



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
October 20, 2016 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
  - 1. October 5, 2016 LOC Meeting Minutes
- III. Current Business**
  - 1. Back Pay Amendments
  - 2. Election Law Amendments
  - 3. Leasing Law Amendments
  - 4. Budget Management and Control Law
  - 5. Employment Law
- IV. New Submissions**
  - 1. Drug and Alcohol Free Workplace Policy Emergency Amendments
  - 2. Petition: Genskow / Metivier
- V. Additions**
- VI. Administrative Updates**
  - 1. Election Law – Campaign Finance Memo
- VII. Executive Session**
- VIII. Recess/Adjourn**



## **LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

October 5, 2016 9:00 a.m.

**Present:** Tehassi Hill, David P. Jordan, Fawn Billie

**Excused:** Brandon Stevens and Jennifer Webster

**Others Present:** Jennifer Falck, Tani Thurner, Clorissa Santiago, Maureen Perkins, Jo Anne House, Krystal John, Diane McLester-Heim, Rhiannon Metoxen, Cathy Bachhuber, Rae Skenandore, Tonya Webster, Nic Reynolds, Leyne Orosco

### **I. Call to Order and Approval of the Agenda**

Tehassi Hill called the October 5, 2016 Legislative Operating Committee meeting to order at 9:07 a.m.

Motion by David Jordan to adopt the agenda with the addition of New Submission IV.1, Petition; seconded by Fawn Billie. Motion carried unanimously.

### **II. Minutes to be approved**

#### **1. September 21, 2016 LOC Meeting Minutes**

Motion by David Jordan to approve the September 21, 2016 LOC meeting minutes; seconded by Fawn Billie. Motion carried unanimously.

### **III. Current Business**

#### **1. Eviction and Termination Law**

Motion by David Jordan to approve the updated Eviction and Termination law adoption packet and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

#### **2. Landlord – Tenant Law**

Motion by Fawn Billie to approve the updated Landlord-Tenant law adoption packet and forward to the Oneida Business Committee for consideration; seconded by David Jordan. Motion carried unanimously.

#### **3. Vendor Licensing Law Amendments**

Motion by Fawn Billie to approve the adoption packet and forward to the Business Committee for consideration upon receiving the fiscal impact statement; seconded by David Jordan. Motion carried unanimously.

#### **4. Election Law Amendments**

Motion by David Jordan to prepare an adoption packet with changes and forward to the Business Committee for consideration; seconded by Fawn Billie. Motion carried

Legislative Operating Committee Meeting Minutes of October 5, 2016

unanimously.

**IV. New Submissions**

**1. Corporate Laws**

Motion by David Jordan to add Corporate Laws to the Active Files List as High Priority; seconded by Fawn Billie. Motion carried unanimously. Brandon Stevens is appointed as the sponsor.

**V. Additions**

**1. Yvonne Metivier/ Madelyn Genskow Petition**

Motion by David Jordan to add the Metivier/Genskow Petition to the Active Files List; seconded by Fawn Billie. Motion carried unanimously. Tehassi Hill will be the sponsor.

**VI. Administrative Updates**

**1. Open Records Request SOP**

Motion by Fawn Billie to accept the SOP as FYI; seconded by David Jordan. Motion carried unanimously.

**VII. Executive Session**

**VIII. Recess/Adjourn**

Motion by David Jordan to adjourn the October 5, 2016 Legislative Operating Committee meeting at 9:38 a.m.; seconded by Fawn Billie. Motion carried unanimously.



## Legislative Operating Committee October 20, 2016

# Back Pay Amendments

<b>Submission Date:</b> 6/11/14	<b>Public Meeting:</b> 5/5/16
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This request was submitted to clarify two conflicting provisions related to whether health insurance coverage continues during involuntary separation/terminations, and to require reinstated employees to reimburse CHS dollars used if an employee claims medical treatment from CHS prior to reinstatement.*

**6/17/15 LOC:** Motion by David P. Jordan to add the Back Pay Policy Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

**8/19/15 LOC:** Motion by Jennifer Webster to accept the memorandum regarding the status of the Back Pay Policy Amendments as FYI; seconded by Fawn Billie. Motion carried unanimously.

**10/21/15 LOC:** Motion by David P. Jordan to make the noted changes clarifying employment benefits and defer the Back Pay Policy Amendments for a legislative analysis and fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

**3/22/16 LOC:** Motion by David P. Jordan to accept the legislative analysis of the Back Pay Law and prepare for a public meeting of May 5th, 2016; seconded by Tehassi Hill. Motion carried unanimously.

For the record: Brandon Stevens stated the LOC is changing back to using “shall” instead of “must” and the Back Pay Policy will be re-titled as the Back Pay Law based on the LOC direction of changing all policies into laws.

**4/6/16 LOC:** Motion by David P. Jordan to prepare the Back Pay Law Amendments for a public meeting scheduled May 5th, 2016; seconded by Jennifer Webster. Motion carried unanimously.

**5/5/16:** *Public Meeting Held.*

**5/18/16 LOC:** Motion by David P. Jordan to accept the public meeting comments regarding the Back Pay Amendments, to request reports from the Accounting Department and the Oneida Law Office regarding their timeframes for processing back pay awards and to direct the Legislative



Reference Office to bring options back to the LOC regarding the back pay formula; seconded by Tehassi Hill. Motion carried unanimously.

**7/20/16 LOC:** Motion by David P. Jordan to approve a change in policy changing the formula to use average hours instead of average earnings and approve alternative 2 from the LOC memo, adding a definition for “immediately prior”; seconded by Jennifer Webster. Motion carried unanimously.

**Next Steps:**

- Approve the Back Pay law adoption packet.
- Forward to the Oneida Business Committee for consideration.



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



TO: Oneida Business Committee  
 FROM: Brandon Stevens, LOC Chairperson *BS*  
 DATE: October 26, 2016  
 RE: Back Pay Law Amendments

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

1. Resolution: Back Pay Law Amendments
2. Statement of Effect: Back Pay Law Amendments
3. Back Pay Law Amendments Legislative Analysis
4. Back Pay Law (Redline)
5. Back Pay Law (Clean)
6. Back Pay Law Amendments Fiscal Impact Statement

#### *Overview*

This Resolution adopts amendments to the current Back Pay Policy. The amendments:

- Retitle the Back Pay Policy as a law in alignment with the Legislative Operating Committee's (LOC's) directive that all policies are to be classified as laws moving forward.
- Expand the health insurance covered by the Nation during the back pay period to include other insurance benefits such as long-term disability, short-term disability, dental, vision and life insurance *[see 206.4-1(g)(1)]*.
- Require a reinstated employee to authorize Purchased Referred Care to retroactively recover funds from the employee's insurance provider if Purchased Referred Care services were provided to the employee during the back pay period *[see 206.4-1(g)(1)(B)]*.
- Update the calculation of an employee's back pay award when a fractional week is included in the back pay period *[see 206.4-3(b)(2)]*.

In accordance with the Legislative Procedures Act, a public meeting was held regarding the amendments on May 5, 2016, with a comment period closing on May 12, 2016. Those comments were accepted and considered by the LOC at the May 18, 2016, LOC meeting.

#### **Requested Action**

Approve the Resolution: Back Pay Law Amendments

**BC Resolution \_\_\_\_\_**  
*Back Pay Law Amendments*

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

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

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

**WHEREAS,** the Back Pay Policy was adopted by the Oneida Business Committee by resolution BC-05-24-06-PP and amended by resolutions BC-06-23-10-F and BC-08-13-14-C; and

**WHEREAS,** the amendments to the Back Pay Policy retitle the Policy as a law in alignment with the Legislative Operating Committee's directive that all policies are to be classified as laws moving forward; and

**WHEREAS,** currently, the Policy states that only the employee's portion of the health insurance premium would be deducted from the back pay award because only health insurance would be covered by the Nation during the period where an employee is involuntarily separated from employment with the Nation; and

**WHEREAS,** the amendments clarify that the employee's portion of premiums for long-term disability, short-term disability, dental, vision, and life insurance will also be deducted from the back pay award because the insurance benefits are also covered by the Nation during involuntary separations, except in the event of a termination where the coverage would discontinue; and

**WHEREAS,** the amendments require an employee reinstated after an involuntary separation to sign a waiver authorizing Purchased Referred Care to review the back pay period to determine if services provided by Purchased Referred Care were used by the employee; and

**WHEREAS,** if Purchased Referred Care determines services were rendered to the employee during the back pay period, the employee shall submit insurance information to Purchased Referred Care in order for Purchased Referred Care to retroactively bill the insurance provider to recover funds for those services rendered to the employee during the back pay period; and

**WHEREAS,** when determining an employee's back pay award the current Policy calculates the award for a fractional week at a rate of one-sixth of the employee's weekly wage per day worked during the fractional week; and

**Resolution BC-\_\_\_\_\_**  
**Page 2**

**WHEREAS,** the amendments compensate the employee for each day worked during a fractional week based on the average number of hours worked by the employee per day; and

**WHEREAS,** additional amendments update the definition of back pay to clarify that the intent of back pay is to compensate the employee for the involuntary separation as determined by the formula set forth within this law; clarify that an employee's back pay award may include any Oneida Business Committee or General Tribal Council merit increases provided to the employee during the back pay period; and clarify that all internal departments of the Nation will cooperate as necessary with the Oneida Law Office in providing information needed to prepare a back pay agreement; and

**WHEREAS,** a public meeting on the amendments was held on May 5, 2016, in accordance with the Legislative Procedures Act, and comments received were reviewed and accepted by the Legislative Operating Committee on May 18, 2016.

**NOW THEREFORE BE IT RESOLVED,** that the attached amendments to the Back Pay Law are hereby adopted.



## **Statement of Effect**

### *Back Pay Law Amendments*

#### **Summary**

This Resolution adopts amendments to the Back Pay law (“the Law”) that update and clarify how the law is implemented.

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

#### ***Analysis by the Legislative Reference Office***

Amendments to the Back Pay Policy (Policy) retitle the Policy as a law in alignment with the Legislative Operating Committee’s (LOC’s) directive that all policies are to be classified as laws moving forward.

Currently, the Policy states that only health insurance is covered by the Nation during the period where an employee is involuntarily separated from employment with the Nation. The proposed amendments clarify that long-term disability, short-term disability, dental, vision, and life insurance are included as insurance benefits that are covered by the Nation during involuntary separations: except in the event of a termination where the coverage would discontinue. The employee’s share of all insurance premiums paid during the involuntary separation will be deducted from the employee’s back pay award.

Once employment is reinstated after an involuntary separation, the amendments require the employee to sign a waiver authorizing Purchased Referred Care to review the back pay period to determine if Purchased Referred Care services were used by the employee. If Purchased Referred Care determines services were rendered to the employee during the back pay period, the employee is now required to submit insurance information to Purchased Referred Care in order for Purchased Referred Care to retroactively bill the insurance provider to recover funds for those services rendered during the back pay period. If the employee refuses to sign an authorization waiver from Purchased Referred Care, the employee will not be eligible to receive any back pay award.

Amendments also update the calculation of an employee’s back pay award. Currently, if the back pay period contains a fractional week (i.e. if the employee worked only part of the week immediately before or after the involuntary separation); back pay is calculated for that fractional week at the rate of one-sixth of the weekly wage per day worked during the fractional week. Under the amendments the employee is compensated for each day worked during the fractional week based on the average number of hours worked by the employee per day. The change was made after taking into account that most Nation employees do not work six days a week, but average between four and five days.

Additional amendments:

- update the definition of back pay to clarify that the intent of back pay is to compensate the employee for the involuntary separation as determined by the formula set forth within this law; and
- clarify that an employee's back pay award may include any Oneida Business Committee or General Tribal Council merit increases provided to employees during the back pay period; and
- clarify that all internal departments of the Nation must cooperate as necessary with the Oneida Law Office in providing information needed to prepare a back pay agreement.

Additional, minor changes are made to the draft to update the language and ensure compliance with drafting style and formatting requirements. These changes did not affect the content or meaning of the Law.

A public meeting on the proposed amendments was held on May 5, 2016, in accordance with the Legislative Procedures Act. On May 18, 2016, the LOC reviewed all comments received during the public comment period; and any changes made based on those comments have been incorporated into this draft.

### **Conclusion**

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



## Back Pay Amendments

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<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Back Pay				
<b>Sponsor</b>	David P. Jordan	<b>Drafter</b>	Clorissa N. Santiago	<b>Analyst</b>	Maureen Perkins
<b>Requester &amp; Reason for Request</b>	The OBC Officers were considering a settlement proposal and two issues were discovered that the OBC Officers felt needed to be addressed in the law, 1) if the employee is being reinstated for health care benefits as if they were never terminated, the employee should be mandated to reimburse the Nation for any CHS claims they may have made during the time they were off work and 2) Article 4-1 (g) (1) needs clarification [see 206.4-1].				
<b>Purpose</b>	The purpose of this law is to set forth the standards used in calculating back pay for employees of the Nation in accordance with the Nation's law[see 206.1].				
<b>Authorized/ Affected Entities</b>	This law applies to any of the Nation's employees that receive back pay, Oneida Law Office, and internal departments [see 206.5-2]. Also Oneida Judiciary.				
<b>Related Legislation</b>	The Nation's laws, rules and policies related to employment [see 206.4-1(a)(1), 206.4-1 (e)(2)], Investigative Leave Policy, Oneida Law Office Back Pay Procedures				
<b>Enforcement &amp; Due Process</b>	An employee not receiving back pay in accordance with this law may seek enforcement by the Judiciary [see 206.5-4].				
<b>Public Meeting Status</b>	A public meeting was held on May 5, 2016. The LOC has reviewed the public comments received during the public comment period; and any changes made based on the public comments received have been incorporated into this draft.				

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### Overview

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The intent of the Back Pay law is to authorize monetary damages in the form of back pay to an employee wrongfully suspended or terminated to compensate the employee. Current amendments include providing reinstated insurance information to Oneida Contract Health department if services were rendered during the back pay period and clarification of insurance benefits.

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- Employees are responsible for providing Oneida Contract Health with reinstated insurance information if services were rendered during the back pay period.
- Detail regarding insurance benefits was clarified.

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### Proposed Amendments

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- The definition of back pay was changed to align with the current practice in calculating back pay awards to compensate the employee [see 206.3-1(b)].
- The definition for punitive damages was added. "Punitive damages" means monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the other party [see 206.3-1(j)]. Punitive damages are not allowed under the current or proposed amendments of the Back Pay law [see 206.4-2(a)].

- Merit Increases from the OBC and GTC were added to the merit increase system/standard used by the employee's supervisor during the back pay period [see 206.4-1(e)].
- The health insurance premiums section was updated to include long-term disability, short term disability, dental, vision and life insurance [see 206.4-1(g)(1)].
- Employees who are awarded reinstatement of insurance benefits are now required to sign a waiver authorizing Oneida Contract Health to determine if services were rendered during back pay period. If it is determined that services were rendered, employee must provide insurance information to Purchased Referred Care services to retroactively recoup funds from insurance [see 206.4-1(g)(1)(B)]. If the employee refuses to sign the form they are ineligible for any back pay award [see 206.4-1(g)(1)(C)].
- Retirement plan payments made to the employee in lieu of employer match were removed [see 206.4-1(g)(3)(c)].
- The calculation for a fractional week for back pay awards was changed from a 1/6 of the weekly indemnity for each day [see 4-3(b)(2) of current policy] to an average of number of hours worked for each day [see 206.4-3(b)(2)]; to more fairly compensate the average employee who works between 4-5 days per week rather than 6 days per week.
- Internal departments were added to the back pay process to ensure all departments directly involved with the back pay process are included in assembling the back pay package [see 206.5-2].
- The Oneida Tribe of Indians of Wisconsin was updated to Nation throughout the law in accordance with the approved constitutional amendments.
- This law has changed from a policy to a law in alignment with the LOC's directive that all policies are classified as laws moving forward.

#### Other

Minor language changes have been made to improve the clarity of the law without affecting the content. Please refer to the fiscal impact statement for any financial impacts.

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## Title 2. Employment – Chapter 206

### BACK PAY Policy

Article I. Purpose and Policy	206.1. Purpose and Policy
Article II. Adoption, Amendment, Appeal	206.2. Adoption, Amendment, Appeal
Article III. Definitions	206.3. Definitions
Article IV. Back Pay Calculation	206.4. Back Pay Calculation
Article V. Back Pay Process	206.5. Back Pay Process

#### Article I 206.1. Purpose and Policy

1-1. 206.1-1. The purpose of this Policylaw is to set forth standards used in the calculation of back pay for all employees of the TribeNation in accordance with Tribalthe Nation's law.

1-2. 206.1-2. It is the policy of the TribeNation to have consistent and standard procedures for the management of employee back pay.

#### Article II 206.2. Adoption, Amendment, Appeal

206.2-1. This Policylaw was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP and amended by resolutions BC-06-23-10-F ~~and~~ BC-08-13-14-C ~~and~~ BC-

206.2-2. This Policylaw may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

206.2-3. Should a provision of this Policylaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policylaw which are considered to have legal force without the invalid portions.

206.2-4. In the event of a conflict between a provision of this Policylaw and a provision of another policylaw, the provisions of this Policylaw shall control.

206.2-5. This Policylaw is adopted under authority of the Constitution of the Oneida ~~Tribe of~~ Indians of Wisconsin Nation.

#### Article III 206.3. Definitions

206.3-1. This section shall govern the definitions of words and phrases used within this Policylaw. All words not defined herein shall be used in their ordinary and everyday sense.

(a) ~~“Advocate” shall mean~~ means a non-attorney person as provided by law and other person who is admitted to practice law and is presented to the court as the representative or advisor to a party.

(b) ~~“Back pay” shall mean~~ means money damages owed to the employee for a salary or wage ~~that would have been earned into compensate the time taken to litigate employee as determined by the employment dispute, minus amounts that are deducted from salary or income earned from a third party employer or limited by other~~ formulas set forth within this law of the Tribe.

(c) ~~“Consequential Damages” shall mean~~ damages” means damages that are not a direct and immediately result of an act, but a consequence of the initial act, including but not limited to penalties on early withdrawal of retirement account.

(d) ~~“Consultant” shall mean~~ means a professional who is contracted externally whose expertise is provided on a temporary basis for a fee.

~~(e) “Court” shall mean the trial court of the Tribe’s judicial system.~~

~~(f)(e) “Earnings” shall include~~ includes vacation/personal time, shift differential, holiday

pay, merit increases, bonuses and incentives, employment benefits and income received during the back pay period.

~~(g)(f)~~ –“Employee” ~~shall mean~~means any individual who is employed by the TribeNation and is subject to the direction and control of the TribeNation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to; an individual employed by any program or enterprise of the TribeNation, but does not include elected or appointed officials or individuals employed by a Tribally Chartered Corporation. For purposes of this Policylaw, individuals employed under an employment contract as a limited term employee are employees of the TribeNation, not consultants.

~~(h)(g)~~ –“Involuntarily separated” ~~shall mean~~means an employee removed from employment through whatever means, other than a layoff, by the employer. This shall include, but is not limited to, investigative leave, suspension or termination.

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

~~(h) Article IV~~ “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) “Nation” means the Oneida Nation.

(j) “Punitive damages” means monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the other party.

#### **206.4. Back Pay Calculation**

206.4-1. Back Pay Limitations. Back pay shall only include the items identified in this ArticleSection as they relate to the employee. Back pay shall include and be subject to the following:

(a) ~~–Vacation/Personal Time Accrual.~~ Employees shall receive prorated credit for vacation/ personal time which would have accrued during the back pay period.\_

(1) ~~–Reinstated employees shall be credited for vacation/ personal time. If the crediting of vacation/personal time would result in the employee exceeding the accrual cap of two hundred eighty (280) hours pursuant to the Tribe’s personnel Nation’s laws, rules and policies and procedures,~~ then any amount over that cap shall be provided as a cash payout. Non-reinstated employees shall be paid out vacation/personal time in lieu of crediting personal/vacation time.

(b) ~~–Shift Differential.~~ Shift differential shall be included in the back pay amount to the extent it is a part of the employee’s regularly scheduled hours.\_

(c) ~~–Tips.~~ If the employee received pooled tips at the time of involuntary separation, tips shall be included in the total back pay amount at the same tip rate that other employees in the same position and on the same shift received on the same dates.

(1) ~~–If the employee received individual tips at the time of involuntary separation,~~ the employee shall be ineligible for tips during the back pay period.

(d) ~~–Holiday Pay.~~ Holiday pay shall be included in the back pay amount to the extent the employee would have received such pay if the employee had not been involuntarily separated.

(e) ~~–Merit Increases.~~ The hourly rate used to calculate back pay shall be increased

according to the merit increase system/standard used by the employee's supervisor during the back pay period and will include any increases from Oneida Business Committee or General Tribal Council directives.

(1) ~~The effective date of the employee's merit increase shall be the same as the effective date for other employees in the same department. Retroactive increases shall be calculated back to the retroactive date used for other employees in the same department.~~

(2) ~~The most recent performance review issued to the employee prior to being involuntarily separated shall be used to determine the level of merit increase. However, if the employee appealed the performance review to the Human Resource Department Manager prior to involuntary separation, a method under the Tribe's personnel~~ Nation's laws, rules and ~~policies and procedures~~ shall be used to determine the merit increase.

(f) ~~Bonuses and Incentives.~~ All bonus and incentive payments for which the employee would have been eligible during the back pay period shall be included in the total back pay amount, except for non-monetary gifts distributed by the ~~Tribe~~ Nation to all employees (e.g. ~~Winter Gift~~ winter gift ~~certificates~~) or other non-monetary benefits, such as clothing allowance.

(g) ~~Employment Benefits.~~ Employee benefits shall be subject to the provisions in this section.

~~(1) Health Insurance Premiums. The Tribe shall deduct~~ Benefits. Coverage by the Nation for health insurance ~~premiums from the back pay award. Health, dental insurance, vision insurance, life insurance, long-term disability and short-term disability coverage by the Tribe shall continue during the involuntary separation, excluding terminations. except in the event of a termination where the coverage will discontinue. The Nation shall deduct the employee's share of premiums paid from any back pay award.~~

~~(A)~~ (A) If the employee's circumstances have changed during the back pay period and such circumstances affect the employee's ~~health~~ insurance needs, the employee shall notify the ~~Tribe~~ Nation of such changes at the time of reinstatement.

(B) An employee who is reinstated shall sign a waiver from Purchased Referred Care authorizing a review of the back pay period to determine if Purchased Referred Care services were rendered. If Purchased Referred Care determines services were rendered during the back pay period, an employee shall timely submit insurance information to Purchased Referred Care in order for Purchased Referred Care to retroactively bill the insurance provider to recoup funds for those services rendered during the back pay period.

(C) If the employee refuses to sign an authorization waiver from Purchased Referred Care, the employee will not be eligible to receive any back pay award.

(2) *Flexible Benefit Plan Contributions.* If a terminated employee was contributing to the ~~Tribe's~~ Nation's flexible benefit plan at the time of termination, the status of the employee's flex benefit plan shall be subject to the provisions of the Internal Revenue Code.

(3) *Retirement Benefit Contributions.* In the event the employee was

participating in the ~~Tribe's~~Nation's retirement plan at the time of involuntary separation, the employee shall be responsible for contacting the retirement plan administrator and reactivating contributions.

(A) ~~The~~ employee may choose whether to have the employee's contribution to the retirement plan that would have been made during the back pay period deducted from the total back pay amount and deposited into the employee's retirement account.

(B) ~~If~~ the employee was eligible for employer matching contributions at the time of involuntary separation and the employee chooses to make a contribution through back pay, the ~~Tribe~~Nation shall contribute the employer match into the employee's retirement account.

(C) ~~If~~ the employee was not participating in the ~~Tribe's~~Nation's retirement plan or chooses not to make contributions through the back pay process, then the ~~Tribe~~Nation shall not make employer match contributions into the employee's retirement account ~~or otherwise make payments to the employee in lieu of employer match contributions.~~

(h) ~~Income Received During the Back Pay Period.~~

(1) ~~Unemployment Benefits.~~ Depending upon the unemployment compensation financing option elected by the Nation, either:

~~(A)~~ Any unemployment compensation paid by the ~~Tribe~~Nation to the State of Wisconsin for an involuntarily separated employee shall be deducted from the employee's back pay award ~~;~~ or

~~(B) ~~The employee is directly responsible for the reimbursement to the State of Wisconsin. The Nation shall send a copy of the completed and signed settlement agreement to the appropriate state department. The state then may determine the amount, if any, of unemployment compensation benefits received during the back pay period should be repaid.~~~~

(2) ~~Income Received Through Employment.~~ Except as provided in section 4-1(h)(2)(B), income earned by an employee during the back pay period shall be deducted from the total back pay amount.

