on personal time.

307.9-6. *Modified Duty.* If a medical provider places physical restrictions on the employee's work duties or recommends modified duties, the process set out in the Nation's Early Return to Work law shall be followed. However, modified duty pursuant to the Early Return to Work law shall only be granted two (2) times in the lifetime of employment if the modified duty is a result of fit-for-duty testing, and is not available for mental health issues. Modified duty under this law is limited to up to one-hundred and eighty (180) days. After that time has expired, it is a determination of the supervisor or designee whether the modifications will continue.

307.9-7. *Safety Risk.* Employees found to be a danger to themselves or others by a medical provider, regardless if it was a self-referral, may be found to be unfit to perform their duties and may be terminated.

307.9-8. *Refusal of Assessment.* Refusal to undergo an assessment may result in termination if the supervisor and area manager both determine the employee poses a significant danger to the health, safety or welfare of themselves or others. Refusal to sign the informed consent and disclosure form and the request for fit-for-duty assessment form is considered a refusal of assessment.

307.9-9. *Refusal of Treatment.* An employee who refuses recommended counseling or other medical treatments may still be terminated if the failure to receive such counseling or treatment results in the employee continuing to be unfit-for-duty.

307.10. Fraudulent Report

307.10-1. Any employee or supervisor found to have made a report other than in good faith, and the assessment returns from a medical provider as being medically unnecessary shall be disciplined according to the Nation's laws, rules and policies governing employment, up to and including termination.

307.11. Confidentiality

307.11-1. Information received about an employee as a result of a report, self-disclosure, assessment or counseling/treatment received is strictly confidential and said information shall not be disclosed to third parties without the prior written consent of the employee or in compliance with a court order or relevant laws or policies.

307.12. Appeal Rights

307.12-1. A directive by a supervisor to submit to a fit-for-duty test shall not be appealable.

307.12-2. A termination based on a decision that the employee is unfit-for-duty may be appealed pursuant to the Nation's laws, rules and policies governing employment.

End.

Adopted - BC-_____



Legislative Operating Committee

April 20, 2016

Marriage Law Amendments

Submission Date: November 4, 2015

☒ Public Meeting: 3/18/16

☐ Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *This item is a proposal to amend the Marriage Law to provide for a way to waive the standard waiting period between applying for a license and solemnizing the marriage, provide for an administrative fee for amendments to an application after it has been submitted and to provide for a process to adopt a fee schedule.*

11/04/15 LOC: Motion by Jennifer Webster to add the Marriage Law Amendments to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously.

1/6/16 LOC: Motion by Fawn Billie to accept the legislative analysis for the Marriage Law amendments, defer the amendments to the Finance Department for a fiscal impact statement and direct the Legislative Reference Office to prepare the amendments for a public meeting to be held on February 18, 2016; seconded by Jennifer Webster. Motion carried unanimously.

1/20/16 LOC: Motion by David P. Jordan to accept the Marriage Law Amendments public meeting packet and to forward to a public meeting to be held on February 18, 2016; seconded by Fawn Billie. Motion carried unanimously.

2/17/16 LOC: Motion by Fawn Billie to approve the public meeting packet for the Marriage Law Amendments and to forward to a public meeting date of March 17, 2016; seconded by Jennifer Webster. Motion carried unanimously.

3/18/16: Public meeting held.

4/6/16 LOC: Motion by Jennifer Webster to defer the review of the Marriage Law Amendments - public comments to a work meeting to be scheduled; seconded by David P. Jordan. Motion carried unanimously.

4/11/16: Work meeting held. Attendees include: Fawn Billie, Jennifer Webster, Tehassi Hill, David P. Jordan and Doug McIntyre.

Next Steps:

- Review the changes to the draft of the Marriage Law Amendments and forward for an updated legislative analysis from the Legislative Reference Office.

Chapter CHAPTER 71
Marriage MARRIAGE

YenyaktAa?

What one does to get married

71.1. Purpose and Policy
71.2. Adoption, Amendment, Conflicts
71.3. Definitions
71.4. Marriages, Generally

71.5. Marriage Document and Marriage Ceremony
71.6. Marriages Conducted to Avoid the Law and Immaterial
Irregularities
71.7. Penalties

71.1. Purpose and Policy

71.1-1. *Purpose.* It is the purpose of this Law to exercise the sovereign right of the Oneida Tribe-Nation to regulate the rights and responsibilities relating to marriage.

71.1-2. *Policy.* Marriage is a foundation of Tribal society that stabilizes families which the Tribe-Nation acknowledges by recognizing the legal relationship of a union between two adults.

71.2. Adoption, Amendment, Conflicts

71.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-28-10-F and amended by resolutions BC-06-12-13-E, BC-05-27-15-A and BC-_____.

71.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

71.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

71.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, nothing in this Law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

71.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin Nation.

71.2-6. *Rules.* If rules addressing a certain area of this Law have not been enacted in accordance with the Tribal Nation's laws and the Court is faced with a question, the Court may, in its discretion, refer to other Indian tribal law or state law for guidance, to the extent that such law is not inconsistent with this or any other Tribal Oneida laws.

71.3. Definitions

71.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Competent" means a person has attained the age of eighteen (18) years old and is able to make a legally binding commitment.

(b) "Court" means Family Court, which is a branch of the judicial arm of the Tribe Nation.

(c) "Court of competent jurisdiction" means a court that has the power and authority to dissolve a marriage.

(d) "Department" means the licensing department of the Tribe-Nation that is responsible for administering and issuing licenses in accordance with Tribal-the laws of the Nation.

(e) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(f) “Marriage” means the civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of spouses.

(ge) “Marriage document” means that document issued by the Department which includes the marriage license as well as information concerning the marriage ceremony, the signatures of the witnesses and officiating person(s), and proof of filing.

(hf) “Marriage license” means that portion of the marriage document designated as such, which is the authorization for the marriage to take place.

(i) “Nation” means the Oneida Nation.

(jg) “Officiating person” means the person or persons who perform the marriage ceremony.

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

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

71.4. Marriages, Generally

71.4-1. *Who May Marry.* A marriage may be contracted under this ~~L~~law between two (2) adults who:

- (a) have a marriage document issued by the Department;
- (b) have attained the age of eighteen (18), except as provided in Section 71.4-3; and
- (c) meet all other provisions under this ~~L~~law.

71.4-2. *Who May Not Marry.* Persons may not enter into marriage if they:

- (a) are currently legally married to another person; or,
- (b) have been legally divorced for less than six (6) months with a judgment of divorce from a court of competent jurisdiction; or,
- (c) are not legally competent; or,
- (d) are closer in relationship than second cousins, except first cousins may marry if both parties are fifty-five (55) years old or older.

71.4-3. *Minors.* Individuals under the age of sixteen (16) shall not marry. Individuals who meet the above requirements, except for Section 71.4-1(b) and are over the age of sixteen (16) but under the age of eighteen (18) may marry if they present:

- (a) written consent by his or her parent or guardian, signed and notarized before the person issuing the marriage license; or
- (b) proof that they have been legally emancipated.

71.5. Marriage Document and Marriage Ceremony

71.5-1. *Fees.* An applicant is responsible for paying all fees at the time the application is filed. The Department may promulgate rules that establish fee associated ~~The Oneida Business Committee, upon recommendation of the Department, shall adopt a fee schedule through Resolution for all fees associated~~ under this ~~L~~law. ~~The Oneida Business Committee may require any fees~~ as long as those fees are consistent with this ~~L~~law.

71.5-2. *Marriage Document.* The Department shall issue a marriage document to the applicants within five (5) business days after the application is filed if, in addition to the other requirements in this ~~L~~law, the following conditions are met at the time a marriage license is applied for:

- (a) Either (1) or (2) applies to the applicants:
 - (1) each applicant:
 - (A) is a Tribal member; or
 - (B) resides on the ~~R~~reservation and is a member of an Indian tribe, band

or community which is recognized by a state or the federal government.

(2) one of the applicants meets the requirements of Section 71.5-2(a)(1)(A) or (B) and the other applicant consents to the Tribe's-Nation's jurisdiction to issue the license. The completion of an application for a marriage license represents a person's consent to the Tribe's-Nation's jurisdiction to grant the license.

(b) Both applicants appear in person at the Department to complete the marriage license application.

(c) The applicants provide any information necessary to complete the application, which may include: social security numbers, birth certificates, proof of residence, proof of tribal membership, documentation of a judgment of divorce, annulment, or death certificates from most recent marriages, parents' full names, mothers' maiden names, date and place of marriage ceremony, and the name, address, and phone number of the officiating person(s).

(d) The applicants swear under oath that the information provided is true and accurate and sign the application in the presence of a notary public.

(e) The applicants pay the required fees.

71.5-3. *Objections.* Any relative of the applicants, Department official, or applicant that objects to an upcoming marriage may file a petition and sworn affidavit with the Court objecting to the marriage.

(a) The petition shall state grounds for the belief that a marriage license should not be issued to the applicants or a marriage license that has already been issued should be revoked.

(b) The Court shall approve the petition only if the marriage, if conducted, would violate this Law.

(c) If the petition is approved by the Court, the applicants shall show cause why the license should be issued or why the license should not be revoked.

71.5-4. *Marriage Ceremony.*

(a) The marriage must occur between six (6) days after the license is issued and thirty (30) days after the license is issued. The applicant may apply for a waiver of the initial five (5) day waiting period for an additional fee. The marriage license shall contain notification of these time limits.

(b) If neither applicant resides on the Reservation, the marriage ceremony shall be held on the Reservation. If one (1) or both of the applicants reside on the Reservation, the marriage ceremony shall be held within the State of Wisconsin. The applicants shall be notified of this requirement when applying for a marriage license.

(c) The ceremony shall be solemnized by an officiating person(s) with two (2) competent adult witnesses present.

(d) The parties shall vow by mutual declarations, before the officiating person(s) and witnesses, that they take each other in lawful matrimony.

(e) The parties, the officiating person(s), and the witnesses shall, at the conclusion of the ceremony, sign and date the marriage document.

(f) The officiating person(s) or one of the parties shall deliver-return the original completed marriage document to the Department within three-ten (103) business days after the ceremony. The Department shall deliver-return the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed. The Department shall retain a file stamped copy and provide a file stamped copy to the married couple.

(g) The Department shall keep a marriage license docket and shall enter therein a

complete record of the marriage applications and issuance of marriage licenses which shall be available for public inspection during regular business hours.

71.5-5. *Officiating Persons.* The following persons are authorized as officiating persons under this ~~L~~law:

(a) a traditional tribal practitioner or spiritual or religious leader ~~who is commonly recognized as such by the Oneida community or other Indian community and has~~ registered with the Court; or

(b) a Judge from the ~~any branch of the Judiciary Court~~ or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; or

(c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the request of the persons being married; or

(d) any ordained clergyperson of any religious denomination, society, or sect; or

(e) any person licensed by a religious body or appointed by a high-ranking clergy member, if the religious denomination, society, or sect allows the person to solemnize marriages; or

(f) the parties themselves, by mutual declarations that they take each other as spouses, in accordance with the customs, rules, and regulations of any religious denomination, society, or sect to which either of the parties belongs; ~~or;~~

(g) a former or retired Judge or Appeals Commissioner that served the Nation.

71.6. Marriages Conducted to Avoid the Law and Immaterial Irregularities

71.6-1. If a person is prohibited from marrying another under this ~~L~~law and goes to another jurisdiction and there contracts a marriage that is prohibited under this ~~L~~law, such marriage shall not be recognized by the ~~Tribe~~Nation.

71.6-2. No marriage shall be contracted under this ~~L~~law by a party residing and intending to continue to reside in another jurisdiction, if such marriage would be void if contracted in such other jurisdiction. Every marriage celebrated in violation of this provision shall be void.

71.6-3. *Immaterial Irregularities.* A marriage shall be recognized as valid if the marriage is consummated with the full belief on the part of the persons so married that they have been lawfully joined in marriage, and:

(a) the officiating person(s) did not have the authority to solemnize the marriage; or

(b) the marriage license was issued by a department or person who did not have jurisdiction to issue the license; or

(c) the marriage license or application for the marriage license had an informality or irregularity; or

(d) either or both of the witnesses to the marriage were incompetent; or

(e) the marriage ceremony was solemnized outside of the ~~R~~reservation boundaries, or Brown or Outagamie County, when applicable, or outside of the required time lines listed on the marriage license.

71.7. Penalties

71.7-1. ~~The Department shall promulgate rules that establish a fine schedule for A-persons who knowingly violates this L-law. may be penalized as follows:~~

~~(a) Any person who swears to a false statement to obtain a marriage license or to help another obtain a marriage license shall be fined no less than five hundred dollars (\$500.00).~~

~~(b) Any person who is not an officiating person who solemnizes a marriage ceremony shall be fined no less than one hundred dollars (\$100.00).~~

~~(c) The parties to a marriage and/or the officiating person(s) of a marriage conducted without a valid marriage license or without the presence of two (2) competent adult witnesses shall be fined no less than one hundred dollars (\$100.00).~~

~~(d) Any person who goes to another jurisdiction to avoid this Law and contracts a marriage prohibited under this Law shall be fined no less than five hundred dollars (\$500.00).~~

~~(e) Any person who violates any other provision of this Law shall be fined no less than one hundred dollars (\$100.00).~~

71.7-2. The Department shall be the responsible entity for the enforcement of this section.

71.7-3. All fines issued shall be paid to the Department within thirty (30) days of the issuance of the fine. Any person issued a fine under this Law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

End.

Adopted-BC-04-28-10-F
Amended-BC-06-12-13-E
Amended-BC-05-27-15-A



Legislative Operating Committee

April 20, 2016

Garnishment Amendments

Submission Date: 8/5/15

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

Summary: *This item was brought to the LOC by the Judiciary to request an amendment to the ordinance which would allow the Judiciary to include interest when a garnishment is ordered as some creditors have been requesting interest, and the Judiciary has been denying it because the ordinance is silent.*

8/5//15 LOC: Motion by David P. Jordan to add the Garnishment Ordinance Amendments to the active files list with himself as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to defer Garnishment Ordinance Amendments to the sponsor's office to work with the Chief Financial Officer for recommendations, and bring back with the required analysis within 60 days; seconded by Tehassi Hill. Motion carried unanimously.

12/2/15 LOC: Motion by Jennifer Webster to accept the legislative analysis of the Garnishment Amendments with the directed change to the law, and prepare for a public meeting date of January 21, 2016; seconded by Fawn Billie. Motion carried with Fawn Billie abstaining.

Note: the directed change requires Tribal departments to pay filing fees instead of being exempt.

12/16/15 LOC: Motion by Jennifer Webster to approve the public meeting packet and to forward the Garnishment Amendments to a public meeting date of January 21, 2016; seconded by David P. Jordan. Motion carried unanimously.

1/20/16 LOC: Motion by David P. Jordan to approve the public meeting packet for the Garnishment Amendments and to approve the rescheduled public meeting date of February 18, 2016; seconded by Tehassi Hill. Motion carried unanimously.

3/2/16 LOC: Motion by Tehassi Hill to accept the Garnishment Law Amendments public meeting comments; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to defer the Garnishment Law Amendments public meeting comments to the sponsor to schedule a work meeting; seconded by Tehassi Hill. Motion carried unanimously.

4/6/16: Work meeting held to consider public comments received. Attendees include: David P. Jordan, Tehassi Hill, Jennifer Webster, Maureen Perkins and Krystal John.

- **Next Steps:** Accept the updated draft and legislative analysis based on the review of public meeting comments. Determine whether an additional public meeting is required based on the revisions made to the draft of the Garnishment amendments.
 - If it is determined that an additional public meeting is required, direct the LRO to prepare a public meeting packet for a public meeting to be held on June 3, 2016.



Analysis Draft # 3 to Draft 5

<i>Analysis by the Legislative Reference Office</i>					
Title	Garnishment (law)				
Requester	Judiciary	Drafter	Krystal L. John	Analyst	Candice E. Skenandore / Maureen Perkins
Reason for Request	To determine whether or not to include interest when a garnishment is ordered.				
Purpose	The purpose of this law to exercise the authority of the Nation to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt [see 58.1-1].				
Authorized/ Affected Entities	Employees of the Nation that incur personal debt, the Accounting Department, the Judiciary (excluding the Family Court), creditors (can include Oneida entities), and a court of competent jurisdiction				
Related Legislation	Judiciary Law and Rules of Appellate Procedure. The Child Support Law and Per Capita Law have similar concepts.				
Enforcement/ Due Process	<p>The Judiciary can issue a garnishment order against a debtor [see 58.5-4].</p> <p>Oneida entities do not need a judgment or garnishment order [see 58.6-1]; however the debtor can request a garnishment hearing to contest the validity of the debt or to request a reduced garnishment amount [see 58.6-7].</p> <p>The debtor can request a reduction in the required twenty (20) percent of their disposable income with appropriate justification and documentation [see 58.5-6(c)(1)(A)].</p> <p>Garnishments will not affect current or potential employment with the Nation [see 58.8].</p> <p>Either party can appeal a decision regarding a garnishment order to the Court of Appeals [see 58.9].</p>				

Overview

This law and the Child Support law both deal with wage withholdings; however, this law sets the process for withholdings of the Nation's employees that have personal debt. This personal debt can include, but is not limited to child support orders from a court of competent jurisdiction. Child Support sets the process for child support orders made by the Family Court; those orders will not follow this law [see 58.7 and Child Support 78.9-2].

This law explains how a creditor can seek a garnishment order against an employee of the Nation for personal debt. The creditor, other than Oneida entities, must file a petition with the Judiciary and once the petition is received, the Judiciary must hold a garnishment hearing within 60 days. Within five business days of the garnishment hearing, the judge will make a final decision and notify the parties. If the judge issues a garnishment order, he/she will calculate a percentage of the debtor's disposable income that will be garnished, starting with a presumption that 20 percent of the debtor's disposable income can be garnished. However, the debtor can request a lesser percentage be garnished from his/her disposable income if the debtor meets established criteria. The debtor can also request a greater percentage be garnished. Once the garnishment order is issued, the Accounting Department will begin deducting the appropriate amount from the debtor's paycheck within ten business days of receiving a copy of the garnishment order. If the debtor owes \$50 or less, the Judge can hold a summary proceeding which does not require a formal hearing.

Oneida entities are not subject to the garnishment process requirements regarding a judgment and can garnish without going through the Judiciary unless the debtor requests a garnishment hearing. The entity owed the debt must provide two written notices of the debt to the debtor before issuing the notice to

garnish. The notice to garnish must also appear in the Nation's newspaper. Once this has been satisfied, the Accounting Department will calculate the garnishment amount or the Nation's entity owed debt. The Accounting Department will begin deducting the appropriate amount from the debtor's paycheck within ten business days of the close of the debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment hearing or enter into an alternate garnishment agreement.

A party can appeal the judge's decision regarding the garnishment. An employee cannot be discharged, disciplined or an applicant cannot be turned away solely because he/she is subject to a garnishment action.

Proposed Amendments

Although there are a number of proposed amendments made to this Law, the following amendments have the greatest impact:

- The current law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00. These amounts have been removed from the law and instead the Judiciary is authorized to determine the garnishment action fee amount [see 58.5-3(a)(1)], while the Accounting Department determines administrative fee amount [see 58.5-6(a)].
- The current law allows the parties to be represented by someone to speak on their behalf. The proposed amendments limit representation to an attorney or advocate [see 58.5-4(d)].
- A post judgment interest must be applied to the amount received beginning on the date of the judgment and ending on the date the garnishment order is satisfied [see 58.5-6(d)]. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment [see 58.5-6(d)(1)&(2)].
- Oneida entities, including chartered corporations, do not require a judgment or a garnishment order to garnish an employee's earnings to collect a debt owed to the Nation [see 58.6-1]. Oneida entities must follow the notification procedure [see 58.6-2]. An employee can request a garnishment hearing with the Judiciary within 30 days of the date of the final notice to challenge the debt owed to the Nation or to request a reduced garnishment amount [see 58.6-7]. The debtor is responsible for the Judiciary's garnishment action fee [see 58.6-3(b)(8)].

Considerations

The LOC may want to consider the following:

- This law defines Judiciary as "the judicial system that was established by . . . GTC Resolution 01-07-13-B to administer the judicial authorities and responsibilities of the Nation" [see 58.3-1 (o)]. Because the Family Court was adopted pursuant to BC Resolution 05-08-13-A, it not included in the definition for "Judiciary" and cannot hold garnishment hearings in accordance with this law. This is appropriate because the Judiciary is the appropriate court to determine garnishment actions for the Family Court.

Miscellaneous

A public meeting was held February 18, 2016. Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. Changes have been made throughout the law to ensure compliance with drafting style. In addition, revisions have been made to improve the flow and sequence of the law without changing the intended content. Please refer to the fiscal impact statement for any financial impacts.

Chapter 58
Garnishment
Lotihwistáhkwa Olihwá·ke
the matter of taking money out

<u>58.1. Purpose and Policy</u>	<u>58.1. Purpose and Policy</u>
<u>58.2. Adoption, Amendment, Repeal</u>	<u>58.2. Adoption, Amendment, Repeal</u>
<u>58.3. Definitions</u>	<u>58.3. Definitions</u>
<u>58.4. General</u>	<u>58.4. General</u>
<u>58.4.1. Jurisdiction. By filing a Petition, Creditors are submitting to the jurisdiction of the Tribe for the subject action.</u>	<u>58.5. Garnishment Action Procedure</u>
<u>58.5. Garnishment Action Procedure</u>	<u>58.6. Recognition to Collect Debt Owed to the Nation</u>
<u>58.6. Recognition of Child Support Orders</u>	<u>58.7. Recognition of Child Support Orders</u>
<u>58.7. Discharge from Employment</u>	<u>58.8. Discharge from Employment</u>
	<u>58.9. Appeals</u>

58.1. Purpose and Policy

58.1-1.— The purpose of this Law is to exercise the authority of the Oneida Tribe of Indians Nation to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

58.1-2.— It is the policy of the Oneida Tribe of Indians of Wisconsin Nation to afford all individuals due process.

58.2.— Adoption, Amendment, Repeal

58.2-1.— This Law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B and _____.

58.2-2.— This Law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Oneida Legislative Procedures Act.

58.2-3.— Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

58.2-4.— In the event of a conflict between a provision of this Law and a provision of another law, the provision of this Law controls. law shall control.

58.2-5.— This Law is adopted under the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin Nation.

58.3.— Definitions

58.3-1.— This Article governs section shall govern the definitions of words or phrases as used herein. All words not defined herein are to shall be used in their ordinary and everyday sense.

(a) "Accounting Department" means that department of the Tribe area of the Nation charged with managing the finances of keeping the Tribe, specifically, the office charged with responsibility for the records of financial transactions and includes accounts payable and receivable, inventory, payroll of the Tribe, fixed assets and other financial elements.

(b) "Administrative Fee" means the fee assessed against the debtor each week the Accounting Department is responsible for processing the garnishment to cover the Accounting Department's costs associated with enforcing—Garnishment Orders implementing the garnishment.

(c) "Business Day" means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation.

(d) “Creditor” means anyone who is awarded a money ~~Judgment~~judgment which ~~may include a Tribal or a non Tribal entity~~includes both the Nation’s Oneida entities and outside entities. Should the ~~Tribe~~Nation be the creditor, a designee from the ~~Tribal Nation’s Oneida~~ entity shall represent the claim of indebtedness.

(de) “Debtor” means the ~~Employee~~employee whom the ~~Judgment~~judgment has been awarded against and/or whom owes a debt to the Nation.

(ef) “Disposable Earnings” means the part of the ~~Debtor’s~~debtor’s gross ~~Earnings~~earnings for a pay period remaining after deductions required by state and federal law and for health insurance costs which is presumed to be thirty percent (30%) of the debtor’s gross earnings.

(fg) “Earnings” means compensation payable in exchange for personal services and includes, but is not limited to, wages, salaries, bonuses, commissions, expense reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of benefits.

(gh) “Employee” means any individual hired by the ~~Tribe~~Nation and on the ~~Tribe’s Nation’s~~ payroll and encompasses all forms of employment, including but not limited to, full-time, part-time, at-will, elected/appointed officials, political appointees and contracted persons.

(hi) “Garnishment” means the legal process in which the ~~Earnings~~earnings of the ~~Debtor~~is debtor are required to be withheld by the ~~Tribe~~Nation for a payment of a ~~money judgement~~debt.

(ij) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the administrative costs incurred during the ~~Garnishment~~garnishment proceedings.

(jk) “Garnishment Hearing” means the time and location where the Judiciary hears relevant evidence, determines the validity of the ~~Petition~~petition for ~~Garnishment~~garnishment and identifies the amount of the ~~Garnishment Order~~garnishment order, if applicable.

(kl) “Garnishment Order” means the order issued by the Judiciary which requires the ~~Tribe Nation~~ to withhold an ~~Employee’s Earnings~~employee’s earnings in order to satisfy a ~~Creditor’s~~creditor’s unpaid money ~~Judgment~~judgment or a debt owed to an entity of the Nation and ~~must include~~includes any fees assessed against the ~~Debtor~~debtor.

(lm) “Judge” means the member of the Judiciary assigned to hear the ~~Petition~~petition for ~~Garnishment~~garnishment.

(mn) “Judgment” means any judgment, decree, or order from a court of competent jurisdiction, including, but not limited to, the Judiciary, which awards money to one or more parties.

(no) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the ~~Tribe~~Nation.

~~(p)~~ (p) “Nation” means the Oneida Nation.

~~(q)~~ (q) “Petition” means a formal written request to the Judiciary to ~~issue a Garnishment Order~~.

~~(p)~~ (p) “Judge” means the member of the Judiciary assigned to hear the ~~Petition for Garnishment~~a garnishment matter.

~~(q)~~ (q) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

58.4. General

58.4-1. Jurisdiction. By filing a ~~Petition, Creditors~~petition, creditors are submitting to the jurisdiction of the ~~Tribe~~Nation for the subject action.

58.4-2. Consumer Protection Act. This ~~Law~~law may be interpreted to allow the fullest protections available to ~~Debtors~~debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws protecting ~~Debtors~~debtors in ~~Child Support Orders~~child support orders, and other federal laws.

58.5. Garnishment Action Procedure

58.5-1. - Applicability. This section applies to the collection of all debt through the garnishment process except as provided in section 58-6.

~~58.5-2. Judgment Required. A Creditor must obtain~~Except as provided in section 58-6, a Judgment before judgment is required prior to filing a ~~Petition~~garnishment petition.

~~58.5-3. 58.5-2—Filing Action~~. In order to initiate a ~~Garnishment~~garnishment, the ~~Creditor must~~creditor shall file a petition with the Judiciary. The ~~Petition must identify~~creditor shall ensure that the petition identifies the ~~Creditor~~creditor, the intended ~~Debtor~~debtor, any other interested parties, the reason for the claim, the name of the court that issued the ~~Judgment and judgment~~, the amount awarded. ~~The Creditor must~~the creditor shall also include a copy of the ~~Judgment when filing~~judgment the Petitionpetition is based upon.

(a) The Creditor shall pay the ~~Garnishment Action Fee~~garnishment action fee before the Judiciary may consider the ~~Petition~~petition complete.

(1) The Judiciary shall determine the amount of the ~~Garnishment Action Fee~~garnishment action fee and post notice of the fee amount at the Judiciary and on the Judiciary's webpage.

~~58.5-3. 4.~~Garnishment Hearing. The Judiciary shall hold a ~~Garnishment Hearing~~garnishment hearing within sixty (60) days of receiving the completed ~~Petition~~petition.

(a) The Judiciary shall provide written notice of the garnishment hearing to the ~~Creditor, Debtor~~creditor, debtor and any other interested parties within ten (10) business days of receiving the completed petition.

(b) The ~~Debtor~~debtor may challenge the authenticity of the ~~Judgment~~judgment document or the debt owed to an Oneida entity at the ~~Garnishment Hearing~~garnishment hearing but he or she may not challenge the validity of the ~~Judgment~~judgment.

(c) A ~~Garnishment Hearing~~garnishment hearing may be used to resolve one (1) or more ~~Petitions~~petitions for one (1) or more ~~Debtors~~debtors; however, the Judiciary shall hear and determine each ~~Petition must be heard and determined~~petition separately.

(d) Throughout the ~~Garnishment~~garnishment proceedings, the parties may choose to represent themselves or may be represented by an attorney or advocate. ~~All~~The Judiciary shall provide all parties ~~shall have with~~ an equal opportunity to present evidence at the ~~Garnishment Hearing~~garnishment hearing.

~~58.5-4. 5.~~Final Decision. The ~~Judge~~judge shall make the final decision regarding a ~~Garnishment Order~~garnishment order within five (5) business days of the ~~Garnishment Hearing~~garnishment hearing. The ~~Judge~~judge shall provide written notice of the final decision to all parties within ten (10) business days of his or her decision. If a ~~Garnishment Order~~garnishment order is issued, the ~~written notice must~~Judiciary shall include a copy of the ~~Garnishment Order~~garnishment order in the written notice.

