



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
February 5, 2020
9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. January 15, 2020 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Citations Law (pg. 4)
2. Indian Preference in Contracting Amendments (pg. 35)
3. Southeastern Wisconsin Oneida Tribal Services (SEOTS) Advisory Board Bylaws Amendments (pg. 103)

IV. New Submissions

1. Petition: Nancy Dallas – Funeral Home (pg. 125)
2. Petition: Nancy Dallas – Hold on Building (pg. 126)
3. Oneida Nation Emergency Planning Committee Bylaws Amendments (pg. 127)
4. Curfew Law Amendments (pg. 128)
5. Domestic Animals Law Amendments (pg. 129)

V. Additions

1. Land Commission Bylaws Amendments *HANDOUT (p. 130)

VI. Administrative Updates

1. E-Poll Results: Sanctions and Penalties for Elected Officials Law – Approve Updated Materials and Fiscal Impact Statement Request (pg. 133)
2. E-Poll Results: Sanctions and Penalties for Elected Officials Law – Approve Adoption Packet and Forward to Oneida Business Committee (pg. 193)
3. E-Poll Results: Sanctions and Penalties for Elected Officials Law – Rescind Motion Approving Adoption Packet (pg. 240)
4. Boards, Committees and Commissions One-Year Evaluation Report (pg. 242)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
January 15, 2020
9:00 a.m.

Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King

Excused: Jennifer Webster

Others Present: Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Kristen Hooker, Jennifer Falck, Rae Skenandore, Jameson Wilson, Rosa Laster, Bonnie Pigman, Lee Cornelius. *Present via Teleconference:* Arthur Elm III, Diane Hill, Lloyd Ninham, Michael Coleman.

I. Call to Order and Approval of the Agenda

David P. Jordan called the December 18, 2019, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Kirby Metoxen to adopt the agenda; seconded by Ernest Stevens III. Motion carried unanimously.

II. Minutes to be Approved

1. December 18, 2019

Motion by Ernest Stevens III to approve the December 18, 2019, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

III. Current Business

1. Citations Law (1:00-11:37)

Motion by Kirby Metoxen to accept the updated public comment review memorandum, draft, and legislative analysis; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Ernest Stevens to approve the Citations law fiscal impact statement request memorandum and forward to the Finance Department requesting a fiscal impact statement be prepared and submitted to the Legislative Operating Committee by January 29, 2020; seconded by Kirby Metoxen. Motion carried unanimously.

2. Children's Burial Fund Policy Amendments (11:38-22:43)

Motion by Kirby Metoxen to accept legislative analysis; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Kirby Metoxen to approve the public meeting packet and forward the Children's Burial Fund Policy Amendments to a public meeting to be held on February 13, 2020; seconded by Ernest Stevens III. Motion carried unanimously



3. Oneida Food Service Code Amendments (22:43-31:40)

Motion by Kirby Metoxen to approve the public meeting packet and forward the Food Service Code Amendments to a public meeting to be held on February 6, 2020; seconded by Daniel Guzman King. Motion carried unanimously

4. Sanctions and Penalties Law (31:41-36:42)

Motion by Ernest Stevens III to accept the public comments and public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

IV. New Submissions

1. Real Property Law Emergency Amendments (36:43-54:12)

Motion by Kirby Metoxen to add “Real Property Emergency Amendments” to the active files list with Jennifer Webster and Ernest Stevens III as cosponsors; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Kirby Metoxen to approve the Real Property Emergency Amendments adoption packet and forward to the Oneida Business Committee for consideration with adding cosponsors; seconded by Ernest Stevens III. Motion carried.

Ayes: Ernest Stevens III, Kirby Metoxen
Abstained: Daniel Guzman King

2. Southeast Oneida Tribal Services Advisory Board Amendments (54:18-1:04:16)

Motion by Daniel Guzman King to add the SEOTS Board bylaws to the active files list for amendments with Daniel Guzman King as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

3. Tobacco Law Emergency Amendments (1:04:18-1:11:41)

Motion by Daniel Guzman King to add the Tobacco Law Emergency Amendments to the active files list with Kirby Metoxen as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

For the record: Ernest Stevens III, “I support that motion, because we can’t have a conversation if we don’t bring it there. That’s the only reason I’m supporting it.”

V. Additions

VI. Administrative Items

1. E-poll Results: Vehicle Driver Certification and Fleet Management Amendments (1:11:58-1:12:34)

Motion by Kirby Metoxen to enter the E-poll into the record from 12/18/19 to approve the January 23, 2020 Updated public meeting for the Vehicle Driver Certification and Fleet Management Law Amendments; seconded by Daniel Guzman King. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Kirby Metoxen to adjourn at 10:13 a.m.; seconded by Ernest Stevens III. Motion carried unanimously.



Legislative Operating Committee
February 5, 2020

Citations Law

Submission Date: 5/15/19	Public Meeting: 11/22/19
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *This item came to the LOC as a result of the development of the amendments to the Domestic Animals law. The development of a Citations law will ensure that the Nation provides a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.*

5/15/19 LOC: Motion by Jennifer Webster to add the Citations Law to the active files list with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Abstained by Ernest Stevens III and Daniel Guzman King. Motion carried.

5/21/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Jennifer Falck, Eric Boulanger, Chad Wilson, Kelly McAndrews, Wes Martin, Tsyoslake House. The purpose of this work meeting was to review and discuss the initial draft of the Citations law with the departments and entities that are currently involved in the handling of citations. The Oneida Law Office, Legal Resource Center, and Oneida Police Department provided suggestions and recommendations to the LRO staff. LRO will update the draft.

5/23/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to discuss and plan for how the LOC will collaborate with the Judiciary on the development of this Law.

6/13/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Destiny Prendiville, Laura Laitinen-Warren. The purpose of this work meeting was to review the draft of the Law, and for the LOC to provide input. The LOC provided the LRO with revisions to be made to the law, and areas that should be researched. LOC also determined that the law should not move forward until the Judiciary has been consulted.

8/6/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Eric Boulanger, Lisa Skenandore, Patricia Degrand, Kristina Denny, Kelly McAndrews. The purpose of this work meeting was to review the proposed draft of the Law to ensure that the processes and timelines included are realistic and can be implemented successfully.

8/29/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the proposed revisions to the draft of the Citations law based on the comments collected from the Oneida Police Department, Oneida Law Office, and Judiciary.

10/2/19 LOC: Motion by Daniel Guzman King to accept the draft Citations law and Legislative Analysis and defer to a work meeting for further consideration; seconded by Kirby Metoxen. Motion carried unanimously.

