



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: August 15, 2018
RE: Comprehensive Policy Governing Boards, Committees, and Commissions
Amendments: Public Meeting Comment Review

On June 21, 2018, a public meeting was held regarding proposed amendments to the Comprehensive Policy Governing Boards, Committees and Commissions (“the Law”). Twenty-two (22) people attended the public meeting, with eight (8) individuals providing oral comments during the public meeting, and two (2) individuals submitting written comments during the public comment period. The Oneida Trust Enrollment Committee, Oneida Nation School Board, Oneida Nation Commission on Aging, Environmental Resource Board, and the Oneida Gaming Commission all had representation at the public meeting or during the public comment period.

On July 18, 2018, the Legislative Operating Committee reviewed and considered all oral and written comments received during the public meeting and public comment period. This memorandum demonstrates the consideration of the oral and written comments received within the public meeting and public comment period.

The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – Application of the Law to the Oneida Business Committee:

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

(a) This law shall not apply to the Oneida Business Committee.

105.3. Definitions

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation’s membership.

Bonnie Pigman (oral): Hi, I’m Bonnie Pigman, General Tribal Council Member, 5361. I’m wanting to talk about the Purpose and Policy, Line 7, which specifically states “This law shall not apply to the Oneida Business Committee.” I have a couple of questions and then some information and some things with the definitions. A question for me is why not? Where is it

defined that the OBC is not considered a committee. I haven't seen anything that says they are not a committee. Everybody calls you the Oneida Business Committee.

Bonnie Pigman (oral): Line 59, which is in the definitions. An entity reads, means a board, committee or commission created by GTC or the Business Committee whose members are appointed by the OBC or elected by the Nation's membership. How does the Business Committee not apply to this definition? Even the Constitution, Article III, Governing Body, Section 3 reads, the qualified voters of the Oneida Nation shall elect from among the enrolled Oneida Nation members aged 21 and over who physically reside within Brown and Outagamie Counties of Wisconsin, by secret ballot, a Chairman, Vice Chairman, Secretary, Treasurer and five council members who shall constitute the Oneida Business Committee. Again, committee and perform such duties as authorized by, may be authorized by General Tribal Council.

Response

The commenter questions why the Law does not apply to the Oneida Business Committee if the Oneida Business Committee fits the definition of an entity.

The Law defines an entity of the Nation as a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership. [1 O.C. 105.3-1(h)].

The commenter is correct in stating that the Oneida Business Committee does fit the description of an entity according to the definition provided by the Law, since the Oneida Business Committee was created by the General Tribal Council and elected by the Nation's membership pursuant to Article III, Section 3 of the Constitution and Bylaws of the Oneida Nation.

Although the Oneida Business Committee fits the definition for entity provided by the Law, it is important to note that it was never the intent to exempt the Oneida Business Committee based on whether or not the Oneida Business Committee meets the definition of entity. The Oneida Business Committee is exempted from this law because the purpose of the Law specifically excludes the Oneida Business Committee. [1 O.C. 105.1-1(a)].

The Oneida Business Committee is one (1) of only three (3) governmental bodies formally recognized by the Constitution and Bylaws of the Oneida Nation, the others being the General Tribal Council as the governing body of the Nation when in session, and the Judiciary as the judicial authority of the Nation. The Oneida Business Committee is delegated the authority by the Constitution to perform such duties as authorized by the General Tribal Council. [Constitution Article III, Section 3]. The Constitution provides various requirements for the Oneida Business Committee such as:

- Who may run for office with the Oneida Business Committee (must be age twenty-one (21) or over and physically reside in either Brown or Outagamie Counties);
- How many members may sit on the Oneida Business Committee (overall nine (9) members);
- What officer positions must be held on the Oneida Business Committee (necessary to have a chairman, a vice chairman, a treasurer, and a secretary);

- What constitutes a quorum (a majority of the body including the chairman or vice chairman);
- How regular meetings will be established (by resolution of the Oneida Business Committee);
- Notice requirements for special meetings (three (3) day advance notice by the chairman to all members or upon written request of a majority of the Oneida Business Committee stating the time, place, and purpose of the special meeting);
- How vacancies are filled (General Tribal Council may at any regular special meeting fill any vacancies that occur on the Oneida Business Committee for an unexpired term);
- How Oneida Business Committee members are removed (at the discretion of the General Tribal Council by a two-thirds (2/3) majority vote at any regular or special meeting of the General Tribal Council pursuant to a duly adopted ordinance); and
- How often Oneida Business Committee members are elected (every three years in the month of July).

[see Constitution Article III, Section 3 and Article III, Section 4].

Many of the standards and requirements that the Law sets forth for boards, committees, and commissions of the Nation are already addressed by the Constitution in terms of application to the Oneida Business Committee. Therefore, it is not that the Oneida Business Committee is exempt from many of the same requirements as other boards, committees, and commissions of the Nation are expected to comply with, it is just that the standards and requirements for the Oneida Business Committee are addressed through other legislative means.

In recognition of the fact that the Oneida Business Committee is a constitutionally recognized extension of the General Tribal Council, and the fact that the standards and procedures regarding the Oneida Business Committee is already addressed by other legislative means, the Oneida Business Committee has been exempted from this Law.

There is no recommended revision based on this comment.

The LOC may consider whether the definition for entity should be clarified to explicitly state that the Oneida Business Committee is excluded, in addition to the section 105.1-1 of the Law which describes the purpose. A possible revision to the definition could be as follows:

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership, excluding the Oneida Business Committee.

LOC Consideration

The LOC discussed the inclusion of various requirements and standards for the Oneida Business Committee in the Nation's Constitution, and determined that the Nation's Constitution clearly sets for requirements for the Oneida Business Committee and therefore this Law does not need to duplicate those requirements.

The LOC discussed the fact that it is important to understand that it is not that the Oneida Business Committee is exempted from the standards and requirements for boards, committees, and commissions under this Law, but that the standards and requirements for the Oneida Business Committee are addressed through other legislative means, such as the Constitution, and it is for that reason the Oneida Business Committee is exempted from this Law.

The LOC determined that it was not necessary to amend the definition for “entity” as recommended, because the Law is clear the Oneida Business Committee is not included in the application of this Law.

Comment 2 – Creation of Initial Bylaws of a Board, Committee, or Commission:

105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

Florence Petri (oral): Also, another one I have is, it says the Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity. Shouldn't the entity initiate those bylaws and then followed up by the Business Committee? That's my opinion. Thank you.

Response

The Law provides that when a new entity is created by either the Oneida Business Committee or the General Tribal Council, the Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity. [1 O.C. 105.4-3].

The commenter questions why the entity itself does not initiate those bylaws, and then obtain approval by the Oneida Business Committee.

The Oneida Business Committee is delegated the authority to draft the initial bylaws of an entity, because the entity is newly established, and would not have any members. The initial bylaws must be drafted by the Oneida Business Committee so that decisions such as how many members will serve on the entity, if the members will be elected or appointed, and what the qualifications for membership on the entity shall be, can be made in order for the vacancies on this new board, committee, or commission to be posted and filled. The Law provides requirements for what information shall be addressed in the bylaws. [1 O.C. 105.10-3].

Once individuals are elected or appointed to a new board, committee, or commission, it would be up to the discretion of that board, committee, or commission to revise the initial bylaws that were created by Oneida Business Committee. Any revisions to bylaws have to be done in accordance with the bylaws of the board, committee, or commission and shall be approved by the Oneida

Business Committee, in addition to the General Tribal Council when applicable, prior to implementation of the bylaws. [1 O.C. 105.10-3(g)(1)].

There is no recommended revision based on this comment.

LOC Consideration

The LOC determined that there is no revision necessary based on this comment. The LOC reiterated the fact that the purpose of this section is to create a process for a new board, committee, or commission that does not have members that could create the bylaws.

The LOC discussed the fact that the recent creation of bylaws for the Personnel Selection Committee is a great example of this process.

Comment 3 – Uniform Applications:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

Lee Cornelius (oral): Our office went over this and we had some concerns and questions that we had. First is 105.5-1. We were wondering if we could make the packets just be uniform. Have a section in there basically for the background investigation, instead of having separate applications.

Response

The commenter suggests having the application to serve on a board, committee, or commission of the Nation be uniform, and include a section for background investigations on the general application instead of having a separate application.

Currently, only the Oneida Police Commission and the Oneida Gaming Commission require background investigations.

The Law requires the Oneida Business Committee to approve all applications to serve on a board, committee, or commission of the Nation, and this allows the Oneida Business Committee the ability to ensure that one uniform and consistent application is used for all boards, committees, or commissions of the Nation. [1 O.C. 105.5-1].

The Legislative Operating Committee previously decided to have an additional application form that would be required for those entities that require a background investigation instead of including the information for a background investigation on the main application, because the background investigation application shall include the applicant's social security number and any other information required for a background investigation. [1 O.C. 105.5-1(b)].

All applications will be delivered to every member of the Oneida Business Committee and the entity's Chairperson for review before appointment. [1 O.C. 105.7-1(a)(1)]. In an effort to keep social security numbers confidential and secure the Legislative Operating Committee decided to keep the background investigation application separate from the general application. The Legislative Operating Committee has also specified through the Law that the background investigation application shall be solely used for the background investigation and not included in the application materials that are shared with the Oneida Business Committee, entity, and/or the Election Board. [1 O.C. 105.5-1(b)].

There is no recommended revision based on this comment.

The Legislative Operating Committee may determine if revisions should be made to allow for one application that includes information required for the background investigation, instead of having a separate background investigation application.

LOC Consideration

The LOC determined that general applications for a board, committee, or commission of the Nation should be separate from the background investigation application so that it can be ensured that social security numbers remain confidential and secured. There is no revision to the Law needed based on this comment.