~~(A) ~~The~~ employee shall provide information to verify the amount of or lack of earned income and sign an affidavit attesting to the amount of or lack of earned income.~~

~~(B) ~~If~~ the employee worked an additional job prior to being involuntarily separated and continued working in the same capacity, the income earned from that employment shall not be deducted from the total back pay amount to the extent that the income is consistent with pre-involuntary separation earnings. Where the employee worked the additional job, the employee shall provide information from the employer to verify the income earned before and during the back pay period.~~

206.4-2. ~~Payments Not Allowed.~~ The ~~Tribe~~Nation shall not include the following in any back pay amount:

(a) ~~Punitive damages;~~

(b) ~~Consequential damages;~~

(c) ~~Attorney's or advocate's fees;~~

(d) ~~Time when the employee would not have been eligible to work;~~

(e) ~~Monies normally paid for additional duties while working where an alternate~~

employee assumed that function while the employee was involuntarily separated, unless the additional duties are a part of such involuntarily separated employee's regular schedule.

**206.4-3. Back Pay Period.** Calculation of back pay begins on the day the employee is involuntarily separated and ends on the day the employee is reinstated.

(a)- If the employee is reinstated but refuses to return to work, the back pay period ends on the date reinstatement would have taken effect, but was refused by the employee.

(b)- Back pay shall be calculated by taking the employee's earnings average hours worked during the fifty-two (52) week period immediately preceding the date of the involuntary separation and divide that amount by the number of weeks worked.

(1)- If the employment prior to the involuntary separation was less than fifty-two (52) weeks, the average weekly wage shall be calculated by taking the employee's earnings average hours worked and divide that amount by the number of weeks worked.

(2)- If the involuntary separation period involves a fractional week, the indemnity shall be paid for each day of ~~such week at the rate of one sixth (1/6) of the weekly indemnity~~ a fractional week at the rate of the average number of hours worked per day immediately prior to the involuntary separation. For the purposes of this section, immediately prior means the twelve (12) full work weeks immediately preceding the involuntary separation. Provided that, under extenuating circumstances related to business needs of the Nation wherein the Oneida Law Office determines that considering hours worked per day immediately prior would be unfair, an alternative reasonable timeframe may be used.

## **Article V 206.5. Back Pay Process**

**206.5-1.** The Oneida Law Office shall develop necessary forms and procedures for the purpose of implementing this ~~Policy~~ law.

**206.5-2.** ~~The Internal departments shall cooperate as necessary with the~~ Oneida Law Office ~~shall work with the employee's supervisor, the Human Resource Department and the employee/advocate~~ in providing information needed to assemble ~~information~~ and prepare the back pay agreement.

**206.5-3.** A reasonable effort shall be made to complete the back pay agreement within thirty (30) calendar days, starting the day after the party to the grievance action provides to the Oneida Law Office a judgment ordering back pay or the results of an investigation or test showing the employee is cleared of any wrongdoing.

**206.5-34.** An employee not receiving back pay in accordance with the back pay agreement may seek enforcement by ~~appealing to the court~~ Judiciary.

*End.*

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Adopted - BC-5-24-06-PP

Amended - BC-06-23-10-F

Amended - BC-08-13-14-C

**Title 2. Employment – Chapter 206**  
**BACK PAY**

206.1. Purpose and Policy	206.4. Back Pay Calculation
206.2. Adoption, Amendment, Appeal	206.5. Back Pay Process
206.3. Definitions	

**206.1. Purpose and Policy**

206.1-1. The purpose of this law is to set forth standards used in the calculation of back pay for all employees of the Nation in accordance with the Nation's law.

206.1-2. It is the policy of the Nation to have consistent and standard procedures for the management of employee back pay.

**206.2. Adoption, Amendment, Appeal**

206.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-24-06-PP and amended by resolutions BC-06-23-10-F, BC-08-13-14-C and BC\_\_\_\_\_.

206.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

206.2-3. 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.

206.2-4. 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.

206.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**206.3. Definitions**

206.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Advocate" means a non-attorney person as provided by law and other person who is admitted to practice law and is presented to the court as the representative or advisor to a party.

(b) "Back pay" means money damages owed to the employee for a salary or wage to compensate the employee as determined by the formulas set forth within this law.

(c) "Consequential damages" means damages that are not a direct and immediately result of an act, but a consequence of the initial act, including but not limited to penalties on early withdrawal of retirement account.

(d) "Consultant" means a professional who is contracted externally whose expertise is provided on a temporary basis for a fee.

(e) "Earnings" includes vacation/personal time, shift differential, holiday pay, merit increases, bonuses and incentives, employment benefits and income received during the back pay period.

(f) "Employee" means any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to; an individual employed by any program or enterprise of the Nation, but

does not include elected or appointed officials or individuals employed by a Tribally Chartered Corporation. For purposes of this law, individuals employed under an employment contract as a limited term employee are employees of the Nation, not consultants.

(g) "Involuntarily separated" means an employee removed from employment through whatever means, other than a layoff, by the employer. This shall include, but is not limited to, investigative leave, suspension or termination.

(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) "Nation" means the Oneida Nation.

(j) "Punitive damages" means monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the other party.

#### **206.4. Back Pay Calculation**

206.4-1. *Back Pay Limitations.* Back pay shall only include the items identified in this Section as they relate to the employee. Back pay shall include and be subject to the following:

(a) *Vacation/Personal Time Accrual.* Employees shall receive prorated credit for vacation/ personal time which would have accrued during the back pay period.

(1) Reinstated employees shall be credited for vacation/ personal time. If the crediting of vacation/personal time would result in the employee exceeding the accrual cap pursuant to the Nation's laws, rules and policies, then any amount over that cap shall be provided as a cash payout. Non-reinstated employees shall be paid out vacation/personal time in lieu of crediting personal/vacation time.

(b) *Shift Differential.* Shift differential shall be included in the back pay amount to the extent it is a part of the employee's regularly scheduled hours.

(c) *Tips.* If the employee received pooled tips at the time of involuntary separation, tips shall be included in the total back pay amount at the same tip rate that other employees in the same position and on the same shift received on the same dates.

(1) If the employee received individual tips at the time of involuntary separation, the employee shall be ineligible for tips during the back pay period.

(d) *Holiday Pay.* Holiday pay shall be included in the back pay amount to the extent the employee would have received such pay if the employee had not been involuntarily separated.

(e) *Merit Increases.* The hourly rate used to calculate back pay shall be increased according to the merit increase system/standard used by the employee's supervisor during the back pay period and will include any increases from Oneida Business Committee or General Tribal Council directives.

(1) The effective date of the employee's merit increase shall be the same as the effective date for other employees in the same department. Retroactive increases shall be calculated back to the retroactive date used for other employees in the same department.

(2) The most recent performance review issued to the employee prior to being involuntarily separated shall be used to determine the level of merit increase. However, if the employee appealed the performance review to the Human Resource Department Manager prior to involuntary separation, a method under



the Nation's laws, rules and policies shall be used to determine the merit increase.  
(f) *Bonuses and Incentives.* All bonus and incentive payments for which the employee would have been eligible during the back pay period shall be included in the total back pay amount, except for non-monetary gifts distributed by the Nation to all employees (e.g. winter gift) or other non-monetary benefits, such as clothing allowance.

(g) *Employment Benefits.* Employee benefits shall be subject to the provisions in this section.

(1) *Insurance Benefits.* Coverage by the Nation for health insurance, dental insurance, vision insurance, life insurance, long-term disability and short-term disability coverage shall continue during an involuntary separation, except in the event of a termination where the coverage will discontinue. The Nation shall deduct the employee's share of premiums paid from any back pay award.

(A) If the employee's circumstances have changed during the back pay period and such circumstances affect the employee's insurance needs, the employee shall notify the Nation of such changes at the time of reinstatement.

(B) An employee who is reinstated shall sign a waiver from Purchased Referred Care authorizing a review of the back pay period to determine if Purchased Referred Care services were rendered. If Purchased Referred Care determines services were rendered during the back pay period, an employee shall timely submit insurance information to Purchased Referred Care in order for Purchased Referred Care to retroactively bill the insurance provider to recoup funds for those services rendered during the back pay period.

(C) If the employee refuses to sign an authorization waiver from Purchased Referred Care, the employee will not be eligible to receive any back pay award.

(2) *Flexible Benefit Plan Contributions.* If a terminated employee was contributing to the Nation's flexible benefit plan at the time of termination, the status of the employee's flex benefit plan shall be subject to the provisions of the Internal Revenue Code.

(3) *Retirement Benefit Contributions.* In the event the employee was participating in the Nation's retirement plan at the time of involuntary separation, the employee shall be responsible for contacting the retirement plan administrator and reactivating contributions.

(A) The employee may choose whether to have the employee's contribution to the retirement plan that would have been made during the back pay period deducted from the total back pay amount and deposited into the employee's retirement account.

(B) If the employee was eligible for employer matching contributions at the time of involuntary separation and the employee chooses to make a contribution through back pay, the Nation shall contribute the employer match into the employee's retirement account.

(C) If the employee was not participating in the Nation's retirement plan or chooses not to make contributions through the back pay process, then the Nation shall not make employer match contributions into the employee's retirement account.



145 (h) *Income Received During the Back Pay Period.*

146 (1) *Unemployment Benefits.* Depending upon the unemployment compensation  
147 financing option elected by the Nation, either:

148 (A) Any unemployment compensation paid by the Nation to the State of  
149 Wisconsin for an involuntarily separated employee shall be deducted from  
150 the employee's back pay award; or

151 (B) The employee is directly responsible for the reimbursement to the State  
152 of Wisconsin. The Nation shall send a copy of the completed and signed  
153 settlement agreement to the appropriate state department. The state then  
154 may determine the amount, if any, of unemployment compensation benefits  
155 received during the back pay period should be repaid.

156 (2) *Income Received Through Employment.* Except as provided in section 4-  
157 1(h)(2)(B), income earned by an employee during the back pay period shall be  
158 deducted from the total back pay amount.

159 (A) The employee shall provide information to verify the amount of or lack  
160 of earned income and sign an affidavit attesting to the amount of or lack of  
161 earned income.

162 (B) If the employee worked an additional job prior to being involuntarily  
163 separated and continued working in the same capacity, the income earned  
164 from that employment shall not be deducted from the total back pay amount  
165 to the extent that the income is consistent with pre-involuntary separation  
166 earnings. Where the employee worked the additional job, the employee  
167 shall provide information from the employer to verify the income earned  
168 before and during the back pay period.

169 206.4-2. *Payments Not Allowed.* The Nation shall not include the following in any back pay  
170 amount:

171 (a) Punitive damages;

172 (b) Consequential damages;

173 (c) Attorney's or advocate's fees;

174 (d) Time when the employee would not have been eligible to work;

175 (e) Monies normally paid for additional duties while working where an alternate  
176 employee assumed that function while the employee was involuntarily separated, unless  
177 the additional duties are a part of such involuntarily separated employee's regular  
178 schedule.

179 206.4-3. *Back Pay Period.* Calculation of back pay begins on the day the employee is  
180 involuntarily separated and ends on the day the employee is reinstated.

181 (a) If the employee is reinstated but refuses to return to work, the back pay period ends on  
182 the date reinstatement would have taken effect, but was refused by the employee.

183 (b) Back pay shall be calculated by taking the employee's average hours worked during  
184 the fifty-two (52) week period immediately preceding the date of the involuntary  
185 separation and divide that amount by the number of weeks worked.

186 (1) If the employment prior to the involuntary separation was less than fifty-two  
187 (52) weeks, the average weekly wage shall be calculated by taking the employee's  
188 average hours worked and divide that amount by the number of weeks worked.

189 (2) If the involuntary separation period involves a fractional week, the indemnity  
190 shall be paid for each day of a fractional week at the rate of the average  
191 number of hours worked per day immediately prior to the involuntary

separation. For the purposes of this section, immediately prior means the twelve (12) full work weeks immediately preceding the involuntary separation. Provided that, under extenuating circumstances related to business needs of the Nation wherein the Oneida Law Office determines that considering hours worked per day immediately prior would be unfair, an alternative reasonable timeframe may be used.

**206.5. Back Pay Process**

206.5-1. The Oneida Law Office shall develop necessary forms and procedures for the purpose of implementing this law.

206.5-2. Internal departments shall cooperate as necessary with the Oneida Law Office in providing information needed to assemble and prepare the back pay agreement.

206.5-3. A reasonable effort shall be made to complete the back pay agreement within thirty (30) calendar days, starting the day after the party to the grievance action provides to the Oneida Law Office a judgment ordering back pay or the results of an investigation or test showing the employee is cleared of any wrongdoing.

206.5-4. An employee not receiving back pay in accordance with the back pay agreement may seek enforcement by the Judiciary.

*End.*

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Adopted - BC-5-24-06-PP

Amended - BC-06-23-10-F

Amended - BC-08-13-14-C



## HANDOUT

# MEMORANDUM

To: Patricia King, Tribal Treasurer  
Oneida Business Committee

From: Larry Barton, Chief Financial Officer

Date: October 17, 2016

Re: **Financial Impact of the Back Pay Law**

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## **I. Background**

The Back Pay Law was originally approved by BC resolution 05-24-06-PP. Amendments were approved by with BC 06-23-10, BC 08-13-14-C, and new amendments are being proposed to further define back pay, punitive damages, to provide notification of the Contract Health Services department, and adding previously omitted insurance benefits to clarify the calculation of awards.

## **II. Executive Summary of Findings**

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

The Back Pay Law amends the title from Policy, to Law and replaces Tribe with Nation for consistency purposes. Punitive damages is being defined as compensation that goes beyond the amount necessary to compensate an employee for losses and is intended to punish the other party.

The Back Pay calculation is adding to the calculation increases from the Oneida Business Committee or General Tribal Council directives.

Insurance Benefits coverage during a covered involuntary separation adds dental, vision, life, long-term, and short term disability insurances.

The Law is amended to add the requirement that employees sign a waiver authorizing the Contract Health Services department to determine if services were rendered during the back pay award period and authorizes retroactive submission of claims to the health insurance provider.

**III. Financial Impact**

Each back pay award will have independent variables therefore, a fiscal impact is indeterminate at this time.

**IV. Recommendation**

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



Legislative Operating Committee  
October 20, 2016

## Election Law Amendments

<b>Submission Date:</b> 4/20/16	<b>Public Meeting:</b> 9/15/16
<b>LOC Sponsor:</b> Tehassi Hill	<b>Emergency Enacted:</b> 4/27/16 <b>Emergency Extended:</b> 10/12/16 <b>Expires:</b> 4/27/17

**Summary:** *Amendments to the law were requested by the Constitutional Amendments Implementation Team in order to update the minimum age requirement for voting to align with the Constitutional amendments. Amendments were adopted on an emergency basis in order to ensure compliance with recent actions taken by the Nation's membership directing that tribal members eighteen (18) years of age and older are able to vote in an upcoming caucus scheduled for May 7, 2016.*

**4/20/16 LOC:** 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.

**4/27/16 OBC:** Motion by Jennifer Webster to adopt resolution #4-27-16-B Election Law Emergency Amendments, seconded by Brandon Stevens. Motion carried unanimously.

Motion by Brandon Stevens to approve the draft letter to the 18-20 year old Tribal Members notifying them of their ability to participate in elections and General Tribal Council meetings, seconded by Trish King. Motion carried unanimously.

**8/17/16 LOC:** Motion by David P. Jordan to direct the Legislative Reference Office to prepare a public meeting packet for the Election Law permanent amendments; seconded by Tehassi Hill. Motion carried unanimously.

**9/15/16:** *Public Meeting held.*

**10/5/16 LOC:** Motion by David Jordan to prepare an adoption packet with changes and forward to the Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

**Next Steps:**

- Consider forwarding the Election Law amendments to the Oneida Business Committee.



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



**TO:** Oneida Business Committee  
**FROM:** Brandon Stevens, LOC Chair *BS*  
**DATE:** October 20, 2016  
**RE:** Election Law Amendments

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Please find the following attached backup documentation for the Election Law Amendments:

1. Resolution: Election Law Amendments
2. Statement of Effect: Election Law Amendments
3. Election Law Amendments Legislative Analysis
4. Election Law Amendments redline to current draft
5. Election Law Amendments Draft

#### **Overview**

The amendments will align the Election Law to the Oneida Nation Constitution and include;

- Lowering the minimum voting age for Oneida Nation elections from 21 to 18 years of age.
- Changing "Tribe" to "Nation".
- Establishing a process for making future amendments to the Constitution.

#### **Requested Action**

The LOC is requesting that these amendments be forwarded to the GTC in January 2017 so that they can be considered for adoption.

**GTC Resolution** \_\_\_\_\_  
*Election Law Permanent Amendments*

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

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

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

**WHEREAS,** on May 2, 2015, the Oneida Tribal membership voted at the Secretarial Election to amend the Tribal Constitution; and

**WHEREAS,** on June 16, 2015 the United States Department of Interior, Bureau of Indian Affairs approved by certification the amendments to the Oneida Tribal Constitution; and

**WHEREAS,** in July 2015, a tribal member filed an appeal to the Interior Board of Indian Appeals which suspended the certification and implementation; and

**WHEREAS,** on February 11, 2016 the Interior Board of Indian Appeals denied the tribal member's appeal and upheld the Bureau of Indian Affairs certification of all the constitutional amendments; and

**WHEREAS,** these permanent amendments to the Election Law incorporate the following Constitutional Amendments into the Law:

-Changing the age of a qualified voter from twenty-one (21) and over to eighteen (18) and over;

-Providing more detail regarding the requirements for amending the Nation's Constitution and/or By-laws in the future; and

-Implementing a name change from "Oneida Tribe of Indians of Wisconsin" to "Oneida Nation"; and

**WHEREAS,** a public meeting on the proposed permanent amendments to the Election Law was held on September 15, 2016 in accordance with the Legislative Procedures Act; and

**NOW THEREFORE BE IT RESOLVED,** that the attached permanent amendments to the Election Law are hereby adopted and take effect immediately.





## **Statement of Effect**

### *Resolution: Election Law Permanent Amendments*

### **Summary**

This resolution permanently adopts amendments to the Election Law (the Law), which update the Law to reflect the amendments made to the Oneida Nation Constitution (the Constitution) by the May 2, 2015 Secretarial Election. The amendments to the Law:

- Lower the minimum voting age for Oneida Nation elections from 21 to 18 years old;
- Revise terminology by replacing references to “Tribe” with “Nation” ; and
- Provide the process required to amend the Nation’s Constitution and/or By-laws in the future.

*Submitted by Krystal L. John, Staff Attorney*

### *Analysis by the Legislative Reference Office*

#### *Emergency Amendments*

On April 27, 2016, the Oneida Business Committee (OBC) adopted emergency amendments to the Election Law. At the October 12, 2016 OBC meeting, the OBC extended the adoption of those emergency amendments, which will now expire on April 27, 2017. The purpose of the emergency amendments was to lower the voting age in the Law from 21 years old to 18 years old in order to comply with the Constitution. The Legislative Operating Committee was required to process the voting age amendments as an emergency so that the Election Law would not deny 18-20 year olds with their constitutional right to vote in the Nation’s elections while permanent amendments were put together for the General Tribal Council to consider for adoption.

#### *These Permanent Amendments*

This resolution would adopt permanent amendments to the election law that fully encompass all revisions needed in order to incorporate the Constitutional amendments into the Election Law. The permanent amendments include the lowering of the voting age, which was considered by the emergency amendments, and also include provisions that detail how the Nation’s Constitution and/or By-laws may be amended in the future. The current Law does not address how such amendments are made, however, those provisions are now necessary in the Law based on the Constitutional Amendments which required parts of the Constitutional and By-law amendment process to be further detailed by law.

### **Conclusion**

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



## Election Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Election Law (the Law)				
<b>Sponsor</b>	Tehassi Hill	<b>Drafter</b>	Krystal John	<b>Analyst</b>	Tani Thurner
<b>Requester &amp; Reason for Request</b>	The Constitutional Amendments Implementation Team requested changes to implement the Constitutional amendments approved by the May 2, 2015 Secretarial Election.				
<b>Purpose</b>	This Law governs the Nation's process for electing officials.				
<b>Authorized/ Affected Entities</b>	Election Board is created by this law, and delegated primary responsibilities. General Tribal Council (GTC), the Oneida Business Committee (OBC), Judiciary, Tribal Secretary, Trust Enrollment Department, Zoning Administrator, Records Management Department and Oneida Police Department are all delegated specific authorities or responsibilities in this Law. All elected entities are affected by this law – including boards, committees, commissions, and the Judiciary.				
<b>Related Legislation</b>	Election Board Bylaws; Comprehensive Policy Governing Boards, Committees and Commissions; Open Records and Open Meetings Law, Removal Law, Zoning Law; Oneida Nation Gaming Ordinance (ONGO) and various laws identifying responsibilities/authority for elected entities.				
<b>Enforcement &amp; Due Process</b>	The Law allows for the Election Board to impose fines for violations of the law's contribution restrictions and campaign sign restrictions. The Zoning Administrator may remove noncompliant campaign signs. The Law provides appeal processes for applicants who are found to be ineligible to run for elected positions, for voters found to be ineligible to vote, and for challenging the results of an election.				
<b>Public Meeting Status</b>	A public meeting was held on September 15, 2016. No spoken comments were submitted at the Public Meeting, and no written comments were submitted during the public comment period.				

### Overview

These proposed amendments to the Election Law (the Law) permanently adopt the emergency amendments adopted on April 24, 2016, which were extended by the Oneida Business Committee on October 12, 2016. In addition, these proposed amendments also create an additional section in the Law, which details one of the two processes established by the Nation's Constitution, for amending the Constitution in the future.

The emergency amendments will lapse on April 27, 2017, unless permanently adopted prior to that date, in accordance with the Legislative Procedures Act.

On May 2, 2015, the Oneida Nation voted in a Secretarial Election, approving five amendments to the Oneida Nation Constitution (hereinafter: "Constitution"):

- Lowering the minimum voting age for Tribal elections from 21 to 18 years old.
- Establishing a different process for making future amendments to the Constitution; and giving the Secretary of the US Department of the Interior less approval/oversight authority over the Nation.
- Changing the name of the Oneida Tribe of Indians of Wisconsin to "Oneida Nation".

- Formally establishing the Judiciary in the Constitution
- Allowing GTC Annual and Semi-Annual meetings to be held at any time during the months of January and July, instead of on the first Mondays of those months.

These proposed amendments were submitted to update the Law to reflect the Constitutional amendments.

**Lowering the minimum voting age for Oneida Nation elections from 21 to 18 years old; changing “Tribe” to “Nation” to reflect the new name.**

After the Constitution was amended, provisions in this Law conflicted with the new requirements – specifically, this Law still defined “qualified voters” as persons who are at least 21 years old, but the Constitution now states that qualified voters are persons who are at least 18 years old.

On April 27, 2016, the OBC adopted emergency amendments to this Law which lowered the minimum voting age to 18. Additional changes were made to replace references to the “Tribe” with references to the “Nation.” [2.3-15]. Those amendments were adopted on an emergency basis in order to reconcile the different voting age requirements before a caucus that was scheduled for May 7, 2016.

**Establishing a different process for making future amendments to the Constitution**

In addition to permanently adopting the emergency amendments, these proposed changes create a new section in the Law, which addresses how the Constitution can be amended in the future. Currently, this Law does not address how the Constitution can be amended; the only requirements are set out in the Constitution, and those requirements were changed after the Secretarial Election.

The amended Constitution now identifies that there are now two different processes by which Constitutional amendments can be placed on a ballot for the membership to vote on:

1. **OBC Process.** Amendments may be proposed by the OBC.
2. **Petition Process.** Amendments may be proposed by a petition signed by the membership.

*OBC Process*

The new section in the Law essentially repeats most of the requirements set out in the Constitution for the petition process; but for the OBC process, this Law does not repeat the requirements found in the Constitution. Instead, the Law states that the requirements for the OBC process are “provided in the Constitution and as further detailed in the supporting standard operating procedures which the [OBC] shall adopt.” [2.13-1] The Constitution does not specifically authorize the OBC to adopt supporting SOPs for when they propose amendments; that language only appears in the proposed new language for the Election Law.