10/2/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to review the legislative analysis and make decisions regarding the policy considerations contained in the law.

10/16/19 LOC: Motion by Jennifer Webster approve the public meeting packet, with the updated draft and analysis, and forward the Citation Law to a public meeting to be held on November 22, 2019; seconded by Daniel Guzman King. Motion carried unanimously.

11/22/19: *Public Meeting Held.* Present: Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Rae Skenandore, Mollie Passon. There were no oral comments made during this public meeting.

12/3/19: *Public Comment Period Closed.* There was one (1) submission of written comments received during the public comment period.

12/18/19 LOC: Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.

12/18/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and consider the public comments that were received. LRO will update the draft based on the LOC's considerations.

1/15/20 LOC: Motion by Kirby Metoxen to accept the updated public comment review memorandum, draft, and legislative analysis; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Ernest Stevens to approve the Citations law fiscal impact statement request memorandum and forward to the Finance Department requesting a fiscal impact statement be prepared and submitted to the Legislative Operating Committee by January 29, 2020; seconded by Kirby Metoxen. Motion carried unanimously.

Next Steps:

- Approve the Citations law adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairman
DATE: February 12, 2020
RE: Citations Law

Please find the following attached backup documentation for your consideration of the proposed Citations law:

1. Resolution: Citations Law
2. Statement of Effect: Citations Law
3. Citations Law Legislative Analysis
4. Citations Law
5. Citations Law Fiscal Impact Statement

Overview

On May 15, 2019, the Legislative Operating Committee decided to pursue the development of a Citations law. The purpose of the Citations law is to provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation. [8 O.C. 807.1-1].

This resolution adopts the Citations law which will:

- Provide how a citation action commences and who has the authority to issue a citation [8 O.C. 807.4-1, 807.4-2];
- Describe what information is required to be included on a citation [8 O.C. 807.4-3];
- Set requirements for how a citation shall be served on an individual and subsequently filed with the court [8 O.C. 807.4-4, 807.4-5];
- Provide a process for an individual to enter into a stipulation agreement with an authorized attorney of the Nation to settle a citation [8 O.C. 807.5];
- Provide a process for how an individual can contest his or her citation in court [8 O.C. 807.6-1, 807.6-2];
- Set forth the various timelines and procedures for citation hearings [8 O.C. 807.6-2]; and
- Clarify that this Law shall not apply to any law of the Nation which delegates hearing authority to a hearing body other than the Oneida Judiciary. [8 O.C. 807.7].

The Legislative Operating Committee developed the proposed amendments to the Citations law through collaboration with representatives from the Oneida Law Office, Oneida Police Department, Judiciary, and Legal Resource Center. The Legislative Operating Committee also reviewed various laws of the Nation, as well as laws from other tribes.

In accordance with the Legislative Procedures Act, a public meeting on the Citations law was held on November 22, 2019. No oral comments were provided during the public meeting. The public

comment period was then held open until December 3, 2019. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on December 18, 2019. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Approve the Resolution: Citations Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Citations Law

- 1
- 2
- 3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 4 recognized by the laws of the United States of America; and
- 5
- 6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 7
- 8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 10
- 11 **WHEREAS,** the purpose of the Citations law ("the Law") is to provide a process that governs all citations
- 12 that fall under the jurisdiction of the Oneida Nation; and
- 13
- 14 **WHEREAS,** the Law provides how a citation action commences and who has the authority to issue a
- 15 citation; and
- 16
- 17 **WHEREAS,** the Law describes what information is required to be included on a citation; and
- 18
- 19 **WHEREAS,** the Law sets forth requirements for how a citation shall be served on an individual and
- 20 subsequently filed with the court; and
- 21
- 22 **WHEREAS,** the Law provides a process for an individual to enter into a stipulation agreement with an
- 23 authorized attorney of the Nation to settle a citation; and
- 24
- 25 **WHEREAS,** the Law provides a process for how an individual can contest his or her citation in court;
- 26 and
- 27
- 28 **WHEREAS,** the Law sets forth the various timelines and procedures for citation hearings; and
- 29
- 30 **WHEREAS,** the Law clarifies that this Law shall not apply to any law of the Nation which delegates
- 31 hearing authority to a hearing body other than the Oneida Judiciary; and
- 32
- 33 **WHEREAS,** in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact
- 34 statement were developed for this Law; and
- 35
- 36 **WHEREAS,** a public meeting on the Law was held on November 22, 2019, in accordance with the
- 37 Legislative Procedures Act, and the public comment period was held open until December
- 38 3, 2019; and
- 39
- 40 **WHEREAS,** the Legislative Operating Committee accepted, reviewed, and considered the public
- 41 comments received on December 18, 2019; and
- 42

43 **NOW THEREFORE BE IT RESOLVED**, that the Citations law is hereby adopted and shall become effective
44 on February 26, 2020.
45



Statement of Effect

Citations Law

Summary

This resolution adopts the Citations law which will provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office
Date: February 5, 2020

Analysis by the Legislative Reference Office

This resolution adopts the proposed Citations law. The proposed Citations law will provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation. [8 O.C. 807.1-1]. It is the policy of the Nation to ensure that the consistent process for handling citations provides equal and fair treatment to all persons who come before the Judiciary to have their citations resolved. [8 O.C. 807.1-2].

Adoption of any legislation is required to comply with the Legislative Procedures Act (“the LPA”), which was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a standardized process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The Citations law complied with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

A public meeting on the proposed Citations law was held on November 22, 2019. No oral comments were provided during the public meeting. The public comment period was then held open until December 3, 2019. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on December 18, 2019. Any changes made based on those comments have been incorporated into this draft.

The Citations law will become effective ten (10) business days after the adoption of this resolution in accordance with the LPA. [1 O.C. 109.9-3].