Comment 4 – Statement of Attendance Requirements on Applications:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a

background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

Lee Cornelius (oral): 105.5-1. We're curious as to why the attendance requirements are due at the time of the application.

Response

The commenter questions why the Law requires the applications to include a statement explaining the attendance requirements for serving on a board, committee, or commission of the Nation. [1 O.C. 105.5-1(a)(1)]. The Law requires a statement that at least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report of that entity is an agenda item. [1 O.C. 105.12-3].

The Legislative Operating Committee determined that the a statement of the requirement of at least one (1) member of a board, committee, or commission be in attendance at the Oneida Business Committee meeting where the entity's quarterly report is on the agenda be included on the application so that an individual is made aware from the moment they turn in an application to serve on a board, committee, or commission of the Nation that there is the expectation that he or she might have to attend the Oneida Business Committee meeting on behalf of his or her board, committee, or commission.

There is no recommended revision based on this comment.

The Legislative Operating Committee may consider if the requirement to include a statement explaining the attendance requirements of section 105.12-3 should remain in the Law.

LOC Consideration

The LOC determined that the requirement to include a statement explaining the attendance requirements of section 105.12-3 on applications should remain in the Law. The LOC wants to ensure that from the moment an individual applies for a position on a board, committee, or commission they are aware of the expectation that they might have to attend an Oneida Business Committee meeting to present the board, committee, or commission's quarterly report.

Comment 5 – Conflict of Interest Disclosure on Applications:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3;

and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

Lee Cornelius (oral): 105.5-1. We're wondering if we could attach a conflict of interest right away to the application instead of having a separate section for that.

Response

The commenter suggests that the law be revised to allow for a conflict of interest disclosure form to be attached to the application instead of having a separate section within the application form which would address conflicts of interest.

The Legislative Operating Committee may consider if the law should be revised to allow for a conflict of interest disclosure form to be attached to the application instead of having a separate section within the application form which would address conflicts of interest.

LOC Consideration

The LOC discussed whether it would be more efficient to include the conflict of interest disclosure information right on the application, or attach a separate conflict of interest disclosure form. The LOC ultimately decided that the Business Committee Support Office should make the determination as to what is more efficient since they are the office that will be handling applications.

The Law requires that all applications include a section regarding disclosures of conflicts of interest. [1 O.C. 105.5-1(a)(2)]. Whether that section simply refers the individual filling out the general application to a separate attached conflict of interest form, or contains the space to disclose conflicts of interest on the general application, is a decision that the Business Committee Support Office may make.

The LOC determined no revision to the Law is required by this comment.

Comment 6 – Conflict of Interest:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

- (1) a statement explaining the attendance requirements of section 105.12-3; and
- (2) a section regarding disclosures of conflicts of interest.

105.15. Conflicts of Interest

105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.

105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.

(a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.

105.15-3. Due to the potential for a real or perceived conflict of interest to exist, political appointees and legislative assistants shall not serve on an appointed or elected entity.

Lori Elm (oral): One of the other things I've seen was the conflict of interest. It was a little confusing for me because just this week in the mail or an e-mail I sent, we had to have all of our land commissioners sign a new conflict of interest, but when I was reading this it says then the application they are going to have a conflict of interest. So if they are going to have it on the application, the conflict of interest, couldn't there be some type of stipulation just put right on there, if you are elected that if you would, you know comply, or you would have to stay in compliance with the conflict of interest and if anything would change you have 30 days to report it to your board or to your, to the Secretary's office, just so then that needs so much paperwork.

Response

The Law does require that applications contain a section to allow for the disclosures of conflicts of interest. [1 O.C. 105.5-1(a)(2)]. Additionally the Law requires that members of boards, committees, and commissions comply with the Nation's laws and policies governing conflict of interest. [1 O.C. 105.15-1].

Both the Law, and the Nation's Conflict of Interest law require a member of a board, committee, or commission to update a conflict of interest disclosure form with the Nation's Secretary on an annual basis, as well as disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises. [1 O.C. 105.15-2, 2 O.C. 217.4-3(b)].

Therefore, the commenter's suggestion to not have an annual conflict of interest disclosure form, and simply use the conflict of interest disclosure on the application with language added that a person must disclose a future conflict of interest within a determined period of time, would be in violation of the provisions contained in this Law, as well as the Nation's Conflict of Interest law.

There is no recommended revision based on this comment.

LOC Consideration

The LOC determined that there is no revision to the Law necessary based on this comment. The commenter's suggestion would be in violation of the Nation's Conflict of Interest law.

Comment 7 – Application Deadlines:

105.5. Applications

105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline.

105.5-3. Five (5) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

Lee Cornelius (oral): 105.5-2. We want a, we were wondering if we could have a strict deadline of 4:30 instead of the mailing five days later. And if we do have the mailing five days later, can we have the verbiage changed that we will have more time than five days to get it to BC for consideration, because obviously that would be the same day.

Response

The commenter requests that the Law be revised to have a strict deadline of 4:30 p.m. on the day of the deadline date, instead of allowing for postmarked envelopes to be accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline.

The Legislative Operating Committee did consider removing the allocation of a five (5) day period for postmarked envelopes, but ultimately decided to keep the five (5) day allocation in the law in recognition of the fact that there are people who would still utilize standard mail to send in an application. The Legislative Operating Committee did not want to limit one's ability to turn in an application to the Business Committee Support Office.

The LOC may make one of the following considerations:

1. Keep the Law as currently drafted and allow for postmarked envelopes to be accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline; or
2. Revise the Law to have a strict deadline of 4:30 p.m. on the deadline date.

If the LOC determines that no revision to the Law is necessary, then the commenter requests that the language included in section 105.5-3 that states that five (5) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment. The commenter makes this request to allow the Business Committee Support Office more time in processing applications within postmarked envelopes that might be received on that fifth (5th) day.

If the LOC determines that the five (5) day period for postmarked envelopes to be received by the Business Committee Support Office should remain in the law, then it is recommended that the time period for the Business Committee Support Office to notify all persons who have filed an application of the date his or her application was received provided for in section 105.5-3 be extended, as requested by the commenter.

LOC Consideration

The LOC discussed the fact that the 4:30 p.m. deadline in regards to postmarked envelopes included in section 105.5-2 has been an issue that has been greatly debated by the LOC throughout the development of amendments to this Law.

The LOC again discussed whether allowing applications to be accepted if the envelope is postmarked on the date of the deadline for applications and received by the Business Committee Support Office within five (5) business days of the deadline date should remain in the Law. The LOC discussed the fact that the five (5) day allocation for postmarked envelopes does not necessarily stop mailing issues from occurring. An envelope can be postmarked on the deadline date, but then for circumstances outside of the control of the individual who is applying for a position on a board, committee, or commission of the Nation, may not be received by the Business Committee Support Office until after the five (5) days post deadline.

The LOC questioned how many boards, committees, and commissions of the Nation require those who apply for a position to be a resident of Brown or Outagamie County. The LOC then discussed whether living in Brown or Outagamie County would make it easier to ensure that your application was turned in by the deadline date, or easier to ensure that five (5) days would be sufficient for a postmarked envelope to be received by the Business Committee Support Office.

Although the LOC believes that if you are serious about obtaining a position on a board, committee, or commission of the Nation you will ensure your application materials are submitted by the deadline date, the LOC understands that some people still utilize mail. The LOC does not want to limit a person's ability to submit application materials, and therefore made the determination that the five (5) day allocation for postmarked envelopes should remain in the Law.

The LOC understands the Business Committee Support Office's concerns that the requirement of section 105.5-3 that five (5) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment may be a hard deadline to meet if the Business Committee Support Office must accept all postmarked envelopes during that same timeframe.

For that reason, the LOC determined that this timeline should be extended to allow the Business Committee Support Office more time to collect all applications, even those that may be

postmarked by the deadline date and received five (5) days after the posted deadline, and then notify applicants once the timeframe for the collection of applications has ended.

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

105.5-3. ~~Eight~~~~Five~~ (8~~5~~) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

For the sake of consistency in timelines throughout the Law, the following revision will also have to be made to the Law:

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

(a) ~~Five~~~~Eight~~ (5~~8~~) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:

(1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and

(2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

Comment 8 – Effective Date of Vacancies:

105.6. Vacancies

105.6-2. A position on an entity shall be considered vacant in the following situations:

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

(1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

Lee Cornelius (oral): We would like the end of terms for elected positions to be the end of July. We already have terminology in there that states that they can stay on until the next person takes the oath, so we were wondering if we could end it on July 31st and just use that terminology and start with the new person.

Response

The commenter suggests that the end of terms for elected positions be specified and held consistent as the end of July.

Currently, the Law only states that a vacancy is effective as of 4:30 p.m. on the last day of the month in which the term ends, and does not provide any specific references to when those terms might end. [1 O.C. 105.6-2].

The LOC may consider if:

1. The Law should remain as currently drafted and state that a vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
2. The Law should be revised to specify that a vacancy for an elected position is effective as of 4:30 p.m. on July 31st that ends the term.

LOC Consideration

The LOC understands the Business Committee Support Office's request for consistency in the effective date of a vacancy on a board, committee, or commission of the Nation. Although the LOC respects the Business Committee Support Office's opinions and suggestions regarding matters that the Business Committee Support Office handles, since the Business Committee Support Office has the experience and first-hand knowledge regarding these matters, the LOC questioned why a request to make the effective dates for vacancies consistent is coming forward at this time. The LOC questioned if there were current issues with the effective dates of vacancies, or if this request was just an effort to streamline the process. The LOC was hesitant to make a decision as to whether or not to amend a process that may have no current issues.