*Petition Process*

The Constitution sets out specific requirements for the petition process; and most of those requirements are repeated in the new language in this Law. The Constitution also identifies additional requirements that may/must be established by law, and most of those are also established in this new section added to the Law:

Requirement in the Constitution	Provisions that would be added to the Election Law
---------------------------------	--

On the ballot, proposed Constitutional amendments must be accompanied by purpose statement, prepared by “the person who is so authorized by law.”	Authorizes the Oneida Law Office to prepare the statement of purpose that will appear on the ballot. [2.13-4]
Petitions to amend the Constitution must be filed with the “person authorized by law” to receive them.	Authorizes the Office of the Nation’s Secretary ( <i>i.e.</i> Tribal Secretary) to receive these petitions. [2.13-1]
After receiving a petition, the authorized person must, “as provided by law”: 1. determine the validity and sufficiency of the signatures, and 2. at least 60 days before the election, make an official announcement about the <u>validity/sufficiency of the signatures</u> .	1. The Trust Enrollment Department is responsible for verifying petition signatures, and 2. The Election Board is responsible for making an official announcement <u>of the proposed amendments</u> , once signatures are verified. [2.13-1]
Petitions must be in the form, and signed and circulated in the manner prescribed by Oneida law.	Qualified voters may request a petition form from the Tribal Secretary: • Then, the Tribal Secretary/designee must direct the Trust Enrollment Department to calculate the number of signatures the petitioner must collect. (This is calculated as of the date the petition form is requested.) • Then, the Secretary must give the petition form to the requester, and inform the requester of how many signatures they must collect. Petition forms must be circulated with all supporting materials (if any); each person signing the petition must also initial the form to acknowledge the supporting materials were available for review at the time s/he signed the petition. 2.13-1.
Publishing Notice: 3 things must be <u>published in full, as provided by Oneida Law</u> : • The proposed Constitutional amendment • The existing provision of the Constitution and Bylaws that would be changed/deleted. • The question as it shall appear on the ballot.	Proposed amendments must be published by publishing a sample ballot. The Election Board is responsible for mass-mailing the sample ballot no less than 10 days before the election. The Election Board Chair must notify the Trust Enrollment Department no less than 20 days before the requested mailing. 2.13-3.
Notice must be “prominently posted at Tribal <u>administration</u> offices.”	The sample ballot must be prominently posted at Oneida <u>administrative</u> offices; defined as “the location where the [OBC] conducts business.” [2.13-3]
Notice must be “furnished to news media as provided [by] Oneida law.”	The sample ballot must be published <u>in official Oneida media outlets</u> , which must be identified by OBC resolution. [2.13-3]

65 Although not required by the Constitution, one other additional requirement is established  
66 by the Law: The Constitution does not identify who is responsible for putting proposed  
67 amendments on the ballot for an election. This Law adds that the Election Board is responsible  
68 for doing so. [2.13-2]

69 **Other**

70 Various references to the “Enrollment Department” are changed to refer to the “Trust  
71 Enrollment Department.” All other relevant references to the “Tribe” were changed to “Nation”  
72 – including references to the “Tribal Secretary”, which were changed to the “Nation’s  
73 Secretary”; and all references to the Constitution were revised to “Oneida Nation Constitution.”

74 Section 2.2 is updated to incorporate the language requirements set out in the Legislative  
75 Procedures Act.



**Title 1. Government and Finances - Chapter 2102****ONEIDA ELECTION LAW****Onayote'a'ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanláhsla***People of the Standing Stone how it is we will appoint them the kind of laws we have*

2.1. Purpose and Policy  
 2.2. Adoption, Amendment, Repeal  
 2.3. Definitions  
 2.4. Election Board  
 2.5. Candidate Eligibility  
 2.6. Selection of Candidates  
 2.7. Notice of Polling Places

2.8. Registration of Voters  
 2.9. Election Process  
 2.10. Closing Polls Tabulating and Securing Ballots  
 2.11. Election Outcome and Ties  
 2.12. Elections  
 2.13. Oneida Nation Constitution and By-law Amendments

**2.1. Purpose and Policy**

2.1-1. It is the policy of the TribeNation that this law shall govern the procedures for the conduct of orderly Tribal elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

2.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida TribeNation in the conduct of elections. It is intended to govern all procedures used in the election process.

**2.2. Adoption, Amendment, Repeal**

2.2-1. This law was adopted by the Oneida General Tribal Council by resolution #GTC 707-06-98-A and amended by resolutions #GTC-01-04-10- A and BC-02-25-15-C. ~~The amendments adopted by resolution #GTC-01-04-10-A shall be effective January 4, 2010.~~

2.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Oneida Administrative Legislative Procedures Act ~~by the Business Committee or the Oneida General Tribal Council.~~ Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

2.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

2.2-4. ~~Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.~~ In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

2.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation.

**2.3. Definitions**

2.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

2.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

2.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding



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~~Tribal~~ holidays of the Nation.

2.3-5. -“Campaigning” shall mean all efforts designed to influence ~~Tribal~~ members of the Nation to support or reject a particular ~~Tribal~~ candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with ~~Tribal~~ members of the Nation.

2.3-6. -“Candidate” shall mean a petitioner or nominee for an elected position whose name is placed on the ballot by the Election Board after successful application.

2.3-7. -“Clerk” shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

2.3-8. -“Close of business” shall mean 4:30 p.m. Monday through Friday.

2.3-9. “Conflict of Interest” shall mean any interest, whether it be personal, financial, political or otherwise, in which a ~~Tribal~~Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the ~~Tribe~~Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida ~~Tribe~~Nation, or as defined in any law or policy of the ~~Tribe~~Nation.

2.3-10. -“Election” shall mean every primary and election.

2.3-11. -“General election” shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

2.3-12. -“Judge” shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

2.3-13. -“Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the ~~Tribe~~Nation.

2.3-14. -“Lot drawing” shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

2.3-15. ~~“Oneida Police Officer” shall mean an enrolled member of the Oneida Tribe of Indians who is a police officer on any police force~~ “Nation” means the Oneida Nation.

2.3-16. ~~“Nation’s newspaper” shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.~~

~~2.3-17. “Oneida Police Officer” shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.~~

2.3-18. “Private property” shall mean any lot of land not owned by the ~~Tribe~~Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

2.3-~~17~~19. “Prominent locations” shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

2.3-~~18~~20. “Qualified voter” shall mean an enrolled ~~Tribal~~ member of the Nation who is ~~21~~eighteen (18) years of age or older.

2.3-~~19~~21. “Rejected Ballots” shall mean those ballots which are rejected by the vote tabulating machine.



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83 | 2.3-~~20-22~~. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise  
 84 | marred and is not tabulated.

85 | 2.3-~~21-23~~. "Teller" shall mean the election official in charge of collecting and storing of all  
 86 | ballots.

87 | ~~2.3-22. "Tribal newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the~~  
 88 | ~~Tribe for the benefit of transmitting news to Tribal members which is designated by the Election~~  
 89 | ~~Board as a source for election related news.~~

90 | ~~2.3-23. "Tribe" means the Oneida Tribe of Indians of Wisconsin.~~

91

## 92 | **2.4. -Election Board**

### 93 | *Section A. Establishment, Composition and Election*

94 | 2.4-1.- An Election Board is hereby created for the purpose of carrying out the provisions of this  
 95 | law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

96 | 2.4-2.- The Election Board shall consist of nine (9) elected members. All members shall be  
 97 | elected to terms of three (3) years, not to exceed two (2) consecutive terms.

98 | 2.4-3. -*Recusal*.- An Election Board member shall recuse himself/herself from participating as an  
 99 | Election Board member in any pre-election, election day, or post-election activities while he or  
 100 | she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of  
 101 | interest.

102 | 2.4-4. -*Removal*.- Removal of members shall be pursuant to the Oneida Removal Law. A  
 103 | member who is removed from the Election Board shall be ineligible to serve on the Board for  
 104 | three (3) years from the time he or she is removed from the Election Board.

105 | 2.4-5. -*Vacancies*.- Any vacancy in an unexpired term shall be filled by appointment by the  
 106 | Business Committee for the balance of the unexpired term. The filling of a vacancy may be  
 107 | timed to correspond with the pre-election activities and the needs of the Election Board.

108 | 2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

109 | 2.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the  
 110 | Election Board, as recommended by the Election Board, to assist with election day and pre-  
 111 | election activities.

112 | 2.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the  
 113 | By-laws of the Election Board, to preside over the meetings. This selection shall be carried out  
 114 | at the first meeting of the Election Board following an election. The Chairperson shall then ask  
 115 | the Election Board to select a Vice-Chairperson and Secretary.

116

### 117 | *Section B. Duties of the Election Board*

118 | 2.4-9. -The Election Board shall have the following duties, along with other responsibilities listed  
 119 | throughout this law.

120 | (a) The Election Board shall be in charge of all registration and election procedures; and

121 | (b) Upon completion of an election, the Election Board shall make a final report on the  
 122 | election results as set out in this law.

123

### 124 | *Section C. Specific Duties of Officers and Election Board Members*

125 | 2.4-10. -Specific duties of the Chairperson and other Election Board members, in addition to  
 126 | being present at all Election Board meetings and assisting the handicapped through the voting  
 127 | process, are as set out herein:



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(a) ~~Chairperson~~: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 2.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and ~~OneidaTrust~~ Enrollment Department personnel when their election day duties are complete; and shall post and report election results.

(b) ~~Vice-Chairperson~~: Shall preside over all meetings in the absence of the Chairperson.

(c) ~~Secretary~~: Shall keep a record of the meetings and make them available to the ~~TribalNation's~~ Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.

(d) ~~Clerks~~: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the ~~OneidaTrust~~ Enrollment Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the ~~OneidaTrust~~ Enrollment Department.

(e) ~~Tellers~~: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) ~~Judges~~: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between ~~Tribal~~ members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

#### Section D. Compensation Rates

2.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the ~~Nation's~~ budgeting process ~~of the Tribe~~.

2.4-12. The ~~OneidaTrust~~ Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

### 2.5. Candidate Eligibility

#### Section A. Requirements

2.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

2.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

(a) be an enrolled ~~Tribal~~ member of the Nation, as verified by membership rolls of the ~~TribeNation~~.

(b) be a qualified voter on the day of the election.

(c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:

(1) a valid Wisconsin driver's license;

(2) a bill or pay check stub showing name and physical address of the candidate



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from the prior or current month;

(3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

2.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

2.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the TribalNation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal TribalNation mail delivery, faxed or other delivery method shall be accepted.

2.5-5. The names of the candidates and the positions sought shall be a public record and made available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

#### *Section B. Eligibility Review*

2.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

2.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

(a) Position for which they were considered

(b) Qualification of the position and citation of the source. (Copies of source may be attached.)

(c) A brief summary explaining why the applicant was found to be ineligible.

(d) That the applicant has two (2) business days from notification to make an appeal.

Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal TribalNation mail, faxed or other delivery method will be accepted.

#### *Section C. Campaign Financing*

2.5-8. Contributions:

(a) Solicitation of Contributions by Candidates.

(1) Candidates shall only accept contributions from individuals who are members of the TribeNation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.



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(2) Candidates shall not solicit or accept contributions in any ~~Tribal~~ office or business/facility of the Nation.

(b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

#### 2.5-9. Campaign Signs and Campaigning:

(a) Placement of campaign signs:

(1) Campaign signs shall not be posted or erected on any ~~Tribal~~ property of the Nation except for private property with the owner/tenant's permission.

(2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.

(3) No campaign sign shall project beyond the property line into the public right of way.

(b) Removal of campaign signs. All campaign signs shall be removed within five (5) business days after an election.

(c) Employees of the ~~Tribe~~Nation shall not engage in campaigning for ~~Tribal~~ offices of the Nation during work hours. ~~Tribal~~The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

#### Section D. Candidate Withdrawal

2.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

2.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

2.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

2.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

#### 2.5-14. Candidate Withdrawal After Winning an Election.

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be



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repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

## 2.6. Selection of Candidates

### *Section A. Setting of Caucus*

2.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

2.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus. Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.

(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

### *Section B. Petition*

2.6-3. Any eligible ~~Tribal~~ member of the Nation may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the ~~Tribal~~ Office of the Nation's Secretary's ~~Office~~ or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

(1) printed name and address;

(2) date of birth;

(3) Oneida ~~Tribal~~ Nation Enrollment Number; and

(4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the ~~Tribal~~ Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The ~~Tribal~~ Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the ~~Oneida~~ Trust Enrollment Department verify all signatures contained on the petition.

2.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a

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judicial court or commission, shall not run for more than one (1) elective office or seat per election.

## 2.7. Notice of Polling Places

2.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of ~~Tribal~~the Nation's businesses/facilities.

2.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

2.7-3. Except for a Special Election, notice for the election shall be mailed to all ~~Tribal~~Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The ~~Oneida~~Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

2.7-4. Notice of the election shall be placed in the ~~Tribal~~Nation's newspaper.

## 2.8. Registration of Voters

### *Section A. Requirements*

2.8-1. *Registration of Voters.* All enrolled members of the ~~Tribe~~Nation, who are ~~twenty-one~~ ~~(21)~~eighteen (18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida ~~Tribal~~Nation Constitution.

### *Section B. Identification of Voters*

2.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) ~~Tribal~~Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

### *Section C. Registration Procedures*

2.8-3. Voters shall physically register, on the day of the election, at the polls.

2.8-4. ~~Oneida~~Trust Enrollment Department personnel shall be responsible for verifying ~~Tribal~~ enrollment, with the Nation. Conduct of ~~Oneida~~Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

2.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

### *Section D. Qualification/Verification of Voter Eligibility*

2.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the ~~Trust~~ Enrollment Department personnel who are registering voters, to decide the voting



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member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida ~~Tribal~~Nation Constitution, Article III Section 2, to vote in ~~tribal~~the Nation's elections.

2.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

## **2.9. Election Process**

### *Section A. Polling Places and Times*

2.9-1. In accordance with Article III, Section 45 of the ~~Tribal~~Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 2.12-6.

2.9-2. Elections shall be held in an Oneida ~~Tribal~~Nation facility(s) as determined by the Election Board.

2.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) ~~Tribal~~members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

2.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

2.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

2.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

2.9-7. No one causing a disturbance shall be allowed in the voting area.

2.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

### *Section B. Ballot Box*

2.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

### *Section C. Spoiled Ballots*

2.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

2.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."



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2.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

#### *Section D. Rejected Ballots*

2.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 2.9-10 through 2.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

### **2.10. Tabulating and Securing Ballots**

#### *Section A. Machine Counted Ballots*

2.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

2.10-2. At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the ~~Tribal~~ members of the Nation before the polls were opened per section 2.9-3(a).

#### *Section B. Manually Counted Ballots*

2.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

2.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

2.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

2.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

#### *Section C. Securing Ballots*

2.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

### **2.11. Election Outcome and Ties**



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Section A. Election Results Announcement

2.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

*"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"*

2.11-2. The Election Board shall post, in the prominent locations, and publish in the TribalNation's newspaper, the tentative results of an election.

Section B. Tie

2.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

2.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

Section C. Recount Procedures

2.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the TribalOffice of the Nation's Secretary's Office, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The TribalNation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.



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2.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

2.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

2.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

2.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

2.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

#### *Section D. Challenges and Declaration of Results*

2.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

2.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Tribal Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.



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(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

2.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

2.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

2.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

2.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

## 2.12. Elections

### *Section A. Primary Elections; Business Committee*

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

2.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

2.12-4. -In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 2.5-11 and 2.5-12 shall be followed, including the requirement to print a notice in the FribalNation's newspaper if time lines allow.

### *Section B. Special Elections*

2.12-5.- Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as



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defined in this law, may be placed on the same ballot as the subject matter of an election.

2.12-6. -Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

2.12-7. -Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the ~~Tribal~~Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

2.12-8. -In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

### *Section C. Referendums*

2.12-9. -Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

(a)- Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b)- Referendum requests may appear on the next called for election.

(c)- Referendum questions are to be presented to the ~~Tribal~~Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the ~~Tribe~~Nation or general membership.

### *Section D. Initiation of Special Elections*

2.12-10.- Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

2.12-11. -Special Election may be requested by a ~~Tribal~~-member of the Nation to the Business Committee or General Tribal Council.

2.12-12.- All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

## **2.13. Oneida Nation Constitution and By-law Amendments**

2.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures



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622 currently required for a petition submittal, which shall be ten percent (10%) of all  
623 members qualified to vote on the date the petition form is requested from the Office of  
624 the Nation's Secretary. When the Nation's Secretary receives the calculation from the  
625 Trust Enrollment Department, the Nation's Secretary shall provide the requester with the  
626 petition form and the number of signatures that are currently required.

627 (c) Such petitions shall be circulated with all supporting materials and submitted a  
628 minimum of ninety (90) days prior to the election at which the proposed amendment is to  
629 be voted upon. If a petition includes supporting materials in addition to the petition form,  
630 each qualified voter signing the petition shall also acknowledge that the supporting  
631 materials were available for review at the time he or she signed the petition by initialing  
632 where required on the petition form.

633 (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment  
634 Department for verification of signatures and to the Election Board to provide notice that  
635 the petition may need to be placed on an upcoming ballot.

636 (e) If the petition is verified by the Trust Enrollment Department to contain signatures  
637 from at least ten percent (10%) of all qualified voters, the Election Board shall make an  
638 official announcement of the proposed amendments to the Oneida Nation Constitution at  
639 least sixty (60) days prior to the election at which the proposed amendments are to be  
640 voted on.

641 2.13-2. The Election Board shall place any proposed amendments to the Oneida Nation  
642 Constitution that meet the requirements contained in 2.13-1 on the ballot at the next general  
643 election. Provided that, the Oneida Business Committee or General Tribal Council may order a  
644 special election be held to consider the proposed amendments. In such circumstances, the  
645 Election Board shall place any proposed amendments to the Oneida Nation Constitution on the  
646 ballot at the next special election.

647 2.13-3. The Election Board shall publish any proposed amendments by publishing a sample  
648 ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust  
649 Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty  
650 (20) calendar days prior to the requested mailing. Copies of such publications shall be  
651 prominently posted in each polling place and at administrative offices of the Nation and shall  
652 also be published in official Oneida media outlets, which the Oneida Business Committee shall  
653 identify by resolution. For the purposes of this section, Oneida administrative offices means the  
654 location where the Oneida Business Committee conducts business.

655 2.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the  
656 proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure  
657 that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true  
658 and impartial statement and is written in such a manner that does not create prejudice for or  
659 against the proposed amendment.

660 2.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed  
661 amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on  
662 that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend  
663 existing provisions of the Constitution and By-laws at the end of thirty (30) days after  
664 submission of the final election report.

665 2.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the  
666 amendment receiving the highest affirmation vote prevails.

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667 |  
668  
669 *End.*

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Adopted - June 19, 1993  
673 Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)  
674 Presented for Adoption of 1997 Revisions - GTC-7-6-98-A  
675 Amended- October 11, 2008 (General Tribal Council Meeting)  
676 Amended-GTC-01-04-10-A  
677 Amended – BC-02-25-15-C



## Title 1. Government and Finances - Chapter 102

### ELECTION

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*People of the Standing Stone how it is we will appoint them the kind of laws we have*

2.1. Purpose and Policy	2.8. Registration of Voters
2.2. Adoption, Amendment, Repeal	2.9. Election Process
2.3. Definitions	2.10. Tabulating and Securing Ballots
2.4. Election Board	2.11. Election Outcome and Ties
2.5. Candidate Eligibility	2.12. Elections
2.6. Selection of Candidates	2.13. Oneida Nation Constitution and By-law Amendments
2.7. Notice of Polling Places	

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#### 2.1. Purpose and Policy

2.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

2.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

#### 2.2. Adoption, Amendment, Repeal

2.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A and amended by resolutions GTC-01-04-10- A and BC-02-25-15-C.

2.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

2.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

2.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 2.3. Definitions

2.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

2.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

2.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

2.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

2.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

2.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is

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placed on the ballot by the Election Board after successful application.

2.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose of determining voter eligibility.

2.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

2.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political or otherwise, in which a Nation elected official, employee, consultant, appointed or elected, member of any board, committee or commission, or their immediate relatives, friends or associates, or any other person with whom they have contact, that conflicts with any right of the Nation to property, information, or any other right to own and operate its enterprises, free from undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in any law or policy of the Nation.

2.3-10. "Election" shall mean every primary and election.

2.3-11. "General election" shall mean the election held every three (3) years in July to elect the Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the Business Committee and may include contests for elected boards, committees and commissions positions.

2.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of discrepancies, complaints and controversy regarding voter eligibility.

2.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

2.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the winner of an elected position, in the case of a tie between two (2) or more candidates.

2.3-15. "Nation" means the Oneida Nation.

2.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by the Nation for the benefit of transmitting news to members of the Nation, which is designated by the Election Board as a source for election related news.

2.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a police officer on any police force.

2.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential dwelling or a privately owned business within the boundaries of the Reservation.

2.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the SEOTS building and all One-Stop locations.

2.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18) years of age or older.

2.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating machine.

2.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred and is not tabulated.

2.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

## **2.4. Election Board**

### *Section A. Establishment, Composition and Election*

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2.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

2.4-2. The Election Board shall consist of nine (9) elected members. All members shall be elected to terms of three (3) years, not to exceed two (2) consecutive terms.

2.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an Election Board member in any pre-election, election day, or post-election activities while he or she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

2.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member who is removed from the Election Board shall be ineligible to serve on the Board for three (3) years from the time he or she is removed from the Election Board.

2.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed to correspond with the pre-election activities and the needs of the Election Board.

2.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

2.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to the Election Board, as recommended by the Election Board, to assist with election day and pre-election activities.

2.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in the By-laws of the Election Board, to preside over the meetings. This selection shall be carried out at the first meeting of the Election Board following an election. The Chairperson shall then ask the Election Board to select a Vice-Chairperson and Secretary.

#### *Section B. Duties of the Election Board*

2.4-9. The Election Board shall have the following duties, along with other responsibilities listed throughout this law.

- (a) The Election Board shall be in charge of all registration and election procedures; and
- (b) Upon completion of an election, the Election Board shall make a final report on the election results as set out in this law.

#### *Section C. Specific Duties of Officers and Election Board Members*

2.4-10. Specific duties of the Chairperson and other Election Board members, in addition to being present at all Election Board meetings and assisting the handicapped through the voting process, are as set out herein:

- (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing body for applicants found to be ineligible in accordance with 2.5-6 in the event of an appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust Enrollment Department personnel when their election day duties are complete; and shall post and report election results.
- (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.
- (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's Secretary, other Election Board members and the public as required in the Open Records and Open Meetings Law.
- (d) Clerks: Shall implement the requirements of identifying and registering all voters and determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

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Department personnel in the registration process, and assist the Chairperson as directed in conducting the election. Clerks cannot be currently employed by the Trust Enrollment Department.

(e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as determined by this law. Shall assist the Chairperson in conducting the election.

(f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted under this law. In case of disputes among Election Board members, or between members of the Nation and Election Board members, or any controversy regarding voter eligibility, the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall also ensure that all ballots of voters whose eligibility may be in question, remain confidential.

#### *Section D. Compensation Rates*

2.4-11. Election Board members are to be compensated at an hourly rate when conducting elections as provided for in the Election Board's bylaws as approved by the Business Committee. The Election Board shall have a budget, approved through the Nation's budgeting process.

2.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be compensated at their regular rate of pay out of their respective budgets.

### **2.5. Candidate Eligibility**

#### *Section A. Requirements*

2.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-laws or other documents, all applicants shall meet the minimum requirements set out in this section in order to become a candidate.

2.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

- (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:
  - (1) a valid Wisconsin driver's license;
  - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;
  - (3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

2.5-3. No applicant may have a conflict of interest with the position for which they are being considered, provided that any conflict of interest which may be eliminated within thirty (30) calendar days of being elected shall not be considered as a bar to nomination or election.

2.5-4. Applications and petitions where the applicant was not nominated during caucus shall be filed by presenting the information to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus. No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

2.5-5. The names of the candidates and the positions sought shall be a public record and made



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available to the public upon the determination of eligibility by the Election Board or the Board's designated agent.

*Section B. Eligibility Review*

2.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal. At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall select the hearing body. The hearing shall be held within two (2) business days of receipt of the appeal. The applicant shall be notified by phone of time and place of the hearing. The decision of the hearing body shall be sent via certified mail or hand delivery within two (2) business days of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the Judiciary on an accelerated schedule.

2.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position shall be notified by certified mail return receipt requested. The notice shall provide the following information:

- (a) Position for which they were considered
- (b) Qualification of the position and citation of the source. (Copies of source may be attached.)
- (c) A brief summary explaining why the applicant was found to be ineligible.
- (d) That the applicant has two (2) business days from notification to make an appeal. Appeals must be filed at the location designated on the notice by hand delivery. The location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or other delivery method will be accepted.

*Section C. Campaign Financing*

2.5-8. Contributions:

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are members of the Nation or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any office or business/facility of the Nation.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

2.5-9. Campaign Signs and Campaigning:

- (a) Placement of campaign signs:
  - (1) Campaign signs shall not be posted or erected on any property of the Nation except for private property with the owner/tenant's permission.
  - (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven (7) such signs may be placed on a building or on a lot.
  - (3) No campaign sign shall project beyond the property line into the public right of way.
- (b) Removal of campaign signs. All campaign signs shall be removed within five (5)

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business days after an election.

(c) Employees of the Nation shall not engage in campaigning for offices of the Nation during work hours. The Nation's employees shall be subject to disciplinary action under the personnel policies and procedures for political campaigning during work hours.

(d) Enforcement. The Zoning Administrator shall cause to be removed any campaign signs that are not in compliance with this law, in accordance with the Zoning and Shoreland Protection Law.

(e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee.

*Section D. Candidate Withdrawal*

2.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by the candidate prior to submission of the ballot for printing to any Election Board member, excluding alternates.

2.5-11 After printing of the ballot, any candidate may withdraw his or her name from the election by submitting in writing a statement indicating they are withdrawing from the election prior to the opening of the polls to any Election Board member, excluding alternates. This statement shall be posted alongside any sample ballot printed prior to the election in the newspaper or any posting at the polling places.

2.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the Election Board members in charge of the polling place, to be removed from the ballot. The written statement shall be posted next to any posted sample ballot.

2.5-13. Candidates withdrawing by any method listed herein shall be denied any position from which they have withdrawn regardless of the number of votes cast for that candidate. A written statement shall be considered the only necessary evidence of withdrawal and acceptance of denial of any position withdrawn from.