58.5-~~5~~-6. Garnishment Orders. Should the Judiciary issue a Garnishment Order~~garnishment order~~, it ~~must be required to~~ include the following:

(a) ~~An Administrative Fee-~~ An administrative fee which ~~must be assessed against the Debtor each pay period until the Garnishment Order is paid in full.~~

~~(1) The Accounting Department shall determine the amount of the Administrative Fee and provide with~~ notice of the fee amount provided to the Judiciary. The Judiciary shall post notice of the ~~Administrative Fee~~administrative fee amount in the Judiciary and on the Judiciary's webpage.

~~(b) The Garnishment Action Fee which must be awarded to the Creditor.~~

(b) Garnishment Action Fee. If the petition is submitted by the creditor, the judiciary shall include the amount of the garnishment action fee originally paid by the creditor in the garnishment order to reimburse the creditor for his or her costs to enforce the judgment.

(c) ~~The Garnishment amount~~Amount. The ~~Judge must~~judge shall begin with a presumption that a total of twenty percent (20%) of a ~~Debtor's Disposable Earnings~~debtor's disposable earnings per pay period may be subject to ~~Garnishment~~garnishment(s) at any one (1) time.

(1) In calculating the amount of the ~~Garnishment~~garnishment per pay period, the ~~Judge~~judge may not include amounts garnished pursuant to child support orders when calculating twenty percent (20%) of the ~~Debtor's Disposable Earnings~~debtor's disposable earnings.

(A) The ~~Debtor~~debtor may request the Judiciary to lower the percentage deducted from his or her disposable earnings if the he or she can show that requiring a deduction of the maximum twenty percent (20%) would cause him or her undue harm by demonstrating that one (1) or more of the following apply:

(i) The ~~Debtor~~debtor is subject to child support orders that would leave him or her with less than fifty percent (50%) of his or her ~~Earnings~~earnings;

(ii) The ~~Debtor~~debtor receives, is eligible for or, within six (6) months of the date the Judiciary received the completed ~~Petition~~petition, received public assistance;

(iii) The ~~Debtor's~~debtor's household income is below the current federal poverty level;

(iv) The ~~Garnishment~~garnishment of twenty percent (20%) of the ~~Debtor's~~debtor's disposable earnings would cause the ~~Debtor's~~debtor's household income to drop below the current federal poverty level; or

(v) The ~~Garnishment~~garnishment of twenty percent (20%) of the ~~Debtor's~~debtor's disposable earnings would cause the ~~Debtor~~debtor undue harm for reasons not identified in this section.

(2) The ~~Debtor~~debtor may request a higher percentage be deducted from his or her disposable earnings. ~~Such~~The debtor shall make such requests ~~must be made~~ directly to the Judiciary.

(3) Nothing in this ~~Law~~law prohibits the ~~Debtor~~debtor from making additional payments to satisfy the ~~Garnishment Order~~garnishment order, provided that, if a ~~Creditor~~creditor receives payments from the ~~Debtor~~debtor outside of the

~~Garnishment~~garnishment process, ~~he or she must~~the creditor shall provide notice of said payment to the Accounting Department with a copy to the ~~Debtor~~debtor.

(d) *Post Judgment Interest.* ~~Post Judgment~~The Judiciary shall include in the garnishment order a one (1) time post judgment interest ~~must be applied~~charge to the ~~judgment~~judgment amount ~~recovered from the date of.~~ The Judiciary shall determine the ~~Judgment until the~~Judgment ~~Garnishment Order is satisfied.~~ The post Judgment~~post judgment~~ interest rate ~~must be~~fixed for the duration of the Garnishment Order and is determined by one (1) of the following means:

(1) An agreement by the parties to the ~~Garnishment~~garnishment as to a fair ~~annual~~post Judgment~~judgment~~ interest rate; or

(2) ~~An annual~~A post ~~Judgment~~judgment interest rate equal to one percent (1%) plus the prime rate in effect on the date in which the ~~Judgment~~judgment was awarded or the date of the final notice of indebtedness with intent to garnish, as reported by the Federal Reserve Board in federal reserve statistical release H. 15.

~~58.5-6-7.~~ 58.5-7. *Notice of Garnishment to Accounting Department.* The Judiciary shall provide the Accounting Department with a copy of the ~~Garnishment Order~~garnishment order after the timeframe for all appeals has been exhausted.

~~58.5-7.~~ 58.5-8. *Garnishment Implementation.* Within ten (10) business days of receiving a copy of the ~~Garnishment Order~~garnishment order the Accounting Department shall implement the ~~Garnishment~~garnishment by:

(a) ~~Deducting~~deducting the appropriate amount from the ~~Debtor's~~debtor's paycheck(s) and ~~forward~~forwarding that amount to the ~~Creditor~~creditor; and

(b) ~~Notify~~creditor. The Accounting Department shall notify the ~~Debtor~~debtor and ~~Creditor~~creditor when the ~~Garnishment Order~~garnishment order has been fulfilled.

~~58.5-9.~~ 58.5-8. *Summary Process.* The Judiciary shall summarily process ~~Petitions~~petitions when the ~~Debtor~~debtor owes fifty dollars (\$50) or less, unless the ~~Debtor~~debtor formally requests a ~~Garnishment Hearing~~.

(a) ~~garnishment hearing.~~ garnishment hearing. For the purposes of this section, to summarily process a ~~Petition~~petition means a ~~Judge~~judge may make a determination regarding the ~~Garnishment Order~~garnishment order without holding a ~~Garnishment Hearing~~garnishment hearing.

~~58.5-9.~~ 58.5-9. *Appeals.* ~~A party may appeal the decision regarding a Garnishment Order, provided that the appeal must be submitted within ten (10) business days from the date of the notice of the Judge's determination. The appeal shall be filed with the Judiciary's Court of Appeals in accordance with the Judiciary Law and any applicable rules and procedures.~~

~~58.5-10.~~ 58.5-10. *Records.* The Judiciary shall keep records of all ~~Garnishment~~garnishment actions. ~~The~~ it hears and shall ensure such records ~~must contain, at minimum~~include the following:

- (a) Correspondence and notices to all parties involved;
- (b) Bookkeeping records;
- (c) Garnishment evidence presented by all parties; and
- (d) Decisions made by the Judge.

58.5-11. Modifying a Garnishment Order. A debtor may petition the Judiciary at any time following the issuance of a garnishment order to request a reduced garnishment amount if he or she is able to demonstrate a change in circumstances that may justify a reduced amount as provided in section 58.5-6(c)(1)(A).

58.6. Garnishment to Collect Debt Owed to the Nation

58.6-1. – No Judgment or Garnishment Order Required. Oneida~~The Nation's~~ entities, which for the purposes of this section include its chartered corporations, are not subject to the garnishment process requirements contained in section 58.5 unless a garnishment hearing is requested under section 58.6-7. In all other circumstances, ~~the Nation's~~ Oneida entities do not require a judgment or a garnishment order in order to garnish an employee's earnings to collect debt owed to the Nation.

58.6-2. Notice of Indebtedness. Prior to initiating a garnishment, the entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail.

(a) Frequency of Notice. Entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for garnishment.

(b) Notice Content. Entities shall include the following in their notices of indebtedness:

(1) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;

(2) The amount of the debtor's indebtedness;

(3) Information for making payment on the debt; and

(4) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic garnishment of the debtor's earnings.

58.6-3. Initiating a Garnishment. After thirty (30) calendar days have lapsed since the entity sent the second consecutive monthly notice of indebtedness, the entity may initiate a garnishment by providing the debtor with a final notice of indebtedness with intent to garnish. The entity shall send the final notice to the debtor by certified mail and shall provide a copy to the Accounting Department. Additionally, the entity shall post notice of intent to garnish in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The entity shall submit its request to post to the newspaper at the same time the final notice with intent to garnish is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment hearing. The entity shall include the following in the final notice of indebtedness with intent to garnish:

(a) The dates of all prior notices of indebtedness provided to the debtor;

(b) The amount of the debtor's indebtedness;

(c) Information for making payment on the debt;

(d) An explanation that this is the final notice and the entity has by this final notice initiated a garnishment against the debtor;

(e) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to garnish that the Accounting Department will automatically begin garnishing the debtor's earnings until the debt is satisfied in full;

(f) That the garnishment amount that may be deducted from the debtor's earnings each week consists of an administrative fee, the payment of the debt each to a maximum of twenty percent (20%) of the debtor's disposable earnings and an interest charge; and

(g) An explanation that the debtor may negotiate a reduced weekly garnishment amount with the entity, excluding the administrative fee which is not negotiable, and may request

that a higher percentage than what is required under section 58.6-4(a)(2) be deducted weekly. Provided that, if an agreement is not reached and noticed to the Accounting Department within thirty (30) calendar days from the date of the of the final notice of indebtedness, the Accounting Department shall proceed with the garnishment amount provided in the notice; and

(h) An explanation that the debtor may request a garnishment hearing with the Judiciary to contest the validity of the debt or request a reduced garnishment amount, by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to garnish and that the debtor is responsible for the Judiciary's garnishment action fee.

58.6-4. Accounting Department Responsibilities.

(a) Calculating the Garnishment Amount. The Accounting Department shall include the following in its calculation of the weekly garnishment amount.

(1) The administrative fee to be assessed against the debtor each pay period until the debt is paid in full. The Accounting Department shall use the same administrative fee that is noticed in the Judiciary and on the Judiciary's website as required in section 58.5-6(a).

(2) The amount of the garnishment attributable to payment of the debt that is equal to twenty percent (20%) of the debtor's disposable earnings per pay period.

(A) If the Accounting Department is currently processing any other garnishments for the same debtor, it shall adjust this amount so that no more than twenty percent (20%) of the debtor's disposable income is subject to garnishment at any one (1) time.

(B) In calculating the amount of the garnishment per pay period, the Accounting Department may not include amounts garnished pursuant to child support orders when calculating twenty percent (20%) of the debtor's disposable earnings.

(3) Interest. The Accounting Department shall include in the garnishment amount a one (1) time interest charge to the original amount of the debt. Unless otherwise agreed by the creditor and the debtor, the Accounting Department shall apply the interest using a rate equal to one percent (1%) plus the prime rate in effect on the date of the final notice of indebtedness with intent to garnish, as reported by the Federal Reserve Board in federal reserve statistical release H. 15.

(b) Garnishment Implementation. Within ten (10) business days of either the close of the debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment hearing or receipt of an alternate garnishment agreement, the Accounting Department shall implement the garnishment by deducting the appropriate amount from the debtor's paycheck(s) and forwarding that amount to the creditor. The Accounting Department shall notify the debtor and creditor when the debt has been fully satisfied and the garnishment is complete.

(c) Records. The Accounting Department shall keep records of all garnishments enforced on behalf of Oneida entities, and shall ensure that such records include the following:

(1) Copies of all final notices with intent to garnish sent to debtors; and

(2) Bookkeeping records.

58.6-5. Negotiating an Alternate Garnishment Agreement. It is within the entities' discretion to negotiate an alternate garnishment agreement that would reduce the weekly garnishment amount.

Such negotiations may include a reduced interest rate and/or a reduced amount of the weekly garnishment attributable to payment of the debt.

(a) In the event of that the entity and the debtor reach an agreement, the entity shall immediately forward the agreement to the Accounting Department and provide a copy to the debtor.

(b) If an agreement is not reached and noticed to the Accounting Department within thirty (30) calendar days from the date of the of the final notice of indebtedness, the Accounting Department shall proceed with the garnishment amount provided in the final notice with intent to garnish.

(c) The garnishment amount attributable to payment of the debt may be amended at any time if agreed to by the entity and the debtor.

58.6-6. *Payments in Excess of the Required Garnishment Amount.* A debtor may at any time make payments in excess of the required garnishment amount as noticed to them in the final notice of indebtedness with intent to garnish.

(a) The debtor may request a higher percentage be deducted from his or her disposable earnings. Debtors shall make such requests directly to the Accounting Department.

(b) Nothing in this law prohibits the debtor from making additional payments to satisfy the garnishment order, provided that, if an entity receives payments from the debtor outside of the garnishment process, the entity shall provide notice of said payment to the Accounting Department with a copy to the debtor.

58.6-7. *Requesting a Garnishment Hearing.* A debtor may request a garnishment hearing with the Judiciary to contest the validity of the debt or request a reduced garnishment amount by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to garnish.

(a) The debtor shall ensure that the petition identifies the creditor, the debtor, any other interested parties, and the reason for requesting the garnishment hearing; the debtor shall also include a copy of the final notice of indebtedness with intent to garnish.

(b) The debtor shall pay the garnishment action fee before the Judiciary may consider the petition complete.

(c) When a request for a garnishment hearing is timely made, the garnishment process contained in sections 58.5-4 through 58.5-10 controls. In such circumstances, the entity is still not required to obtain a judgment, but shall receive a garnishment order prior to garnishing.

58.7. Recognition of Child Support Orders

58.7-1. *Recognition and Enforcement of Child Support*~~58.6-1. *Orders for*~~. The Judiciary shall recognize and enforce child support orders against any ~~Employee must be recognized and enforced~~employee, provided that the order has been issued from a court of competent jurisdiction.

58.67-2. *Authenticity of Order.* ~~The Judiciary must receive such~~Parties seeking to garnish based on a child support orders and order shall submit the order to the Judiciary, which shall verify the order's authenticity of such orders. Upon verification of the child support order, the Judgejudge shall forward such order to the Accounting Department for action.

58.67-3. *Administrative Fee.* ~~An Administrative Fee must~~An administrative fee is required to be assessed monthly so long as the child support deduction is in effect.

58.7-8. Discharge from Employment

58.78-1. The ~~Tribe shall~~Nation may not discharge from employment, refuse to employ or otherwise take disciplinary action against an ~~Employee~~employee solely because the ~~Employee~~employee is subject to a ~~Garnishment~~garnishment action.

58.9. Appeals

58.9-1. A party may appeal a garnishment action with the Judiciary's Court of Appeals in accordance with the Judiciary Law and any applicable rules and procedures.

End.

Adopted - BC-6-2-92

Adopted - BC-6-10-92

Adopted - BC-4-2-97-G

Amended - BC-06-25-14-B

Chapter 58
Garnishment
Lotihwistáhkwa Olihwa·ke
the matter of taking money out

58.1.	Purpose and Policy	58.6.	Garnishment to Collect Debt Owed to the Nation
58.2.	Adoption, Amendment, Repeal	58.7.	Recognition of Child Support Orders
58.3.	Definitions	58.8.	Discharge from Employment
58.4.	General	58.9.	Appeals
58.5.	Garnishment Action Procedure		

58.1. Purpose and Policy

58.1-1. The purpose of this law is to exercise the authority of the Nation to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

58.1-2. It is the policy of the Nation to afford all individuals due process.

58.2. Adoption, Amendment, Repeal

58.2-1. This law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B and _____.

58.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Oneida Legislative Procedures Act.

58.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

58.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control.

58.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

58.3. Definitions

58.3-1. This section shall govern the definitions of words or phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Accounting Department" means the area of the Nation charged with keeping the records of financial transactions and includes accounts payable and receivable, inventory, payroll, fixed assets and other financial elements.

(b) "Administrative Fee" means the fee assessed against the debtor each week the Accounting Department is responsible for processing the garnishment to cover the Accounting Department's costs associated with implementing the garnishment.

(c) "Business Day" means Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Creditor" means anyone who is awarded a money judgment which includes both Oneida entities and outside entities. Should the Nation be the creditor, a designee from the Oneida entity shall represent the claim of indebtedness.

(e) "Debtor" means the employee whom the judgment has been awarded against and/or whom owes a debt to the Nation.

(f) "Disposable Earnings" means the part of the debtor's gross earnings for a pay period remaining after deductions required by state and federal law and for health insurance costs which is presumed to be thirty percent (30%) of the debtor's gross earnings.

(g) “Earnings” means compensation payable in exchange for personal services and includes, but is not limited to, wages, salaries, bonuses, commissions, expense reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of benefits.

(h) “Employee” means any individual hired by the Nation and on the Nation’s payroll and encompasses all forms of employment, including but not limited to, full-time, part-time, at-will, elected/appointed officials, political appointees and contracted persons.

(i) “Garnishment” means the legal process in which the earnings of the debtor are required to be withheld by the Nation for a payment of a debt.

(j) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the administrative costs incurred during the garnishment proceedings.

(k) “Garnishment Hearing” means the time and location where the Judiciary hears relevant evidence, determines the validity of the petition for garnishment and identifies the amount of the garnishment order, if applicable.

(l) “Garnishment Order” means the order issued by the Judiciary which requires the Nation to withhold an employee’s earnings in order to satisfy a creditor’s unpaid money judgment or a debt owed to an entity of the Nation and includes any fees assessed against the debtor.

(m) “Judge” means the member of the Judiciary assigned to hear the petition for garnishment.

(n) “Judgment” means any judgment, decree, or order from a court of competent jurisdiction, including, but not limited to, the Judiciary, which awards money to one or more parties.

(o) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(p) “Nation” means the Oneida Nation.

(q) “Petition” means a formal written request to the Judiciary to hear a garnishment matter.

58.4. General

58.4-1. *Jurisdiction.* By filing a petition, creditors are submitting to the jurisdiction of the Nation for the subject action.

58.4-2. *Consumer Protection Act.* This law may be interpreted to allow the fullest protections available to debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws protecting debtors in child support orders, and other federal laws.

58.5. Garnishment Action Procedure

58.5-1. *Applicability.* This section applies to the collection of all debt through the garnishment process except as provided in section 58-6.

58.5-2. *Judgment Required.* Except as provided in section 58-6, a judgment is required prior to filing a garnishment petition.

58.5-3. *Filing Action.* In order to initiate a garnishment, the creditor shall file a petition with the Judiciary. The creditor shall ensure that the petition identifies the creditor, the intended debtor, any other interested parties, the reason for the claim, the name of the court that issued the

judgment, the amount awarded; the creditor shall also include a copy of the judgment the petition is based upon.

(a) The Creditor shall pay the garnishment action fee before the Judiciary may consider the petition complete.

(1) The Judiciary shall determine the amount of the garnishment action fee and post notice of the fee amount at the Judiciary and on the Judiciary's webpage.

58.5-4. *Garnishment Hearing.* The Judiciary shall hold a garnishment hearing within sixty (60) days of receiving the completed petition.

(a) The Judiciary shall provide written notice of the garnishment hearing to the creditor, debtor and any other interested parties within ten (10) business days of receiving the completed petition.

(b) The debtor may challenge the authenticity of the judgment document or the debt owed to an Oneida entity at the garnishment hearing but he or she may not challenge the validity of the judgment.

(c) A garnishment hearing may be used to resolve one (1) or more petitions for one (1) or more debtors; however, the Judiciary shall hear and determine each petition separately.

(d) Throughout the garnishment proceedings, the parties may choose to represent themselves or may be represented by an attorney or advocate. The Judiciary shall provide all parties with an equal opportunity to present evidence at the garnishment hearing.

58.5-5. *Final Decision.* The judge shall make the final decision regarding a garnishment order within five (5) business days of the garnishment hearing. The judge shall provide written notice of the final decision to all parties within ten (10) business days of his or her decision. If a garnishment order is issued, the Judiciary shall include a copy of the garnishment order in the written notice.

58.5-6. *Garnishment Orders.* Should the Judiciary issue a garnishment order, it is required to include the following:

(a) *Administrative Fee.* An administrative fee which the Accounting Department shall determine with notice of the fee amount provided to the Judiciary. The Judiciary shall post notice of the administrative fee amount in the Judiciary and on the Judiciary's webpage.

(b) *Garnishment Action Fee.* If the petition is submitted by the creditor, the judiciary shall include the amount of the garnishment action fee originally paid by the creditor in the garnishment order to reimburse the creditor for his or her costs to enforce the judgment.

(c) *Garnishment Amount.* The judge shall begin with a presumption that a total of twenty percent (20%) of a debtor's disposable earnings per pay period may be subject to garnishment(s) at any one (1) time.

(1) In calculating the amount of the garnishment per pay period, the judge may not include amounts garnished pursuant to child support orders when calculating twenty percent (20%) of the debtor's disposable earnings.

(A) The debtor may request the Judiciary to lower the percentage deducted from his or her disposable earnings if the he or she can show that requiring a deduction of the maximum twenty percent (20%) would cause him or her undue harm by demonstrating that one (1) or more of the following apply:

- (i) The debtor is subject to child support orders that would leave him or her with less than fifty percent (50%) of his or her earnings;
- (ii) The debtor receives, is eligible for or, within six (6) months of the date the Judiciary received the completed petition, received public assistance;
- (iii) The debtor's household income is below the current federal poverty level;
- (iv) The garnishment of twenty percent (20%) of the debtor's disposable earnings would cause the debtor's household income to drop below the current federal poverty level; or
- (v) The garnishment of twenty percent (20%) of the debtor's disposable earnings would cause the debtor undue harm for reasons not identified in this section.
- (2) The debtor may request a higher percentage be deducted from his or her disposable earnings. The debtor shall make such requests directly to the Judiciary.
- (3) Nothing in this law prohibits the debtor from making additional payments to satisfy the garnishment order, provided that, if a creditor receives payments from the debtor outside of the garnishment process, the creditor shall provide notice of said payment to the Accounting Department with a copy to the debtor.
- (d) *Post Judgment Interest.* The Judiciary shall include in the garnishment order a one (1) time post judgment interest charge to judgment amount. The Judiciary shall determine the post judgment interest rate by one (1) of the following means:
- (1) An agreement by the parties to the garnishment as to a fair post judgment interest rate; or
- (2) A post judgment interest rate equal to one percent (1%) plus the prime rate in effect on the date in which the judgment was awarded or the date of the final notice of indebtedness with intent to garnish, as reported by the Federal Reserve Board in federal reserve statistical release H. 15.
- 58.5-7. *Notice of Garnishment to Accounting Department.* The Judiciary shall provide the Accounting Department with a copy of the garnishment order after the timeframe for all appeals has been exhausted.
- 58.5-8. *Garnishment Implementation.* Within ten (10) business days of receiving a copy of the garnishment order the Accounting Department shall implement the garnishment by deducting the appropriate amount from the debtor's paycheck(s) and forwarding that amount to the creditor. The Accounting Department shall notify the debtor and creditor when the garnishment order has been fulfilled.
- 58.5-9. *Summary Process.* The Judiciary shall summarily process petitions when the debtor owes fifty dollars (\$50) or less, unless the debtor formally requests a garnishment hearing. For the purposes of this section, to summarily process a petition means a judge may make a determination regarding the garnishment order without holding a garnishment hearing.
- 58.5-10. *Records.* The Judiciary shall keep records of all garnishment actions it hears and shall ensure such records include the following:
- (a) Correspondence and notices to all parties involved;
- (b) Bookkeeping records;
- (c) Garnishment evidence presented by all parties; and
- (d) Decisions made by the Judge.

58-5-11. *Modifying a Garnishment Order.* A debtor may petition the Judiciary at any time following the issuance of a garnishment order to request a reduced garnishment amount if he or she is able to demonstrate a change in circumstances that may justify a reduced amount as provided in section 58.5-6(c)(1)(A).

58.6. Garnishment to Collect Debt Owed to the Nation

58.6-1. *No Judgment or Garnishment Order Required.* Oneida entities, which for the purposes of this section include its chartered corporations, are not subject to the garnishment process requirements contained in section 58.5 unless a garnishment hearing is requested under section 58.6-7. In all other circumstances, Oneida entities do not require a judgment or a garnishment order in order to garnish an employee's earnings to collect debt owed to the Nation.

58.6-2. *Notice of Indebtedness.* Prior to initiating a garnishment, the entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail.

(a) *Frequency of Notice.* Entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for garnishment.

(b) *Notice Content.* Entities shall include the following in their notices of indebtedness:

(1) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;

(2) The amount of the debtor's indebtedness;

(3) Information for making payment on the debt; and

(4) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic garnishment of the debtor's earnings.

58.6-3. *Initiating a Garnishment.* After thirty (30) calendar days have lapsed since the entity sent the second consecutive monthly notice of indebtedness, the entity may initiate a garnishment by providing the debtor with a final notice of indebtedness with intent to garnish. The entity shall send the final notice to the debtor by certified mail and shall provide a copy to the Accounting Department. Additionally, the entity shall post notice of intent to garnish in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The entity shall submit its request to post to the newspaper at the same time the final notice with intent to garnish is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment hearing. The entity shall include the following in the final notice of indebtedness with intent to garnish:

(a) The dates of all prior notices of indebtedness provided to the debtor;

(b) The amount of the debtor's indebtedness;

(c) Information for making payment on the debt;

(d) An explanation that this is the final notice and the entity has by this final notice initiated a garnishment against the debtor;

(e) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to garnish that the Accounting Department will automatically begin garnishing the debtor's earnings until the debt is satisfied in full;

(f) That the garnishment amount that may be deducted from the debtor's earnings each week consists of an administrative fee, the payment of the debt each to a maximum of twenty percent (20%) of the debtor's disposable earnings and an interest charge; and

(g) An explanation that the debtor may negotiate a reduced weekly garnishment amount with the entity, excluding the administrative fee which is not negotiable, and may request that a higher percentage than what is required under section 58.6-4(a)(2) be deducted weekly. Provided that, if an agreement is not reached and noticed to the Accounting Department within thirty (30) calendar days from the date of the of the final notice of indebtedness, the Accounting Department shall proceed with the garnishment amount provided in the notice; and

(h) An explanation that the debtor may request a garnishment hearing with the Judiciary to contest the validity of the debt or request a reduced garnishment amount, by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to garnish and that the debtor is responsible for the Judiciary's garnishment action fee.

58.6-4. *Accounting Department Responsibilities.*

(a) *Calculating the Garnishment Amount.* The Accounting Department shall include the following in its calculation of the weekly garnishment amount.

(1) The administrative fee to be assessed against the debtor each pay period until the debt is paid in full. The Accounting Department shall use the same administrative fee that is noticed in the Judiciary and on the Judiciary's website as required in section 58.5-6(a).

(2) The amount of the garnishment attributable to payment of the debt that is equal to twenty percent (20%) of the debtor's disposable earnings per pay period.

(A) If the Accounting Department is currently processing any other garnishments for the same debtor, it shall adjust this amount so that no more than twenty percent (20%) of the debtor's disposable income is subject to garnishment at any one (1) time.

(B) In calculating the amount of the garnishment per pay period, the Accounting Department may not include amounts garnished pursuant to child support orders when calculating twenty percent (20%) of the debtor's disposable earnings.

(3) *Interest.* The Accounting Department shall include in the garnishment amount a one (1) time interest charge to the original amount of the debt. Unless otherwise agreed by the creditor and the debtor, the Accounting Department shall apply the interest using a rate equal to one percent (1%) plus the prime rate in effect on the date of the final notice of indebtedness with intent to garnish, as reported by the Federal Reserve Board in federal reserve statistical release H. 15.

(b) *Garnishment Implementation.* Within ten (10) business days of either the close of the debtor's thirty (30) calendar day time period to resolve the debt or request a garnishment hearing or receipt of an alternate garnishment agreement, the Accounting Department shall implement the garnishment by deducting the appropriate amount from the debtor's paycheck(s) and forwarding that amount to the creditor. The Accounting Department shall notify the debtor and creditor when the debt has been fully satisfied and the garnishment is complete.

(c) *Records.* The Accounting Department shall keep records of all garnishments enforced on behalf of Oneida entities, and shall ensure that such records include the following:

- (1) Copies of all final notices with intent to garnish sent to debtors; and
- (2) Bookkeeping records.

58.6-5. *Negotiating an Alternate Garnishment Agreement.* It is within the entities' discretion to negotiate an alternate garnishment agreement that would reduce the weekly garnishment amount. Such negotiations may include a reduced interest rate and/or a reduced amount of the weekly garnishment attributable to payment of the debt.

(a) In the event of that the entity and the debtor reach an agreement, the entity shall immediately forward the agreement to the Accounting Department and provide a copy to the debtor.

(b) If an agreement is not reached and noticed to the Accounting Department within thirty (30) calendar days from the date of the of the final notice of indebtedness, the Accounting Department shall proceed with the garnishment amount provided in the final notice with intent to garnish.

(c) The garnishment amount attributable to payment of the debt may be amended at any time if agreed to by the entity and the debtor.

58.6-6. *Payments in Excess of the Required Garnishment Amount.* A debtor may at any time make payments in excess of the required garnishment amount as noticed to them in the final notice of indebtedness with intent to garnish.

(a) The debtor may request a higher percentage be deducted from his or her disposable earnings. Debtors shall make such requests directly to the Accounting Department.

(b) Nothing in this law prohibits the debtor from making additional payments to satisfy the garnishment order, provided that, if an entity receives payments from the debtor outside of the garnishment process, the entity shall provide notice of said payment to the Accounting Department with a copy to the debtor.