The LOC discussed the fact that a provision was added to the Law through these amendments which allows an individual to stay in office once his or her term has ended until his or her successor can be sworn into office. The LOC clarified that this comment is suggesting that the end of term for all positions be made consistent.

The LOC conducted a review of the various effective dates of vacancies on various boards, committee, and commissions of the Nation by reviewing information provided on the Nation's website at <https://oneida-nsn.gov/government/boards-committees-and-commissions/>. The information provided on the Nation's website demonstrated that the effective date for a vacancy on a board, committee, or commission of the Nation varied greatly.

The LOC determined that since all current terms were staggered and had different effective dates for the vacancies, the Law should remain as currently written, and a consistent date for when a position would become vacant on a board, committee, or commission should not be included in the Law at this time.

Comment 9 – Vacancies at the End of Term:

105.6. Vacancies

105.6-2. A position on an entity shall be considered vacant in the following situations:

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

(1) **Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been**

sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

Chad Wilson (oral): Hi. So I just have a few things that I have a concern about. One thing I do like, board members staying in that way we have quorums, so I just want to put that out there. Back when Racquel was chair we weren't getting people elected and we were losing quorums, so by having a person stay in office until the next person takes their oath, I think that's a great change.

Response

The commenter commends the inclusion of section 105.6-2(a)(1) which allows for a member of a board, committee, or commission who's term has ended to remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

There is no recommended revision based on this comment.

LOC Consideration

The LOC appreciates the praise from the commenter, and agrees that no revision to the law is necessary based on this comment.

Comment 10 – Vacancy due to Resignation:

105.6. Vacancies

105.6-2. A position on an entity shall be considered vacant in the following situations:

(d) Resignation. A resignation is effective upon:

- (1) Deliverance of a letter to the Business Committee Support Office;**
 - (A) Upon receipt of resignation, the Business Committee Support Office will notify the entity of the resignation;**
- (2) Deliverance of a letter to the Chairperson of the entity, or designee, or**
- (3) Acceptance by motion of the entity of a verbal resignation.**

105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.

Lee Cornelius (oral): We'd also like on 105.6-2 verbiage in there stating that if somebody does resign and they turn it to the board, that the board must notify the BCSO office.

Response

The commenter requests that the Law be revised to include language that requires a board, committee, or commission of the Nation that accepts a resignation to notify the Business Committee Support Office.

The requirement of a board, committee, or commission to notify the Business Committee Support Office that a resignation has been received and a position is now vacant is already required by the Law. The Law requires that an entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. [1 O.C. 105.6-3]. This would include when a board, committee, or commission accepts a verbal resignation by motion, or if a resignation letter is delivered to Chairperson of the entity, or designee.

There is no recommended revision based on this comment.

LOC Consideration

Some members of the LOC expressed concern that proper communication between the Business Committee Support Office and the boards, committees, and commissions of the Nation is not currently happening. There was apprehension that boards, committees, or commissions would not report a vacancy because the individual can stay in office until his or her successor takes an oath of office.

The LOC discussed the fact that the Law addresses potential issues regarding communication with the inclusion of section 105.6-3 which requires an entity to notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. This requirement will promote communication between the boards, committees, and commission and the Business Committee Support Office.

The LOC then discussed whether the Law should include a timeframe for when a board, committee, or commission has to inform the Business Committee Support Office of a vacancy. The LOC ultimately decided that instead of imposing a timeframe, the Law should be revised to state that a resignation by letter must be deliver to the entity and the Business Committee Support Office, in order to ensure that both entities are properly notified of the resignation.

The revision to the Law shall be as follows:

105.6. Vacancies

105.6-2. A position on an entity shall be considered vacant in the following situations:

(d) *Resignation.* A resignation is effective upon:

(1) Deliverance of a letter to the Business Committee Support Office, and to the Chairperson of the entity, or designee; or

~~(A) Upon receipt of resignation, the Business Committee Support Office will notify the entity of the resignation;~~

~~(2) Deliverance of a letter to the Chairperson of the entity, or designee, or~~

~~(23)~~ Acceptance by motion of the entity of a verbal resignation.

105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.

Comment 11 – Posting of Vacancies:

105.6. Vacancies

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Secretary shall post notice of vacancies at the following times:

- (a) *End of Term.* Automatically thirty (30) days prior to completion of the term.
- (b) *Removal.* No later than the first Oneida Business Committee meeting following the effective date of the removal.
- (c) *Resignation.* No later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity.
- (d) *New Positions.* Upon one of the following conditions:
 - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
 - (2) upon date specified when creating the entity.
- (e) *Termination of appointment.* No later than the first Oneida Business Committee meeting following the effective date of the termination.

Lee Cornelius (oral): 105.6-4, we would like to change it from the Secretary shall post to the BCSO will post the vacancies. For (a) End of Term, Automatically it currently says 30 days. With our backwards scheduling and everything, we would like to extend that out to 60 days. And Resignation part (c), on that one it says no later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity. We would like to see, change the verbiage to next available BC because if it's done after our deadline to turn in, the deadline for putting in a request then we won't be able to have time for it. And that seems to be it. Thank you.

Response

The commenter makes a couple suggested revisions regarding timelines and requirements for posting vacancies. The commenter serves as a representative of the Business Committee Support Office who currently handles most responsibilities regarding the posting of vacancies, and has the specific knowledge and experience regarding these matters.

It is recommended that the following revisions be made:

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The ~~Secretary~~ Business Committee Support Office shall post notice of vacancies at the following times:

- (a) *End of Term.* Automatically ~~thirty~~ sixty (~~30~~) days prior to completion of the term.
- (b) *Removal.* No later than the ~~first~~ next available Oneida Business Committee meeting following the effective date of the removal.
- (c) *Resignation.* No later than the ~~first~~ next available Oneida Business Committee

meeting following the Secretary's receipt of notice of an effective resignation from the entity.

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

- (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
- (2) upon date specified when creating the entity.

(e) *Termination of appointment*. No later than the ~~first~~ next available Oneida Business Committee meeting following the effective date of the termination.

The LOC may determine if the recommended revisions should be made to the law, or if the language included in the law regarding the posting of vacancies should remain as currently drafted.

LOC Consideration

In regards to the request to amend section 106.6-4 to change the reference to the Secretary to the Business Committee Support Office the LOC determined that this revision should be made to the Law to accurately reflect who handles this responsibility. The revision to the Law shall be as follows:

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The ~~Secretary~~ Business Committee Support Office shall post notice of vacancies at the following times:

In regards to the request to amend the timeframe for when a vacancy at the end of a term should be posted, as provided for in section 105.6-1(a), the LOC determined that the timeframe should be extended from thirty (30) days to sixty (60) days. The revision to the Law shall be as follows:

105.6-4. (a) *End of Term*. Automatically ~~thirtysixty~~ (~~360~~) days prior to completion of the term.

In regards to the request to amend all references in section 105.6-4 from "first Oneida Business Committee meeting" to "next available Oneida Business Committee meeting" the LOC had a lot of discussion on this matter. The intent behind modifying the appointment process was to expedite the process so that boards, committees, and commissions of the Nation are not left with vacant positions that affect quorum or the board, committee, or commission's ability to conduct business. The LOC wanted to ensure that when a position becomes vacant, the position is immediately approved to be posted at the next Oneida Business Committee meeting. There was concern expressed by some members of the LOC that a revision to "next available" might be construed too freely and allow for too much flexibility. The LOC wants to ensure that all efforts are made to include the approval of the posting for the vacant position on the next Oneida Business Committee meeting, even if that means the approval of the posting is included as an add on item.

The LOC determined that all references in section 105.6-4 to "first Oneida Business Committee meeting" shall be revised to state "next Oneida Business Committee meeting." The revision to the Law shall be as follows:

- 105.6-4. (a) End of Term. Automatically ~~thirty~~ sixty (~~30~~) days prior to completion of the term.
- (b) Removal. No later than the firstnext Oneida Business Committee meeting following the effective date of the removal.
- (c) Resignation. No later than the firstnext Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity.
- (d) New Positions. Upon one of the following conditions:
- (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
 - (2) upon date specified when creating the entity.
- (e) Termination of appointment. No later than the firstnext Oneida Business Committee meeting following the effective date of the termination.

Comment 12 – Review of Application Materials for Appointment:

105.7. Appointment to an Entity

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

- (a) Five (5) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
- (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
 - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.
- (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
- (1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.
- (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
- (1) choose an applicant for appointment, or
 - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

Chad Wilson (oral): Under the Section 105.6(b), I think it's b. Okay, I got it wrong. It's talking about when the applications come in for appointment that the Business Committee will review the application and that the entity's chair will also have the opportunity to review that

application and that the BC Support Office will make an appointment on the next BC meeting to discuss that appointment. Just like the BC, ERB would like all of the members to go ahead and look at that application and make that recommendation for the appointment, not just the chair. So, having it on the next meeting might not work out, not all people utilize electronic mail or social media and sometimes we can't get a hold of members on the telephone, so if we could have it at least a month out or into the next or after the next regularly scheduled meeting for that entity, that way we can have that recommendation move forward.

Response

The Law provides that five (5) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall deliver the application materials to the members of the Oneida Business Committee and Chairperson of the entity for review, and then place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(a)].

The Law then allows the Chairperson of the entity to provide a recommendation of an applicant for appointment during the executive session discussion where the Oneida Business Committee will review the application materials. [1 O.C. 105.7-1(b)(1)].

The commenter requests that timeline be extended at least a month out, or after the next regularly scheduled meeting for that entity, so that the entity has the opportunity to allow all of its members to come together and review the application materials and make recommendations for the Chairperson of the entity to bring to the Oneida Business Committee.