*2.5-14. Candidate Withdrawal After Winning an Election.*

(a) In the event a candidate declines an office after winning an election, the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a Special Election shall be held.

**2.6. Selection of Candidates**

*Section A. Setting of Caucus*

2.6-1. The Election Board shall be responsible for calling a caucus before any election is held. The caucus for the general election shall be held at least ninety (90) calendar days prior to the election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior to the election date. In a general election year, caucuses shall be combined so that candidates for the Business Committee and elected boards, committees and commissions are nominated at the same caucus.

2.6-2. The procedures for the caucus shall be as follows:

(a) Candidates shall be nominated from the floor.

(b) Candidates present at the caucus will accept/decline their nomination at the caucus.

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Candidates nominated at the caucus, but not present to accept the nomination, shall be required to follow the petition process.

(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

*Section B. Petition*

2.6-3. Any eligible member of the Nation may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

(1) printed name and address;

(2) date of birth;

(3) Oneida Nation Enrollment Number; and

(4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

2.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

**2.7. Notice of Polling Places**

2.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

2.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

2.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

2.7-4. Notice of the election shall be placed in the Nation's newspaper.

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**2.8. Registration of Voters**

*Section A. Requirements*

2.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the Oneida Nation Constitution.

*Section B. Identification of Voters*

2.8-2. All voters must present one of the following picture identifications in order to be able to vote:

- (a) Oneida Nation I.D.
- (b) Drivers License.
- (c) Other I.D. with name and photo.

*Section C. Registration Procedures*

2.8-3. Voters shall physically register, on the day of the election, at the polls.

2.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election Officials during the voting period.

2.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration Form containing the voter's following information:

- (a) name and maiden name (if any);
- (b) current address;
- (c) date of birth; and
- (d) enrollment number.

*Section D. Qualification/Verification of Voter Eligibility*

2.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote, the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with the Trust Enrollment Department personnel who are registering voters, to decide the voting member's eligibility currently being questioned and shall make such decisions from the facts available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation Constitution, Article III Section 2, to vote in the Nation's elections.

2.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of the voter shall be written next to a numbered list which corresponds to the numbered and sealed envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they desire to challenge the decision made by the Election Officials. The Election Board shall make a final decision, within five (5) business days of receiving the appeal and shall report this decision in the final report sent to the Oneida Business Committee.

**2.9. Election Process**

*Section A. Polling Places and Times*

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2.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections shall be held in the month of July on a date set by the General Tribal Council. The General Tribal Council shall set the election date at the January annual meeting, or at the first GTC meeting held during a given year. Special Elections shall be set in accordance with 2.12-6.

2.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election Board.

2.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line to vote at 7:00 p.m. shall be allowed to vote.

(a) If a ballot counting machine is used, the ballot counting machine shall be prepared prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count.

2.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open, and until the counting of ballots is completed, and tentative results posted.

2.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such that there is an area with at least two sides and a back enclosure.

2.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of the voting area, excluding private property.

2.9-7. No one causing a disturbance shall be allowed in the voting area.

2.9-8. Election Board members may restrict the voting area to qualified voters only. This restriction is in the interest of maintaining security of the ballots and voting process.

#### *Section B. Ballot Box*

2.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and shall be locked until counting at the close of polls. Provided that, with electronic ballot counting, the ballots may be placed within the ballot counting machine as they are received.

#### *Section C. Spoiled Ballots*

2.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

2.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

2.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

#### *Section D. Rejected Ballots*

2.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 2.9-10 through 2.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked

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“Void Ballots.”

## **2.10. Tabulating and Securing Ballots**

### *Section A. Machine Counted Ballots*

2.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate from the ballot counting machine copies of the election totals from the votes cast.

2.10-2. At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 2.9-3(a).

### *Section B. Manually Counted Ballots*

2.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the ballot box and remove the ballots.

2.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall be secured in a sealed container for transportation to the ballot counting location. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

2.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and witnessed/monitored by an Oneida Police Officer.

2.10-6. Ballots must be counted by two different Election Officials until two final tallies are equal in back to back counting. Final tallies shall be verified by the Election Judges.

### *Section C. Securing Ballots*

2.10-7. The Judges shall place together all ballots counted and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots, and the election totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The Oneida Police Officer shall then deliver, on the day of the election, the sealed container to the Records Management Department for retaining.

## **2.11. Election Outcome and Ties**

### *Section A. Election Results Announcement*

2.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

*"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"*

2.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

### *Section B. Tie*

2.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to determine the outcome of an election, the Election Board shall conduct an automatic recount of

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the votes for each candidate receiving the same number of votes. Any recount conducted shall be the only recount allowed for the tied candidates.

2.11-4. For Business Committee positions, a run-off election between the candidates with the same number of votes shall be held if there remains a tie after the recount. Said run-off election shall be held within twenty one (21) calendar days after the recount. For all other positions, if there remains a tie after the recount, the Election Board shall decide the winner of the tied positions at least two (2) business days after, but no more than five (5) business days after the recount through a lot drawing, which shall be open to the public.

(a) The Election Board shall notify each of the tied candidates and the public of the date, time, and place of the drawing at least one (1) business day before the drawing. Notice to the tied candidates shall be in writing. Notice to the public shall be posted by the Election Board in the prominent locations.

(b) On the date and at the time and place the drawing was noticed, the Election Board Chairperson shall clearly write the name of each tied candidate on separate pieces of paper in front of any witnesses present. The pieces of paper shall be the same, or approximately the same, color, size, and type. The papers shall be folded in half and placed in a container selected by the Election Board Chairperson.

(c) The Election Board Chairperson shall designate an uninterested party to draw a name from the container. The candidate whose name is drawn from the container first shall be declared the winner. An Election Board member other than the Chairperson shall remove the remaining pieces of paper from the container and show them to the witnesses present.

*Section C. Recount Procedures*

2.11-5. A candidate may request the Election Board to complete a recount, provided the margin between the requesting candidate's vote total and vote total for the unofficial winner was within two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is greater. A candidate requests a recount by hand delivering a written request to the office of the Nation's Secretary, or noticed designated agent, within five (5) business days after the election. Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact the Election Board Chairperson by the next business day after the request for recounts.

2.11-6. The Election Board shall respond by the close of business on the fifth (5<sup>th</sup>) day after the request regarding the results of the recount. Provided that, no recount request need be honored where there have been two (2) recounts completed as a result of a request either as a recount of the whole election results, or of that sub-section.

2.11-7. All recounts shall be conducted manually with, if possible, the original Election Officials and Oneida Police Officer present, regardless of the original type of counting process. Manual recounts may, at the discretion of the Election Officials, be of the total election results, or of the challenged sub-section of the election results.

2.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed container with the ballots from the Records Management Department and transporting it to the ballot recounting location.

2.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election Board Chairperson and an Oneida Police Officer shall witness the recount.

2.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be

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counted until two (2) final tallies are equal in back to back counting and the total count of ballots reconciles with the total count from the ballot counting machine. Sub-sections of candidates may be recounted in lieu of a full recount.

(a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be counted twice by different persons and certified by the Judges.

(b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior to using an electronic ballot counting device, it shall be certified as correct either by the maker, lessor of the machine, or Election Board.

*Section D. Challenges and Declaration of Results*

2.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

(b) If the Judiciary invalidates the election results, a Special Election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as the Election Law allows for a Special Election.

2.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

(a) Total number of persons voting.

(b) Total votes cast for each candidate by subsection of the ballot.

(c) List of any ties and final results of those ties, including the method of resolution.

(d) List of candidates elected and position elected to.

(e) Number of spoiled ballots.

(f) Cost of the election, including the compensation paid to each Election Board member.

2.11-13. *Declaration of Results.* The Business Committee shall declare the official results of the election and send notices regarding when the swearing in of newly elected officials shall take place within ten (10) business days after receipt of the Final Report.

2.11-14. Candidates elected to the Business Committee shall resign from any salaried position effective prior to taking a Business Committee oath of office

2.11-15. Except in the event of an emergency, as determined by the Business Committee, newly elected officials shall be sworn into office no later than thirty (30) calendar days after the official results of an election are declared by the Business Committee.

(a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall be considered vacant and the Election Board shall declare the next highest vote recipient the winner. This procedure shall be repeated as necessary until a winner is declared.

(b) If all vote recipients decline or are otherwise unable to be declared the winner, then a



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Special Election shall be held.

2.11-16. The Election Board shall send notice to the Records Management Department to destroy the ballots thirty (30) calendar days after the election or after the final declaration of official election results occurs, whichever is longer.

## **2.12. Elections**

### *Section A. Primary Elections; Business Committee*

2.12-1. When a primary is required under 2.12-2, it shall be held on a Saturday at least sixty (60) calendar days prior to the election.

2.12-2. There shall be a primary election for Business Committee positions whenever there are three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-large council member positions.

(a) The two (2) candidates receiving the highest number of votes cast for each officer position shall be placed on the ballot.

(b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large council member positions shall be placed on the ballot.

(c) Any position where a tie exists to determine the candidates to be placed on the ballot shall include all candidates where the tie exists.

2.12-3. The Election Board shall cancel the primary election if the Business Committee positions did not draw the requisite number of candidates for a primary by the petitioning deadline set for the primary.

2.12-4. In the event a candidate withdraws or is unable to run for office after being declared a winner in the primary, the Election Board shall declare the next highest primary vote recipient the primary winner. This procedure shall be repeated as necessary until the ballot is full or until there are no available candidates. If the ballot has already been printed, the procedures for notifying the Oneida public in section 2.5-11 and 2.5-12 shall be followed, including the requirement to print a notice in the Nation's newspaper if time lines allow.

### *Section B. Special Elections*

2.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as defined in this law, may be placed on the same ballot as the subject matter of an election.

2.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business Committee as recommended by the Election Board or as ordered by the Judiciary in connection with an election challenge.

2.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the Special Election.

2.12-8. In the event of an emergency, the Election Board may reschedule the election, provided that no less than twenty-four (24) hours notice of the rescheduled election date is given to the voters, by posting notices in the prominent locations.

### *Section C. Referendums*

2.12-9. Registered voters may indicate opinions on any development, law or resolution, proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special referendum election.

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(a) Referendum elections in which a majority of the qualified voters who cast votes shall be binding on the Business Committee to present the issue for action/decision at General Tribal Council.

(b) Referendum requests may appear on the next called for election.

(c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the caucus prior to election, regarding issues directly affecting the Nation or general membership.

#### *Section D. Initiation of Special Elections*

2.12-10. Special Elections may be initiated by a request or directive of the General Tribal Council or the Oneida Business Committee.

2.12-11. Special Election may be requested by a member of the Nation to the Business Committee or General Tribal Council.

2.12-12. All Special Elections shall follow rules established for all other elections. This includes positions for all Boards, Committees and Commissions.

### **2.13. Oneida Nation Constitution and By-law Amendments**

2.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition of qualified voters. The requirements for the Oneida Business Committee's initiation of Constitutional amendments are as provided in the Constitution and as further detailed in the supporting standard operating procedures which the Oneida Business Committee shall adopt. Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting a petition to the Office of the Nation's Secretary which includes the full text of the proposed amendments and signatures that are equal in number to at least ten percent (10%) of all members qualified to vote.

(a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

(b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall direct the Trust Enrollment Department to calculate the number of signatures currently required for a petition submittal, which shall be ten percent (10%) of all members qualified to vote on the date the petition form is requested from the Office of the Nation's Secretary. When the Nation's Secretary receives the calculation from the Trust Enrollment Department, the Nation's Secretary shall provide the requester with the petition form and the number of signatures that are currently required.

(c) Such petitions shall be circulated with all supporting materials and submitted a minimum of ninety (90) days prior to the election at which the proposed amendment is to be voted upon. If a petition includes supporting materials in addition to the petition form, each qualified voter signing the petition shall also acknowledge that the supporting materials were available for review at the time he or she signed the petition by initialing where required on the petition form.

(d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment Department for verification of signatures and to the Election Board to provide notice that the petition may need to be placed on an upcoming ballot.

(e) If the petition is verified by the Trust Enrollment Department to contain signatures

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from at least ten percent (10%) of all qualified voters, the Election Board shall make an official announcement of the proposed amendments to the Oneida Nation Constitution at least sixty (60) days prior to the election at which the proposed amendments are to be voted on.

2.13-2. The Election Board shall place any proposed amendments to the Oneida Nation Constitution that meet the requirements contained in 2.13-1 on the ballot at the next general election. Provided that, the Oneida Business Committee or General Tribal Council may order a special election be held to consider the proposed amendments. In such circumstances, the Election Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the next special election.

2.13-3. The Election Board shall publish any proposed amendments by publishing a sample ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently posted in each polling place and at administrative offices of the Nation and shall also be published in official Oneida media outlets, which the Oneida Business Committee shall identify by resolution. For the purposes of this section, Oneida administrative offices means the location where the Oneida Business Committee conducts business.

2.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a true and impartial statement and is written in such a manner that does not create prejudice for or against the proposed amendment.

2.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that amendment shall become part of the Constitution and By-laws, and shall abrogate or amend existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission of the final election report.

2.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote prevails.

*End.*

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Adopted - June 19, 1993

Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

Amended- October 11, 2008 (General Tribal Council Meeting)

Amended-GTC-01-04-10-A

Amended – BC-02-25-15-C



## MEMORANDUM

DATE: October 3, 2016

FROM: Larry Barton, Chief Financial Officer  
FINANCE ADMINISTRATION OFFICE

TO: Patricia King, Treasurer  
Oneida Business Committee

RE: **Financial Impact of Changes in Law – Election Law**

### **I. Background**

Under consideration is a change to the existing Election Law. This current Law was amended on April 24, 2016 via an approved Emergency Amendment by the Business Committee. This Amendment is set to expire on October 27, 2016 if no action is taken to make the change permanent. However, another option under the Legislative Procedures Act is to extend the Emergency Amendment for an additional six months.

### **II. Executive Summary of Findings**

According to the Legislative Analysis, the Secretarial Election which took place on May 2, 2015 prompted two changes to the current Election Law. There was a lag in bringing these changes forward due to an appeal of the Secretarial Election results. There were two aspects of the Secretarial Election which have an impact on the existing Election Law and have prompted the Emergency Amendment on April 24, 2016:

1. Lowering the voting age from 21 to 18, and replacing all references of Oneida “Tribe” to Oneida Nation.
2. Establishing a new process for making future amendments to the Constitution.

#### **LOWERING VOTING AGE**

The Finance Department contacted the Chairperson of the Oneida Election Board, and requested the number of ballots cast in our recent elections, which appear in the chart below. General Elections tend to have more ballots cast than Special Elections. However, there have been no General Elections during the period since the adoption of the Emergency Amendment.

2016 Special Election Results:			
Number of voters:	Oneida: 228	Milwaukee: 29	Total: 257
2015 (Special Election to fill OBC Vacancy):			
Oneida: 714	Milwaukee: 84	Total: 798	
2015 (Special Election):			
Oneida: 483	Milwaukee: 40	Total: 523	
2014 (Judicial):			
Oneida: 420	Milwaukee: 73	Total: 493	
2014 (Primary):			
Oneida: 1153	Milwaukee: 126	Total: 1279	
2014 (General):			
On Reservation 1209, Brown/Outagamie 257, Milwaukee 145, WI 41, Out of State Total: 1645			

Making the Amendment permanent would not seem to have a direct impact on the number of polling stations. We currently have a station in Oneida and one in Milwaukee. The Election Board Chairperson indicated that an expected cost for printing ballots and rental of voting machines is eight thousand three hundred six dollars (\$8,306.00).

The Finance Department also contacted the Enrollments Department. It was learned that there are currently six hundred eighty-four (684) enrolled Oneida members in the 18-20 year old age range. Of these, 215 reside on the Oneida Reservation, another 116 in Brown and Outagamie Counties and another 98 in the Milwaukee area. From the chart above, one can glean that our voter turnout for a General Election is approximately ten percent (10%). The voter turnout rate is much lower for any Special Election. In applying this pattern to the 18-20 year old age group, one would expect an additional sixty-eight (68) ballots to be cast in a General Election. However, it should be noted that the 2016 Special Election took place in July, when the 18-20 year olds were allowed to vote. Records show the lowest voter turnout recorded in the last six elections conducted. Therefore, the cost for printing and voter machine rental would be negligible.

## ESTABLISHING NEW PROCESS FOR CONSTITUTIONAL AMENDMENTS

The current process for Constitutional Amendment does not involve the Election Board. Under the new provisions, the Election Board is responsible for “making the official announcement” of

a proposed Constitutional Amendment, once the required signatures have been verified. We surmise an Election Board meeting would be required to fulfill this responsibility. The Election Board Chairperson has indicated that total stipends paid to hold an election board meeting is nine hundred dollars (\$900.00). This would involve a mass-mailing of a sample ballot to all Oneida households. In examining printing and mailing costs of our recent General Tribal Council meetings, we would surmise that the cost of printing and mailing a sample ballot for any purpose would be among the lowest cost, akin to notification of a meeting to finish a previously disseminated G.T.C. agenda. The June 1, 2015 G.T.C. meeting to finish a previous agenda saw printing costs of six hundred eighty-nine dollars (\$689.00) and mailing costs of two thousand eight hundred twenty-eight dollars (\$2,828.00), for a grand total of three thousand five hundred seventeen dollars (\$3,517.00.) We will estimate printing and mailing of a sample ballot to amend our Constitution at four thousand one hundred dollars (\$4,100.00), to allow for printing of additional pages.

### **III. Financial Impact**

The financial impact of lowering the voting age from 21 to 18 years of age has been shown to be negligible. The financial impact of requiring the Election Board to play a role in the Constitutional Amendment process can be estimated at five thousand dollars (\$5,000.00) per proposed Amendment where signatures have been verified.

### **IV. Recommendation**

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



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



## Legislative Operating Committee October 20, 2016

# Leasing Law Amendments

<b>Submission Date:</b> 11/17/14	<b>Public Meeting:</b> 5/5/16
<b>LOC Sponsor:</b> Tehassi Hill	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was carried over into the current term by the LOC. Until recently, for tribal trust lands, all surface leases were required to be individually approved by the Secretary of the US Department of the Interior. However, the federal HEARTH Act now enables tribes to approve individual surface leases for their own trust lands – provided that the tribe has adopted tribal leasing regulations that were approved by the Secretary of the Interior.*

*The LOC processed a new Leasing Law, and it was adopted by the OBC on May 13, 2015 and submitted for approval by the Secretary of the Interior. However, it was returned with required changes that would need to be made before the Secretary would approve the law.*

**9/17/14 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.

**2/4/15 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 5-13-15-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.
- 4/6/16 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.
- 4/20/16 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.
- 5/4/16 LOC:** Motion by Jennifer Webster to accept the Leasing law public meeting packet with the updated draft and legislative analysis based on the latest comments received from the BIA and reaffirm the public meeting scheduled for the Leasing law on May 19, 2016 at 12:15 p.m.; seconded by Fawn Billie. Motion carried unanimously.
- 5/19/16:** *Public Meeting held.*
- 6/15/16 LOC:** Motion by Fawn Billie to accept the Leasing law public meeting comments; seconded by Tehassi Hill. Motion carried unanimously.
- Motion by Jennifer Webster to direct an adoption packet for the Leasing law be prepared when feedback of the draft from the Bureau of Indian Affairs is received; seconded by David P. Jordan. Motion carried unanimously.
- 8/2/16:** *Work meeting held.* Still waiting for the soft approval from BIA. Once received, adoption packet will go to LOC.
- 10/5/16:** LOC Chair received an email from the BIA giving “soft” approval of the Leasing Law.
- 10/10/16:** *Quarterly Sponsor Update Meeting Held.* Present: Tehassi Hill, Maureen Perkins, Tani Thurner, Clorissa Santiago, Krystal John. Group agreed it would go onto the 10/20/16 LOC agenda for adoption packet approval and forward to the Oneida Business Committee.

#### **Next Steps:**

- Accept the Leasing Law Amendments adoption packet and forward it to the Oneida Business Committee for consideration and direct the LRO to prepare a submittal packet for BIA review upon adoption.



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



TO: Oneida Business Committee  
FROM: Brandon Stevens, LOC Chairperson *BS*  
DATE: October 26, 2016  
RE: Leasing Law Amendments

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Please find the following attached backup documentation for your consideration of the Leasing law amendments:

1. Resolution: Leasing Law Amendments
2. Statement of Effect: Leasing Law Amendments
3. Leasing Law Amendments Legislative Analysis
4. Leasing Law Amendments Draft (Redline)
5. Leasing Law Amendments Draft (Clean)
6. Leasing Law Amendments Fiscal Impact Statement

## Overview

This resolution adopts amendments to the Leasing law which:

- Delegates rulemaking authority jointly to the Oneida Land Commission and the Division of Land Management based on the Administrative Rulemaking law [see 65.5-1, 65.7-5 and 65.10-5];
- Specifies 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)];
- Includes valuation provisions for residential and agricultural leases [see 65.6-4, 65.6-5, 65.7-5, 65.8-5 and 65.8-6];
- Includes 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
- Adds additional information regarding the process required under the National Environmental Policy Act [see 65.9-2(a)-(d)].

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on May 19, 2016 with a comment period closing on May 26, 2016. Those comments were accepted and considered by the Legislative Operating Committee (LOC) at the June 15, 2016 LOC meeting.

## Legislative History

The Oneida Business Committee originally adopted the Leasing Law and amendments to the Real Property to incorporate the Leasing Law with resolutions BC-05-13-15-C and BC-05-13-15-B respectively. Once the Leasing Law was adopted, it was submitted to the Bureau of Indian

Affairs for review and consideration for approval. The BIA responded with required revisions, which required the LOC to initiate amendments to the Leasing Law using the Legislative Procedures Act.

The BIA permitted the LOC to submit drafts for review, prior to adopting a final version for a second official BIA consideration. On October 5, 2016, I received an e-mail notifying the Nation that our latest draft submitted met all of the BIA's requirements and that we should now proceed by sending a copy of the amendments officially adopted by the Oneida Business Committee.

Part of the required revisions to the Leasing Law included limiting applicability to only the Tribal Trust Land. So that we could use the same process for all land owned by the Nation, including fee land, we included the following provision in amendments to the Real Property Law which are currently being developed by the LOC and are scheduled for a public meeting on October 20, 2016.

The Leasing law definition of Tribal land does not include Tribal fee land, however pursuant to this law, leases of Tribal fee land lasting longer than one (1) year that are not made as part of the homeownership program which uses federal funding must be administered and processed using the Leasing law.

Because this statement is not included in the Real Property Amendments adopted by BC-05-13-15-B, if these Leasing Law amendments were approved and made effective prior to the adoption of the amendments to the Real Property Law currently under development with the LOC, the leasing of fee land would not be covered anywhere. Accordingly, BC-05-13-15-B needs to be repealed. The LOC will continue to monitor the adoption and approval timelines. Should the Leasing Law amendments be approved prior to the Real Property Law amendments currently being developed, the LOC will initiate emergency amendments to the Real Property Law to ensure that all leasing scenarios are adequately covered with legislation.

### **Requested Action**

Approve the Resolution: Leasing Law Amendments

**BC Resolution \_\_\_\_\_**  
*Leasing Law Amendments*

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

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

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

**WHEREAS,** the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012 created a voluntary, alternative land leasing process available to Indian tribes by amending the Indian Long-Term Leasing Act of 1955; and

**WHEREAS,** under the HEARTH Act, once the governing Tribal leasing regulations have been submitted to, and approved by the Secretary of Interior, Indian tribes are authorized to negotiate and enter into leases without further approvals by the Secretary; and

**WHEREAS,** the Nation's Leasing Law, which established a process under which the Nation would be able to approve leases on Tribal trust land without additional approval of the Secretary of Interior, was adopted by resolution BC-05-13-15-C pending approval of the law from the Secretary of the Interior; and

**WHEREAS,** the Bureau of Indian Affairs (BIA) responded to the submission of our adopted law with required revisions in order to attain compliance with the HEARTH Act; and

**WHEREAS,** these amendments include those revisions identified by the BIA and also incorporated a delegation of rulemaking authority and created a provision permitting leases be entered by a guardian on behalf of a ward;

**WHEREAS,** on October 5, 2016, the BIA sent an e-mail indicating that the latest draft submitted met their requirements and that we should proceed by providing a copy of the amendments that have been adopted into in the law; and

**WHEREAS,** a public meeting for the Leasing Law amendments was held on May 19, 2016, in accordance with the Legislative Procedures Act; and

**WHEREAS,** the most recent amendment to the Real Property Law, adopted by resolution BC-05-13-15-B and also contingent on BIA approval of the Leasing Law, deleted all leasing provisions and deferred to the Leasing Law, however, based on the

revisions to the Leasing Law, a plain deferral to the Leasing Law would no longer adequately encompass all leasing situations the Nation encounters; and

**NOW THEREFORE BE IT RESOLVED**, that the most recent amendments to the Real Property Law, adopted by resolution BC-05-13-15-B, are hereby repealed; and

**NOW THEREFORE BE IT FURTHER RESOLVED**, that the amendments to the Leasing Law are hereby adopted; and

**NOW THEREFORE BE IT FINALLY RESOLVED**, that the Leasing Law shall be effective thirty (30) days after approval by the Secretary of Interior.