58.6-7. *Requesting a Garnishment Hearing.* A debtor may request a garnishment hearing with the Judiciary to contest the validity of the debt or request a reduced garnishment amount by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to garnish.

(a) The debtor shall ensure that the petition identifies the creditor, the debtor, any other interested parties, and the reason for requesting the garnishment hearing; the debtor shall also include a copy of the final notice of indebtedness with intent to garnish.

(b) The debtor shall pay the garnishment action fee before the Judiciary may consider the petition complete.

(c) When a request for a garnishment hearing is timely made, the garnishment process contained in sections 58.5-4 through 58.5-10 controls. In such circumstances, the entity is still not required to obtain a judgment, but shall receive a garnishment order prior to garnishing.

58.7. Recognition of Child Support Orders

58.7-1. *Recognition and Enforcement of Child Support Orders.* The Judiciary shall recognize and enforce child support orders against any employee, provided that the order has been issued from a court of competent jurisdiction.

58.7-2. *Authenticity of Order.* Parties seeking to garnish based on a child support order shall submit the order to the Judiciary, which shall verify the order's authenticity. Upon verification

of the child support order, the judge shall forward such order to the Accounting Department for action.

58.7-3. *Administrative Fee.* An administrative fee is required to be assessed monthly so long as the child support deduction is in effect.

58.8. Discharge from Employment

58.8-1. The Nation may not discharge from employment, refuse to employ or otherwise take disciplinary action against an employee solely because the employee is subject to a garnishment action.

58.9. Appeals

58.9-1. A party may appeal a garnishment action with the Judiciary's Court of Appeals in accordance with the Judiciary Law and any applicable rules and procedures.

End.

Adopted - BC-6-2-92

Adopted - BC-6-10-92

Adopted - BC-4-2-97-G

Amended - BC-06-25-14-B



Legislative Operating Committee

April 20, 2015

Landlord-Tenant Law

Submission Date: October 7, 2015

☐ Public Meeting:
☐ Emergency Enacted:

LOC Sponsor: David P. Jordan

Summary: *Is a new law that will explain the roles and responsibilities of the Landlord and Tenant. This law is being developed because the Land Commission's hearing authority is being transferred to the Judiciary.*

10/7/15 LOC: Motion by David P. Jordan to add the Real Property Law Amendments, Probate Law, Mortgage Law, Landlord-Tenant Law and Land Commission Bylaws Amendments to the Active Files List with himself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

12/16/15 LOC: Motion by Fawn Billie to accept the memorandum update as FYI and to defer the Landlord-Tenant Law back to the sponsor and to bring back when ready; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Accept the draft of the Landlord-Tenant law and send for a legislative analysis.

Chapter 63
Landlord-Tenant
Tsi' Yuhwatsyawá'ku Aolihwá'ke
where it bound to the earth - issues

6	63.1.	Purpose and Policy.	11	63.6.	Rights and Duties of Landlords and Tenants.
7	63.2.	Adoption, Amendment, Repeal.	12	63.8.	Sex Offender Registry.
8	63.3.	Definitions.	13	63.9.	Termination of Tenancy at Death of Tenant.
9	63.4.	Rental Programs.	14	63.10.	Appeals.
10	63.5.	Rental Agreement Documents.	15		

63.1. Purpose and Policy.

63.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants within the reservation.

63.1-2. *Policy.* Is it the Nation's policy to provide a fair process to all landlords and tenants that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

63.2. Adoption, Amendment, Repeal.

63.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

63.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

63.2-3. Should a provision of this law or the application of thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

63.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

63.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

63.3. Definitions.

63.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(b) "Nation" means the Oneida Nation.

(c) "Premises" means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

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

(e) "Rental Agreement" means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.

(f) “Rule” means

(g) “Tenant” means the person granted the right to use or occupy a premise pursuant to a rental agreement.

(h) “Security Deposit” means a payment made to the landlord by the tenant to ensure that rent will be and other responsibilities of the rental agreement performed.

63.4. Rental Programs.

63.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and shall establish rules naming said programs and providing the specific requirements for each program:

(a) Elder tribal members;

(b) Low-income Oneida tribal members and families; and

(c) Tribal members in general.

63.4-2. *Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

(a) Be eighteen (18) years of age at the time of the application;

(b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;

(c) Meet the local governments’ laws’ requirements regarding residency restrictions for convicted sex offenders;

(d) Meet the income requirements for entering the rental agreement as determined by the rental program’s governing rules;

(e) Not hold a residential lease with the Nation; and

(f) Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than this law, but may be stricter than this law.

63.4-3. *Tenant Selection.* The Comprehensive Housing Division shall develop rules governing the selection of applicants for the issuance of rental agreements.

(a) At a minimum, the Comprehensive Housing Division shall ensure that the rental agreement selection rules provide a preference to applicants:

(1) With a disability recognized by a medical professional, and/or

(2) Having veteran status with relevant proof of service, which may include, but is not limited to, a DD214 Discharge Form, Reservist Identification Card, or National Guard Identification Card.

(b) Nothing in this section may be interpreted to place a requirement on a landlord to modify existing rental units in order to provide additional housing that is handicap accessible.

63.5. Rental Agreement Documents.

63.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not

affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

63.5-2. Requirements of Rental Agreements and Terminations. A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premise;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premise;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) If a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction law; and/or

(D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 64.5-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(5) Imposes liability on the tenant for any of the following:

(A) Personal injury arising from causes clearly beyond the tenant's control.

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 64.5-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(6) Waives any obligation on the part of the landlord to deliver the premise in a fit and habitable condition or to maintain the premise during the tenant's tenancy.

(7) Allows for periodic tenancy, which for the purposes of this section means when a tenant uses/occupies a premise without an effective and valid rental agreement by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

63.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

63.6. Rights and Duties of Landlords and Tenants.

63.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

63.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant removes from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of the abandoned personal property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

(a) The landlord shall hold personal property for a minimum of five (5) business days and the tenant may retrieve said personal property by contacting the landlord.

(b) The landlord shall keep a written log of the date and the work time that the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(c) The Comprehensive Housing Division shall create rules further governing the disposition of personal property.

63.6-3. *Repairs; Untenantability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) Duties of the Landlord.

(1) Except for repairs made necessary by the negligence of, or improper use of the premises by, the tenant, the landlord has a duty to do all of the following:

(A) Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

(B) Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

(C) Make all necessary structural repairs.

(D) Except as provided in section 63.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

(E) Comply with any laws or rules of the Nation that are applicable to the premises.

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 63.6-(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

(3) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any violation of either the Building Code of the Oneida Nation or the Zoning and Shoreland Protection Ordinance if all of the following apply:

(A) The landlord has actual knowledge of the violation;

(B) The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises;

(C) The violation presents a significant threat to the prospective tenant's health or safety; and

(D) The violation has not been corrected.

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 64.5-.3(b) or (c) governs.

(5) The landlord is responsible for all required pest control to keep the premises in a safe and healthy condition, provided that where an infestation has occurred due to the acts or inaction of the tenant the pest control costs may be assessed against the tenant.

(b) Duties of the Tenant.

(1) If the premises are damaged, including by an infestation of insects or other pests, due to the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the remediation, repair, or redecoration, and in such case the tenant shall reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

(2) The tenant shall keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order.

(3) Tenants shall comply with all laws and rules of the Nation.

(c) Untenability. If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of Section 63.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 63.6-3(a) materially affecting the health or safety of the tenant.

(1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.

(2) If the tenant remains in possession, the landlord shall decrease rent for each month the extent the tenant is deprived of the full normal use of the premises.

The Comprehensive Housing Division shall develop rules governing how and

when rent is decreased pursuant to this section. This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.

(3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.

(e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:

(1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;

(2) The landlord suspects the tenant has abandoned the premises; and/or

(3) The landlord receives notice that the premise's utilities have been disconnected.

(f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.

(g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.

63.7. Domestic Abuse Protections.

63.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

(a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;

(b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;

(c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;

(d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;

(e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;

(f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or

(g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

63.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

63.7-3. The Eviction law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

63.8. Sex Offender Registry.

63.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

63.9. Termination of Tenancy at Death of Tenant.

63.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

(a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;

(b) The expiration of the term of the rental agreement.

63.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

63.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

63.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration.

63.10. Appeals.

63.10-1. Parties may appeal actions taken pursuant to this law and/or a rental agreement to the Oneida Judiciary.

End.



Legislative Operating Committee

April 20, 2016

Per Capita Law Amendments

Submission Date: 7/10/2015

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

Summary: *This request from the Trust Enrollment Department was submitted to clarify several provisions of the law, modify the frequency of form requirements and in elder distributions, and incorporate fees for stop payments and closed bank accounts.*

7/15/15 LOC: Motion by Jennifer Webster to add the Per Capita Law Amendments to the active files list with David P. Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to accept the update as FYI and defer the Per Capita Law Amendments to the Legislative Reference Office and to bring back in 30 days for an update; seconded by Fawn Billie. Motion carried unanimously.

10/21/15 LOC: Motion by David P. Jordan to accept the memorandum as FYI and to defer the Per Capita Law Amendments to the sponsor to continue to work with the Trust Enrollment Committee and to bring a draft back on November 4, 2015; seconded by Fawn Billie. Motion carried unanimously.

10/23/15: Work meeting held, attendees include: Cheryl Skolaski, David P. Jordan, Caroyl Long, Douglass McIntyre, Bonnie Pigman, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore.

10/26/15: Work meeting held, attendees include: Caroyl Long, Bonnie Pigman, Misty Cannon, Leyne Orosco, Lisa Kelly Skenandore, Candice Skenandore, Susan White, Krystal John.

11/4/15 LOC: Motion by Jennifer Webster to defer to Legislative Reference Office for legislative analysis and fiscal impact; seconded by Fawn Billie. Motion carried unanimously.

2/3/16 LOC: Motion by Tehassi Hill to defer the Per Capita Law Amendments to a work meeting with the Trust Enrollment Department, the Finance Department, Law Office and the sponsor and bring back to the LOC within the next 30 days; seconded by David P. Jordan. Motion carried unanimously.

3/2/16 LOC: Motion by Jennifer Webster to accept the Per Capita Law Amendments status update memorandum and defer to the sponsor to bring back an updated draft with an updated legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

4/6/16 LOC: Motion by Jennifer Webster to prepare the Per Capita Law Amendments for a public meeting to be held on May 19, 2016; seconded by David P. Jordan. Motion carried unanimously.

- **Next Steps:** Accept the results of the e-poll conducted on April 7, 2016; approve the revisions to the draft and analysis based on the e-poll; and approve the Per Capita Law Amendments public meeting packet and forward for a public meeting to be held on May 19, 2016 at 12:15 p.m.

Oneida Nation Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Maureen Perkins, Legislative Analyst, LTE



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214

<https://oneida-nsn.gov/Laws>

Memorandum

TO: Legislative Operating Committee
FROM: Krystal L. John, Staff Attorney
DATE: April 20, 2016
RE: E-Poll Results for Updated Per Capita Law Amendments Draft

At the Legislative Operating Committee (LOC) meeting held on April 6, 2016 the LOC approved the draft and analysis of the Per Capita law amendments and directed that a public meeting packet be prepared for a May 19, 2016 meeting.

Since that date the LOC held a work meeting to consider the public meeting comments related to the Garnishment Amendments. At that meeting, the LOC decided to revise the garnishment process for collection of debt owed to Oneida entities. At that meeting it was discussed that similar revisions should be considered for the attachment of per capita payments for the purposes of collecting debt owed to Oneida entities.

Upon discussion with the sponsor, David P. Jordan, an e-poll was sent out requesting permission from the LOC to update the draft Per Capita law amendments and legislative analysis to include a process for per capita attachment that does not require Oneida entities to go through the Judiciary in order to attach. This update would allow the Per Capita law amendments information to be updated in advance of the LOC's approval of the public meeting packet.

Please accept the attached results of the E-Poll that was conducted on April 7, 2016 to direct the Legislative Reference Office to update the draft Per Capita law amendments and legislative analysis to include the revisions discussed in this memo.

Krystal John

From: Krystal John
Sent: Thursday, April 07, 2016 2:54 PM
To: Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Jennifer A. Webster; Ronald W. Hill
Cc: Maureen S. Perkins; Douglass A. McIntyre; Bonnie M. Pigman; Susan White
Subject: E-Poll Per Capita Law Attachments to Collect Tribal Debt

Good afternoon,

At the work meeting held on April 6, 2016 to review the public meeting comments on the Garnishment law amendments, the LOC made a policy decision to allow tribal entities to garnish wages for debts owed to the Nation without requiring a court order. This largely mirrors the levy process that the IRS uses and allows the debtors to request a hearing to contest the garnishment, which is the only way the judiciary would become involved in a garnishment to collect a debt owed to the Nation. At that meeting it was discussed that to maintain consistency, the attachments in the Per Capita law should use the same process.

Please respond with approval to revise the draft and legislative analysis of the Per Capita law approved at the April 6, 2016 LOC meeting in order to incorporate this revision prior to the public meeting.

From: Jennifer A. Webster
Sent: Thursday, April 07, 2016 3:02 PM
To: Krystal John; Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Ronald W. Hill
Cc: Maureen S. Perkins; Douglass A. McIntyre; Bonnie M. Pigman; Susan White
Subject: RE: E-Poll Per Capita Law Attachments to Collect Tribal Debt

Approve,
 Jenny

From: David P. Jordan
Sent: Thursday, April 07, 2016 3:23 PM
To: Krystal John; Brandon L. Yellowbird-Stevens; Fawn J. Billie; Jennifer A. Webster; Ronald W. Hill
Cc: Maureen S. Perkins; Douglass A. McIntyre; Bonnie M. Pigman; Susan White
Subject: RE: E-Poll Per Capita Law Attachments to Collect Tribal Debt

support

From: Ronald W. Hill
Sent: Thursday, April 07, 2016 7:07 PM
To: Krystal John
Cc: Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Jennifer A. Webster; Maureen S. Perkins; Douglass A. McIntyre; Bonnie M. Pigman; Susan White
Subject: Re: E-Poll Per Capita Law Attachments to Collect Tribal Debt

Approve

Sent from my iPhone



Analysis Draft # 4 to Draft 12

<i>Analysis by the Legislative Reference Office</i>					
Title	Per Capita (law) Amendments				
Requester	Trust Department	Drafter	Krystal L. John	Analyst	Maureen Perkins
Reason for Request	To 1) clarify minor and majority age beneficiary references as they relate to deferrals and hardships; 2) make changes in frequency of form requirements and in Elder distributions; 3) incorporate fees for stop payments and closed bank accounts and 4) review how resolutions BC-01-28-04-A and BC-11-06-02 are affected by the proposed changes and original intent, as they apply to the law.				
Purpose	The purpose of this law is to specify the procedures to be followed in the event that per capita payments are distributed by the Nation and to clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments <i>[See 9.1-1]</i> .				
Authorized/ Affected Entities	Oneida Business Committee, Trust Enrollment Committee, Trust Department, Enrollment Department, Judiciary, Oneida Accounting Department, Oneida Nation Child Support Agency, Oneida Entities				
Due Process	Any Tribal member or guardian of a Tribal member can appeal a decision regarding a per capita payment and/or distribution <i>[See 9.8]</i> or an attachment <i>[See 9.4-6(d)(1)(A)]</i> to the Judiciary.				
Related Legislation	Per Capita Trust Agreement, Tribal Revenue Allocation Plan, Child Support Law and Accompanying Rules, Memorandum of Agreement, Judiciary				
Policy Mechanism	Attachments may be ordered by the Judiciary for child support arrears, debt owed to an Oneida Entity that is past due, or a federal tax levy <i>[See 9.4-6(a)]</i> . Debt owed to an Oneida Entity includes any money owed and any fines that have been issued by the Oneida Entity <i>[See 9.4-6(a)(2)(A)]</i> . The Judiciary may order attachments against per capita payments of Tribal members who have not returned a notarized membership payment form or who refuse a per capita payment <i>[See 9-4.6(e)]</i> . All fees associated with reissuing a distribution must be applied to the distribution unless it is an error on the Nation's behalf <i>[See 9.5-2(b)(1)(A) and (B)]</i> .				
Enforcement	Per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution <i>[See 9.4-3]</i> .				

Overview

The proposed Per Capita law amendments were requested by the Trust Department to reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults, reduce the processing of adult per capita payments by eliminating the submission of the notarized form for adult members who have direct deposit on file with the Enrollment Department, create the majority age beneficiary category distinct from minor beneficiary, and establish bank fees for closed accounts and returned distributions. Additional amendments include: repeals BC resolution 11-06-02-A,

merges Trust and Enrollment Departments into one Trust Enrollment Department, recognizes the Trust Enrollment Committee (the current law recognizes the Trust Committee), eliminates deadlines related to attachments, eliminates the requirement for Oneida entities to receive an attachment order from the Judiciary unless an attachment hearing is requested and eliminates the role of the Trust Enrollment Committee to hold administrative hearings.

Analysis was requested regarding the following resolutions:

▪ **BC Resolution 11-06-02-A**

- This resolution amended the Per Capita Ordinance to create a separate per capita payment schedule for elders who turn 62 and 65 in a distribution year. The amendments added age 65 to the definition of elder in the Per Capita Ordinance. The resolution also established that elders who turn 62 or 65 by December 31st were to receive the respective elders' per capita payment for that September 30th distribution year. Those who turn 62 or 65 after September 30th were to receive their respective first time elder per capita payment in the month following their birth date. This establishes that there are additional elders payments sent after September 30th of a distribution year for those who are turning 62 and 65 after September 30 of that distribution year.
 - The proposed amendments still honor December 31st as the cut off for elders who reach the age determined by the GTC resolution in the distribution year that takes place on September 30th. These distributions; however, will occur on September 30th along with all adult distributions. Elders who reach age categories established by the GTC resolution between October 1st and December 31st will receive their elders' payments early on September 30th of that distribution year.
 - BC Resolution 11-06-02-A conflicts with the proposed amendments in that there is not a separate schedule for elders' payments in the proposed law as established by this resolution. Elders are classified as adults in the definition and therefore follow the adult distribution timeline.
 - Adult is defined as a Tribal member who is at least eighteen (18) years of age on or before September 1st of a given year [See 9.3-1(a)].

	BC Resolution 11-06-02-A	Current Law	Proposed Amendments
definition	Elder: shall mean those tribal members who are age 62 years or over, or 65 years or over, as of December 31 of a given year	(e) "Elder" shall mean those Tribal members who are age 62 years or over, or 65 years or over, as of December 31st of a given year.	9.3-1 "Adult" means a Tribal member who is at least eighteen (18) years of age on or before September 1 st of a given year. 9.7-2(1) For the purposes of this section, elder means a Tribal Member who meets the age requirements as of December 31st of a given year to be eligible for an elder Distribution as determined by the effective

Analysis Draft # 4 to Draft 12

			General Tribal Council Resolution.
	BC Resolution 11-06-02-A	Current Law	Proposed Amendments
Payments / Distributions	<p>(c) Payments Sent. Per capita payments shall be mailed on September 30th.</p> <p>1) After September 30, and through December 31, first time elder per capita payments shall be sent in the month following birth date.</p>	<p>5.5-3(d) (d) Annual Payments. Annual per capita payments shall be distributed on or before September 30th. First time elder per capita payments for those Tribal members who turn sixty-two (62) or sixty-five (65) after September 30th, and through December 31st, shall be distributed at the end of the month of the elder's birth date.</p> <p>(e) (1) Prior Payments: Elders. Prior payments requested by eligible elders on or before the twentieth (20th) day of the month shall be distributed by the last business day of that month. Prior payments requested by elders after the twentieth (20th) day of the month shall be distributed by the last business day of the next month.</p>	<p>9.5-2 (c) Annual Distribution Date. All annual per capita payments, excluding those to minor beneficiary trust accounts, which are governed by the Per Capita Trust Agreement, must be distributed on or before September 30th.</p>

- **Impact.** BC Resolution 11-06-02-A conflicts with the proposed amendments.
 - This law repeals BC Resolution 11-06-02-A considering that elders will still receive their elders' payments in the distribution year according to the proposed Per Capita Law amendments.

- **Special BC Resolution 1-28-04-A**

- This resolution was passed at the Special BC meeting held in lieu of the GTC Annual Meeting due to a lack of quorum. This resolution designates the interest from the unclaimed unallocated per capita pooled account to be applied to the Oneida Language Revitalization Program.
- Please note that the pooled account itself has not been designated for use by the GTC through this resolution; only the interest from the account was allocated, the principal of the account shall not be depleted.
- **Impact.** This resolution has no legislative impact on the proposed amendments.

Proposed Amendments

This section will highlight each of the major proposed amendments to the law and will indicate whether there is overlap or conflict with the Per Capita Trust Agreement.

- **Repeals BC Resolution 11-06-02-A**

- **Impact.** The separate process for elders' per capita distributions has been eliminated; all adult distributions will follow the same distribution schedule.

- **Trust Enrollment Committee.** Added responsibilities include: provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan [see 9.4-5(c)].

- **Impact.** No legislative impact or conflict.

- 67 ▪ **Trust Enrollment Department.** Added responsibilities include: ensure the availability
68 and liquidity of funds for transfer of the trust funds under the authorization of the Trust
69 Enrollment Committee *[see 9.4-6(f)]*.
70 ○ **Impact.** No legislative impact or conflict.
- 71 ▪ **Tribal Treasurer.** Duties removed:
72 ○ Make a payment to those Tribal members responding to the membership payment
73 form deadline who are not minors or incompetent adults *[see 9.7-5(a) of current*
74 *law]*.
75 ○ Cover unverified member payments for those members who are unresponsive to
76 the membership payment form deadline *[see 9.7-5(b) of current law]*.
77 ▪ **Impact.** No legislative impact or conflict.
- 78 ▪ **Deadlines.** Deadlines regarding attachments were removed throughout the law to
79 eliminate the need to amend the law due to updated deadlines in the future *[see 9.4-*
80 *6(d)(4) and 9.4-6(d)(4)(B) and 9.4-6(d)(4)(C) and 9.4-6(d)(5) and 9.4-6(d)(6)(A) and 9.4-*
81 *6(d)(6)(B) and 9.4-6(e)(1) and 9.4-6(e)(2) and 9.4-6(e)(3)(A) and 9.4-6(e)(3)(B) of*
82 *current law]*.
83 ○ **Impact.** No legislative impact or conflict.
- 84 ▪ **Distinction of Majority Age and Minor Beneficiaries.** Two terms have been added to
85 create clarity in the law: majority age beneficiaries and minor beneficiaries.
86 ○ **Proposed Amendments to the Law.** The proposed amendments to the law
87 define the new terms as follows:
88 ▪ Majority age beneficiaries: a Tribal member who has reached eighteen
89 (18) years of age by September 1 and is eligible to claim a trust account
90 for the first time in the distribution year *[see 9.3-1(l)]*.
91 ▪ Minor beneficiaries are defined as Tribal members who are less than
92 eighteen (18) years of age *[see 9.3-1(k)]*.
93 ○ **Per Capita Trust Agreement.** The Per Capita Trust Agreement refers only to
94 “beneficiaries” defined as:
95 ▪ The beneficiaries of the trust shall be all duly enrolled members of the
96 Oneida Tribe of Indians of Wisconsin who are eligible to receive a per
97 capita distribution in any year in which any such distribution is made, and
98 who have not yet attained the age of eighteen years by September 1st of the
99 year in which such distribution is made *[see Article I. Beneficiaries of the*
100 *Per Capita Trust Agreement]*.
101 ○ **Impact.** No legislative impact or conflict.
- 102 ▪ **Oneida Entity Debt Attachment.** Oneida entities are not required to receive an
103 attachment order from the Judiciary prior to initiating a per capita payment attachment
104 unless an attachment hearing is requested *[see 9.4-9(d)]*. The entity owed the debt must
105 provide two written notices via first class mail to the debtor’s last known address prior to
106 issuing final notice of indebtedness with intent to attach. The notice to attach must also
107 appear in the Nation’s newspaper. Once this has been satisfied, the Trust Enrollment
108 Department will calculate the attachment amount. The Trust Enrollment Department
109 may attach per capita payments of Tribal members who do not return a notarized
110 membership payment form or who refuse a distribution *[see 9.4-9(f)]*. Any remaining

amount after all attachments have been satisfied will be distributed to the Tribal member if current direct deposit is on file with the Trust Enrollment Department or deposited into the unclaimed per capita account if no direct deposit is on file or if refused *[see 9.4-9(f)]*.

- **Administrative Hearings.** The role of the Trust Enrollment Committee to hold administrative hearings regarding challenges to payment or non-payment of per capita payments has been removed from this law *[see 9.4-4(c) of current law]*. Disputes are settled by the Judiciary in the proposed amendments.

 - **Proposed Amendments to the Law.** The proposed amendments to the law state, “Any Tribal member or guardian of a Tribal member can appeal a decision regarding a per capita payment and/or distribution to the Judiciary” *[see 9.8]*.
 - **Per Capita Trust Agreement.** The Per Capita Trust Agreement states, “If any dispute arises out of the distribution of a beneficiary’s interest under the trust, all such matters shall be resolved according to the procedures set forth in the Oneida Administrative Procedures Act, except as otherwise provided in the Oneida Tribe of Indians of Wisconsin Revenue Allocation Plan *[see Article XV of the Per Capita Trust Agreement]*.”
 - **Impact.** Article XV of the Per Capita Trust Agreement would need to be updated to refer disputes to the Judiciary.
- **Membership Distribution Forms.** The current law requires each adult Tribal member to return a notarized membership payment form by the close of business on September 1st in order to be eligible for the per capita payment *[see 9.5-3(b) of current law]*.

 - **Proposed Amendments to the Law.** Tribal members who have submitted a direct deposit form are no longer required to submit the notarized membership payment form each year unless there is a change to the direct deposit information *[see 9.5-2(b)(1)(A)]*. The direct deposit information can be updated until the deadline of September 1 to apply to the per capita payment that year *[see 9.5-2(b)(1)(A)(i)]*.
 - **Impact.** No legislative impact or conflict.
- **Bank Fees.** The current law is silent with respect to bank fees.

 - **Proposed Amendments to the Law.** All fees associated with reissuing a distribution (due to stop payment or incorrect direct deposit information) must be applied to the distribution *[see 9.5-2(d)(1)]* unless it is an error on the Nation’s behalf *[see 9.5-2(d)(2)]*.
 - **Impact.** No legislative impact or conflict.
- **Elders Payments.** The separate process for elder’s distributions was removed from this law. Elder’s distributions now follow the same process and adhere to the same deadlines as the adult distributions *[see 9.5]*, except for those elders who reach the age category established by the GTC resolution between October 1 and December 31 of the distribution year, who will receive their elders’ payments early on September 30 (implied intent). This change conflicts with BC Resolution 11-06-02-A which sets the distribution timeline for elders reaching 62 and 65 by December 31st of the distribution year.

 - **Impact.** BC Resolution 11-06-02-A is repealed in this law as noted in the analysis of the resolution above.
- **Appeal Process.** A process to appeal to the Judiciary was added to this law *[See 9.8]*.

- **Impact.** The appeal process would need to be updated in the Per Capita Trust Agreement as it currently refers to the Administrative Procedures Act and the Revenue Allocation Plan to settle disputes *[See Article XV of the Per Capita Trust Agreement]*.

- **Appeal of Oneida Entity Debt and Federal Tax Levy Attachments**

- Tribal members subject to attachment to collect a debt owed to the Judiciary who wish to appeal the attachment may file a request for a show cause hearing with the Judiciary. The Judiciary shall honor all requests for show cause hearings received within ten (10) business days from the date of the one-time notice of attachment *[see 9.4-9(d)(1)(A)]*. .

- **Impact.** Provides an opportunity for Tribal members to appeal an attachment to collect debt issued by the Judiciary.

Miscellaneous

A public meeting has not yet been held. Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved constitutional amendments. Minor language changes have been made to improve the clarity without affecting the content of the law. Revisions have been made to comply with drafting styles. Please refer to the fiscal impact statement for any financial impacts.

Draft 12 – Redline to Draft 11
2016 04 20

Chapter 9
PER CAPITA
Shakotiwi' Stawihé Olihwa'ke
Issues concerning where they give the money

9.1. Purpose and Policy
9.2. Adoption, Amendment, Repeal
9.3. Definitions
9.4. General

9.5. Distributions
9.6. Minor Beneficiaries and Legally Incompetent Adults
9.7. Appeals

9.1. Purpose and Policy

9.1-1. *Purpose.* The purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and
- (b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

9.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

9.2. Adoption, Amendment, Repeal

9.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and _____.

9.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

9.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

9.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that this law repeals Oneida Business Committee resolution 11-06-02-A.

9.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

9.3. Definitions

9.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Adult" means a Tribal member who is at least eighteen (18) years of age on or before September 1st of a given year.

(b) "Arrears" means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.

(c) "Court of competent jurisdiction" means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.

