

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

May 4, 2016 9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved

1. April 20, 2016 LOC Meeting Minutes

III. Current Business

1. Petition: Debraska – Health Board
2. Cemetery Law Amendments
3. Garnishment Amendments
4. Employment Law
5. Eviction and Termination
6. Leasing Law Amendments

IV. New Submissions

1. Rules of Administrative Procedure

V. Additions

1. BC Meetings Law (Handout)

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

April 20, 2016 9:00 a.m.

Present: Brandon Stevens, Tehassi Hill, Fawn Billie

Excused: Jennifer Webster, David P. Jordan

Others Present: Taniquelle Thurner, Krystal John, Douglass McIntyre, Maureen Perkins, Rae Skenandore, Leyne Orosco, Bill Graham, Bradley Graham, Mary Cornelissen, Bonnie Pigman, Dianne McLester-Heim, Mike Debraska (*via videoconference from SEOTS*)

I. Call to Order and Approval of the Agenda

Brandon Stevens called the April 20, 2016 Legislative Operating Committee meeting to order at 9:00 a.m.

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

II. Minutes to be approved

1. April 6, 2016 LOC Meeting Minutes

Motion by Tehassi Hill to approve the April 6, 2016 LOC meeting minutes; seconded by Fawn Billie. Motion carried with Fawn Billie abstaining.

III. Current Business

1. Petition: Debraska – Health Board (2:24-6:12)

Motion by Tehassi Hill to accept the 45 day update for Petition: Debraska – Health Board and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

2. Fitness for Duty (6:13-15:42)

Motion by Fawn Billie to approve the Fitness for Duty Public Meeting packet and to forward to a May 19, 2016 Public Meeting; seconded by Tehassi Hill. Motion carried unanimously.

3. Marriage Law Amendments (15:45-24:01)

Motion by Tehassi Hill to forward the Marriage Law Amendments to the Legislative Reference Office for an updated legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

4. Garnishment Amendments (24:05 -25:46)

Motion by Tehassi Hill to prepare the Garnishment Amendments for Public Meeting and to schedule a Public Meeting for June 3, 2016; seconded by Fawn Billie. Motion carried unanimously.

5. Landlord-Tenant Law (25:48 - 28:09)

Motion by Tehassi Hill to accept the draft Landlord-Tenant Law and forward it to the Legislative Reference Office for a legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

6. Per Capita Law Amendments (28:10 - 31:42)

Motion by Tehassi Hill to enter the April 7, 2016 e-poll results for the Per Capita Law Amendments; seconded by Fawn Billie. Motion carried unanimously.

Note: the April 7th 2016 e-poll directed the Legislative Reference Office to update the draft Per Capita Law Amendments and legislative analysis to include the revisions discussed in the memo.

Motion by Tehassi Hill to approve the Per Capita Law Amendments Public Meeting packet, noting one update to be made to the legislative analysis, and deleting one definition from the draft law; seconded by Fawn Billie. Motion carried unanimously.

Note: the update to the legislative analysis would identify one additional new duty of the Trust Enrollment Department: calculating the amount of attachments. The definition to be deleted is for "proof of education", since there are duplicate definitions.

7. Leasing Law (31:43-32:34)

Motion by Fawn Billie to accept the Leasing Law Public Meeting packet and forward to a Public Meeting to be held on May 19, 2016; seconded by Tehassi Hill. Motion carried unanimously.

8. Code Reorganization Project (32:40-46:49)

Motion by Tehassi Hill to accept the titles as presented and to direct the Legislative Reference Office to continue with the conversion table; seconded by Fawn Billie. Motion carried unanimously.

IV. New Submissions

1. Election Law Emergency Amendments (46:51-1:06:11)

Motion by Fawn Billie to move the amendment lowering the voting age to 18 years old, to emergency status; seconded by Tehassi Hill. Motion carried unanimously.

Note: All other changes will continue to be processed through the regular process for permanent amendments.

Motion by Tehassi Hill to forward the Election Law Emergency Amendments packet to the Oneida Business Committee for emergency adoption; seconded by Fawn Billie. Motion carried unanimously.

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

Motion by Tehassi Hill to adjourn the April 20, 2016 Legislative Operating Committee meeting at 10:06 a.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee

May 4, 2016

Petition: Debraska Health Board

Submission Date: 3/9/2016

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

LOC Sponsor: Jennifer Webster

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.

4/20/16 LOC: Motion by Tehassi Hill to accept the 45 day update for Petition: Debraska – Health Board and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

**OBC accepted the 45 day update at a meeting on 4/27/16. Minutes were not available at the time this was submitted.

Next Steps:

- Accept 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



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Statement of Effect

Petition: Debraska Health Board

Summary

This petition requests that a Health Care Board be created with appointments, by-laws and stipends being set by GTC.

Submitted by Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

On February 20, 2016, a petition was submitted to the Tribal Secretary's Office and has since been verified by the Enrollment Department. On March 9, 2016, the Oneida Business Committee accepted the receipt of the petition and forwarded it for the appropriate analyses, including this statement of effect considering legislative impacts the proposal may have on the Nation's laws and policies. The petition requests a special General Tribal Council (GTC) meeting to be called to discuss eight (8) topics.

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

An Oneida Health Board had previously existed in the 1970s. The function of the Board was to provide oversight to the Oneida Community Health Center. It does not appear that there was formal action to deactivate the Board, but new members were not appointed to fill vacancies. There is no legislative impact from the creation or reactivation of a Health Care Board.

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

By-laws for the Oneida boards, committees and commissions are governed by the Comprehensive Policy Governing Boards, Committees and Commissions (hereafter "Comprehensive Policy"). All boards, committees and commissions, including both elected and appointed, are required to conform to this policy. *This analysis is based on the version of the

Comprehensive Policy that was in effect as of May 4, 2016. If changes are made to the policy, an update will be needed.

a. “GTC select and appoint all Health Care Board members”

This section conflicts with the current version of the Comprehensive Policy. Section 6-1 states “[a]ll appointments shall be made by the Oneida Business Committee at regular or special Oneida Business Committee meetings.” Section 6-2 provides that the Tribal Chairperson chooses an applicant for appointment and forwards the applicant to the Oneida Business Committee. The Oneida Business Committee then accepts or rejects this applicant.

If the members of the Boards remain appointed, a change in the Comprehensive Policy will be needed to allow this.

b. “[GTC] approve their by-laws and resolutions”

There is no conflict with this section and the Comprehensive Policy as other boards, committees and commissions, like the Trusts/Enrollments Committee, require the by-laws be approved by GTC.

c. “this Health Care Board reports only to General Tribal Council”

This section potentially conflicts with the current version of the Comprehensive Policy depending on the meaning of the word “report”. Section 8-4(d)(4) provides that “[e]ntities will report to the Oneida Business Committee member who is their designated liaison.” If “report” means any communication then this would be a conflict. However, if report means an official written report such as the quarterly and semi-annual reports, then there would be no conflict with the Comprehensive Policy. This would be a departure from the current method as all boards, committees and commissions provide written quarterly or semi-annually reports to the Oneida Business Committee.

d. “[GTC] set their stipends”

This section could potentially conflict with section 11-3 of the current version of the Comprehensive Policy. This limits stipends for appointed members to “no more than \$50 per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted by-laws of that entity.”

There is a conflict with the Comprehensive Policy from this section if a higher stipend is set. A change in the Comprehensive Policy will be needed to allow this.

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

A change in the service area would have no legislative impact.

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

A change in the order of how patients are seen and payment process has no legislative impact.

5. GTC determine and limit, if necessary, the descendancy lineage to receive care and their medical bills being paid; and

A change in descendancy lineage has no legislative impact.

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

This provision of the petition conflicts with current law and policy. With the adoption of the Personnel Policy and Procedures (also known as the bluebook), the GTC delegated hiring responsibility to HRD and various other positions. The Personnel Policy and Procedures provides a process for the selection of an applicant at section (III)(B)(2)(g). This provides that the supervisor of the position selects one of the top two candidates ranked through the rating scale, and requires Oneida Preference Policy and Indian Preference Policy be applied. The petition is requesting that GTC directly selects the applicant and does not indicate whether the preferences would be applied.

In addition, the Personnel Policy and Procedures provide structure for the hiring process including the screening of applicants at section (III)(B)(2)(f) and the interviewing of candidates at (III)(B)(2)(g). It is unclear if the petition will be following these portions of the policy.

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

This provision indicates that no action be taken on any of these matters until GTC has heard this petition. It appears that this petition requests no action from the time that the petition was submitted until GTC considers the petition. A petition is not binding and has no effect until after it is considered by the GTC and some action is directed. There is no conflict from this provision.

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.

A legislative impact from this provision cannot be made as it would depend on what action is taken.

Conclusion

There are potential conflicts from the petition and current laws and policies of the Nation. Changes will need to be made to certain policies to move forward with the petition

This Statement of Effect is limited to an analysis of the contents of the petition and does not constitute a review of the laws and policies which were discussed herein.



Legislative Operating Committee

May 4, 2016

Cemetery Law Amendments

Submission Date: 8/5/15

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

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

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

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

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

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

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

Motion by Lisa Summers to direct the Chairwoman's Office to send out communications, regarding the indefinite land use moratorium directive, to the Business Committee's Direct Reports, appropriate Boards, Committees, and Commissions, and affected parties, including sweat lodge users and families impacted, seconded by David Jordan. Motion carried unanimously.

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

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

- 11/10/15 OBC:** Motion by Tehassi Hill to accept and approve the recommendations provided in the Business Committee Officers' memorandum dated November 5, 2015, seconded by Jennifer Webster. Motion carried unanimously.
- Motion by Jennifer Webster to request the Trust and Enrollment Committee to send out updated communications to the families of the cemetery, seconded by David Jordan. Motion carried unanimously.
- 12/16/15 LOC:** Motion by Jennifer Webster to accept the Cemetery Law Amendments memorandum B and to include language which requires communication pertaining to the history of the land and possible issues that may result if encasements are not used; seconded by David P. Jordan. Motion carried unanimously.
- 12/23/15 OBC:** Motion by Lisa Summers to accept the Cemetery Action Plan update dated December 3, 2015, and to request the Legislative Operating Committee revisit this item once the study is completed, seconded by Brandon Stevens. Motion carried unanimously.
- 1/6/16 LOC:** Motion by Jennifer Webster to defer the draft Cemetery Law Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.
- 2/17/16 LOC:** Motion by Jennifer Webster to accept the legislative analysis for the Cemetery Law Amendments and defer to the sponsor pending the results of the hydrogeology study; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Forward the Cemetery Law Amendments to a public meeting to be held on June 3, 2016.

NOTICE OF
PUBLIC MEETING
TO BE HELD
THURSDAY, June 3, 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: CEMETERY LAW
AMENDMENTS**

This is a proposal (to amend an existing Tribal Law) which:

- ◆ Adds the new names of the current Tribal cemetery into the law;
- ◆ Adds step-children as eligible for interment in Tribal cemeteries;
- ◆ Provides that no interments shall be scheduled in Oneida Holidays;
- ◆ Provides that no monument/markers shall be installed from November until May;
- ◆ Requires the Enrollment Department provide information concerning the use of encasements;

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 June 10, 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
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Chapter 75 Cemetery Law

Analysis Draft # 2 to Draft 4 5/4/16

Tsi' Lotiya'tata Olihwa'ke

The matters concerning when they bury the body

<i>Analysis by the Legislative Reference Office</i>					
Title	Cemetery Law				
Requester	Oneida Law Office OBC	Drafter	Douglass McIntyre	Analyst	Maureen Perkins
Reason for Request/ Purpose	Correct the name of the cemetery and change the entity responsible for the cemetery's maintenance. Additionally, review the Cemetery Law as it relates to the requirement of having encasements as part of burial mandate(s) and provide a recommendation. Request a position analysis be developed for groundkeeper and/or cemetery manager, including a reporting structure in the law.				
Purpose	This law establishes authorities and responsibilities, governs the sale of Tribal cemetery plots and establishes who is eligible for interment in a Tribal cemetery, and establishes the process for disinterment of buried remains and cremated remains.				
Authorized/ Affected Entities	Enrollment Department, Trust Enrollment Committee, OBC, Land Commission, all enrolled Tribal members, their families (including step-children) and descendants who wish to be interred at a Tribal cemetery.				
Due Process	Any individual may file a complaint with the Enrollment Department. The Enrollment Department shall respond to complaints within five days. Disinterment may only occur upon order from the judiciary. Judiciary decisions regarding disinterment are appealable. Disinterment requests are required to notify affected parties. Rules established through the Enrollment Department will be governed by the Administrative Rulemaking law when adopted.				
Related Legislation	The Rules of Appellate Procedure govern appeals of disinterment decisions.				
Policy Mechanism	The Enrollment Department has Administrative Rulemaking authority.				
Enforcement	The Enrollment Department may contact Oneida Police Department to prohibit those who violate this law or cemetery rules from accessing a Tribal cemetery. The Enrollment Department may also remove items from plots if non-compliant with cemetery rules. The OPD may issue citations for violating this law or cemetery rules, in accordance with the Public Use of Tribal Lands Schedule of Citations.				

Overview

The Oneida Burial Ordinance BC 5-19-89-E was established to have a non-denominational cemetery for Tribal Members and their families. The Cemetery Board was established under this ordinance which was the entity responsible for meeting with the individual or family whenever a plot or burial was requested, maintaining vital statistics, plotting, surveying, selling and conveying plots, establish regulations, and maintaining, improving, safeguarding and beautifying the cemetery grounds. The Land Commission (Committee) was responsible for designation of the plot for the cemetery [see 5-19-89-E]. Amendments made with BC resolution 6-29-05-A changed the ordinance into the Oneida Burial Law and clarified the burial eligibility of non-Oneidas (non-Oneida parents were added). The Burial Law was renamed the Cemetery Law [see 1-14-09-E] and dissolved the Cemetery Board, moving the

responsibilities listed above to the Enrollment Department. Amendments also include descendants as eligible for interment. The title of the Cemetery Law will remain the same and will cover current and future cemeteries. The Oneida Scared Burials Grounds, also known as Tsi? Tyeya?Tat'alih, was recognized under the proposed amendments. The proposed amendments add step-children as eligible for interment. Additionally, the Enrollment Department was granted administrative rulemaking authority regarding their duties under this law.

Proposed Amendments

Enrollment Department

- Requesting additional portions of land to be designated for use as a tribal cemetery, if needed, was added to the Enrollment Department's responsibilities *[see 75.4-3(b)]*.
- Rulemaking Authority
 - The language regarding establishing regulations was changed to establishing rules *[see 75.4-3(g)]*.
 - Complaints with regard to rules established under this law will be handled in accordance with the Administrative Rulemaking law.
- A maintenance responsibilities section was added *[see 75.4-4]*. Additional maintenance duties were added to the Enrollment Department's responsibilities:
 - Ensuring the appearance of Tribal cemeteries is kept in accordance with any established rules *[see 75.4-4(b)]*.
 - Entering into agreements with person(s) or entities, where needed, in order to meet the maintenance responsibilities *[see 75.4-4(c)]*.
 - Oversight of any position created to care for the cemetery *[see 75.4-4(d)]*.
- Language regarding the company selling an outer burial container contacting the Enrollment Department prior to delivering was removed *[see 75.6-4]*.
- The specifics of the division of plots were updated to be determined by the individual purchasing the plot rather than the Enrollment Department *[see 75.6-5]*.
- When a complaint is received, the Enrollment Department shall respond in writing within 5 business days indicating any action taken or planned action to remedy the complaint to the individual that filed the complaint, to the Trust/Enrollment Committee and to the Secretary's Office *[see 75.9-2]*.
- Complaints filed with the Enrollment Department are no longer appealable to the Trust Enrollment Committee *[see 75.9-2]*.

General Amendments

- The term for step-children was added and step-children were added to the eligibility section *[see 75.3.1(i) and 75.5-1(a)]*.
- The Oneida Scared Burials Grounds, also known as Tsi? Tyeya?Tat'alih was recognized *[see 75.4.1 and 75.4-3]*.
- Restrictions were placed on interments. "No interments will be scheduled on the observance of any Tribal holiday" *[see 75.6-2]*.
- No monuments/markers can be installed from November 1st through May 1st *[see 75.6-6(a)]*.

- Only flush markers can be installed outside of the headstone area when a plot is designated for two or more people *[see 75.6-6]*.
- A stay may be issued by the Judiciary if an appeal regarding disinterment is filed *[see 75.7-6]*.
- The Oneida Police Department was added as the authorized entity to restrict who is present during a disinterment or re-interment *[see 75.7-8]*.

Miscellaneous

A public hearing 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 and movement of text have been made to improve the clarity without affecting the content. Revisions have been made to comply with drafting styles. Please refer to the fiscal impact statement for any financial impacts.

Chapter 75
CEMETERY LAW**Cemetery Law**
Tsi> Lotiya>tata Olihwa@ke

The matters concerning when they bury the body

75.1. Purpose and Policy

75.2. Adoption, Amendment, Repeal

75.3. Definitions

75.4. Administration and Authority

75.5. Eligibility and Ownership

75.6. Interment and Plots

75.7. Disinterment

75.8. Prohibited Items and Behavior on Cemetery Grounds

75.9. Reporting.

75.1. Purpose and Policy

75.2. Adoption, Amendment, Repeal

75.3. Definitions

75.4. Administration and Authority

75.5. Tribal Cemeteries

75.6. Interment and Plots

75.7. Prohibited Items and Behavior on Cemetery Grounds

75.1. Purpose and Policy

75.1-1. *Purpose.* The purpose of this Law is to govern the sale of plots and establish who is eligible for interment in a Tribal cemetery on the Oneida Reservation.

75.1-2. *Policy.* It is the policy of the Tribe-Nation that all enrolled Tribal members, their families and descendants may be interred in a Tribal cemetery.

75.2. Adoption, Amendment, Repeal

75.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E, ~~and BC-07-23-14-B and BC-~~.

75.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

75.2-3. 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.

75.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

~~Provided that, this Law repeals the following:~~

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

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

75.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of WisconsinNation.

75.3. Definitions

75.3-1. 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) “Days” ~~shall mean~~means calendar days, unless otherwise specifically stated.

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

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

(d) “Family” ~~shall mean~~means a Tribal member’s parent, spouse and children.

(e) “Interment” ~~shall mean~~means the act or ceremony of burying human remains or cremated remains.

(f) “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.

(g) “Nation” means the Oneida Nation.

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

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

(j) “Step-children” means a person(s) whose parent is legally married to a Tribal member and the relationship can be demonstrated through an original state certified marriage license.

(k) “Tribe” or “Tribal” ~~shall mean~~ the Oneida ~~Nation, Tribe of Indians of Wisconsin.~~ “Step-Children” ~~mean a person(s) an original state certified marriage license~~

75.4. Administration and Authority

75.4-1. The land designation, administrative duties and maintenance responsibilities for the Oneida Sacred Burials Grounds, also known as Tsi> Tyeya>Tat’alih and any other cemetery owned by the Nation shall be as provided within this section.

75.4-2. Land Designation Responsibilities. The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Tribal cemeteries.

75.4-3. Administrative Responsibilities. The Enrollment Department shall be responsible for the administrative duties for all Tribal cemeteries. These duties include:

(a) Maintaining vital statistics of those interred in a Tribal cemetery, creating long-term strategic plans for Tribal cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.

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

(c) Requesting additional portions of land to be designated for use as a Tribal cemetery, if needed.

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

(e) Administering all payment activities related to the sale of a plot.

(f) Determining how to utilize gifts to a Tribal cemetery.

~~(f) Maintaining Tribal cemeteries.~~

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

75.4-4. Maintenance Responsibilities. The Enrollment Department shall be responsible for the maintenance duties including:

(a) Maintaining Tribal cemetery grounds.

(b) Ensuring the appearance of a Tribal cemetery is kept in accordance with any established rules.

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

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

75.5. Tribal Cemeteries Eligibility and Ownership

75.5-1. ~~The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Tribal cemeteries.~~

75.5-~~12~~. *Eligibility*. The following persons may be interred in a Tribal cemetery:

(a) A Tribal member, his or her family, ~~and~~-descendants and/or step-children.

(b) Human remains that are:

(1) Returned to the TribeNation; or

(2) Discovered on the Reservation ~~and-if~~ the Enrollment Department, Cultural Heritage Department and any other interested parties have determined that the most suitable place for interment of the remains is a Tribal cemetery.

75.5-~~23~~. *Ownership of Plots*. Plots in a Tribal cemetery may be purchased by anyone for individuals eligible to be interred in a Tribal cemetery, as defined in section 75.5-12, ~~but~~—~~T~~he owner of the plot shall be the individual for whom the plot was purchased. Purchase of a plot does not result in any ownership rights in the plot itself, but grants an individual the right to be interred in the plot or determine who will be interred in the plot, subject to the eligibility requirements of this Law.

(a) In the event the owner of a plot becomes ineligible to be interred in a Tribal cemetery, he or she shall resell the plot to the Tribe-Nation in accordance with section 75.5-3(c).

(b) A plot is not inheritable, and may only be transferred from one owner to an individual eligible to be interred in a Tribal cemetery, ~~as defined in 75.5-2~~. The transfer of a plot from one owner to another shall be processed through the Enrollment Department.

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

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

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

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

75.6. Interment and Plots

75.6-1. All interments shall be approved by the Enrollment Department prior to interment to ensure the health and safety of the public will not be endangered, that the plot is properly marked and to provide information to any company or contractor providing services for the interment.

~~75.6-2. No interments will be scheduled on the observance of any Oneida Holiday, or during the winter months from November 1st to May 1st.~~

75.6-~~23~~. *Cost of Interment*. All fees for the cost of a plot and/or an interment are the responsibility of the deceased person's estate or family.

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

(b) Marking fees shall be assessed each time an interment occurs, whether the interment is of human remains, with or without a casket, or cremated remains.

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

(d) There shall be no plot fees or marking fees assessed for human remains re-buried in accordance with section 75.5-2(b). If the Tribe-Nation opens or closes a plot for the re-burial of human remains in accordance with section 75.5-2(b), no fees shall be assessed for the opening or closing of the plot. Any fees for opening and closing a plot assessed by an outside vendor shall be the responsibility of the TribeNation.

75.6-~~43~~. *Outer Burial Containers*. Outer burial containers, such as liners and vaults, while recommended, are not required for interment, ~~however if an outer burial container is purchased, the company shall notify the Enrollment Department before delivering and installing it in the designated plot in order to ensure the plot is properly prepared.~~ The Department responsible for administrative duties shall provide information concerning the potential effects if a burial container is not used.