Conclusion

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



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Laws of issues/matters

CITATIONS LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: LOC	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Proposed Law	To establish a consistent process for citations issued for violations of laws of the Nation, including: <ul style="list-style-type: none"> What must appear on a citation form; How a citation must be served; A process for entering into stipulation agreements to settle citations; A process for contesting citations in court; and Timelines and procedures for citation hearings. 		
Purpose	To provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation [8 O.C. 807.1-1].		
Affected Entities	Any person issued a citation under the laws of the Nation; Agencies responsible for enforcement and issuing citations under the laws of the Nation (Oneida Police Department, Conservation Wardens, Oneida Environmental Health Safety and Land Division, Licensing Department), the Nation's Judiciary, Oneida Law Office, GTC Legal Resource Center, Utilities Department, and Oneida Land Commission.		
Related Legislation	Domestic Animals law; Hunting, Fishing and Trapping law; All-Terrain Vehicle law; Public Use of Tribal Land law; Recycling and Solid Waste Disposal law; Tribal Environmental Response law; Well Abandonment law; Onsite Waste Disposal Ordinance; Water Resources law; Emergency Management and Homeland Security law; Tobacco law; Oneida Food Service Code; Tattoo and Body Piercing law; Notary Act; Non Metallic Mine Reclamation law; Zoning and Shoreland Protection law; Marriage law, Sanitation Ordinance, Rules of Civil Procedure; Rules of Appellate Procedure, Judiciary Law Rule No. 1 – Oneida Trial Court Rules.		
Public Meeting	A public meeting was held on November 22, 2019.		
Fiscal Impact	A fiscal impact statement was submitted by the Finance Dept. on January 29, 2020.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Oneida Nation exercises its sovereignty through the enactment and enforcement of its own laws. These laws cover a variety of topics, including health and public safety, environmental and natural resources, and property and land. When a person violates a law of the Nation, several laws authorize the Nation to enforce by issuing citations, fines and penalties. However, the Nation's laws do not include a uniform process for what happens after a citation is issued, particularly once it reaches the Judiciary. This has led to implementation issues for individuals and entities involved in the citation process. In some instances, it has resulted in the dismissal of cases in the Judiciary on technical grounds.
- B. During the development of amendments to Domestic Animals law in 2019, the LOC worked collaboratively with several of the Nation's agencies. During this process, the agencies discussed the

need to develop a more detailed procedure for the issuance and processing of citations. Rather than add a detailed process only to the Domestic Animals law, the LOC decided to begin drafting a new Citations law to apply to violations of any law of the Nation that authorizes citations.

- C. The LOC added the proposed Citations law to the Active Files List on May 15, 2019. Since that time, a work group of representatives from Oneida Police Department, Environmental Resource Board, Oneida Law Office and Oneida Legal Resource Center met to work on the proposed law.
- D. This proposed law applies only to citations issued by the Nation for violations of the Nation's laws. Officers of the Oneida Police Department are cross-deputized by the Brown County Sheriff's Department and also have the authority to issue citations for violation of state laws that may be heard in Wisconsin Circuit Courts (for example, violations for operating while intoxicated).

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Police Department, Oneida Law Office, Oneida Judiciary, Oneida Legal Resource Center, and Oneida Environmental Resource Board.
- B. The following laws were reviewed in the drafting of this analysis: Domestic Animals law; Hunting, Fishing and Trapping law; All-Terrain Vehicle law; Public Use of Tribal Land law; Recycling and Solid Waste Disposal law; Tribal Environmental Response law; Well Abandonment law; Onsite Waste Disposal Ordinance; Water Resources law; Emergency Management and Homeland Security law; Tobacco law; Oneida Food Service Code; Tattoo and Body Piercing law; Notary Act; Non Metallic Mine Reclamation law; Zoning and Shoreland Protection law; Motor Vehicle Registration law; Marriage law; Sanitation Ordinance; Clean Air Policy; Alcohol Beverage Licensing law; Oneida Woodcutting Ordinance; Building Code law; Rules of Civil Procedure; Rules of Appellate Procedure, and Judiciary Law Rule No 1 – Oneida Trial Court Rules.

SECTION 4. PROCESS

- A. The amendments to this law have followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was added to the Active Files List on May 15, 2019.
- C. A public meeting was held on November 22, 2019. The public comment period was held open until December 3, 2019.
- C. The following work meetings were held regarding the development of this law and legislative analysis:
 - May 21, 2019: Work meeting with Oneida Police Department, Oneida Law Office, Environmental Resource Board and Legal Resource Center.
 - May 23, 2019: Work meeting with LOC.
 - June 13, 2019: Work meeting with LOC.
 - August 6, 2019: Work meeting with Oneida Police Department, Oneida Law Office and Oneida Judiciary clerks.
 - August 29, 2019: Work meeting with LOC.
 - October 2, 2019: Work meeting with LOC.
 - December 18, 2019: Work meeting with LOC.

SECTION 5. CONTENTS OF THE LEGISLATION

A. *Commencement of a Citation Action.*

- *What is a Citation?* A citation is a “legal document that services as a notice or summons to appear in a court of the Nation in response to a charge against an individual of a violation of law” [8 O.C. 807.3-1(b)]. The issuance of a citation begins a civil action in the Judiciary for violating a law of the Nation for the purpose of collecting a fine or penalty imposed by the law [8 O.C. 807.4-1].
- *Who Can Issue a Citation?* An “officer” may issue a citation to any person he or she has reasonable grounds to believe has committed a violation of a law of the Nation. For the purposes of this law,

an “officer” is defined as “any individual authorized by a law of the Nation to issue a citation for a violation of said law” [8 O.C. 807.3-1(g)]. For most laws of the Nation, the individual authorized to issue a citation is an officer of the Oneida Police Department or a Conservation Warden.

- *Who can Receive a Citation?* A “person” who receives a citation may be an individual or a legal entity, such as a corporation, LLC or sole proprietorship [8 O.C. 807.3-1(i)].

B. Form of Citation. This law creates a standard list of information that must be included on a citation form when it is issued. These requirements match the information included on the current citation form used by the Nation [8 O.C. 807.4-3].

- *Identifying Information:*

- Name of the officer who issued citation;
- Name, address, and date of birth of the defendant. Enrollment number and/or license number of the defendant, if applicable.

- *Information About the Alleged Violation:*

- The violation alleged, the law violated, the time and place of the violation, and a description of the violation.

- *Court Hearing & Fine Information:*

- A notice of when and where to appear at a citation pre-hearing and whether the pre-hearing is mandatory;
- Provisions for payment of citation and stipulation in lieu of an appearance in Court, if applicable. In other words, the option for individuals to pay their fine without having to make a court appearance;
- Notice that if the defendant does not pay the citation or stipulate an agreement prior to the pre-hearing and fails to appear in Court at the time listed on the citation, the Court may issue a default judgment which may include any fine amount due, restitution and/or suspension of any rights, privileges, or licensures, or any other penalty authorized by law;
- Notice that failure to satisfy a fine, restitution, or any other party of the judgment may result in per capita attachment, wage garnishment, revocation, suspension of any rights, privileges, licensures, and/or any other action authorized by law and/or other collection processes available to the court.