**Statement of Effect**  
*Resolution: Leasing Law Amendments*

***Summary***

This is a resolution 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 602.5-1 and 602.10-5];
- 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 602.4-2(b)];
- Include valuation provisions for residential and agricultural leases [see 602.6-4, 602.6-5, and 602.7-5];
- Include a provision allowing a residential lease be entered into by a parent or legal guardian on behalf of their child or ward [see 602.6-6]; and
- Add additional information regarding the process required under the National Environmental Policy Act [see 602.9-2(a)-(d)].

*Submitted by Krystal L. John, Staff Attorney*

***Analysis***

The Helping Expedite and Advance Responsible Tribal Home Ownership Act, better known as the HEARTH Act, created a voluntary, alternative land leasing process that is available to Indian tribes by amending the Indian Long-Term Leasing Act of 1955. In accordance with the HEARTH Act, once the governing Tribal leasing regulations have been submitted to and approved by the Secretary of Interior, Indian tribes are authorized to negotiate and enter into leases without further approvals by the Secretary.

The purpose of the Leasing Law amendments is to meet the requirements of the HEARTH Act by responding to and revising issued identified by the Bureau of Indian Affairs (BIA) Realty Specialist upon her review. In addition, the amendments also include delegation of administrative rulemaking authority jointly to the Oneida Land Commission and the Division of Land Management.

Based on an e-mail from the BIA Realty Specialist dated October 5, 2016, our understanding is that her latest review of our Leasing law amendments indicates that it is ready for approval of the Secretary of the Interior.

The only potential conflict that may arise based on adopted of this resolution, is if the Real Property law amendments currently scheduled for a public meeting on October 20, 2016 are not adopted before the Secretary of the Interior approves the Leasing law. This resolution repeals the Real Property law that was adopted by resolution BC-05-13-15-B and is contingent on the BIA's approval of the Leasing law. This version 05-13-15-B version of the Real Property law removed all content related to leasing and referenced the Leasing law; the simple reference is no longer adequate because one of the revisions required by the BIA was to amend the applicability of the Leasing to apply only to trust land. Accordingly, without an additional statement in the Real Property Law indicating that through the Real Property law the Leasing law's requirements will be applied to the Tribal fee land, leases of fee land would not be covered by any legislation. The proposed Real Property Amendments currently going through the legislative process contain that statement. If those Real Property amendments are not adopted before the Secretary of the Interior approves the Leasing law, the 02-25-15-C version of the Real Property law would govern, which contains Leasing provisions that conflict with this resolution. If that circumstance arises, the LOC will be required to adopt emergency amendments to the Real Property law to avoid any conflicting provisions and to ensure that all leasing scenarios are covered by legislation.

### ***Conclusion***

Adoption of this Resolution would conflict with the Real Property law if the Real Property law amendments that are currently going through the legislative process are not adopted before the Leasing law is approved by the Secretary of the Interior. Should that occur, the LOC will be required to adopt emergency amendments to the Real Property law to avoid any conflicting provisions and to ensure that all leasing scenarios are covered by legislation. In all other circumstances, adoption of this resolution does not conflict with any of the Nation's laws.





## Leasing Law Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Leasing law (the Law)				
<b>Sponsor</b>	Tehassi Hill	<b>Drafter</b>	Krystal John	<b>Analyst</b>	Tani Thurner
<b>Requester &amp; Reason for Request</b>	Initially, the Law was requested by Nathan King, Legislative Affairs. The Law was processed and adopted, however it was never approved by the Department of the Interior. These amendments are based on comments received from the Department of the Interior, and make changes necessary to ensure the Law is approved by the Department of the Interior.				
<b>Purpose</b>	This Law sets out the Tribe's authority to issue, review, approve and enforce leases of Tribal fee land and trust land.				
<b>Authorized/ Affected Entities</b>	Department of Land Management (DOLM), Land Commission, Cultural Heritage Department, Environmental Health & Safety Division, the Judiciary, Oneida Law Office				
<b>Related Legislation</b>	Real Property Law, Public Use of Tribal Land Law, Administrative Rulemaking law and proposed Eviction Law				
<b>Enforcement &amp; Due Process</b>	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. The Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a lease document, and complaints filed with the Judiciary must name the Division of Land Management and the specific lease program.				
<b>Public Meeting Status</b>	A public meeting was held on May 19, 2016, and any comments received during the public comment period have been reviewed and considered by the LOC.				

### Overview

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. [602.6-6]
  - 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." [602.3-1(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. [602.3-1(k)]
- 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. [602.5-3]
- 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.” [602.4-2(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. [602.3-1(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. [602.3-1(l), 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. [602.3-1(n), 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. [602.5-2(a), DOI 1-13]
- All lease descriptions must now meet the requirements of the BIA’s Land Titles and Records Office (LTRO). [602.5-2(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 and Termination law.” (There is not currently an Eviction and Termination law in place, but the LOC is processing a proposal for a new Eviction and Termination law.) [602.11-4, 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. [602.10-3, 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. [602.5-2(j), 602.5-2(m), DOI 1-15 and 1-16]

- 51 • Currently, the Law addresses how the valuation of a business lease is determined [602.8-6]  
52 but does not mention anything about valuation of other types of leases. Two provisions are  
53 added to address valuation of residential and agricultural leases. [DOI 1-21, 1-29]
  - 54 1. Residential Leases – the same requirements for valuation of a business lease are  
55 added to the section governing residential leases. [602.6-4] The amendments also add  
56 that residential leases may not be approved for less than the appraised fair annual  
57 lease value unless DOLM determines such action is in the best interest of the Nation,  
58 in which case an appraisal is not required. [602.6-5].
  - 59 2. Agricultural Leases “are valued based on the bidding process required as part of the  
60 lease award process included in the rules, which [DOLM] and the Oneida Land  
61 Commission shall jointly develop.” [602.7-5]
- 62 • Agricultural leases must now also require the lessee to manage land in accordance with a  
63 conservation plan that the Nation is required to develop, as well as any other appropriate  
64 stipulations developed by the Nation.” [602.7-4, DOI 1-20, 2-8]
- 65 • Currently, every lease is required to include several provisions related to improvements. The  
66 amendments add that all lease documents must now also include these, and add that they  
67 must include “whether development plans and/or construction management schedules must  
68 be submitted to [DOLM] for approval prior to beginning construction of any improvements.”  
69 [602.5-3(d), DOI 1-17]
- 70 • DOLM may enter property to ensure compliance in accordance with this Law and any other  
71 Oneida laws, policies and rules; instead of in accordance with federal regulations. [602.5-  
72 2(j), DOI 1-15, 1-16, 2-5]
- 73 • Section 602.4-3(c) is deleted as redundant and already covered under 602.4-3(a). [DOI 1-9]
- 74 • Currently, the Law states that DOLM determinations may be appealed in accordance with the  
75 Judiciary law. The DOI requested that “Judiciary law” be defined. Instead, a definition for  
76 “Judiciary” is added, and that provision is replaced with three provisions, which state that:
  - 77 1. The Judiciary is granted jurisdiction to hear complaints filed regarding actions taken  
78 pursuant to this law and/or a lease document. [602.12-1]
  - 79 2. No administrative hearing body, including a board, committee or commission, is  
80 authorized to hear a complaint regarding actions taken pursuant to this law and/or a  
81 lease document. [602.12-2]
  - 82 3. The lessor is the Division of Land Management in regards to taking actions  
83 authorized under this law and complaints filed with the Oneida Judiciary shall name  
84 the Division of Land Management and the specific lease program. [602.12-3]

#### Environmental Review Process

85 Amendments add that the Environmental Health & Safety Division is responsible for  
86 conducting environmental reviews on all proposed lease documents and that the Nation is solely  
87 responsible for ensuring the environmental review has been completed in accordance with this  
88 law. [602.9-2 and DOI 1-22]

89 Currently, 602.9-2 only states that environmental reviews “shall be conducted in accordance  
90 with the process established under [the National Environmental Policy Act (NEPA)] to evaluate  
91 environmental effects of federal undertakings.” The DOI included comments in both sets of  
92 comments regarding this provision. The first, (DOI 1-22) stated:

93 **One of the potential benefits to tribes under the HEARTH Act is the ability to establish**  
94 **streamlined procedures for an environmental review process. While doing so would**  
95 **eliminate the Tribe’s reference to compliance with NEPA, [...] the HEARTH Act does**  
96 **have minimum requirements -- in general:**  
97

- 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, 602.9-2 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 602.9-2 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. [602.4-2] 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.”[602.5-1] 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.” [602.3-1(q)] The amendments add that DOLM is also authorized to enforce rules developed pursuant to this Law. [602.11-1]

#### *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. [602.5-1]
- Which must include a lease award process which must include a bidding process which is used to determine the valuation of agricultural leases. [602.7-5]
- Requiring administrative fees for issuing a lease document or conducting any other administrative transaction. [602.10-5]

#### *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. [602.10-1(b)]
- An **accounting system** that generates invoices, accounts for payments, and dates of when rate adjustments should be made. [602.10-2]
- A **procedure equivalent to an appraisal** for determining fair annual lease value for business and residential leases. [602.6-4(a) and 602.8-5(a)]
- The **format and requirements** set out in lease document applications. (These must be approved by the Land Commission) [602.5-1(a)]
- **Additional procedures and processes to be followed when offering and awarding lease documents** (these must be approved by the Land Commission). [602.5-1(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)

- 602.7-4 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.”
- 602.9-2 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.
- 602.8-4(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. [602.5-1(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). [602.5-1 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. [602.3-1]

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.



**Title 6. Property and Land – Chapter 65602**  
**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

602.1. Purpose and Policy  
602.2. Adoption, Amendment, Repeal  
602.3. Definitions  
602.4. General Provisions  
602.5. Lease Document Requirements  
602.6. Residential Leases  
602.7. Agricultural Leases  
602.8. Business Leases  
602.9. Environmental and Cultural Reviews  
602.10. Lease Management  
602.11. Enforcement  
602.12. Leasing Actions

**65602.1. Purpose and Policy**

65602.1-1. Purpose. The purpose of this Lawlaw is to set out the Tribe'sNation's authority to issue, review, approve and enforce leases. In addition, the purpose of this Lawlaw 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 TribeNation will be able to approve leases on Tribal-tribal land without additional approval of the Secretary of the Interior.

65602.1-2. Policy. It is the policy of the TribeNation to set out the expectations and responsibilities of the lessorslessor and lessees of Tribaltribal land and to ensure the leasing of Tribaltribal land results in minimal risk to the TribeNation.

**65602.2. Adoption, Amendment, Repeal**

65602.2-1. This Lawlaw was adopted by the Oneida Business Committee by resolution BC-05-13-15-C and shall take effectamended by resolution BC-\_\_\_\_\_ and becomes effective thirty (30) calendar days after approval by the Secretary of the Interior.

65602.2-2. This Lawlaw 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 Lawshalllaw may not take effect until they have been approved by the Secretary of the Interior. Minor, technical amendments may take effect upon approvaladoption by the Oneida Business Committee.

65602.2-3. Should a provision of this Lawlaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Lawlaw which are considered to have legal force without the invalid portions.

65602.2-4. In the event of a conflict between a provision of this Lawlaw and a provision of another Tribal-law, the provisions of this Lawlaw shall control.

(a) To the extent that this Lawlaw conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall-controlcontrols.

(b) To the extent that any lease to which this Lawlaw applies conflicts with this Lawlaw, this Lawshall-controllaw controls.

65602.2-5. This Lawlaw is adopted under authority of the Constitution of the Oneida Tribe-of Indians-of WisconsinNation.

**65602.3. Definitions**

65602.3-1. This section shall govern the definitions of words and phrases used within this Lawlaw. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Assignment" shall-meanmeans 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.

#### **65602.4.–General Provisions**

65602.4-1.– Applicable Land. This Lawlaw applies to all Tribaltribal land.

65602.4-2.– 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~~, leases included in the Nation’s home ownership programs administered using federal funding or leases lasting one (1) year or less.

65602.4-3.– 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.~~

65602.4-4.– 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.

65602.4-5.– ~~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’sNation’s sovereign immunity.

65602.4-6.– 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.

#### **65602.5.–Lease and Lease Document Requirements**

65602.5-1.– Information and Application. Land Management shall approve and execute all leases. InformationLand 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.

65602.5-2. Terms and Conditions. ~~Leases~~Land Management shall ~~be~~ensure leases are in  
writing and contain, at a minimum, the following:

(a) ~~A description of the land or building being leased; business leases shall contain~~  
adequate site including surveys and legal descriptions based on metes and bounds,  
rectangular, or lot and block systems which meet the requirements of the Land Titles and  
Records Office of the Bureau of Indian Affairs;

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

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

(d) ~~The parties to the lease;~~

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

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

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

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

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

(j) ~~Land Management or the Secretary~~ has the right, at any reasonable time during the  
term of the lease and upon reasonable notice, in accordance with ~~federal regulations~~this  
law and any other applicable laws, policies and rules of the Nation, to enter the leased  
premises for inspection and to ensure compliance with the lease;

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

(l) ~~The lessee indemnifies the United States and the~~ TribeNation against all liabilities or  
costs relating to the use, handling, treatment, removal, storage, transportation, or disposal  
of hazardous materials, or the release or discharge of any hazardous material from the  
leased premises that occurs during the lease term, regardless of fault, with the exception  
that the lessee is not required to indemnify the TribeNation for liability or cost arising  
from the Tribe'sNation's negligence or willful misconduct; and

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

65602.5-3. 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.

~~65602.5-4. Obtain a Lease Document. Lease~~ Land Management shall ensure lease documents ~~shall be~~ are 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.

~~65602.5-5. 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.

~~65602.5-6. 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 ~~65602.9~~, have been completed. Leases approved and executed in violation of this section ~~shall be~~ are null and void.

~~65602.5-7. 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.

## ~~65602.6. Residential Leases~~

~~65602.6-1.~~ In addition to the requirements that apply to all leases under section ~~65602.5~~, the requirements of this section ~~shall~~ also apply to residential leases.

~~65602.6-2.~~ 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.

~~65602.6-3.~~ Duration. Residential leases ~~shall may~~ not exceed seventy-five (75) years.

## ~~65602.6-4. 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.

602.6-5. 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.

602.6-6. Lease by Guardian. A parent or legal guardian may enter into a residential lease on behalf of his or her child or ward.

#### **602.7.– Agricultural Leases**

65602.7-1.– In addition to the requirements that apply to all leases under section 65602.5, the requirements of this section shall also apply to agricultural leases.

65602.7-2.– 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.

65602.7-3.– 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.

65602.7-4.– Land Management. Agricultural leases shall of Land. Land Management shall ensure that agricultural leases require the lessee to manage land in accordance with the conservation plan that the Nation shall develop and any agricultural resource management plan and/or other appropriate stipulations developed by the TribeNation.

65602.7-5. 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.

#### **602.8.– Business Leases**

65602.8-1.– In addition to the requirements that apply to all leases under section 65602.5, the requirements of this section shall also apply to business leases.

65602.8-2.– 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.

65602.8-3.– 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.

65602.8-4.– 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 TribeNation.

65602.8-5.– 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.

~~65602~~.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 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.

~~65602~~.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.~~

~~65602~~.9. Environmental and Cultural Reviews

~~65602~~.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.

~~65602~~.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:

65(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.

~~602.9-3.- 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.

~~65602.9-4.-~~ 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.

#### ~~65602.10.-~~ Lease Management

~~65602.10-1.-~~ 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.

~~65602.10-2.-~~ 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.

~~65602.10-3.-~~ 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.

~~65602.10-4.-~~ 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~~.

~~65602.10-5.~~ 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.

**65602.11.– Enforcement**

~~65602.11-1.~~ 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.

~~65602.11-2.~~ 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.

~~65602.11-3.~~ 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.

~~65602.11-4.~~ 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.

~~65602.11-5.~~ 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.

**65602.12.– Appeals Leasing Actions**

~~65602.12-1.~~ The lessee–Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or an interested party may appeal a determination lease document.

~~602.12-2.~~ No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a lease document.

~~602.12-3.~~ The lessor is the Division of Land Management in accordance regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary ~~law and any applicable rules~~ shall name the Division of procedure Land Management and the specific lease program.

*End.*

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

## **Title 6. Property and Land – Chapter 602**

### **LEASING**

602.1.	Purpose and Policy	602.7.	Agricultural Leases
602.2.	Adoption, Amendment, Repeal	602.8.	Business Leases
602.3.	Definitions	602.9.	Environmental and Cultural Reviews
602.4.	General Provisions	602.10.	Lease Management
602.5.	Lease Document Requirements	602.11.	Enforcement
602.6.	Residential Leases	602.12.	Leasing Actions

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#### **602.1. Purpose and Policy**

602.1-1. *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.

602.1-2. *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.

#### **602.2. Adoption, Amendment, Repeal**

602.2-1. 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.

602.2-2. 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.

602.2-3. 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.

602.2-4. 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.

602.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **602.3. Definitions**

602.3-1. 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.

#### **602.4. General Provisions**

602.4-1. *Applicable Land.* This law applies to all tribal land.

602.4-2. *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.

97 602.4-3. *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.

101 602.4-4. 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.

107 602.4-5. 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.

110 602.4-6. 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 **602.5. Lease Document Requirements**

114 602.5-1. *Information and Application.* Land Management shall approve and execute all leases.  
115 Land Management shall make available information on obtaining residential, agricultural or  
116 business lease documents. Parties interested in obtaining a residential, agricultural or business  
117 lease document shall submit an application to Land Management pursuant to the rules which  
118 Land Management and the Oneida Land Commission shall jointly develop.

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

123 602.5-2. *Terms and Conditions.* Land Management shall ensure leases are in writing and  
124 contain, at a minimum, the following:

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

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

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

131 (d) The parties to the lease;

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

135 (f) Whether there will be rental reviews or adjustments, how and when they will be done,  
136 when any adjustments will be effective and how disputes regarding adjustments will be  
137

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.

602.5-3. *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.

602.5-4. *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.

602.5-5. *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.

602.5-6. *Environmental and Cultural Reviews.* Land Management may not approve a lease until an environmental review and a cultural review, as required under section 602.9, have been completed. Leases approved and executed in violation of this section are null and void.

602.5-7. *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.

**602.6. Residential Leases**

602.6-1. In addition to the requirements that apply to all leases under section 602.5, the requirements of this section also apply to residential leases.

602.6-2. 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.

602.6-3. *Duration.* Residential leases may not exceed seventy-five (75) years.

602.6-4. *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.

602.6-5. *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.

602.6-6. *Lease by Guardian.* A parent or legal guardian may enter into a residential lease on behalf of his or her child or ward.

**602.7. Agricultural Leases**

602.7-1. In addition to the requirements that apply to all leases under section 602.5, the requirements of this section also apply to agricultural leases.

602.7-2. 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.

602.7-3. *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.

602.7-4. *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.

602.7-5. *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.

**602.8. Business Leases**

602.8-1. In addition to the requirements that apply to all leases under section 602.5, the requirements of this section also apply to business leases.

602.8-2. 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.

602.8-3. *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.

602.8-4. *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.

602.8-5. *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.

602.8-6. *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.

602.8-7. *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.

## **602.9. Environmental and Cultural Reviews**

602.9-1. *Applicability.* Land Management may not consider approving a lease document until an environmental review and a cultural review have been completed.

602.9-2. *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.

602.9-3. *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.

602.9-4. *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.

## **602.10. Lease Management**

602.10-1. *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.

602.10-2. *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.

602.10-3. *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.

602.10-4. *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.

602.10-5. *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.

## **602.11. Enforcement**

602.11-1. 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.

602.11-2. *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.

602.11-3. *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.

602.11-4. *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.

602.11-5. *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.

## **602.12. Leasing Actions**

602.12-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a lease document.

602.12-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a lease document.

602.12-3. The lessor is the Division of Land Management in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Division of Land Management and the specific lease program.

*End.*

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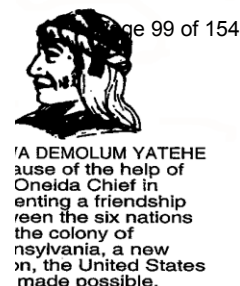
376 Adopted-BC-05-13-15-C, pending BIA approval

# ONEIDA TRIBE OF INDIANS OF WISCONSIN

## ONEIDA FINANCE OFFICE

Office: (920) 869-4325 η Toll Free: 1-800-236-2214  
FAX # (920) 869-4024

## MEMORANDUM



HANDOUT

DATE: October 19, 2016

FROM: Larry Barton, Chief Financial Officer

TO: Patricia King, Treasurer  
Oneida Business Committee

RE: **Financial Impact of Changes in Law – Leasing Law**

### I. Background

Under consideration is a change to the existing Leasing Law, which was adopted by BC Resolution 05-13-15-B. It was noted at that time that the Leasing Law needed to be submitted to the Department of Interior (D.O.I.) for final approval, before it could go into effect. After the first submission to D.O.I. for review, it was returned with comments requiring changes. This process was followed again, and the current submission to the D.O.I. is a version prepared after their second set of comments has been incorporated into the Leasing Law.

### II. Executive Summary of Findings

According to the Legislative Analysis, the proposed Amendment to the Leasing Law has five (5) different impacts:

1. Delegate rulemaking authority jointly to the Oneida Land Commission and the Division of Land Management.
2. Specify the Law does not apply to leases in the Oneida Nation's home ownership programs.
3. Include valuation provisions for residential and agricultural leases.
4. Include a provision allowing a residential lease be entered into by a parent or legal guardian on behalf of their child or ward.
5. Add additional information regarding the process required under the National Environmental Policy Act (N.E.P.A.).

The Finance Department contacted the Division of Land Management. The representatives we contacted indicated that the processes described in the Executive Summary of the Statement of Effect from the Legislative Reference Office are already occurring within the current operating procedures of either the Division of Land Management or Oneida Housing Authority.

### **III. Financial Impact**

The Amendment to the Leasing Law does not seem to contain any direct financial impact, compared to current operating procedures.

### **IV. Recommendation**

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





Legislative Operating Committee  
October 20, 2016

## Budget Management and Control

<b>Submission Date:</b> 9/17/14	<b>Public Meeting:</b> None Yet
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was deferred to the OBC by the GTC on May 23, 2011 and it was carried over into the current term by the LOC. The request was to develop a law to provide consistent requirements for the Tribal budget process, establish a procedural framework, and address oversight of Tribal expenditures.*

**9/17/14 LOC:** Motion by Tehassi Hill to add the Budget Management and Control Law to the Active Files List with Brandon Stevens as sponsor; seconded by Fawn Billie. Motion carried unanimously.

**12/9/15 OBC:** Motion by Lisa Summers to adopt resolution 12-9-15-A Guidance for Implementing Fiscal Year 2016 Budget and Developing Fiscal Year 2017 and Fiscal Year 2018 Budget, seconded by Jennifer Webster. Motion carried unanimously.

**8/2/16:** *Work meeting held.* Still in draft. Another work meeting scheduled for 8/15/16.

**8/15/16** *Work Meeting held.* Still in draft.

**9/9/16** *Work meeting held.* Still in draft.

**9/19/16** *Work meeting held.* Krystal John, David Jourdan, Chad Fuss, Ralinda Ninham, Trish King, Larry Barton, Denise Vigue, Clorissa Santiago, Wes Martin attended. Draft completed. Krystal John will clean up the draft and it will be put on the 10/5/16 LOC agenda, where a legislative analysis will be requested.

**10/3/16** *Work meeting held.* Denise Vigue, Jenny Webster, David Jourdan, Wes Martin, Larry Barton, Ralinda Ninham, Jen Falck. Some changes were suggested. LRO Director will discuss those changes with the drafting attorney (KJ). Another work meeting will be scheduled.

**Next Steps:**

- Accept Budget Management and Control Law draft and defer to the Legislative Reference Office for a legislative analysis.

## Title 1. Government and Finances – Chapter 121

### BUDGET MANAGEMENT AND CONTROL

#### Twahwistatye>n\$ha>

*We have a certain amount of money*

121.1.	Purpose and Policy	121.7.	Appropriation of the Nation's Funds
121.2.	Adoption, Amendment, Repeal	121.8.	Budget Authority
121.3.	Definitions	121.9.	Budget Transfers; Amendments
121.4.	Strategic Planning	121.10.	Reporting
121.5.	Budget Process	121.11.	Authorizations and Signatures
121.6.	Capital Improvements.	121.12.	Enforcement and Penalties

#### **121.1. Purpose and Policy**

121.1-1. *Purpose.* The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida entities when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget.

121.1-2. *Policy.* It is the policy of the Nation to rely on value based budgeting strategies, identifying proper authorities and ensuring compliance and enforcement.

#### **121.2. Adoption, Amendment, Repeal**

121.2-1. This law was adopted by the Oneida Business Committee by Resolution \_\_\_\_\_.

121.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

121.2-3. 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.

121.2-4. 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.