75.6-~~54~~. *Division of Plots*. Each plot may only be used, as determined by the individual purchasing the plot, for the interment of:

(a) one (1) individual;

(b) ~~one (1) or more human remains, with or without a casket(s) and/or~~ one (1) individual along with the cremated remains of one (1) ~~an other~~ individual(s); or

(c) the cremated remains of up to four (4) people~~as determined by the Trust/Enrollment Department.~~

75.6-~~65~~. *Monuments and Flush Markers*. No more than four (4) monuments or flush markers per plot shall be allowed. If a purchased plot is designated for more than two (2) individuals only flush markers can be installed outside of the designated headstone area. The Enrollment Department shall establish maximum height, width and thickness requirements for monuments or flush markers placed at a plot. In addition, the Enrollment Department may establish the types of materials that may be used for monuments or flush markers.

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

~~75.6-6. Decorations. The Enrollment Department shall remove all inappropriate and deteriorated items left at a plot.~~

75.7. Disinterment

~~75.7.16-7. Disinterment.~~ Disinterment from a Tribal cemetery ~~shall~~ may only occur upon order of the ~~Judiciary Tribe's judicial system.~~ Disinterment ~~is an extraordinary remedy that shall~~ may only be ordered when all other reasonable means for obtaining the requester's objective have been exhausted and when the ~~Judiciary Tribe's judicial system~~ determines that substantial cause exists to order disinterment.

75.7-2. (a) A request to the ~~Tribe's judicial system~~ Judiciary to issue an order for disinterment from a Tribal cemetery may be made by the following persons, in the following order of priority:

(a1) The surviving spouse of the deceased.

(b2) An adult child of the deceased.

(c3) A parent of the deceased.

(d4) An adult sibling of the deceased.

(e5) A guardian of the person of the deceased at the time of the deceased's death.

75.7-3. (b) A requester shall notify the Enrollment Department and all individuals of the same or a higher priority of his or her intent to request the ~~Tribe's judicial system~~ Judiciary to issue an order of disinterment. If any member of the same or a higher priority cannot be located, this, along with the efforts taken to locate the individual, shall be reported to the ~~Tribe's judicial system~~ Judiciary. Notification shall specifically state:

(a1) the requester's intent to obtain an order of disinterment;

(b2) the reason for the disinterment;

(c3) the place of re-interment or intent of the requestor to have human remains cremated; and

(d4) that any objections shall be filed with the ~~Tribe's judicial system~~ Judiciary within five (5) business days of the notification or may be presented at the hearing.

~~75.7-4. (c) Disinterment Process. (1)~~ The ~~Tribe's judicial system~~ Judiciary shall set a hearing date on the disinterment request at the earliest possible time after the deadline for filing objections has passed and shall issue an order on the matter within ten (10) days after the hearing. The Judiciary may, for good cause, extend the time for an order to be issued for an additional ten (10) days, taking into consideration:

- ~~(a)~~ A the manner in which the deceased died;
- ~~(b)~~ B whether disinterment would create a public health risk;
- ~~(c)~~ C the decedent's wishes, if known;
- ~~(d)~~ D any objections filed with the ~~Tribe's judicial system~~ Judiciary or presented at the hearing;
- ~~(e)~~ E whether an order of disinterment from a court other than the ~~Tribe's judicial system~~ Judiciary has been issued; and
- ~~(f)~~ F whether any required permits regarding re-interment have been obtained.

~~75.7-5. (2) All of the factors listed in 75.6-7(c) shall be considered when determining whether to allow disinterment, although t~~ The Tribe's judicial system Judiciary shall make a determination on the request and may deny the request for disinterment based solely on any objections to the disinterment filed or presented by an individual with the same or a higher priority than the requester. ~~(3) The Tribe's judicial system may, for good cause, extend the time for an order to be issued for an additional ten (10) days. (4) The~~ Judiciary ~~Tribe's judicial system~~ may issue an additional order(s) to assist the requester in obtaining his or her objective for ~~d~~disinterment, including testing, inspection and/or transportation of the remains.

~~75.7-6. (d) Appeals.~~ An appeal of an order issued under this section shall be filed with the ~~Tribe's judicial system~~ Judiciary within five (5) business days after the order is issued. ~~All appeals shall be heard in accordance with the Tribe's Rules of Appellate Procedure.~~

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

~~(1) If no appeal of an order issued under this section is filed, disinterment shall take place within sixty (60) days after the deadline for filing an appeal has passed.~~ If an appeal is filed, a stay of the disinterment may be ordered.

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

~~75.7-7. (f)~~ Following ~~d~~disinterment, the remains of the deceased person shall be reinterred or cremated as identified by the order of disinterment within forty-eight (48) hours of ~~d~~disinterment.

~~75.7-8. (g)~~ The Enrollment Department shall be present ~~at~~ for each disinterment and re-interment that occurs in ~~the a~~ Tribal cemetery. The Oneida Police Department ~~and~~ shall have the authority to restrict who may be present during a disinterment or re-interment.

~~75.7-9. (h)~~ The requester shall be responsible for making all arrangements and incurring all costs associated with disinterment and re-interment.

75.87. Prohibited Items and Behavior on Cemetery Grounds

~~75.87-1.~~ The Enrollment Department shall ~~establish cemetery~~ promulgate rules for Tribal cemeteries which shall be posted on Tribal cemetery grounds. The Enrollment Department shall notify the Oneida Trust ~~/~~Enrollment Committee of the current rules and changes to any rules.

~~75.87-2.~~ The Enrollment Department, or its designee, may remove any non-conforming objects from plots, prohibit individuals who violate this ~~L~~law or the cemetery rules from accessing a Tribal cemetery and/or contact the Oneida Police Department for assistance with individuals who violate this ~~L~~law or the cemetery rules.

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

(b) Criminal activity conducted at a Tribal cemetery shall be handled in accordance with applicable law.

75.97-3. Reporting Appeals.

75.9-1. Any individual may file a complaint regarding the implementation and enforcement of this law. All complaints will be forwarded to the Enrollment Department.

75.9-2. Within five (5) business days of the receipt of a complaint, the Enrollment Department shall respond in writing indicating any action taken or planned action to remedy the complaint to the individual that filed the complaint, if the address is known, to the Trust Enrollment Committee and to the Secretary's Office. ~~decisions regarding the implementation and enforcement of this Law and the creation and enforcement of any cemetery rules may be appealed to the Trust/Enrollment Committee.~~

End.

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

Chapter 75
Cemetery Law
Tsi> Lotiya>tata Olihwa@ke

The matters concerning when they bury the body

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7	75.2. Adoption, Amendment, Repeal	12	75.7. Disinterment
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75.1. Purpose and Policy

75.1-1. *Purpose.* The purpose of this law is to govern the sale of plots and establish who is eligible for interment in a Tribal cemetery on the Oneida reservation.

75.1-2. *Policy.* It is the policy of the Nation that all enrolled Tribal members, their families and descendants may be interred in a Tribal cemetery.

75.2. Adoption, Amendment, Repeal

75.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E, BC-07-23-14-B and BC-_____.

75.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

75.2-3. 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.

75.2-4. 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.

75.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

75.3. Definitions

75.3-1. 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) “Days” means calendar days, unless otherwise specifically stated.

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

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

(d) “Family” means a Tribal member’s parent, spouse and children.

(e) “Interment” means the act or ceremony of burying human remains or cremated remains.

(f) “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.

(g) “Nation” means the Oneida Nation.

(h) “Re-interment” means to rebury human remains or cremated remains.

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

(j) “Step-children” means a person(s) whose parent is legally married to a Tribal member and the relationship can be demonstrated through an original state certified marriage license.

(k) “Tribal” means the Oneida Nation.

75.4. Administration and Authority

75.4-1. The land designation, administrative duties and maintenance responsibilities for the Oneida Sacred Burials Grounds, also known as Tsi> Tyeya>Tat’alih and any other cemetery owned by the Nation shall be as provided within this section.

75.4-2. *Land Designation Responsibilities.* The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Tribal cemeteries.

75.4-3. *Administrative Responsibilities.* The Enrollment Department shall be responsible for the administrative duties for all Tribal cemeteries. These duties include:

(a) Maintaining vital statistics of those interred in a Tribal cemetery, creating long-term strategic plans for Tribal cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.

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

(c) Requesting additional portions of land to be designated for use as a Tribal cemetery, if needed.

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

(e) Administering all payment activities related to the sale of a plot.

(f) Determining how to utilize gifts to a Tribal cemetery.

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

75.4-4. *Maintenance Responsibilities.* The Enrollment Department shall be responsible for the maintenance duties including:

(a) Maintaining Tribal cemetery grounds.

(b) Ensuring the appearance of a Tribal cemetery is kept in accordance with any established rules.

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

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

75.5. Eligibility and Ownership

75.5-1. *Eligibility.* The following persons may be interred in a Tribal cemetery:

(a) A Tribal member, his or her family, descendants and/or step-children.

(b) Human remains that are:

(1) Returned to the Nation; or

(2) Discovered on the reservation if the Enrollment Department, Cultural Heritage Department and any other interested parties have determined that the most suitable place for interment of the remains is a Tribal cemetery.

75.5-2. *Ownership of Plots.* Plots in a Tribal cemetery may be purchased by anyone for individuals eligible to be interred in a Tribal cemetery, as defined in section 75.5-1, but the owner of the plot shall be the individual for whom the plot was purchased. Purchase of a plot does not result in any ownership rights in the plot itself, but grants an individual the right to be interred in the plot or determine who will be interred in the plot, subject to the eligibility requirements of this law.

(a) In the event the owner of a plot becomes ineligible to be interred in a Tribal cemetery, he or she shall resell the plot to the Nation in accordance with section 75.5-3(c).

(b) A plot is not inheritable, and may only be transferred from one owner to an individual eligible to be interred in a Tribal cemetery. The transfer of a plot from one owner to another shall be processed through the Enrollment Department.

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

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

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

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

75.6. Interment and Plots

75.6-1. All interments shall be approved by the Enrollment Department prior to interment to ensure the health and safety of the public will not be endangered, that the plot is properly marked and to provide information to any company or contractor providing services for the interment.

75.6-2. No interments will be scheduled on the observance of any Oneida Holiday.

75.6-3. *Cost of Interment.* All fees for the cost of a plot and/or an interment are the responsibility of the deceased person's estate or family.

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

(b) Marking fees shall be assessed each time an interment occurs, whether the interment is of human remains, with or without a casket, or cremated remains.

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

(d) There shall be no plot fees or marking fees assessed for human remains re-buried in accordance with section 75.5-2(b). If the Nation opens or closes a plot for the re-burial of human remains in accordance with section 75.5-2(b), no fees shall be assessed for the opening or closing of the plot. Any fees for opening and closing a plot assessed by an outside vendor shall be the responsibility of the Nation.

75.6-4. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while recommended, are not required for interment. The Department responsible for administrative duties shall provide information concerning the potential effects if a burial container is not used.

75.6-5. *Division of Plots.* Each plot may only be used, as determined by the individual purchasing the plot, for the interment of:

(a) one (1) individual;

(b) one (1) individual along with the cremated remains of one (1) other individual; or

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

75.6-6. *Monuments and Flush Markers.* No more than four (4) monuments or flush markers per plot shall be allowed. If a purchased plot is designated for more than two (2) individuals only flush markers can be installed outside of the designated headstone area. The Enrollment Department shall establish maximum height, width and thickness requirements for monuments or flush markers placed at a plot. In addition, the Enrollment Department may establish the types of materials that may be used for monuments or flush markers.

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

75.7. Disinterment

75.7.1. Disinterment from a Tribal cemetery may only occur upon order of the Judiciary. Disinterment may only be ordered when all other reasonable means for obtaining the requester's objective have been exhausted and when the Judiciary determines that substantial cause exists to order disinterment.

75.7-.2. A request to the Judiciary to issue an order for disinterment from a Tribal cemetery may be made by the following persons, in the following order of priority:

- (a) The surviving spouse of the deceased.
- (b) An adult child of the deceased.
- (c) A parent of the deceased.
- (d) An adult sibling of the deceased.
- (e) A guardian of the person of the deceased at the time of the deceased's death.

75.7-3. A requester shall notify the Enrollment Department and all individuals of the same or a higher priority of his or her intent to request the Judiciary to issue an order of disinterment. If any member of the same or a higher priority cannot be located, this, along with the efforts taken to locate the individual, shall be reported to the Judiciary. Notification shall specifically state:

- (a) the requester's intent to obtain an order of disinterment;
- (b) the reason for the disinterment;
- (c) the place of re-interment or intent of the requestor to have human remains cremated; and
- (d) that any objections shall be filed with the Judiciary within five (5) business days of the notification or may be presented at the hearing.

75.7-4. The Judiciary shall set a hearing date on the disinterment request at the earliest possible time after the deadline for filing objections has passed and shall issue an order on the matter within ten (10) days after the hearing. The Judiciary may, for good cause, extend the time for an order to be issued for an additional ten (10) days, taking into consideration:

- (a) the manner in which the deceased died;
- (b) whether disinterment would create a public health risk;
- (c) the decedent's wishes, if known;
- (d) any objections filed with the Judiciary or presented at the hearing;
- (e) whether an order of disinterment from a court other than the Judiciary has been issued; and
- (f) whether any required permits regarding re-interment have been obtained.

75.7-5. The Judiciary shall make a determination on the request and may deny the request for disinterment based solely on any objections to the disinterment filed or presented by an individual with the same or a higher priority than the requester. The Judiciary may issue an additional order(s) to assist the requester in obtaining his or her objective for disinterment, including testing, inspection and/or transportation of the remains.

75.7-6. *Appeals.* An appeal of an order issued under this section shall be filed with the Judiciary within five (5) business days after the order is issued. If no appeal of an order is filed, disinterment shall take place within sixty (60) days after the deadline for filing an appeal has passed. If an appeal is filed, a stay of the disinterment may be ordered.

75.7-7. Following disinterment, the remains of the deceased person shall be reinterred or cremated as identified by the order of disinterment within forty-eight (48) hours of disinterment.

75.7-8. The Enrollment Department shall be present for each disinterment and re-interment that occurs in a Tribal cemetery. The Oneida Police Department shall have the authority to restrict who may be present during a disinterment or re-interment.

75.7-9. The requester shall be responsible for making all arrangements and incurring all costs associated with disinterment and re-interment.

75.8. Prohibited Items and Behavior on Cemetery Grounds

75.8-1. The Enrollment Department shall promulgate rules for Tribal cemeteries which shall be posted on Tribal cemetery grounds. The Enrollment Department shall notify the Oneida Trust Enrollment Committee of the current rules and changes to any rules.

75.8-2. The Enrollment Department, or its designee, may remove any non-conforming objects from plots, prohibit individuals who violate this law or the cemetery rules from accessing a Tribal cemetery and/or contact the Oneida Police Department for assistance with individuals who violate this law or the cemetery rules.

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

(b) Criminal activity conducted at a Tribal cemetery shall be handled in accordance with applicable law.

75.9. Reporting.

75.9-1. Any individual may file a complaint regarding the implementation and enforcement of this law. All complaints will be forwarded to the Enrollment Department.

75.9-2. Within five (5) business days of the receipt of a complaint, the Enrollment Department shall respond in writing indicating any action taken or planned action to remedy the complaint to the individual that filed the complaint, if the address is known, to the Trust Enrollment Committee and to the Secretary's Office.

End.

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



Legislative Operating Committee

May 4, 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.

- 4/20/16 LOC:** Motion by Tehassi Hill to prepare the Garnishment Amendments for Public Meeting and to schedule a Public Meeting for June 3, 2016; seconded by Fawn Billie. Motion carried unanimously.
- **Next Steps:** Approve the Garnishment Amendments public meeting packet and forward for a public meeting to be held on June 3, 2016.

NOTICE OF

PUBLIC MEETING

TO BE HELD

WEDNESDAY, June 3, 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: GARNISHMENT LAW AMENDMENTS

This is a proposal to amend an existing Tribal Law which would:

- Remove the specific amount of the garnishment action fee and the administrative fee from the Law and instead the Judiciary is authorized to determine the garnishment action fee amount, while the Accounting Department determines administrative fee amount [*See 58.5-2 (a) (1) and 58.5-5 (a) (1)*]. The current Law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00.
- Limit representation to an attorney or advocate [*See 58.5-3 (d)*]. The current Law allows the parties to be represented by someone to speak on their behalf.
- Require post judgment interest be applied to the judgment amount and included in the garnishment order [*See 58.5-3 (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 58.5-5 (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)*].

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 June 10, 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 58
Garnishment
Lotihwistáhkwa Olihwa'ke
the matter of taking money out

Analysis Draft # 3 to Draft 5 5/4/16

<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

Chapter 58

Analysis Draft # 3 to Draft 5 5/4/16

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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

- 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 on the date of the garnishment order [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

Lotihwist@hkwa Olihw@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. Garnishment 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~~ 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~~ 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~~ 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~~ law or the application thereof to any person or circumstances be held as invalid, such invalidity ~~does~~ shall not affect other provisions of this ~~Law~~ law which are considered to have legal force without the invalid portions.

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

58.2-5. ~~This Law~~ 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)~~ “Nation” means the Oneida Nation.

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

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

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

82 **58.4. General**

83 58.4-1. ~~–~~ *Jurisdiction*. By filing a ~~Petition, Creditors~~petition, creditors are submitting to the
84 jurisdiction of the ~~Tribe~~Nation for the subject action.

85 58.4-2. *Consumer Protection Act*. This ~~Law~~law may be interpreted to allow the fullest
86 protections available to ~~Debtors~~debtors by the federal Consumer Protection Act, 16 U.S.C.
87 §1671, et seq., state laws protecting ~~Debtors~~debtors in ~~Child Support Orders~~child support orders,
88 and other federal laws.

89
90 **58.5. Garnishment Action Procedure**

91 58.5-1. ~~–~~ *Applicability*. ~~This section applies to the collection of all debt through the garnishment~~
92 ~~process except as provided in section 58-6.~~

93 ~~58.5-2. Judgment Required. A Creditor must obtain~~Except as provided in section 58-6, a
94 ~~Judgment before judgment is required prior to~~ filing a ~~Petition.~~garnishment petition.

95 ~~58.5-3. 58.5-2. Filing Action.~~ In order to initiate a ~~Garnishment~~garnishment, the ~~Creditor~~
96 ~~must~~creditor shall file a petition with the Judiciary. The ~~Petition must identify~~creditor shall
97 ~~ensure that the petition identifies~~ the ~~Creditor~~creditor, the intended ~~Debtor~~debtor, any other
98 interested parties, the reason for the claim, the name of the court that issued the ~~Judgment~~
99 ~~and judgment~~, the amount awarded. ~~The Creditor must; the creditor shall also~~ include a copy of
100 the ~~Judgment when filing judgment~~ the ~~Petition~~petition is based upon.

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

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

106 ~~58.5-3. 4.~~ *Garnishment Hearing*. The Judiciary shall hold a ~~Garnishment Hearing~~
107 ~~garnishment hearing~~ within sixty (60) days of receiving the completed ~~Petition~~petition.

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

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

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

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

121 58.5-4. ~~5.~~ *Final Decision*. The ~~Judge~~judge shall make the final decision regarding a
122 ~~Garnishment Order~~garnishment order within five (5) business days of the ~~Garnishment~~
123 ~~Hearing~~garnishment hearing. The ~~Judge~~judge shall provide written notice of the final decision
124 to all parties within ten (10) business days of his or her decision. If a ~~Garnishment~~
125 ~~Order~~garnishment order is issued, the ~~written notice must~~Judiciary shall include a copy of the
126 ~~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~~the judgment amount ~~recovered from the date of.~~ The Judiciary shall determine the ~~Judgment until the Garnishment Order is satisfied.~~ 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 Judge/judge 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
Lotihwist@hkwa Olihw@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.

58.6. 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

May 4, 2016

Employment Law

Submission Date: 9/17/14

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: Brandon Stevens

Summary: *This item was carried over into the current term by the LOC. The original proposal is for the development of an employment law to replace the current Personnel Policies and Procedures (Previously titled "Personnel Policies and Procedures-Revisions").*

9/17/14 LOC: Motion by Jennifer Webster to add the Employment Law to the Active Files List, with Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

10/8/14 OBC: Motion by Lisa Summers to accept the Legislative Operating Committee update with the following answers: 4) With regard to the Personnel Commission legislation, the Business Committee agrees that the Employment Law should continue forward and shall include consideration regarding how the Personnel Commission and/or their processes are incorporated into the Employment Law legislation; seconded by Trish King. Motion carried unanimously.

5/6/15 LOC: Motion by Jennifer Webster to defer the Employment Law to a Legislative Operating Committee work meeting; seconded by Fawn Billie. Motion carried unanimously.

6/15/15: Work meeting held. Attendees include Brandon Stevens, David Jordan, Matthew Denny, Gina Buenrostro, Don White, Yvonne Jordan, Lynn Franzmeier, Candice Skenandore, Douglass McIntyre, Krystal John.

10/5/15 LOC: Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Danelle Wilson, Rhiannon Metoxen, Nick Reynolds, Krystal John, and Candice Skenandore.

10/8/15 OBC: Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Melinda Danforth, Trish King, Tehassi Hill, Jessica Wallenfang, Mitzi Kopetsky, Nathan King, Apache Danforth, Rhiannon Metoxen, Danelle Wilson, Leyne Orosco, and Krystal John.

11/18/15: Gaming Supervisory Advisor Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Robert Sundquist, Louise Cornelius, Lisa Duff, Georgianna Mielke, Donna Smith, Luke Schwab, Donald Solecki, Gabrielle Metoxen, Michelle Schneider, Martin Prevost and Laura Laitinen-Warren.

11/19/15: Gaming Management Advisory Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Andrew Doxtator, Cherice Santiago, Fawn Teller, Julie Clark, Larae Gower, Shelly Stevens, Jacqueline Smith, Jay Rasmussen, Laura Laitinen-Warren, Michelle Schneider, Travis Cottrell, Louise Cornelius, Jessalyn Marvath, Brenda Mendolla-Buckley, Lucy Neville, David Emerson, Gabrielle Metoxen and Lambert Metoxen.

11/30/15: Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Wendy Alvarez, Lucy Neville, Matt Denny, Marianne Close and Krystal John.

12/3/15: Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.

12/22/15: Work meeting held. Attendees include Geraldine Danforth, Wendy Alvarez, Lucy Neville, Matt Denny, Marianne Close and Krystal John.

1/6/16: Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.

1/8/16: Work meeting held. Attendees include Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.