During the development of the amendments to this section of the law the LOC relied on comments received during the September 21, 2017 and February 22, 2018 work meetings with members of various boards, committees, and commissions of the Nation. Representatives from the Environmental Resource Board, Police Commission, Oneida Nation Commission on Aging, Election Board, Land Claims Commission, Oneida Trust Enrollment Committee, Oneida Nation Veterans Affairs Committee, Gaming Commission, Pow-Wow Committee, Land Commission, and the Oneida Community Library Board attended the work meetings and shared comments, suggestions, and concerns with the Legislative Operating Committee.

One prevalent concern that was shared by the members of the various boards, committees, and commissions was the amount of time it would take for an individual to be appointed to fill a vacancy on a board, committee, or commission. For this reason, the Legislative Operating Committee wanted to amend the appointment process to ensure that appointments would be made in a timely manner so that a board, committee, or commission would not be left with a vacancy that could potentially affect the board, committee, or commission's quorum and ability to conduct business.

Although the Law does allow a member whose position is considered vacant once the terms ends to remain in office until the member's successor is sworn into office by the Oneida Business Committee [1 O.C. 105.6-2(1)], this would not address vacancies due to removal, termination of appointment, resignation, or the creation of new positions.

The Legislative Operating Committee determined that once application materials are collected by the Business Committee Support Office the appointment should be placed on the next Oneida Business Committee agenda.

The Legislative Operating Committee recognized the importance of allowing the Chairperson of the entity, who has specific knowledge on the needs and standards of his or her specific entity, to provide a recommendation, and that boards, committees, or commissions might want the Chairperson of their entity to gain input from the entire board, committee, or commission.

The Legislative Operating Committee ultimately determined that boards, committees, or commissions would still be allowed to review application materials as an entity and come to a consensus to the recommendation the Chairperson would make to the Oneida Business Committee, but it would have to occur before the executive session discussion.

Boards, committees, or commissions have options on how they would choose to handle addressing the need to make a recommendation for a vacancy. The board, committee, or commission could decide to hold a meeting to address recommendations for a vacancy, communicate via their entity specific email address, or even conduct e-polls to determine a recommendation.

Although the commenter suggested that the timeline for making an appointment could be dependent on the meeting schedule of the specific board, committee, or commission that has the vacancy, the Legislative Operating Committee's goal is to create a consistent process that could be used across the board for all boards, committees, or commission.

The LOC may consider if:

1. The Law should remain as currently drafted and require that appointments be placed on the next Oneida Business Committee meeting agenda; or
2. The Law should be revised to extend the timeline for when appointments are placed on the Oneida Business Committee agenda.

It is recommended that if the Legislative Operating Committee determines that the Law should remain as currently drafted, that the language is revised to clarify that the appointments should be placed on the next *available* Oneida Business Committee meeting agenda. An example of the proposed language revision would be as follows:

105.7-1(a)(2): place the appointment for the entity on the next **available** executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

LOC Consideration

During the development of the amendments to this Law the LOC spent a lot of time discussing the appointment process, and how to make the process more efficient. After review of this comment, the LOC decided that the current timelines that are included in the amendments to this law for the appointment process should remain as written.

The LOC's goal was to create an efficient process that would allow for an appointment to be made as soon as possible to avoid a loss of quorum for a board, committee, or commission.

The LOC then discussed the importance of receiving input from the board, committee, and commission itself, and the fact that the law still allows for this recommendation from the board, committee, or commission to be made, it just has to be made on an expedited timeline. The LOC hopes that when the Chair of a board, committee, or commission makes a recommendation to the Oneida Business Committee, that recommendation is based on consultation with other members of the board, committee, or commission.

Comment 13 – Termination of Appointment versus Removal:

105.7. Appointment to an Entity

105.7-4. *Termination of Appointment.* Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

Lori Elm (oral): One of the other things was I was a little confused on the termination and removal policy, but I talked to somebody just before I came and they told me the termination is actually different from the removal policy, because the removal policy was from the GTC directive, so I was wondering how can that happen, but it was the wording, it was a different effect. I understand it so but, this may be clarification on that too, that reason why it isn't going to GTC.

Response

The commenter states that she was confused about the inclusion of both termination and removal in the Law, but spoke with myself, Attorney Clorissa N. Santiago, before the meeting and received some clarification on the matter.

Termination of appointment refers to how an *appointed* official would be removed from his or her board, committee, or commission, while removal refers to how an *elected* official would be removed from his or her board, committee, or commission.

The termination of an appointment of a board, committee, or commission member is at the discretion of the Oneida Business Committee, and requires a two-thirds majority vote of the Oneida Business Committee. [1 O.C. 105.7-4].

The removal of an elected official is subject to the procedures contained in the Nation's Removal law. [1 O.C. 105.6-2(b)]. The Removal law was adopted by the General Tribal Council through resolution GTC-01-09-06-A, and then most recently amended through resolution BC-05-28-14-B, for the purpose of governing the removal of persons elected to serve on boards, committees, or commissions of the Nation. [1 O.C. 104]. The Removal law provides the various grounds for removal [1 O.C. 104.4], the process for petitioning for a removal of an elected official [1 O.C. 104.5], the preliminary review of a petition of the removal [1 O.C. 104.6], the hearing for a petition for removal [1 O.C. 104.7], and the process for the General Tribal Council's consideration of the removal [1 O.C. 104.8].

There is no recommended revision based on this comment.

LOC Consideration

The LOC feels that the commenter's confusion on the difference between termination of appointment and removal of an elected official has been adequately clarified. The LOC agrees there is no revision to the Law needed based on this comment.

Comment 14 – Appointment Selection Process:

105.7. Appointment to an Entity

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

- (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
 - (1) choose an applicant for appointment, or
 - (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

105.7. Appointment to an Entity

105.7-3. *Declination of Appointment.* An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

- (a) An individual may decline an appointment to an entity in the following ways:
 - (1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
 - (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.
- (b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy

posting and the process outlined in section 105.7-1 to select another applicant for appointment.

Lori Elm (oral): When they are doing the selection process, I've seen one part that said, I think it's Line 178, OBC may elect. I think they should just swipe that out if it says may. It should just be shall all the time and if anything, one of my recommendation is, is if the OBC is voting in Executive Session on this, that the support staff don't even put names on them when they send the packets to you, so that is executive session, names, addresses, anything that, you know, you can tell who the person is and then when it does go to you that you automatically make three recommendations and if all the board is not there, it should say who is not voting so then it's just done. So then if say for example someone got appointed and they declined, then it would automatically go to the next one, next one, they would have that right in place right away.

Response

The commenter suggests that application materials do not contain the names of the applicant or any identifying information when the Oneida Business Committee members are tasked with reviewing the application materials and making a decision on who to appoint to a vacant position.

The commenter also suggests that three recommendations are ranked and made, so that if an individual declines an appointment, the next highest ranked individual would be given the appointment.

The Law currently only allows the Oneida Business Committee to select one applicant for appointment during the appointment selection process. [1 O.C. 105.7-1(c)]. If the individual that is selected for appointment declines the appointment, then the Law requires that the Oneida Business Committee uses the original pool of applications for the vacancy posting and the process for the selection for appointment outlined in section 105.7-1 of the Law is used to select another applicant for appointment. [1 O.C. 105.7-3].

The Legislative Operating Committee may determine if a provision should be added to the Law that requires the application materials not include any identifying information.

The Legislative Operating Committee may also determine if the appointment selection process should remain as currently drafted in the law, or if provisions should be revised to address the selection of multiple appointments for one (1) vacant position and how a declined appointment is handled.

LOC Consideration

The LOC discussed the commenter's suggestion to remove all identifying information from application materials. The LOC determined that it would be difficult for the Oneida Business Committee to make a decision of which applicant to choose for an appointment with all identifying information removed from application materials. The Oneida Business Committee wants to ensure they have all information and background on individuals so that the Oneida

Business Committee can make an informed decision on who would be the best candidate for the vacant position on the board, committee, or commission. Ultimately, the LOC determined that there is no revision to the Law needed based on this suggestion.

The LOC also discussed the appointment selection process should remain as currently drafted in the law, or if provisions should be revised to address the selection of multiple appointments for one (1) vacant position and how a declined appointment is handled. The LOC determined that no revision to the Law is necessary based on this comment because the Law already provides a process for the appointment process of a vacant position, and a process for what to do if an appointment is declined.

Comment 15 – Oath of Office:

105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation’s Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

Lori Elm (oral): Oath of office was another thing I had a question about. Over the years oath of offices were done right in the offices here and I think precedence was set years ago that and then they would approve it on the BC Agenda. Now lately, they have to be at a BC Meeting. One of the things I, a lot of times when everybody gets elected they have a big ceremony outside and everybody takes their oath of office outside. Nobody calls that to order or I mean it isn’t a meeting. So that’s my thing, maybe one thing they should look at is at least for the wording of that, is at least maybe if they do the oath of offices, they always have to be recorded on the next agenda or some type of, I’m not for sure about that, but that was just one thing that I noticed.

Response

The commenter states a belief that precedence was set before which allowed people the ability to take their oath of office outside of an Oneida Business Committee meeting, and requests that if someone is allowed to take their oath outside of an Oneida Business Committee meeting then it at least be recorded in the record on the next agenda.

The Law requires oaths of office to be taken in person during a regular or special Oneida Business Committee meeting, unless if granted permission by the Secretary to appear by video conferencing equipment. [1 O.C. 105.9-1(a)].

There is no recommended revision based on this comment. The Legislative Operating Committee may determine if the Law should be revised to allow for oaths of office to be taken at other locations than during an Oneida Business Committee meeting.