(d) "Day" means calendar days, unless otherwise specifically stated.

~~(e)~~ (e) "Debtor" means a Tribal member owing a debt to an Oneida entity.

Draft 12 – Redline to Draft 11
2016 04 20

(f) “Direct Deposit” means the electronic distribution of funds.

(fg) “Distribution” means the transfer of funds to Tribal members.

(gh) “IGRA” means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

(hi) “Judiciary” means the Nation’s judicial system, which includes the Family Court, Trial Court and/or Appellate Court.

(ij) “Legally Incompetent Adult” means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.

(jk) “Majority Age Beneficiary” means a Tribal member who has reached eighteen (18) years of age by September 1st and is eligible to claim a trust account for the first time in the distribution year.

(kl) “Minor Beneficiary” means a Tribal member who is less than eighteen (18) years age.

(lm) “Nation” means the Oneida Nation.

(mn) “Oneida Entity” means a department, board, committee ~~or~~ commission or chartered corporation of the Nation or the Judiciary.

(no) “Outstanding Check” means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.

(op) “Per Capita Payment” means the amount authorized by the General Tribal Council to be distributed to Tribal members.

(pq) “Pooled Account” means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation’s laws.

(r) “Proof of Education” means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.

(s) “Tribal Member” means an individual who is an enrolled member of the Nation.

(t) “Trust Account” means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation’s revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.

(su) “Trust Enrollment Committee” means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation’s enrollment records.

(tv) “Trust Fund Accountant” means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.

(w) “Proof of Education” means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.

9.4. General

9.4-1. This section sets forth the responsibilities delegated under this law.

9.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

Draft 12 – Redline to Draft 11
2016 04 20

9.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.

9.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;
- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

9.4-5. *Trust Enrollment Committee.* The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

9.4-6. *Trust Enrollment Department.* When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Division and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to the same.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Division and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and

Draft 12 – Redline to Draft 11
2016 04 20

distribution verification.

(j) Record issued, voided, redeemed, and outstanding check trust account distributions in the Enrollment Database.

(k) Complete trust account reconciliations.

(l) Calculate attachment amounts for collection of Oneida entity debts and implement Oneida Entity attachments.

9.4-7. *Oneida Accounting Division.* When a per capita payment is approved, the Oneida Accounting Division shall:

(a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.

(b) Record issued, voided and outstanding check distributions on the general ledger.

(c) Complete bank account reconciliations.

9.4-8. *Tribal Treasurer.* The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Division.

9.4-9. *Attachments.* Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita ~~payment—attachments~~payments may only be ~~ordered by the Judiciary~~attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) “Debt owed to an Oneida entity” includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in

Draft 12 – Redline to Draft 11
2016 04 20

this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9.5-5.

(c) *Child Support Attachments.* Claimants or their designated representative shall submit all requests for attachments for child support arrears to the Oneida Nation Child Support Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect child support arrears without first having received an order of determination ~~from~~issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 9.4-9(c)(1).

(d) *Oneida Entity Debt ~~and~~ Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 9.4-9(d)(5).

(1) Notice of Indebtedness. Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail at the debtor's last known address.

(A) Frequency of Notice. Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) Notice Content. Oneida entities shall include the following in their notices of indebtedness:

(i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt; and

(iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) Initiating an Attachment. After thirty (30) calendar days have lapsed since the Oneida entity sent the second consecutive monthly notice of indebtedness, the

Draft 12 – Redline to Draft 11
2016 04 20

Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

(i) The dates of all prior notices of indebtedness provided to the debtor;

(ii) The amount of the debtor's indebtedness;

(iii) Information for making payment on the debt;

(iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;

(v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;

(vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and

(vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1st in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to implement an attachment for a current per capita payment distribution, Oneida Entities shall:

(i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31st, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment

Draft 12 – Redline to Draft 11
2016 04 20

hearing with the Judiciary expires on or before July 31st; and
(ii) Receive, review and respond to the withholding report, in
accordance with the deadline provided by the Trust Enrollment
Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall
determine the amount of per capita payment attachment based on the order
provided in section 9.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards
a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall
only include unpaid debts in their final accounting submitted to the Trust
Enrollment Department.

(A) Once the Oneida entity has submitted the final accounting to the Trust
Enrollment Department, the attachment amount may not be modified. If a
debtor makes a payment towards a debt subject to attachment after the
final accounting has been submitted to the Trust Enrollment Department,
the Oneida entity shall reimburse the debtor for payments received in
excess of the amount of the debt noticed to the debtor within thirty (30)
calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment
hearing with the Judiciary to contest the validity of the debt by submitting a
petition to the Judiciary within thirty (30) calendar days from the date of the final
notice of indebtedness with intent to attach, provided that the debtor shall include
a copy of the final notice of indebtedness with intent to attach with the petition.

(A) The debtor shall pay any filing fees required by the Judiciary before
the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida
entity is still not required to obtain a judgment, but shall receive an
attachment order before the Trust Enrollment Department may attach a per
capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to
satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the
process contained in section 9.4-9(d)(1)-(5) for each per capita payment it seeks
to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall
submit all requests for attachments for ~~debt owed to an Oneida entity after receiving a~~
~~judgment from a court of competent jurisdiction or to the federal government for a~~
~~federal tax levy to the Judiciary.~~ a federal tax levy to the Judiciary. The Trust Enrollment
Department may not attach a Tribal member's per capita payment to collect a federal tax
levy without first having received an order of determination from the Judiciary.

(1) ~~Upon recognizing a need to attach a Tribal member's per capita payment to~~
~~collect a debt owed to an Oneida entity, the Oneida entity shall send a one-time~~
~~notice and a voluntary federal income tax withholding request form to said Tribal~~

Draft 12 – Redline to Draft 11
2016 04 20

~~members by first class U.S. mail to the last known address of the party.~~

~~(A) Tribal members subject to attachment to collect a debt owed to the Judiciary who wish to appeal the attachment may file a request for a show cause hearing with the Judiciary. f The Judiciary shall honor all requests for show cause hearings received within ten (10) business days from the date of the one time notice of attachment.~~

~~(2) If attaching for a debt owed to an Oneida entity, the Oneida entity shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.~~

~~(3) The may order and the Trust Enrollment Department may not attach a Tribal member's per capita payment to collect a debt owed to an Oneida entity or a federal tax levy without first having received an order of determination from the Judiciary.~~

~~(e) The Judiciary may order~~implement attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 9.5-2(b)(1) or who refuse a payment under 9.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9.5-5.

9.4-10. *Federal Income Tax Withholding.*

(a) *Voluntary.* The Trust Enrollment Department shall withhold federal income taxes from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 9.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

~~(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal members whose per capita payment is subject to attachment in accordance with section 9.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the deadlines established by, the Oneida entity pursuing the attachment. The Trust Enrollment Department shall apply timely the federal income tax withholding requests to the applicable distribution before any attachments are applied.~~

(b) *Mandatory.* A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a.* The Nation shall comply with the most recent edition of IRS Publication 15a.

Draft 12 – Redline to Draft 11
2016 04 20

9.5. Distributions

9.5-1. *General.* This section sets forth the required processes for distribution of per capita payments.

9.5-2. *Deadlines.* The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility.* Eligibility falls into the following categories:

(1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31st in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines.* An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31st.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment.* A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1st.

(b) *Distribution Documents.*

(1) *Adult Distribution Form and Instructions.*

(A) Prior to July 1st of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to those who do not have a direct deposit record on file with the Trust Enrollment Department.

(i) Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1st in order to be eligible for a per capita distribution.

(B) Prior to July 1st of the year the Trust Enrollment Department shall mail receipts to those who have a direct deposit record on file with the Trust Enrollment Department. Adults receiving the receipts are not required to submit a membership distribution form unless an adult wishes to remove his or her direct deposit record.

(i) An adult wishing to remove his or her direct deposit record shall complete, notarize and return all applicable forms to the Trust Enrollment Department by close of business on or before the distribution form deadline.

(C) The Trust Enrollment Department shall make available late

Draft 12 – Redline to Draft 11
2016 04 20

membership distribution forms and shall accept such forms in compliance with section 9.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1st of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30th, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 9.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 9.5-5.

(A) The Trust Enrollment Department shall distribute prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall distribute prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1st of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds

Draft 12 – Redline to Draft 11
2016 04 20

are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall deposit expired funds in a pooled account in accordance with 9.5-5.

(B) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include but are not limited to stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 9.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with the distribution deadline.

(3) The Trust Enrollment Department shall deposit refused distributions in a pooled account in accordance with 9.5-5.

9.5-3. *Deceased Tribal Members.* Tribal members are ineligible to receive a distribution if his or her date of death occurs on or before the distribution date. This includes distributions identified to be deposited to a trust account.

(a) *Deceased Adult.* The estate of a deceased adult may not submit a membership distribution form on behalf of the deceased to claim a distribution. The Trust Enrollment Department shall deposit per capita payments reserved for deceased adults in a pooled account in accordance with 9.5-5.

(b) *Deceased Minor/Majority Age Beneficiary.* The value of a minor/majority age beneficiary's trust account is inheritable on the date of the minor/majority age beneficiary's death. The Trust Enrollment Committee shall establish rules creating the processes by which an application for distribution may be made. The distribution may be issued either in the name of the deceased minor/majority age beneficiary or the estate of the minor/majority age beneficiary.

(1) If the trust account funds for a deceased minor/majority beneficiary are not claimed by the estate of the deceased within one (1) year after the date of the minor/majority age beneficiary's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.

(c) *Deceased Legally Incompetent Adult.* The balance of a legally incompetent adult's

Draft 12 – Redline to Draft 11
2016 04 20

trust account is inheritable as of the date of his or her death. The Trust Enrollment Committee shall establish rules creating the processes by which the deceased's estate may apply for distribution of the trust account funds. The distribution may be issued either in the name of the deceased legally incompetent adult or the estate of the deceased legally incompetent adult.

(1) If the trust account funds for a deceased legally incompetent adult are not claimed by the estate of the deceased within one (1) year after the date of the legally incompetent adult's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.

9.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall deposit funds set aside for a relinquished adult's distribution in a pooled account in accordance with 9.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account ~~in accordance with section 9.6 1(a)(4).~~ if he or she is eighteen (18) years of age by September 1st of the distribution year and submits the majority age distribution form by July 1st of the same year. In addition, a relinquished majority/minor age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21st) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 9.5-2(f).

(34) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

~~(4) In order to be eligible to claim his or her joint savings account funds, a relinquished majority age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21st) birthday.~~

(5) The Trust Enrollment Department shall deposit any unclaimed joint savings account funds in a Pooled Account in accordance with section 9.5-5.

(c) *Legally Incompetent Adult Relinquishment.* Upon a legally incompetent adult's relinquishment the Trust Enrollment Department shall disburse any funds in a trust

Draft 12 – Redline to Draft 11
2016 04 20

account for the legally incompetent adult to the guardian of the legally incompetent adult.

- (1) If the trust account funds for a legally incompetent adult are not claimed within one (1) year after the date of relinquishment, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.

9.5-5. *Pooled Account.* Pooled account funds are managed by the Trust Enrollment Committee, to be used for a purpose designated by General Tribal Council. Pooled account funds result from the following.

(a) *Expiration of Unclaimed Per Capita Payments.* Tribal Members' rights to unclaimed Per Capita Payments expire upon the occurrence of any one (1) of the following:

- (1) A Tribal member submits a refusal form under 9.5-2(f);
- (2) A Tribal member fails to request a prior distribution or trust account funds within the time provided under this law and/or the Per Capita Trust Agreement;
- (3) An ~~adult deceases~~adult's death occurs prior to a distribution date; or
- (4) The estate of a deceased majority age/minor beneficiary fails to request distribution of the trust account within the time provided under 9.5-3(b).
- (5) The guardian of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 9.5-3(c).

9.6. Minor Beneficiaries and Legally Incompetent Adults

9.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust accounts. The Trust Enrollment Committee may choose to maintain pooled or individual accounts, separate accounts for each distribution or series of distributions, or any other combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

- (1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

Draft 12 – Redline to Draft 11
2016 04 20

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of ~~a high school diploma or its equivalent~~education by September 1st of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of ~~a high school diploma or its equivalent~~education by September 1st of the Distribution year as required by the Per Capita Trust Agreement, he or she ~~is~~remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the requirement to provide ~~a high school diploma or its equivalent~~proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 9.6-2. In such circumstances, the Trust Enrollment Department shall automatically liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have a learning or other disability that has been medically diagnosed and are able to present a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to ~~a high school diploma~~proof of education.

(D) *Fraudulent Proof of a Diploma.* In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of ~~a high school diploma or its equivalent~~education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

Draft 12 – Redline to Draft 11
2016 04 20

(a) His or her proof of ~~high school diploma or its equivalent~~education has been deemed fraudulent;

(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until ~~the sooner of when~~ he or she submits valid proof of ~~a high school diploma, its equivalent~~education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of ~~a high school diploma or its equivalent~~education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 9.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1st of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

9.6-2. *Legally Incompetent Adults.* This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with IGRA.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules for determining when a guardian qualifies for distribution from an established trust account.

(b) *Reversal of Incompetency.* If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

Draft 12 – Redline to Draft 11
2016 04 20

9.7. Appeals

9.7-1. Any Tribal member or guardian of a Tribal member may appeal a decision regarding a per capita payment and/or distribution to the Judiciary.

End.

Adopted - BC-7-12-00-B

Emergency Amendments – BC-01-03-01-B

Emergency Amendments - BC-2-28-01-E

Amendments - BC-11-06-02-A (Elder Per Capita)

Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)

Amendments - BC-6-16-04-C (Child support priority for attachment)

Emergency Amendments - BC-9-12-07-A (one-time per capita payment)

Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)

Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)

Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)

Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)

Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13

Amendments Adopted – BC-08-14-13-D

NOTICE OF
PUBLIC MEETING

TO BE HELD
Thursday, May 19th at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: PER CAPITA LAW

This is a proposal to amend the Garnishment law which would:

- ◆ Reduce the frequency of per capita distributions to elders while still maintaining the elders payments by placing elders on the same distribution schedule as adults [see 9.5-2 and 9.4-6(a)];
- ◆ Reduce the processing of adult per capita payments by eliminating the submission of the notarized form for adult members who have direct deposit on file with the Trust Enrollment Department [see 9.5-2(b)(1)(A)];
- ◆ Create the majority age beneficiary category distinct from minor beneficiary [see 9.3-1(j)];
- ◆ Establish bank fees for closed accounts and returned distributions [see 9.5-2(d)(2) and 9.5-2(e)(2)(B)];
- ◆ Transfer the Trust Enrollment Committees hearing authority to the Oneida Judiciary [see 9.7-1]; and
- ◆ Revise the attachment process to allow entities to collect debt owed to the Nation without requiring a court order [see 9.4-9(d)].

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL May 26, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidanation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040

Draft 12
2016 04 20

Chapter 9
PER CAPITA
Shakotiwi' Stawihé Olihwa'ke
Issues concerning where they give the money

9.1. Purpose and Policy
9.2. Adoption, Amendment, Repeal
9.3. Definitions
9.4. General

9.5. Distributions
9.6. Minor Beneficiaries and Legally Incompetent Adults
9.7. Appeals

9.1. Purpose and Policy

9.1-1. *Purpose.* The purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are distributed by the Nation; and
- (b) To clearly state the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments.

9.1-2. *Policy.* It is the policy of the Nation to have a consistent methodology for distribution of per capita payments, including payments derived from gaming revenues and regulated by IGRA.

9.2. Adoption, Amendment, Repeal

9.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D and _____.

9.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

9.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

9.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that this law repeals Oneida Business Committee resolution 11-06-02-A.

9.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

9.3. Definitions

9.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Adult" means a Tribal member who is at least eighteen (18) years of age on or before September 1st of a given year.
- (b) "Arrears" means the amount of money a Tribal member has not paid pursuant to the most recent child support court order against him or her.
- (c) "Court of competent jurisdiction" means the Judiciary, a state or federal court or another court recognized by the Judiciary as having the jurisdiction to hear and determine a particular legal proceeding.
- (d) "Day" means calendar days, unless otherwise specifically stated.
- (e) "Debtor" means a Tribal member owing a debt to an Oneida entity.

Draft 12
2016 04 20

- (f) "Direct Deposit" means the electronic distribution of funds.
- (g) "Distribution" means the transfer of funds to Tribal members.
- (h) "IGRA" means the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.
- (i) "Judiciary" means the Nation's judicial system, which includes the Family Court, Trial Court and/or Appellate Court.
- (j) "Legally Incompetent Adult" means a Tribal member who is at least eighteen (18) years of age and has been declared incompetent by a court of competent jurisdiction pursuant to applicable law.
- (k) "Majority Age Beneficiary" means a Tribal member who has reached eighteen (18) years of age by September 1st and is eligible to claim a trust account for the first time in the distribution year.
- (l) "Minor Beneficiary" means a Tribal member who is less than eighteen (18) years age.
- (m) "Nation" means the Oneida Nation.
- (n) "Oneida Entity" means a department, board, committee, commission or chartered corporation of the Nation or the Judiciary.
- (o) "Outstanding Check" means a check that has been written by the Nation, but has not yet cleared the bank on which it was drawn.
- (p) "Per Capita Payment" means the amount authorized by the General Tribal Council to be distributed to Tribal members.
- (q) "Pooled Account" means the account set up by the General Tribal Council or Oneida Business Committee, through resolution, for the purpose of managing undistributed funds pursuant to the Nation's laws.
- (r) "Proof of Education" means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.
- (s) "Tribal Member" means an individual who is an enrolled member of the Nation.
- (t) "Trust Account" means an account(s) established by the Trust Enrollment Committee for the purpose of maintaining per capita funds for persons pursuant to the Nation's revenue allocation plan, which includes, but is not limited to, minor beneficiaries and legally incompetent adults.
- (u) "Trust Enrollment Committee" means that body designated by the General Tribal Council to manage the trust funds for the Nation on behalf of Tribal members, and which is also responsible for the Nation's enrollment records.
- (v) "Trust Fund Accountant" means the third party professionals hired by the Trust Enrollment Committee to oversee trust accounts established pursuant to this law.
- (w) "Proof of Education" means the documents identified in Article III of the Per Capita Trust Agreement as acceptable to demonstrate that the tribal member has received a high school diploma or its equivalent.

9.4. General

9.4-1. This section sets forth the responsibilities delegated under this law.

9.4-2. *Supersedes.* This law supersedes any contradictory language contained in any other per capita payment plan.

Draft 12
2016 04 20

9.4-3. *Budgetary Limitations.* This law may not be construed as mandating a per capita payment; per capita payments may only be issued at the direction of the General Tribal Council through adoption of a resolution.

9.4-4. *Oneida Business Committee.* The Oneida Business Committee shall:

- (a) Identify and allocate funds available for per capita payments;
- (b) Forward approved revenue allocation plans to the Bureau of Indian Affairs;
- (c) Transfer funds to the appropriate Oneida entity(ies) pursuant to the Nation's laws within a reasonable time frame;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Trust Enrollment Committee.

9.4-5. *Trust Enrollment Committee.* The Trust Enrollment Committee shall:

- (a) Manage trust accounts related to per capita payments with fiduciary responsibility;
- (b) Maintain the Nation's membership rolls so that the Trust Enrollment Department can accurately identify which Tribal members are eligible for distribution;
- (c) Provide input to the Finance Department regarding per capita matters included in the Nation's revenue allocation plan;
- (d) Be responsible for any activities not specifically identified but reasonably related to the responsibilities in this sub-section; and
- (e) Enter into a Per Capita Trust Agreement and Memorandum of Agreement with the Oneida Business Committee.

9.4-6. *Trust Enrollment Department.* When a per capita payment is approved, the Trust Enrollment Department shall:

- (a) Develop and finalize a list of the eligible distribution recipients broken down into the following categories: minor beneficiaries, majority age beneficiaries, legally incompetent adults, adults and elders. For the purposes of this section, elder means a Tribal member who meets the age requirements as of December 31st of a given year to be eligible for an elder distribution as determined by the effective General Tribal Council Resolution.
- (b) Provide the finalized list of Tribal members eligible to receive the distribution to the Oneida Accounting Division and trust fund accountant.
- (c) Send membership distribution and trust account forms and receipts related to the same.
- (d) Manage and maintain the Enrollment Database including, but not limited to, membership and distribution information.
- (e) Process the distribution data and forward the data to the Oneida Accounting Division and trust fund accountant.
- (f) Ensure the availability and liquidity of funds for transfer of the trust funds under the authorization of the Trust Enrollment Committee.
- (g) Provide fund transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.
- (h) Work with the Trust Enrollment Committee to establish any necessary trust accounts.
- (i) Monitor all trust accounts for the purposes of necessary reporting, claims and

Draft 12
2016 04 20

distribution verification.

(j) Record issued, voided, redeemed, and outstanding check trust account distributions in the Enrollment Database.

(k) Complete trust account reconciliations.

(l) Calculate attachment amounts for collection of Oneida entity debts and implement Oneida Entity attachments.

9.4-7. *Oneida Accounting Division.* When a per capita payment is approved, the Oneida Accounting Division shall:

(a) Initiate and complete the funds transfer upon receipt of funds transfer instructions from the authorizing Oneida entity and shall ensure that the physical movement of funds happens no later than one (1) business day prior to the distribution date.

(b) Record issued, voided and outstanding check distributions on the general ledger.

(c) Complete bank account reconciliations.

9.4-8. *Tribal Treasurer.* The office of the Oneida Treasurer shall identify funds and shall timely transfer the necessary amount of relevant funds to the Trust Enrollment Committee, the trust fund accountant and the Oneida Accounting Division.

9.4-9. *Attachments.* Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) "Debt owed to an Oneida entity" includes any money owed to an Oneida entity and any fines that have been issued by an Oneida entity.

(B) If a Tribal member owes debt to more than one (1) Oneida entity, the Trust Enrollment Department shall equally divide the per capita payment based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

(b) If the amount of the per capita payment exceeds the amount of the attachment, the Trust Enrollment Department shall distribute the remaining balance to the Tribal member, provided the Tribal member has met the distribution requirements contained in

Draft 12
2016 04 20

this law. If there is a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9.5-5.

(c) *Child Support Attachments.* Claimants or their designated representative shall submit all requests for attachments for child support arrears to the Oneida Nation Child Support Agency.

(1) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(2) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Judiciary.

(3) The Trust Enrollment Department may not attach a Tribal member's per capita payment to collect child support arrears without first having received an order of determination issued by the Judiciary.

(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita payment based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 9.4-9(c)(1).

(d) *Oneida Entity Debt Attachments.* Oneida entities are not required to receive an attachment order from the Judiciary prior to initiating a per capita payment attachment unless an attachment hearing is requested under section 9.4-9(d)(5).

(1) *Notice of Indebtedness.* Prior to initiating an attachment, the Oneida entity owed the debt shall provide written notice of indebtedness to the debtor by first (1st) class mail at the debtor's last known address.

(A) *Frequency of Notice.* Oneida entities shall send debtors notice of indebtedness for each month a debt is owed with each notice being sent a minimum of thirty (30) calendar days apart. Oneida entities shall send two (2) consecutive monthly notices prior to the debt becoming eligible for attachment.

(B) *Notice Content.* Oneida entities shall include the following in their notices of indebtedness:

- (i) How many notices of indebtedness have been provided prior to the subject notice and the dates of all prior notices;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt; and
- (iv) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the second consecutive monthly notice, the entity may initiate an automatic attachment of the Tribal member's per capita payment.

(2) *Initiating an Attachment.* After thirty (30) calendar days have lapsed since the Oneida entity sent the second consecutive monthly notice of indebtedness, the

Draft 12
2016 04 20

Oneida entity may initiate an attachment by providing the debtor with a final notice of indebtedness with intent to attach. The Oneida entity shall send the final notice to the debtor by certified mail. Additionally, the Oneida entity shall post notice of intent to attach in the Nation's newspaper, where such notice includes only the debtor's name, the Oneida entity owed a debt and the Oneida entity's contact information for payment. The Oneida entity shall submit its request to post to the newspaper at the same time as the final notice with intent to attach is mailed in order to ensure that notice is posted in the newspaper a minimum of ten (10) business days before the close of the debtor's thirty (30) calendar day time period to resolve the debt or request an attachment hearing.

(A) The Oneida entity shall include the following in the final notice of indebtedness with intent to attach:

- (i) The dates of all prior notices of indebtedness provided to the debtor;
- (ii) The amount of the debtor's indebtedness;
- (iii) Information for making payment on the debt;
- (iv) An explanation that this is the final notice and the Oneida entity has by this final notice initiated an attachment against the debtor;
- (v) An explanation that if the debt is not paid in full within thirty (30) calendar days from the date of the final notice of indebtedness with intent to attach that the Trust Enrollment Department will automatically attach the debtor's available per capita payment in order to satisfy the debt;
- (vi) An explanation that the debtor may request an attachment hearing with the Judiciary to contest the validity of the debt by submitting a petition to the Judiciary within thirty (30) calendar days from the date of the of the final notice of indebtedness with intent to attach and that the debtor is responsible for any filing fees required by the Judiciary; and
- (vii) A membership distribution form which the debtor shall submit to the Trust Enrollment Department no later than September 1st in order for voluntary federal income taxes to be withheld.

(B) *Attachment Deadlines.* In order for the Trust Enrollment Department to implement an attachment for a current per capita payment distribution, Oneida Entities shall:

- (i) Send the Trust Enrollment Department a one-time final accounting of all debts subject to attachment no later than July 31st, provided that, in order for a debt to be included in the final accounting, the Oneida entity's shall have sent the debtor a final notice of indebtedness with intent to attach in which the debtor's thirty (30) day period to resolve the debt or request an attachment

Draft 12
2016 04 20

hearing with the Judiciary expires on or before July 31st; and
(ii) Receive, review and respond to the withholding report, in
accordance with the deadline provided by the Trust Enrollment
Department.

(3) *Calculating the Attachment Amount.* The Trust Enrollment Department shall
determine the amount of per capita payment attachment based on the order
provided in section 9.4-9(a).

(4) *Payment of Debt Prior to Attachment.* A debtor may make payments towards
a debt subject to attachment at any time.

(A) Oneida entities shall keep record of all debtors payments and shall
only include unpaid debts in their final accounting submitted to the Trust
Enrollment Department.

(A) Once the Oneida entity has submitted the final accounting to the Trust
Enrollment Department, the attachment amount may not be modified. If a
debtor makes a payment towards a debt subject to attachment after the
final accounting has been submitted to the Trust Enrollment Department,
the Oneida entity shall reimburse the debtor for payments received in
excess of the amount of the debt noticed to the debtor within thirty (30)
calendar days from its receipt of the per capita payment attachment.

(5) *Requesting an Attachment Hearing.* A debtor may request an attachment
hearing with the Judiciary to contest the validity of the debt by submitting a
petition to the Judiciary within thirty (30) calendar days from the date of the final
notice of indebtedness with intent to attach, provided that the debtor shall include
a copy of the final notice of indebtedness with intent to attach with the petition.

(A) The debtor shall pay any filing fees required by the Judiciary before
the Judiciary may consider the petition complete.

(B) When a request for an attachment hearing is timely made, the Oneida
entity is still not required to obtain a judgment, but shall receive an
attachment order before the Trust Enrollment Department may attach a per
capita payment to collect debt owed to the Oneida entity.

(6) *Multiple Attachments.* If a single per capita payment is not sufficient to
satisfy the debt owed to an Oneida entity, the Oneida entity shall follow the
process contained in section 9.4-9(d)(1)-(5) for each per capita payment it seeks
to attach.

(e) *Federal Tax Levy Attachments.* Claimants or their designated representatives shall
submit all requests for attachments for a federal tax levy to the Judiciary. The Trust
Enrollment Department may not attach a Tribal member's per capita payment to collect a
federal tax levy without first having received an order of determination from the
Judiciary.

(f) The Judiciary may order and the Trust Enrollment Department may implement
attachments against per capita payments of Tribal members who do not return a notarized
membership payment form as required under 9.5-2(b)(1) or who refuse a payment under
9.5-2(f). If the amount of the per capita payment exceeds the amount of the attachment

Draft 12
2016 04 20

resulting in a remaining unclaimed balance, the Tribal member may request it to be distributed as provided in 9.5-2(e). The Trust Enrollment Department shall deposit any remaining refused balance in accordance with 9.5-5.

9.4-10. *Federal Income Tax Withholding.*

(a) *Voluntary.* The Trust Enrollment Department shall withhold federal income taxes from a distribution only when the following applies:

(1) Tribal members whose per capita payment is not subject to attachment in accordance with section 9.4-9 may voluntarily request to have federal income tax withheld, provided that Tribal members shall make such requests in accordance with the applicable distribution deadlines.

(2) If the Trust Enrollment Department receives a timely voluntary request to have federal income tax withheld from a Tribal members whose per capita payment is subject to attachment in accordance with section 9.4-9, the Trust Enrollment Department shall apply the federal income tax withholding to the applicable distribution before any attachments are applied.