2/1/16: Work meeting held. Attendees include Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez and Krystal John.

2/8/16: Work meeting held. Attendees include Brandon Stevens, Rhiannon Metoxen, Geraldine Danforth, Lucy Neville, Marianne Close, Matt Denny, Wendy Alvarez, Krystal John and Maureen Perkins.

2/15/16: Work meeting held. Attendees include Lorena Metoxen, Larry Smith, Donna Smith, Larae Gower, Matt Denny, Geraldine Danforth and Krystal John.

2/17/16: Employment Law information meeting for managers and supervisors held at Skenandoah.

2/18/16: Employment Law information meeting for managers and supervisors held at Skenandoah.

2/22/16: Employment Law information meeting for employees held at Skenandoah.

2/25/16: Employment Law information meeting for employees held at Skenandoah.

2/26/16: Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Matt Denny, Lucy Neville, Maureen Perkins and Krystal John.

2/29/16: Employment Law information meeting for managers and supervisors held at Norbert Hill Center.

3/1/16: Employment Law information meeting for managers and supervisors at Main Casino.

3/3/16: Employment Law information meeting for managers and supervisors held at Norbert Hill Center.

3/4/16: Employment Law information meeting for employees held at Norbert Hill Center.

3/7/16: Employment Law information meeting for employees held at Norbert Hill Center.

3/10/16: Employment Law information meeting for managers and supervisors held at Little Bear Development Center.

3/14/16: Employment Law information meeting for employees held at Little Bear Development Center.

3/16/16: Employment Law information meeting employees at Mohawk Room (Radisson). Morning Session

3/16/16: Employment Law information meeting employees at Mohawk Room (Radisson). Afternoon Session

3/17/16: Employment Law information meeting for managers and supervisors held at Social Services (OLC).

3/18/16: Employment Law information meeting for managers and supervisors held at Social Services (OLC).

3/21/16: Employment Law information meeting employees held at Social Services (OLC). Morning Session

3/21/16: Employment Law information meeting employees held at Social Services (OLC). Afternoon Session

3/23/16: Employment Law information meeting for Gaming Panels at Employee Services Morning Session

3/23/16: Employment Law information meeting for Gaming Panels at Employee Services Afternoon Session

- 3/25/16:** Employment Law information meeting for managers and supervisors held at Oneida Health Center.
- 3/28/16:** Employment Law information meeting for managers and supervisors held at Oneida Health Center.
- 3/29/16:** Employment Law information meeting for employees held at Oneida Health Center.
- 3/30/16:** Employment Law information meeting for employees held at Oneida Health Center.
- 3/31/16:** Employment Law Public Meeting held.
- 4/7/16:** Work meeting held. Attendees include Lucy Neville, Marianne Close, Wendy Alvarez, and Krystal John.

- **Next Steps:** Accept the Employment law public meeting comments and defer consideration of the comments to a work meeting to be held on Thursday, May 12, 2016 in the Business Committee Conference Room from 10:30 a.m. – 1:30 p.m.

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

Krystal L. John, Staff Attorney
Douglass A. McIntyre, Staff Attorney
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Memorandum

TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: May 4, 2016
RE: Employment Law: Public Meeting Comment Review

On March 31, 2016, a public meeting was held regarding the development of the Employment (Law). This is a new law that would:

- Replace the current Personnel Policies and Procedures;
- Provide a fair, consistent and efficient structure to govern all employment matters;
- Streamline current processes to reduce cost, time and resources;
- Provide the framework for Employment matters with the detailed content currently contained in the Personnel Policies and Procedures being delegated to HRD in the form of rules HRD shall create pursuant to the Administrative Rulemaking Law;
- Allow tribal entities the latitude to adjust certain employment practices to best fit their individual entities; and
- Dissolve the Personnel Commission and redirect its currently assigned duties; the Oneida Judiciary will absorb the hearing body authority and the duties related to hiring process are transferred to HRD.

This memorandum is submitted as a review of the oral comments received during the public meeting process and written comments received within the public comment period. The public meeting draft with comments and the written comments received are attached for your review.

Comment 1 – Employment law in general

Jennifer Falck – written comments: I attended one the presentation meetings a few weeks ago & the public hearing on March 31, 2016. I am a 19 year employee with experience in both applying for work here, and hiring staff. I am in support of the new law. It is not perfect, but I think it will at least get our HR processes into the 21st century. Thank you for all your hard work and dedication to the effort.

Gina Buenrostro: Another issue is the cost savings. Where's the dollar amount? I would like to see a dollar amount on the cost savings for this.

Response

In response to the first comment, I appreciate the comment and am following up with the

commenter to see if she has any recommendations for improvements.

In response to the second comment, based on the fiscal year 2016 budget which was approved at the December 14, 2015 General Tribal Council meeting, the Personnel Commission's budget is \$336,871. Based on information from finance, of that \$336,871 total budget, \$24,370 is attributable to costs the Nation would incur regardless of whether or not the proposed Employment law is passed (i.e. utilities, rents, indirect, ect). Accordingly, at first glance, without the full consideration of costs related to implementation of the law, which the fiscal impact statement required by the Legislative Procedures Act will report, the maximum savings to the Nation would be \$312,501. Again, that is not say the full \$312,501 will actually be savings, but the full \$312,501 of the Personnel Commission's current budget could be reallocated.

Comment 2 – GTC Authority

300.2-2. This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

Mike Debraska: Thank you. While I'm not an employee of this tribe, I do want to speak to this because I've been doing advocacy work for almost twenty five (25) years with respect to GTC. In the last three (3) years I haven't seen a piece of legislation such as this. I am completely and utterly dumbfounded. What this attempts to do is to take all the power and policy and procedures away from General Tribal Council and stick it solely in the hands of the Business Committee and HRD.

Response

This law is required to be passed by the General Tribal Council; the General Tribal Council will have to approve any and all delegations of authority that are contained in this law. The items that are addressed in this law, for example, the order of Oneida and Indian Preference, may not be changed without the consent of the General Tribal Council. The commenter does correctly identify that the proposed law would allow for the items in the Employee Handbook (the rules) to be modified without being brought back the General Tribal Council through the Administrative Rulemaking process. This process was incorporated into this law in order to allow our employment practices the flexibility to move with the market trends and to prevent another circumstance that we are encountering now wherein our employment practices are revised piecemeal, without comprehensive improvements for over thirty years.

Comment 3 – Repealed Policies/Resolutions Reasoning

300.2-4. In the event of a conflict between a provision of this Law and a provision of another Law, the provisions of this Law control, provided that this Law repeals the following:

- (a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985;
- (b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;

- (c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B, permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to BC-1-20-99-B and BC-6-30-04-J;
- (d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;
- (e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee, Paid Time Off for Selected Color Guard Members Who Are Employees;
- (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A;
- (g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive coordinated by the Nation;
- (h) BC Resolution 05-12-93-J regarding HRD's role in the interpretation, implementation and enforcement of the Personnel, Policies and Procedures; and
- (i) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring.

Candice Skenandore – written comments: Some Tribal policies that pertain to employment matters are being repealed (Employee Protection Policy, Parent Leave Policy) and other policies are not (Furlough Policy, Layoff Policy). What factors were considered when deciding whether or not to repeal an employment policy?

Response

The factors that were considered when deciding which policies should be repealed and incorporated into the Employee Handbook (the rules) include the following:

- Is it possible for this policy to apply to persons that are not employees of the Nation;
- Does the Employee Handbook address this topic anywhere to the extent that it would make sense to combine the policy into the Employee Handbook;
- Does the policy include the Oneida Personnel Commission in any of its required processes; if so, should a separate process be developed or would it make sense to include this process into the Employee Handbook; and
- Is this process setting policy that the Oneida Business Committee would like to retain full control over, without delegating authority for future amendments to HRD.

Comment 4 – Constitutional Amendments

300.2-6. This Law is adopted under authority of the Constitution of the Oneida Nation.

Brad Graham: Alright, one of my first comments is line 40, 300.2-6, states this law is adopted under the authority of the constitution of the Oneida Nation. Show me, within the constitution, where it states. That's my first one.

Response

It is unclear what the commenter would like to be shown in the Constitution of the Oneida Nation. If he is speaking in reference to the "Oneida Nation" as opposed to "Oneida Tribe of Indians of Wisconsin," per the Secretarial Election, all references to the Nation have been switched to "Oneida Nation." If he is speaking in reference to the General Tribal Council's authority to adopt laws, article IV (f) contains that authority and reads as follows:

To promulgate and enforce ordinances, governing the conduct of members of the Oneida Nation, providing for the manner of making, holding, and revoking assignments of tribal land or interests therein, providing for the levying of taxes and the appropriation of available tribal funds for public purposes, providing for the licensing of non-members coming upon the reservation for purposes of hunting, fishing, trading, or other business, and for the exclusion from the territory of the Nation of persons not so licensed and establishing proper agencies for law enforcement upon the Oneida Reservation.

Comment 5 – Definition of Employee

300.3-1 (e) “Employee” means any individual who is hired by the Nation through the normal hiring process, works full-time (30 or more hours per week) or part-time (less than 30 hours per week) and is subject to the Nation’s direction and control with respect to the material details of the work performed. “Employee” includes, but is not limited to, individuals employed by any entity and individuals employed through an employment contract as a limited term employee, but does not include elected or appointed officials, at-will employees or individuals employed by a tribally chartered corporation. Throughout this Law all references to employee include both employees and at-will employees, unless the term at-will employee is used, in which case only at-will employees are intended.

Candice Skenandore – written comments: The Law does not specify whether or not a transfer employee is considered an “at-will employee” or an “employee”. The LOC may want to consider adding “transfer employee” to the “employee” definition [See 300.3-1 (e)].

Gina Buenrostro: The direct report issues, where’s that in the law and if they have issues of intimidation and harassment, things of that nature, that don’t fall under EEO violations, where is that addressed? How do they appeal that? Where do they get protection? How can they dispute those kind of employee issues?

Response

In regards to the first comment, the Employee Handbook specifically provides that transfer employees are not subject to an additional probationary period which would classify them as at-will employees in article 5-16(c). That being said, to be completely clear, transfer employee could be added to the list of examples provided in the definition of employee in both the law and the Employee Handbook.

In regards to the second comment, employee protection and harassment are covered in section 300.8 of the law and further elaborated in article 14 of the Employee Handbook. Direct reports fit within the definition of an employee and accordingly these processes are available to them the same way they would be available to any other employee. The only exception is that if an elected member is alleged to be committing the harassment or violating an employee’s protection, the elected member would not be subject to discipline. Rather, the direct report could submit a complaint based on the standard operating procedures provided by the Oneida Business Committee or could circulate a petition for removal of the elected official. This is the unavoidable nature of upper management (direct report) positions within a political entity and something that direct reports must consider in deciding whether or not to accept such a position.

If a direct report is subject to an unfounded (harassing/retaliatory) discipline or other harassment,

such actions are appealable to the Judiciary as an adverse employment action. If the Judiciary finds in favor of the employee, the Judiciary would be able overturn the discipline and/or order measures be taken to correct the employment environment.

In short, this law and Handbook maintain the status quo for direct reports.

Comments 6 and 7 – The Oneida School Board’s Memorandum of Agreement

300.3-1 (g) “Entity” means any of the Nation’s divisions having employees and may include, but is not limited to, divisions, departments, areas, programs, enterprises, board, committees, commissions and the like.

Oneida Nation School Board – written comments: To address the new Employment Law, including the repeal of the Oneida Tribal Management System and the Oneida Personnel Selection Committee, and to maintain the autonomy of the School Board, we recommend for review and adoption, the following revision to the Employment Law (in red text): Request: Revision at section 300.3 Definitions, 300.3-1(g): "Entity" means any of the Nation's divisions having employees and may include, but is not limited to, departments, areas, programs, enterprises, board, committees, commissions and the like; **except that the Oneida Nation School Board and related department shall be exempt as an Entity as provided at section 300.4-4.**

Oneida Nation School Board – written comments: To address the new Employment Law, including the repeal of the Oneida Tribal Management System and the Oneida Personnel Selection Committee, and to maintain the autonomy of the School Board, we recommend for review and adoption, the following revision to the Employment Law (in red text): Request: Insert new subsection at section at 300.4: **300.4-4. Oneida Nation School Board. Pursuant to Section 1 (h) of Article IV of the Constitution of the Oneida Tribe of Indians of Wisconsin empowering the General Tribal Council to delegate certain powers to subordinate organizations of the Tribe, the General Tribal Council, by GTC Resolution #1-29-77-A, established the Oneida Education Board (also known as the Oneida Tribal School Board or the Oneida Nation School Board) ("Board") to accept responsibility over Oneida education programs. Pursuant to GTC Resolution #1-8-83, the General Tribal Council directed that "an agreement be reached between the Oneida Business Committee and the Oneida Tribal School Board regarding the autonomous administration of the Oneida Tribal School which would provide for full involvement of the Oneida Tribal School Board in all personnel matters related to all personnel employed in the operation of the Oneida Tribal School." A "Memorandum of Agreement" (MOA) between the Board and the Oneida Business Committee was adopted by GTC Resolution #3-21-88. By this MOA, the General Tribal Council provided the Board authority over employees working within the Oneida Tribal School System. Now, therefore, the Board shall continue its autonomous administration of the Oneida education programs, including the Tribal School System, and is exempt from the Oneida Employment Law and related administrative rule-making, as is necessary for the operation of the Oneida education programs. The Board shall amend the MOA personnel hiring, evaluations, promotions, suspensions/dismissals, and grievance process, consistent with personnel decisions based upon sound educational administration and accounting for the repeal of the Oneida Tribal Management System and dissolution of the Oneida Personnel Commission (formerly known as the Oneida Tribal Personnel Selection Committee) herein,**

which amendment shall not require further ratification by the Oneida General Tribal Council. The MOA shall remain in effect as amended. The Board shall have administrative rule-making authority under Oneida Law, Chapter 17, and the Oneida General Tribal Council shall retain all authority to adopt or deny a proposed Education Law and related Administrative rules.

Response

The issue brought forward by the commenter is important and addressed in the Employee Handbook in article 3-7, but should also be addressed in the law. My understanding is that the Oneida Nation School Board is the only entity that with a memorandum of agreement, provided that the MOA is with the Oneida Business Committee and not HRD, as referenced in the Handbook, so the Handbook will also need to be updated. However, the Oneida Police Commission also handles employment matters outside of the processes provided in the current Personnel, Policies and Procedures for its sworn officers as provided in the Law Enforcement Ordinance. I would recommend rejecting the Oneida Nation School Board's recommendations, but incorporating their intent to be inclusive of the Oneida Police Commission by revising the law as follows:

Shift all sections following the definitions section down one to add a general applicability section, which would now be 300.4 and move section 300.11 *Applicability to Elected Officials* to this section. The new section 300.4 would read as follows:

300.4. Applicability

300.4-1. *Elected Officials*. The provisions of sections 300.6 – 300.8 apply to the Nation's elected officials that work full-time (30 hours or more per week) and receive salaries for their service.

300.4-2. *Oneida Nation School Board*. To the extent that the provisions of this law and handbook conflict with the provisions of the memorandum of agreement between the Oneida Business Committee and the Oneida Nation School Board and any rules promulgated pursuant to authority delegated under the said agreement, the memorandum of agreement and corresponding rules govern.

300.4-3. *Oneida Police Commission*. To the extent that the provisions of this law and handbook conflict with the provisions of the Law Enforcement Ordinance and the Oneida Police Commission's rulemaking authority delegated under that law, the Law Enforcement Ordinance and corresponding rules govern.

In addition to these revisions in the law, the adopting resolution will need to include a provision whereby the General Tribal Council directs that the memorandum of agreement between the Oneida Business Committee and the Oneida Nation School Board be amended to remove all references to Oneida Personnel Commissioners and to provide notice of the updated memorandum of agreement at the next annual or semi-annual General Tribal Council meeting.

Comment 8 – Oneida Employee Handbook as Rules

300.4-1(a) Develop and amend the rules necessary to carry out the intent of this Law pursuant to the Administrative Rulemaking Law.

Candice Skenandore – written comments: The Law provides the Human Resources Department (HRD) the authority to create rules pursuant to the Administrative Rulemaking Law. It is my understanding that the Employee Handbook is where these rules will be housed; however, the Law does not reference an Employee Handbook. In order for employees to have a better understanding on where to find these rules, the LOC may want to consider adding language in section 300.4-1 referencing the Employee Handbook.

Gina Buenrostro: And whether they be unfair or not unfair, the perception is you control that now. Along with the employee handbook, you have the authority now as a Business Committee member to change those policies within that handbook. And if employees want to challenge it or dispute it, their only recourse is to go to the judiciary. The judiciary, not including the administrative court because that's not even developed, but an employee that would want to challenge something that you guys changed in the employee handbook, they would have to follow the rules of civil procedure, the rules of federal evidence, and those types of things, that's very difficult for employees to navigate. I'm just going to say that out front. So, it looks like, the way you have it set up by writing yourself in the law, by creating it, writing it, making yourselves kinda like the boss figure that there's no equity.

Response

In regards to the first comment, this is a valid concern. I recommend revising the definition of rules as follows and incorporating the updated terminology in all places the law references HRD's rules developed pursuant to the law.

(o) “~~Rule Handbook~~” means the Oneida Employee Handbook, which contains the set of requirements enacted by HRD in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law. ~~any exercise of authority delegated to HRD in order to implement, interpret and/or enforce this Law. A “rule” does not include any statements, interpretations, decisions, rules, regulations, policies, standard operating procedures or other matters concerning internal management of an entity, or, which do not affect the private rights or interests of individuals outside of the said entity.~~

In regards to the second comment, the Oneida Business Committee would not be adopting the Employment law, which is the subject of this public meeting; the General Tribal Council is required to adopt this law. It is correct that as written, the law delegates rulemaking authority to HRD pursuant to the Administrative Rulemaking law. It is also correct that HRD reports to the Oneida Business Committee. However, persons that take issue with the rules have additional outlets for feedback on top of an appeal to the Judiciary; the rulemaking process requires a public meeting with comment period before any amendments may be passed. In addition, neither this law nor the Administrative Rulemaking law is able to strip the General Tribal Council of its ability to direct a content change to the law or the rules at any time.

Comment 9 – HRD’s Role in the Employment Law

300.4-1(b) The HRD shall [i]mplement, interpret and enforce this Law and the associated rules.

Gina Buenrostro: I think in this new law the issues of hostile work environments has never been resolved in the past, and some cases have went to HRD which they had recommendations regarding those hostile work environments and the interpersonal relationships with different departments and they still were never resolved.

Also, I guess I have an issue with the work group, the draft team, because that entailed all of HRD. But HRD has a vested interest in how this works because they will be the ones that will be overseeing everything, they will have that freedom to do what they want to do. The issue I have with this law, I don't think it's going to hold them accountable, because they haven't been accountable yet. The compensation scale hasn't been updated in over eight (8) years. Who is being held accountable for that right now as we speak, eight (8) years. We have a director that sits in that position and she hasn't updated it.

Response

The commenter has not identified any specific issues with the law or made any recommendations for improvement. In regards to the drafting team, the law delegates the rulemaking authority to HRD, which is why HRD has largely comprised the drafting team. As far as accountability, if HRD is not abiding by the processes set out in the rules, such actions are reviewable by the Judiciary based on an employee's appeal of a corrective action, adverse employment action or deprivation of an equal employment opportunity.

In regards to the commenter's allegation that HRD is responsible for the stagnated compensation scale over the course of the past 8 years, the allegation is not factually accurate. It is correct that, absent GTC action, the compensation scale has not been updated in the over 8 years. However, HRD submitted plans to adjust the wage scale, at a minimum, for each of the last 4 years. Each year, the Finance Department advised that based on the economic condition of the Nation, if the wage scale were to be adjusted, layoffs would be required. Each year, through the budget process it was decided it was more important to avoid layoffs than to adjust the wage scale.

Comment 10 – HRD's Role in Upholding the Nation's Sovereignty

300.4-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices.

Mike Debraska: And what I do is I look at it and say at line 157 it says HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices. Hmm, interesting. Okay I didn't know it was up to HRD to uphold sovereignty but okay.

Response

All entities within the organization have a responsibility to uphold the Nation's sovereignty as it applies to the entity's practices.

Comment 11 – Oneida Business Committee and HRD Memorandum of Understanding

300.4-3. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall negotiate and enter into a memorandum of understanding which governs the relationship between the two parties by establishing the responsibilities and expectations of each party with

regard to the management of HRD.

Gina Buenrostro: Ok, so, the number one thing I wanted to address was that employee handbook and the law. And I stated this to you before publically and I'll state it again, I think it's unfair and I think there's a GTC directive that already states the BC not be involved with the day to day. You are writing yourselves in the law, you are the oversight of HRD, you have the authority now to be deeply involved in hiring practices.

Mike Debraska: Next at line 159 it talks about the Business Committee entering into a Memorandum of Agreement. It's always been my understanding that for MOU's to take place it's usually is with an elected board. Are you now saying that HRD is going to go to an elected position? Because that's typically how that happens. And I don't believe it should be happening because less and less transparency, we already have very little transparency coming out of HRD as well as even with the executive session of Business Committee. So I look at that and I say that should not be happening period plain and simple. Rest assured I will be acknowledging this if it comes to the floor of General Tribal Council.

Response

In response to the first comment, the Oneida Business Committee's oversight of HRD under this law is not different from the status quo and is likewise not any different from the Oneida Business Committee's oversight of the Government Services Division or the Division of Land Management. The Oneida Business Committees oversight of HRD and their role in setting policy as it relates to this law and handbook, does not amount to day to day. The setting of policy is not a day-to-day activity. With the exception of the direct reports, which again is the nature of the direct reports' positions, the setting of policy through the Administrative Rulemaking process is the only involvement that the Oneida Business Committee has in the hiring process.

In response to the second comment, while it may be that traditionally memorandums of understanding with the Oneida Business Committee have been entered into with the Nation's boards, committees and commissions, there is nothing that would prevent a memorandum of agreement between the Oneida Business Committee and HRD. The memorandum would actually provide increased transparency, accountability and consistency by providing a public document that details the standards and responsibilities for both the Oneida Business Committee and HRD in relation to the implementation of the Employment law and handbook.