Current Oneida Nation Citation Form – Front

ONEIDA NATION CITATION #20 _____ – IR# _____										
Appearance Required <input type="checkbox"/> No <input type="checkbox"/> Yes Date: _____ Time: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM					See back for court/ payment information		Fine/Other Penalties \$ _____			
Oneida Judiciary 2630 West Mason Street, Green Bay, WI 54303										
Day of Week	Date of Violation	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	COUNTY	TWP-Village-City						
NAME (Last, First, MI)				Area Code - Telephone No.						
Tribal ID		Driver's License/ID #				State		Exp Year		
Street Address				City				State		
Date of Birth MM/DD/YYYY		Sex	Race	HT	WT	Hair	Eyes	Case Type <input type="checkbox"/> Adult <input type="checkbox"/> Juvenile	Parent's Name (Juvenile Only)	
Violation Code		Violation Name								
Description of Violation										
Print Officer Name		Officer Signature			Title		Badge Number		Department/Agency	
YOU ARE HEREBY NOTIFIED TO APPEAR IN FRONT OF THE ONEIDA JUDICIARY A failure to appear and defend may result in a default judgment against the Defendant										
Issuance Information		Method of Service			Personal		Mail		Left with _____ at defendant's residence	
Distribution: White-Court Yellow-Defendant Pink-Law Office Goldenrod-Agency										

91 *Current Oneida Nation Citation Form – Back*

Mandatory Appearance If your citation is marked “Yes” under the “Appearance Required,” you **MUST** appear in Court.

Disputing a Citation If you wish to dispute the citation, you must appear in court for a pre-hearing where a “contest” or “admit” plea will be entered verbally. A hearing date will then be scheduled.

If you do not wish to dispute the Citation You may mail in a money order or cashier’s check made payable to the Oneida Judiciary; include a copy of your citation and send to Oneida Judiciary at P.O. Box 19 Oneida, WI 54155 before the Court date stated on your citation. Or you may pay in person at the Oneida Judiciary located at 2630 West Mason Street, Green Bay, WI 54303.

If you do nothing The Court may enter a default judgement which may include, but is not limited to, any fine amount that is due, restitution and/or suspension of any rights, privileges or censures with the Oneida Nation.

Failure to satisfy Penalty/Restitution A failure to satisfy and fine, restitution or any other part of the judgement, may result in the following, but is not limited to, intercept of Per Capita, wage garnishment, revocation and/or suspension of any rights, privileges, censures, or any other action authorized by law with the Oneida Nation.

OP25352 R11/17

92
93 C. **Service of a Citation.** When an officer issues a citation, the citation must be “served” on the individual
94 alleged to have violated the law [8 O.C. 807.4-4].

- 95 ▪ **Personal Service.** An officer must first attempt to personally serve the citation on the defendant
96 (i.e. hand the citation to the defendant) or leave a copy of the citation at the defendant’s home in
97 the presence of a competent family member at least fourteen (14) years of age or an adult who
98 resides in the home of the defendant.

- 99 ○ **Why age 14?** In the state of Wisconsin, a service of summons may be left in the presence
100 of a competent family member at least fourteen (14) years of age if, with reasonable due
101 diligence, the defendant cannot be personally served [Wis. Stats 801.11]. This provision is
102 modeled after WI statutes.

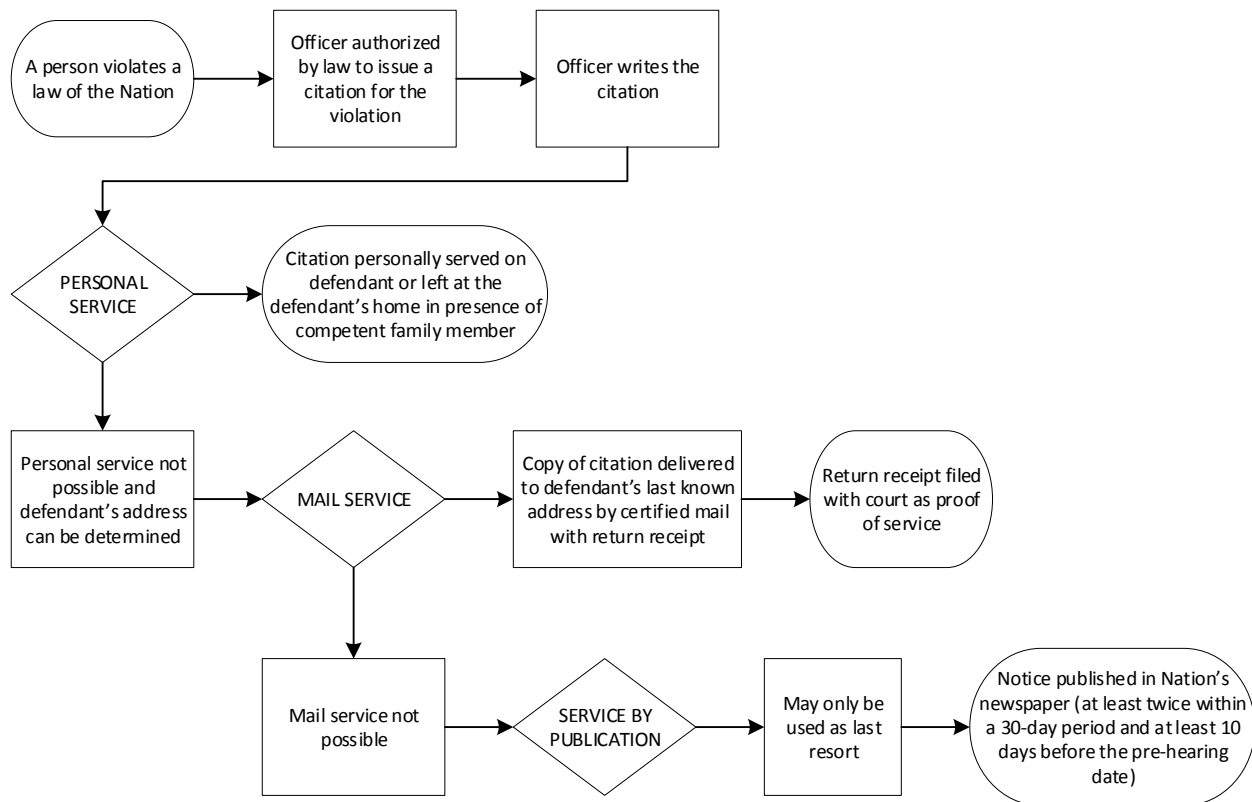
- 103 ▪ **Mail Service.** If personal service is not possible and the defendant’s address can be determined,
104 then mail service may be used. For service by mail, a copy of the citation may be delivered to the
105 defendant’s last known address by certified mail with return receipt. The certified mail return
106 receipt will be signed by the defendant or competent family member at least fourteen (14) years of
107 age or an adult who resides in the home of the defendant. The certified mail return receipt will be
108 filed with the Court as proof of service.