LOC Consideration

The LOC discussed the fact that the Oneida Business Committee and the Judiciary are the only entities that take an oath of office outside, or at a different location. Neither the Oneida Business Committee or the Judiciary are subject to this Law, and therefore do not have to comply with the requirement to take oath of offices at an Oneida Business Committee meeting.

The LOC determined there is no revision to the Law needed based on this comment.

Comment 16 – Requirement for Bylaws:

105.10. Bylaws

105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.

(b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) *Exception.* Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

Jolene D. Hensberger (written): Bylaws – School Board utilizes Policies and Procedures.

Response

The commenter states that the School Board uses “Policies and Procedures” and not bylaws.

All entities are required to have bylaws that conform to the requirements of this law. [1 O.C. 105.10-1]. The Law outlines the minimum information that a board, committee, or commission must include in their bylaws, and provides boards, committees, and commissions the flexibility to include any other information the board, committee, or commission believes is necessary and relevant. [1 O.C. 105.10-1(b)].

The School Board, as well as every other board, committee, or commission of the Nation will be required to comply with the format for bylaws provided by the Law, and present bylaws for adoption within a reasonable time after the Law is adopted. [1 O.C. 105.10-1(a)].

There is no recommended revision based on this comment.

LOC Consideration

The LOC expressed the importance of the requirement that all boards, committees, and commissions of the Nation have consistent bylaws that comply with the requirements of this law.

The LOC then discussed its efforts to provide boards, committees, and commissions of the Nation with a “bylaw kickoff event.” Within thirty (30) days of adoption of the law, the Legislative Reference Office (LRO) staff will provide two bylaw kickoff meetings where information on the new bylaw requirements of the law will be presented, drafting assistance by LRO staff will be offered, and a bylaw template will be provided. The goal of this effort is to provide boards, committees, and commissions with assistance in complying with the new bylaw requirements of the Law.

The LOC also discussed the fact that all bylaws will come before the LOC and the Oneida Business Committee, and in some cases the General Tribal Council, for approval. LOC expressed a desire that a redline draft of changes that are made to the bylaws be included when the bylaws are submitted for approval so that the revisions made to the bylaws are easy to identify and discuss.

There is no revision to the Law needed based on this comment.

Comment 17 – Age Requirements for Boards, Committees and Commissions:

105.10. Bylaws

105.10-3. Sections. Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(5) Membership. The following information shall be in this section:

(A) Number of members on the entity;

(B) If members on the entity are elected or appointed, and how a member is elected or appointed;

(C) How vacancies are filled; and

(D) Qualifications for membership on the entity.

Maryann Kruckeberg (oral): I’d like to amend the laws that some boards, committees and commissions have the same age group, age limit on it, because some are 18 and some are 21 to be on these boards, except for the ONCOA Board, which is 55. The other ones, some have 18 age limit to be on it, like the Trust Committee has age 18 and the Election Board has age 21. So what is the difference? Make the age the same on all boards, commissions and committees, except the ONCOA Board. Thank you.

Response

The commenter requests that minimum age requirements for serving on a board, committee, or commission of the Nation be consistent throughout all boards, committees, or commissions of the Nation, except for the Oneida Nation Commission on Aging (ONCOA).

The presumption behind excluding ONCOA from any requirements for consistent minimum age requirements for membership would be that ONCOA is comprised of elders in the community, aged fifty-five (55) years or older.

The Law currently does not address minimum age requirements for those individuals that wish to serve on a board, committee, or commission of the Nation. The Law does allow for a board, committee, or commission to determine the qualifications for membership on their specific entity through the bylaws of that entity. [1 O.C. 105.13-3(a)(5)(D)]. This would allow a board, committee, or commission to set minimum age requirements for those that wish to serve on the entity through the entity's bylaws.

For elected boards, committees, and commissions of the Nation the Nation's Election law requires that a person be a qualified voter on the day of the election in order to be eligible as a candidate. [1 O.C. 102.5-2(b)]. A qualified voter is defined as an enrolled member of the Nation who is eighteen (18) years of age or older. [1 O.C. 102.3-20].

A review of the bylaws of the Nation's various boards, committees, and commissions has provided the following information in regards to any minimum age requirements:

Boards, Committees, and Commissions of the Nation with No Minimum Age Requirements:

- Anna John Resident Centered Care Community Board – No minimum age requirement listed.
- Oneida Community Library Board – No minimum age requirement listed.
- Environmental Resource Board – No minimum age requirement listed.
- Oneida Nation Arts Board – No minimum age requirement listed.
- Oneida Nation Veterans Affairs Committee – No minimum age requirement listed.
- Personnel Selection Committee – No minimum age requirement listed.
- Oneida Pow-Wow Committee – No minimum age requirement listed.
- Oneida Election Board* – No minimum age requirement listed.
- Oneida Land Commission* – No minimum age requirement listed.
- Oneida Nation School Board* – No minimum age requirement listed.
- Oneida Trust Enrollment Committee* – No minimum age requirement listed.

Boards, Committees, and Commissions of the Nation with an Additional Age Requirement:

- Oneida Police Commission – Must be twenty-five (25) years of age or older.
- Pardon and Forgiveness Screening Committee – Has three (3) representatives from the community-at-large, one (1) of which must be an elder over the age of fifty-five (55) years old. No minimum age requirement listed for other community-at-large representatives.
- Southeastern Oneida Tribal Services Advisory Board – Must be eighteen (18) years of age or older.
- Oneida Nation Commission on Aging* – Must be fifty-five (55) years of age or older.
- Oneida Gaming Commission* – Must be twenty-one (21) years of age or older.
- Oneida Land Claims Commission* – Must be twenty-one (21) years of age or older.

*The * denotes an elected board, committee, or commission, where members must be at least eighteen (18) years of age or older.*

The Legislative Operating Committee may determine if the Law should provide for a consistent minimum age requirement for qualification on a board, committee, or commission of the Nation, or if boards, committees, and commissions should be allowed the flexibility to determine any qualifications for membership in their bylaws, including minimum age requirements.

LOC Consideration

The LOC discussed whether a minimum age for qualification for a board, committee, or commission of the Nation should be consistent for all boards, committees, and commissions. The LOC reviewed the lists of those boards, committees, and commissions that do have a specific minimum age requirement and discussed the potential intent for those minimum age requirements.

The LOC discussed the fact that some boards, committees, or commissions might have minimum age requirements because it is required by a law. For example, the Oneida Nation Gaming Ordinance requires that all Gaming Commission members be at least twenty-one (21) years of age.

The LOC then questioned why not all boards, committees, and commissions of the Nation have minimum age qualifications. Does this mean that someone who is sixteen (16) could obtain a position on an appointed board, committee, or commission that does not have minimum age qualifications? The LOC then discussed whether youth should be allowed to have representation on certain boards, committees, and commissions. Ultimately, the LOC determined that an individual should at least be a qualified voter before they can hold a position on a board, committee, or commission of the Nation. Article III, Section 2 of the Constitution and Bylaws of the Oneida Nation currently states that a qualified voter is an enrolled member of the Nation who is eighteen (18) years of age or older.

The LOC then again took a look at the list of boards, committees, and commissions that have minimum age qualifications, and discussed whether the LOC was aware if those minimum age requirements were set by a law. The LOC wanted to ensure that minimum age requirements that were set by a Law or policy were maintained.

The LOC decided that the Law should be revised to state that in order to be eligible for a position on a board, committee, or commission of the Nation a person shall meet the age requirements set for qualified voters of the Nation, unless a law, policy or directive sets forth a minimum age requirement.

The LOC directed the LRO to review the boards, committees, and commissions that have minimum age requirements to see if the minimum age requirement is set by Law, or if it would be changing when the LOC's revision stated above is added to the Law.

The following revision shall be made to the Law:

105.10-3. *Sections.* Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(5) Membership. The following information shall be in this section:

(D) Qualifications for membership on the entity.

(i) In order to qualify for membership on an entity, a person shall meet the minimum age requirements set forth for qualified voter of the Nation status, unless a law, policy, or directive sets forth a minimum age requirement.

Comment 18 – Authority of Boards, Committees, and Commissions:

105.10. Bylaws

105.10-3. *Sections.* Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(2) *Establishment.* This section shall state the citation and name, if any, of the creation document.

(3) *Authority.* This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

Lori Elm (oral): Yes. Hello, I'm Lori Elm. Some of my comments are, one of them is, I was looking for authority of the boards, committees and commissions, because in my area currently in the past year, one of the commission's that's in our area was like, seemed to have jumped authority and kind of went into our actual day-to-day business, so I don't know if some type of stipulation can be put into there. I know there is a resolution for the BC that they need to stay out of the day-to-day business, but maybe there is something that can be put in here to put some type of guideline in that, so maybe there is some type of directive they have to take or if they have some type of complaint or process against the actual employees or the actual processes that they can put the steps in there on how to do it.

Response

The commenter suggests that a provision be included in the Law that provides guidance to the specific authorities of boards, committees, and commissions of the Nation. Specifically, the commenter would like to see language included in the Law regarding a board, committee, or commission's authority over a department of the Nation.

It would be difficult to address the authority of each and every board, committee, or commission in one general statement in the Law itself, because each board, committee, or commission of the Nation has its own determined authorities and responsibilities.

The Legislative Operating Committee does believe that it is important that the authority and responsibilities of a board, committee, or commission of the Nation be clearly defined. For that reason, the Legislative Operating Committee added a provision into the Law that requires each board, committee, or commission's bylaws to address the authority of the board, committee, or commission.

The Law requires that bylaws contain a section that addresses authority, and contains information regarding how the board, committee, or commission was established, for what purpose the entity was created, and what, if any, authority the entity is delegated. [1 O.C. 105.10-3(a)].