Comment 12 – Hiring Practices

Dale Wheelock: Ah, one of the things I want to bring to light is the fact that back in the 80's the tribe was just growing, and I hear the arguments of we can do it faster. It takes too long to get the process through. Ok, on that point alone, there was 300 employees back in 83' and there was two people in HRD, myself and a secretary. We could get positions filled in thirty (30) days, forty-five (45) days if it was technical. I have no idea what it takes now but its months. I know the population has grown in employees, but look at the ratio. You've got 3,000 employees, how much do you have in HRD? About thirty some? So, the ratios are pretty close. I think the efficiency of the department is really the question of the issue. Not the other piece with the

timeliness.

Cliff Danforth: I just have a few comments. I agree with Dale. And what about, I wanted to ask about the hiring process. You know, you want to speed it up, but speed in haste makes waste. What we go through as the personnel commission, and we score these people and pick out the best qualified person. And I think that's a big deal, to pick out the right person in the hiring process, not just go right through and have HRD pick whoever they want or supervisors pick their friends or whatever nepotism, conflict of interest is all involved here.

Mike Debraska: I will be speaking out and going into greater detail on this, but again, I do agree with several of the statements that have been made previously by individuals; Dale, as well as Cliff and several others and Gina with respect to the hiring practices that are going on.

Response

A general response to these comments is that the employment law itself does not directly update the hiring process; the update to the hiring process is done in the handbook, which is not the subject of this public meeting. However, because the handbook is so closely interlinked with the law, I will respond to these comments.

In response to the first comment, I will not respond to the commenter's allegation that HRD is the sole cause for the timeframe it takes to fill a position. Further, several hiring practices have been updated since 1983. For example, in 1983, we did not have pre-employment drug screening or behavioral based interviews which take significantly longer to administer. In addition, in 1983, HRD conducted minimal skills based testing relating only to typing, spelling and math. Today, HRD does much more skills based testing, for example, requiring cashiers to demonstrate they can give accurate change or that employees know how to work the equipment that will be used in their position. That being said, regardless of the source of the current inefficiencies in the hiring process, the proposed updates in the handbook will work to increase efficiency. For example, the handbook takes the posting requirements for a position down from a potential 28 days of required posting to an ability to conclude all posting in 7 days. Regardless of HRD's practices or the HRD to employee ratio, these required posting updates represent a potential time saving of 21 days.

In regards to the second comment, the updated processes in the handbook do not lead to less screening/vetting of applicants. HRD will continue with skills based testing and behavioral based interviews. Applicants will continue to be interviewed and ranked. The only difference is that only supervisors and subject matter experts will be doing the scoring, whereas currently Personnel Commissioners also score. With the dissolution of the Personnel Commission, Personnel Commissioners will no longer be involved in the interview/ranking process and those duties will be assumed by the HRD hiring representative. The hiring representative will rank, but will not personally score as they, similar to the Personnel Commission, do not have the experience with the requirements of each department and position to properly assess which applicant produces the best answers and best meets the needs of the department and the position.

Comment 13 and 14 – Inaccurate Section Reference

300.5-1. *Equal Employment Opportunities.* The Nation and HRD shall afford all applicants and employees equal employment opportunities; however, the Nation shall follow the preferences outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

Candice Skenandore – written comments: Section 300.5-1 states that “. . . the Nation shall follow the preferences outlines in Section 300.5-3 and such preferences may not be considered a violation of this Law” however, section 300.5-3 refers to education and not preferences. This section should reference 300.5-2 which alludes to Oneida and Indian Preference.

Candice Skenandore – written comments: In addition, line 179, it should read 300.5-2 (a) not 300.5-3 (a).

Response

The commenter correctly identifies two inaccurate section references, which should be updated to reference 300.5-2 as opposed to 300.5-3.

Comment 16 – Insurance and Retirement Benefits

300.6-3. *Insurance and Retirement.* The Nation may provide insurances and/or a retirement plan as a benefit to full-time employees. Emergency and temporary employees are not eligible for these benefits.

Candice Skenandore – written comments: Section 300.6-3 states that the Nation may provide insurances and/or a retirement plan. Who will decide if employees will have insurance and benefits and under what circumstances will the insurance and/or retirement benefits be taken away? Is the Nation required to provide insurance under the Affordable Care Act? The LOC may want to consider amending this section to state that “the Nation shall offer insurances and a retirement plan.”

Response

The commenter correctly identifies that this statement is ambiguous and could alarm employees. Based on feedback received from the insurance and benefits manager at HRD, I recommend declining the commenter’s suggestion to state that “the Nation shall offer insurances and a retirement plan.” The reasoning that I was provided is as follows:

- The term “insurances” is generally viewed to mean health insurance but it encompasses a number of different insurances. We currently offer medical, dental (two plans), vision, disability (short/long term), life insurance and voluntary benefits such as critical illness, accident, whole life insurance, individual short term disability and voluntary term life insurance. If we switch “may” to “shall” we would need to define insurances.
- The insurance plans have plan documents that provide parameters regarding eligibility. There could be circumstances where an employee would not be eligible such as missing enrollment deadlines. Would changing to “shall” impact those guidelines?
- The ACA does require employers to offer health insurance to employees who work 30 or more hours a week. This only impacts health insurance and does not include dental, vision, disability, retirement, or voluntary benefits. While the Nation would be required

to offer health insurance, there may come a time where paying the penalty (for not offering health insurance) would be cheaper than providing health insurance.

- There may come a time, perhaps for budget reasons, that the Nation would want the option to review what insurances/retirement plans are available to employees and their dependents. Changing to “shall” would make the process to explore those options more challenging.
- The 401k retirement plan is open to all employees (not just full time employees). Having “may” allows the Nation to provide benefits beyond full time employees when applicable.
- Getting rid of insurances/retirement plans all together would not be taken likely. That would be a discussion that would more than likely include HRD, Finance, and the Business Committee.

In order to address the ambiguity and HRD’s concerns, I suggest that this section be revised as follows:

300.6-3. *Insurance and Retirement.* ~~The Nation may provide insurances and/or a retirement plan as a benefit to full-time employees. Emergency and temporary employees are not eligible for these benefits.~~ Any modification to the insurance and retirement benefits offered by the Nation requires approval by Oneida Business Committee resolution.

Comment 17 – Time Off/Accruals

300.6-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. HRD shall establish rates of accrual and the process for requesting paid time off in the Rules created pursuant to Section 300.4-1(a).

Candice Skenandore – written comments: The current Bluebook specifically sets out the accrual rates; however, the Law provides HRD the authority, among other things, to establish the rates of accrual and the process for requesting paid time off in accordance with the Administrative Rulemaking Law. This will give HRD the authority to change the accrual rates without having to go through the process set forth in the Legislative Procedures Act. Similarly, Ho Chunk Nation affords the Executive Director of the Department of Personnel the “functions and authority to implement, manage, enforce and promulgate i.e. create, establish, publish, make known and carry out policies within [the Personnel, Employment and Labor Code]” [See 6HCC§5 (4)]. However, Ho Chunk’s Personnel, Employment and Labor Code specifically sets items such as accrual and sick time rates [See 6HCC§5.18(a) (1) & 18 (b) (1) (a)]. The LOC may want to reach out to other tribes and get an idea on how they set up their employment laws and found out what is and what is not working for them prior to implementing this Law.

The LOC may want to add language within the Law that specifies who has the authority to close Tribal offices when circumstances (inclement weather, building malfunctions, safety issues) make it unsafe for employees to attend work.

Response

The commenter correctly identifies that the accrual rates could be amended in the future outside

of the process required by the Legislative Procedures Act, however they would be subject to the Administrative Rulemaking process, which similarly includes a public comment period. The sponsor does understand that leaving accrual rates in the handbook has been voiced as a concern based on meetings held with the employment base. In recognition of this concern, the sponsor plans to recommend an alternative to the General Tribal Council at the time the law is presented that would move the accrual rates into the law and thereby require General Tribal Council approval before they may be amended.

Further, the drafting team has considered various models, but the LOC could at anytime direct the LRO to further reach out to other tribal governments in order to discuss how they handle their employment matters.

Lastly, the delegation of authority for closing tribal offices is currently done in a tribe-wide standard operating procedure promulgated by HRD. Accordingly, this topic was in the handbook in article 8-4.

Comment 18 – The Grievance Process

300.10-2. Employees, excluding at-will employees, who disagree with a corrective action or allege that a supervisor's actions amount to an adverse employment action may contest the action using the rules developed by HRD, and based on the following available levels of review:

- (a) *First Level of Review.* Any employee, excluding at-will employees, contesting the validity of a suspension or termination or allege that a supervisor's actions amount to an adverse employment action may contest the action to the Administrative Hearing Court.
- (b) *Second Level of Review.* Any party, excluding at-will employees, that is dissatisfied with the Administrative Hearing Court's decision, may appeal the Administrative Hearing Court's decision to the Oneida Judiciary's Appellate Court.

Candice Skenandore – written comments: What is the Administrative Hearing Court, who will have the authority to adopt it and will it be in place prior to implementing this Law?

Dale Wheelock: Good afternoon. I do have a written list of items but I only have five minutes so I will watch my time. And I do have some questions at the end. One of the things on this law changed, it does refer to administrative court quite often. And I'll get to that portion I have some questions regarding that. But, the issue of employee fairness; I was around here in the 80s in fact I wrote the red book that turned into the blue book back in '83. So I'm familiar with the structure. I also won my case against the administration and political officers based on those appeal processes. And going through three judges on the Personnel Commission which found in my favor, also five judges on the appellate court ruled in favor. And it's all based on the policies and procedures, actions that weren't taken by administration. That's one thing. Ah, it's long reading, thirty-one (31) page decision and quite apparent that there was intimidation and harassment involved on hired administration, you know against me. Ah, that's one thing, but I followed the process. The personnel policies and procedures were there; I followed them to the letter by documentation and won. So, my concern is will employees have that appeal process? Will they have the opportunity if they are intimidated, harassed by supervisors, or would they

just go before the administrative court? The other piece is back then there's an issue of a union. If there are no policies or procedures for employees to air their grievances before an unbiased committee or personnel commission, you will have a union coming. And if you think you got problems now with getting things done, you know there are 3,000 employees. I just saw an article this morning, McDonald's, California wanted \$15 an hour. Guess who's petitioning and picketing right there? Unions. They want to get that population because they get union dues. So those things are coming. I want to bring back the point that employee have to have due process. Now if this administrative committee is appointed, who's going to appoint them? Is it going to be elected? Or is it going to be appointed by the Business Committee? Because right now we have community members involved. We have no bias one way or another in terms of administration winning or the employees winning, they just look at the case and the laws and the policies and procedures. Now, if they're appointed, is it going to be all administrative staff? A new function? So, let me get to the questions because I remember I only have 5 minutes. How many individuals will be sitting on this administrative court? Ok. The statement being I think you are going to be stepping backwards, you're going to be having, it goes back to the employee fairness. If they don't have a due process, perceived or otherwise, you're going to have issues. And those employees will not have an opportunity to grieve it because we're already going to go to court. It's restricted to administrative court. Their decision is final. They might be able to go on a technicality to the judicial court system, which will cost them money, attorney's fees and all the other stuff that goes with it. Is that fair to an employee who generally live pay check to pay check. They can't afford \$250 an hour attorney to present their case. And, from personal experience, things get dragged out on purpose. Things are delayed, that's where the timeframe comes in. If you are on time and get the stuff done the employees will have a better shot at winning their case.

Brandon Stevens: Ok, I'll answer those questions and you can submit the rest of those questions in with your testimony and when we review, when we take all the public meeting comments we will go to a work meeting and we will go through and actually answer all those questions that you have and that will be generated in a report that is available for anyone's view. So we'll answer any questions that you weren't able to get answered today or ask, but I'll answer the one about how many on the administrative court. The administrative court is going to be a function of the judiciary. So they're going to be elected judges that are assigned to the administrative function of the process. And so they'll have that autonomous portion separate from the Business Committee that they will oversee those cases. And we are developing administrative rules of procedure that make it a lot easier than the civil rules of procedure which are very cumbersome in the judicial court. We're making those administrative rules that will make it a lot easier for self-representation within the court on all levels.

Gina Buenrostro: Um, I think that it is unfair that employees will not be able to dispute their employment issues such as written warnings or adverse employment actions because the law does not provide that it only provides that they can appeal suspensions or terminations. And then, if they want to take it further, they have to go to the judiciary and it only will entail EEO violations. In my sixteen (16) years on this commission the amount of EEO violations we've had is one. So people like Dale who was fired and he had issues of hostile work environment intimidation harassment, he would never be able to appeal that, his case would never be heard, because that's not afforded or provided in the employment law.

Response

This response addresses the first, second and third commenter. There is no intention to remove any of the avenues of due process currently afforded to employees. Based on the handbook, employees still may request reconsideration of a supervisor's action internal to the organization to the reviewing supervisor (which is the direct supervisor to the employee supervisor). This is the exact same as the first level of appeal currently available. Currently, the second level of appeal is to the Oneida Personnel Commission. This level is being maintained except that the hearing body authority is being transferred from the Oneida Personnel Commission to the Administrative Hearing Court.

Ms. Buenrostro alleges that only suspensions, terminations and EEO violations are appealable to the Judiciary. However, that is not accurate. The law specifically states, starting on line 275, that "any employee, excluding at-will employees, contesting the validity of a suspension or termination or allege that a supervisor's actions amount to an adverse employment action may contest the action to the Administrative Hearing Court." The definition of adverse employment action includes violations of EEOs. Accordingly, the commenter's statement is inaccurate, as adverse employment actions are appealable.

Further, while it is correct that written warnings are not directly appealable, they are appealable to the extent that they lead to a suspension or termination. Currently, the Oneida Personnel Commission will only hear disputes regarding the current pending action. This means that if hearing a contested suspension the Oneida Personnel Commission will not hear any matters related to progressive corrective actions that led to the suspension. Accordingly, under the current process, without allowing direct appeal of a written warning, there would be no due process afforded written warnings, even though the direct dispute of a written warning is costly to the Nation and causing high conflict environments for disciplinary actions that often never amount to suspension or termination.

The new grievance process affords due process to written warnings while simultaneously reducing conflict in the work environment by allowing the employee to contest any written warnings that were progressive corrective actions that led to the disputed suspension or termination so long as the employee requested reconsideration to his or her reviewing supervisor.

Mr. Wheelock seems to be under the impression that the decision of the Administrative Hearing Court is final and Ms. Buenrostro seems to be under the impression that only violations of EEOs are appealable to the Court of Appeals; however all decisions of the Administrative Hearing Court are subject to the review of the Court of Appeals, which includes suspensions, terminations and adverse employment actions. It is correct that a previous version of the law only permitted the Court of Appeals to hear appeals of the Administrative Hearing Court's decisions regarding violations of EEO claims, but that provisions was updated in Draft 15 of the Employment law based on public feedback.

The last discussion based on these comments is in regards to the composition of the Administrative Hearing Court. Based on recent developments regarding the Administrative Hearing Court, it is likely that the Administrative Hearing Court references will be replaced with

the Trial Court operating under the Rules of Administrative Procedure rather than the Rules of Civil Procedure. This would require that the Rules of Civil Procedure be amended to apply to all civil matters that are not based upon action/inaction taken by an entity of the Nation. Further, as stated by Councilman Stevens, the Rules of Administrative Procedure are currently in development and will be tailored to pro se litigants so that representation by an attorney will not be necessary. These rules will apply to all disputes regarding an action/inaction taken by an entity of the Nation. Under this structure, the same judges that serve on the Trial Court would hear employment matters.

Those judges are elected, not appointed, so there is no threat of a biased decision as currently exists with the appointed Oneida Personnel Commission. Further, irrespective of the individual judge's and commissioner's actual education and experience levels, the statutory requirements to be a judge are much more stringent than the requirements to serve on the Oneida Personnel Commission according to its by-laws. In addition, the Judiciary has strict conflict of interest procedures and a stricter definition of a conflict of interest, again, aimed at providing the parties before the Judiciary a decision free of political and familial influence.

Cliff Danforth: And as far as the grievance hearing, we are trained, the personnel commission has been trained for years to take on these grievance hearings and bring out the truth in all these matters of written warnings, suspensions, terminations, we deal with all of that all the time. People on the personnel commission know what they are doing, they are well educated and I think they do a great job. I don't know where if you go to an administrative court they could do and of a better job that we do. And they will probably cost more money than what it costs for us to do grievance hearings. So that's all mine.

Mike Debraska: Additionally with respect to the administrative rulemaking process or the court that you want to put in place, I don't understand how that's going to streamline anything. Because now you're taking that court and you're going to create another court and hopefully train individuals when we already have those trained individuals here, sitting here, doing it? That to me makes no sense, how does that streamline anything? It's like taking one pool of money and shifting it over to another place and saying ok we did a better job. How? Why? The lawyers also stood up here and said, two lawyers said, that by creating that administrative court you are duplicating processes. If it's supposed to be streamlined, how is duplicating processes duplicating anything? Those are my comments, but there will be more forthcoming on the floor of GTC.

Response

This response addresses the third and fourth commenters. The reassignment of the Personnel Commission's hearing body authority to the Oneida Judiciary is not to say that the Oneida Personnel Commission does a poor job. It is a matter of duplicative services. Yes, the Oneida Personnel Commissioners are trained to conduct hearings; so are the Trial Court judges. This streamlines the process because all persons contesting a matter related to an action/inaction of an entity of the Nation will be heard by the same hearing body, under the same rules of procedure. In discussion with the Judiciary, we have learned that, based on the current caseloads of the Oneida Personnel Commission and other administrative hearing bodies whose authority will be transferred to the Oneida Judiciary, the Judiciary will not require any additional judges or staff.

Accordingly, for the entities whose hearing body authority will be transferred to the Oneida Judiciary, 100% of those hearing stipends may be reallocated to other expenses of the Nation and will not be transferred to the Oneida Judiciary.

Brad Graham: So, my other thing that I want to ask, is how many boards, committees, commissions have hearing authority? Why is the personnel being excluded only and being taken out? When there's other boards with the hearing authorities. You's had a list of boards, committees and commissions, all of a sudden it's just the personnel commission you're gona get rid of? Don't sit there and shake your head no because you've got it listed right here. You don't have the other ones in here. You only have the personnel commission. You're showing prejudice against one body by doing this. You's guys have to take a long hard look at this law. And I mean a long hard look. Because you're going to get fought on this every inch of the way by the people. You're singling out one body and one body only. Thank you.

Response

This response addresses only the fifth commenter. The commenter's allegations that the Oneida Personnel Commission is being singled out as the only board, committee or commission losing hearing body authority is not an accurate statement. The action plan accepted by the Oneida Business Committee on August 8, 2015 is working towards transferring all boards', committees' and commissions' hearing body authority over to the Oneida Judiciary with the exception of the Oneida Nation Gaming Commission, the Oneida Nation School Board, Oneida Police Commission and the Pardon and Forgiveness Screening Committee (which does not have binding decision making authority).

Comment 19 – Compensatory Damages

300.10-2(c) *Compensatory Damages*. Should the Oneida Judiciary determine that there was an intentional deprivation of an equal employment opportunity, the Oneida Judiciary may award compensatory damages, including, but not limited to, attorney's or advocate's fees and court costs, as against the individual(s) found to have engaged in the intentional deprivation of an equal employment opportunity. Said compensatory damages may not be awarded against the Nation.

Candice Skenandore – written comments: The Law may hold a supervisor personally responsible for compensatory damages if it is found that there was an intentional deprivation of an equal employment opportunity [See 300.10-2 (c)]. This may deter qualified individuals from taking on a managerial role. In addition, the Law does not specify if the supervisor can appeal a decision that requires the supervisor to pay compensatory damages.

Response

The commenter points out a potential implication of the availability of compensatory damages as against supervisors. This is a policy call for the LOC. The compensatory damages are only available for intentional EEO violations. According to Ms. Buenrostro, she has only seen one EEO claim in her 16 years working for the Oneida Personnel Commission. Further, to meet the burden of proving that the EEO violation was intentional is a difficult burden to meet in court.

Comment 20 – Court Fees

300.10-3. The Administrative Hearing Court and the Oneida Judiciary may waive any and all court fees on behalf of employees seeking to appeal a corrective action or an action alleged to be an adverse employment action.

Candice Skenandore – written comments: An employee can contest a suspension, termination or an adverse employment action to the Administrative Hearing Court and if not satisfied with the Administrative Hearing Court decision, can appeal to the Appellate Court; however, the Administrative Hearing Court and Judiciary are not required to waive any and all fees associated with the case(s) [See 300.10-2 (a) & 300.10-3]. This may subject the employee to court and filing costs which may present a problem if the employee is not receiving an income.

Response

The point highlighted by the commenter is valid and something we have heard when presenting the Employment law and handbook to the employee base. We are currently in discussion with the Judiciary regarding making the waiver mandatory and believe that we will be moving in that direction.

Comment 21 – Applicability to Elected Officials

300.11-1. The provisions of Sections 300.6 - 300.8 apply to the Nation's elected officials that work full-time (30 hours or more per week) and receive salaries for their service.

Gina Buenrostro: Ok, so, also, let's see here, I really, my personal opinion, is that the BC, because you've developed as a subcommittee, this employee handbook doesn't address yourself. How do you guys hold each other accountable if there's a hostile work environment? How do you hold yourself accountable for drug and alcohol testing, criminal backgrounds, things of that nature? I think if you're gonna hold someone accountable, and develop new rule, laws, policies and procedures, do it for yourself first. Right now, with the direct reports you guys have, there's been issues of people can't get their personal and vacation time approved, people have to be disciplined and three of the four officers have to agree, it is so, I want to say confusing and unfair to those direct reports as it is, I don't know how your employee handbook's gonna handle that. However, for each other, I know that you guys have to hold each other accountable and responsible, so why don't you, while you're showing us how you want to have all the employees follow these rules and policies, how bout starting with yourself? Address the attendance and punctuality issues, address discipline issues, address abuse of travel issues, things of that nature. Even your own interpersonal actions between each other, you guys sat up there yesterday and it was very unprofessional, very unprofessional, very hostile, and I apologize for my part because I was egged on by somebody, but you guys between each other, argue, cut each other off and it's very unprofessional. What are the rules and policies that you guys are developing for yourselves that's transparent so when you're telling an employee these are the new rules and policies but we have them for ourselves too and we're going to share that with you and be transparent about that.

Brad Graham: Then if you look at the last of this, it's got 300.11, applicability to elected officials. So, you're writing yourself into this law, correct?

Response

Yes, the provisions of this law related to compensation and benefits and the general provisions apply to full time salaried elected members. The reference to section 300.6-8 should be removed because as those policies were further developed in the handbook, they subject those in violation to employee discipline, which cannot apply to an elected official. The requirements regulating behavior of employees are not applicable to elected officials. Currently, the only recourse would be to submit a complaint in hopes of correcting the action moving forward or to pursue removal pursuant to the Removal law. That being said, the LOC has added a Sanctions and Penalties law for elected officials infractions that do not rise to the level of grounds for removal, which will continue to be developed pursuant to the Legislative Procedures Act.