(b) *Mandatory.* A Tribal member who meets all of the requirements of this law, but refuses to provide the Trust Enrollment Department with his or her social security number or individual tax identification number is subject to mandatory federal income tax withholding from his or her per capita payment, as required by federal law.

(c) *IRS Publication 15a.* The Nation shall comply with the most recent edition of IRS Publication 15a.

9.5. Distributions

9.5-1. *General.* This section sets forth the required processes for distribution of per capita payments.

9.5-2. *Deadlines.* The following deadlines apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline is construed to be the close of business on the following business day. For any additional per capita payments, the Trust Enrollment Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility.* Eligibility falls into the following categories:

(1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31st in order to be considered eligible for the following per capita payment.

(A) *Enrollment Deadlines.* An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31st.

(B) A newly enrolled Tribal member is eligible only for per capita payments authorized to be distributed following the effective date of his or her enrollment; he or she is not eligible to receive any per capita payments that were distributed prior to the effective date of his or her enrollment.

(2) *Dual Enrollment.* A Tribal member who is dually enrolled with another Indian tribe is not eligible for a per capita payment unless his or her

Draft 12
2016 04 20

relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Trust Enrollment Department by September 1st.

(b) *Distribution Documents.*

(1) *Adult Distribution Form and Instructions.*

(A) Prior to July 1st of the year the Trust Enrollment Department shall mail membership distribution forms and instructions to those who do not have a direct deposit record on file with the Trust Enrollment Department.

(i) Adults shall complete, notarize and return a notarized membership distribution form to the Trust Enrollment Department by close of business on or before September 1st in order to be eligible for a per capita distribution.

(B) Prior to July 1st of the year the Trust Enrollment Department shall mail receipts to those who have a direct deposit record on file with the Trust Enrollment Department. Adults receiving the receipts are not required to submit a membership distribution form unless an adult wishes to remove his or her direct deposit record.

(i) An adult wishing to remove his or her direct deposit record shall complete, notarize and return all applicable forms to the Trust Enrollment Department by close of business on or before the distribution form deadline.

(C) The Trust Enrollment Department shall make available late membership distribution forms and shall accept such forms in compliance with section 9.5-2(e).

(2) *Majority Age Beneficiary Distribution Form and Instructions.*

(A) Prior to April 1st of the year the Trust Enrollment Department shall mail trust account forms and instructions to eligible majority age beneficiaries for trust account distributions.

(B) The Trust Enrollment Department shall make available late trust account forms and shall accept such forms in accordance with Article III of the Per Capita Trust Agreement.

(c) *Annual Distribution Date.* The Trust Enrollment Department shall distribute all annual per capita payments on or before September 30th, excluding those to beneficiary trust accounts, which are governed by the Per Capita Trust Agreement.

(d) *Direct Deposit.* Adults and majority age beneficiaries may submit a direct deposit form at any time, provided that in order for it to be applied to an upcoming distribution, the Tribal member shall submit the direct deposit form by the applicable per capita or trust account distribution form deadline.

(1) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include, but are not limited to, stop payment and direct deposit bank rejection fees).

(2) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the

Draft 12
2016 04 20

Tribal member as identified in 9.5-2(e)(2)(A).

(e) *Request for a Prior Per Capita Payment.*

(1) *Unclaimed Payment.* Tribal members shall submit a request for a prior adult per capita payment, for which the Tribal member was eligible, but was not claimed or fully attached, by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment expires and the Trust Enrollment Department shall deposit such funds in a pooled account in accordance with 9.5-5.

(A) The Trust Enrollment Department shall distribute prior per capita payments requested by eligible adults according to the Trust Enrollment Committee's rules regarding distribution timelines.

(B) The Trust Enrollment Department shall distribute prior per capita payments requested by a majority age beneficiary in accordance with Article III of the Per Capita Trust Agreement.

(2) *Distribution of Outstanding Checks including rejected Direct Deposit funds.* Tribal members shall submit a request for an adult or majority age beneficiary's prior distribution, for which a Tribal member already claimed, but did not redeem, by September 1st of the next year. For example, if a distribution's original issue date is in 2000, then the deadline is September 1, 2001.

(A) An adult, beneficiary or majority age beneficiary's distribution may only be reissued once. After the distribution/rejected direct deposit funds are reissued, the Tribal member has ninety (90) days to redeem it or the distribution will expire and may not be reissued. The Trust Enrollment Department shall deposit expired funds in a pooled account in accordance with 9.5-5.

(B) The Trust Enrollment Department shall deduct any fees associated with reissuing a distribution from the reissued distribution. (Fees may include but are not limited to stop payment and direct deposit bank rejection fees).

(i) The Nation shall waive fees if a check is reissued due to an error on its behalf. A reissue made due to an error on the Nation's behalf may not count against the Tribal member as identified in 9.5-2(e)(2)(A).

(f) *Refusal of Distributions.* An adult or majority age beneficiary may refuse any distribution due to him or her, including a trust account distribution, by completing a refusal form available with the Trust Enrollment Department. However, if the Judiciary has approved an attachment of an adult distribution, only the remaining portion of the distribution, if any, may be refused. Majority age beneficiary and legally incompetent adult distributions are not attachable.

(1) Upon submitting the refusal form to the Trust Enrollment Department, the adult or majority age beneficiary irrevocably waives his or her right to the specific distribution as indicated on the form.

Draft 12
2016 04 20

(2) Tribal members seeking to refuse a distribution shall submit refusal forms in accordance with the distribution deadline.

(3) The Trust Enrollment Department shall deposit refused distributions in a pooled account in accordance with 9.5-5.

9.5-3. *Deceased Tribal Members.* Tribal members are ineligible to receive a distribution if his or her date of death occurs on or before the distribution date. This includes distributions identified to be deposited to a trust account.

(a) *Deceased Adult.* The estate of a deceased adult may not submit a membership distribution form on behalf of the deceased to claim a distribution. The Trust Enrollment Department shall deposit per capita payments reserved for deceased adults in a pooled account in accordance with 9.5-5.

(b) *Deceased Minor/Majority Age Beneficiary.* The value of a minor/majority age beneficiary's trust account is inheritable on the date of the minor/majority age beneficiary's death. The Trust Enrollment Committee shall establish rules creating the processes by which an application for distribution may be made. The distribution may be issued either in the name of the deceased minor/majority age beneficiary or the estate of the minor/majority age beneficiary.

(1) If the trust account funds for a deceased minor/majority beneficiary are not claimed by the estate of the deceased within one (1) year after the date of the minor/majority age beneficiary's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.

(c) *Deceased Legally Incompetent Adult.* The balance of a legally incompetent adult's trust account is inheritable as of the date of his or her death. The Trust Enrollment Committee shall establish rules creating the processes by which the deceased's estate may apply for distribution of the trust account funds. The distribution may be issued either in the name of the deceased legally incompetent adult or the estate of the deceased legally incompetent adult.

(1) If the trust account funds for a deceased legally incompetent adult are not claimed by the estate of the deceased within one (1) year after the date of the legally incompetent adult's death, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.

9.5-4. *Relinquishment of Tribal Membership.* Tribal members are ineligible for any current, future and/or prior per capita payment distributions as of the date his or her Tribal membership is relinquished.

(a) *Relinquished Adult.* The Trust Enrollment Department shall deposit funds set aside for a relinquished adult's distribution in a pooled account in accordance with 9.5-5.

(b) *Majority Age/Minor Beneficiary Relinquishment.* Upon a majority age/minor beneficiary's relinquishment the following provisions apply:

(1) The Trust Enrollment Department shall deposit any funds in a trust account for a majority age/minor beneficiary in a joint savings account in the name of the Trust Enrollment Committee and the relinquished majority age/minor beneficiary.

(2) A relinquished majority age/minor beneficiary is eligible to claim the joint savings account if he or she is eighteen (18) years of age by September 1st of the

Draft 12
2016 04 20

distribution year and submits the majority age distribution form by July 1st of the same year. In addition, a relinquished majority/minor age beneficiary shall claim any remaining funds held in the joint savings account prior to the first distribution following his or her twenty-first (21st) birthday.

(3) A relinquished majority age/minor beneficiary may refuse his or her joint savings account funds at the age of eighteen (18). The proof of education requirement is not required to refuse joint savings account funds, however the relinquished majority age/minor beneficiary shall satisfy the requirements of section 9.5-2(f).

(4) The Trust Enrollment Department shall follow the Trust Enrollment Committee's standard operating procedure for allocating any fees necessary for the establishment and maintenance of a relinquished majority age/minor beneficiary's joint savings account to the said account.

(5) The Trust Enrollment Department shall deposit any unclaimed joint savings account funds in a Pooled Account in accordance with section 9.5-5.

(c) *Legally Incompetent Adult Relinquishment.* Upon a legally incompetent adult's relinquishment the Trust Enrollment Department shall disburse any funds in a trust account for the legally incompetent adult to the guardian of the legally incompetent adult.

(1) If the trust account funds for a legally incompetent adult are not claimed within one (1) year after the date of relinquishment, the Trust Enrollment Department shall liquidate and deposit the trust fund account in accordance with 9.5-5.

9.5-5. *Pooled Account.* Pooled account funds are managed by the Trust Enrollment Committee, to be used for a purpose designated by General Tribal Council. Pooled account funds result from the following.

(a) *Expiration of Unclaimed Per Capita Payments.* Tribal Members' rights to unclaimed Per Capita Payments expire upon the occurrence of any one (1) of the following:

(1) A Tribal member submits a refusal form under 9.5-2(f);

(2) A Tribal member fails to request a prior distribution or trust account funds within the time provided under this law and/or the Per Capita Trust Agreement;

(3) An adult's death occurs prior to a distribution date; or

(4) The estate of a deceased majority age/minor beneficiary fails to request distribution of the trust account within the time provided under 9.5-3(b).

(5) The guardian of a deceased legally incompetent adult fails to request distribution of the trust account within the time provided under 9.5-3(c).

9.6. Minor Beneficiaries and Legally Incompetent Adults

9.6-1. *Minor Beneficiaries.* This section sets forth a consistent method to protect and preserve the interests of minor beneficiaries in any distribution to which a minor beneficiary may be eligible. All distributions to minor beneficiaries are governed by this law, IGRA and the Per Capita Trust Agreement.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring and distributing the trust

Draft 12
2016 04 20

accounts. The Trust Enrollment Committee may choose to maintain pooled or individual accounts, separate accounts for each distribution or series of distributions, or any other combination which is in the best interests of the beneficiaries and which is consistent with the terms of the Per Capita Trust Agreement and the Trust Enrollment Committee's investment policy.

(1) The Trust Enrollment Committee is responsible for the protection and preservation of per capita payment funds for beneficiaries. As part of that responsibility, the Trust Enrollment Committee shall complete and issue any necessary reports to the beneficiaries. The Trust Enrollment Committee shall develop rules, which establish valuation dates and frequency of reports and identify data critical to the completion of the reports. The Trust Enrollment Committee may delegate such reporting responsibilities to duly selected vendors.

(b) *Costs of Account.* The Trust Enrollment Department shall apply administrative costs related to a trust account to the said account. Administrative costs are those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs do not include any costs related to the expenses of the Trust Enrollment Committee or Trust Enrollment Department.

(c) *No Guarantee.* It is the Trust Enrollment Committee's responsibility to invest beneficiaries' distributions in accordance with the Per Capita Trust Agreement. Because the market affects the value of trust accounts, beneficiaries are not guaranteed any specific amount of distribution made prior to becoming a majority age beneficiary.

(d) *Disbursement to Majority Age Beneficiaries.* Disbursement of trust account funds to majority age beneficiaries is governed by the Per Capita Trust Agreement, provided that to be eligible for a distribution, the majority age beneficiary is required to:

(1) Meet the age and education requirements where:

(A) If the majority age beneficiary has proof of education by September 1st of the distribution year as required by the Per Capita Trust Agreement, he or she is eligible for distribution at eighteen (18) years of age.

(B) If the majority age beneficiary does not have proof of education by September 1st of the Distribution year as required by the Per Capita Trust Agreement, he or she remains eligible to claim their trust account funds upon reaching twenty-one (21) years of age.

(C) *Exceptions.* The following Tribal members are exempt from the requirement to provide proof of education in order to be eligible for a minor trust account distribution prior to reaching twenty-one (21) years of age:

(i) Majority age beneficiaries declared to be a legally incompetent adult under 9.6-2. In such circumstances, the Trust Enrollment Department shall automatically liquidate and deposit any funds from the minor's trust account into a legally incompetent adult trust account.

(ii) Majority age beneficiaries who have a learning or other disability that has been medically diagnosed and are able to present

Draft 12
2016 04 20

a certificate of attendance showing he or she has attended twelve (12) years of school. In such circumstances, that certificate of attendance is deemed the equivalent to proof of education.

(D) *Fraudulent Proof of a Diploma.* In the event the Trust Enrollment Department deems that a majority age beneficiary has submitted fraudulent proof of education, the Trust Enrollment Department shall:

(i) If distribution has not been made to the Tribal member, withhold distribution of the trust account funds until the requirements of this law have been met;

(ii) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's entire trust account funds;

(iii) Notify the Tribal member of the following:

(a) His or her proof of education has been deemed fraudulent;

(b) If not already distributed to the Tribal member, the trust account funds may not be distributed until he or she submits valid proof of education or reaches twenty-one (21) years of age;

(c) A fine of one-third (1/3) of the Tribal member's entire trust account funds has been imposed; and

(d) How to appeal the Trust Enrollment Department's determination of the fraudulent proof of education, including any applicable time limits.

(iv) If necessary to satisfy the fine, take action to have the Tribal member's future per capita payments attached in accordance with this law.

(v) Deposit any funds collected to pay a fine imposed pursuant to this section in a pooled account in accordance with 9.5-5.

(2) Complete and submit a majority age beneficiary distribution form and/or deferral payment agreement by July 1st of the distribution year. A majority age beneficiary may postpone distribution of all or some of his or her trust account funds by entering into a deferral payment agreement pursuant to the Per Capita Trust Agreement.

9.6-2. *Legally Incompetent Adults.* This section sets forth a consistent method to protect and preserve the interests of legally incompetent adults in any distribution for which they may be eligible. If a distribution includes legally incompetent adults as eligible recipients, the Trust Enrollment Department shall deposit such distributions into a trust account in accordance with IGRA.

(a) *The Trust Enrollment Committee.* The Trust Enrollment Committee shall establish standard operating procedures for setting up, monitoring, and distributing trust accounts. When an adult is declared legally incompetent, the Trust Enrollment Department shall place any distribution that is claimed on his or her behalf in a trust account for health, welfare and/or education expenses. The Trust Enrollment Committee shall develop rules

Draft 12
2016 04 20

for determining when a guardian qualifies for distribution from an established trust account.

(b) *Reversal of Incompetency*. If a court of competent jurisdiction determines that an adult is no longer legally incompetent, the adult shall provide the Trust Enrollment Department with a certified copy of the order. Provided that the adult is eligible for the distribution and has followed the processes required under this law, upon receipt of an order reversing incompetency, the Trust Enrollment Department shall distribute any funds held in the trust account for the legally incompetent adult to the adult now deemed competent.

9.7. Appeals

9.7-1. Any Tribal member or guardian of a Tribal member may appeal a decision regarding a per capita payment and/or distribution to the Judiciary.

End.

Adopted - BC-7-12-00-B

Emergency Amendments – BC-01-03-01-B

Emergency Amendments - BC-2-28-01-E

Amendments - BC-11-06-02-A (Elder Per Capita)

Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)

Amendments - BC-6-16-04-C (Child support priority for attachment)

Emergency Amendments - BC-9-12-07-A (one-time per capita payment)

Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)

Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)

Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)

Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)

Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13

Amendments Adopted – BC-08-14-13-D



Legislative Operating Committee

April 20, 2016

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.

02/04/15 LOC: Motion by Tehassi Hill to send the Leasing Law back to the Legislative Reference Office to make the noted changes, update the analysis and bring back to the March 4, 2015 Legislative Operating Committee meeting; seconded by Fawn Billie. Motion carried unanimously.

3/4/15 LOC: Motion by Jennifer Webster to delete lines 209 through 225 and lines 231 through 245 from the legislative analysis and forward the Leasing Law to an April 2, 2015 public meeting; seconded by Fawn Billie. Motion carried unanimously.

Noted for the Record: the considerations highlighted in the legislative analysis have been addressed by the LOC.

4/2/15: Public meeting held.

5/6/15 LOC: Motion by David P. Jordan to forward the Leasing Law to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

5/13/15 OBC: Motion by Brandon Stevens to adopt resolution 05-13-15-C Leasing Law, seconded by David Jordan. Motion carried unanimously.

Amendment to the main motion by Melinda J. Danforth to amend the resolution to include a resolve that states that this law shall take effect thirty (30) days after approval by the Secretary of the Interior, seconded by David Jordan. Motion carried unanimously.

5/18/15: Leasing Law was sent to the Department of Interior for consideration.

10/15/15: Work meeting held, attendees include: Brandon Stevens, Victoria Flowers, Jeff Mears and Krystal John.

11/4/15 LOC: Motion by Jennifer Webster to defer the Leasing Law to the Legislative Reference Office for a legislative analysis and to the Finance Department for a financial analysis and direct the Legislative Reference Office to provide a draft to the Department of the Interior; seconded by Tehassi Hill. Motion carried unanimously.

4/6/2016 LOC: Motion by David P. Jordan to accept the update and defer the Leasing Law Amendments back to the Legislative Reference Office with the noted changes to make section 65.6-5 more clear and

remove “document” in section 65.8-1 and prepare for a public meeting to be held on May 19, 2016; seconded by Jennifer Webster. Motion carried unanimously.

Motion by David P. Jordan to have the legislative analysis updated based on the discussion at the meeting, be included in the public meeting packet; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Accept the Leasing law public meeting packet and forward the Leasing law to public meeting to be held on May 19, 2016 at 12:15 p.m.

NOTICE OF
PUBLIC MEETING

TO BE HELD
Thursday, May 19th at 12:15 p.m.
IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: LEASING LAW

This is a proposal to amend the Leasing law which was adopted pending BIA approval. The amendments:

- ◆ Delegate rulemaking authority jointly to the Oneida Land Commission and the Division of Land Management based on the Administrative Rulemaking law [see 65.5-1 and 65.10-5];
- ◆ Specify that this law does not apply to leases included in the Nation's home ownership programs administered using federal funding or leases lasting one (1) year or less [see 65.4-2(b)];
- ◆ Include valuation provisions for residential and agricultural leases [see 65.6-4, 65.6-5, and 65.7-5];
- ◆ Include a provision allowing a residential lease be entered into by a parent or legal guardian on behalf of their child or ward [see 65.6-6]; and
- ◆ Add additional information regarding the process required under the National Environmental Policy Act [see 65.9-2(a)-(d)].

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD OPEN UNTIL May 26, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidanation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040

Chapter 65 LEASING

<i>Analysis by the Legislative Reference Office</i>					
Title	Leasing law (the Law)				
Requester	Nathan King, Legislative Affairs	Drafter	Krystal L. John	Analyst	Tani Thurner
Reason for Request	To amend the Law based on comments received from the Department of the Interior, so that the Law can be approved.				
Purpose	This Law sets 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 (DOLM), Land Commission, Cultural Heritage Department, Environmental Health & Safety Division, the Judiciary, Oneida Law Office				
Related Legislation	Real Property Law, Public Use of Tribal Land Law, Administrative Rulemaking law and proposed Eviction Law				
Due Process & Enforcement	Denial of lease requests and cancellation of leases; parties can also request that the Secretary of the Interior review the Tribe's leasing law to ensure it is being followed. DOLM "determinations" are appealable to the Judiciary.				

On May 13, 2015, the Oneida Business Committee (OBC) adopted a new Tribal leasing law, which required approval from the US Department of the Interior (DOI) before it could go into effect. Once it is approved and effective, the Oneida Nation will be able to lease Tribal land held in trust without needing approval from the DOI for each individual lease.

The Law has not yet gone into effect. After adoption by the OBC, the law was submitted to the DOI for approval, but the DOI returned the Law with several comments. Additional changes were made, the draft was re-submitted; and the DOI returned it with more comments.

This draft of the Law was prepared after reviewing the second set of comments provided by the Department of the Interior (DOI). Further changes were made, both based on the comments as well as changes not related to the comments.

Changes not related to the DOI comments

- A new provision is added that authorizes a parent or legal guardian to enter into a residential lease on behalf of his/her child or ward. [65.6-6] This is not limited to minor or incompetent children/wards, so it is not clear if this would authorize a parent to enter into a residential lease on behalf of an adult child over whom the parent had no legal authority.
- Currently, the Law treats leases and lease documents (a broad term that includes lease amendments, assignments, subleases and leasehold mortgages) as separate things. Under the amendments, the definition of "lease document" is expanded to include leases, and provisions throughout the Law that referred to "leases and lease documents" are revised to just refer to lease documents. [65.3-1(i)]
- Currently, every lease is required to include several provisions related to improvements, which are listed in the Law. Under the amendments, every lease amendment, lease assignment, sublease and leasehold mortgage is now also required to list those requirements related to improvements. [65.5-3]
- Currently, the Law does not apply to mineral leases or to any lease of individually-owned Indian allotted land (*i.e.* individual trust land). Two additional exceptions are added – now, this Law will also not apply to:

1. Leases lasting exactly one year, or less than one year.
2. Leases included in the Nation’s home ownership programs administered using federal funding.” [65.4-2(b)]

Changes made per the Department of Interior comments

Note: For this analysis, comments preceded by “DOI 1-” refer to the DOI’s September 21, 2015 comments, and “DOI 2-” refers to the January 22, 2016 comments.

- Clarification that this Law only applies to leasing trust land, not Tribally-owned fee land. The definition of Tribal Trust Land is deleted and the term is replaced with “tribal land”; the definition for tribal land only includes trust land. [65.3-1(s), DOI 1-5 to 1-7, 1-10, 2-1, 2-2]
- References to “encumbrances” are changed to “leasehold mortgages” as this is the only type of encumbrance that may be placed on Tribal trust land. [65.3-1(j), DOI 1-1, 1-3, 1-18, 1-19]
- Clarification that the lessor is always the Oneida Nation, and no longer includes any administrator or assign of the Oneida Nation. [65.3-1(l), DOI 1-4]
- All leases, not just business leases, must contain site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems. [65.5-2(a), DOI 1-13]
- All lease descriptions must now meet the requirements of the BIA’s Land Titles and Records Office (LTRO). [65.5-2(a), DOI 1-13, 1-14, 2-4, 2-6, 2-7]
- When DOLM cancels a lease due to default, it must now be done “pursuant to the Eviction law.” [65.11-4, DOI 1-24]
- Lease documents must be provided to the BIA for encoding, and to *forward* to the LTRO, instead of being provided to the BIA for recording in the LTRO. Residential subleases are still exempt from this requirement, but encumbrances are no longer exempt. [65.10-3, DOI 1-23, 2-11]
- To clarify that the Oneida Nation is taking over the administration, management, and enforcement of leasing Tribal land, the Law no longer specifically authorizes the Secretary of the Interior to enter leased premises for inspection and to ensure compliance with leases. Instead, only the DOLM may do so. [65.5-2(j), 65.5-2(m), DOI 1-15 and 1-16]
- Currently, the Law addresses how the valuation of a business lease is determined [65.8-6] but does not mention anything about valuation of other types of leases. Two provisions are added to address valuation of residential and agricultural leases. [DOI 1-21, 1-29]
 - Residential Leases – the same requirements for valuation of a business lease are added to the section governing residential leases. [65.6-4] The amendments also add that residential leases may not be approved for less than the appraised fair annual lease value unless DOLM determines such action is in the best interest of the Nation, in which case an appraisal is not required. [65.6-5].
 - Agricultural Leases “are valued based on the bidding process required as part of the lease award process included in the rules, which [DOLM] and the Oneida Land Commission shall jointly develop.” [65.7-5]
- Agricultural leases must now also require the lessee to manage land in accordance with a conservation plan that the Nation is required to develop, as well as any other appropriate stipulations developed by the Nation.” [65.7-4, DOI 1-20, 2-8]
- Currently, every lease is required to include several provisions related to improvements. The amendments add that all lease documents must now also include these, and add that they must include “whether development plans and/or construction management schedules must be submitted to [DOLM] for approval prior to beginning construction of any improvements.” [65.5-3(d), DOI 1-17]

- DOLM may enter property to ensure compliance in accordance with this Law and any other Oneida laws, policies and rules; instead of in accordance with federal regulations. [65.5-2(j), DOI 1-15, 1-16, 2-5]
- Section 65.4-3(c) is deleted, it is redundant and already covered under 65.4-3(a). [DOI 1-9]
- Currently, DOLM determinations may be appealed in accordance with the Judiciary law. The DOI requested that “Judiciary law” be defined. Instead, that provision is changed to say that determinations of DOLM can be appealed with the Oneida Judiciary and a definition for the Judiciary is added. [65.12-1, 65.3-1(m), DOI 1-2, 1-25]

Environmental Review Process

Amendments clarify that the Environmental Health & Safety Division is responsible for conducting environmental reviews on all proposed lease documents. [65.9-2 and DOI 1-22]

Currently, 65.9-2 only states that environmental reviews “shall be conducted in accordance with the process established under [the National Environmental Policy Act (NEPA)] to evaluate environmental effects of federal undertakings.” The DOI included comments in both sets of comments regarding this provision. The first, (DOI comment 1-22) stated:

One of the potential benefits to tribes under the HEARTH Act is the ability to establish streamlined procedures for an environmental review process. While doing so would eliminate the Tribe’s reference to compliance with NEPA, [...] the HEARTH Act does have minimum requirements -- in general:

- Identification and evaluation of any significant effects of the proposed action on the environment;
- A process that provides how the public will be notified of any significant environmental impacts;
- A process that ensures the public has a reasonable opportunity to comment;
- Ensures the Tribe will respond to “relevant and substantive public comments”

Within a streamlined process, we also look for:

- Definitions for related terms used, i.e., public, environmental impacts, significant effects, etc.;
- Recognition of a categorical exclusion option. If desired;
- Specific timeframes associated with the processes and comment period.

No changes were made to the Law based on that comment. Then, when the second set of comments was received, a new comment was added for this issue:

Comment 2-10 DISCUSSION & REQUIRED: [Comment 1-22] was intended to explain that the Tribe’s Leasing Law must state specific, streamlined environmental review requirements as provided within the HEARTH Act. [...] the minimum requirements referenced in [comment 1-22] must be included in the Tribe’s Leasing Law.

To address this, 65.9-2 was expanded to state:

“The Environmental, Health and Safety Division or its designee shall conduct an environmental review on all proposed lease documents in accordance with the process established under the [NEPA] to evaluate environmental effects of federal undertakings and, at a minimum, the process shall:

- (a) Identify and evaluate any significant effects of the proposed action on the environment;
- (b) Establish a process for notifying the public of significant environmental impacts;
- (c) Ensure that the public has a reasonable opportunity to provide comments regarding

the action and its environmental impacts;
(d) Require the Nation to respond to relevant and substantive comments received from the public.”

This language still states that the review must be conducted “in accordance with the process established under” NEPA, but does not clearly identify that the Tribe must establish its own process, and does not identify how a process would be developed or who would be responsible for creating it.

Further, the intent of the DOI comments appears to require that the basic process actually be set out in this law – including definitions, specific timeframes, and recognizing any blanket exclusions – not to just have the Tribe identify requirements for a process. A review of other tribes with leasing laws that have been approved by the Secretary of the Interior, appears to show that they all have much more detailed requirements regarding environmental reviews, without necessarily including the entire process within their law.

DOI comments that did not result in changes

- The DOI suggested that an additional provision be added if the Tribe has land within an irrigation project or drainage district. [DOI 1-12] However, it does not appear that the Tribe has land within such a district, so no change was made.
- The Law only applies to residential, agricultural, and business leases. [65.4-2] The DOI comments noted that Wind and Solar leases and Wind Energy Evaluation Leases are not addressed. No changes were made; but this was a “Discussion,” not a “Required” comment. [DOI 1-8]
- Currently, lease applications must be submitted pursuant to rules and Standard Operating Procedures (SOPs) developed by DOLM. The DOI recommended including more detail within the Law as to the steps in the leasing process, because:
“Detailing how an application is obtained, who initiates various steps (i.e., the potential lessee or the Tribal department, etc.) can be helpful to applicants and perhaps lessen the time tribal staff has to spend responding to routine inquiries.”
[DOI comment 1-11]

However, instead of adding more detail to the steps, the Law was instead amended to state that applications are submitted to DOLM “pursuant to the Rules which [DOLM] and the Oneida Land Commission shall jointly develop.”[65.5-1] This does not satisfy the recommendation; but this was not a “Required” change.