- 109 ▪ **Service by Publication.** As a last resort, after a showing of due diligence that personal and mail
110 service are not possible, then service may be completed by publication in the Nation’s newspaper
111 (the Kalihwisaks). The notice must be published at least two (2) times within a 30-day period. The
112 notices must be published at least ten (10) days before the citation pre-hearing.

- 113 ▪ **Filing a Citation.** The department of the officer who issued the citation must file the citation with
114 the Court along with proof of service, if applicable, at least thirty (30) days prior to the date of the
115 pre-hearing. Citations may be filed in person or electronically transmitted [8 O.C. 807.4-5].

- 116 ○ **Amendments to Citations.** A citation may be amended by an officer or the authorized
117 attorney prior to the citation pre-hearing. A copy of the amended citation must be provided
118 to the defendant at least five (5) days prior to the citation pre-hearing.

Chart 1. Service of a Citation.



D. Stipulations. An authorized attorney of the Nation is granted the discretion to seek the settlement of the citation. This means that the Nation and the defendant can agree to a lower fine amount or other condition to settle the case [8 O.C. 807.5].

- *Who is an Authorized Attorney of the Nation?* An attorney of the Nation who represents the department or entity of the officer who issued the citation, such as the attorney for the Oneida Police Department [8 O.C. 807.3-1]. Attorneys of the Nation work in the Oneida Law Office.
- *Form of Stipulation.* The stipulation, or agreement, between the Nation's attorney and defendant must be in writing, signed by both parties, and include the following information:
 - A summary of the violation that resulted in the citation,
 - The details of the stipulation including any fine, penalty, condition or payment plan the defendant must comply with,
 - A statement that the defendant admits that he or she committed the act or is entering a plea of no contest and waives his or her right to contest the citation in Court; and
 - A statement that all parties signed the agreement free of duress and coercion.
- *Current Practice.* It is the Nation's current practice to offer stipulations to defendants for violations of the Nation's Domestic Animals law. Stipulations typically involve the Nation lowering a fine amount. Currently, this practice is not outlined in detail in any law of the Nation.
 - *Comparison to State of WI.* For cases in Wisconsin circuit court, stipulations are typically handled by the prosecutor's office. Oneida Nation does not have a prosecutor or exercise criminal jurisdiction, so in this instance, the Nation is represented by an attorney of the Law office who assumes these responsibilities for violations the Nation's civil laws.
- *Effect.* Although offering stipulations is the current practice of the Nation, placing the process in the law will formally establish this authority for the authorized attorneys of the Nation.

E. Citation Pre-Hearing. All citations will include a pre-hearing date with the Court which will be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law of the Nation [8

147 *O.C. 807.6-1*]. The Judiciary’s current practice is to hold citation pre-hearings on the third Thursday of
148 each month.

- 149 ■ **Mandatory Appearance.** Appearance at a pre-hearing is only mandatory when a law, policy, rule
150 or resolution of a Nation requires a mandatory appearance for that specific violation of the law.
151 Most violations of the Nation’s laws do not require a mandatory appearance.

- 152 ○ *Example:* The Domestic Animals law fine, penalty and licensing fee schedule requires a
153 mandatory court appearance for mistreatment of animals [*BC Resolution 05-08-19-D*].

- 154 ■ **Paying Fine or Penalty.** If an appearance is not mandatory and the individual does not want to
155 contest (or challenge) the citation, the individual may pay the fine or penalty listed on the citation
156 before the pre-hearing date and the citation will be considered satisfied.

- 157 ■ **Contesting a Citation.** If an individual wants to contest their citation, that person can appear at the
158 pre-hearing to contest the citation. If an appearance at the pre-hearing isn’t mandatory, that
159 individual can also send a written notice to the Court with a copy to the Law Office notifying the
160 court that they wish to contest the citation.

- 161 ■ **Default Judgment.** If the defendant does not pay their fine or enter into a stipulation before their
162 pre-hearing date and fails to appear at their pre-hearing or provide notice to the court, then the court
163 may enter a default judgment against the defendant. In other words, if a defendant “ignores” their
164 citation, the court can automatically find them guilty of the violation.

- 165 ○ *Consequences.* A default judgment can include the fine amount due, restitution, suspension
166 of rights, privileges and licenses, or any other penalty authorized by laws of the Nation.

- 167 **F. Citation Hearing.** If a defendant contests that they committed the violation that resulted in the citation,
168 then the Court will schedule a hearing within ninety (90) days of the pre-hearing date. In other words,
169 if the defendant argues that they did not commit the violation or that the citation was issued
170 inappropriately, the defendant has an opportunity to challenge their citation at a court hearing [*8 O.C.*
171 *807.6-2*].

- 172 ■ **Burden of Proof.** The burden of proof at a citation hearing is “clear and convincing evidence.” This
173 means that the Nation must provide evidence “indicating that the [allegation] to be proved is highly
174 probably or reasonably certain” [*see Black’s Law Dictionary*].

- 175 ○ *Current Standard of Proof.* The Nation’s Rules of Civil Procedure state that the standard
176 of proof for all matters to be decided by the Court shall be proven by a “preponderance of
177 the evidence” standard, unless specified otherwise [*8 O.C. 803.4-8*]. “Preponderance of
178 the evidence” is the burden of proof in most civil trials and means that there is sufficient
179 evidence that there is a greater than 50% chance that the claim is true.

- 180 ○ *Effect.* This law sets a higher burden of proof than the Judiciary is currently using for
181 citation hearings under the laws of the Nation. This means that the Nation and its agencies
182 (represented by its authorized attorney) will have to meet this higher burden of proof when
183 a citation is challenged by a defendant. This will only apply to citation hearings. All other
184 hearings of the court will utilize the “clear and convincing evidence” standard unless
185 otherwise noted in another law of the Nation.

- 186 ■ **Appeals.** Anyone who wishes to appeal a judgment of the court may appeal to the Nation’s Court
187 of Appeals in accordance with the Rules of Appellate Procedure [*8 O.C. 807.6-3*].

- 188 ○ The Rules of Appellate Procedure state that a notice of appeal must be filed within thirty
189 (30) days after the Trial Court’s order is rendered [*8 O.C. 805.5*].