CHAPTER 300 EMPLOYMENT LAW

300.1. Purpose and Policy	300.7. General
300.2. Adoption, Amendment, Repeal	300.8. Employee Responsibilities
300.3. Definitions	300.9. Layoffs and Furloughs
300.4. Human Resources Department	300.10. Employee Discipline and Grievances
300.5. Hiring	300.11. Applicability to Elected Officials
300.6. Compensation and Benefits	300.12. Violations

300.1. Purpose and Policy¹

300.1-1. It is the purpose of this Law to provide a fair, consistent and efficient structure to govern all employment matters.

300.1-2. It is the Nation's policy to provide entities latitude to create human resource practices to fit their individual industry standards, while creating a strong and healthy work environment. In addition, although certain federal and state laws, specifically Title VII, do not apply to the Nation, the Nation's employment policy is to afford applicants and employees equal employment opportunities while recognizing the Nation's Oneida and Indian employment preference. The Nation's hiring philosophy is to recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and familiar with the Oneida community.

300.2. Adoption, Amendment, Repeal

300.2-1. This Law was adopted by the Oneida General Tribal Council by resolution _____ and is effective six (6) months from the date of adoption.

300.2-2. This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.²

300.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

300.2-4. In the event of a conflict between a provision of this Law and a provision of another Law, the provisions of this Law control, provided that this Law repeals the following:

(a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985;

(b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;

(c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B, permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to BC-1-20-99-B and BC-6-30-04-J;

¹ **Jennifer Falck** – written comments: I attended one the presentation meetings a few weeks ago & the public hearing on March 31, 2016. I am a 19 year employee with experience in both applying for work here, and hiring staff. I am in support of the new law. It is not perfect, but I think it will at least get our HR processes into the 21st century. Thank you for all your hard work and dedication to the effort.

Gina Buenrostro: Another issue is the cost savings. Where's the dollar amount? I would like to see a dollar amount on the cost savings for this.

² **Mike Debraska:** Thank you. While I'm not an employee of this tribe, I do want to speak to this because I've been doing advocacy work for almost twenty five (25) years with respect to GTC. In the last three (3) years I haven't seen a piece of legislation such as this. I am completely and utterly dumbfounded. What this attempts to do is to take all the power and policy and procedures away from General Tribal Council and stick it solely in the hands of the Business Committee and HRD.

- (d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;
 (e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee, Paid Time Off for Selected Color Guard Members Who Are Employees;
 (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A;
 (g) BC Resolution 04-05-95-A regarding a paid break for donating blood at a blood drive coordinated by the Nation;³
 (h) BC Resolution 05-12-93-J regarding HRD's role in the interpretation, implementation and enforcement of the Personnel, Policies and Procedures; and
 (i) GTC Resolution 05-23-11-A entitled Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring.

300.2-6. This Law is adopted under authority of the Constitution of the Oneida Nation.⁴

300.3. Definitions

300.3-1. This section governs the definitions of words and phrases used within this Law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Adverse Employment Action" means a supervisor's failure to comply with the employment rules that results in a significant change in an employee's employment status that is more disruptive than a mere inconvenience or an alteration of job responsibilities and may include a deprivation of an equal employment opportunity.

(b) "At-Will Employee" means an employee working for the Nation on a short term basis that is not hired through the standard hiring procedures, including, but not limited to, political appointees, part-time, seasonal, and volunteer workers, and new Employees that have not yet completed their probationary period pursuant to the Rules developed by HRD.

(c) "Corrective Action" means any initiative taken by an employee supervisor with the goal of correcting an employee's prohibited behavior as identified in the rules created by HRD.

(d) "Cost of Living Adjustments" means wage or salary modifications which allow employees to sustain a certain level of living, including basic expenses such as housing, food, taxes and healthcare.

(e) "Employee" means any individual who is hired by the Nation through the normal hiring process, works full-time (30 or more hours per week) or part-time (less than 30 hours per week) and is subject to the Nation's direction and control with respect to the material details of the work performed. "Employee" includes, but is not limited to, individuals employed by any entity and individuals employed through an employment contract as a limited term employee, but does not include elected or appointed officials, at-will employees or individuals employed by a tribally chartered corporation. Throughout this Law all references to employee include both employees and at-will

³ *Candice Skenandore* – written comments: Some Tribal policies that pertain to employment matters are being repealed (Employee Protection Policy, Parent Leave Policy) and other policies are not (Furlough Policy, Layoff Policy). What factors were considered when deciding whether or not to repeal an employment policy?

⁴ *Brad Graham*: Alright, one of my first comments is line 40, 300.2-6, states this law is adopted under the authority of the constitution of the Oneida Nation. Show me, within the constitution, where it states. That's my first one.

employees, unless the term at-will employee is used, in which case only at-will employees are intended.⁵

(f) “Employee Supervisor” means the party responsible for directly overseeing the employee and who is responsible for taking corrective actions when employees fail to meet their responsibilities.

(g) “Entity” means any of the Nation’s divisions having employees and may include, but is not limited to, divisions, departments, areas, programs, enterprises, board, committees, commissions and the like.⁶

(h) “Equal Employment Opportunity” or “EEO” means the Nation’s consideration for hiring selection and position retention and compensation and benefit distribution that is free from discrimination against any person on the basis of race color, religion, sex (including pregnancy), national origin, age, disability, economic status or genetic information. Oneida and Indian Preference are allowable and are not considered a deprivation of an EEO,

(i) “HRD” means the Oneida Human Resources Department.

(j) “Immediate Family Member” means an individual’s husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.

(k) “Involuntarily Separated” means an employee is removed from employment.

(l) “Nation” means the Oneida Nation.

(m) “Political Appointee” means an individual appointed as an executive assistant by an individual Oneida Business Committee member or as an assistant by a board, committee or commission.

(n) “Reviewing Supervisor” means the party responsible for overseeing the employee supervisor and who may hear an appeal of a corrective action taken by an employee supervisor.

(o) “Rule” means any exercise of authority delegated to HRD in order to implement, interpret and/or enforce this Law. A “rule” does not include any statements, interpretations, decisions, rules, regulations, policies, standard operating procedures or other matters concerning internal management of an entity, or, which do not affect the private rights or interests of individuals outside of the said entity.

(p) “Sexual Harassment” means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

⁵ **Candice Skenandore** – written comments: The Law does not specify whether or not a transfer employee is considered an “at-will employee” or an “employee”. The LOC may want to consider adding “transfer employee” to the “employee” definition [See 300.3-1 (e)].

Gina Buenrostro: The direct report issues, where’s that in the law and if they have issues of intimidation and harassment, things of that nature, that don’t fall under EEO violations, where is that addressed? How do they appeal that? Where do they get protection? How can they dispute those kind of employee issues?

⁶ **Oneida Nation School Board** – written comments: To address the new Employment Law, including the repeal of the Oneida Tribal Management System and the Oneida Personnel Selection Committee, and to maintain the autonomy of the School Board, we recommend for review and adoption, the following revision to the Employment Law (in red text): Request: Revision at section 300.3 Definitions, 300.3-1(g): "Entity" means any of the Nation's divisions having employees and may include, but is not limited to, departments, areas, programs, enterprises, board, committees, commissions and the like; **except that the Oneida Nation School Board and related department shall be exempt as an Entity as provided at section 300.4-4.**

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

(q) "Standard Operating Procedure" means an internal procedure that is created to govern how an Entity operates and performs its designated functions; a standard operating procedure does not affect parties outside of the entity to which the procedure belongs.

(r) "Tribal Member" means an individual who is an enrolled member of the Oneida Nation.

300.4. Human Resources Department⁷

300.4-1. *General Responsibilities.* The HRD shall:

(a) Develop and amend the rules necessary to carry out the intent of this Law pursuant to the Administrative Rulemaking Law.⁸

⁷ **Oneida Nation School Board** – written comments: To address the new Employment Law, including the repeal of the Oneida Tribal Management System and the Oneida Personnel Selection Committee, and to maintain the autonomy of the School Board, we recommend for review and adoption, the following revision to the Employment Law (in red text): Request: Insert new subsection at section at 300.4: **300.4-4. Oneida Nation School Board.** Pursuant to Section 1 (h) of Article IV of the Constitution of the Oneida Tribe of Indians of Wisconsin empowering the General Tribal Council to delegate certain powers to subordinate organizations of the Tribe, the General Tribal Council, by GTC Resolution #1-29-77-A, established the Oneida Education Board (also known as the Oneida Tribal School Board or the Oneida Nation School Board) ("Board") to accept responsibility over Oneida education programs. Pursuant to GTC Resolution #1-8-83, the General Tribal Council directed that "an agreement be reached between the Oneida Business Committee and the Oneida Tribal School Board regarding the autonomous administration of the Oneida Tribal School which would provide for full involvement of the Oneida Tribal School Board in all personnel matters related to all personnel employed in the operation of the Oneida Tribal School." A "Memorandum of Agreement" (MOA) between the Board and the Oneida Business Committee was adopted by GTC Resolution #3-21-88. By this MOA, the General Tribal Council provided the Board authority over employees working within the Oneida Tribal School System. Now, therefore, the Board shall continue its autonomous administration of the Oneida education programs, including the Tribal School System, and is exempt from the Oneida Employment Law and related administrative rule-making, as is necessary for the operation of the Oneida education programs. The Board shall amend the MOA personnel hiring, evaluations, promotions, suspensions/dismissals, and grievance process, consistent with personnel decisions based upon sound educational administration and accounting for the repeal of the Oneida Tribal Management System and dissolution of the Oneida Personnel Commission (formerly known as the Oneida Tribal Personnel Selection Committee) herein, which amendment shall not require further ratification by the Oneida General Tribal Council. The MOA shall remain in effect as amended. The Board shall have administrative rule-making authority under Oneida Law, Chapter 17, and the Oneida General Tribal Council shall retain all authority to adopt or deny a proposed Education Law and related Administrative rules.

⁸ **Candice Skenandore** – written comments: The Law provides the Human Resources Department (HRD) the authority to create rules pursuant to the Administrative Rulemaking Law. It is my understanding that the Employee Handbook is where these rules will be housed; however, the Law does not reference an Employee Handbook. In order for employees to have a better understanding on where to find these rules, the LOC may want to consider adding language in section 300.4-1 referencing the Employee Handbook.

Gina Buenrostro: And whether they be unfair or not unfair, the perception is you control that now. Along with the employee handbook, you have the authority now as a Business Committee member to change those policies within that handbook. And if employees want to challenge it or dispute it, their only recourse is to go to the judiciary. The judiciary, not including the administrative court because that's not even developed, but an employee that would want to challenge something that you guys changed in the employee handbook, they would have to follow the rules

(b) **Implement, interpret and enforce this Law and the associated rules.⁹**

(c) Provide all employees a copy of all employment rules and all of the Nation's laws and policies specifically pertaining to employment matters, and shall further notify employees of how such rules, laws and policies may be electronically accessed.

(d) Review and approve all entities' employment related standard operating procedures to ensure compliance with this Law and the rules developed pursuant to this Law.

(e) Keep a record of all employment related decisions made by the employee supervisors, reviewing supervisors and the Oneida Judiciary.

(f) Collect and maintain data on human resource related information including, but not limited to, information on hiring, appointments, terminations, separations, transfers, employee development, grievances, policy issues and insurances.

(1) HRD shall provide quarterly reports to the Oneida Business Committee, or its designee, in accordance with the schedule provided by the Nation's Secretary's office.

(2) The Oneida Business Committee may not have direct access to employee information and/or personnel files, especially information relating to individual compensation or corrective actions; provided that, Oneida Business Committee members that are also employee supervisors may access the employee records of any of his or her direct employees pursuant to Section 300.4-1(f)(3)(B).

(3) HRD shall store these employee records in a manner that maintains the records' private and confidential nature. Information contained in employee records may only be released in the following situations:

(A) A current or past employee may have access to his or her own employment record; an employee supervisor may have access to his or her current employees' records; a hiring supervisor may have access to the last twelve months of a current or former employee's work history; and HRD managers may have access to any employee's employment record.

(B) If required by law, the Nation shall release the information required to be released to the party the law designates as entitled to receive said information.

(C) Should an Employee be alleged to have committed an illegal act in the course of his or her employment with the Nation against the Nation, its customers or its employees, the said employee's record may be released to law enforcement agencies.

of civil procedure, the rules of federal evidence, and those types of things, that's very difficult for employees to navigate. I'm just going to say that out front. So, it looks like, the way you have it set up by writing yourself in the law, by creating it, writing it, making yourselves kinda like the boss figure that there's no equity.

⁹ **Gina Buenrostro:** I think in this new law the issues of hostile work environments has never been resolved in the past, and some cases have went to HRD which they had recommendations regarding those hostile work environments and the interpersonal relationships with different departments and they still were never resolved. Also, I guess I have an issue with the work group, the draft team, because that entailed all of HRD. But HRD has a vested interest in how this works because they will be the ones that will be overseeing everything, they will have that freedom to do what they want to do. The issue I have with this law, I don't think it's going to hold them accountable, because they haven't been accountable yet. The compensation scale hasn't been updated in over eight (8) years. Who is being held accountable for that right now as we speak, eight (8) years. We have a director that sits in that position and she hasn't updated it.

(D) A third party may access an employee's record if the employee provides written consent to release his or her record to a designated third party.

300.4-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices.¹⁰

300.4-3. *Memorandum of Understanding*. The Oneida Business Committee and HRD shall negotiate and enter into a memorandum of understanding which governs the relationship between the two parties by establishing the responsibilities and expectations of each party with regard to the management of HRD.¹¹

300.5. Hiring¹²

300.5-1. *Equal Employment Opportunities*. The Nation and HRD shall afford all applicants and employees equal employment opportunities; however, the Nation shall follow the preferences outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.¹³

300.5-2. *Oneida and Indian Preference*. The Nation shall apply Oneida and Indian Preference to all hiring practices.

¹⁰ **Mike Debraska:** And what I do is I look at it and say at line 157 it says HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices. Hmm, interesting. Okay I didn't know it was up to HRD to uphold sovereignty but okay.

¹¹ **Gina Buenrostro:** Ok, so, the number one thing I wanted to address was that employee handbook and the law. And I stated this to you before publically and I'll state it again, I think it's unfair and I think there's a GTC directive that already states the BC not be involved with the day to day. You are writing yourselves in the law, you are the oversight of HRD, you have the authority now to be deeply involved in hiring practices.

Mike Debraska: Next at line 159 it talks about the Business Committee entering into a Memorandum of Agreement. It's always been my understanding that for MOU's to take place it's usually is with an elected board. Are you now saying that HRD is going to go to an elected position? Because that's typically how that happens. And I don't believe it should be happening because less and less transparency, we already have very little transparency coming out of HRD as well as even with the executive session of Business Committee. So I look at that and I say that should not be happening period plain and simple. Rest assured I will be acknowledging this if it comes to the floor of General Tribal Council.

¹² **Dale Wheelock:** Ah, one of the things I want to bring to light is the fact that back in the 80's the tribe was just growing, and I hear the arguments of we can do it faster. It takes too long to get the process through. Ok, on that point alone, there was 300 employees back in 83' and there was two people in HRD, myself and a secretary. We could get positions filled in thirty (30) days, forty-five (45) days if it was technical. I have no idea what it takes now but its months. I know the population has grown in employees, but look at the ratio. You've got 3,000 employees, how much do you have in HRD? About thirty some? So, the ratios are pretty close. I think the efficiency of the department is really the question of the issue. Not the other piece with the timeliness.

Cliff Danforth: I just have a few comments. I agree with Dale. And what about, I wanted to ask about the hiring process. You know, you want to speed it up, but speed in haste makes waste. What we go through as the personnel commission, and we score these people and pick out the best qualified person. And I think that's a big deal, to pick out the right person in the hiring process, not just go right through and have HRD pick whoever they want or supervisors pick their friends or whatever nepotism, conflict of interest is all involved here.

Mike Debraska: I will be speaking out and going into greater detail on this, but again, I do agree with several of the statements that have been made previously by individuals; Dale, as well as Cliff and several others and Gina with respect to the hiring practices that are going on.

¹³ **Candice Skenandore** – written comments: Section 300.5-1 states that “. . . the Nation shall follow the preferences outlines in Section 300.5-3 and such preferences may not be considered a violation of this Law” however, section 300.5-3 refers to education and not preferences. This section should reference 300.5-2 which alludes to Oneida and Indian Preference.

(a) Unless otherwise prohibited by law or grant funding requirements, the Nation shall apply the following order of Oneida and Indian Preference in staffing decisions:

(1) Persons who are tribal members.

(2) Persons who meet the blood quantum requirements contained in the Membership Ordinance, but are not currently tribal members, and/or persons who are documented first generation descendants of a tribal member.

(3) Persons enrolled in any federally recognized tribe other than this Nation.

(4) All other non-Indian persons.

(b) If a law or grant funding requirement prohibits the application of Oneida and Indian Preference in accordance with Section 300.5-3(a), the Nation shall make staffing decisions in accordance with the Indian Preference requirements of the said law or grant.¹⁴

(c) Oneida and Indian Preference applies only when an applicant meets all the minimum requirements of the position applied for.

(d) Oneida-Only Positions. To the extent possible, all top administrative and political appointee positions must be held by tribal members.¹⁵ If a position requires specific skills and/or licensing by the state or federal government and there are no available tribal members who possess the necessary skills or licensing to assume the vacancy, only then may a non-tribal member be selected to fill the vacancy.

300.5-3. *Education.* Employees shall have or obtain a high school diploma, a high school equivalency diploma or a general equivalency diploma within one (1) year of being hired. Exceptions and/or extensions to this requirement may be included in the rules developed by HRD pursuant to Section 300.4-1(a).

300.5-4. *Workplace Safety.* The Nation shall develop rules and procedures as necessary to protect the safety, health and well-being of all employees and other individuals in the workplace.

(a) The Employee Health Nursing Department shall establish, maintain, implement, evaluate and periodically update a Tuberculosis Control Program, which applies to all employees as well as the Nation's elected and appointed officials. The Employee Health Nursing Department shall make the approved program available to all persons to which it applies.

300.5-5. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly supervised by an immediate family member.

300.5-6. *Right to Work.* No person may be required to do any of the following in order to become or remain an employee of the Nation:

(a) resign or refrain from being a member of a labor organization;

(b) become or remain a member of a labor organization; or

(c) pay dues or other charges to a labor organization.

300.6. Compensation and Benefits

300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor Statistics for average earnings in the Green Bay area; the said plan must be approved by the

¹⁴ *Candice Skenandore* – written comments: In addition, line 179, it should read 300.5-2 (a) not 300.5-3 (a).

¹⁵ January 8, 1990 GTC: Debbie Powless moved that the General Manager's and all top administrative positions be held by enrolled tribal members, motion seconded. ... Main motion carried.

Oneida Business Committee prior to becoming effective.

(a) Wage and salary adjustments and benefits available to employees are dependent upon available funding allocations, provided that, the compensation plan must require HRD to make reasonable efforts to regularly implement cost of living adjustments based on the United States Department of Labor – Bureau of Labor Statistics’ Consumer Price Index for the Midwest Region.

300.6-2. *Designation of Employees.* The Nation shall use the standards created under the Fair Labor Standards Act to designate its employees as either nonexempt or exempt and to set minimum wage and maximum hour restrictions for employees receiving an hourly wage.

300.6-3. *Insurance and Retirement.* The Nation may provide insurances and/or a retirement plan as a benefit to full-time employees.¹⁶ Emergency and temporary Employees are not eligible for these benefits.

300.6-4. *Time Off.* The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. HRD shall establish rates of accrual and the process for requesting paid time off in the Rules created pursuant to Section 300.4-1(a).¹⁷

300.6-5. *Leaves.* Employees of the Nation may be allowed leave as provided in the Rules created pursuant to Section 300.4-1(a) and any other applicable laws and policies of the Nation.

300.7. General

300.7-1. *Employee Development.* The Nation encourages the advancement and transfer of Employees in order to make the best possible use of human resources. Employees who wish to advance in the organization may work with the HRD to develop a career ladders plan.

300.7-2. *Entities.* Individual entities shall comply with this Law and the rules promulgated under Section 300.4-1(a) and, if necessary, shall develop internal rules and standard operating procedures for the implementation of this Law and its associated rules.

300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment for employees and to keep the number of job-related illnesses and/or injuries to a minimum, the Nation shall maintain safety standards in accordance with the Nation’s applicable laws and policies. The Nation shall also maintain standards requiring employees to perform their job duties in a safe, secure, productive and effective manner.

¹⁶ *Candice Skenandore* – written comments: Section 300.6-3 states that the Nation may provide insurances and/or a retirement plan. Who will decide if employees will have insurance and benefits and under what circumstances will the insurance and/or retirement benefits be taken away? Is the Nation required to provide insurance under the Affordable Care Act? The LOC may want to consider amending this section to state that “the Nation shall offer insurances and a retirement plan.”

¹⁷ *Candice Skenandore* – written comments: The current Bluebook specifically sets out the accrual rates; however, the Law provides HRD the authority, among other things, to establish the rates of accrual and the process for requesting paid time off in accordance with the Administrative Rulemaking Law. This will give HRD the authority to change the accrual rates without having to go through the process set forth in the Legislative Procedures Act. Similarly, Ho Chunk Nation affords the Executive Director of the Department of Personnel the “functions and authority to implement, manage, enforce and promulgate i.e. create, establish, publish, make known and carry out policies within [the Personnel, Employment and Labor Code]” [See 6HCC§5 (4)]. However, Ho Chunk’s Personnel, Employment and Labor Code specifically sets items such as accrual and sick time rates [See 6HCC§5.18(a) (1) & 18 (b) (1) (a)]. The LOC may want to reach out to other tribes and get an idea on how they set up their employment laws and found out what is and what is not working for them prior to implementing this Law.

The LOC may want to add language within the Law that specifies who has the authority to close Tribal offices when circumstances (inclement weather, building malfunctions, safety issues) make it unsafe for employees to attend work.

300.7-4. *Unemployment Insurance.* The Nation shall comply with the State of Wisconsin's unemployment insurance program; the Nation's employees may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

300.8. Employee Responsibilities

300.8-1. *Harassment and Ensuring Equal Employment Opportunities.* All employees are expressly prohibited from committing sexual harassment of another individual or engaging in any conduct that deprives another of an equal employment opportunity.