121.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **121.3. Definitions**

121.3-1. 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) "Appropriation" means the legislative act of designating funds for a specific purpose in accordance with the provisions contained in this law.

(b) "Fund Unit" means any board, committee, commission, service, program, enterprise, department, office, or any other division or non-division of the Nation which receives an appropriation approved by the Nation.

(c) "Capital Expenditure" means:

(1) Any item with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more; or

(2) Items purchased together where none of the items individually costs more than two thousand dollars (\$2,000.00), but the total purchase price for all of the items is ten thousand dollars (\$10,000.00) or more.

(d) "Capital Improvement" means non-recurring expenditures or any expenditure for physical improvements, including costs for: acquisition of existing buildings, land, or

interests in land; construction of new buildings or other structures, including additions and major alterations; acquisition of fixed equipment; landscaping; and similar expenditures with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more.

(e) "CFO" means the Nation's Chief Financial Officer.

(f) "Debt" means the secured or unsecured obligations owed by the Nation.

(g) "Economic Life" means the length of time an asset is expected to be useful.

(h) "Executive Manager" means any one of the following positions within the Nation: Gaming General Manager, Chief Legal Counsel and/or Chief Financial Officer.

(i) "Expenditure Report" means a financial report which includes, but is not limited to, a statement of cash flows, revenues, costs and expenses, assets, liabilities and a statement of financial position.

(j) "Fiscal Year" means the one (1) year period each year from October 1<sup>st</sup> to the September 30<sup>th</sup>.

(k) "General Reserve Fund" means the Nation's main operating fund which is used to account for all financial resources not accounted for in other funds.

(l) "GTC Allocations" means expenditures directed by the General Tribal Council as required payments and/or benefits to the Nation's membership and are supported by either a General Tribal Council or Oneida Business Committee resolution.

(m) "Line Item" means the specific account within a fund unit's budget or category that expenditures are charged to.

(n) "Manager" means the person in charge of directing, controlling and administering the activities of a fund unit.

(o) "Permanent Executive Contingency" means an account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial distress.

(p) "Nation" means the Oneida Nation.

(q) "Treasurer" means the elected Oneida Nation Treasurer or his or her designee.

#### **121.4. Strategic Planning**

121.4-1. *Triennial Strategic Plan.* Prior to December 1<sup>st</sup> of each year, the Oneida Business Committee, in consultation with the Executive Managers, shall develop a triennial strategic plan which includes, but is not limited to:

(a) Major policy and budgetary goals for the Nation, both long and short term;

(b) Specific strategies and planned actions for achieving each goal; and

(c) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

(1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and

(2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-2. *Oneida Entities' Contributions to the Triennial Strategic Plan.* Managers shall annually develop, submit and maintain a triennial strategic plan for the fund unit's operations which aligns with the triennial strategic plan established by the Oneida Business Committee pursuant to 121.4-1. Manager shall submit the fund unit's triennial strategic plan to the CFO when the fund unit's budget is due and, at a minimum, shall include the following in the plan:

- (a) A statement of the fund unit's mission;
- (b) Specific goals including a description of the fund unit's strategies as part of its service group provided in 121.5-3(c) which aligns with the goals established in the Nation's triennial strategic plan;
- (c) Specific strategies for achieving each of the fund unit's goals; and
- (d) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:
  - (1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and
  - (2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-3. *Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO, executive managers and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation. The Oneida Business Committee shall approve, by resolution, the budget contingency plan and any amendments thereto. The Oneida Business Committee is responsible for the implementation of the budget contingency plan, provided that such implementation is predicated on the Oneida Business Committee's determination that the Nation is under extreme financial distress. For the purposes of this section, extreme financial distress includes, but is not limited to, natural or human-made disasters, United States Government shutdown, Tribal shutdown (which occurs when the General Tribal Council has not approved a budget for the Nation prior to the beginning of a new fiscal year) and economic downturns.

(a) *Cost Savings Tools.* As part of the budget contingency plan, the Oneida Business Committee may require stabilization funds, reductions of expenditures, furloughs and other cost saving tools provided that such tools are in compliance with the Nation's laws, specifically the Employment code.

(b) *Business Continuity Fund.* The Oneida Business Committee shall maintain a prudent level of business continuity funds to prevent default on debt and to sustain operations as part of the budget contingency plan. The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of business continuity funds required. The Treasurer shall set aside business continuity funds in the Permanent Executive Contingency until a prudent level has been achieved. Funds in the Permanent Executive Contingency may only be used for the following purposes and only to the extent that alternative funding sources are unavailable:

- (1) Payments to notes payable to debt service, both principal and interest, and applicable service fees;
- (2) Employee payroll, including all applicable taxes;
- (3) Payments to vendors for gaming and retail;
- (4) Payments to vendors for governmental operations;
- (5) Payments to any other debt; and
- (6) To sustain any of the Nation's other operations during implementation of the budget contingency plan.

## **121.5. Budget Process**

121.5-1. *General.* All revenues and expenditures of the Nation shall be in accordance with the annual budget adopted by the General Tribal Council. In creating the budget to present to the

General Tribal Council for consideration, the Oneida Business Committee, executive managers and managers shall follow the processes provided in this law. The Oneida Business Committee may alter the deadlines provided in this law only upon a showing of good cause, provided that, the Oneida Business Committee shall approve any such alterations by resolution.

121.5-2. *Community Input Budget Meeting(s)*. The Treasurer's office shall schedule, at a minimum, one (1) community input budget meeting(s) prior to December 1<sup>st</sup> of each year. At the community budget input meeting(s), the Treasurer shall afford community members an opportunity to provide input as to what should be included in the upcoming fiscal year budget. Any fund units that plan to request forecast variations for the upcoming budget shall present the need and anticipated dollar amount of the requested forecast variation. For the purposes of this section, a forecast variation is a fund unit's requested deviation from the performance targets the fund unit submitted pursuant to 121.4-2(d)(2).

(a) The Treasurer shall ensure the community budget input meeting(s) are voice recorded and transcribed.

(b) The CFO shall provide recommendations as to any forecast variations requested by fund units.

(c) The CFO and any relevant managers shall provide responses and/or recommendations to all comments and considerations presented by community members.

(d) The Treasurer shall work with the CFO to place a community budget input meeting packet on the Oneida Business Committee agenda no later than the last Oneida Business Committee Meeting in January. At a minimum, the packet is required to include:

(1) The community budget input meeting(s) transcript(s);

(2) Any applicable fund unit's requested forecast variations; and

(3) Responses and/or recommendations by the CFO and any relevant managers regarding requests for forecast variations and community members' comments and considerations related to forecast variations.

121.5-3. *Priority List Established by the Oneida Business Committee*. The Oneida Business Committee shall review the community budget input meeting packet and shall hold work meetings to create a priority list.

(a) The Oneida Business Committee shall establish the priority list by placing the following services provided by the Nation in chronological order with the lowest number having the highest priority. The order of the following service groups provided below has no relation to the service groups' anticipated and/or required placement within the Oneida Business Committee's priority list; the Oneida Business Committee's priority list may vary from year to year based on the needs of the Nation.

(1) Protection and Preservation of Natural Resources

(2) Protection and Preservation of Culture and Language

(3) Education and Literacy

(4) Health Care

(5) Economic Enterprises

(6) Building and Property Maintenance

(7) Human Services

(8) Public Safety

(9) Housing

(10) Utilities, Wells, Wastewater and Septic

(11) Planning, Zoning and Development



(12) Membership Administration

(13) Government Administration

(b) The Oneida Business Committee shall approve the priority list by resolution no later than the last meeting in February.

(c) The CFO shall maintain a list which places each fund unit into a corresponding service group.

121.5-4. *Annual Proposed Budgets.* The CFO shall develop the necessary guidelines, including specific deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. Upon review of the Nation's economic state, the CFO shall include in the guidelines the exact amount that each service group's cumulative budget is required to be increased/decreased in accordance with its placement on the priority list. The CFO shall submit the guidelines, as approved by the Treasurer, to the Oneida Business Committee for review in accordance with the deadline as set by the Oneida Business Committee. The Oneida Business Committee may revise the guidelines as it deems necessary and shall approve a set of budgetary guidelines within thirty (30) calendar days of the date the budgetary guidelines proposed by the CFO were received.

(a) In accordance with the approved budgetary guidelines, fund units offering like services shall meet together to review each fund unit's budget and discuss strategies for attaining compliance with the approved budgetary guidelines. Each service group shall submit one (1) draft budget which contains each fund unit's individual proposed budget and demonstrates cumulative compliance with the approved budgetary guidelines.

(b) The CFO shall receive and review the proposed budgets and shall compile the proposed budgets into the Nation's draft budget which the CFO shall present to the Oneida Business Committee no later than the last Oneida Business Committee meeting in May. The CFO may not alter any proposed budgets until such budgets have been reviewed by the Oneida Business Committee.

(1) The CFO shall return any service group's draft budget that is in non-compliance with the approved budgetary guidelines within ten (10) business days of the date the budget was submitted to the CFO.

(2) Upon return, the CFO shall notice the service group of the amount of its non-compliance and provide the service group with a deadline for a compliant resubmission.

(3) Any service group's budget that remains in non-compliance upon the expiration of the deadline provided by the CFO shall be included in the draft budget submitted to the Oneida Business noting the dollar amount of the service group's non-compliance. A service group's continued non-compliance may result in employee discipline according to the Nation's employment law and rules.

121.5-5. *Content of Budget.* The CFO shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's spending priorities and budget strategy. The Nation's draft budget shall include, but is not limited to:

(a) Estimated revenues to be received from all sources for the year which the budget covers;

(b) The individual budgets of each fund unit;

(c) A description of each line item within each fund unit's budget;

(d) The estimated expenditures by each fund unit; and

(e) Each fund unit's strategic plan showing alignment with the Nation's goals.

121.5-6. *Review of Draft Budget.* In the month of May, the CFO shall meet with the Oneida Business Committee to review the draft budget and provide any recommendations for modifications.

(1) Following the Oneida Business Committee's review of the draft budget with the CFO, the Oneida Business Committee shall schedule meetings with managers of each fund unit for which the Oneida Business Committee is considering altering the fund unit's proposed budget.

(2) The Oneida Business Committee shall complete all meetings with fund unit managers required by this section by the end of June each year.

121.5-7. *Final Draft Budget.* The Oneida Business Committee shall work with fund unit managers and the CFO to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council by the end of July each year.

121.5-8. *Community Meetings.* Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

121.5-9. *Budget Adoption.* The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted.

## **121.6. Capital Improvements.**

121.6-1. *Capital Improvement Plan for Government Services.* The Oneida Business Committee shall develop and the General Tribal Council shall approve a capital improvement plan for government services and shall reassess the plan once every five (5) years. The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed at the time of the reassessment.

121.6-2. *Capital Improvement Plan for Enterprises.* Capital improvement plans for enterprises may be brought forward as needed in accordance with the capital improvement rules which the Community Development Planning Committee and the Development Division shall jointly create, provided that the Oneida Business Committee shall approve all such plans.

121.6-3. *Capital Improvement Plan Implementation.* Capital Improvement plans shall be implemented, contingent on available funding capacity, using the capital improvement rules which the Community Development Planning Committee and the Development Division shall jointly create.

## **121.7. Appropriation of the Nation's Funds**

121.7-1. *Unexpended Capital Improvement Funds.* Unless the entity qualifies for an exception as provided in the capital improvement rules, which the Community Development Planning Committee and the Development Division shall jointly create, unexpended capital improvement

funds carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted.

121.7-2. *Unexpended Capital Expenditure Funds.* The CFO shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.

## **121.8. Budget Authority**

121.8-1. *Authority to Expend Funds.* Authority to expend appropriated funds is delegated to the CFO, who shall make such expenditures in accordance with the adopted budget. This authority is necessarily delegated to other officers and department managers of the Tribe who manage the budgets, pursuant to their job descriptions based on the procurement manual rules developed by the Purchasing Department.

121.8-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as applicable to a function for which Tribal funds have also been appropriated, those grant funds shall be used before appropriated Tribal funds unless the Tribal funds are needed to make up an otherwise shortfall in the overall business unit budget or there is a restriction on the grant funds that provide otherwise.

121.8-3. In addition to the authority and responsibilities provided elsewhere in this Law, the following positions and entities shall have the authority and responsibilities as outlined below:

(a) *Oneida Business Committee.* Once the Nation's annual budget is adopted, the authority of the Oneida Business Committee is limited to budget oversight except as otherwise provided in this Law. However, these limitations do not prevent the Oneida Business Committee, with input from the CFO, from taking necessary action, on an emergency basis and within the scope of its authority, to protect and safeguard the resources and general welfare of the Nation and ensure compliance with applicable laws, regulations and requirements. The OBC shall ensure that the CFO performs the duties and responsibilities as assigned under this law.

(b) *Tribal Treasurer.* The Tribal Treasurer shall:

(1) Submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee and/or the General Tribal Council at:

(A) The annual General Tribal Council meeting;

(B) The semi-annual General Tribal Council meeting; and

(C) Other such times as may be directed by the Oneida Business Committee and/or the General Tribal Council.

(2) Present the proposed draft budget to the General Tribal Council at the annual budget meeting as required by section 121.5-9.

(c) *Chief Financial Officer.* Once the Tribal budget is properly adopted, the CFO shall ensure that it is properly implemented. The CFO shall:

(1) Provide managers with monthly revenue and expense reports in order for the managers to track their expenditures;

(2) Submit, to the Oneida Business Committee, a written report of any monthly variances that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Conduct financial condition meetings with the Nation's management on a quarterly basis.

(d) *Managers*. Managers of each business unit shall:

(1) Ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant this law;

(2) Report to the CFO explanations and corrective actions for any monthly variance that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month.

#### **121.9. Budget Transfers; Amendments**

121.9-1. *Budget Transfers*. After the budget is adopted, transfer of funds within the budget is not permitted except as provided in section 121.8-3(a) and to allow the CFO to adjust the approved budget as required to accurately reflect the amount of grant funding actually received.

121.9-2. *Budget Amendments*. After the budget is adopted, amendments of the budget are not permitted except as provided in section 121.8-3(a).

#### **121.10. Reporting**

121.10-1. *Monthly Reporting*. The CFO shall provide copies of the monthly treasurer's reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee Meeting held for the acceptance of such reports.

121.10-2. *Audits*. The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Audit Law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected business units or of business units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each business unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

#### **121.11. Authorizations and Signatures**

121.11-1. *General*. The procurement manual rules developed by the Purchasing Department shall provide the sign-off process and authorities required to expend funds on behalf on the Nation.

121.11-2. *Fees and Charges*. Managers of programs and services requiring Tribal contribution that desire to charge fees for their services shall determine the full cost of providing the program and/or service and, only then, may charge fees to cover operational costs. The full cost of providing a program and/or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation. Fees and charges may cover the full cost of service and/or service whenever such fee or charge would not present an undue financial burden to recipient. Programs and services charging fees may offer fee waivers, provided that the program/service has developed rules outlining the fee waiver eligibility and requirements.

**121.12. Enforcement**

121.12-1. *Compliance and Enforcement.* All employees and elected officials of the Nation shall comply with and enforce this law to the greatest extent possible.

121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws, policies and rules, including but not limited to, the Nation's employment law, policies and rules, the Conflict of Interest Policy, the Code of Ethics and potentially the Removal law.

121.12-3. *Civil and/or Criminal Charges.* This law shall not be construed to preclude the Nation from pursuing civil and/or criminal charges under applicable law. Violations of applicable federal or state civil and/or criminal laws may be pursued in a court having jurisdiction over any such matter.

*End.*

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## Legislative Operating Committee August 17, 2016

# Employment Law

<b>Submission Date:</b> 9/17/16	<b>Public Meeting:</b> 3/31/16
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**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.
- 4/29/16:** Work meeting held. Attendees include Brandon Stevens, Geraldine Danforth, Lucy Neville, Marianne Close, Maureen Perkins and Krystal John.
- 5/4/16 LOC:** Motion by Jennifer Webster to accept the Employment law public meeting comments and defer the 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.; seconded by David P. Jordan. Motion carried unanimously.
- 5/13/16:** Work meeting held. Attendees include Geraldine Danforth, Matt Denny, Wendy Alvarez and Krystal John.
- 5/18/16 LOC:** Motion by Jennifer Webster to accept the updated draft of the Employment law based on the public meeting comments; noting the revision to be made to section 300.11-4 changing the language from a fee waiver to a statement that prohibits the Judiciary from assessing court fees upon employees disputing employment matters; and deferring to the Legislative Reference Office for an updated legislative analysis; seconded by David P. Jordan. Motion carried unanimously.
- 6/1/16 LOC:** Motion by Jennifer Webster to accept the updated legislative analysis for the Employment Law and direct the sponsor and the drafting attorney to conduct an informational meeting for the Oneida Business Committee to solicit input and, provided there are no major changes, bring an adoption packet back once all input has been collected; seconded by David P. Jordan. Motion carried unanimously.
- Note: This meeting is scheduled for Friday June 3, 2016.*
- 6/3/16 OBC:** Employment Law update provided to OBC with OBC feedback requested. Attendees include Brandon Stevens, Melinda Danforth, Lisa Summers, Tehassi Hill, Fawn Billie, Jennifer Webster, David P. Jordan, Leyne Orosco, Mitzi Kopetsky, R.C. Metoxen and Krystal John.
- 6/15/16 OBC:** Employment Law update concluded to OBC with OBC feedback requested. Employment Law update provided to OBC with OBC feedback requested. Attendees include Brandon Stevens, Melinda Danforth, Lisa Summers, Tehassi Hill, Fawn Billie, David P. Jordan, Leyne Orosco, Mitzi Kopetsky, R.C. Metoxen and Krystal John.
- 8/10/16 OBC:** Motion by Lisa Summers to accept the updated written report; to direct this item be placed on the 2017 Annual General Tribal Council meeting agenda; and included in that item will be a request for General Tribal Council to schedule a special General Tribal Council meeting to specifically address this item, seconded by Brandon Stevens. Motion carried unanimously:
- Ayes: Fawn Billie, Tehassi Hill, David Jordan, Brandon Stevens, Lisa Summers  
Not Present: Melinda J. Danforth, Trish King, Jennifer Webster
- Motion by Lisa Summers to request the team working on this item include in the communication plan that Employment Law and handbook be provided and distributed 30 (thirty) days prior to the 2017 Annual General Tribal Council meeting, seconded by Brandon Stevens. Motion carried unanimously:
- Ayes: Fawn Billie, Tehassi Hill, David Jordan, Brandon Stevens, Lisa Summers  
Not Present: Melinda J. Danforth, Trish King, Jennifer Webster
- 8/17/16 LOC:** Motion by David P. Jordan to accept the updated Employment Law draft and legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

*Note: The updated draft of the Employment Law incorporates feedback from the June 3 and June 15 Oneida Business Committee work meetings.*

*Note: Updates have also been made to the Employee Handbook based on OBC feedback; the current draft is available on the Oneida Register.*

**Next Steps:** Accept the Employment Law packet and forward to the Oneida Business Committee to be placed on the Annual General Tribal Council (GTC) meeting agenda for January 2017.



**Oneida Nation**  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54115-0365  
Oneida-nsn.gov



**TO:** Oneida Business Committee  
**FROM:** Brandon Stevens, LOC Chair *BS*  
**DATE:** October 26, 2016  
**RE:** Employment Law

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Please find the draft Employment Law attached.

### **Overview**

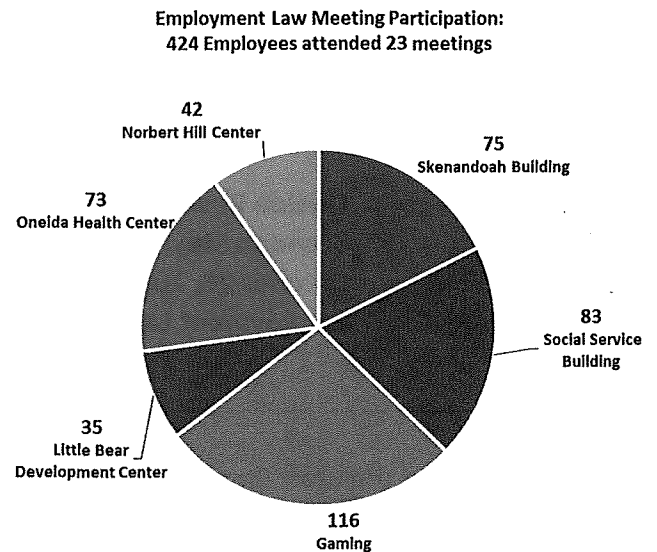
This is a proposal for a new Tribal law which would:

- 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.

In accordance in with the Legislative Procedures Act, a public meeting was held regarding this law on March 31, 2016 with a comment period expiring April 7, 2016. These comments were accepted by the Legislative Operating Committee (LOC) at the May 4, 2016 meeting and considered at a work meeting held May 12, 2016.

The following provides a breakdown of all the meetings have been held for the purpose of sharing information and gathering input for the Employment Law:

Meeting Type	Number of Meetings	Number of Participants
Employee Meetings	23	424 (52 tribal departments)
LPA Public Meetings and Comment Period	2	8 people made 21 comments. That material can be found on line at the Oneida Register web site.
Community Meetings	5	4



In addition, the LOC has written 5 *Kaliwisaks* articles. Due to low participation, the LOC has decided to hold one monthly Community Meeting instead of two, until the General Tribal Councils considers the law for adoption.

#### Requested Action

Accept the attached Employment Law packet and place on the General Tribal Council Annual meeting agenda scheduled for January 2017.





**Oneida Nation**  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54115-0365  
Oneida-nsn.gov



**TO:** General Tribal Council  
**FROM:** Brandon Stevens, LOC Chair *BS*  
**DATE:** October 26, 2016  
**RE:** Employment Law

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Please find the draft Employment Law attached. The Legislative Operating Committee (LOC) is requesting a Special GTC Meeting to consider the Employment Law. The LOC would like to be able to present all the information regarding this item so that the GTC can consider the proposed legislation fully. When the LOC sent the Judiciary Law to the GTC, a Special GTC Meeting was convened for this same reason.

For more information about the Employment Law, go to <https://oneida-nsn.gov/government/register/employmentlaw/>. You will find drafts of the law, the draft Employee Handbook, public meeting comments, and more.

### Overview

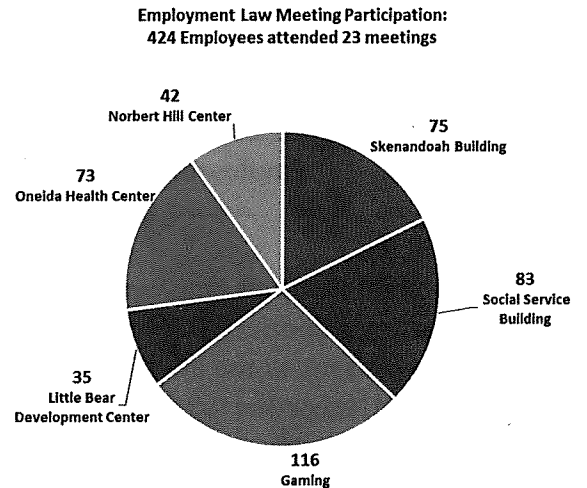
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In addition, the LOC has written 5 *Kaliwisaks articles*. Due to low participation, the LOC has decided to hold one monthly Community Meeting instead of two, until the General Tribal Councils considers the law for adoption.

#### Requested Action

Motion to schedule a Special GTC Meeting to present and consider adoption of Employment Law.

## Title 2 Employment – Chapter 201

### EMPLOYMENT

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*Their work      their law*

201.1.	Purpose and Policy	201.7.	Compensation and Benefits
201.2.	Adoption, Amendment, Repeal	201.8.	General
201.3.	Definitions	201.9.	Employee Responsibilities
201.4.	Applicability	201.10.	Layoffs and Furloughs
201.5.	Human Resources Department	201.11.	Employee Discipline and Appeals
201.6.	Hiring	201.12.	Employment Actions

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#### **201.1. Purpose and Policy**

201.1-1. It is the purpose of this law to provide a fair, consistent and efficient structure to govern all employment matters and to provide employment preference to Oneida Tribal members and members of other federally recognized tribes.

201.1-2. 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.

#### **201.2. Adoption, Amendment, Repeal**

201.2-1. This law was adopted by the Oneida General Tribal Council by resolution \_\_\_\_\_ and is effective six (6) months from the date of adoption.

201.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

201.2-3. 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.

201.2-4. 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 and any and all amendments made thereto;
- (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 Policy Leave 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.

201.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### **201.3. Definitions**

201.3-1. 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) “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 employees, unless the term at-will employee is used, in which case only at-will employees are intended.

(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.

(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, sexual orientation and gender identification), 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) “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.

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

(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.

#### **201.4. Applicability**

201.4-1. *Applicability to Elected Officials.* The provisions of Sections 201.6 - 201.8 apply to the Nation’s elected officials that work full-time (30 hours or more per week) and receive salaries for their service, provided that, because other laws govern discipline of the elected officials, the Removal law for example, elected officials may not be subjected to corrective action pursuant to this law or handbook.

201.4-2. *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 said agreement, the memorandum and corresponding rules govern.