- 190 **G. Exclusion.** This law will not apply to any law of the Nation that delegates hearing authority to a hearing
191 body other than the Judiciary [*8 O.C. 807.7*]. The Oneida Land Commission retains hearing authority
192 for citations issued under two of the Nation’s laws. Therefore, the proposed Citations law will not apply
193 to citations issued under the following two laws:

- 194 ■ Zoning and Shoreland Protection law [*6 O.C. 605*].

- 195 ■ Non-Metallic Mining Reclamation law [*4 O.C. 402*].

SECTION 6. EXISTING LEGISLATION

A. Which Laws of the Nation will the New Citations Process Apply to? Many laws of the Nation authorize citations, fines or forfeitures for violations. The intent of the proposed Citations law is to establish a uniform process that can apply to all of these laws without conflict. Some of these laws were updated after the creation of the Nation's Judiciary and conform cleanly with the process in this proposed Citations Law. However, other laws are decades-old and conform less clearly due to changes in drafting style and the Nation's organizational structure over the years. The following charts provide a summary of the Nation's laws that authorize citations, fines, forfeitures or penalties and whether the proposed Citations law will apply.

- **Laws that Authorize Citations & Include Judiciary Appeals Process with Timelines.** The following laws of the Nation specifically authorize the issuance of citations and include a process for contesting citations in the Judiciary Trial Court with required timelines for citations hearings. The proposed Citations law conforms with these timeframes and adds additional process and requirements.
 - *Conclusion:* The proposed Citations will apply to any citations issued under the following laws of the Nation:

Chart 2. Oneida Laws that Authorize Citations & Include Judiciary Appeals Process.

Chapter	Law	Authority to Enforce	Example Violation
304	<i>Domestic Animals</i>	Oneida Police Department and Oneida Conservation	Dangerous animal; prohibited animal; animal running at large.
406	<i>Hunting, Fishing and Trapping</i>	Oneida Police Department and Oneida Conservation	Failure possess license; Failure to tag, Unlawfully hunting/shooting from a vehicle.
410	<i>All Terrain Vehicle</i>	Oneida Police Department and Oneida Conservation	Operating all-terrain vehicle in a careless manner, on private property without consent, on tribal lands without consent
609	<i>Public Use of Tribal Land</i>	Oneida Police Department and Oneida Conservation	Trespassing.

- **Laws that Authorize Citations & Refer to Citations law for Judiciary Appeals Process.** The following laws of the Nation specifically authorize the issuance of citations and state that citations will be processed in accordance with the procedure contained "in the Nation's laws and policies governing citations." This refers to the proposed Citations law and Judiciary Law Rule No. 1 – Oneida Trial Court Rules.
 - *Conclusion:* The proposed Citations will to apply to any citations issued under the following law of the Nation:

Chart 3. Oneida Laws that Authorize Citations & Reference Citations law.

Chapter	Law	Authority to Enforce	Example Violation
308	<i>Curfew</i>	Oneida Police Department	Minor violating curfew.

- **Laws that Authorize “Fines, Penalties and Forfeitures” and Include Judiciary Appeals Process with Timelines.** The following laws of the Nation authorize “fines, penalties or forfeitures” and include a process for contesting citations in the Judiciary Trial Court with required timelines for citation hearings. The proposed Citations law conforms with these timeframes and adds additional process and requirements.
 - *Conclusion:* The proposed Citations law appears to apply to any citations issued under the following laws of the Nation:

Chart 4. Laws that Authorize Fines and Include Judiciary Appeals Process w/Timelines.

Chapter	Law	Authority to Enforce	Example Violation
401	<i>Tribal Environmental Response Law</i>	Environmental Health, Safety and Land Division	Violating a compliance order issued by Division for discharging hazardous substance.
404	<i>Well Abandonment Law</i>	Environmental Health, Safety and Land Division	Failure to comply within ten (10) days of written notice of violation.
407	<i>Onsite Waste Disposal Ordinance</i>	Environmental Health, Safety and Land Division (“Environmental Specialist”)	Failure to correct on-site waste disposal system, constituting threat to public health.
409	<i>Water Resources</i>	Oneida Conservation	Failure to report discharging substance to waters of reservation.

- **Laws that Authorize Citations and Do Not Include Judiciary Appeals Process.** The following laws of the Nation specifically authorize citations but do not specify a process or timeframe for how citations may be contested in the Judiciary. The process and timeframes included in the Citations law will now apply to any citations issued under these laws.
 - *Conclusion:* The proposed Citations law will apply to any citations issued under the following law of the Nation:

Chart 5. Oneida Laws that Authorize Citations and Do Not Include Judiciary Appeals Process.

Chapter	Law	Authority to Enforce	Example Violation
405	<i>Recycling and Solid Waste Disposal*</i>	Oneida Police Department and Oneida Conservation	Improperly dumping solid waste within reservation boundaries

**The Recycling and Solid Waste Disposal Law is currently on the LOC’s Active Files List for amendments.*

- **Laws that Authorize “Fines, Penalties and Forfeitures” and Include Judiciary Appeals Process without Timelines.** The following laws of the Nation authorize “fines, penalties or forfeitures” and state that appeals may be filed with the Judiciary, but do not specify a process or timeframe for how those appeals will be handled. It appears that the process and timeframes included in the Citations law will likely apply to any citations issued under these laws.
 - *Conclusion:* The proposed Citations law appears to apply to any citations issued under the following laws of the Nation:

Chart 6. Oneida Laws that Authorize Fines and Include Judiciary Appeals Process w/o Timelines

Chapter	Law	Authority to Enforce	Example Violation
115	Tobacco	Oneida Police Department	Selling tobacco products in violation of the law.
302	Emergency Management and Homeland Security	Oneida Police Department	Willfully obstruct, hinder or delay the implementation of emergency response.
305	Oneida Food Service Code*	Environmental Health, Safety and Land Division and Licensing.	Selling food or food products on tribal property without a license.
306	Tattoo and Body Piercing	Environmental Health, Safety and Land Division and Licensing.	Performing tattooing or body piercing without a license.
701	Marriage	Licensing Department	False statement to obtain a marriage license.

*The Oneida Food Service Code is currently on the LOC's Active Files List for amendments.

- **Laws that Authorize “Fines, Penalties and Forfeitures” and Do Not Include Judiciary Appeals Process.** The following laws of the Nation authorize “fines, penalties and forfeitures” but do not specify a process or timeframe for how citations may be contested in the Judiciary. It appears that the process and timeframes included in the Citations law will likely apply to any citations issued under these laws.
 - *Conclusion:* The proposed Citations law appears to apply to any citations issued under the following laws of the Nation:

Chart 7. Oneida Laws that Authorize Fines and Do Not Include Judiciary Appeals Process.