300.8-2. *Anonymous Information.* Employees who receive anonymous information of any type shall maintain the confidentiality of the said information and forward a summary of the information to the Chief of the Oneida Police Department expressly noting that the information was provided anonymously.

300.8-3. *Employee Protection.* The Nation may not retaliate against any employee who reports an employee's, political appointee's and/or any official of the Nation's violation(s) of laws, policies or rules of the Nation and shall protect any employees who report such violations from retaliatory actions.

(a) HRD shall develop rules designed to protect employees reporting others' violations of the Nation's laws, policies or rules from any and all forms of retaliation.

300.9. Layoffs and Furloughs

300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to operate effectively and efficiently in varying economic conditions pursuant to the Nation's laws, policies and rules.

300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any circumstances be considered adverse employment actions.

300.9-3. The Nation's decision to layoff and/or furlough an employee is not subject to appeal.

300.10. Employee Discipline and Grievances

300.10-1. Corrective action rules may be used by employee supervisors to correct employees' unacceptable work performance and/or behavior.

300.10-2. Employees, excluding at-will employees, who disagree with a corrective action or allege that a supervisor's actions amount to an adverse employment action may contest the action using the rules developed by HRD, and based on the following available levels of review:

(a) *First Level of Review.* Any employee, excluding at-will employees, contesting the validity of a suspension or termination or allege that a supervisor's actions amount to an adverse employment action may contest the action to the Administrative Hearing Court.

(b) *Second Level of Review.* Any party, excluding at-will employees, that is dissatisfied with the Administrative Hearing Court's decision, may appeal the Administrative Hearing Court's decision to the Oneida Judiciary's Appellate Court.¹⁸

¹⁸ *Candice Skenandore* – written comments: What is the Administrative Hearing Court, who will have the authority to adopt it and will it be in place prior to implementing this Law?

Dale Wheelock: Good afternoon. I do have a written list of items but I only have five minutes so I will watch my time. And I do have some questions at the end. One of the things on this law changed, it does refer to administrative court quite often. And I'll get to that portion I have some questions regarding that. But, the issue of employee fairness; I was around here in the 80s in fact I wrote the red book that turned into the blue book back in 83'. So I'm familiar with the structure. I also won my case against the administration and political officers based on those appeal processes. And going through three judges on the Personnel Commission which found in my favor,

also five judges on the appellate court ruled in favor. And it's all based on the policies and procedures, actions that weren't taken by administration. That's one thing. Ah, it's long reading, thirty-one (31) page decision and quite apparent that there was intimidation and harassment involved on hired administration, you know against me. Ah, that's one thing, but I followed the process. The personnel policies and procedures were there; I followed them to the letter by documentation and won. So, my concern is will employees have that appeal process? Will they have the opportunity if they are intimidated, harassed by supervisors, or would they just go before the administrative court? The other piece is back then there's an issue of a union. If there are no policies or procedures for employees to air their grievances before an unbiased committee or personnel commission, you will have a union coming. And if you think you got problems now with getting things done, you know there are 3,000 employees. I just saw an article this morning, McDonald's, California wanted \$15 an hour. Guess who's petitioning and picketing right there? Unions. They want to get that population because they get union dues. So those things are coming. I want to bring back the point that employee have to have due process. Now if this administrative committee is appointed, who's going to appoint them? Is it going to be elected? Or is it going to be appointed by the Business Committee? Because right now we have community members involved. We have no bias one way or another in terms of administration winning or the employees winning, they just look at the case and the laws and the policies and procedures. Now, if they're appointed, is it going to be all administrative staff? A new function? So, let me get to the questions because I remember I only have 5 minutes. How many individuals will be sitting on this administrative court? Ok. The statement being I think you are going to be stepping backwards, you're going to be having, it goes back to the employee fairness. If they don't have a due process, perceived or otherwise, you're going to have issues. And those employees will not have an opportunity to grieve it because we're already going to go to court. It's restricted to administrative court. Their decision is final. They might be able to go on a technicality to the judicial court system, which will cost them money, attorney's fees and all the other stuff that goes with it. Is that fair to an employee who generally live pay check to pay check. They can't afford \$250 an hour attorney to present their case. And, from personal experience, things get dragged out on purpose. Things are delayed, that's where the timeframe comes in. If you are on time and get the stuff done the employees will have a better shot at winning their case.

Brandon Stevens: Ok, I'll answer those questions and you can submit the rest of those questions in with your testimony and when we review, when we take all the public meeting comments we will go to a work meeting and we will go through and actually answer all those questions that you have and that will be generated in a report that is available for anyone's view. So we'll answer any questions that you weren't able to get answered today or ask, but I'll answer the one about how many on the administrative court. The administrative court is going to be a function of the judiciary. So they're going to be elected judges that are assigned to the administrative function of the process. And so they'll have that autonomous portion separate from the Business Committee that they will oversee those cases. And we are developing administrative rules of procedure that make it a lot easier than the civil rules of procedure which are very cumbersome in the judicial court. We're making those administrative rules that will make it a lot easier for self-representation within the court on all levels.

Gina Buenrostro: Um, I think that it is unfair that employees will not be able to dispute their employment issues such as written warnings or adverse employment actions because the law does not provide that it only provides that they can appeal suspensions or terminations. And then, if they want to take it further, they have to go to the judiciary and it only will entail EEO violations. In my sixteen (16) years on this commission the amount of EEO violations we've had is one. So people like Dale who was fired and he had issues of hostile work environment intimidation harassment, he would never be able to appeal that, his case would never be heard, because that's not afforded or provided in the employment law.

Cliff Danforth: And as far as the grievance hearing, we are trained, the personnel commission has been trained for years to take on these grievance hearings and bring out the truth in all these matters of written warnings, suspensions, terminations, we deal with all of that all the time. People on the personnel commission know what they are doing, they are well educated and I think they do a great job. I don't know where if you go to an administrative court they could do and of a better job that we do. And they will probably cost more money than what it costs for us to do grievance hearings. So that's all mine.

Mike Debraska: Additionally with respect to the administrative rulemaking process or the court that you want to put in place, I don't understand how that's going to streamline anything. Because now you're taking that court and you're going to create another court and hopefully train individuals when we already have those trained individuals here, sitting here, doing it? That to me makes no sense, how does that streamline anything? It's like taking one pool of money and shifting it over to another place and saying ok we did a better job. How? Why? The lawyers also stood up here and said, two lawyers said, that by creating that administrative court you are duplicating processes. If

(c) *Compensatory Damages*. Should the Oneida Judiciary determine that there was an intentional deprivation of an equal employment opportunity, the Oneida Judiciary may award compensatory damages, including, but not limited to, attorney's or advocate's fees and court costs, as against the individual(s) found to have engaged in the intentional deprivation of an equal employment opportunity. Said compensatory damages may not be awarded against the Nation.¹⁹

300.10-3. The Administrative Hearing Court and the Oneida Judiciary may waive any and all court fees on behalf of employees seeking to appeal a corrective action or an action alleged to be an adverse employment action.²⁰

300.11. Applicability to Elected Officials

300.11-1. The provisions of Sections 300.6 - 300.8 apply to the Nation's elected officials that work full-time (30 hours or more per week) and receive salaries for their service.²¹

it's supposed to be streamlined, how is duplicating processes duplicating anything? Those are my comments, but there will be more forthcoming on the floor of GTC.

Brad Graham: So, my other thing that I want to ask, is how many boards, committees, commissions have hearing authority? Why is the personnel being excluded only and being taken out? When there's other boards with the hearing authorities. You's had a list of boards, committees and commissions, all of a sudden it's just the personnel commission you're gona get rid of? Don't sit there and shake your head no because you've got it listed right here. You don't have the other ones in here. You only have the personnel commission. You're showing prejudice against one body by doing this. You's guys have to take a long hard look at this law. And I mean a long hard look. Because you're going to get fought on this every inch of the way by the people. You're singling out one body and one body only. Thank you.

¹⁹ **Candice Skenandore** – written comments: The Law may hold a supervisor personally responsible for compensatory damages if it is found that there was an intentional deprivation of an equal employment opportunity [See 300.10-2 (c)]. This may deter qualified individuals from taking on a managerial role. In addition, the Law does not specify if the supervisor can appeal a decision that requires the supervisor to pay compensatory damages.

²⁰ **Candice Skenandore** – written comments: An employee can contest a suspension, termination or an adverse employment action to the Administrative Hearing Court and if not satisfied with the Administrative Hearing Court decision, can appeal to the Appellate Court; however, the Administrative Hearing Court and Judiciary are not required to waive any and all fees associated with the case(s) [See 300.10-2 (a) & 300.10-3]. This may subject the employee to court and filing costs which may present a problem if the employee is not receiving an income.

²¹ **Gina Buenrostro:** Ok, so, also, let's see here, I really, my personal opinion, is that the BC, because you've developed as a subcommittee, this employee handbook doesn't address yourself. How do you guys hold each other accountable if there's a hostile work environment? How do you hold yourself accountable for drug and alcohol testing, criminal backgrounds, things of that nature? I think if you're gona hold someone accountable, and develop new rule, laws, policies and procedures, do it for yourself first. Right now, with the direct reports you guys have, there's been issues of people can't get their personal and vacation time approved, people have to be disciplined and three of the four officers have to agree, it is so, I want to say confusing and unfair to those direct reports as it is, I don't know how your employee handbook's gona handle that. However, for each other, I know that you guys have to hold each other accountable and responsible, so why don't you, while you're showing us how you want to have all the employees follow these rules and policies, how bout starting with yourself? Address the attendance and punctuality issues, address discipline issues, address abuse of travel issues, things of that nature. Even your own interpersonal actions between each other, you guys sat up there yesterday and it was very unprofessional, very unprofessional, very hostile, and I apologize for my part because I was egged on by somebody, but you guys between each other, argue, cut each other off and it's very unprofessional. What are the rules and policies that you guys are developing for yourselves that's transparent so when you're telling an employee these are the new rules and policies but we have them for ourselves too and we're going to share that with you and be transparent about that.

Brad Graham: Then if you look at the last of this, it's got 300.11, applicability to elected officials. So, you're writing yourself into this law, correct?

296

297 **300.12. Violations**

298 300.12-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law
299 may be filed with the Oneida Judiciary.

300

301 End.

302

Legislative Reference Office

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

**Committee Members**

Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
Jennifer Webster, Councilmember
David P. Jordan, Councilmember

LEGISLATIVE OPERATING COMMITTEE

Public Meeting on the Employment
Business Committee Conference Room-2nd Floor
Norbert Hill Center
March 31, 2016 12:15 p.m.

PRESENT: Brandon Stevens, Jennifer Webster, Tehassi Hill, Rae Skenandore, Brad Graham, Bill Graham, Dale Wheelock, Brenda VandenLangenberg, Gina Buenrostro, Wendy Alvarez, Jeff Mears, Jen Falck, Clifford Danforth, Mike Debraska, Pearl Webster, Bridget Buckley, Beverly Somers, Taniquelle Thurner, Maureen Perkins, Douglass McIntyre and Krystal John.

Brandon Stevens: Alright, I will go ahead and call this public meeting to order. It is 12:16. The topic today is the Employment Law. With the Legislative Procedures Act the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal the Employment Law. This proposal is a new tribal law which will:

- Replace the current Personnel Policies and Procedures;
- Provide a fair, consistent and efficient structure to govern all employment matters;
- Streamline current processes to reduce cost, time and resources;
- Provide the framework for employment matters with the detailed content currently contained in the Personnel Policies and Procedures being delegated to HRD in the form of rules HRD shall create pursuant to the Administrative Rulemaking Law;
- Allow tribal entities the latitude to adjust certain employment practices to best fit their individual entities;
- Dissolve the Personnel Commission and redirect its currently assigned duties; the Oneida Judiciary will absorb the hearing body authority and the duties related to hiring process are transferred to HRD.

The public comment period, all interested persons may also submit written comments and/or provide transcripts and testimony may be provided for those that are here today. The time limit is five days from now so that would be April 7th. Yes, April 7th would be the time you can submit written testimony for the law and so following the Legislative Procedures Act I will impose a five minute time limit on all oral testimony. Moving forward and I guess go first on the list: Brenda Vandenlangdenberg, it says you are first up, no Dale, sorry, Dale is up first.

Dale Wheelock:

Good afternoon. I do have a written list of items but I only have five minutes so I will watch my time. And I do have some questions at the end. One of the things on this law changed, it does

refer to administrative court quite often. And I'll get to that portion I have some questions regarding that. But, the issue of employee fairness; I was around here in the 80s in fact I wrote the red book that turned into the blue book back in 83'. So I'm familiar with the structure. I also won my case against the administration and political officers based on those appeal processes. And going through three judges on the Personnel Commission which found in my favor, also five judges on the appellate court ruled in favor. And it's all based on the policies and procedures, actions that weren't taken by administration. That's one thing. Ah, it's long reading, thirty-one (31) page decision and quite apparent that there was intimidation and harassment involved on hired administration, you know against me. Ah, that's one thing, but I followed the process. The personnel policies and procedures were there; I followed them to the letter by documentation and won. So, my concern is will employees have that appeal process? Will they have the opportunity if they are intimidated, harassed by supervisors, or would they just go before the administrative court? Ah, one of the things I want to bring to light is the fact that back in the 80's the tribe was just growing, and I hear the arguments of we can do it faster. It takes too long to get the process through. Ok, on that point alone, there was 300 employees back in 83' and there was two people in HRD, myself and a secretary. We could get positions filled in thirty (30) days, forty-five (45) days if it was technical. I have no idea what it takes now but its months. I know the population has grown in employees, but look at the ratio. You've got 3,000 employees, how much do you have in HRD? About thirty some? So, the ratios are pretty close. I think the efficiency of the department is really the question of the issue. Not the other piece with the timeliness. The other piece is back then there's an issue of a union. If there are no policies or procedures for employees to air their grievances before an unbiased committee or personnel commission, you will have a union coming. And if you think you got problems now with getting things done, you know there are 3,000 employees. I just saw an article this morning, McDonald's, California wanted \$15 an hour. Guess who's petitioning and picketing right there? Unions. They want to get that population because they get union dues. So those things are coming. I want to bring back the point that employee have to have due process. Now if this administrative committee is appointed, who's going to appoint them? Is it going to be elected? Or is it going to be appointed by the Business Committee? Because right now we have community members involved. We have no bias one way or another in terms of administration winning or the employees winning, they just look at the case and the laws and the policies and procedures. Now, if they're appointed, is it going to be all administrative staff? A new function? So, let me get to the questions because I remember I only have 5 minutes. How many individuals will be sitting on this administrative court?

Brandon Stevens: Can you say that again?

Dale Wheelock: How many individuals will be sitting on this administrative court?

Brandon Stevens: You get your question out I'll answer them all, you have about a minute left.

Dale Wheelock: Ok. You just want me to finish the statement?

Brandon Stevens: Yeah.

Dale Wheelock: Ok. The statement being I think you are going to be stepping backwards, you're going to be having, it goes back to the employee fairness. If they don't have a due

process, perceived or otherwise, you're going to have issues. And those employees will not have an opportunity to grieve it because we're already going to go to court. It's restricted to administrative court. Their decision is final. They might be able to go on a technicality to the judicial court system, which will cost them money, attorney's fees and all the other stuff that goes with it. Is that fair to an employee who generally live pay check to pay check. They can't afford \$250 an hour attorney to present their case. And, from personal experience, things get dragged out on purpose. Things are delayed, that's where the timeframe comes in. If you are on time and get the stuff done the employees will have a better shot at winning their case.

Brandon Stevens: Ok, I'll answer those questions and you can submit the rest of those questions in with your testimony and when we review, when we take all the public meeting comments we will go to a work meeting and we will go through and actually answer all those questions that you have and that will be generated in a report that is available for anyone's view. So we'll answer any questions that you weren't able to get answered today or ask, but I'll answer the one about how many on the administrative court. The administrative court is going to be a function of the judiciary. So they're going to be elected judges that are assigned to the administrative function of the process. And so they'll have that autonomous portion separate from the Business Committee that they will oversee those cases. And we are developing administrative rules of procedure that make it a lot easier than the civil rules of procedure which are very cumbersome in the judicial court. We're making those administrative rules that will make it a lot easier for self-representation within the court on all levels.

Dale Wheelock: Ok, thank you.

Brandon Stevens: Thank's Dale. Alright. Gina.

Gina Buenrostro: Good afternoon. I didn't know I was next on the list, but I'll start. I think in this new law the issues of hostile work environments has never been resolved in the past, and some cases have went to HRD which they had recommendations regarding those hostile work environments and the interpersonal relationships with different departments and they still were never resolved. Um, I think that it is unfair that employees will not be able to dispute their employment issues such as written warnings or adverse employment actions because the law does not provide that it only provides that they can appeal suspensions or terminations. And then, if they want to take it further, they have to go to the judiciary and it only will entail EEO violations. In my sixteen (16) years on this commission the amount of EEO violations we've had is one. So people like Dale who was fired and he had issues of hostile work environment intimidation harassment, he would never be able to appeal that, his case would never be heard, because that's not afforded or provided in the employment law. Ok, so, the number one thing I wanted to address was that employee handbook and the law. And I stated this to you before publically and I'll state it again, I think it's unfair and I think there's a GTC directive that already states the BC not be involved with the day to day. You are writing yourselves in the law, you are the oversight of HRD, you have the authority now to be deeply involved in hiring practices. And whether they be unfair or not unfair, the perception is you control that now. Along with the employee handbook, you have the authority now as a Business Committee member to change those policies within that handbook. And if employees want to challenge it or dispute it, their only recourse is to go to the judiciary. The judiciary, not including the administrative court because that's not even developed, but an employee that would want to challenge something that

you guys changed in the employee handbook, they would have to follow the rules of civil procedure, the rules of federal evidence, and those types of things, that's very difficult for employees to navigate. I'm just going to say that out front. So, it looks like, the way you have it set up by writing yourself in the law, by creating it, writing it, making yourselves kinda like the boss figure that there's no equity. Ok, so, also, let's see here, I really, my personal opinion, is that the BC, because you've developed as a subcommittee, this employee handbook doesn't address yourself. How do you guys hold each other accountable if there's a hostile work environment? How do you hold yourself accountable for drug and alcohol testing, criminal backgrounds, things of that nature? I think if you're gonna hold someone accountable, and develop new rule, laws, policies and procedures, do it for yourself first. Right now, with the direct reports you guys have, there's been issues of people can't get their personal and vacation time approved, people have to be disciplined and three of the four officers have to agree, it is so, I want to say confusing and unfair to those direct reports as it is, I don't know how your employee handbook's gonna handle that. However, for each other, I know that you guys have to hold each other accountable and responsible, so why don't you, while you're showing us how you want to have all the employees follow these rules and policies, how bout starting with yourself? Address the attendance and punctuality issues, address discipline issues, address abuse of travel issues, things of that nature. Even your own interpersonal actions between each other, you guys sat up there yesterday and it was very unprofessional, very unprofessional, very hostile, and I apologize for my part because I was egged on by somebody, but you guys between each other, argue, cut each other off and it's very unprofessional. What are the rules and policies that you guys are developing for yourselves that's transparent so when you're telling an employee these are the new rules and policies but we have them for ourselves too and we're going to share that with you and be transparent about that. The direct report issues, where's that in the law and if they have issues of intimidation and harassment, things of that nature, that don't fall under EEO violations, where is that addressed? How do they appeal that? Where do they get protection? How can they dispute those kind of employee issues? Another issue is the cost savings. Where's the dollar amount? I would like to see a dollar amount on the cost savings for this. Also, I guess I have an issue with the work group, the draft team, because that entailed all of HRD. But HRD has a vested interest in how this works because they will be the ones that will be overseeing everything, they will have that freedom to do what they want to do. The issue I have with this law, I don't think it's going to hold them accountable, because they haven't been accountable yet. The compensation scale hasn't been updated in over eight (8) years. Who is being held accountable for that right now as we speak, eight (8) years. We have a director that sits in that position and she hasn't updated it. Can I sign up again? Because I have more comments.

Brandon Stevens: You have one chance. Thank you. You can submit written comments until April 7th and we will address all those through the work meeting.

Gina Buenrostro: Ok.

Brandon Stevens: Alright. Next is Jeff, that's an N, that's a no? It looks like an M, sorry. Maybe? Um...Cliff.

Clifford Danforth: I just have a few comments. I agree with Dale. And what about, I wanted to ask about the hiring process. You know, you want to speed it up, but speed in haste makes

waste. What we go through as the personnel commission, and we score these people and pick out the best qualified person. And I think that's a big deal, to pick out the right person in the hiring process, not just go right through and have HRD pick whoever they want or supervisors pick their friends or whatever nepotism, conflict of interest is all involved here. And as far as the grievance hearing, we are trained, the personnel commission has been trained for years to take on these grievance hearings and bring out the truth in all these matters of written warnings, suspensions, terminations, we deal with all of that all the time. People on the personnel commission know what they are doing, they are well educated and I think they do a great job. I don't know where if you go to an administrative court they could do and of a better job that we do. And they will probably cost more money than what it costs for us to do grievance hearings. So that's all mine.

Brandon Stevens: Let's see. Alright that's the last I have who wanted to provide oral comments, and so I guess...oh, do you want to put your name on the list?

Mike Debraska: You can, you can just throw me on there.

Brandon Stevens: Okay.

Mike Debraska: All set?

Brandon Stevens: Okay, and just formally acknowledging that Mike has allowed me to add him on the list.

Mike Debraska: Thank you. While I'm not an employee of this tribe, I do want to speak to this because I've been doing advocacy work for almost twenty five (25) years with respect to GTC. In the last three (3) years I haven't seen a piece of legislation such as this. I am completely and utterly dumbfounded. What this attempts to do is to take all the power and policy and procedures away from General Tribal Council and stick it solely in the hands of the Business Committee and HRD. And what I do is I look at it and say at line 157 it says HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices. Hmm, interesting. Okay I didn't know it was up to HRD to uphold sovereignty but okay. Next at line 159 it talks about the Business Committee entering into a Memorandum of Agreement. It's always been my understanding that for MOU's to take place it's usually is with an elected board. Are you now saying that HRD is going to go to an elected position? Because that's typically how that happens. And I don't believe it should be happening because less and less transparency, we already have very little transparency coming out of HRD as well as even with the executive session of Business Committee. So I look at that and I say that should not be happening period plain and simple. Rest assured I will be acknowledging this if it comes to the floor of General Tribal Council. I will be speaking out and going into greater detail on this, but again, I do agree with several of the statements that have been made previously by individuals; Dale, as well as Cliff and several others and Gina with respect to the hiring practices that are going on. Additionally with respect to the administrative rulemaking process or the court that you want to put in place, I don't understand how that's going to streamline anything. Because now you're taking that court and you're going to create another court and hopefully train individuals when we already have those trained individuals here, sitting here, doing it? That to me makes no sense, how does that streamline anything? It's like taking one pool of money and

shifting it over to another place and saying ok we did a better job. How? Why? The lawyers also stood up here and said, two lawyers said, that by creating that administrative court you are duplicating processes. If it's supposed to be streamlined, how is duplicating processes duplicating anything? Those are my comments, but there will be more forthcoming on the floor of GTC.