201.4-3. *Oneida Police Commission.* To the extent that any provisions of this law and handbook conflict with the provisions of the Law Enforcement Ordinance and the Oneida Police Commission’s rulemaking authority as delegated under that law, the Law Enforcement Ordinance and corresponding rules govern.

#### **201.5. Human Resources Department**

201.5-1. *General Responsibilities.* The HRD shall:

(a) Develop and amend the Handbook as necessary to carry out the intent of this law.

(b) Implement, interpret and enforce this law and the associated handbook.

(c) Provide all employees with a copy of this law and the handbook and shall further notify employees of how such materials and all other employment related 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 handbook.

(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 201.5-1(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) As applicable to employees and supervisors:

(i) A current or past employee may have access to his or her own employment record;

(ii) An employee supervisor may have access to his or her current employees' records;

(iii) When considering a transfer or a position for which all applicants are current or former employees of the Nation, a hiring supervisor may have access to the last twelve (12) months of a current or former employee's work history; and

(iv) 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.

(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.

201.5-2. HRD shall uphold the Nation's sovereignty, laws and policies in its hiring and employment practices.

201.5-3. *HRD Oversight by the Oneida Business Committee.* HRD shall report to the Oneida Business Committee, or its designee, as directed by the Oneida Business Committee.



**201.6. Hiring**

201.6-1. *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 201.6-2 and such preferences may not be considered a violation of this law.

201.6-2. *Oneida and Indian Preference.* The Nation shall apply Oneida and Indian Preference to all hiring practices. HRD shall provide a quarterly and annual report to the Oneida Business Committee regarding the trending data for Oneida and Indian preference in hiring and shall post such results on the Nation's website and newspaper.

(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 201.6-2(a), the Nation shall make staffing decisions in accordance with the Indian Preference requirements of the said law or grant.

(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.<sup>1</sup> If a position requires specific skills and/or licensing by the state or federal government and no Tribal members apply who are qualified and eligible and possess the necessary skills or licensing to assume the vacancy, only then may a non-tribal member be selected to fill the vacancy. In the event that a non-Tribal member is hired for a position originally designated as Oneida-only based on this provision, HRD shall hire the employee under contract so that the Nation may consider whether a Tribal member may be available to assume the position upon the expiration of the contract term.

201.6-3. *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 handbook developed by HRD pursuant to 201.5-1(a).

201.6-4. *Workplace Safety.* The handbook shall contain requirements 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.

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<sup>1</sup> 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.

201.6-5. *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.

201.6-6. *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.

## **201.7. Compensation and Benefits**

201.7-1. *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 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.

201.7-2. *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.

201.7-3. *Insurance and Retirement*. Any modification to the insurance and employment benefits offered by the Nation requires approval by Oneida Business Committee resolution.

201.7-4. *Time Off*. The Nation shall afford employees accumulated paid time off based on continuous service to the Nation. HRD shall the process for requesting paid time off in the handbook created pursuant to 201.5-1(a).

- (a) Employees accrue paid time off based on years of continuous service, provided that temporary employees are not eligible to accrue paid time off.

- (1) Paid time off accrual rates for full-time employees are as follows:

- (A) 0-3 years of service – 144 hours annually
- (B) 4-7 years of service – 184 hours annually
- (C) 8-15 years of service – 240 hours annually
- (D) 16 + years of service – 296 hours annually

- (2) Part-time employees accrue time off based on the hours worked as a ratio of full-time hours.

- (b) Once an employee reaches 280 hours of accrued PTO, he or she ceases to accrue paid time off. Employee supervisors shall notify employees in danger of reaching the accrual cap when the employee reaches 201 hours of accrued PTO.

201.7-5. *Leaves*. Employees of the Nation may be allowed leave as provided in the handbook created pursuant to 201.5-1(a) and any other applicable laws and policies of the Nation.

## **201.8. General**

201.8-1. *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.

201.8-2. *Entities.* Individual entities shall comply with this law and the handbook promulgated under 201.5-1(a) and, if necessary, shall develop internal rules and standard operating procedures for the implementation of this law and its associated handbook.

201.8-3. *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.

201.8-4. *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.

## **201.9. Employee Responsibilities**

201.9-1. *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.

201.9-2. *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.

201.9-3. *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 include procedures in the handbook designed to protect employees reporting others' violations of the Nation's laws, policies or rules from any and all forms of retaliation.

## **201.10. Layoffs and Furloughs**

201.10-1. Employees may be laid off and/or furloughed to the extent necessary for the Nation to operate effectively and efficiently in varying conditions pursuant to the Nation's laws, policies and rules.

201.10-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any circumstances be considered adverse employment actions.

201.10-3. The Nation's decision to layoff and/or furlough an employee is not subject to appeal.

## **201.11. Employee Discipline and Appeals**

201.11-1. Employee supervisors shall use the corrective action procedures in the handbook to address employees' unacceptable work performance and/or behavior.

201.11-2. 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 handbook, and based on the following available levels of review:

(a) *Internal Review by the Nation – Reconsideration by the Reviewing Supervisor.* An employee may request reconsideration of any corrective action or other action which may amount to an adverse employment action taken by his or her employee supervisor to his or her reviewing supervisor. The reviewing supervisor may affirm, modify or overturn the decision of the employee supervisor.

(b) *First Level of Appeal.* Any employee, excluding at-will employees, alleging a wrongful suspension or termination or that a supervisor's actions amount to an adverse employment action may contest the action to the Trial Court using the Rules of Administrative Procedure so long as the employee has requested reconsideration from his or her reviewing supervisor according to 201.11-2(a).

(1) An employee supervisor may not initiate a first level appeal in the event that the reviewing supervisor overturns the employee supervisor's action.

(2) In considering an appeal of a corrective action, the Trial Court may consider previous corrective actions upon which the suspension or termination was based, provided that, the employee must demonstrate that he or she requested a reviewing supervisor's reconsideration of such prior corrective actions in accordance with Article 13-1. When reviewing prior corrective actions, the Trial Court shall only consider whether the corrective action was justified based on the employee's behavior; procedural compliance may not be considered.

(c) *Second Level of Appeal.* Any party, excluding at-will employees, that is dissatisfied with the Trial Court's decision, may appeal the Trial Court's decision to the Oneida Judiciary's Appellate Court.

201.11-3. *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.

201.11-4. The Oneida Judiciary may, in its discretion, waive any court filing fees that may be assessed against an employee appealing an employment matter.

## **201.12. Employment Actions**

201.12-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law.

201.12-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

201.12-3. Complaints filed with the Oneida Judiciary shall name the entity of the Nation that made the contested action.

End.

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



## AGENDA REQUEST FORM

- 1) Request Date: 7/14/16
- 2) Contact Person(s): Kelly M. McAndrews  
 Dept: Oneida Law Office  
 Phone Number: 4327 Email: Kmccandre@oneidanation.org
- 3) Agenda Title: Drug and Alcohol Free Workplace Policy Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee  
Amendments requested to comply with a new final rule concerning Occupational Health and Safety Act.

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

- |                |          |
|----------------|----------|
| 1) <u>Memo</u> | 3) _____ |
| 2) _____       | 4) _____ |

- 5) Please List any laws, ordinances or resolution that might be affected:
- \_\_\_\_\_

- 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:

Implementation Deadline

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

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**ATTORNEY CLIENT COMMUNICATION  
PRIVILEGED AND CONFIDENTIAL  
M E M O R A N D U M**

**TO:** Jennifer Falck, Legislative Reference Office Director

**FROM:** Kelly M. McAndrews, Staff Attorney   
Robert W. Orcutt, Staff Attorney 

**DATE:** July 14, 2016

**SUBJECT:** Potential Conflict Between New OSHA Rule and Tribe's Drug and Alcohol Free Workplace Policy

---

Last month, the Law Office was notified of a new final rule (also "Rule") adopted by the Occupational Health and Safety Administration ("Agency"), the agency charged with implementing the Occupational Health and Safety Act ("OSHA"). The new Rule updates injury reporting methods by allowing electronic reporting and, importantly for the Tribe's purposes, includes a provision prohibiting an employer from "retaliating" against an employee for reporting an injury.

**The Rule:**

29 CFR §1904.35(b)(1)(A) provides that employers must give notice to employees that employees have the right to report work related injuries and illnesses. Subsection (B) of the Rule further provides that "Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses". The purpose of the Rule is to encourage employees to report work related injuries and illnesses and to prevent any barriers which may prevent them from doing so.

The Agency received many comments which focused on an employer's ability to conduct drug testing of its employees, and discipline them for violations, in light of the Rule. The Agency responded that "Although drug testing of employees may be a reasonable workplace policy in some situations, it is often perceived as an invasion of privacy, so if an injury or illness is very unlikely to have been caused by employee drug use, or if the method of drug testing does not identify impairment but only use at some time in the recent past, requiring the employee to be drug tested may inappropriately deter reporting." Further, the Agency "believes the evidence in the rulemaking record shows that blanket post-injury drug testing policies deter proper reporting." Finally, the Agency recognizes that "this final rule does not ban drug testing of employees. However, the final rule does prohibit employers from using drug testing (or the threat



of drug testing) as a form of adverse action against employees who report injuries or illnesses.”  
*Generally see* Comments to Rule.

### **The Tribe’s Drug and Alcohol Free Workplace Policy:**

The Tribe implemented the Drug and Alcohol Free Workplace Policy (“Policy”) in 1994. Since then, it has been amended several times. Most recently, the Policy was amended in December of 2013 to include a provision which requires employees to submit to drug and alcohol testing anytime they are involved a work related accident. See § 8.3 of the Policy. Work related accident is defined in the Policy as “an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

- (1) results in an injury to the employee and requires medical intervention by a police officer or emergency medical technician, or treatment at a medical facility;
- (2) results in death of the employee or another person; or
- (3) involves any property damage.” See § 3-1(M). If the results of the drug and alcohol test are positive, the employee may face disciplinary action, including termination (discharge).

The Policy also provides that the Tribe may require employees to submit to drug and alcohol testing when there is reasonable suspicion to believe the employee may be under the influence of drugs or alcohol at work.

### **Applicability of OSHA to the Tribe:**

The Law Office has opined several times about the applicability of OSHA to the Tribe. OSHA is a law of general applicability and in most cases, laws of general applicability apply to Tribes unless one of three exceptions exist: “(1) the law touches on exclusive rights of self-governance in purely intramural matters (2) the application of the law to the tribe would abrogate rights guaranteed by Indian treaties, or (3) there is proof by legislative history or some other means that Congress intended the law not to apply to Indians on their reservations.” Donovan v. Coeur d’Alene Tribal Farm, 751 F.2d 1113 (9<sup>th</sup> Cir., 1985). The Seventh Circuit Court of Appeals, which covers Wisconsin, has not squarely addressed the issue of OSHA’s applicability to a tribal government, but it has held that OSHA applies to a commercial enterprise owned and operated by the Menominee Tribe. See Menominee Tribal Enterprises v. Solis, 601 F.3d 669 (7<sup>th</sup> Cir. 2010). In that case, the Seventh Circuit found that none of the exceptions applied to prevent the application of OSHA, as a law of general applicability, to the Menominee Tribe’s commercial timber mill. *Id.* Thus, courts would likely minimally find OSHA to apply to the Tribe’s commercial enterprises. It is our understanding that for purposes of consistency, the Tribe attempts to voluntarily comply with most provisions of OSHA across the board.

### **Potential Conflict between the Rule and the Policy:**

Since the Rule prohibits employers from discriminating against or discharging employees for reporting workplace injuries and since the Policy could subject employees to potential discharge from reporting workplace injuries by way of a positive drug test, there is a conflict. The Tribe has several options for dealing with this conflict. First, the Tribe could argue that OSHA does

not apply to the Tribe as a government and therefore the Tribe does not need to adjust its Policy to comply with the Rule. There are obvious problems with this option, though, as it would not resolve how the Tribe's commercial entities would deal with the Rule and it assumes a court would find OSHA does not apply to the Tribe (a fight the Tribe should avoid). This option could also lead to staff confusion as some tribal entities would be bound by the Rule and some would not.

Second, the Tribe could argue that the Policy does not conflict with the Rule because discharge is not an automatic result of injury reporting under the Policy; rather discharge is only possible for some employees involved in workplace injuries. Further, discharge is not a guaranteed result of workplace injury reporting.

Third, and safest, the Tribe could amend the Policy to delete the provisions regarding post-accident drug and alcohol testing in all instances of work related accidents. This relatively minor change would allow the Tribe to comply with the Rule. The Tribe could leave in place the bulk of the Policy and drug and alcohol testing could still in cases of workplace accidents if there is reasonable suspicion.



## Memorandum

**To:** Oneida Business Committee  
**From:** Brandon Stevens, LOC Chairperson *BS*  
**Date:** October 26, 2016  
**Re:** Drug and Alcohol Free Workplace Policy Emergency Amendments

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Please find attached the following for your consideration:

1. Resolution: Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy
2. Statement of Effect: Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy
3. Drug and Alcohol Free Workplace Policy Emergency Amendments Legislative Analysis
4. Drug and Alcohol Free Workplace Policy Emergency Amendments (redline with analysis)
5. Drug and Alcohol Free Workplace Policy Emergency Amendments (clean)

### *Overview*

Emergency amendments to the Drug and Alcohol Free Workplace Policy are requested by the Oneida Law Office to comply with a new final rule concerning the Occupational Health and Safety Act. Although the rule went into effect August 10, 2016, OSHA announced it will not enforce it until November 1, 2016 and non-emergency amendments cannot be processed in time to meet this timeline.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.

These emergency amendments will become effective immediately and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted.

### **Requested Action**

Approve the Resolution: Adoption of Emergency Amendments to the Drug and Alcohol Free Workplace Policy

**BC Resolution \_\_\_\_\_***Drug and Alcohol Free Workplace Policy Emergency Amendments*

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

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

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

**WHEREAS,** the federal Occupational Safety and Health Administration (OSHA) adopted amendments to a final rule (29 CFR 1904) which become effective on November 1, 2016, and which prohibit employers from retaliating against workers who report work-related injuries or illnesses; and

**WHEREAS,** OSHA's comments on the changes to the rule, as published in the Federal Register, state that "To strike the appropriate balance here, drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use"; and

**WHEREAS,** the Drug and Alcohol Free Workplace Policy, as originally adopted by Oneida Business Committee resolution 10-25-95-A and most recently amended by Oneida Business Committee resolution 12-11-13-F, requires all employees to immediately undergo drug and alcohol testing following a workplace accident; and

**WHEREAS,** these requirements in the Policy conflict with the new requirements under federal law; and

**WHEREAS,** amendments to the Policy would delete the requirement that all employees must undergo drug and alcohol testing following any workplace accident; and

**WHEREAS,** the Nation's employees are still required to immediately report all workplace accidents to their supervisor; and

**WHEREAS,** the Nation's employees may still be required to undergo drug and alcohol testing at any time if there is "reasonable suspicion" that the employee is under the influence of alcohol or drugs; and

**WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis; and

**WHEREAS,** emergency adoption of this amendment to the Drug and Alcohol Free Workplace

**Resolution BC-\_\_\_\_\_****Page 2**

48 Policy is necessary for the preservation of the public health, safety, or general  
49 welfare of the Reservation population; because it ensures that the Nation is in  
50 compliance with federal workplace standards; and

51  
52 **WHEREAS,** observance of the standard legislative process would be contrary to public interest  
53 because permanent amendments to the Policy could not be adopted in time to be  
54 in effect when the new federal requirements go into effect.

55  
56 **NOW THEREFORE BE IT RESOLVED,** that the attached emergency amendments to the  
57 Drug and Alcohol Free Workplace Policy are hereby adopted and shall take effect immediately.



## **Statement of Effect**

### *Resolution: Drug and Alcohol Free Workplace Policy Amendments*

#### **Summary**

In order to comply with changes to federal law, proposed amendments to the Drug and Alcohol-Free Workplace Policy (the Policy) delete a requirement that states that all employees must submit to drug testing immediately following every work-related accident.

*Submitted by Tani Thurner, Staff Attorney, Legislative Reference Office*

#### **Analysis from Legislative Reference Office**

The proposed amendments to the Drug and Alcohol-Free Workplace Policy (the Policy) were requested in response to a recent change to federal law (29 CFR 1904), which will go into effect November 1, 2016 and which is intended to prevent employers from discouraging employees from reporting workplace injuries and illnesses. The change to federal law more clearly prohibits employers from using drug testing, or the threat of it, as a form of retaliation against employees who report injuries or illnesses. The comments for the Final Rule, published on the Federal Register, state that employers' drug testing policies:

“should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.”

Currently, the Policy states that after an employee is involved in a work-related accident, alcohol and drug testing must be conducted immediately on the employee; and that upon arriving at a medical facility following the accident, the employee must inform the medical care provider that this was a work-related accident. The Policy also currently requires supervisors to direct employees to go to Employee Health Nursing (EHN) or its designee to be tested within one hour of being directed to do so; and states that refusal to submit to post-accident alcohol and drug testing requested by various parties, will be treated as a refusal to test pursuant to the Policy; which sets out specific penalties for refusal to test. [Current Policy, 8-3]

Under the amendments, these provisions are deleted. Employees are still required to immediately notify their supervisor when they are involved in a work-related accident; and employees can still be subjected to drug and alcohol testing when there is reasonable suspicion that the employee is under the influence, but employees would no longer be required to automatically submit to drug and alcohol testing for every work-related accident.

These amendments are being submitted on an emergency basis in order to ensure that the amended law is in effect as of November 1, 2016, which is when the changes to federal law go into effect.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the OBC to take emergency action to amend a law where it is “necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population” and when enactment or amendment of legislation is required sooner than would be possible under the LPA. By adopting



this resolution, the OBC is issuing a finding of an emergency, and identifying the necessity for emergency amendments.

Emergency amendments become effective immediately upon adoption, and can remain in effect for six months, with an opportunity for a one-time extension of up to an additional six months. It is intended that while these emergency amendments are in effect, amendments to the Policy would also be processed for permanent adoption.

### ***Conclusion***

There are no legal bars to adopting this Resolution.



## Drug and Alcohol Free Workplace Policy Amendments

<i>Analysis by the Legislative Reference Office</i>					
<b>Title</b>	Drug and Alcohol-Free Workplace Policy (the Policy)				
<b>Sponsor</b>	N/A	<b>Drafter</b>	Rob Orcutt – Oneida Law Office	<b>Analyst</b>	Tani Thurner Maureen Perkins
<b>Requester &amp; Reason for Request</b>	The Oneida Law Office has requested these changes due to a recently adopted change to federal law.				
<b>Purpose</b>	This policy governs drug/alcohol testing of employees of the Nation.				
<b>Authorized/ Affected Entities</b>	HRD, Employee Health Nursing, Oneida Nation Employee Assistance Program, Medical Review Officer (MRO) and all employees of the Nation				
<b>Related Legislation</b>	Personnel Policies and Procedures; Workers Compensation Law				
<b>Enforcement &amp; Due Process</b>	The Policy identifies how reasonable suspicion can be established, such that an employee can be sent for drug and/or alcohol testing. Employee's cannot appeal or challenge this determination.				
<b>Public Meeting Status</b>	This draft is presented for adoption on an emergency basis. A public meeting is not required for the adoption of emergency legislation.				

### Overview

The proposed amendments to the Drug and Alcohol-Free Workplace Policy (the Policy) were requested in response to a change to federal law (29 CFR 1904). Although the rule went into effect August 10, 2016, OSHA announced it will not enforce it until November 1, 2016. The rule is intended to prevent employers from discouraging employees from reporting workplace injuries and illnesses. The change to federal law more clearly prohibits employers from using drug testing, or the threat of it, as a form of retaliation against employees who report injuries or illnesses. The comments for the Final Rule, published on the Federal Register, states:

“[t]he final rule does prohibit employers from using drug testing (or the threat of drug testing) as a form of adverse action against employees who report injuries or illnesses. To strike the appropriate balance here, drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.”

Currently, the Nation's Policy requires employees to immediately notify their supervisors and to undergo alcohol and drug testing every time they are involved in a work-related accident [see 3-1(m), 8-3]. The Policy treats a failure to do so as “refusal to test” and the employee would be punished accordingly [see Article 9]. In response to the upcoming change to federal law, the proposed amendments delete this requirement. Article 9 is also amended to delete references to work-related accidents when identifying what “refusal to test” entails.

These changes mean that employees of the Nation will no longer be subject to mandatory drug and alcohol testing for every work-related accident. The Policy will not identify any situations where an employee is subject to mandatory post-accident testing. However, employees may still be subject to drug and alcohol testing if their supervisor has “reasonable suspicion” that

October 20, 2016

the employee may be under the influence. The Policy already identifies standards/processes for how supervisors can establish reasonable suspicion [see 7-1].

#### Other

Section 16.9-5 of the Legislative Procedures Act authorizes the OBC to temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible by utilizing the standard legislative process [see *Legislative Procedures Act, 16.9-5(b)*]. In this situation, there would not be time to amend the policy through the standard legislative process prior to the changes to federal law going into effect.

If adopted on an emergency basis, these amendments will become effective immediately, and will remain in effect for up to six months, with the possibility of a one-time extension of up to an additional six months [see *Legislative Procedures Act, 16.9-5(b)*].

## **Drug and Alcohol Free Workplace Policy**

Article I. Purpose and Policy  
 Article II. Adoption, Amendment, Repeal  
 Article III. Definitions  
 Article IV. Application  
 Article V. Shared Responsibility  
 Article VI. Prohibited Behavior  
 Article VII. Reasonable Suspicion  
 Article VIII. Drug and Alcohol Testing

Article IX. Refusal to Test  
 Article X. Waiting Period  
 Article XI. Consequences for Prohibited Behavior  
 Article XII. Re-hire  
 Article XIII. Other Potential Consequences  
 Article XIV. Confidentiality  
 Article XV. Communication

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### **Article I. Purpose and Policy**

1-1. The Tribe is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Tribe recognizes that alcohol abuse and drug use pose a significant health and safety threat to customers and other employees. The Tribe also recognizes that alcohol/drug abuse and addiction are treatable illnesses. The Tribe realizes that early intervention and support may improve the success of rehabilitation.

1-2. It is the policy of the Tribe to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Tribe encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

### **Article II. Adoption, Amendment, Repeal**

2-1. This Policy was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B and BC-12-11-13-F.

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

2-3. Should a provision of this Policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this Policy and a provision of another Policy, the provisions of this Policy shall control.

2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

### **Article III. Definitions**

3-1. This Article 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) "Appropriate authority" shall mean the Human Resource hiring representative, immediate supervisor, MRO, and/or EAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) "Confirmed positive test result" shall mean a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this Policy (levels established by the US Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(c) "Employee" shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but

is not limited to; an individual employed by any program or enterprise of the Tribe, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Policy, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

(d) “External applicant” shall mean a person who is applying for a position and not currently employed by the Tribe.

(e) “HRD” shall mean the Human Resources Department and/or representatives performing Human Resources functions applicable to this Policy.

(f) “Internal applicant” shall mean a person who is applying for a position who is currently employed by the Tribe, this shall include those employed under a temporary status.

(g) “MRO” shall mean Medical Review Officer who is a licensed physician who is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

(h) “ONEAP” shall mean the Oneida Nation Employee Assistance Program which is a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to Tribal employees and family members.

(i) “Prohibited drug(s)” shall mean marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This shall also include prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(j) “Return-to-Work Agreement” shall mean an agreement, developed by an ONEAP counselor and signed by the employee and the ONEAP counselor, and the referring supervisor, which sets out the actions the employee needs to complete in order to return to work and remain employed.

(k) “Supervisor” shall mean the immediate supervisor, or person who has taken on the role of supervisor due to an absence that is responsible for performance review, corrective action, and day-to-day assignments of duties.

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

(m) “Work-related accident” shall mean an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

- (1) results in an injury to the employee and requires medical intervention by a police officer or emergency medical technician, or treatment at a medical facility,
- (2) results in death of the employee or another person, or
- (3) involves any property damage.

#### **Article IV. Application**

4-1. This Policy applies to all applicants for employment, whether external or internal, and all employees during working hours and when on-call.

4-2. Employees are prohibited from the use of intoxicants and prohibited drugs while on official business travel while the conference or meeting is in session.

4-3. An employee is not exempted from this Policy if they travel to another state, territory or country where the use of certain drugs is legal.

## **Article V. Shared Responsibility**

5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and employees.

5-2. *Employee.* It is the employee's responsibility to:

- (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.
- (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.
- (c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.
- (d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.
- (e) Cooperate with the requests made by the MRO and return the call of the MRO within twenty-four (24) hours of the call being made to the employee. Employees who fail to cooperate and do not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.
- (f) Sign a consent form to be tested for alcohol and drugs when requested by a supervisor, EHN, a certified drug and alcohol technician, or police personnel in accordance with this Policy.

5-3. *Supervisor.* It is the supervisor's responsibility to:

- (a) Be familiar with this Policy and any related policies and procedures.
- (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.
- (c) Promptly intervene with employees who are believed to be under the influence of prohibited drugs and/or alcohol.
- (d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.
- (e) Send the employee through the contracted transportation service for drug and alcohol forensic testing.
- (f) Take appropriate action as outlined by this Policy.
- (g) Sign the Return to Work Agreement along with the employee and ONEAP counselor that was developed by ONEAP.
- (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the employee to EHN.