Rulemaking Authority

A definition for “Rule” is added – the set of requirements developed to implement this Law and adopted in accordance with the Administrative Rulemaking Law.¹⁾ [65.3-1(p)] The amendments also add that DOLM is also authorized to enforce rules developed pursuant to this Law. [65.11-1]

Clear Rulemaking Authority

The Law clearly delegates rulemaking authority to DOLM and the Oneida Land Commission to jointly develop rules:

- Governing how parties submit an application for a lease document. [65.5-1]

¹ The Administrative Rulemaking law authorizes entities to promulgate rules that do not exceed the rulemaking authority granted under the law for which the rule is being promulgated. Citation, fee and penalty schedules are also considered rules, meaning they must be adopted in accordance with the Rulemaking Law. [17.3-1(f) and 17.4-1]

- Which must include a lease award process which must include a bidding process which is used to determine the valuation of agricultural leases. [65.7-5]
- Requiring administrative fees for issuing a lease document or conducting any other administrative transaction. [65.10-5]

Possible Rulemaking Authority

This Law delegates authority to DOLM develop or implement the following, but it is not clear if this is a delegation of rulemaking authority – the word “Rule” is not used, so it is not clear if the following would be subject to the newly-established Rulemaking process:

- A **leasing management plan** that ... addresses accounting, collections, monitoring, enforcement, relief, and remedies. [65.10-1(b)]
- An **accounting system** that generates invoices, accounts for payments, and dates of when rate adjustments should be made. [65.10-2]
- A **procedure equivalent to an appraisal** for determining fair annual lease value for business and residential leases. [65.6-4(a) and 65.8-5(a)]
- The **format and requirements** set out in lease document applications. (These must be approved by the Land Commission) [65.5-1(a)]
- **Additional procedures and processes to be followed when offering and awarding lease documents** (these must be approved by the Land Commission). [65.5-1(a)]

Other Entities – Potential Rulemaking Authority

The Law references other rules/plans/processes, but is not clear about who must develop/implement them or whether these are considered rules (in some situations, the Law just states the “Nation” will develop the plan but this is not identifying a responsible party)

- 65.7-4 refers to “the conservation plan that the Nation shall develop and any agricultural resource management plan and/or other appropriate stipulations developed by the Nation.”
- 65.9-2 refers to an **environmental review, which must be conducted in accordance with the process established under [NEPA]** and which must meet requirements listed in the law.
- 65.8-4(c) refers to “any **business leasing management plan** developed by the Nation.”

New Responsibilities for the Land Commission

Currently, the Law only mentions the Land Commission once – it responsible for *approving* the format/requirements for lease applications, and additional processes/procedures for awarding leases/lease documents. [65.5-1(a)] The amended law makes the Land Commission jointly responsible for developing rules, so along with the Department, the Land Commission will be jointly responsible for performing all of the other responsibilities required by the Administrative Rulemaking law, such as preparing each rule, including publishing notice; conducting public meetings, and requesting/obtaining required analyses for the rule(s). [65.5-1 and DOI 2-3]

Other

To reflect the Oneida Constitutional amendments adopted in 2015, various references to the “Tribe” were changed to “Nation.” [65.3-1(n)] The definitions for Cultural Heritage Department, Environmental Health and Safety Division, and Land Management (DOLM) no longer state that they are “Tribal” entities; just that they are entities. [65.3-1]

Additional minor changes were made to ensure the document is consistent with standard drafting practices; and to improve the flow and clarity of the Law; these did not affect the content of the Law.

A public meeting has not been held.

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~~

65.1. Purpose and Policy
65.2. Adoption, Amendment, Repeal
65.3. Definitions
65.4. General Provisions
65.5. 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

65.1.— Purpose and Policy

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

65.1-2.—*Policy.* It is the policy of the ~~Tribe~~Nation to set out the expectations and responsibilities of the ~~lessors~~lessor and lessees of ~~Tribal~~tribal land and to ensure the leasing of ~~Tribal~~tribal land results in minimal risk to the ~~Tribe~~Nation.

65.2.— Adoption, Amendment, Repeal

65.2-1.—This ~~Law~~law was adopted by the Oneida Business Committee by resolution BC-05-13-15-C and ~~shall take effect~~amended by resolution BC-_____ and becomes effective thirty (30) ~~calendar~~calendar days after approval by the Secretary of the Interior.

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

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

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

(a)—To the extent that this ~~Law~~law conflicts with any applicable federal statutes or regulations, the federal statute or regulation ~~shall control~~controls.

(b)—To the extent that any lease to which this ~~Law~~law applies conflicts with this ~~Law~~law, this ~~Law~~law ~~shall control~~law controls.

65.2-5.—This ~~Law~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of~~Indians of WisconsinNation.

65.3.— Definitions

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

(a) “Assignment” ~~shall mean~~means an agreement between a lessee and an assignee

whereby the assignee acquires all or some of the lessee's rights and assumes all or some of the lessee's obligations under a lease.

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

(c) "Cultural ~~review~~ ~~shall mean~~Review" means a review of the anticipated effects of a proposed lease ~~or lease~~ document on archaeological, cultural and/or historic resources.

~~(d) "Day" or "days" shall mean calendar days, unless otherwise specified.~~

~~(e) "Encumbrance" shall mean a claim or liability that is attached to property.~~

~~(f)(d)~~ "Environmental, Health and Safety Division" ~~shall mean~~means the ~~Tribal~~ entity responsible for conducting environmental reviews as required under this ~~Law~~law.

~~(g)(e)~~ "Environmental ~~review~~ ~~shall mean~~Review" means a review of the anticipated environmental effects of a proposed lease ~~or lease~~ document.

~~(h)(f)~~ "Improvements" ~~shall mean~~means buildings, other structures, and associated infrastructure attached to the leased premises.

~~(i)(g)~~ "Land Management" ~~shall mean~~means the Division of Land Management or other ~~Tribal~~ entity responsible for entering into leases of ~~Tribal~~tribal land.

~~(j)(h)~~ "Lease" ~~shall mean~~means a written contract between the ~~Tribe~~Nation and a lessee, whereby the lessee is granted a right to use or occupy ~~Tribal~~tribal land, for a specified purpose and duration.

~~(k)(i)~~ "Lease ~~document~~ ~~shall mean~~Document" means a lease, lease amendment, lease assignment, sublease or ~~encumbrance~~leasehold mortgage.

~~(l)(j)~~ "Leasehold ~~mortgage~~ ~~shall mean~~Mortgage" means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

~~(m)(k)~~ "Lessee" ~~shall mean~~means a person or entity who has acquired a legal right to use or occupy ~~Tribal~~tribal land by a lease under this ~~Law~~law, or one who has the right to use or occupy a property under a lease.

~~(n)(l)~~ "Lessor" ~~shall mean~~means the ~~Tribe~~Nation, in its capacity as the legal, beneficial and/or equitable owner of ~~Tribal~~tribal land subject to a lease.

~~(o)(m)~~ "Oneida Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and any administrator or assign responsibilities of the ~~Tribe~~Nation.

~~(p)(n)~~ "Nation" means the Oneida Nation.

(o) "Performance ~~bond~~ ~~shall mean~~Bond" means a bond given to ensure the timely performance of a lease.

~~(q)(p)~~ "Rule" means the set of requirements developed to implement this law and adopted in accordance with the Administrative Rulemaking law.

~~(r)(q)~~ "Secretary" ~~shall mean~~means the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.

~~(s)(r)~~ "Sublease" ~~shall mean~~means a written agreement by which the lessee grants to a person or entity a right to use or occupy no greater than that held by the lessee under the lease.

~~(t)(r)~~ "Tribal" or "Tribe" ~~shall mean the Oneida Tribe of Indians of Wisconsin.~~

~~(u)(s)~~ "Tribal land" ~~shall mean Tribal trust land and any land owned by the Tribe held in fee status.~~

~~(v)(t)~~ "Tribal trust land" ~~shall mean~~ Land means the surface estate of land or any interest therein held by the United States in trust for the ~~Tribe~~Nation; land held by the

TribeNation 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~~ the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §§ ~~461-479~~ §477, et. seq.

65.4. ~~General Provisions~~

65.4-1. ~~Applicable Land.~~ This Lawlaw applies to all ~~Tribal~~ tribal 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~~ law applies to all residential, agricultural and business leases executed by the TribeNation and to all actions and decisions taken in connection with those leases. Provided that, nothing herein ~~shall may~~ be construed to affect the terms and conditions of leases existing when this Lawlaw goes into effect or amendments, assignments, subleases or encumbrances made to those leases.

(b) This ~~Law shall~~ law does 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-), leases included in the Nation's home ownership programs administered using federal funding or leases lasting one (1) year or less.

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

(a) ~~all Tribal law~~ of the Nation's laws, except to the extent those ~~Tribal~~ laws are inconsistent with applicable federal law; and

(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 TribeNation under federal law, the Secretary may, upon reasonable notice from the TribeNation and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential, agricultural or business lease on Tribal trust tribal land executed by the TribeNation. The United States shall may not be liable for losses sustained by any party to a residential, agricultural or business lease executed pursuant to this Lawlaw.~~

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

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

65.5. ~~Lease and~~ Lease Document Requirements

65.5-1. ~~Information and Application.~~ Land Management shall approve and execute all leases. Information Land Management shall make available information on obtaining residential, agricultural or business ~~leases or~~ lease documents ~~shall be available at Land Management.~~ Parties interested in obtaining a residential, agricultural or business lease ~~or lease~~ document shall submit an application to Land Management pursuant to the rules which Land Management and the Oneida Land Commission shall jointly develop.

(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.

65.5-2. ~~Terms and Conditions.~~ Leases~~Land Management~~ shall ~~be~~ensure leases are in writing and contain, at a minimum, the following:

(a) ~~— A description of the land or building being leased; business leases shall contain adequate site including surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems which meet the requirements of the Land Titles and Records Office of the Bureau of Indian Affairs;~~

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

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

(d) ~~— The parties to the lease;~~

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

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

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

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

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

(j) ~~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~~this law and any other applicable laws, policies and rules of the Nation, to enter the leased premises for inspection and to ensure compliance with the lease;

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

(l) ~~The lessee indemnifies the United States and the TribeNation against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the TribeNation for liability or cost arising from the Tribe'sNation's negligence or willful misconduct; and~~

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

65.5-3. ~~Improvements.~~ A Land Management shall ensure lease ~~shall~~documents set out requirements related to improvements, including:

(a) ~~— whether improvements may be constructed;~~

(b) ~~— ownership of improvements;~~

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

(d) ~~— whether the lessee shall submit development plans and/or construction management schedules to Land Management for approval prior to beginning construction of any improvements;~~

(e) ~~removal of improvements;~~

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

(f)–g) the lessor’s right of first refusal to purchase the lessee’s interest, if any.
65.5-4. ~~Obtaining a Lease Document.~~ Lease Land Management shall ensure lease documents shall be entered into by written consent of the lessor and the lessee, unless otherwise provided herein and shall that the lease documents contain the effective date of the lease document dates.

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

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

(c)– The lease ~~shall may~~ not authorize mortgages that encumber title to ~~Tribal~~ tribal land.

65.5-5. ~~Payments.~~ For any lease requiring payments to be made to the lessor, the lessor shall provide the Secretary with such documentation of the lease payments as the Secretary may request to enable the Secretary to discharge the trust responsibility of the United States.

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

65.5-7. ~~Documentation.~~ The following are required for a party to enter into a lease:

(a) – a signed lease; and

(b)– any reports, surveys and site assessments needed to comply with ~~Tribal~~ the Nation’s environmental, cultural resource and land use requirements.

65.6. ~~Residential Leases~~

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

65.6-2. ~~A residential lease shall be entered into~~ is required for the lease of land suited or used for the construction, improvement, and/or maintenance of a dwelling and related structures on the premises, and otherwise to use or occupy said premises for residential purposes.

65.6-3. ~~Duration.~~ Residential leases ~~shall may~~ not exceed seventy-five (75) years.

65.6-4. Appraisal, Local Studies.

(a) Land Management shall determine the fair annual lease value using an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. Land Management shall ensure that an appraisal log reporting the methods of appraisal and value of the tribal land is attached to every residential lease.

(b) Alternatively, Land Management shall determine the fair annual lease value using an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. Land Management shall ensure that an appraisal log describing the method of appraisal and value of the tribal land is attached to every residential lease.

65.6-5. Fair Annual Lease Value. Land Management may offer residential leases at reduced rates if it determines that doing so is in the best interest of the Nation. Under such circumstances an appraisal is not required. In all other circumstances, a residential lease may not be approved for less than the present fair annual lease value as set forth in the appraisal.

65.6-6. Lease by Guardian. A parent or legal guardian may enter into a residential lease on

behalf of his or her child or ward.

65.7.– Agricultural Leases

65.7-1.–In addition to the requirements that apply to all leases under section 65.5, the requirements of this section ~~shall~~ also apply to agricultural leases.

65.7-2.–An agricultural lease ~~shall be entered into~~ is required for the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.

65.7-3.–*Duration and Renewal.* Agricultural leases ~~shall~~ may not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.7-4.–~~Land Management.~~ Agricultural leases shall of Land. Land Management shall ensure that agricultural leases require the lessee to manage land in accordance with the conservation plan that the Nation shall develop and any agricultural resource management plan and/or other appropriate stipulations developed by the ~~Tribe~~ Nation.

65.7-5. Lease Valuation. Agricultural leases are valued based on the bidding process required as part of the lease award process included in the rules, which Land Management and the Oneida Land Commission shall jointly develop.

65.8.– Business Leases

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

65.8-2.–A business lease ~~shall be entered into~~ is required for the lease of land suited or used for business purposes including retail, office, manufacturing, storage, or other business purposes; and public purposes, including religious, educational, recreational, cultural, or other public purposes.

65.8-3.–*Duration and Renewal.* Business leases ~~shall~~ may not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.8-4.–*Supporting Documents.* All applicants for business ~~site~~ leases shall submit the following documents to Land Management:

(a)– ~~financial statement;~~

(b)– ~~site survey and legal description, if applicable;~~

(c)– ~~other documents as may be required by any business site-leasing management plan developed by the Tribe~~ Nation.

65.8-5.–*Appraisal, Local Studies.*

(a)–~~The~~ Land Management shall determine the fair annual lease value ~~shall be determined by using~~ an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. ~~An~~ Land Management shall ensure that an appraisal log reporting the methods of appraisal and value of the ~~Tribe~~ tribal land ~~shall be~~ is attached to every business site lease.

(b)– ~~Alternatively,~~ Land Management shall determine the fair annual lease value ~~shall be determined by using~~ an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. ~~An~~ Land Management shall ensure that an appraisal log describing the method of appraisal and value of the ~~Tribe~~ tribal land ~~shall be~~ is attached to every business site lease.

65.8-6. ~~Fair Annual Lease Value.~~

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

(1) ~~___~~ The lessee is in the development period;

(2) ~~___~~ Land Management is providing an incentive for businesses to locate on ~~Tribal~~tribal land, and ~~must provide~~is providing lease concessions, lease improvement credits, and lease abatements to attract such business; or

(3) ~~___~~ Land Management determines such action is in the best interest of the ~~Tribe~~Nation.

(b) ~~___~~ A lease may:

(1) ~~___~~ Be structured at a flat lease rate; and/or

(2) ~~___~~ Be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, or the lessee generates over one million dollars (\$1,000,000.00) annually in gross receipts; and/or

(3) ~~___~~ Be structured based on a percentage of gross receipts, or based on a market indicator; and/or

(4) ~~___~~ Be structured to allow for lease rate adjustments. ~~The with the In such circumstances, Land Management shall ensure that the~~ lease ~~shall specify~~specifies how adjustments will be made, who will make such adjustments, when adjustments ~~will~~ go into effect, and how disputes ~~shall~~may be resolved; and/or

(5) ~~___~~ Be amended to allow for lease rate adjustments; and/or

(6) ~~___~~ Provide for periodic review. ~~Such review shall give~~ giving consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(c) ~~___~~ Land Management shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. ~~These and shall present such records shall be presented~~ to the lessee and ~~included~~include them in any lease file.

65.8-7. ~~Performance Bond.~~ If a performance bond is required under a business lease, ~~a the lessee shall obtain the~~ performance bond ~~shall be obtained by the lessee~~ in an amount that reasonably assures performance on the lease. ~~Such bond shall be~~ Land Management may require performance bonds for the purpose of guaranteeing any of the following:

(a) ~~___~~ The annual lease payment;

(b) ~~___~~ The estimated development cost of improvements; and

(c) ~~___~~ Any additional amount necessary to ensure compliance with the lease.

65.9. ~~Environmental and Cultural Reviews~~

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

65.9-2. ~~Environmental Reviews.~~ ~~An environmental review shall be conducted by or at the request of the~~ The Environmental, Health and Safety Division or its designee shall conduct an environmental review on all proposed ~~leases and~~ lease documents. ~~The environmental review shall be conducted~~ in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings. ~~and, at a minimum, the process shall:~~

(a) Identify and evaluate any significant effects of the proposed action on the environment;

(b) Establish a process for notifying the public of significant environmental impacts;

(c) Ensure that the public has a reasonable opportunity to provide comments regarding

the action and its environmental impacts;

(d) Require the Nation to respond to relevant and substantive comments received from the public.

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

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

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

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

65.10. Lease Management

65.10-1. ~~Management Plan.~~ Land Management shall:

(a) ~~manage~~ existing leases as well as those executed pursuant to this ~~Law~~ law; and

(b) ~~institute~~ a leasing management plan that employs sound real estate management practices, and addresses accounting, collections, monitoring, enforcement, relief, and remedies.

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

65.10-3. ~~Recording Leases and Lease Documents.~~ Land Management shall provide all leases and lease documents of ~~Tribal trust~~ tribal land, except residential subleases and encumbrances, to the Bureau of Indian Affairs for ~~recording in~~ encoding and to be forwarded to the Land Titles and Records Office. ~~All leases and~~ Land Management shall record all lease documents of ~~Tribal~~ tribal land ~~shall also be recorded in with~~ the ~~Tribe's~~ Oneida Nation Register of Deeds. Land Management shall also distribute a copy of the recorded lease documents to the lessee.

65.10-4. ~~Ownership of Records.~~ Records of activities taken pursuant to this ~~Law~~ law with respect to ~~Tribal trust~~ tribal land are the property of the United States and the ~~Tribe~~ Nation. Records compiled, developed or received by the lessor in the course of business with the Secretary are the Nation's property ~~of the Tribe~~.

65.10-5. ~~Administrative Fees.~~ Land Management and the Oneida Land Commission may ~~charge~~ jointly develop rules requiring administrative fees for costs associated with issuing a lease ~~or lease~~ document, or conducting any other administrative transaction.

65.11. Enforcement

65.11-1. ~~Land Management shall have~~ is delegated all powers necessary and proper to enforce ~~this Law and the lease terms.~~ this law and any rules developed pursuant to this law. This includes, but is not limited to, the power to enter the premises, assess penalties, assess late payments and cancel leases. Land Management may request the Oneida Law Office assist in enforcement of this ~~Law~~ law, rules and leases.

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

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

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

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

65.12.– Appeals

65.12-1.– The lessee or an interested party may appeal a determination of Land Management with the Oneida Judiciary in accordance with ~~the Judiciary law and~~ any applicable rules of procedure.

End.

Adopted-BC-05-13-15-C, pending BIA approval

Chapter 65 LEASING

65.1. Purpose and Policy
65.2. Adoption, Amendment, Repeal
65.3. Definitions
65.4. General Provisions
65.5. 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

65.1. Purpose and Policy

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

65.1-2. *Policy.* It is the policy of the Nation to set out the expectations and responsibilities of the lessor and lessees of tribal land and to ensure the leasing of tribal land results in minimal risk to the Nation.

65.2. Adoption, Amendment, Repeal

65.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-13-15-C and amended by resolution BC-_____ and becomes effective thirty (30) calendar days after approval by the Secretary of the Interior.

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

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

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

(a) To the extent that this law conflicts with any applicable federal statutes or regulations, the federal statute or regulation controls.

(b) To the extent that any lease to which this law applies conflicts with this law, this law controls.

65.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

65.3. Definitions

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

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

(b) "Cultural Heritage Department" means the entity responsible for conducting cultural reviews as required under this law.

(c) "Cultural Review" means a review of the anticipated effects of a proposed lease document on archaeological, cultural and/or historic resources.

(d) “Environmental, Health and Safety Division” means the entity responsible for conducting environmental reviews as required under this law.

(e) “Environmental Review” means a review of the anticipated environmental effects of a proposed lease document.

(f) “Improvements” means buildings, other structures, and associated infrastructure attached to the leased premises.

(g) “Land Management” means the Division of Land Management or other entity responsible for entering into leases of tribal land.

(h) “Lease” means a written contract between the Nation and a lessee, whereby the lessee is granted a right to use or occupy tribal land, for a specified purpose and duration.

(i) “Lease Document” means a lease, lease amendment, assignment, sublease or leasehold mortgage.

(j) “Leasehold Mortgage” means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

(k) “Lessee” means a person or entity who has acquired a legal right to use or occupy tribal land by a lease under this law, or one who has the right to use or occupy a property under a lease.

(l) “Lessor” means the Nation, in its capacity as the legal, beneficial and/or equitable owner of tribal land subject to a lease.

(m) “Oneida Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(n) “Nation” means the Oneida Nation.

(o) “Performance Bond” means a bond given to ensure the timely performance of a lease.

(p) “Rule” means the set of requirements developed to implement this law and adopted in accordance with the Administrative Rulemaking law.

(q) “Secretary” means the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.

(r) “Sublease” means a written agreement by which the lessee grants to a person or entity a right to use or occupy no greater than that held by the lessee under the lease.

(s) “Tribal Land” means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq.

65.4. General Provisions

65.4-1. *Applicable Land.* This law applies to all tribal land.

65.4-2. *Applicable Leases.*

(a) Except as excluded in (b) below, or as contrary to applicable federal statutes and regulations, this law applies to all residential, agricultural and business leases executed by the Nation and to all actions and decisions taken in connection with those leases. Provided that, nothing herein may be construed to affect the terms and conditions of leases existing when this law goes into effect or amendments, assignments, subleases or encumbrances made to those leases.

(b) This law does not apply to mineral leases, any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2), leases included in the Nation’s

home ownership programs administered using federal funding or leases lasting one (1) year or less.

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

- (a) all of the Nation's laws, except to the extent those laws are inconsistent with applicable federal law; and
- (b) applicable federal laws.

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

65.4-5. Lease parties shall resolve all disputes over residential, agricultural and business leases under the Nation's laws and in accordance with federal law. Nothing in this law may be construed to waive the Nation's sovereign immunity.

65.4-6. After the Secretary approves this law, all leases of tribal land approved and executed under this law may become 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 Document Requirements

65.5-1. *Information and Application.* Land Management shall approve and execute all leases. Land Management shall make available information on obtaining residential, agricultural or business lease documents. Parties interested in obtaining a residential, agricultural or business lease document shall submit an application to Land Management pursuant to the rules which Land Management and the Oneida Land Commission shall jointly develop.

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

65.5-2. *Terms and Conditions.* Land Management shall ensure leases are in writing and contain, at a minimum, the following:

- (a) A description of the land or building being leased including surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems which meet the requirements of the Land Titles and Records Office of the Bureau of Indian Affairs;
- (b) The effective date and term of the lease;
- (c) The purpose of the lease and authorized uses of the leased premises;
- (d) The parties to the lease;
- (e) How much rent is due, when it is due, who receives it, what form(s) of payment is acceptable, and whether any late payment charges or special fees apply and the rate of interest to be charged if the lessee fails to make payments in a timely manner;
- (f) Whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective and how disputes regarding adjustments will be resolved;
- (g) Who is responsible for any taxes applied to the property and/or improvements;
- (h) Due diligence requirements that apply, if any;
- (i) Performance bond and insurance requirements that apply, if any;
- (j) Land Management has the right, at any reasonable time during the term of the lease

and upon reasonable notice, in accordance with this law and any other applicable laws, policies and rules of the Nation, to enter the leased premises for inspection and to ensure compliance with the lease;

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

(l) The lessee indemnifies the United States and the Nation against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Nation for liability or cost arising from the Nation's negligence or willful misconduct; and

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

65.5-3. *Improvements.* Land Management shall ensure lease documents set out requirements related to improvements, including:

(a) whether improvements may be constructed;

(b) ownership of improvements;

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

(d) whether the lessee shall submit development plans and/or construction management schedules to Land Management for approval prior to beginning construction of any improvements;

(e) removal of improvements;

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

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

65.5-4. *Obtaining a Lease Document.* Land Management shall ensure lease documents are entered into by written consent of the lessor and the lessee unless otherwise provided herein and that the lease documents contain effective dates.

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

(b) The lease may authorize leasehold mortgages on the leasehold interest for the purpose of financing to develop and improve the premises. Land Management shall approve the leasehold mortgage.

(c) The lease may not authorize mortgages that encumber title to tribal land.

65.5-5. *Payments.* For any lease requiring payments to be made to the lessor, the lessor shall provide the Secretary with such documentation of the lease payments as the Secretary may request to enable the Secretary to discharge the trust responsibility of the United States.

65.5-6. *Environmental and Cultural Reviews.* Land Management may not approve a lease until an environmental review and a cultural review, as required under section 65.9, have been completed. Leases approved and executed in violation of this section are null and void.

65.5-7. *Documentation.* The following are required for a party to enter into a lease:

(a) a signed lease; and

(b) any reports, surveys and site assessments needed to comply with the Nation's environmental, cultural resource and land use requirements.

65.6. Residential Leases

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

65.6-2. A residential lease is required for the lease of land suited or used for the construction, improvement, and/or maintenance of a dwelling and related structures on the premises, and otherwise to use or occupy said premises for residential purposes.

65.6-3. *Duration*. Residential leases may not exceed seventy-five (75) years.

65.6-4. *Appraisal, Local Studies*.

(a) Land Management shall determine the fair annual lease value using an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. Land Management shall ensure that an appraisal log reporting the methods of appraisal and value of the tribal land is attached to every residential lease.

(b) Alternatively, Land Management shall determine the fair annual lease value using an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. Land Management shall ensure that an appraisal log describing the method of appraisal and value of the tribal land is attached to every residential lease.

65.6-5. *Fair Annual Lease Value*. Land Management may offer residential leases at reduced rates if it determines that doing so is in the best interest of the Nation. Under such circumstances an appraisal is not required. In all other circumstances, a residential lease may not be approved for less than the present fair annual lease value as set forth in the appraisal.

65.6-6. *Lease by Guardian*. A parent or legal guardian may enter into a residential lease on behalf of his or her child or ward.

65.7. Agricultural Leases

65.7-1. In addition to the requirements that apply to all leases under section 65.5, the requirements of this section also apply to agricultural leases.

65.7-2. An agricultural lease is required for the lease of land suited or used for the production of crops, livestock or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.

65.7-3. *Duration and Renewal*. Agricultural leases may not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.7-4. *Management of Land*. Land Management shall ensure that agricultural leases require the lessee to manage land in accordance with the conservation plan that the Nation shall develop and any agricultural resource management plan and/or other appropriate stipulations developed by the Nation.

65.7-5. *Lease Valuation*. Agricultural leases are valued based on the bidding process required as part of the lease award process included in the rules, which Land Management and the Oneida Land Commission shall jointly develop.

65.8. Business Leases

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

65.8-2. A business lease is required for the lease of land suited or used for business purposes including retail, office, manufacturing, storage, or other business purposes; and public purposes, including religious, educational, recreational, cultural, or other public purposes.

65.8-3. *Duration and Renewal.* Business leases may not exceed twenty-five (25) years, except that any such lease may include an option to renew for up to two (2) additional terms, which may not exceed twenty-five (25) years each.

65.8-4. *Supporting Documents.* All applicants for business leases shall submit the following documents to Land Management:

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

65.8-5. *Appraisal, Local Studies.*

(a) Land Management shall determine the fair annual lease value using an appraisal or equivalent procedure performed by Land Management utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and lease data of comparable sites. Land Management shall ensure that an appraisal log reporting the methods of appraisal and value of the tribal land is attached to every business site lease.

(b) Alternatively, Land Management shall determine the fair annual lease value using an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal. Land Management shall ensure that an appraisal log describing the method of appraisal and value of the tribal land is attached to every business site lease.

65.8-6. *Fair Annual Lease Value.*

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

- (1) The lessee is in the development period;
- (2) Land Management is providing an incentive for businesses to locate on tribal land, and is providing lease concessions, lease improvement credits, and lease abatements to attract such business; or
- (3) Land Management determines such action is in the best interest of the Nation.

(b) A lease may:

- (1) Be structured at a flat lease rate; and/or
- (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, or the lessee generates over one million dollars (\$1,000,000.00) annually in gross receipts; and/or
- (3) Be structured based on a percentage of gross receipts, or based on a market indicator; and/or
- (4) Be structured to allow for lease rate adjustments with the In such circumstances, Land Management shall ensure that the lease specifies how adjustments will be made, who will make such adjustments, when adjustments go into effect, and how disputes may be resolved; and/or
- (5) Be amended to allow for lease rate adjustments; and/or
- (6) Provide for periodic review giving consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(c) Land Management shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments and shall present such records to the lessee and include them in any lease file.