Brandon Stevens: Would you like to be added?

Brad Graham: yes.

Brandon Stevens: Ok. Go ahead.

Brad Graham: Alright, one of my first comments is line 40, 300.2-6, states this law is adopted under the authority of the constitution of the Oneida Nation. Show me, within the constitution, where it states. That's my first one. Then if you look at the last of this, it's got 300.11, applicability to elected officials. So, you're writing yourself into this law, correct? So, my other thing that I want to ask, is how many boards, committees, commissions have hearing authority? Why is the personnel being excluded only and being taken out? When there's other boards with the hearing authorities. You's had a list of boards, committees and commissions, all of a sudden it's just the personnel commission you're gona get rid of? Don't sit there and shake your head no because you've got it listed right here. You don't have the other ones in here. You only have the personnel commission. You're showing prejudice against one body by doing this. You's guys have to take a long hard look at this law. And I mean a long hard look. Because you're going to get fought on this every inch of the way by the people. You're singling out one body and one body only. Thank you.

Brandon Stevens: Alright, anyone else want to be added to the list for public comment? Ok, hearing none I will close the public meeting and remind that anyone that wants to submit written testimony may do so by April 7th, at 4:30 on April 7th. Thank you, and I guess the next steps are we take the public meeting comments and we'll go through those, we'll go through the public comments and if there's suggestions on changes this is what we do we go through the changes and see if there's suggested changes to the law, then we look at the direction of incorporating them or not, then we'll bring those back to the LOC and they will decide whether they are in agreement with and then we'll institute the changes as a result of the public meeting. And then once that's packaged and if it's ok, then we get a fiscal analysis and a financial analysis then we forward that too. Yeah and if any substantial changes, if there's any substantial changes within the direction of the public meeting comments, then we may ask for another public meeting for more public comment based on those changes; with the inclusion of those changes and so if not, then that will be packaged up to the Business Committee for their approval. And since this is a General Tribal Council law, this will go to BC and they will decide when they will put it on the next General Tribal Council meeting for General Tribal Council consideration. So, that's the process and we'll see how this goes and thank you for coming.

Close: 12:41

-End of meeting-

Krystal John

From: LOC
Sent: Friday, April 01, 2016 2:13 PM
To: Krystal John
Subject: FW: Employment Law Written Comments

From: Jennifer A. Falck
Sent: Friday, April 01, 2016 1:58 PM
To: LOC
Subject: Employment Law Written Comments

Good Afternoon-
I'd like to submit these comments for the Employment Law.

I attended one the presentation meetings a few weeks ago & the public hearing on March 31, 2016.

I am a 19 year employee with experience in both applying for work here, and hiring staff. I am in support of the new law. It is not perfect, but I think it will at least get our HR processes into the 21st century.

Thank you for all your hard work and dedication to the effort.

Jennifer Falck, RS, MPA
Program Evaluation Analyst
Oneida Environmental, Health, and Safety Division
Oneida Tribe of Indians of Wisconsin

Krystal John

From: Rhiannon R. Metoxen
Sent: Wednesday, April 06, 2016 10:15 AM
To: Krystal John
Cc: Debra J. Danforth; Linda R. Jenkins
Subject: School Board Memo & resolution RE: Employment Law
Attachments: School Board.pdf

Please see the attached comments/memo and resolution sent on behalf of the Oneida Nation School Board.

Yaw^ko,

RC

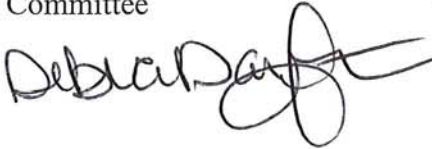
ONEIDA NATION SCHOOL SYSTEM

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FAX (920) 869-1684



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Oneida, WI 54155
(920) 869-4308

TO: Oneida Legislative Operating Committee

FROM: Oneida Nation School Board 

DATE: March 31, 2016

RE: Proposed Oneida Employment Law & Recommendations

The Oneida Nation School Board requested, from its attorney, a legal review of the new Employment Law and Employee Handbook to determine its effect, if any, on the autonomous operation of the Oneida Nation School System under the 1988 Memorandum of Agreement between the Board and the Business Committee. Additionally, the Board requested a review of the new Administrative Rulemaking Law. For the recommendation below, the following sources of information were reviewed:

Proposed Oneida Employment Law, Employee Handbook, & Legislative Reference Office analysis
Oneida Administrative Rulemaking Law, Ch. 17; Administrative Procedures Act, Ch. 1; and
Legislative Procedure Act, Ch. 16
GTC Resolutions: #1-29-77-A; #1-8-83; #7-9-83; #3-21-88;
1988 Memorandum of Agreement between the Board and the Oneida Business Committee

The School Board proposes a revision to the Employment Law, which is intended to retain the existing General Tribal Council resolutions and the MOA with the Business Committee, in particular, the provision of broad autonomous authority for the Board, as approved by the General Tribal Council.

Purpose of the proposed Employment Law:

300.1-1. It is the purpose of this Law to provide a fair, consistent and efficient structure to govern all employment matters. (Emphasis added.)

What the proposed Employment Law repeals and supersedes, in relevant part:

The proposed Employment Law repeals the Oneida Tribal Management System and the Tribal Personnel Selection Committee

300.2-4. (a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985;

Relevant sections of the 1988 Memorandum of Agreement:

1. That all hiring, evaluations, promotions, suspensions/dismissals of all personnel employed in the operation of the Oneida Tribal School is to be performed by the BOARD: that hiring, promotions, suspensions/dismissals shall be conducted pursuant to the Oneida Tribal Management System wherein three (3) member [sic] of the BOARD and one (1) Tribal School Administrator, shall sit with one (1) member of the Oneida Tribal Personnel Selection Committee and the EEO Officer,
 - A. Where the Oneida Tribal Management System refers to Personnel Administrator it shall be revised by the COMMITTEE to provide for Consultation with the Tribal School Administrator and Chairman of the BOARD.
2. Grievances of employees of the Oneida Tribal School are to be processed by two (2) members of the Oneida Personnel Selection Committee, three (3) BOARD members and the EEO Officer as per grievance procedures outlined in the Oneida Tribal Management System.

Recommendation

To address the new Employment Law, including the repeal of the Oneida Tribal Management System and the Oneida Personnel Selection Committee, and to maintain the autonomy of the School Board, we recommend for review and adoption, the following revision to the Employment Law (in red text):

Request: Revision at section 300.3 Definitions, 300.3-1(g):

“Entity” means any of the Nation’s divisions having employees and may include, but is not limited to, departments, areas, programs, enterprises, board, committees, commissions and the like; **except that the Oneida Nation School Board and related department shall be exempt as an Entity as provided at section 300.4-4.**

Request: Insert new subsection at section at 300.4:

300.4-4. Oneida Nation School Board. Pursuant to Section 1(h) of Article IV of the Constitution of the Oneida Tribe of Indians of Wisconsin empowering the General Tribal Council to delegate certain powers to subordinate organizations of the Tribe, the General Tribal Council, by GTC Resolution #1-29-77-A, established the Oneida Education Board (also known as the Oneida Tribal School Board or the Oneida Nation School Board) (“Board”) to accept responsibility over Oneida education programs. Pursuant to GTC Resolution #1-8-83, the General Tribal Council directed that “an agreement be reached between the Oneida Business Committee and the Oneida Tribal School Board regarding the autonomous administration of the Oneida Tribal School which would provide for full involvement of the Oneida Tribal School Board in all personnel matters related to all personnel employed in the operation of the Oneida Tribal School.” A “Memorandum of Agreement” (MOA) between the Board and the Oneida Business Committee was adopted by GTC Resolution #3-21-88. By this MOA, the General Tribal Council provided the Board authority over employees working within the Oneida Tribal School System.

Now, therefore, the Board shall continue its autonomous administration of the Oneida education programs, including the Tribal School System, and is exempt from the Oneida Employment Law and related administrative rule-making, as is necessary for the operation of the Oneida education programs. The Board shall amend the MOA personnel hiring, evaluations, promotions, suspensions/dismissals, and grievance process, consistent with personnel decisions based upon sound educational administration and accounting for the repeal of the Oneida Tribal Management System and dissolution of the Oneida Personnel Commission (formerly known as the Oneida Tribal Personnel Selection Committee) herein, which amendment shall not require further ratification by the Oneida General Tribal Council. The MOA shall remain in effect as amended. The Board shall have administrative rule-making authority under Oneida Law, Chapter 17, and the Oneida General Tribal Council shall retain all authority to adopt or deny a proposed Education Law and related Administrative rules.

ONEIDA NATION SCHOOL SYSTEM

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Oneida Nation High School
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 Oneida, WI 54155
 Phone: (920) 869-4308
 FAX: (920) 869-4045

Resolution # 4-4-16

Oneida Education Board Exemption as an Entity Under the New Employment Law, Authority to Amend and Retain 1988 Memorandum of Agreement (MOA), and Recognition as Entity with Rulemaking Authority

- WHEREAS**, in 1977, the Oneida General Tribal Council (GTC), pursuant to its Constitutional authority and Resolution No. 1-29-77-A, created the Oneida Education Board, now commonly known as the Oneida Tribal School Board or the Oneida Nation School Board, to coordinate existing and future education programs of the Tribe; and
- WHEREAS**, the Oneida Nation School Board is charged by the GTC, pursuant to Resolution No. 1-29-77-A, with short-term and long-term planning for the education of the Oneida Community, and for the development of general policies consistent with the Constitution and By-Laws of the Oneida Tribe of Indians of Wisconsin, and other resolutions of the GTC; and
- WHEREAS**, the GTC directed in 1983 that an agreement be reached between the Oneida Business Committee and the Oneida Tribal School Board regarding the autonomous administration of the Oneida Tribal School which would provide for full involvement of the Oneida Tribal School Board in all personnel matters based on sound educational administration relating to all personnel employed in the operation of the Oneida Tribal School; and
- WHEREAS**, the Oneida Business Committee and the Oneida Tribal School Board did execute a Memorandum of Agreement (MOA), adopted by GTC Resolution #3-21-88, that provided the School Board with the authority over employees working within the Oneida Tribal School System; and
- WHEREAS**, a new Oneida Nation Employment Law, Ch. 300, is proposed that provides that the Oneida Nation Human Resources Department will have authority over all employment matters and entities, including boards, and repeals the Oneida Tribal Management System and Personnel Commission, designated in the MOA as assisting with the Oneida Nation School System's personnel hiring, evaluations, promotions, suspensions/dismissal, and grievance process; and
- WHEREAS**, the broad authority of the proposed new Employment Law, with the provision that the new Law is controlling when it conflicts with another Law, may result in the repeal of the broad authority the Oneida Nation School Board has over all personnel matters under the MOA; and

WHEREAS, the Oneida Nation School Board finds that it is in the best interest of the Oneida Nation, tribal members, and their children that the Oneida Nation School Board retain its autonomous operation of the education programs based on sound educational administration as provided in the MOA.

NOW THEREFORE BE IT RESOLVED, that the Oneida Nation School Board, at a valid meeting with a quorum present, does hereby authorize and approve the revision to the Employment Law at Section 300.3-1(g), Definitions, and 300.4-4, Human Resource Department, as written in the attached Memorandum to the Oneida Legislative Operating Committee from the Oneida Nation School Board (Memorandum); and

NOW THEREFORE BE IT FURTHER RESOLVED, that the members of the Oneida Nation School Board direct its Chairperson to submit the attached Memorandum as its Written Comment on the proposed Employment Law to the Legislative Operating Committee no later than April 7, 2016, in support of this Resolution and the revisions to the proposed new Employment Law; and

BE IT FINALLY RESOLVED, that the Oneida Nation School Board does hereby authorize and approve its Chairperson, or designee in her absence, to take all actions as may be necessary and appropriate to carry out the terms, conditions, and intent of this Resolution.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Nation School Board, hereby certify that the Oneida Nation School Board is composed of 9 members of whom 5 members constitute a quorum; 7 members were present at a meeting duly called, noticed, and held on the 4th day of April 2016; that the forgoing resolution was duly adopted at such meeting by a vote of 5 members for; 0 members against; and 2 members not voting; and that said resolution has not been rescinded or amended in any way.

Rhiannon "RC" Metoxen, Secretary
Oneida Nation School Board

Krystal John

From: LOC
Sent: Thursday, April 07, 2016 3:59 PM
To: Krystal John
Subject: FW: Employment Law Public Meeting Comments
Attachments: Employment Law.docx

From: Candice E. Skenandore
Sent: Thursday, April 07, 2016 2:17 PM
To: LOC
Subject: Employment Law Public Meeting Comments

Good Afternoon,
Attached are my comments to Draft 17 of the Employment Law. Please let me know if you have any questions.

Candice E. Skenandore

Child Support Agency
Paralegal

“Ensuring Our Children’s Well-Being Through Emotional and Financial Support”



NOTICE: This message is intended for the use of the addressee and may contain confidential information. If you are not the intended recipient, you are hereby notified that any copying or dissemination of this message is prohibited. If you have received this message in error, please notify by reply email or by telephone and immediately delete the message and all of its attachments.

TO: Legislative Operating Committee
FROM: Candice E. Skenandore
DATE: April 6, 2016
RE: Employment Law Public Comments (Draft 17)

The following comments are in regards to the proposed Employment Law (Law). These comments stem from Draft 17 which was presented at a public meeting held on March 31, 2016.

The comments are as follows:

- The Law does not specify whether or not a transfer employee is considered an “at-will employee” or an “employee”. The LOC may want to consider adding “transfer employee” to the “employee” definition [*See 300.3-1 (e)*].
- The Law provides the Human Resources Department (HRD) the authority to create rules pursuant to the Administrative Rulemaking Law. It is my understanding that the Employee Handbook is where these rules will be housed; however, the Law does not reference an Employee Handbook. In order for employees to have a better understanding on where to find these rules, the LOC may want to consider adding language in section 300.4-1 referencing the Employee Handbook.
- Section 300.5-1 states that “. . . the Nation shall follow the preferences outlines in Section 300.5-3 and such preferences may not be considered a violation of this Law” however, section 300.5-3 refers to education and not preferences. This section should reference 300.5-2 which alludes to Oneida and Indian Preference. In addition, line 179, it should read 300.5-2 (a) not 300.5-3 (a).
- Section 300.6-3 states that the Nation may provide insurances and/or a retirement plan. Who will decide if employees will have insurance and benefits and under what circumstances will the insurance and/or retirement benefits be taken away? Is the Nation required to provide insurance under the Affordable Care Act? The LOC may want to consider amending this section to state that “the Nation shall offer insurances and a retirement plan.”
- The current Bluebook specifically sets out the accrual rates; however, the Law provides HRD the authority, among other things, to establish the rates of accrual and the process for requesting paid time off in accordance with the Administrative Rulemaking Law. This will give HRD the authority to change the accrual rates without having to go through the process set forth in the Legislative Procedures Act. Similarly, Ho Chunk Nation affords the Executive Director of the Department of Personnel the “functions and authority to implement, manage, enforce and promulgate i.e. create, establish, publish, make known and carry out policies within [the Personnel, Employment and Labor Code]” [*See 6HCC§5 (4)*]. However, Ho Chunk’s Personnel, Employment and Labor Code specifically sets items such as accrual and sick time rates [*See 6HCC§5.18(a) (1) & 18 (b) (1) (a)*]. The LOC may want to reach out to other tribes and get an idea on how they set up their employment laws and found out what is and what is not working for them prior to implementing this Law.
- Some Tribal policies that pertain to employment matters are being repealed (Employee Protection Policy, Parent Leave Policy) and other policies are not (Furlough Policy, Layoff Policy). What factors were considered when deciding whether or not to repeal an employment policy?

- An employee can contest a suspension, termination or an adverse employment action to the Administrative Hearing Court and if not satisfied with the Administrative Hearing Court decision, can appeal to the Appellate Court; however, the Administrative Hearing Court and Judiciary are not required to waive any and all fees associated with the case(s) [See 300.10-2 (a) & 300.10-3]. This may subject the employee to court and filing costs which may present a problem if the employee is not receiving an income.
- What is the Administrative Hearing Court, who will have the authority to adopt it and will it be in place prior to implementing this Law?
- The Law may hold a supervisor personally responsible for compensatory damages if it is found that there was an intentional deprivation of an equal employment opportunity [See 300.10-2 (c)]. This may deter qualified individuals from taking on a managerial role. In addition, the Law does not specify if the supervisor can appeal a decision that requires the supervisor to pay compensatory damages.
- The LOC may want to add language within the Law that specifies who has the authority to close Tribal offices when circumstances (inclement weather, building malfunctions, safety issues) make it unsafe for employees to attend work.

Please let me know if you have any questions.



Legislative Operating Committee

May 4, 2016

Eviction and Termination

Submission Date: January 6, 2016

☐ Public Meeting:
☐ Emergency Enacted:

LOC Sponsor: Brandon Stevens

Summary: *Is a new law that will create a streamlined eviction and termination process which provides the rights and responsibilities of all parties involved and applies to leases held pursuant to the Leasing law and rental agreements held pursuant to the Landlord-Tenant law.*

1/6/16 LOC: Motion by Fawn Billie to add the Eviction law to the Active Files List with Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

3/2/16 LOC: Motion by Jennifer Webster to accept the Eviction Law status update memorandum and defer to the sponsor to bring this item back when ready; seconded by Tehassi Hill. Motion carried unanimously.

4/19/16 LOC: Work meeting held. Attendees include: Diane Wilson, Michelle Hill, Corrine Robelia-Zhuckkahos, Scott Denny, Rebecca Webster and Krystal John.

4/26/16 LOC: Work meeting held. Attendees include: Brandon Stevens, Diane Wilson, Corrine Robelia-Zhuckkahos, Scott Denny, Rebecca Webster and Krystal John.

Next Steps:

- Accept the draft of the Eviction and Termination law and defer to the Legislative Reference Office for a legislative analysis.

Chapter 62
Eviction and Termination
Shakonato·líhe? Aolihwá'ke
they shoo them away – issues

63.1.	Purpose and Policy.	63.6.	Rights and Duties of Landlords and Tenants.
63.2.	Adoption, Amendment, Repeal.	63.8.	Sex Offender Registry.
63.3.	Definitions.	63.9.	Termination of Tenancy at Death of Tenant.
63.4.	Rental Programs.	63.10.	Appeals.
63.5.	Rental Agreement Documents.		

62.1. Purpose and Policy.

62.1-1. *Purpose.* The purpose of this law is to provide consistent procedures for terminating a residential contract and/or evicting an occupant which affords the applicant due process and protects all parties involved.

62.1-2. *Policy.* Is it the Nation's policy to provide fair termination and eviction processes that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

62.2. Adoption, Amendment, Repeal.

62.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

62.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

62.2-3. 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.

62.2-4. 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.

62.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

62.3. Definitions.

62.3-1. 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) "Contract" means either a lease document pursuant to the Leasing law or a rental agreement pursuant to the Landlord-Tenant law.

(b) "Eviction" means to expel an occupant from the premises.

(c) "Nation" means the Oneida Nation.

(d) "Nuisance" means an occupant's interference with another occupant's use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, noise violations, execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

(e) “Occupant” means the person granted the right to use or occupy a premises pursuant to a lease or rental agreement entered into in accordance with the Leasing law or Landlord Tenant Law respectively.

(f) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or as a landlord as defined in the Landlord Tenant law.

(g) “Premises” means the property covered by a contract, including not only the real property and fixtures, but also any personal property furnished by the owner pursuant to a contract.

(h) “Rent” means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the property for the period of time set by the contract.

(i) “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.

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

(k) “Security Deposit” means a payment made to the owner by the occupant to ensure that payments will be made and other responsibilities of the contract performed.

(l) “Waste” means physical damage or deterioration caused to the premises, whether intentional or negligent.

62.4. Comprehensive Housing Division Administrative Rulemaking Authority

62.4-1. The Comprehensive Housing Division may create rules to further govern the processes contained in this law.

62.5. Evictions.

62.5-1. *Causes for Eviction.* The owner may terminate a contract of an offending occupant if the occupant:

- (a) Violates the terms of the contract;
- (b) Is alleged to have violated any applicable law or rule; and/or
- (c) Is alleged to have committed one or more nuisance activities.

62.5-2. *Domestic Abuse Defense to Eviction.* An occupant has a valid defense to eviction if he or she alleges that if not for the alleged domestic abuse, which is noticed to the owner with any of the following documentation, there would not be cause for eviction under section 62.5-1:

- (a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation protecting the tenant from a co-tenant;
- (b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation 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.

62.5-3. *Notice.* This section governs the amount of notice required to evict as well as the manner and form of notice required. When an owner provides notice in compliance with these requirements, the occupant is not entitled to possession or use of the premises after the date of the termination provided in the notice.

(a) *Eviction for Failure to Pay Rents.* If an occupant fails to pay any installment of rent when due, the occupant's contract is terminated if the owner gives the occupant notice requiring the tenant to pay rent or vacate on or before a date at least thirty (30) calendar days after the giving of the notice and if the occupant fails to pay accordingly. If an occupant has been given such a notice and has paid the rent on or before the specified date, or been permitted by the owner to remain in possession contrary to such notice, and if within one (1) year of any prior default in payment of rent for which notice was given the tenant fails to pay a subsequent installment of rent on time, the occupant's contract is terminated if the owner, while the occupant is in default in payment of rent, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(b) *Eviction for Waste or Contract Breach other than Rent Payment.* If an occupant commits waste or breaches any covenant or condition of the occupant's contract, other than for payment of rent, the occupant's tenancy is terminated if the owner gives the occupant a notice requiring the occupant to remedy the default or vacate the premises on or before a date at least thirty (30) calendar days after the giving of the notice, and if the occupant fails to comply with such notice. An occupant is deemed to be complying with the notice if promptly upon receipt of such notice the occupant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the owner and the occupant makes a bona fide and reasonable offer to pay the owner all damages for the occupant's breach. If within one (1) year from the giving of any such notice, the occupant again commits waste or breaches the same or any other covenant or condition of the occupant's contract, other than for payment of rent, the occupant's contract is terminated if the owner, prior to the occupant's remedying the waste or breach, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(c) *Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.* The owner may terminate an occupant's contract based on an alleged violation of an applicable law or rule or if the occupant commits a nuisance act.