5-4. *Supervisor and Employee.* Supervisors and employees that fail to adhere to their responsibilities under this Policy may be subject to disciplinary action or other consequences as explained in Article XIII.

5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol may result in continued impairment during on-duty hours, which shall then constitute a violation of this Policy. It is the employee's responsibility to understand the consequences of off-duty use, and take steps to avoid the possibility of on-duty impairment. In the case where employee is called in for an emergency or unplanned work (this does not include those on-call), and he or she has been using prohibited drugs or drinking alcoholic beverages prior to such a call, such employee should



decline to report until the effects of the prohibited drugs or alcohol have left his or her system. Such refusal to report shall not be viewed as improper, and disciplinary action shall not arise specifically from such refusal.

5-6. *Use of Controlled Substances That May Affect Safety or Performance.* Employees who are taking or are under the influence of any controlled substances during working hours (such as prescription medication or over the counter medication), which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Tribe have the following obligations:

- (a) The employee shall notify the employee's immediate supervisor about the use of the substance and possible work-related effects prior to commencing work.
- (b) Upon request, the employee may be required to obtain a written statement of any work restrictions or impact on performance or safety relating to the legal substances from his or her physician or pharmacist.
- (c) An employee shall not sell or share his or her prescribed medications with any other person, and shall not take medications that are prescribed to another person.
- (d) It may be necessary for the employee's supervisor, area manager or Employee Health Nursing (EHN) to consult with the employee's personal physician or an MRO to determine if the medication might impact the employee's ability to perform his or her job, or pose a hazard to other employees or to the general public.
- (e) The employee's duties may be temporarily modified for up to one hundred eighty (180) days. Any modification of duties shall result in the appropriate modification of pay as established by the Human Resources Department.

## **Article VI. Prohibited Behavior**

6-1. An applicant or employee of the Tribe is in violation of this Policy if he or she:

- (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited drugs or alcohol while on duty. Notwithstanding Article XI, any employee who is caught using, possessing or selling prohibited drugs shall be immediately terminated from employment with the Tribe.
- (b) Fails to inform his or her supervisor of being under the influence of prescription medication and/or over-the-counter medication(s) which may affect the employee's job performance or safety of the employee, fellow employees, public, or assets of the Tribe.
- (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription medications.
- (d) Refuses to test.
- (e) Has a confirmed positive test after completing a drug and/or alcohol forensic test through EHN or its designee, or has a confirmatory test come back as positive.

## **Article VII. Reasonable Suspicion**

7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by personal observation and/or secondary reported observation that an employee may be under the influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee has taken or possess prohibited drugs or prescription medication that is not specifically prescribed to that employee. In order to make a reasonable suspicion determination, the supervisor shall evaluate the following:

Specific, contemporaneous and articulable observations concerning appearance, behavior, speech, or body odors of the employee consistent with possible drug use or alcohol misuse. The observations may include indications of the chronic and withdrawal effects of prohibited drugs or alcohol.

7-2. The supervisor shall document his or her observations and discuss the matter with the employee. During this discussion, the supervisor may ask the employee for proof of a prescription. The employee shall comply with this request. If after a discussion with the employee, the supervisor continues to suspect the employee may currently still be under the influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee for drug and alcohol forensic testing.

### **Article VIII. Drug and Alcohol Testing**

8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize conditions of employment as described in this Policy. To ensure the accuracy and fairness of this Policy, all forensic testing shall be conducted according to the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMSHA) guidelines for Federal Workplace Drug testing Programs

8-2. The Employee Health Nursing Department or its designee shall use Federal Drug Administration approved urine tests and National Highway Transportation Safety Administration (NHTSA) certified evidential breath testing devices or NHTSA certified saliva-screening devices, operated by technicians whose training terminology, procedures, methods, equipment, forms, and quality assurance comply with best practices.

(a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory which is certified by the U.S. Department of Health and Human Services using its confirmation methods and established cut-off levels. Laboratory-confirmed results shall undergo the verification process by a MRO.

(b) Confirmation breath alcohol testing shall be performed using an NHTSA certified evidential breath testing device.

(c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA certified saliva test.

8-3. If an employee is involved in a work-related accident, he or she shall immediately inform his or her supervisor of the accident. ~~Alcohol and drug testing shall be conducted on the employee immediately following the accident by certified drug and alcohol technicians or police personnel. Upon arriving at a medical facility, the employee shall inform the medical care provider that this was a work-related accident. If the alcohol and drug testing is not conducted by certified drug and alcohol technician or police, then the supervisor shall direct the employee to go to EHN or its designee to be tested within one (1) hour of being directed by the Supervisor to do so or within one (1) hour of being treated and released at the medical facility. Refusal to submit to any post-accident alcohol and drug testing requested by certified drug and alcohol technicians, police, EHN, or its designee shall be treated as a refusal to test pursuant to this Policy.~~

8-4. Each employee, as a condition of employment, is required to participate in pre-employment, reasonable suspicion, and follow-up testing upon the request of an appropriate authority.

8-5. A negative test result is required for employment eligibility. In cases where a test result is diluted or the test was cancelled, retesting urine for drugs is required. If the re-test results in a negative-dilute, the applicant shall be given a negative test result. If the re-test results in a

positive-dilute, then the applicant shall be given a positive test result. Other retesting may also be required at the direction of the MRO.

### **Article IX. Refusal to Test**

9-1. Refusal to test is prohibited behavior as defined in Article VI. Refusal to test carries the same consequences as a non-negative and/or confirmed positive test result. Examples of refusal to test include, but are not limited to:

- (a) Substituting, adulterating (falsifying), or diluting the specimen
- (b) Refusal to sign the required forms
- (c) Refusal to cooperate in the testing process in such a way that prevents completion of accurate testing and as directed by the collector
- (d) Failing to remain at the testing site until the testing process is complete
- (e) Providing an insufficient sample of urine or breath
- (f) Failing to test or to re-test
- (g) Failing to appear within two (2) hours after an order or request is made for testing or re-testing, ~~including for work related accidents.~~
- (h) Behaving in a confrontational or discourteous manner that disrupts the collection process
- (i) ~~Failing to inform the medical facility that alcohol and drug testing is needed due to a work related accident~~

### **Article X. Waiting Period**

10-1. An employee shall be immediately removed from duty without pay during the waiting period between the time of specimen collection and the employer's notification of negative results on both tests, alcohol and drugs, or MRO-verified negative test results.

10-2. When negative test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date. Back pay shall be provided in accordance with the Back Pay Policy. However, if the employee fails to return to work on the assigned reinstatement date as instructed in the notice from the supervisor, the supervisor shall discipline the employee in accordance with the Personnel Policies and Procedures, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

10-3. This article applies only to current employees who meet the reasonable suspicion standard. It does not apply to applicants.

### **Article XI. Consequences for Prohibited Behavior**

11-1. Either an internal applicant or an external applicant may decline the position at any time before being directed to the Employee Health Nursing Department or other designated testing site for his or her drug and alcohol testing.

11-2. *External Applicant.* If an external applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 6-1(e) that has been documented, the employment offer shall be withdrawn. An external

applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the date of the urine drug screening test.

11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section 6-1, the employment offer shall be withdrawn. The applicant shall be removed from duty and subject to respective consequences of this Policy. The applicant shall not be eligible for hiring consideration in a different position for one hundred eighty (180) days from the date of the urine drug screening test.

11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days (which shall be deemed thereafter as a definite positive test), he or she shall be removed from duty and subject to the respective consequences of this Policy.

11-5. *Consequences.*

(a) *First Violation.*

(1) Any employee who engages in prohibited behavior as defined in Article VI for the first time shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment. The ONEAP shall also determine if the employee shall be subject to return-to-duty/follow-up testing. If follow-up testing is required, the testing shall be at the employee's expense.

(2) The employee shall be required to sign a Return-to-Work Agreement and submit it to his or her supervisor within ten (10) calendar days or the employee shall be terminated and ineligible for re-hire for one (1) year.

(A) When the supervisor signs the Return-to-Work Agreement the employee shall be placed back on the work schedule by the next regularly scheduled workday.

(3) Failure to comply with the Return-to-Work Agreement shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(b) *Second Violation.*

(1) Any employee who engages in prohibited behavior as defined in Article VI a second time within his or her lifetime of employment with the Tribe shall be removed from duty without pay and shall receive a mandatory referral to ONEAP for an assessment.

(2) The employee shall be required to sign a Return-to-Work Agreement and submit it to their supervisor for signature within ten (10) calendar days or the employee shall be terminated and ineligible for re-hire for one (1) year. After a second violation the employee shall not be placed back on the work schedule until:

(A) The employee receives approval from the ONEAP that they have demonstrated sufficient progress in a treatment program that would indicate the employee is drug and alcohol free within thirty (30) days of the employee being removed from duty; and

(B) The employee completes a return-to-duty drug screening and alcohol test at a SAMHSA-certified facility at their own expense, which shall be negative within thirty (30) days of the employee being removed from duty;

(C) The ONEAP notifies the supervisor of the employee's eligibility to return to work.

(3) As a condition of continuing employment, the employee shall participate in follow-up testing with continued negative results as directed by the ONEAP and listed in the Return-to-Work Agreement. All follow-up testing shall be at the employee's expense.

(4) Failure to comply with the Return-to-Work agreement shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(c) *Third Violation.*

(1) Any employee who engages in prohibited behavior as defined in Article VI a third time in his or her lifetime of employment with the Tribe shall be terminated. The employee shall not be eligible for employment unless he or she receives a forgiveness pursuant to the Pardon and Forgiveness Law. An employee that receives a forgiveness shall not be eligible for re-hire for one (1) year after the date of termination.

## **Article XII. Re-hire**

12-1. Former employees that were terminated due to violations of this Policy shall provide, along with their application for employment, the following:

- (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
- (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at their own expense.

## **Article XIII. Other Potential Consequences**

13-1. The violation of this Policy may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

- (a) *Disqualification of Unemployment Benefits:* Employees who are terminated as a result of a violation of this Policy may be ineligible for unemployment benefits.
- (b) *Reduction of Workers Compensation Benefits:* Employees who suffer an injury in a work-related accident that occurred while engaged in a violation of this Policy may have any workers compensation benefits reduced.
- (c) *Criminal Penalties:* Employees whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.
- (d) *Liability for Accidents:* Employees whose conduct in violation of this Policy causes an accident may be held personally responsible for losses associated with the accident, and may be required to pay for those losses.

## **Article XIV. Confidentiality**

14-1. Information related to the application of this Policy is confidential. Access to this information is limited to those who have a legitimate "need to know" in compliance with relevant laws and personnel policies and procedures.

14-2. All drug and alcohol testing information shall be maintained in confidential records, separate from the employee's clinical and personnel files. The employee may request a copy of his or her records. The records may be requested by a third party in accordance with the Oneida Personnel Policies and Procedures.

## **Article XV. Communication**

15-1. HRD shall communicate this Policy to all employees to ensure all employees are aware of their role in supporting this Policy:

- (a) All employees shall be given information on how to access this Policy.
- (b) This Policy shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.
- (c) All employees shall sign an acknowledgment form stating they have received a copy of this Policy, have read and understand it, and agree to follow this Policy.

*End.*

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See GTC-1-31-94-B

Adopted by the OBC on 8-17-94

Emergency Amendments BC-04-20-95-C

Adopted BC-10-25-95-A (repealed previous versions)

Amended BC-10-20-99-A

Amended BC-12-05-07-B

Amended BC-12-11-13-F





**Oneida Nation**  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



**TO: Legislative Operating Committee**  
**FROM: Jennifer Falck, LRO Director**  
**RE: Petition: Genskow/Metivier – Election stipends and elections for OBC members**  
**DATE: October 12, 2016**

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On Friday, August 12, 2016, a petition from Madelyn Genskow and Yvonne Metivier was submitted to the Oneida Business Committee (OBC) Support Office. On August 16, 2016, the Enrollments Department verified that the petition had 61 signatures, and on August 29, 2016, the OBC accepted the petition and directed the petition be sent for legal, financial, legislative and administrative analyses, to be submitted within sixty days.

The requested legislative analysis has been prepared and is provided for your consideration.

**Requested Action**

Approve the legislative analysis and forward to the Oneida Business Committee for consideration.



**Statement of Effect**  
**Petition: Genskow/Metivier – Elections for Oneida Business Committee Members**

*Submitted by Tani Thurner, Staff Attorney, Legislative Reference Office*

**Summary**

This petition is seeking to have the following additional requirements implemented for future Oneida elections, starting with the 2017 General Elections:

**Part 1:** All “voting age members” will receive a \$100 incentive payment if they vote in the election.

**Part 2:** Two months before each election, a special edition of the Tribal newspaper must be published, and all candidates for the Oneida Business Committee (OBC) positions, must be given a half-page, free of charge, to answer two questions:

1. “What do you see as the 3 most important problems in the Oneida Nation based in WI?”
2. “What will you do to specifically address those problems? One month before each election, all candidates for an OBC position must engage in a “live debate” on the floor at GTC, again answering those questions, as well as others.

**Part 3:** GTC attendees are not permitted use their cell phones during the meeting and attendees must be paid a \$100 stipend.

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**Analysis**

August 12, 2016: Petition was submitted on behalf of members Madelyn Genskow and Yvonne Metivier, and was received by the Oneida Business Committee (OBC) Support Office.

August 29, 2016: OBC accepted the petition and directed that it be sent for legal, financial, legislative and administrative analyses, to be submitted within sixty days.

The resolution adopts two findings:

1. Elected officials must be willing to work hard for the health and survival of the Nation, and for the best interest of the membership; and
2. An engaged and informed electorate is necessary in order to accomplish this.

These requirements for the debate and Kalihwisaks candidate statements only apply to candidates for OBC positions. Candidates for any other elected positions would not be affected.

**Part 1. Voting age members receive a \$100 incentive if they vote at “the elections.”**

**Offering Incentives to Vote**

Both federal law and Wisconsin law prohibit incentives for voting in their elections<sup>1</sup>. However, some other states, and various municipalities do allow for various types of incentives for voters. Any such

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<sup>1</sup> For federal elections, it is illegal to offer, solicit or accept “expenditure to any person, either to vote or withhold his vote, [...]” [18 USC 597] For state elections, Wisconsin law makes it illegal to offer anything of value, in order to induce any voter to “go or refrain from going to the polls, [or to] vote or refrain from voting” [Wis. Stat. 12.11(1m)(a).]

provisions added to Oneida Law should be reviewed to ensure there is no conflict with any applicable state or federal law.

### **Voting Age and Voter Turnout**

In 2015, the Oneida membership amended the Oneida Constitution, lowering the minimum voting age from 21 to 18. As of September 28, 2016, there were 17,191 enrolled Tribal members; including 682 members between the ages of 18-20. These 18-20 year-olds were not eligible to vote in elections prior to 2016; but will be able to vote in future elections.

The 2014 election process cost \$41,478.11. 1685 members voted in that election. If each voter had received a \$100 incentive payment, it would have resulted in an additional \$168,500. This would not include additional costs related to the election.

There may be additional costs incurred in order to accommodate an increased turnout. These issues may be addressed in greater detail in the fiscal analysis.

Providing an incentive payment may result in increased turnout for elections. Attendance at GTC meetings is higher since the stipends began.	
Average attendance at the 12 GTC meetings held before the GTC stipend began:	<b>78</b>
Average attendance at the 12 GTC meetings after the GTC stipend began:	<b>1107</b>

### **Conflicts with the Election Law**

The Election Law sets out requirements for conducting elections. The Election Law does not include incentive payments. Before implementing any requirements for incentive payments, it would be necessary to identify:

- How the incentive payments would be implemented and administered .
- What counts as “voting” for the purpose of receiving the stipend – i.e. whether a voter would still qualify for the stipend if their ballot was rejected, and whether/how a person could appeal if they were found to be ineligible for an incentive stipend.

These issues could be addressed in the Election Law, or in a new law. Some issues may be addressed through duly adopted rules - in which case an authority needs to be delegated to an entity, in accordance with the Administrative Rulemaking Law.

**Part 2. Two months before the election, a special edition of the Tribal newspaper must be published. Each candidate for the OBC must be provided with one-half page each, free of charge, to answer “What do you see as the 3 most important problems in the Oneida Nation based in WI?” and “What will you do to specifically address those problems?”**

The Tribal newspaper is the Kalihwisaks. At least 24 Oneida laws and policies, specifically require certain things (generally types of notice) to be published in the Kalihwisaks.

### **Timeline – Election Law**

Caucuses must be held at least 90 days before each general election, and at least 45 days before all other elections. [Election law, 2.6-1] Whenever there are three or more candidates for any officer positions, or 16 or more candidates for at-large council member positions, a primary election must be held. The top two candidates for each OBC officer position, and the top 15 candidates for council member positions, will be placed on the ballot. Primaries must be held at least 60 days before an election. [Election Law 2.12-2.]

**A ½ page statement in the Kaliwisaks would contain approximately 55-600 words. For comparison- there are 577 words on this page.**

The primary must be held at least 60 days before the election. So it may not be possible to publish a special edition of the Kalihwisaks two months in advance of a General Election, because the candidates on the ballot would not be determined until after the primary election.

In addition, it would not be possible to publish candidate statements two months before any special election, because the caucus is not required to be held until 45 days before the election - it would not be known who would be on the ballot two months in advance of the election. In short, these requirements appear to conflict with the Election Law.

### **Kalihwisaks Policies and Procedures**

This petition seeks to require the Kalihwisaks Special Edition to publish candidate statements. It is not clear how various potential issues would be addressed; including:

- What would happen if a candidate submits a statement that exceeds the half-page limit
- The candidate does not answer the questions that the petition directs each candidate to answer
- The statement contains prohibited content.

The Kalihwisaks is governed by a set of policies that include content and publication standards. Section 3.4 identifies various categories of prohibited content, including; defamatory statements, derogatory, harassing or abusive language, personal attacks, crude or vulgar content, content that is overly invasive of personal privacy, language that instigates violence or illegal activity, information that is false, misleading or fraudulent, etc.

The Open Records and Open Meetings Law sets out categories of information that may not be released to the public. Sections 7.11-4 and 7.11-5 of that law provide for penalties for releasing such records. If a candidate's statement includes information that is barred from release Kalihwisaks staff and others, could be violating Tribal law, even if they were required by law to publish the content.

Typically, when readers submit content each submission is reviewed to ensure it conforms to a newspaper's policies. If a submission does not conform, the editor may edit the submission, reject the submission, or return the submission and ask that the submitter make specific changes and re-submit the material.

Because the Kalihwisaks is being required to publish candidate statements, it is not clear whether or how the Kalihwisaks could exercise editorial discretion.

### **Part 3. One month before each election, a "Special Debate GTC meeting" must be held. Candidates for the OBC must engage in a special "live" debate at this GTC meeting.**

It is not clear whether this means General Elections only, or if this also means special elections when there is a vacancy before the end of the term.

The petition is not clear about who would be responsible for organizing such a debate, and does not identify how the debate would be run – i.e. how they would select which questions would be asked of the candidates; who would ask the questions; whether there would be time limits; etc.

### **Each OBC candidate must answer the exact same questions, and the first question asked must be the same question asked in the Special Edition of the Kalihwisaks.**

The petition calls for two questions to be answered by each candidate in the Special Edition of the Kalihwisaks. The intent may be that both of these questions will be asked first. The petition appears to be seeking to ensure that all candidates have the opportunity to answer the same questions and to require that the Special Debate begins with each candidate answering the same question he or she already answered in the Kalihwisaks.

**Tribal members who attend the Special Debate GTC meeting will receive a \$100 stipend.**

The GTC Meeting Stipend Payment Policy already requires all persons who attend a GTC meeting to receive a stipend “in an amount established by General Tribal Council” for attending a GTC meeting, if a quorum is established. [Section 4-1] and an August 11, 2007 GTC directive set that stipend amount at \$100.

The petition does not state whether the intent is for each person in attendance to receive an additional stipend, or if this is repeating the requirement already found in the GTC Meeting Stipend Payment Policy.

If the intent is for attendees to receive the standard GTC Meeting stipend allowed under the GTC Meeting Stipend Payment Policy, then adopting this requirement will create confusion.

**Persons in attendance at the GTC meeting are not allowed to use phones.**

There are currently no provisions in Tribal laws that restrict the use of cell phones at a GTC meeting. It is not clear what constitutes “phone use”. The intent and specific requirements should be clarified, especially:

- **How would a ban on phone use be enforced?** The GTC Meeting Stipend Payment Policy currently requires that stipend to be paid to any Tribal member who is a qualified voter, who registers or is in line to register within 15 minutes after the meeting starts; stays for the entire meeting, and checks out and provides a valid ID after the meeting. This means that the stipend cannot be withheld as a penalty unless the GTC Meeting Stipend Payment Policy is amended to allow for this.
- **What is considered “using” a phone and why is only “phone use” prohibited?** The resolution language is ambiguous – it could be interpreted differently by different people.

**Conclusion**

This petition seeks adoption of a resolution which contains requirements that conflict with Tribal Law. Adoption of this petition would require adopting new laws, amending existing laws, and delegating authority to entities in order to develop rules to administer the required activities.

**Conflicts and potential conflicts with Tribal law include:**

- Requiring a special issue of the Kalihwisaks to be published two months before an election conflicts with the Election Law.
- The requirement that attendees at GTC debates must be paid a \$100 stipend – this does not currently conflict with Tribal law. If the GTC ever changes the GTC meeting stipend, there would be conflict with this requirement.

**If this petition were to pass, several changes to the Oneida Code of Laws would be necessary. In addition, entities would need delegated authority to develop rules to administer these activities. Some of the changes would include;**

- The process, requirements and responsibilities related to providing incentive stipends for voting.
- Requirements governing candidate statements submitted to the Kalihwisaks – particularly what happens when a candidate statement does not meet submission requirements.
- The process, requirements and responsibilities related to GTC Special Debate meetings.
- Restrictions on the use of phones at GTC Special Debate meetings – particularly: enforcement, addressing violations, and specifically identifying what is restricted and what is permitted.



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



TO: Legislative Operating Committee  
Jo Anne House, Chief Counsel  
FROM: Jennifer Falck, LRO Director *JF*  
DATE: October 20, 2016  
RE: Election Law Amendments

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At the August 17, 2016 LOC meeting the following motion was made;

*Motion by Tehassi Hill to add Election Law-Campaign Financing to the active files list as a low priority, listing Tehassi Hill as the sponsor; seconded by David P. Jordan. Motion carried unanimously.*

This action came as response to a request from the Law Office's Chief Counsel, that the LRO complete some research on the Nation's campaign finance reporting practices. The following information is meant to fulfill that request.

### **Election Law Language with Regard to Campaign Finance**

#### *Section C. Campaign Financing*

#### **2-5.8 Contributions:**

- (a) Solicitation of Contributions by Candidates.
  - (1) Candidates shall only accept contributions from individuals who are Tribal members or individuals related by blood or marriage to the candidate. Candidates may not accept contributions from any business, whether sole proprietorship, partnership, corporation, or other business entity.
  - (2) Candidates shall not solicit or accept contributions in any Tribal office or business/facility.
- (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the Election Board in an amount specified in a resolution by the Business Committee.

### **The Election Board's Response**

In response to an email sent by the LRO, the Election Board provided that they only become aware of Oneida election campaign contributions if candidates report them voluntarily. And that at one time, there was a disclosure on the candidate application form, but because it was "not utilized", it was eliminated from the form.



# October 2016

October 2016						
Su	Mo	Tu	We	Th	Fr	Sa
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2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November 2016						
Su	Mo	Tu	We	Th	Fr	Sa
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

	Monday	Tuesday	Wednesday	Thursday	Friday
Oct 3 - 7	<b>Oct 3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
Oct 10 - 14	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>
			BC Meeting (BCCR)		
Oct 17 - 21	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>
				9:00am 12:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar 12:00pm 1:00pm FW: Real Property Amendments- Public Meeting (BC_Conf_Room) - Jen	
Oct 24 - 28	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>
			BC Meeting (BCCR)		
Oct 31 - Nov 4	<b>31</b>	<b>Nov 1</b>	<b>2</b>	<b>3</b>	<b>4</b>

# November 2016

November 2016						
Su	Mo	Tu	We	Th	Fr	Sa
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December 2016						
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

	Monday	Tuesday	Wednesday	Thursday	Friday
	Oct 31	Nov 1	2	3	4
Oct 31 - Nov 4			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:00pm 2:30pm Community Support Fund Public Meeting (BCCR)	
	7	8	9	10	11
Nov 7 - 11			BC Meeting (BCCR)		Veterans Day Holiday
	14	15	16	17	18
Nov 14 - 18			9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar		
	21	22	23	24	25
Nov 21 - 25			BC Meeting (BCCR)	Thanksgiving Holiday	Indian Day Holiday
	28	29	30	Dec 1	2
Nov 28 - Dec 2					