65.8-7. *Performance Bond.* If a performance bond is required under a business lease, the lessee shall obtain the performance bond in an amount that reasonably assures performance on the

lease. Land Management may require performance bonds for the purpose of guaranteeing any of the following:

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

65.9. Environmental and Cultural Reviews

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

65.9-2. *Environmental Reviews.* The Environmental, Health and Safety Division or its designee shall conduct an environmental review on all proposed lease documents in accordance with the process established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to evaluate environmental effects of federal undertakings and, at a minimum, the process shall:

- (a) Identify and evaluate any significant effects of the proposed action on the environment;
- (b) Establish a process for notifying the public of significant environmental impacts;
- (c) Ensure that the public has a reasonable opportunity to provide comments regarding the action and its environmental impacts;
- (d) Require the Nation to respond to relevant and substantive comments received from the public.

65.9-3. *Cultural Reviews.* The Cultural Heritage Department or its designee shall conduct a cultural review on all proposed lease documents in accordance with the permit review requirements for undertakings established in the Protection and Management of Archeological & Historical Resources law.

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

- (a) Before approving a lease document, Land Management may require any reasonable actions, as recommended within the environmental review or cultural review, be completed.
- (b) The Environmental, Health and Safety Division shall prepare an updated environmental review and the Cultural Heritage Department shall prepare an updated cultural review upon completion of any reasonable actions.

65.10. Lease Management

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

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

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

65.10-3. *Recording Lease Documents.* Land Management shall provide all lease documents of tribal land, except residential subleases, to the Bureau of Indian Affairs for encoding and to be forwarded to the Land Titles and Records Office. Land Management shall record all lease documents of tribal land with the Oneida Nation Register of Deeds. Land Management shall

also distribute a copy of the recorded lease documents to the lessee.

65.10-4. *Ownership of Records.* Records of activities taken pursuant to this law with respect to tribal land are the property of the United States and the Nation. Records compiled, developed or received by the lessor in the course of business with the Secretary are the Nation's property.

65.10-5. *Administrative Fees.* Land Management and the Oneida Land Commission may jointly develop rules requiring administrative fees for costs associated with issuing a lease document, or conducting any other administrative transaction.

65.11. Enforcement

65.11-1. Land Management is delegated all powers necessary and proper to enforce the lease terms, this law and any rules developed pursuant to this law. This includes, but is not limited to, the power to enter the premises, assess penalties, assess late payments and cancel leases. Land Management may request the Oneida Law Office assist in enforcement of this law, rules and leases.

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

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

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

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

65.12. Appeals

65.12-1. The lessee or an interested party may appeal a determination of Land Management with the Oneida Judiciary in accordance with any applicable rules of procedure.

End.

Adopted-BC-05-13-15-C, pending BIA approval

Oneida Nation

Legislative Reference Office

Krystal L. John, Staff Attorney
 Douglass A. McIntyre, Staff Attorney
 Taniquelle J. Thurner, Legislative Analyst
 Maureen Perkins, Legislative Analyst



P.O. Box 365
 Oneida, WI 54155
 (920) 869-4375
 (800) 236-2214

<https://oneida-nsn.gov/Laws>

Memorandum

TO: Legislative Operating Committee
FROM: Douglass McIntyre
DATE: April 20, 2016
RE: Code Reorganization Project

On January 13, 2016, the Oneida Business Committee (OBC) approved the reorganization of the current Oneida Code of Laws. This reorganization will consist of only formatting revisions and will not affect the content of any existing laws. All laws will continue to be structured as required in Section 16.11-2 of the Legislative Procedures Act. The laws will continue to be divided into separate “chapters” as is the current practice. The reorganization will group related chapters into general categories called “titles.”

The Legislative Reference Office (LRO) has begun the process by creating nine (9) proposed titles and sorting related laws and policies into each title. These titles include:

- | | |
|---|---------------------------------------|
| -Title 1. Government | -Title 6. Business |
| -Title 2. Community | -Title 7. Property |
| -Title 3. Employment and Labor | -Title 8. Children, Elders and Family |
| -Title 4. Health and Public Safety | -Title 9. Judiciary |
| -Title 5. Environment and Natural Resources | |

The chart below contains all laws and policies for the Nation sorted into the proposed titles. The highlighted items indicate that the item is currently on the LOC’s active files list. The items in green are amendments to current law/policy and items in blue are initiatives for new legislation.

<u>Title 1. Government</u>	Current Chapter	Proposed Chapter	Adopting Entity
Administrative Procedures Act	1	101	OBC
Oneida Election Law	2	102	GTC
Code of Ethics	3	103	GTC
Removal Law	4	104	GTC
Comprehensive Policy Governing BCC	P	105	OBC
Budget Management and Control Law	-	106	OBC

Open Records and Open Meetings Law	7	107	OBC
Audit Law	8	108	OBC
Business Committee Meetings Law	-	109	OBC
GTC Meetings Law	-	110	GTC
General Tribal Council Stipend Payment Policy	P	111	GTC
Ten Day Notice Policy	P	112	GTC
Sanctions and Penalties Law	-	113	OBC
Sovereign Immunity	14	114	OBC
Compliance and Enforcement	-	115	OBC
Legislative Procedures Act	16	116	GTC
Administrative Rulemaking Law	17	117	OBC
<u>Title 2. Community</u>	Current Chapter	Proposed Chapter	Adopting Entity
Higher Education	-	201	GTC
Per Capita Law	9	202	OBC
Membership Ordinance	10	203	GTC
Community Support Fund Policy	P	204	OBC
Pardon and Forgiveness Law	5	205	OBC
Flag Law	-	206	OBC
Cemetery Law	75	207	OBC
Trust Scholarship Fund Policy	P	208	OBC
Children's Burial Fund Policy	P	209	OBC
Protection and Management of Archeological & Historical Resources	12	210	OBC
Hall of Fame Ordinance	83	211	OBC
Computer Resources Ordinance	15	212	OBC
Notary Act	82	213	OBC
Endowments	84	214	OBC
Arts Program-Dollars for Arts Project	P	215	OBC
Research Protection Act	-	216	OBC
<u>Title 3. Employment and Labor</u>	Current Chapter	Proposed Chapter	Adopting Entity
Employment Law	-	301	GTC
Drug and Alcohol Free Work Place Policy	P	302	OBC

Oneida Worker's Compensation Law	13	303	OBC
Garnishment Ordinance	58	304	OBC
Furlough Policy	P	305	OBC
Back Pay Policy	P	306	OBC
Layoff Policy	P	307	OBC
Investigative Leave Policy	P	308	OBC
Early Return to Work	309	309	OBC
Fitness for Duty Policy	-	310	OBC
Workplace Violence Policy	-	311	OBC
Fleet Management Policy	P	312	OBC
Military Service Employee Protection Act	97	313	OBC
Child Abuse & Neglect, Oneida Policy on Reporting	P	314	OBC
Attorney Contract Policy	P	315	OBC
Computer Resources Ordinance	15	316	OBC
Conflict of Interest Policy	P	317	OBC
Social Media Policy	P	318	OBC
Travel and Expense Policy	P	319	OBC
Paper Reduction Policy	P	320	OBC
Early Childhood Program – Internal Investigation	P	321	OBC
Anonymous Letter Policy	P	322	OBC
Parent Policy Leave (Potentially repealed and replaced in the Employment Law)	P	323	OBC
Employee Protection Policy (Potentially repealed by Employment Law)	P	322	OBC
Vehicle Driver Certification Policy (Potentially repealed and combined with Fleet Management Policy)	P	323	OBC
Whistleblower Law	-	325	OBC
<u>Title 4. Health and Public Safety</u>	Current Chapter	Proposed Chapter	Adopting Entity
Oneida Nation Law Enforcement Ordinance	37	401	OBC
Emergency Management and Homeland Security	35	402	OBC
Oneida Safety Law	33	403	OBC
Public Use of Tribal Land	38	404	OBC
Oneida Tribal Regulation of Domestic Animals Ordinance	34	405	OBC
Oneida Food Service Code	36	406	OBC
Tattooing and Body Piercing	32	407	OBC
Domestic Animals	-	408	OBC

VAWA/Banishment	-	409	GTC
<u>Title 5. Environment and Natural Resources</u>	Current Chapter	Proposed Chapter	Adopting Entity
Tribal Environmental Response Law	40	501	OBC
Non-Metallic Mine Reclamation	41	502	OBC
Woodcutting Ordinance	42	503	OBC
Well Abandonment Law	43	504	OBC
Recycling and Solid Waste Disposal	44	505	OBC
Hunting, Fishing and Trapping Law	45	506	OBC
On-Site Waste Disposal Ordinance	46	507	OBC
Sanitation Ordinance	47	508	OBC
Water Resources Ordinance	48	509	OBC
All-Terrain Vehicle Law	49	510	OBC
Clean Air Policy	P	511	OBC
Agriculture Law	-	512	OBC
Environmental, Health and Safety Law	-	513	OBC
<u>Title 6. Business</u>	Current Chapter	Proposed Chapter	Adopting Entity
Oneida Nation Gaming Ordinance	21	601	OBC*
Indian Preference in Contracting Law	57	602	OBC
Independent Contractor Policy	P	603	OBC
Small Business Loans Law	55	604	OBC
Motor Vehicle Registration	51	605	OBC
Oneida Vendor Licensing	56	606	OBC
Alcohol and Beverage Licensing Law	59	607	OBC
Oneida Tobacco Ordinance	60	608	OBC
Room Tax Law	61	609	OBC
Industrial Hemp	-	610	OBC
Tribally-owned Business Organization Code	-	611	OBC
Secured Transactions	-	612	OBC

<u>Title 7. Property</u>	Current Chapter	Proposed Chapter	Adopting Entity
Real Property Law of the Oneida Nation in Wisconsin	67	701	OBC*
Leasing	65	702	OBC*
Building Code of the Oneida Reservation	66	703	OBC
Condominium Ordinance	68	704	OBC
Zoning and Shoreland Protection Ordinance	69	705	OBC
TEQRA	200	706	OBC
Local Land Use Regulation Reimbursement Policy	P	707	OBC
Disposition of Excess Tribal Property Policy	P	708	OBC
Eviction Law	-	709	OBC
Landlord Tenant Law	-	710	OBC
Mortgage and Foreclosure Law	-	711	OBC
Probate Law	-	712	OBC
<u>Title 8. Children, Elders and Family</u>	Current Chapter	Proposed Chapter	Adopting Entity
Marriage Law	71	801	OBC
Divorce, Annulment, Legal Separation Law	72	802	OBC
Paternity Law	77	803	OBC
Child Support Law and Accompanying Rules	78	804	OBC
Child Custody, Placement and Visitation Law	79	805	OBC
Guardianship	-	806	OBC
Child Welfare	-	807	OBC
<u>Title 9. Judiciary</u>	Current Chapter	Proposed Chapter	Adopting Entity
Judiciary	150	901	GTC
Judiciary Canons of Judicial Conduct, Oneida Tribal	152	902	OBC
Rules of Civil Procedure	153	903	OBC
Rules of Evidence, Oneida Judiciary	155	904	OBC
Rules of Appellate Procedure	154	905	OBC
Family Court	151	906	OBC
Family Court Rules, Oneida	156	907	OBC
Capping Damages and Awards from the Judicial System	-	908	OBC

Rules for Administrative Procedure	-	909	OBC

Once the titles and chapter order are finalized, the LRO will draft conversion tables for all of the individual laws within a title. When a conversion table is finished, the title can be brought individually to the OBC with a Resolution and Statement of Effect for consideration for adoption. A sample conversion table is below:

Title 2. Community – Conversion Table	Current Section/ Article	New Section
<u>Higher Education</u> (new legislation based on various GTC Resolutions to be placed in Chapter 201) *No conversion table is needed for legislation not yet adopted	N/A	N/A
<u>Per Capita Law</u> (transfer from Chapter 9 to Chapter 202)	Section 9.1 9.1-1 9.1-1(a) 9.1-1(b) 9.1-2	Section 202.1 202.1-1 202.1-1(a) 202.1-1(b) 202.1-2
	Section 9.2 9.2-1 9.2-2 9.2-3 9.2-4 9.2-5	Section 202.2 202.2-1 202.2-2 202.2-3 202.2-4 202.2-5
	Section 9.3 9.3-1(a) 9.3-1(b) 9.3-1(c) 9.3-1(d) 9.3-1(e) 9.3-1(f) 9.3-1(g) 9.3-1(h) 9.3-1(i) 9.3-1(j) 9.3-1(k) 9.3-1(l)	Section 202.3 202.3-1(a) 202.3-1(b) 202.3-1(c) 202.3-1(d) 202.3-1(e) 202.3-1(f) 202.3-1(g) 202.3-1(h) 202.3-1(i) 202.3-1(j) 202.3-1(k) 202.3-1(l)
	Section 9.4 9.4-1 9.4-2	Section 202.4 202.4-1 202.4-2

	9.4-3	202.4-3
	9.4-4	202.4-4
	9.4-4(a)	202.4-4 (a)
	9.4-4(b)	202.4-4(b)
	9.4-4(c)	202.4-4(c)
	9.4-4(d)	202.4-4(d)
	9.4-5	202.4-5
	9.4-5(a)	202.4-5(a)
	9.4-5(b)	202.4-5(b)
	9.4-5(c)	202.4-5(c)
	9.4-6	202.4-6
	9.4-6(a)	202.4-6(a)
	9.4-6(a)(1)	202.4-6(a)(1)
	9.4-6(a)(2)	202.4-6(a)(2)
	9.4-6(a)(2)(a)	202.4-6(a)(2)(a)
	9.4-6(a)(3)	202.4-6(a)(3)
	9.4-6(b)	202.4-6(b)
	9.4-6(b)(1)	202.4-6(b)(1)
	9.4-6(b)(2)	202.4-6(b)(2)
	9.4-6(c)	202.4-6(c)
	9.4-6(d)	202.4-6(d)
	9.4-6(d)(1)	202.4-6(d) (1)
	9.4-6(d)(2)	202.4-6(d)(2)
	9.4-6(d)(2)(a)	202.4-6(d)(2)(a)
	9.4-6(d)(3)	202.4-6(d)(3)
	9.4-6(d)(3)(A)	202.4-6(d)(3)(A)
	9.4-6(d)(3)(B)	202.4-6(d)(3)(B)
	9.4-6(d)(3)(C)	202.4-6(d)(3)(C)
	9.4-6(d)(4)	202.4-6(d)(4)
	9.4-6(d)(4)(A)	202.4-6(d)(4)(A)
	9.4-6(d)(4)(B)	202.4-6(d)(4)(B)
	9.4-6(d)(4)(C)	202.4-6(d)(4)(C)
	9.4-6(d)(5)	202.4-6(d)(5)
	9.4-6(d)(6)	202.4-6(d)(6)
	9.4-6(d)(6)(A)	202.4-6(d)(6)(A)
	9.4-6(d)(6)(B)	202.4-6(d)(6)(B)
	9.4-6(d)(7)	202.4-6(d)(7)
	9.4-6(e)	202.4-6(e)
	9.4-6(e)(1)	202.4-6(e)(1)
	9.4-6(e)(2)	202.4-6(e)(2)
	9.4-6(e)(3)	202.4-6(e)(3)
	9.4-6(e)(3)(A)	202.4-6(e)(3)(A)
	9.4-6(e)(3)(B)	202.4-6(e)(3)(B)
	9.4-6(f)	202.4-6(f)
	9.4-7	202.4-7
	9.4-7(a)	202.4-7(a)

	9.4-7(b) 9.4-7(c) 9.4-7(d)	202.4-7(b) 202.4-7(c) 202.4-7(d)
	Section 9.5 9.5-1 9.5-2 9.5-3 9.5-3(a) 9.5-3(a)(1) 9.5-3(a)(2) 9.5-3(a)(3) 9.5-3(b) 9.5-3(c) 9.5-3(c)(1) 9.5-3(c)(2) 9.5-3(d) 9.5-3(e) 9.5-3(e)(1) 9.5-3(e)(2) 9.5-3(e)(2)(A) 9.5-3(e)(2)(B) 9.5-3(f) 9.5-3(f)(1) 9.5-3(f)(2) 9.5-4 9.5-4(a) 9.5-4(b) 9.5-5 9.5-6	Section 202.5 202.5-1 202.5-2 202.5-3 202.5-3(a) 202.5-3(a)(1) 202.5-3(a)(2) 202.5-3(a)(3) 202.5-3(b) 202.5-3(c) 202.5-3(c)(1) 202.5-3(c)(2) 202.5-3(d) 202.5-3(e) 202.5-3(e)(1) 202.5-3(e)(2) 202.5-3(e)(2)(A) 202.5-3(e)(2)(B) 202.5-3(f) 202.5-3(f)(1) 202.5-3(f)(2) 202.5-4 202.5-4(a) 202.5-4(b) 202.5-5 202.5-6
	Section 9.6 9.6-1 9.6-1(a) 9.6-1(b) 9.6-1(c) 9.6-1(c)(1) 9.6-2 9.6-2(a) 9.6-2(a)(1) 9.6-2(a)(2) 9.6-2(a)(2)(A) 9.6-2(a)(2)(B) 9.6-2(a)(2)(C) 9.6-2(a)(3) 9.6-2(a)(3)(A)	Section 202.6 202.6-1 202.6-1(a) 202.6-1(b) 202.6-1(c) 202.6-1(c)(1) 202.6-2 202.6-2(a) 202.6-2(a)(1) 202.6-2(a)(2) 202.6-2(a)(2)(A) 202.6-2(a)(2)(B) 202.6-2(a)(2)(C) 202.6-2(a)(3) 202.6-2(a)(3)(A)

	9.6-2(a)(3)(B) 9.6-2(a)(3)(C) 9.6-2(a)(3)(C)(i) 9.6-2(a)(3)(C)(ii) 9.6-2(a)(3)(C)(iii) 9.6-2(a)(3)(C)(iv) 9.6-2(a)(3)(C)(v) 9.6-2(a)(3)(D) 9.6-2(a)(3)(E) 9.6-2(b) 9.6-2(c) 9.6-2(c)(1) 9.6-2(d) 9.6-2(d)(1) 9.6-2(d)(2) 9.6-2(d)(3) 9.6-2(d)(4) 9.6-2(e) 9.6-3 9.6-3(a) 9.6-3(a)(1) 9.6-3(a)(1)(A) 9.6-3(a)(1)(B) 9.6-3(a)(2) 9.6-3(a)(2)(A) 9.6-3(a)(2)(B) 9.6-3(a)(3) 9.6-3(b) 9.6-3(c)	202.6-2(a)(3)(B) 202.6-2(a)(3)(C) 202.6-2(a)(3)(C)(i) 202.6-2(a)(3)(C)(ii) 202.6-2(a)(3)(C)(iii) 202.6-2(a)(3)(C)(iv) 202.6-2(a)(3)(C)(v) 202.6-2(a)(3)(D) 202.6-2(a)(3)(E) 202.6-2(b) 202.6-2(c) 202.6-2(c)(1) 202.6-2(d) 202.6-2(d)(1) 202.6-2(d)(2) 202.6-2(d)(3) 202.6-2(d)(4) 202.6-2(e) 202.6-3 202.6-3(a) 202.6-3(a)(1) 202.6-3(a)(1)(A) 202.6-3(a)(1)(B) 202.6-3(a)(2) 202.6-3(a)(2)(A) 202.6-3(a)(2)(B) 202.6-3(a)(3) 202.6-3(b) 202.6-3(c)
	Section 9.7 9-7.1 9.7-2 9.7-2(a) 9.7-2(b) 9.7-2(c) 9.7-2(d) 9.7-3 9.7-3(a) 9.7-3(b) 9.7-3(c) 9.7-3(d) 9.7-4 9.7-4(a) 9.7-4(b) 9.7-4(c)	Section 202.7 202.7-1 202.7-2 202.7-2(a) 202.7-2(b) 202.7-2(c) 202.7-2(d) 202.7-3 202.7-3(a) 202.7-3(b) 202.7-3(c) 202.7-3(d) 202.7-4 202.7-4(a) 202.7-4(b) 202.7-4(c)

	9.7-5 9.7-5(a) 9.7-5(b)	202.7-5 202.7-5(a) 202.7-5(b)
<u>Membership Ordinance</u> (transfer from Chapter 10 to Chapter 203)	Section 10.1 10.1-1	Section 203.1 203.1-1
	Section 10.2 10.2-1	Section 203.2 203.1-2
	Section 10.3 10.3-1 10.3-1(a) 10.3-1(a)(1) 10.3-1(a)(2) 10.3-1(a)(3) 10.3-1(a)(4) 10.3-1(b) 10.3-1(b)(1) 10.3-1(b)(2) 10.3-1(b)(3) 10.3-1(b)(4) 10.3-1(c) 10.3-1(d) 10.3-1(e) 10.3-1(f)	Section 203.3 203.3-1 203.3-1(a) 203.3-1(a)(1) 203.3-1(a)(2) 203.3-1(a)(3) 203.3-1(a)(4) 203.3-1(b) 203.3-1(b)(1) 203.3-1(b)(2) 203.3-1(b)(3) 203.3-1(b)(4) 203.3-1(c) 203.3-1(d) 203.3-1(e) 203.3-1(f)
	Section 10.4 10.4(a) 10.4(b) 10.4(b)(1) 10.4(b)(2) 10.4(b)(3) 10.4(b)(4) 10.4(c) 10.4(d) 10.4(d)(1) 10.4(d)(2) 10.4(d)(3) 10.4(d)(3)(A) 10.4(d)(3)(B) 10.4(d)(3)(B)(i) 10.4(d)(3)(B)(ii) 10.4(e)	Section 203.4 203.4(a) 203.4(b) 203.4(b)(1) 203.4(b)(2) 203.4(b)(3) 203.4(b)(4) 203.4(c) 203.4(d) 203.4(d)(1) 203.4(d)(2) 203.4(d)(3) 203.4(d)(3)(A) 203.4(d)(3)(B) 203.4(d)(3)(B)(i) 203.4(d)(3)(B)(ii) 203.4(e)
	Section 10.5	Section 203.5

	10.5(a) 10.5(a)(1) 10.5(a)(2) 10.5(a)(3) 10.5(a)(4) 10.5(a)(5) 10.5(a)(6) 10.5(b) 10.5(c) 10.5(c)(1) 10.5(c)(2) 10.5(c)(2)(A) 10.5(c)(2)(B) 10.5(c)(2)(B)(i) 10.5(c)(2)(B)(i)(aa) 10.5(c)(2)(B)(i)(bb) 10.5(c)(2)(B)(i)(cc) 10.5(c)(2)(B)(i)(dd) 10.5(c)(2)(B)(i)(ee) 10.5(c)(2)(B)(i)(ff) 10.5(c)(2)(B)(i)(gg) 10.5(c)(2)(C) 10.5(c)(2)(D)	203.5(a) 203.5(a)(1) 203.5(a)(2) 203.5(a)(3) 203.5(a)(4) 203.5(a)(5) 203.5(a)(6) 203.5(b) 203.5(c) 203.5(c)(1) 203.5(c)(2) 203.5(c)(2)(A) 203.5(c)(2)(B) 203.5(c)(2)(B)(i) 203.5(c)(2)(B)(i)(aa) 203.5(c)(2)(B)(i)(bb) 203.5(c)(2)(B)(i)(cc) 203.5(c)(2)(B)(i)(dd) 203.5(c)(2)(B)(i)(ee) 203.5(c)(2)(B)(i)(ff) 203.5(c)(2)(B)(i)(gg) 203.5(c)(2)(C) 203.5(c)(2)(D)
	Section 10.6 10.6-1	Section 203.6 203.6-1
<u>Community Support Fund Policy</u> (transfer from policy to Chapter 204)	Article I. 1-1 1-2	Section 204.1 204.1-1 204.1-2
	Article II. 2-1 2-2 2-3 2-4 2-5	Section 204.2 204.2-1 204.2-2 204.2-3 204.2-4 204.2-5
	Article III. 3-1(a) 3-1(b) 3-1(c) 3-1(d) 3-1(e) 3-1(e)(1) 3-1(e)(2)	Section 204.3 204.3-1(a) 204.3-1(b) 204.3-1(c) 204.3-1(d) 204.3-1(e) 204.3-1(e)(1) 204.3-1(e)(2)

	3-1(e)(3) 3-1(e)(4) 3-1(f) 3-1(g) 3-1(h) 3-1(i) 3-1(j) 3-1(k) 3-1(l) 3-1(m) 3-1(n) 3-1(o) 3-1(p) 3-1(q) 3-1(r)	204.3-1(e)(3) 204.3-1(e)(4) 204.3-1(f) 204.3-1(g) 204.3-1(h) 204.3-1(i) 204.3-1(j) 204.3-1(k) 204.3-1(l) 204.3-1(m) 204.3-1(n) 204.3-1(o) 204.3-1(p) 204.3-1(q) 204.3-1(r)
	Article IV. 4-1 4-1(a) 4-1(b) 4-1(c) 4-2 4-3 4-4 4-4(a) 4-4(b) 4-5 4-5(a) 4-5(b) 4-5(c) 4-5(d) 4-5(e) 4-5(f) 4-6 4-7 4-8 4-9	Section 204.4 204.4-1 204.4-1(a) 204.4-1(b) 204.4-1(c) 204.4-2 204.4-3 204.4-4 204.4-4(a) 204.4-4(b) 204.4-5 204.4-5(a) 204.4-5(b) 204.4-5(c) 204.4-5(d) 204.4-5(e) 204.4-5(f) 204.4-6 204.4-7 204.4-8 204.4-9
	Article V. 5-1 5-1(a) 5-1(b) 5-1(c) 5-1(d) 5-2 5-2(a)	Section 204.5 204.5-1 204.5-1(a) 204.5-1(b) 204.5-1(c) 204.5-1(d) 204.5-2 204.5-2(a)

	5-2(b) 5-2(c)	204.5-2(b) 204.5-2(c)
	Article VI. 6-1 6-1(a) 6-1(b) 6-1(c) 6-1(d) 6-1(e) 6-1(f) 6-2 6-2(a) 6-2(b) 6-2(c) 6-2(d) 6-3 6-4	Section 204.6 204.6-1 204.6-1(a) 204.6-1(b) 204.6-1(c) 204.6-1(d) 204.6-1(e) 204.6-1(f) 204.6-2 204.6-2(a) 204.6-2(b) 204.6-2(c) 204.6-2(d) 204.6-3 204.6-4
	Article VII. 7-1 7-1(a) 7-1(b) 7-1(c) 7-1(d) 7-1(e) 7-1(f) 7-1(g) 7-2 7-2(a) 7-2(b) 7-2(c)	Section 204.7 204.7-1 204.7-1(a) 204.7-1(b) 204.7-1(c) 204.7-1(d) 204.7-1(e) 204.7-1(f) 204.7-1(g) 204.7-2 204.7-2(a) 204.7-2(b) 204.7-2(c)
	Article VIII. 8-1 8-2 8-2(a) 8-2(b) 8-3 8-3(a) 8-3(b) 8-3(c) 8-3(d) 8-3(e) 8-3(f) 8-3(g)	Section 204.8 204.8-1 204.8-2 204.8-2(a) 204.8-2(b) 204.8-3 204.8-3(a) 204.8-3(b) 204.8-3(c) 204.8-3(d) 204.8-3(e) 204.8-3(f) 204.8-3(g)

	8-3(h) 8-3(i) 8-3(j) 8-4 8-4(a) 8-4(b) 8-4(c) 8-4(d) 8-5 8-5(a) 8-5(b) 8-5(c) 8-5(d) 8-5(e) 8-6	204.8-3(h) 204.8-3(i) 204.8-3(j) 204.8-4 204.8-4(a) 204.8-4(b) 204.8-4(c) 204.8-4(d) 204.8-5 204.8-5(a) 204.8-5(b) 204.8-5(c) 204.8-5(d) 204.8-5(e) 204.8-6
	Article IX. 9-1	Section 204.9 204.9-1

Requested Action:

Accept the memorandum as FYI and direct the LRO to begin preparing conversion tables.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: April 11, 2016
- 2) Contact Person(s): Melinda Danforth Dept: Vice-Chairwoman
Phone Number: ext. 4461 Email: mdanforj@oneidanation.org
- 3) Agenda Title: Emergency Amendemtns- Election Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
Emergency amendments are being requested to the Election Law due to the Constitutional
Amendments that have been approved after appeal in February 2016. Election is in July with
an anticipated caucus in May. These amendments need to be completed prior to the caucus
to conform with the Constitutional Amendments.