(1) In order to terminate based on this section, the owner must have received notice, which may be from, but is not limited to, another occupant, law enforcement agency or a local government's office of the district attorney, which reports:

(A) a violation of an applicable law or rule on behalf of the occupant or in the occupant's unit, or

(B) a nuisance that exists in that occupant's unit or was caused by that occupant on the owner's property. In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant to vacate on or before a date at least five (5) calendar days after the giving of the notice.

(2) The occupant may contest a termination based on a violation of applicable law or rule or nuisance by filing a complaint challenging the basis of the eviction with the Judiciary.

(3) If the occupant contests the termination prior to the termination date provided in the notice, the eviction is stayed and the contract may not be terminated without proof to the Judiciary by the owner by the greater preponderance of the credible evidence of the allegation that a violation of law and/or rule and/or nuisance exists in that occupant's unit or was caused by that occupant.

(d) *Content, Form and Manner of Giving Notice.*

(1) *Notice Content.* Notices required to be provided under this law shall include the following:

(A) The violation of law and/or rule, committing of nuisance and/or breach of the contract, with citations to the applicable law, rule and/or contract clause;

(B) If the notice is pursuant to section 62.5-3(a), the current delinquent balance due;

(C) If the notice is pursuant to section 62.5-3(a) or (b):

(i) A statement that the occupant has a thirty (30) day period to cure;

(ii) The date the period to cure expires and the termination becomes effective in the event occupant does not cure; and

(iii) Potential consequences for failure to cure, which may include, but are not limited to eviction and the assessment of damages against the occupant.

(D) If notice is pursuant to section 62.5-3(c), a statement that the occupant may request a hearing with the Oneida Judiciary prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Judiciary;

(E) The contact information for the Comprehensive Housing Division staff available to answer questions and/or hear concerns of the occupant related to the notice.

(2) *Notice to Individuals.* When providing notice to an occupant that is an individual, the owner shall use one of the following methods:

(A) Giving a copy of the notice personally to the occupant or by leaving a copy at the occupant's usual place of abode in the presence of some competent member of the occupant's family at least fourteen (14) years of age, who is informed of the contents of the notice, provided that the owner

may request that the notice be personally served to the occupant by the Oneida Police Department;

(B) Leaving a copy with any competent person apparently in charge of the premises or occupying the premises or a part thereof, and by mailing a copy by first class mail to the occupant's last-known address;

(C) If notice cannot be given under subsection (A) or (B) with reasonable diligence, by affixing a copy of the notice on an entrance to the rented premises where it can be conveniently read and by mailing a copy by first class mail to the occupant's last-known address;

(D) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;

(E) By serving the occupant as prescribed in the Rules of Civil Procedure for the service of a summons.

(2) *Notice to Corporations or Partnerships.* If notice is to be given to a corporation notice may be given by any method provided in subsection (1) except that notice under subsection (1)(A) may be given only to an officer, director, registered agent or managing agent, or left with an employee in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in subsection (1) except that notice under subsection (1)(A) may be given only to a general partner or managing agent of the partnership, or left with an employee in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least fourteen (14) years of age, who is informed of the contents of the notice.

(3) *Notice to One (1) of Several Parties.* If there are two (2) or more co-occupants of the same premises, notice given to one (1) is deemed to be given to the others also.

(4) *Effect of Actual Receipt of Notice.* If notice is not properly given by one (1) of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the owner alleging actual receipt to prove the fact by clear and convincing evidence.

(e) *Contrary Provision in the Contract.* Except for leases entered into pursuant to the Leasing law, any termination provisions in a contract that are contrary to those provided in this law are invalid.

62.6. Failure to Vacate Following Notice of Eviction or Contract Expiration.

62.6-1. *Changing of Locks and Removal of Occupant.* If an occupant fails to vacate the premises following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner shall secure and take possession of the premises once the timeframe in the notice of termination has expired.

(a) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida Police Officer be on the scene while the locks are being changed.

(b) In the event the occupant has left personal property in the home, the occupant may retrieve the said personal property by contacting the Comprehensive Housing Department staff listed on the notice of termination. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days, where a business day is Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

(1) The Comprehensive Housing Division shall keep a written log of the date and the work time the Comprehensive Housing Division's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the premises after the expiration of the timeframe provided in the notice of termination.

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

62.6-2. *Effect of Failure to Vacate.* A failure to vacate following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract does not in any circumstances, regardless of acceptance of rent payments, create a periodic tenancy. For the purposes of this section, a periodic tenancy means when an occupant uses/occupies a premises without an effective and valid contract by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

62.6-3. *Damages for Failure to Vacate.* If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property maintenance and repairs. Nothing in this section prevents the owner from seeking and recovering any other damages to which the owner may be entitled.

62.7. Withholding From and Return of Security Deposits.

62.7-1. *Applicability.* This section applies only to contracts that require a security deposit.

62.7-2. *Standard Withholding Provisions.* When the owner returns a security deposit to an occupant after the occupant vacates the premises, the owner may withhold from the full amount of the security deposit only amounts reasonably necessary to pay for any of the following:

- (a) Occupant damage, waste, or neglect of the premises;
- (b) Unpaid rent for which the occupant is legally responsible;
- (c) Payment that the tenant owes under the contract for utility service provided by the owner but not included in the rent;

(d) Payment that the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

(e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit of government, to the extent that the owner becomes liable for the occupant's nonpayment; and

(f) Any other payment for a reason provided in a nonstandard provision document described in 62.7-3.

62.7-3. *Nonstandard Withholding Provisions.* A contract may include one or more nonstandard withholding provisions that authorize the owner to withhold amounts from the occupant's security deposit for reasons not specified in 62.7-2(a) through (f). The Owner shall provide any such nonstandard withholding provisions to the occupant in a separate written document entitled "Nonstandard Withholding Provisions." The owner shall specifically identify each nonstandard withholding provision with the occupant before the occupant enters into a contract with the owner. If the occupant signs his or her name, or writes his or her initials, by a nonstandard withholding provision, it is rebuttably presumed that the owner has specifically identified the nonstandard withholding provision with the occupant and that the occupant has agreed to it.

62.7-4. *Normal Wear and Tear.* This section does not authorize the owner to withhold any amount from a security deposit for normal wear and tear, or for other damages or losses for which the occupant cannot reasonably be held responsible under the terms of the contract, and applicable laws and/or rules of the Nation.

62.7-5. *Timing for Return of the Security Deposit.* The owner shall deliver or mail to an occupant the full amount of any security deposit paid by the occupant, less any amounts that may be withheld under subsections 62.7-2 and 62.7-3, within thirty (30) calendar days after any of the following:

(a) If the occupant vacates the premises on the original termination date of the contract, the date on which the contract terminates.

(b) If the occupant vacates the premises or is evicted before the original termination date of the contract, the date on which the occupant's rental agreement terminates or, if the owner re-rents the premises before the occupant's rental agreement terminates, the date on which the new occupant takes occupancy/use of the premises.

(c) If the occupant vacates the premises untimely or is removed from the premises pursuant to 62.6-1, the date on which the owner learns that the occupant has vacated the premises or has been removed from the premises under section 62.6-1.

62.8. Appeals.

62.8-1. Parties may appeal actions taken pursuant to this law and any associated rules to the Oneida Judiciary.

End.

Adopted – BC



Legislative Operating Committee

May 5, 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.

4/20/2016 LOC: Motion by Fawn Billie to accept the Leasing Law Public Meeting packet and forward to a Public Meeting to be held on May 19, 2016; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Accept the Leasing law public meeting packet with the updated draft and legislative analysis based on the latest comments received by the BIA and reaffirm the public meeting scheduled for the Leasing law on May 19, 2016 at 12:15 p.m.

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) “Guardian” means one who has legal authority and duty, as appointed by a court of competent jurisdiction, to care for another’s person or property because of the other’s infancy, incapacity or disability.

~~(g)~~ (g) “Improvements” means buildings, other structures, and associated infrastructure attached to the leased premises.

(h) “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.

~~(i)~~ (i) “Land Management” means the Division of Land Management or other entity responsible for entering into leases of tribal land.

~~(j)~~ (j) “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.

~~(k)~~ (k) “Lease Document” means a lease, lease amendment, assignment, sublease or leasehold mortgage.

~~(l)~~ (l) “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.

~~(m)~~ (m) “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.

~~(n)~~ (n) “Lessor” means the Nation, in its capacity as the legal, beneficial and/or equitable owner of tribal land subject to a lease.

~~(o) “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.~~

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

~~(q)~~ (p) “Performance Bond” means a bond given to ensure the timely performance of a lease.

~~(r)~~ (q) “Rule” means ~~the~~a set of requirements ~~developed to implement this law, including fee schedules, enacted jointly by Land Management and adopted the Oneida Land Commission~~ in accordance with the Administrative Rulemaking law, ~~based on authority delegated in this law in order to implement, interpret and/or enforce this law.~~

~~(s)~~ (r) “Secretary” means the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.

~~(t)~~ (s) “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.

~~(u)~~ (t) “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 Nation is solely responsible for ensuring that the environmental review has been completed in accordance with this law. 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 and Termination 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

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@oneidation.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 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]
 - In response to a later comment received from the DOI, a definition for guardian is also added to the Law: "one who has legal authority and duty, as appointed by a court of competent jurisdiction, to care for another's person or property because of the other's infancy, incapacity or disability." [65.3-1(f)]
 - 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(j)]
- 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(t), 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(k), 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(m), 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.” (There is not currently an Eviction law in place, but the Tribe is processing a proposal for an “Eviction and Termination 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 “Oneida Judiciary” is added. [65.12-1, 65.3-1(o), DOI 1-2, 1-25]

Environmental Review Process

Amendments add that the Environmental Health & Safety Division is responsible for conducting environmental reviews on all proposed lease documents and that the Nation is solely responsible for ensuring the environmental review has been completed in accordance with this law. [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.”

Following this change, a *third* comment was received from the DOI for this provision, which recognized that the “specific, ‘streamlined’ requirements per the HEARTH Act” were now included, but added:

“...However ... the Leasing Law must clarify that the NEPA process will be completed by the Tribe (as with approval of the Leasing Law, the Environmental Review is no longer completed by the BIA).”

To satisfy this comment, a sentence is added to 65.9-2 which states “The Nation is solely responsible for ensuring that the environmental review has been completed in accordance with this 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 – it means “a set of requirements, including fee schedules, enacted jointly by Land Management and the Oneida Land Commission in accordance with the Administrative Rulemaking law based on authority delegated in this law

in order to implement, interpret and/or enforce this law.” [65.3-1(q)] The amendments 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 Land Commission to jointly develop rules:

- Governing how parties submit an application for a lease document. [65.5-1]
- 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.” 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
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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 Wisconsin~~Nation.

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.

(f) "Guardian" means one who has legal authority and duty, as appointed by a court of competent jurisdiction, to care for another's person or property because of the other's infancy, incapacity or disability.

~~(h)(g)~~ "Improvements" ~~shall mean~~means buildings, other structures, and associated infrastructure attached to the leased premises.

(h) "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.

(i) "Land Management" ~~shall mean~~means the Division of Land Management or other ~~Tribal~~ entity responsible for entering into leases of ~~Tribal~~tribal land.

(j) "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) "Lease ~~document~~" ~~shall mean~~Document" means a lease, lease amendment, lease assignment, sublease or ~~encumbrance~~leasehold mortgage.

(l) "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) "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) "Lessor" shall mean means the TribeNation, in its capacity as the legal, beneficial and/or equitable owner of Tribaltribal land subject to a lease, and any administrator or assign of.

~~(n)(o)~~ "Nation" means the ~~Tribe~~Oneida Nation.

~~(o)(p)~~ "Performance ~~bond~~" ~~shall mean~~Bond" means a bond given to ensure the timely performance of a lease.

(q) "Rule" means a set of requirements, including fee schedules, enacted jointly by Land Management and the Oneida Land Commission in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

~~(p)(r)~~ "Secretary" ~~shall mean~~means the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.

~~(q)(s)~~ "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.

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

~~(s) “Tribal land” shall mean Tribal trust land and any land owned by the Tribe held in fee status.~~

(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 TribeNation; 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~~ Tribe 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~~ Tribe 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 Tribe Nation for liability or cost arising
from the ~~Tribe's Nation'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. ~~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 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.~~ ~~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 ~~Tribal~~ 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 ~~Tribal~~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 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~~The Nation is solely responsible for ensuring that the environmental review ~~shall be conducted by or at the request of the~~ has been completed in accordance with this law. 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 and Termination 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 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
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65.4. General Provisions
65.5. Lease Document Requirements
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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) “Guardian” means one who has legal authority and duty, as appointed by a court of competent jurisdiction, to care for another’s person or property because of the other’s infancy, incapacity or disability.

(g) “Improvements” means buildings, other structures, and associated infrastructure attached to the leased premises.

(h) “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.

(i) “Land Management” means the Division of Land Management or other entity responsible for entering into leases of tribal land.

(j) “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.

(k) “Lease Document” means a lease, lease amendment, assignment, sublease or leasehold mortgage.

(l) “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.

(m) “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.

(n) “Lessor” means the Nation, in its capacity as the legal, beneficial and/or equitable owner of tribal land subject to a lease.

(o) “Nation” means the Oneida Nation.

(p) “Performance Bond” means a bond given to ensure the timely performance of a lease.

(q) “Rule” means a set of requirements, including fee schedules, enacted jointly by Land Management and the Oneida Land Commission in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(r) “Secretary” means the Secretary of the Interior, U.S. Department of the Interior, or its authorized representative.

(s) “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.

(t) “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.

90 Provided that, nothing herein may be construed to affect the terms and conditions of
91 leases existing when this law goes into effect or amendments, assignments, subleases or
92 encumbrances made to those leases.

93 (b) This law does not apply to mineral leases, any lease of individually owned Indian
94 allotted land in accordance with 25 U.S.C. 415(h)(2), leases included in the Nation's
95 home ownership programs administered using federal funding or leases lasting one (1)
96 year or less.

97 65.4-3. *Applicable Law.* In addition to this law, leases approved under this law are subject to:

98 (a) all of the Nation's laws, except to the extent those laws are inconsistent with
99 applicable federal law; and

100 (b) applicable federal laws.

101 65.4-4. Pursuant to the authority of the Secretary to fulfill the trust obligation of the United
102 States to the Nation under federal law, the Secretary may, upon reasonable notice from the
103 Nation and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential,
104 agricultural or business lease on tribal land executed by the Nation. The United States may not
105 be liable for losses sustained by any party to a residential, agricultural or business lease executed
106 pursuant to this law.

107 65.4-5. Lease parties shall resolve all disputes over residential, agricultural and business leases
108 under the Nation's laws and in accordance with federal law. Nothing in this law may be
109 construed to waive the Nation's sovereign immunity.

110 65.4-6. After the Secretary approves this law, all leases of tribal land approved and executed
111 under this law may become effective without federal approval under 25 U.S.C. 415(h), unless the
112 Secretary rescinds approval of this law and reassumes responsibility for such approval.

113 114 **65.5. Lease Document Requirements**

115 65.5-1. *Information and Application.* Land Management shall approve and execute all leases.
116 Land Management shall make available information on obtaining residential, agricultural or
117 business lease documents. Parties interested in obtaining a residential, agricultural or business
118 lease document shall submit an application to Land Management pursuant to the rules which
119 Land Management and the Oneida Land Commission shall jointly develop.

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

124 65.5-2. *Terms and Conditions.* Land Management shall ensure leases are in writing and contain,
125 at a minimum, the following:

126 (a) A description of the land or building being leased including surveys and legal
127 descriptions based on metes and bounds, rectangular, or lot and block systems which
128 meet the requirements of the Land Titles and Records Office of the Bureau of Indian
129 Affairs;

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

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

132 (d) The parties to the lease;

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

136 (f) Whether there will be rental reviews or adjustments, how and when they will be done,
137 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; 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 Nation is solely responsible for ensuring that the environmental review has been completed in accordance with this law. 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 and Termination 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 Judiciary in accordance with any applicable rules of procedure.

End.

Adopted-BC-05-13-15-C, pending BIA approval

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: 5/4/2016
- 2) Contact Person(s): Brandon Stevens Dept: LOC
 Phone Number: 869-4469 Email: bstevens@oneidanation.org
- 3) Agenda Title: Administrative Rules of Procedure
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
We are no longer planning to process the Administrative Hearing Court as a separate court,
rather, it will be a part of the Trial Court and will simply operate under administrative rules
rules of procedure. Those rules need to be developed to apply to all civil matters in which
the contested action is based on the action/inaction of an Oneida entity.

List any supporting materials included and submitted with the Agenda Request Form

- | | |
|----------|----------|
| 1) _____ | 3) _____ |
| 2) _____ | 4) _____ |

- 5) Please List any laws, ordinances or resolution that might be affected:
Rules of Civil Procedure need to be amended to apply to all civil matters except those regarding actions by an Oneida entity.
- 6) Please List all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? ☐ Yes ☒ No
 If yes, please indicate why: _____

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: _____

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
HANDOUT – 05/04/2016

TO: Legislative Operating Committee
FROM: Fawn Billie *FB*
DATE: May 4, 2016
RE: BC Meeting law

On April 13, 2016, as the BC Liaison for the Oneida School System, I received the attached e-mail from the Police School Liaison Officer, Officer Lyle Metoxen, regarding school safety concerns related to Oneida Business Committee meetings held at the Norbert Hill Center.

In his e-mail, he references multiple occasions which required Oneida Police Department presence as a result of disorderly conduct on behalf of Oneida community members in attendance at OBC meetings, which are conducted at the Norbert Hill Center, a building which the OBC shares with the Oneida Nation High School and Head Start Program. While the school does have crisis plans in place, he raises a concern that the current environment could escalate to an uncontrollable situation involving serious violence. He also notes that while the Oneida Nation High School and Head Start Program are of primary concern, several employees also work at the Norbert Hill Center and are entitled to a safe and violence free work environment. The e-mail goes on to recommend that procedures be developed to either curtail disruptions requiring a law enforcement response or promote a more civil process for conducting the business of the Oneida Nation.

I agree that these are all valid concerns and think these processes could be incorporated into the development of the BC Meeting law.

Accordingly, I respectfully request that the sponsor of the BC Meeting law and the Legislative Reference Office schedule a strategy meeting between the LRO drafting attorney and LOC and OBC members to discuss possible options for addressing these concerns. As I am aware of concerns raised in addition to Officer Lyle Metoxen's, which are under investigation and for that reason are still confidential, I also request that this meeting be closed to the public so that there can be a full discussion of the concerns and potential solutions.

Finally, I respectfully request that the LOC add the BC Meeting law to its priority list as the safety of our children, students and employees is of utmost importance. As a priority, I request that a draft be brought back the LOC to consider sending for the legislative analysis required by the Legislative Procedures Act by June 1, 2016.

Krystal John

From: Lyle L. Metoxen
Sent: Wednesday, April 13, 2016 5:06 PM
To: Fawn J. Billie
Cc: Ronald E. King; Lisa J. Drew-Skenandore; Artley M. Skenandore
Subject: School Safety Concern at the Norbert Hill Center

As the B.C. Liaison for the Oneida School System, I as the Police School Liaison Officer and a member of this community have a concern with the ongoing safety at the NHC.

Today multiple officers were again dispatched to the Norbert Hill Center for a disturbance reported in the Oneida Business Committee's conference room during the school day. The Oneida High School is located within this same building along with a Headstart Program.

While the school does have Crisis Plans in place which include a Lock Down at the present time in the event of a Violent Intruder. Is it possible for procedures to be developed to either curtail disruptions requiring a law enforcement response or promote a more civil process conducting the business of the Oneida Tribe.

There have been prior disturbances at the Business Committee meetings here at the Norbert Hill Center in just this school year and people have been; escorted out of the building, carried out and issued citations in some cases.

It is my opinion there are some people who crave the attention and are not deterred by the action of the police. I believe there is a likelihood the actions and reactions of these same people or a person who sympathizes with their alleged cause may escalate and tension levels could rise out of control and serious violence may be the ultimate response from either parties involved.

In addition to the children's safety who are present here, I believe the adult employees are also entitled to a Safe and Violence Free Work place under OSHA and other applicable work standards.

Ofc. Lyle Metoxen
 Oneida Nation School's K-12
 Police School Liaison Officer
Imetoxe6@oneidanation.org
 School Liaison Office, 920-869-4334
 OPD Cell Ph. 920-371-7686
 Oneida Police Dept. 920-869-2239

CONFIDENTIALITY: This e-mail (including any attachments) may contain confidential, proprietary and privileged information. Unauthorized disclosure or use is prohibited. If you received this e-mail in error, please notify the sender and delete this e-mail from your system.

May 2016

May 2016						
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	Monday	Tuesday	Wednesday	Thursday	Friday
May 2 - 6	May 2	3	4	5	6
			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	
May 9 - 13	9	10	11	12	13
			BC Meeting (BCCR)	10:30am 1:30pm FW: Employment Law PM Comment Consideration (BCCR) - Krystal John	
May 16 - 20	16	17	18	19	20
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:15pm 2:15pm Public Meeting - Fitness for Duty (Law), Per Capita Law Amendments; and Leasing Law Amendments (BC_Conf_Room) - Douglass A. McIntyre	
May 23 - 27	23	24	25	26	27
	6:00pm 10:00pm GTC Meeting		BC Meeting (BCCR)	9:00am 12:00pm FW: Meeting with ICW RE: Childrens Code (Social Services - Room TBD) - Rhiannon R. Metoxen	Holiday-Oneida Code T
May 30 - Jun 3	30	31	Jun 1	2	3
	Memorial Day				

June 2016

June 2016						
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July 2016						
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31						

	Monday	Tuesday	Wednesday	Thursday	Friday
May 30 - Jun 3	May 30	31	Jun 1	2	3
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
Jun 6 - 10	6	7	8	9	10
			BC Meeting (BCCR)		
Jun 13 - 17	13	14	15	16	17
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
Jun 20 - 24	20	21	22	23	24
			BC Meeting (BCCR)		
Jun 27 - Jul 1	27	28	29	30	Jul 1