There is no recommended revision based on this comment. The Legislative Operating Committee can determine if this issue should be addressed further in the Law.

LOC Consideration

The LOC recognized that the Law already requires that requires each board, committee, or commission's bylaws to address the authority of the board, committee, or commission, so no revision to the Law is needed based on this comment.

The LOC discussed the fact that the Legislative Reference Office staff is currently conducting research on the specific authority granted to each board, committee, and commission of the Nation to assist in the bylaw drafting process.

Comment 19 – Audio Recording Requirement:

105.10. Bylaws

105.10-3. Sections. Articles shall be divided into "sections" as set out.

(f) "Article VI. Records and Reporting" shall consist of the following information:

(5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity will audio record meetings, and how the entity shall maintain the audio records.

Chad Wilson (oral): Just have one more that I saw. Okay, under 105.10-3(5). It's talking about audio recordings. An entity shall audio record all meetings. This section shall state how the entity will audio record meetings, and how the entity shall maintain the records. We've never had that before and generally when we talk about this stuff, I don't, there's a lot of sidebar, trying to remember, like what had happened, or different results and stuff and I don't know if that's necessarily something that you would want on the recording while they are trying to figure this stuff out. Generally if we put it, we put what is pertinent into the minutes and make it a motion and that way people know what it is. I know the board might not be comfortable with any kind of recordings that, if we have public meetings or public hearings, we always record those and we have those on file along with, back when we had hearing authority we have those also recorded, but for standard meeting, I don't see them wanting that, that the minutes would reflect what was going on in the meeting. Thank you.

Response

The commenter expresses concern that members of boards, committees, or commissions will not want to audio record their meetings.

The Legislative Operating Committee determined that all boards, committees, or commissions of the Nation should be required to audio record their meetings for better recordkeeping purposes, and transparency.

The Legislative Operating Committee may consider whether the requirement for all boards, committees, or commissions of the Nation to audio record their meetings should remain in the Law.

LOC Consideration

The LOC determined that the requirement for all boards, committees, and commissions of the Nation to audio record their meetings shall remain in the Law. The LOC believes that the transparency of maintaining audio recordings of meetings is important, and essential to good governance.

The LOC had a discussion on the benefits of audio recording meetings, and how the recordings could be utilized as a reference later if confusion arises as to decisions that were made, and the motivations behind such decisions.

The LOC recognized the fact that there may be times where a board, committee, or commission of the Nation is required to discuss confidential information. The LOC noted that confidential discussions should occur during an executive session portion of a meeting, and requested the Law be clarified to state that executive session portions of a meeting are not subject to the recording requirement.

The following revision shall be made to the Law.

105.10-3. Sections. Articles shall be divided into "sections" as set out.

(f) "Article VI. Records and Reporting" shall consist of the following information:

(5) *Audio Recordings.* An entity shall audio record all meetings. This section shall state how the entity shall audio record meetings, and how the entity shall maintain the audio records.

(A) *Exception.* Audio recordings of executive session portions of a meeting shall not be required.

Comments 20 through 21– Entering an E-Poll into the Record:

105.11. Electronic Polling

105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

- (a) Original e-poll request and all supporting documentation;
- (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
- (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

Lori Elm (oral): And then the other thing is the e-poll. Just to make sure that they are recorded in the minutes after, with the results and make sure that it has who was there, who was not, the abstentions and I think there is one more.

Jolene D. Hensberger (written): Electronic Polling: School Board members ratify at next meeting.

Response

The commenters request that the Law address recording e-polls in the minutes to demonstrate the results.

The Law addresses entering an e-poll into the record in section 105.11-4. The Law requires that all e-poll requests be placed on the next meeting agenda of the entity to be entered into record, and the record must include the original e-poll request and all supporting documentation, a summary of the e-poll results identifying each member of the entity and his or her response, and a copy of any comment by a member of the entity if comments are made beyond a vote. [1 O.C. 105.11-4].

There is no recommended revision based on this comment.

LOC Consideration

The LOC determined that no revision to the Law is needed based on this comment, because a standard process for how e-polls will be conducted and entered into the record has been included in the Law in section 105.11-4.

Comment 22 – Reporting to General Tribal Council:

105.12. Reporting Requirements

105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

Bonnie Pigman (oral): Additionally, I believe most if not all Business Committees have to, or boards, committees and commissions have to report to the General Tribal Council. This document appears or appears to be attempting to circumvent that responsibility. Thank you.

Response

The commenter asserts that this law appears to be attempting to circumvent boards, committees, and commissions' responsibility to report to the General Tribal Council. This is an inaccurate statement.

The Law does not circumvent, but reaffirms the requirement that boards, committees, and commissions of the Nation report to the General Tribal Council. All boards, committees, and commissions of the Nation are required to provide annual reports to the General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. [1 O.C.105.12-4].

If a board, committee, or commission of the Nation has oversight of a department, then an annual and semi-annual report for each department the board, committee, or commission oversees is also required. [1 O.C.105.12-4(b)].

A failure to comply with the requirements to report to the General Tribal Council may result in a hold being placed on the release of stipend payments. [1 O.C.105.12-5].

Additionally, the Law recognizes that the General Tribal Council requires some bylaws of boards, committees, and commissions to be approved by the General Tribal Council, and reaffirms this requirement. [1 O.C. 105.10-1, 105.10-3(g)(1)].

There is no recommended revision based on this comment.

LOC Consideration

The LOC agrees that the law reaffirms the requirement that boards, committees, and commissions of the Nation report to the General Tribal Council, and therefore believes no revision to the Law is needed.

Comments 23 through 24 – Stipends:

105.13. Stipends, Reimbursement and Compensation

105.13-3. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution.

Lori Elm (oral): Oh, stipends was another one. The Election Board receives a hundred dollar stipend to go to the GTC Meetings. But at the same time they are actually doing the same thing as when they are doing a voting day. Now on a voting day they get paid \$10.00 an hour. So, but it's not in here about the Election Board stipend, so my thing is, what's the difference of the hundred dollars and the ten dollars, they are still doing the same process.

And the next thing on that is the cost of living for that ten dollars an hour never went up from I think 2002 or 2005, so maybe that's something else to look at, as that is still at ten dollars an hour for that. But, so I am just wondering how come it isn't at the GTC Meeting, you get paid just like you're acting like a regular election official, because that's what you're doing, is you're counting votes. There ain't no difference than when you are sitting at the polling site and you're counting votes, so that's a question I brought up.

Jolene D. Hensberger (written): Stipends: Remain the same of \$75.00 for each Board member, including Chair, if not more for any meeting of 1 hour or longer.

Response

The commenters provide comments and suggestions regarding the various stipends, and amounts of stipends.

The Law provides the Oneida Business Committee the authority to set stipend amounts by resolution. [1 O.C. 105.13-3]. It is anticipated that a resolution containing specific information on the stipends of boards, committees, or commissions of the Nation will be presented for adoption by the Oneida Business Committee when the proposed amendments to this Law are presented for adoption.

Since the Law does not specify stipend amounts, it is recommended that the Legislative Operating Committee take this information under advisement in the development of a resolution addressing stipends of boards, committees, and commissions that will be presented to the Oneida Business Committee.

There is no recommended revision to the Law based on these comments.

LOC Consideration

The LOC will take the commenter's suggestions under advisement in the development of a resolution addressing stipends of boards, committees, and commissions that will be presented to the Oneida Business Committee for consideration of adoption.

Comments 25 through 26 – Stipends for Training:

105.13. Stipends, Reimbursement and Compensation

105.13-9. Conferences and Training. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. **Provided that:**

- (a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
- (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
- (c) No stipend payments shall be made for those days spent traveling to and from

the conference or training.

Jolene D. Hensberger (written): Trainings: The School Board members should be able to attend trainings relating to education for both children and adults, such as the Conscious Discipline Training coming up at the Radisson. School Board members are encouraged, by many entities, to be present for this training but this is a two-day training, which means that the members will need to take off of work and possibly have to use their personal / vacation time.

Jolene D. Hensberger (written): Stipends: Include clarification of what is considered “out of town” training, i.e. Radisson or at other place of location other than regular meeting place. School Board members have to take off of work and use vacation / personal time to attend trainings which are usually one full day to two days.

Response

The commenter states that members of the School Board should be able to attend trainings related to both the education of children and adults. The commenter also requests clarification on what is considered “out of town” training, and expresses concern that even when a training is local, the members of the board, committee, or commission still have to take off of work to attend and incur expenses.

Members of boards, committees, and commissions are allowed to attend trainings and conferences, as long as the training and/or conference is identified by law, bylaw, or resolution of the Nation. [1 O.C. 105.13-9(a)]. Bylaws of every board, committee or commission are required to include information on any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any. [1 O.C. 105.10-3(a)(7)]. In reference to trainings and/or conferences the Law itself currently does not specifically reference locations of trainings, or provide for different procedures for different locations of training.

The Law does provide that a member of a board, committee or commission shall be reimbursed for travel and per diem for attendance at a conference in accordance with the Nation’s policy for travel and per diem. The Oneida Travel and Expense Policy was most recently amended by the Oneida Business Committee through resolution BC-08-06-08-B. The Oneida Travel and Expense Policy does differentiate between local and non-local travel in its policies regarding the reimbursement of travel expenses. Non-local travel is defined by the Oneida Travel and Expense Policy as any travel which requires an overnight stay. [2 O.C. 219.3-1(a)].