List any supporting materials included and submitted with the Agenda Request Form

- | | |
|-----------------------|------------------------------|
| 1) <u>Resolution</u> | 3) <u>Redline to current</u> |
| 2) <u>Clean Draft</u> | 4) _____ |
- 5) Please List any laws, ordinances or resolution that might be affected:
Election Law
 - 6) Please List all other departments or person(s) you have brought your concern to:
Request is from the Constitutional Amendments Implementation Team
 - 7) Do you consider this request urgent? ☒ Yes ☐ No
If yes, please indicate why: Needs to be amended prior to upcoming election and caucus.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: Michelle L Mays

Digitally signed by Michelle L Mays
DN: cn=Michelle L Mays, o=Oneida Nation, ou=Law Office, email=mmays@oneidanation.org, c=US
Date: 2016.04.15 09:18:05 -05'00'

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

Oneida Nation

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Memorandum

To: Oneida Business Committee
From: Brandon Stevens, LOC Chairperson
Date: April 27, 2016
Re: Election Law Emergency Amendments

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

1. Resolution: Election Law Emergency Amendments
2. Statement of Effect: Election Law Emergency Amendments
3. Election Law Emergency Amendments (redline)
4. Election Law Emergency Amendments (clean)

Overview

The attached Resolution will adopt emergency amendments to the Election Law. Amendments to the law were requested by the Constitutional Amendments Implementation Team in order to update the age requirement for voting to align with the results of the May 2, 2015 Secretarial Election.

In the May 2, 2015 Secretarial Election the Nation's membership voted to amend Section 2 of Article III of the Oneida Tribal Constitution to change the age of a qualified voter from twenty-one (21) and over to eighteen (18) and over. On June 16, 2015 these results were certified by the United States Department of Interior, Bureau of Indian Affairs. Subsequently, in July of 2015, a tribal member filed an appeal to the Interior Board of Indian Appeals which suspended the certification and implementation of the constitutional amendments.

On February 11, 2016 the Interior Board of Indian Appeals denied the tribal member's appeal and upheld the Bureau of Indian Affairs certification of all the constitutional amendments. On February 24, 2016 the Oneida Business Committee formally acknowledged receipt of the Interior Board of Indian Appeals decision and directed the Constitutional Amendments Implementation Team to begin implementation of the constitutional amendments.

Emergency adoption of this amendment to the Election Law is necessary in order to ensure compliance with recent actions taken by the Nation's membership directing that tribal members eighteen (18) years of age and older are able to vote in the Nation's election, which would include the upcoming caucus scheduled for May 7, 2016. Emergency amendments do not require a public meeting or fiscal impact statement. If adopted, these amendments will become effective immediately and will remain in effect for six months, unless extended or permanently adopted [See *Legislative Procedures Act 16.9-5*].

Requested Action

Approve the Resolution: Emergency Amendments to the Election Law

BC Resolution _____
Election Law Emergency Amendments

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

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

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

WHEREAS, on May 2, 2015, the Oneida Tribal membership voted at the Secretarial Election to amend Section 2 of Article III of the Oneida Tribal Constitution to change the age of a qualified voter from twenty-one (21) and over to eighteen (18) and over; and

WHEREAS, on June 16, 2015 the United States Department of Interior, Bureau of Indian Affairs approved by certification the amendment to Section 2 of Article III of the Oneida Tribal Constitution to change the age of a qualified voter from twenty-one (21) and over to eighteen (18) and over; and

WHEREAS, in July 2015, a tribal member filed an appeal to the Interior Board of Indian Appeals which suspended the certification and implementation; and

WHEREAS, on February 11, 2016 the Interior Board of Indian Appeals denied the tribal member's appeal and upheld the Bureau of Indian Affairs certification of all the constitutional amendments; and

WHEREAS, on February 24, 2016 the Oneida Business Committee formally acknowledged receipt of the Interior Board of Indian Appeals decision and directed the Constitutional Amendments Implementation Team to begin implementation of the constitutional amendments; and

WHEREAS, the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis; and

WHEREAS, emergency adoption of this amendment to the Election Law is necessary for the preservation of the public health, safety, or general welfare of the reservation population to ensure compliance with recent actions taken by the Tribal membership; and observance of the adoption requirements under the Legislative Procedures Act for passage of laws and policies would be contrary to public interest.

NOW THEREFORE BE IT RESOLVED, that the attached emergency amendments to the Election Law shall take effect immediately.

Oneida Nation Legislative Reference Office

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
Taniquelle J. Thurner, Legislative Analyst
Maureen Perkins, LTE Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214

<https://oneida-nsn.gov/Laws>

Statement of Effect

Resolution: Election Law Emergency Amendments

Summary

This Resolution adopts Emergency Amendments to the Election Law. These amendments would update the Election Law to comply with the results of the May 2, 2015 Secretarial Election amending the Tribal Constitution. The only Constitutional amendments that are addressed in these emergency amendments are the revision to the minimum voting age requirement from twenty-one (21) to eighteen (18) years of age [see 2.8-1] and the change from “Tribe” to “Nation” throughout the law

Submitted by Krystal L. John, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

This Resolution adopts emergency amendments to the Election Law, which was adopted through resolution GTC-07-06-98-A, and thereafter amended by Resolutions GTC-01-04-10-A, BC-02-25-15-C, and GTC-01-04-10-A. These emergency amendments will bring the Election Law into alignment with the Tribal Constitutions amended minimum voting age requirements and change the reference from “Tribe” to “Nation.”

In the May 2, 2015 Secretarial Election the Nation’s membership voted to amend Section 2 of Article III of the Oneida Tribal Constitution to change the age of a qualified voter from twenty-one (21) and over to eighteen (18) and over. On June 16, 2015 these results were certified by the United States Department of Interior, Bureau of Indian Affairs. Subsequently, in July of 2015, a tribal member filed an appeal to the Interior Board of Indian Appeals which suspended the certification and implementation of the constitutional amendments.

On February 11, 2016 the Interior Board of Indian Appeals denied the tribal member’s appeal and upheld the Bureau of Indian Affairs certification of all the constitutional amendments. On February 24, 2016 the Oneida Business Committee formally acknowledged receipt of the Interior Board of Indian Appeals decision and directed the Constitutional Amendments Implementation Team to begin implementation of the constitutional amendments.

Emergency adoption of this amendment to the Election Law is necessary in order to ensure compliance with recent actions taken by the Nation’s membership directing that tribal members eighteen (18) years of age and older are able to vote in the Nation’s election, which would include the upcoming caucus scheduled for May 7, 2016.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the” LPA. Through the Resolution, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this Law.

Conclusion

Adoption of this Resolution would not conflict with the Nation’s law.

Chapter 2 ONEIDA ELECTION LAW

Onayote'a·ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanláhsla

People of the Standing Stone how it is we will appoint them the kind of laws we have

<i>Analysis by the Legislative Reference Office</i>					
Title	The Election Law (the Law)				
Requester	Constitutional Amendments Implementation Team	Drafter	Michelle Mays/ Krystal L. John	Analyst	Taniquelle Thurner
Reason for Request	To implement the Constitutional amendments approved by the Oneida membership through the May 2, 2015 Secretarial Election.				
Purpose	The Law governs the Oneida Nation's election process.				
Authorized/ Affected Entities	Election Board				
Related Legislation	Oneida Nation boards, committees and commissions that set a minimum age requirement in their by-laws may want to consider whether to lower those minimum age requirements accordingly.				
Enforcement & Due Process	N/A				

The proposed amendments to the Election Law (the Law) are made to reflect one of the Oneida Constitutional amendments passed at the May 2, 2015 Secretarial Election, which lowered the minimum voting age for Tribal elections from 21 years old to 18 years old.

Currently, the Election Law defines “qualified voters” as persons who are at least 21 years old, which conflicts with the amended Oneida Constitution. The proposed amendments change the definition for a “qualified voter,” to mean enrolled Tribal members who are at least 18 years old, instead of those who are at least 21 years old. [2.3-18 and 2.8-1]

Additional Changes

The Constitutional Amendments also changed the official name of the tribe to “Oneida Nation.” Throughout the Law, various references to the “Tribe” are changed to instead refer to the “Nation,” and a definition for “Nation” is added. [2.3-15]

Various references to the “Enrollment Department” are changed to refer to the “Trust Enrollment Department,” and section 2.2 is updated to incorporate the language requirements set out in the Legislative Procedures Act.

Other

These proposed amendments are being submitted for emergency adoption in order to become effective prior to a Tribal caucus scheduled to be held on May 7, 2016.

Section 16.9-5 of the Legislative Procedures Act (LPA) authorizes the OBC to temporarily enact an emergency law where necessary for the immediate preservation of the public health, safety or general welfare of the reservation population, when it is required sooner than would be possible through the standard legislative process. If adopted on an emergency basis, these amendments will become effective immediately and remain in effect for up to six months, with a possibility of a one-time extension of up to an additional six months. [LPA 16.9-5(b)] Emergency amendments to the Election Law to lower the voting age to 18 were adopted on June 28, 2015; however those amendments expired after six months.

A public meeting is not required for emergency legislation.

Chapter 2 ONEIDA ELECTION LAW

Onaʔoteʔa·ká· Tho Ni· Yót Tsiʔ ʔyethiyataláko Tsiʔ Kayanlʔhsla

People of the Standing Stone how it is we will appoint them the kind of laws we have

2.1. Purpose and Policy
2.2. Adoption, Amendment, Repeal
2.3. Definitions
2.4. Election Board
2.5. Candidate Eligibility
2.6. Selection of Candidates

2.7. Notice of Polling Places
2.8. Registration of Voters
2.9. Election Process
2.10. Closing Polls and Securing Ballots
2.11. Election Outcome and Ties
2.12. Elections

2.1. Purpose and Policy

2.1-1. It is the policy of the TribeNation that this law shall govern the procedures for the conduct of orderly Tribal elections, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

2.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida-TribeNation in the conduct of elections. It is intended to govern all procedures used in the election process.

2.2. Adoption, Amendment, Repeal

2.2-1. This law was adopted by the Oneida General Tribal Council by resolution # GTC 7-06-98-A and amended by resolutions #GTC-01-04-10-A and BC-02-25-15-C. ~~The amendments adopted by resolution #, and GTC-01-04-10-A shall be effective January 4, 2010.~~

2.2-2. This law may be amended ~~pursuant to the procedures set out in the Oneida Administrative Procedures Act~~ by the Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

2.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

2.2-4. ~~Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.~~ In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

2.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation.

2.3. Definitions

2.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

2.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

2.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding Tribal holidays.

Draft 1 – Redline to Current
2016 04 20

- 39 2.3-5. "Campaigning" shall mean all efforts designed to influence Tribal members to support or
40 reject a particular Tribal candidate including, without limitation, advertising, rallying, public
41 speaking, or other communications with Tribal members.
- 42 2.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is
43 placed on the ballot by the Election Board after successful application.
- 44 2.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
45 of determining voter eligibility.
- 46 2.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.
- 47 2.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or
48 otherwise, in which a Tribal elected official, employee, consultant, appointed or elected, member
49 of any board, committee or commission, or their immediate relatives, friends or associates, or
50 any other person with whom they have contact, that conflicts with any right of the TribeNation to
51 property, information, or any other right to own and operate its enterprises, free from undisclosed
52 competition or other violation of such rights of the Oneida TribeNation, or as defined in any law
53 or policy of the TribeNation.
- 54 2.3-10. "Election" shall mean every primary and election.
- 55 2.3-11. "General election" shall mean the election held every three (3) years in July to elect the
56 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
57 Business Committee and may include contests for elected boards, committees and commissions
58 positions.
- 59 2.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
60 discrepancies, complaints and controversy regarding voter eligibility.
- 61 2.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
62 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
63 the TribeNation.
- 64 2.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
65 winner of an elected position, in the case of a tie between two (2) or more candidates.
- 66 2.3-15. "Nation" means the Oneida Nation.
- 67 ~~2.3-15~~ 16. "Oneida Police Officer" shall mean an enrolled member of the Oneida ~~Tribe of~~
68 ~~IndiansNation~~ who is a police officer on any police force.
- 69 ~~2.3-16~~ 17. "Private property" shall mean any lot of land not owned by the TribeNation, a
70 residential dwelling or a privately owned business within the boundaries of the Reservation.
- 71 ~~2.3-17~~ 18. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
72 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
73 Community Health Center, the SEOTS building and all One-Stop locations.
- 74 ~~2.3-18~~ 19. "Qualified voter" shall mean an enrolled Tribal member who is ~~21~~ eighteen (18) years
75 of age or older.
- 76 ~~2.3-19~~ 20. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
77 machine.
- 78 ~~2.3-20~~ 21. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise
79 marred and is not tabulated.
- 80 ~~2.3-21~~ 22. "Teller" shall mean the election official in charge of collecting and storing of all
81 ballots.
- 82 2.2-23. "Tribal member" shall mean an enrolled member of the Nation.
- 83 ~~2.3-22~~ 24. "Tribal newspaper" shall mean the Kalihwisaks, or any other newspaper operated by

Draft 1 – Redline to Current
2016 04 20

the ~~Tribe~~Nation for the benefit of transmitting news to Tribal members which is designated by the Election Board as a source for election related news.

~~2.3-23. “Tribe” means the Oneida Tribe of Indians of Wisconsin.~~

2.4. Election Board

Section A. Establishment, Composition and Election

2.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this law and Article III, Sections 2 and 3 of the Oneida Constitution.

2.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

2.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

2.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

2.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

2.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

2.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

Section B. Duties of the Election Board

2.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

Section C. Specific Duties of Officers and Election Board Members

2.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 2.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and ~~Oneida~~the Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.

Draft 1 – Redline to Current

2016 04 20

- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Tribal Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the ~~Oneida-Trust~~ Enrollment Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the ~~Oneida-Trust~~ Enrollment Department.
- (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.
- (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between Tribal members and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

Section D. Compensation Rates

- 2.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the budgeting process of the ~~TribeNation~~.
- 2.4-12. The ~~Oneida-Trust~~ Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

2.5. Candidate Eligibility

Section A. Requirements

2.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

2.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an ~~enrolled~~ Tribal member, as verified by membership rolls of the ~~TribeNation~~.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:
 - (1) a valid Wisconsin driver's license;
 - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
 - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

2.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30)

Draft 1 – Redline to Current
2016 04 20

calendar days of being elected shall not be considered as a bar to nomination or election.

2.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Tribal Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal Tribal mail delivery, faxed or other delivery method shall be accepted.

2.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

Section B. Eligibility Review

2.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

2.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Tribal mail, faxed or other delivery method will be accepted.

Section C. Campaign Financing

2.5-8. Contributions:

(a) Solicitation of Contributions by Candidates.

(1) Candidates shall only accept contributions from individuals who are ~~members of the Tribe~~ Tribal members or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.

(2) Candidates shall not solicit or accept contributions in any Tribal office or business/facility.

(b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

2.5-9. Campaign Signs and Campaigning:

(a) Placement of campaign signs:

Draft 1 – Redline to Current
2016 04 20

(1) Campaign signs shall not be posted or erected on any Tribal property except for private property with the owner/tenant's permission.

(2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.

(3) No campaign sign shall project beyond the property line into the public right of way.

(b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

(c) Employees of the TribeNation shall not engage in campaigning for Tribal offices during work hours. Tribal employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

Section D. Candidate Withdrawal

2.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

2.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

2.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

2.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

2.5-14. Candidate Withdrawal After Winning an Election.

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.6. Selection of Candidates

Section A. Setting of Caucus

2.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the

Draft 1 – Redline to Current
2016 04 20

election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

2.6-2. The procedures for the caucus shall be as follows:

- (a) Candidates shall be nominated from the floor.
- (b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.
- (c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Petition

2.6-3. Any eligible Tribal member may petition to be placed on a ballot according to the following procedures:

- (a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.
- (b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Tribal Secretary's Office or from the mailing for that caucus.
- (c) The petition form shall consist of each endorsee's:
 - (1) printed name and address;
 - (2) date of birth;
 - (3) Oneida Tribal ~~Enrollment~~ enrollment ~~Number~~ number; and
 - (4) signature.
- (d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.
- (e) Petitions shall be presented to the Tribal Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.
- (f) The Tribal Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.
- (g) The Election Board shall have the ~~Oneida~~ Trust Enrollment Department verify all signatures contained on the petition.

2.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

2.7. Notice of Polling Places

2.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of Tribal businesses/facilities.

2.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

Draft 1 – Redline to Current
2016 04 20

2.7-3. Except for a Special Election, notice for the election shall be mailed to all Tribal members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The ~~Oneida-Trust~~ Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

2.7-4. Notice of the election shall be placed in the Tribal newspaper.

2.8. Registration of Voters

Section A. Requirements

2.8-1. *Registration of Voters.* All ~~enrolled members of the Tribe~~, Tribal members who are ~~twenty-one (21)~~ eighteen (18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Tribal Constitution.

Section B. Identification of Voters

2.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Tribal I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

Section C. Registration Procedures

2.8-3. Voters shall physically register, on the day of the election, at the polls.

2.8-4. ~~Oneida-Trust~~ Enrollment Department personnel shall be responsible for verifying Tribal enrollment. Conduct of ~~Oneida-the Trust~~ Enrollment Department personnel is governed by the Election Officials during the voting period.

2.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

Section D. Qualification/Verification of Voter Eligibility

2.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Trust Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Tribal Constitution, Article III Section 2, to vote in tribal elections.

2.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a

Draft 1 – Redline to Current
2016 04 20

final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

2.9. Election Process

Section A. Polling Places and Times

2.9-1. In accordance with Article III, Section 4 of the Tribal Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 2.12-6.

2.9-2. Elections shall be held in an Oneida Tribal facility(s) as determined by the Election Board.

2.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) Tribal members verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

2.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

2.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

2.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

2.9-7. No one causing a disturbance shall be allowed in the voting area.

2.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

Section B. Ballot Box

2.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

Section C. Spoiled Ballots

2.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

2.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

2.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

Section D. Rejected Ballots

2.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections

Draft 1 – Redline to Current
2016 04 20

2.9-10 through 2.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated ‘void,’ and placed in a sealed container marked “Void Ballots.”

2.10. Tabulating and Securing Ballots

Section A. Machine Counted Ballots

2.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

2.10-2. At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the Tribal members before the polls were opened per section 2.9-3(a).

Section B. Manually Counted Ballots

2.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

2.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

2.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

2.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

Section C. Securing Ballots

2.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

2.11. Election Outcome and Ties

Section A. Election Results Announcement

2.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

2.11-2. The Election Board shall post, in the prominent locations, and publish in the Tribal newspaper, the tentative results of an election.

Draft 1 – Redline to Current
2016 04 20

Section B. Tie

2.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

2.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

2.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the Tribal Secretary's Office, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Tribal Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

2.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

2.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

2.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

Draft 1 – Redline to Current

2016 04 20

2.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

2.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

2.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

2.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Tribal Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

2.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

2.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

2.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat

Draft 1 – Redline to Current
2016 04 20

shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

2.12. Elections

Section A. Primary Elections; Business Committee

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

2.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

2.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 2.5-11 and 2.5-12 shall be followed, including the requirement to print a notice in the Tribal newspaper if time lines allow.

Section B. Special Elections

2.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

2.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

2.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Tribal newspaper not less than ten (10) calendar days prior to the Special Election.

2.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

Draft 1 – Redline to Current
2016 04 20

Section C. Referendums

2.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Tribal Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the ~~Tribe~~Nation or general membership.

Section D. Initiation of Special Elections

2.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

2.12-11. Special Election may be requested by a Tribal member to the Business Committee or General Tribal Council.

2.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

End.

Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C

Emergency Amended-BC-06-28-15-A (expired)

Chapter 2 ONEIDA ELECTION LAW

Onayote'a'ká· Tho Ni· Yót Tsi' Ayethiyataláko Tsi' Kayanl'ahsla

People of the Standing Stone how it is we will appoint them the kind of laws we have

2.1. Purpose and Policy	2.7. Notice of Polling Places
2.2. Adoption, Amendment, Repeal	2.8. Registration of Voters
2.3. Definitions	2.9. Election Process
2.4. Election Board	2.10. Closing Polls and Securing Ballots
2.5. Candidate Eligibility	2.11. Election Outcome and Ties
2.6. Selection of Candidates	2.12. Elections

2.1. Purpose and Policy

2.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly Tribal elections, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

2.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

2.2. Adoption, Amendment, Repeal

2.2-1. This law was adopted by the Oneida General Tribal Council by resolution # GTC 7-06-98-A and amended by resolutions #GTC-01-04-10-A, BC-02-25-15-C, and GTC-01-04-10-A.

2.2-2. This law may be amended by the Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

2.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

2.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

2.3. Definitions

2.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

2.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

2.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding Tribal holidays.

2.3-5. "Campaigning" shall mean all efforts designed to influence Tribal members to support or reject a particular Tribal candidate including, without limitation, advertising, rallying, public speaking, or other communications with Tribal members.

2.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

Draft 1
2016 04 20

2.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

2.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

2.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a Tribal elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

2.3-10. "Election" shall mean every primary and election.

2.3-11. "General election" shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

2.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

2.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

2.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

2.3-15. "Nation" means the Oneida Nation.

2.3-16. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

2.3-17. "Private property" shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

2.3-18. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwia Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

2.3-19. "Qualified voter" shall mean an enrolled Tribal member who is eighteen (18) years of age or older.

2.3-20. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating machine.

2.3-21. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

2.3-22. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

2.2-23. "Tribal member" shall mean an enrolled member of the Nation.

2.3-24. "Tribal newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to Tribal members which is designated by the Election Board as a source for election related news.

2.4. Election Board

Section A. Establishment, Composition and Election

2.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this

Draft 1
2016 04 20

law and Article III, Sections 2 and 3 of the Oneida Constitution.

2.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

2.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

2.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

2.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

2.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

2.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

Section B. Duties of the Election Board

2.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

(a) The Election Board shall be in charge of all registration and election procedures; and

(b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

Section C. Specific Duties of Officers and Election Board Members

2.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

(a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 2.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and the Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.

(b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.

(c) Secretary: Shall keep a record of the meetings and make them available to the Tribal Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.

(d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment Department personnel in the registration process, and assist the Chairperson

Draft 1

2016 04 20

as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between Tribal members and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

Section D. Compensation Rates

2.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the budgeting process of the Nation.

2.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

2.5. Candidate Eligibility

Section A. Requirements

2.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

2.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

(a) be a Tribal member, as verified by membership rolls of the Nation.

(b) be a qualified voter on the day of the election.

(c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:

(1) a valid Wisconsin driver's license;

(2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;

(3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

2.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

2.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Tribal Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal Tribal mail delivery, faxed or other delivery method shall be accepted.

2.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's

Draft 1
2016 04 20

designated agent.

Section B. Eligibility Review

2.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

2.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Tribal mail, faxed or other delivery method will be accepted.

Section C. Campaign Financing

2.5-8. Contributions:

(a) Solicitation of Contributions by Candidates.

(1) Candidates shall only accept contributions from individuals who are Tribal members or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.

(2) Candidates shall not solicit or accept contributions in any Tribal office or business/facility.

(b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

2.5-9. Campaign Signs and Campaigning:

(a) Placement of campaign signs:

(1) Campaign signs shall not be posted or erected on any Tribal property except for private property with the owner/tenant's permission.

(2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.

(3) No campaign sign shall project beyond the property line into the public right of way.

(b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

Draft 1

2016 04 20

(c) Employees of the Nation shall not engage in campaigning for Tribal offices during work hours. Tribal employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

Section D. Candidate Withdrawal

2.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

2.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

2.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

2.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

2.5-14. Candidate Withdrawal After Winning an Election.

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.6. Selection of Candidates

Section A. Setting of Caucus

2.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

2.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be

Draft 1
2016 04 20

required to follow the petition process.

(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Petition

2.6-3. Any eligible Tribal member may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Tribal Secretary's Office or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

- (1) printed name and address;
- (2) date of birth;
- (3) Oneida Tribal enrollment number; and
- (4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Tribal Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Tribal Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

2.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

2.7. Notice of Polling Places

2.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of Tribal businesses/facilities.

2.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

2.7-3. Except for a Special Election, notice for the election shall be mailed to all Tribal members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

2.7-4. Notice of the election shall be placed in the Tribal newspaper.

2.8. Registration of Voters

Draft 1
2016 04 20

309 *Section A. Requirements*

310 2.8-1. *Registration of Voters.* All Tribal members who are eighteen (18) years of age or over are
311 qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Tribal
312 Constitution.

313
314 *Section B. Identification of Voters*

315 2.8-2. All voters must present one of the following picture identifications in order to be able to
316 vote:

- 317 (a) Tribal I.D.
- 318 (b) Drivers License.
- 319 (c) Other I.D. with name and photo.

320
321 *Section C. Registration Procedures*

322 2.8-3. Voters shall physically register, on the day of the election, at the polls.

323 2.8-4. Trust Enrollment Department personnel shall be responsible for verifying Tribal
324 enrollment. Conduct of the Trust Enrollment Department personnel is governed by the Election
325 Officials during the voting period.

326 2.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
327 Form containing the voter's following information:

- 328 (a) name and maiden name (if any);
- 329 (b) current address;
- 330 (c) date of birth; and
- 331 (d) enrollment number.

332
333 *Section D. Qualification/Verification of Voter Eligibility*

334 2.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
335 the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
336 the Trust Enrollment Department personnel who are registering voters, to decide the voting
337 member's eligibility currently being questioned and shall make such decisions from the facts
338 available, whether the applicant is, in fact, qualified/verifiable under the Oneida Tribal
339 Constitution, Article III Section 2, to vote in tribal elections.

340 2.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be
341 placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of
342 the voter shall be written next to a numbered list which corresponds to the numbered and sealed
343 envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
344 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
345 desire to challenge the decision made by the Election Officials. The Election Board shall make a
346 final decision, within five (5) business days of receiving the appeal and shall report this decision
347 in the final report sent to the Oneida Business Committee.

348
349 **2.9. Election Process**

350 *Section A. Polling Places and Times*

351 2.9-1. In accordance with Article III, Section 4 of the Tribal Constitution, elections shall be held
352 in the month of July on a date set by the General Tribal Council. The General Tribal Council

Draft 1
2016 04 20

shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 2.12-6.

2.9-2. Elections shall be held in an Oneida Tribal facility(s) as determined by the Election Board.

2.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) Tribal members verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

2.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

2.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

2.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

2.9-7. No one causing a disturbance shall be allowed in the voting area.

2.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

Section B. Ballot Box

2.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

Section C. Spoiled Ballots

2.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

2.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

2.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

Section D. Rejected Ballots

2.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 2.9-10 through 2.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

Draft 1
2016 04 20

2.10. Tabulating and Securing Ballots

Section A. Machine Counted Ballots

2.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

2.10-2. At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the Tribal members before the polls were opened per section 2.9-3(a).

Section B. Manually Counted Ballots

2.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

2.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

2.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

2.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

Section C. Securing Ballots

2.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

2.11. Election Outcome and Ties

Section A. Election Results Announcement

2.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

2.11-2. The Election Board shall post, in the prominent locations, and publish in the Tribal newspaper, the tentative results of an election.

Section B. Tie

2.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

2.11-4. For Business Committee positions, a run-off election between the candidates with the

Draft 1
2016 04 20

same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

2.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the Tribal Secretary's Office, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Tribal Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

2.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

2.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

2.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

2.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

2.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

Draft 1
2016 04 20

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

Section D. Challenges and Declaration of Results

2.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

2.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Tribal Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

2.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

2.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

2.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of

Draft 1
2016 04 20

official election results occurs, whichever is longer.

2.12. Elections

Section A. Primary Elections; Business Committee

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

2.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

2.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 2.5-11 and 2.5-12 shall be followed, including the requirement to print a notice in the Tribal newspaper if time lines allow.

Section B. Special Elections

2.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

2.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

2.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Tribal newspaper not less than ten (10) calendar days prior to the Special Election.

2.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

Section C. Referendums

2.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

Draft 1
2016 04 20

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Tribal Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

Section D. Initiation of Special Elections

2.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

2.12-11. Special Election may be requested by a Tribal member to the Business Committee or General Tribal Council.

2.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

End.

Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C

Emergency Amended-BC-06-28-15-A (expired)

April 2016

April 2016							May 2016						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2	1	2	3	4	5	6	7
3	4	5	6	7	8	9	8	9	10	11	12	13	14
10	11	12	13	14	15	16	15	16	17	18	19	20	21
17	18	19	20	21	22	23	22	23	24	25	26	27	28
24	25	26	27	28	29	30	29	30	31				

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

May 2016

May 2016							June 2016						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
May 1 - 7	May 1	2	3	4	5	6	7
				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:15pm 2:00pm Back Pay (Law) Amendments (BC_Conf_Room) - Douglass A. McIntyre		9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Douglass A. McIntyre
May 8 - 14	8	9	10	11	12	13	14
May 15 - 21	15	16	17	18	19	20	21
				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar			
May 22 - 28	22	23	24	25	26	27	28
		6:00pm 10:00pm GTC Meeting					
May 29 - Jun 4	29	30	31	Jun 1	2	3	4