Although the Oneida Travel and Expense Policy differentiates between local and non-local attendance at trainings or conferences, the Law does provide that a member of a board, committee, or commission shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution. [1 O.C. 105.13-9(a)]. This means that the member of the board, committee, or commission will be eligible for a stipend for his or her attendance at a conference or training no matter if the conference or training is local or non-local. The specific amount for the stipend

for attendance at a conference or training will be determined and approved by the Oneida Business Committee through the adoption of a resolution regarding stipends. [1 O.C. 105.13-3].

There is no recommended revision based on this comment.

LOC Consideration

The LOC recognizes that the requirements of the Law, as well as the Oneida Travel and Expense Policy must be followed by all members of a board, committee, and commission of the Nation. The LOC determined that no revision is necessary based on this comment.

Comment 27 – Stipend Payment Process:

Jolene D. Hensberger (written): To avoid delays in the Stipend Payment Process – Stipend payment process for the School Board is recommended to remain the same. The School Board currently prints out Stipend Form Request, the draft Minutes, Sign-In Sheet, then has it signed by the authorizing representative, and then forwarded to the ONSS Account Clerk to submit to Accounts Payable.

Response

The commenter requests that the stipend payment process remain the same, and describes the School Board’s current process.

The Law currently does not address the stipend payment process. The actual payment process for stipends is currently an internal process.

The Legislative Operating Committee may consider if the stipend payment process should be addressed in the law, or if the stipend payment process should remain an internal process. The Business Committee Support Office intends to take over the responsibility of managing stipends for boards, committees, and commissions.

LOC Consideration

The LOC determined that the stipend payment process should remain an internal procedure, and not specifically be included in the Law. This will allow for more flexibility in adjusting the stipend payment process if determined necessary.

No revision to the Law is necessary based on this comment.

Comment 28 – Official Entity Email Address:

105.14. Confidential Information

105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate

e-mail address from his or her regular work e-mail address.

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

(c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

Pat Lassila (oral): Good afternoon. I just needed some clarification in regards to individuals that get elected to on a board, committee or commission, in here it's talking about receiving an e-mail address, that you have to have a tribal e-mail address and you cannot use a personal e-mail address. What do you do with individuals that are not employees of the Tribe? So you are going to make it available to everyone is my question. Before we couldn't get it, like I've been on this, the ONCOA Board for three years now and I'm using a personal e-mail, because they said I couldn't have one because I'm not an employee of the Tribe. So, are you going to make us, make it available then for those who are not employees of the Tribe?

Response

The commenter questions whether members of boards, committees, or commissions of the Nation who are not employees of the Nation will be receiving an e-mail address.

Yes, the Law will be providing a member of an entity an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

There is no recommended revision based on this comment.

LOC Consideration

The LOC believes the response provides clarification to the commenter's questions regarding official email addresses of board, committee, or commission members.

No revision to the Law is needed based on this comment.

Comments 29 through 30 – Application of the Law to the Oneida Business Committee's Political Appointees:

105.15. Conflicts of Interest

105.15-3. Due to the potential for a real or perceived conflict of interest to exist, political appointees and legislative assistants shall not serve on an appointed or elected entity.

Bonnie Pigman (oral): Question, what about the personnel appointed by the OBC. Are they considered exempted too? Again, why not? Under what separate definition do they not qualify

as an appointed. I know there is a law out there or a policy out there about appointed political appointments.

Lois Strong (oral): Good afternoon, Lois Strong and the question I have is around the, not the question, the comment I have pertains to the political appointees and it states in there what has to be done with the political appointees, but I believe the definition that is out there is the political appointees are those assistants working directly with BC members, but there are some political appointees out there, it says there are three in this document, what is the status of those? How do you explain those? Are they going to be ongoing, not ongoing and how do you work on that process to define them or how are you going to work on it to define it?

Response

The commenters question exactly who is considered a political appointee, and if personnel appointed by the Oneida Business Committee are exempt from this Law.

The term political appointee was used in the Law in reference to the Oneida Business Committee member's executive assistants. The three political appointees that are referenced in the legislative analysis are currently serving on an elected boards, committees, or commissions of the Nation.

Personnel appointed by the Oneida Business Committee, also known as political appointees, are not subject to this Law.

This Law was developed for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].

In regards to the Law, the term "appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee. [1 O.C. 105.3-1(b)]. While the term "entity" is defined as a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership. [1 O.C. 105.3-1(h)].

Although the Oneida Business Committee's political appointees are appointed, they are not appointed to serve on a board, committee, or commission of the Nation and therefore do not meet the definition of appointment or entity, or fit into the purpose of this law.

Additionally, the Law specifies that political appointees shall not serve on an appointed or elected entity. [1 O.C. 105.15-3].

The Legislative Operating Committee has made the determination that upon adoption of the Law the three political appointees that are currently serving on a board, committee, or commission of the Nation will be allowed to complete their term, but will be prohibited from seeking reelection.

To avoid future confusion it is recommended that a definition for political appointee be included in the law, as follows:

105.3-1(l) “Political appointee” means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member’s daily activities and operations.

LOC Consideration

The LOC agrees with the response to this comment that the Law was never intended to apply to political appointees of the Oneida Business Committee.

The issue surrounding whether a political appointee of the Oneida Business Committee should be allowed to serve on a board, committee or commission of the Nation has been widely debated by the LOC throughout the development of the Law, and in response to this comment.

Vice Chairman Brandon Stevens joined the LOC for this discussion and expressed his desire that the process regarding this matter be clear, so that it is understood that it is not necessarily a prohibition of a person’s constitutional right to run for office, but a condition of the employment/appointment that the individual must understand and agree to in order to serve as a political appointee of an Oneida Business Committee member.

The discussion then focused on the potential for perceived and real conflicts of interest when a political appointee of an Oneida Business Committee member sits on an appointed or elected board, committee, or commission of the Nation. The fact that in the past different Oneida Business Committee members handled the potential for perceived conflicts of interest in different ways was also discussed. Some Oneida Business Committee members have asked his or her political assistant to resign from boards, committees, or commissions of the Nation, while others have not. The LOC discussed the importance of this matter being handled in a consistent manner across the board.

The LOC then determined that the adopting resolution for the amendments to this Law should include information on this matter. The adopting resolution of this Law should state that the three political appointees that are currently serving on a board, committee, or commission of the Nation will be allowed to complete their term, but will be prohibited from seeking reelection. Additionally, the adopting resolution shall state a directive to the Nation’s Human Resources Department to update the political appointee job description to include a statement that political appointees cannot serve on a board, committee, or commission of the Nation so that an individual is aware that they have to abstain from serving on a board, committee, or commission of the Nation, or resign from his or her position, if the individual wishes to serve as a political appointee of the Oneida Business Committee.

Ultimately, the LOC determined that political appointees should be prohibited from serving on a board, committee, or commission of the Nation and that a definition for political appointee should be added to the law for clarification. The following revision shall be made to the Law:

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(l) “Political appointee” means a person appointed by a member of the Oneida Business Committee to provide assistance with the Oneida Business Committee member’s daily activities and operations.

Although ultimately the LOC decided political appointees should not hold a position on a board, committee, or commission of the Nation in the interest of preventing any perceived conflicts of interest, Councilman Daniel Guzman was in opposition to this matter. Councilman Daniel Guzman expressed his concerns that although he agrees that political appointees should not serve on appointed boards, committees, or commissions of the Nation because the Oneida Business Committee appoints the individuals who serve in those positions, an individual should not have to abstain from serving on an elected board, committee, or commission. Councilman Daniel Guzman expressed his concern that this provision would limit an individual who wanted to be involved with his or her government.

Comment 31 – Dissolution of Grant Funded Boards, Committees, and Commissions:

105.17. Dissolution of an Entity

105.17-2. *Dissolution of an Entity.* All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. The General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee.

Florence Petri (oral): Okay. I have a few concerns, one is, not sure now, but maybe there be some checking, but ONCOA is a board required by a grant. They have to have an advisory board and so is the Nutrition Board. So, I didn’t see anything in here regarding, should those grants end is the boards end? That was one of my concerns.

Response

The commenter requests clarification on whether a board, committee, or commission of the Nation that is grant funded, would be automatically dissolved if the grant funding ends.

The Law does address the dissolution of a board, committee, or commission of the Nation. The Law provides that all entities of the Nation, other than a task force or ad hoc committee, shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. [1 O.C. 105.17-2]. The Law then provides more detail on a dissolution of a board, committee, or commission of the Nation by stating that the General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee. [1 O.C. 105.17-2].

Therefore, a board, committee, or commission that is currently grant funded would not automatically be dissolved if that grant funding were to end. The Oneida Business Committee or the General Tribal Council would have to take official action, through a motion, to dissolve the entity.

There is no recommended revision based on this comment.

LOC Consideration

The LOC determined that the Law adequately addresses this issue, and that no revision to the Law is needed based on this comment.

Comment 32 – Adoption by the General Tribal Council:

Bonnie Pigman (oral): I would strongly encourage this document be placed on the GTC agenda for further review and approval as I believe GTC should weigh in as to whether the Business Committee should be exempted in this law.

Response

As stated previously in the response to Comment 1, many of the standards and requirements that the Law sets forth for boards, committees, and commissions of the Nation are already addressed by the Constitution in terms of application to the Oneida Business Committee. Therefore, it is not that the Oneida Business Committee is exempt from many of the same requirements as other boards, committees, and commissions of the Nation are expected to comply with, it is just that the standards and requirements for the Oneida Business Committee are addressed through other legislative means such as the Constitution.

The General Tribal Council has already determined standards and requirements for the Oneida Business Committee through the Constitution. Including the Oneida Business Committee in this Law would be a duplication of standards and requirements.

Additionally, it is important to note that the General Tribal Council delegated the authority to develop and adopt legislation for the Nation to the Legislative Operating Committee and the Oneida Business Committee through the adoption of the Legislative Procedures Act (“the LPA”) through resolution GTC-01-07-13-A. The purpose of the LPA is to provide a process for the adoption of laws of the Nation that has been sanctioned by the General Tribal Council. [1 O.C. 109.1-1]. The development of this Law has conformed with the process and procedure contained in the LPA.

There is no recommended revision based on this comment.

LOC Consideration

The LOC determined that the response to this comment provides a good explanation as to why it is not necessary that this Law be presented to the General Tribal Council for consideration of the application of this Law to the Oneida Business Committee.

Comment 33 – Application of the Law to the Oneida Trust Enrollment Committee:

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

Oneida Trust Enrollment Committee (written): In addition to any comments presented at the public meeting, the Oneida Trust Enrollment Committee submits the following comment:

The Oneida Trust Enrollment Committee (OTEC) was established by the people (GTC) and for the people. The OTEC is accountable to GTC. The OTEC is an elected body and an autonomous body. The amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions are an overreach of authority by the Oneida Business Committee (OBC).

Responding to the details of the proposed law would be inappropriate because it would suggest that we are negotiating and commenting on the proposed changes. If anything, operation changes must be negotiated with the OBC and OTEC and confirmed by GTC. The inclusion of elected boards, commissions and committees will create additional political rife in the community.

If you have any questions or concerns with this public comment, please contact OTEC Chairwoman, Bobbi Webster, at (920) 869-4270.

Signed on behalf of the Oneida Trust Enrollment Committee.

Response

The commenter states that the amendments to the Law are an overreach of authority of the Oneida Business Committee as elected boards, committees, or commissions of the Nation should not have to follow the requirements prescribed by the Law due to their autonomous nature.

The development of amendments to the Law is not an overreach of authority of the Oneida Business Committee as the Legislative Operating Committee and the Oneida Business Committee have been delegated the authority to develop and adopt legislation by the General Tribal Council. Through resolution GTC-01-07-13-A the General Tribal Council took action to adopt the Legislative Procedures Act (“the LPA”) which provides a process for the adoption of laws of the Nation. [1 O.C. 109.1-1].

Thus far, the development of this Law has conformed with the process and procedure contained in the LPA.

All individuals, departments, programs, boards, committees, and commissions of the Nation are expected and required to follow all laws, policies, and rules of the Nation. The only time an individual or entity of the Nation may be exempt from the expectation to follow a law, is if that law specifically exempts an entity.

The entire purpose of this Law is to govern boards, committees, and commissions of the Nation, no matter whether the board, committee, or commission is an appointed or elected body. [1 O.C. 105.1-1]. It would be illogical to exempt a board, committee, or commission of the Nation from this Law solely due to its elected status.

Although the commenter cautions that *“inclusion of elected boards, commissions and committees will create additional political rife in the community”* it is important to note that this Law was originally adopted by the Oneida Business Committee in 1997 through resolution BC-05-14-97-F. This means that for the last twenty-one (21) years there has been the expectation that both elected and appointed boards, committees, and commissions of the Nation would conform and follow the requirements and procedures of the Law.

Additionally, although the commenter states *“responding to the details of the proposed law would be inappropriate because it would suggest that we are negotiating and commenting on the proposed changes,”* it is important to note that the Oneida Trust Enrollment Committee has been involved and provided valuable input to the Legislative Operating Committee throughout the development of this Law. The Trust Enrollment Committee had representation at both the September 21, 2017, and February 22, 2018, Legislative Operating Committee work meetings when various boards, committees, and commissions of the Nation met with the Legislative Operating Committee to discuss potential amendments to the Law. The Legislative Operating Committee relied heavily on the input and suggestions of the boards, committees, and commissions in the development of this Law. The Oneida Trust Enrollment Committee’s involvement in the development of this Law demonstrates it is not inappropriate for the Oneida Trust Enrollment Committee to comment on proposed changes and engage in the legislative process.

There is no recommended revision based on this comment.

LOC Consideration

In addition to discussing the response to this comment, the LOC discussed the fact that there have been legal opinions from the Oneida Law Office that have stated the requirement for boards, committees, and commissions of the Nation to follow all laws and policies of the Nation.

The LOC determined that there is no revision to the Law needed based on this comment.

Comment 34 – Use of Personal and Vacation Time for Members of a Board, Committee, or Commission:

Jolene D. Hensberger (written): Using Personal or Vacation Time – Some emergency meetings require Board members to have to take off of their employment to attend meetings. Is there a procedure or exception that will allow School Board members to not have to use personal or vacation time to attend urgent meetings that cannot wait?

Response

The commenter questions if there is a procedure or exception that would allow members of a board, committee, or commission to not have to use personal or vacation time to attend emergency meetings.

The Law focuses on the governance of boards, committees, and commissions of the Nation and the standard procedures that would be necessary for a board, committee, or commission of the Nation to function. [1 O.C. 105.1-1].

It is important to remember that not every member of a board, committee, or commission of the Nation is also an employee with the Nation. During a work meeting with the Management Information System Department (MIS) on April 11, 2018, MIS stated that an initial review of current board, committee, or commission members demonstrated that only about thirty-three (33) out of the one hundred and seventy (170) current board, committee, and commission members are also employees of the Nation. This equates to only nineteen percent (19%) of board, committee, or commission members also being employees of the Nation.

In recognition of the fact that not every member of a board, committee, or commission of the Nation is also an employee of the Nation, a determination as to whether members of a board, committee, or commission are required to use his or her vacation or personal time to attend meetings of the board, committee, or commission would be better addressed by the member's own place of employment. The use of personal or vacation time would be a determination of the board, committee, or commission member's own employer or supervisor.

If the Nation would choose to address whether a member of a board, committee, or commission is required to use his or her vacation and/or personal time to attend meetings of a board, committee, or commission, that policy would be more relevant to be included in the Nation's laws and policies governing employment, rather than this Law.

There is no recommended revision based on this comment. The Legislative Operating Committee may determine if this issue warrants further consideration.

LOC Consideration

The LOC understands that this comment relates to the requirement of board, committee, or commission members attending Oneida Business Committee meetings to present the quarterly reports, and the concern from board, committee, and commission members that this may be burdensome.

The LOC determined that it would not be appropriate to address the use of vacation and personal time in this Law. The Law solely governs governance of boards, committees, and commissions of the Nation, and does not govern any employment practices or procedures. Procedures regarding the use of vacation or personal time would be better addressed by the individual's employer, since not every member of a board, committee, or commission of the Nation is also an employee of the Nation.

Any reference to the use of vacation or personal time for employees of the Nation that are also members of a board, committee, or commission of the Nation would be better addressed in the Nation's laws, policies, and rules governing employment.

The LOC determined there is no revision to the Law needed based on this comment.

Comment 35 – Law Regarding Elected Officials and Political Appointments:

Bonnie Pigman (oral): On August 13, 2014, included in an OBC motion there was language assigning the LOC to work to create laws and policies around elected officials and political appointments. This motion came about from an August 12, 2014, memo from HRD stating there was a lack of policy on law or law on Oneida Business Committee members and political appointments. I have not been able to find any documents that this assignment was accomplished. So I am looking for that to be a reason as to your, maybe your rational or if you haven't defined or done that work with LOC, I recommend that it be followed up on.

Response

The commenter questions the status of a directive from the Oneida Business Committee from 2014 assigning the Legislative Operating Committee to create laws and policies regarding Oneida Business Committee members and political appointments:

“Motion by Melinda J. Danforth to accept the HRD manager's interpretation on BC members and political appointments leaving office which is dated Aug. 12 to the Business Committee as information and assign the LOC to work to create laws and policies around elected officials and political appointments, seconded by Brandon Stevens. Motion carried with one abstention.”

The Law does not apply to the Oneida Business Committee, or political appointees of the Oneida Business Committee. Therefore, a comment regarding prior actions for proposed legislation regarding elected officials, specifically the Oneida Business Committee, or political appointees would not be considered relevant to the proposed amendments to this law.

The LOC may determine if they wish to pursue this issue further.

LOC Consideration

The LOC determined not to pursue this issue at this time.

Comment 36 – Public Meeting Process:

Lori Elm (oral): If I have anything else then I'll just write them down. Do I still have to write these down then to you too?

David Jordan (oral): No, but if you have more comments that you want to put in writing you have until Thursday, July 28th at 4:30 p.m.

Lori Elm (oral): All right, thank you.

Response

The commenter questioned if she would have to provide written comments of the comments she provided during the public meeting. David P. Jordan, Chairman of the Legislative Operating Committee, clarified that she did not, but could provide additional comments in writing during the public comment period.

The Legislative Procedures Act (“LPA”), which was adopted by the General Tribal Council through resolution GTC-01-07-13-A, provides a process for the adoption of laws of the Nation. [1 O.C. 109.1-1].

The LPA requires the Legislative Operating Committee to hold a public meeting to solicit oral comments. [1 O.C. 109.8-3]. After the public meeting is held, a public comment period shall remain open for no less than five (5) business days. [1 O.C. 109.8-1(a)]. During the public comment period people are given the opportunity to submit written comments, data, opinions, arguments, or suggestions on the proposed legislation. [1 O.C. 109.8-1(c)].

The Legislative Operating Committee is then required to fully consider all written comments and oral testimony that was received during the public comment period and public meeting. [1 O.C. 109.8-4]. The Legislative Operating Committee utilizes this memorandum as a method to not only fully consider each and every comment and determine if a revision to the law will be necessary, but also as a means to provide responses to those individuals that provided comments on the proposed legislation.

There is no recommended revision based on this comment.

LOC Consideration

The LOC believes the response to this comment provides clarification on the public meeting process, and that no revision to the Law is needed.