Chapter	Law	Authority to Enforce	Example Violation
114	Notary Act	“Official designated by Oneida Business Committee.”	Impersonating a notary public.
408	Sanitation Ordinance	Utilities Department.	Continuing Violations.

- **Laws that Authorize Citations but include Land Commission Appeals Process.** The following laws of the Nation authorize citations, but direct that any appeals be filed with the Land Commission rather than the Nation’s Judiciary. Therefore, the following laws are excluded from the proposed Citations law [8 O.C. 807.7-1].
 - *Conclusion:* The proposed Citations law will not apply to citations issued under the following laws of the nation.

Chart 8. Oneida Laws that Authorize Citations and Conflict with Proposed Citations Law

Chapter	Law	Authority to Enforce	Example Violation
402	Non-Metallic Mine Reclamation	Environmental Health, Safety and Land Division or designee.	Violating an order requiring an operator to comply with the law.
605	Zoning and Shoreland Protection	Zoning Administrator.	Public Nuisance. Failure to obtain land use permit or conditional use permit.

- **Laws that include Penalties but Do Not Fall Under Proposed Citations law.** The following laws of the Nation authorize various alternative penalties for violations of the law, but do not include a citation process or Judiciary appeals process. It can be reasonably concluded that the following laws would not fall under the jurisdiction of the proposed Citations law as currently drafted.
 - *Conclusion:* The proposed Citations law does not appear to apply to penalties issued under the following laws.

Chart 9. Oneida Nation Laws with Other Penalties Where Citations Law Does Not Apply.

Chapter	Law
403	Oneida Woodcutting Ordinance
411	Clean Air Policy
505	Motor Vehicle Registration
507	Alcohol Beverage Licensing Law
602	Leasing Law
603	Building Code

B. Detailed Review of Laws of the Nation that Authorize Citations with Land Commission Appeals Process. The following laws of the Nation authorize citations but direct that appeals be heard by the Land Commission rather than the Judiciary:

- **Zoning and Shoreland Protection law [6 O.C. 605]**
 - *Purpose.* The purpose of the Zoning and Shoreland Protection law includes establish a zoning plan for tribal lands, regulate the use of lands and buildings and provide for the administration and enforcement of this law, among other purposes [3 O.C. 304.1-1].
 - *Enforcement.* Any person who violates any provision of this law, or who shall take any action on or with respect to any land or structure which is not in compliance with this law, shall be guilty of a civil infraction and shall be issued a fine in accordance with the schedule adopted by the Oneida Business Committee upon recommendation of the Land Commission.
 - *Appeals.* Any person issued a fine under this law may contest the fine by attending a hearing before the Land Commission. The fine shall specify the date, time and place of the hearing. The hearing shall take place at least five (5) days after the fine is issued. After the hearing, the Land Commission shall determine whether the person is responsible for the fine, as was issued by the Zoning Administrator and may set a new date for when the fine shall be paid.
 - *Conclusion.* The proposed Citations law states that citation hearings shall be heard in the Oneida Judiciary, while the Zoning and Shoreland Protection law states that fines issued under that law must be contested at a hearing of the Oneida Land Commission. Therefore, this law is excluded from the proposed Citations law [8 O.C. 807.7-1]. The proposed Citations law will not apply to citations issued under the Zoning and Shoreland Protection law.
- **Non Metallic Mine Reclamation law [4 O.C. 406]**
 - *Purpose.* The purpose of the Non-Metallic Mine Reclamation law is to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place within the boundaries of the reservation [4 O.C. 402.1-1].
 - *Enforcement.* The Oneida Zoning Department or designee may issue a citation to collect fines to enforce this law, a permit issued pursuant to this law or a reclamation plan approved under this law.
 - *Appeals.* A person who is subject to a citation issued pursuant to this section shall have sixty (60) days to either appeal the citation to the Land Commission or review or pay the fine.

- *Conclusion.* The proposed Citations law states that citations hearings shall be heard in the Oneida Judiciary, while the Non-Metallic Mine Reclamation Law states that appeals shall be heard by the Land Commission. Therefore, this law is excluded from the proposed Citations law [8 O.C. 807.7-1]. The proposed Citations law will not apply to citations issued under the Non-Metallic Mine Reclamation law.

C. Detailed Review of Laws of the Nation that Authorize Citations. The following laws of the Nation authorize citations, fines or forfeitures and do not conflict with the proposed Citations law. The provisions of the proposed Citations law will likely apply to citations issued under any of the following laws:

▪ ***Domestic Animals law [3 O.C. 304]***

- *Purpose.* The purpose of the Domestic Animals law is to protect the health, safety, and welfare of the community set minimum standards for treatment of animals; prohibit certain species of animals from being brought on the reservation; regulate the keeping of livestock on lots zoned residential, and establish consequences for damages caused by domestic animals [3 O.C. 304.1-1].
- *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens have the authority to issue citations according to the fine and penalty scheduled developed in accordance with the Domestic Animals law.
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Domestic Animals law. The new requirements of the proposed Citations law will now apply to any citations issued under the Domestic Animals law.

▪ ***Curfew law [3 O.C. 308]***

- *Purpose.* to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors on the Reservation during certain hours, while imposing certain obligations and responsibilities upon the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor [3 O.C. 308.1-1].
- *Enforcement.* The Oneida Police Department has the authority to enforce this law and issue citations to the minor or minor's parent for curfew violations in accordance with the law [3 O.C. 308.6].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Curfew law. The new requirements of the proposed Citations law will now apply to any citations issued under the Curfew law.

▪ ***Hunting, Fishing and Trapping law [4 O.C. 406]***

- *Purpose.* The purpose of the Hunting, Fishing and Trapping law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen and the environment [4 O.C. 406.1-1].
- *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens may issue citations to any person found in violation of the law or corresponding rules. [4 O.C. 406.5-4 and 406.10].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Hunting, Fishing and Trapping law. The new requirements of the proposed Citations law will now apply to any citations issued under the Hunting, Fishing and Trapping law.

▪ ***All-Terrain Vehicle law [4 O.C. 410]***

- *Purpose.* The purpose of the All-Terrain Vehicle law is to govern the safe use of all-terrain vehicles within the jurisdiction of the Oneida Reservation to allow enforcement for protection of the community members and environment [4 O.C. 410.1-1].
- *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens are authorized to enforce and take any appropriate action to prevent or remove a violation of this law. Citations for violations of this law and/or orders issued pursuant to this law

include sanctions, fines and penalties in accordance with the fine schedule developed in accordance with the law [4 O.C. 410.6 and 410.7].

- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the All-Terrain Vehicle law. The new requirements of the proposed Citations law will now apply to any citations issued under the All-Terrain Vehicle law.

■ ***Public Use of Tribal Land law [6 O.C. 609]***

- *Purpose.* The purpose of the Public Use of Tribal Land law is to prevent improper access, use and trespass to tribal lands [6 O.C. 609.1-1].
- *Enforcement.* The Oneida Police Department and Oneida Conservation Wardens are authorized to take any appropriate action to prevent or remove a violation of this law. Citations for violation of this law may include fines, penalties and other orders in accordance with the citation schedule applicable to this law [6 O.C. 609.7].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Public Use of Tribal Land law. The new requirements of the proposed Citations law will now apply to any citations issued under the Public Use of Tribal Land law.

■ ***Recycling and Solid Waste Disposal law [4 O.C. 405]***

- *Purpose.* The purpose of the Recycling and Solid Waste Disposal law is to promote the health, safety and welfare of residents and members of the Oneida Nation through the establishment of standards necessary to the sanitary and environmentally sound disposal of recyclable materials [4 O.C. 405.1-1].
- *Enforcement.* All Oneida Reservation Conservation Enforcement Officers and Police Officers shall be empowered to enforce the provisions of this law. Any person who violates a provision of this “ordinance” may be issued a citation by the Oneida Conservation Warden(s) [4 O.C. 405.12].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Recycling and Solid Waste Disposal law. The new requirements of the proposed Citations law will now apply to any citations issued under the Recycling and Solid Waste Disposal law.

■ ***Tribal Environmental Response law [4 O.C. 401]***

- *Purpose.* The purpose of the Tribal Environmental Response law is to regulate the identification, investigation and remediation of discharges of hazardous substances to the environment, identify sites where discharge has occurred, and eliminate contamination from and control the threat of discharge of hazardous substances [4 O.C. 401.1-1].
- *Enforcement.* Any person who does not comply with a compliance order issued by the Environmental Health, Safety and Land Division may receive a penalty in accordance with the fine schedule. Any order issued pursuant to this law that is not complied with may be physically enforced by the Division [4 O.C. 401.10].
- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Tribal Environmental Response law. The new requirements of the proposed Citations law will now apply to citations issued under the Tribal Environmental Response law.

■ ***Onsite Waste Disposal [4 O.C. 407]***

- *Purpose.* The purpose of the Onsite Waste Disposal law is to establish regulations to ensure that private onsite sewage treatment systems will fulfill Oneida Tribal goals for improving environmental health and safety [4 O.C. 407.1-2].
- *Enforcement.* The Environmental Specialist may issue an Administrative Enforcement Order when a violation of any provision of this law occurs... the Order shall be given to the party responsible for the violation and shall state the nature of the violation, possible penalties for failure to correct, and shall state the right to contested the matter with the Oneida Judiciary [4 O.C. 407.7-1].

- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Onsite Waste Disposal law. The new requirements of the proposed Citations law will now apply to any citations issued under the Onsite Waste Disposal law.
- ***Water Resources [4 O.C. 409]***
 - *Purpose.* The purpose of the Water Resources law is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private [4 O.C. 409.1-2].
 - *Enforcement.* The Oneida Conservation Department shall enforce this law, and all rules and orders issued by the Department [4 O.C. 409.6-3].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Water Resources law. The new requirements of the proposed Citations law will now apply to any citations issued under the Water Resources law.
- ***Emergency Management and Homeland Security law [3 O.C. 302]***
 - *Purpose.* The purpose of the Emergency Management and Homeland Security law is to provide for the development and execution of plans for the protection of residents, property and the environment in an emergency or disaster [3 O.C. 302.1-1].
 - *Enforcement.* Violators of this law may be subject to a fine of not more than two hundred dollars (\$200) per violation to be issued by the Oneida Police Department [3 O.C. 302.9].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Emergency Management and Homeland Security law. The new requirements of the proposed Citations law will now apply to any citations issued under the Emergency Management and Homeland Security law.
- ***Oneida Food Service Code [3 O.C. 305]***
 - *Purpose.* The purpose of the Oneida Food Service Code is to protect and preserve the safety of Oneida Nation citizens and others within its jurisdiction in conjunction with the most current United States Public Health Service Food Code [3 O.C. 305.1-1].
 - *Enforcement.* In addition to the suspension or closing down of a business that violates the law, a food service vendor who violates any provision of the code shall forfeit not less than five dollars (\$5) nor more than five hundred dollars (\$500) upon conviction. Environmental Health, Safety and Land Division, Licensing Department and Oneida Police Department have authority to enforce various provisions of this law.
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the current Oneida Food Service Code. The new requirements of the proposed Citations law will appear to apply to any citations issued under the Oneida Food Service Code.
- ***Tattoo and Body Piercing [3 O.C. 306]***
 - *Purpose.* The purpose of the Tattoo and Body Piercing law is to regulate tattooists, tattoo establishments, body piercers and body piercing establishments under the jurisdiction of the Tribe in order to protect public health and safety [3 O.C. 306.1-1].
 - *Enforcement.* Environmental Health and Safety Division and Licensing Department [3 O.C. 306.13].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Tattoo and Body Piercing law. The new requirements of the proposed Citations law appear to apply to any citations issued under the Tattoo and Body Piercing law.
- ***Tobacco law [1 O.C. 115]***
 - *Purpose.* The purpose of the Tobacco law is to regulate the sale, possession and distribution of cigarettes within the Reservation [1 O.C. 115].
 - *Enforcement.* Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation [1 O.C. 115.8-1].

- *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Tobacco law. The new requirements of the proposed Citations law will now apply to any citations issued under the Tobacco law.
- **Marriage law [7 O.C. 701]**
 - *Purpose.* The purpose of the Marriage law is to exercise the sovereign right of the Oneida Nation to regulate the rights and responsibilities relating to marriages [7 O.C. 701.1-1].
 - *Enforcement.* The Department shall promulgate rules that establish a fine schedule for persons who violate this law [7 O.C. 701.7-1].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Marriage law. The new requirements of the proposed Citations law appear to apply to any citations issued under the Marriage law.
- **Notary Act [1 O.C. 114]**
 - *Purpose.* The purpose of the Notary Act is to promote, serve and protect the public interest and to simplify, clarify and modernize the law governing notaries [1 O.C. 114.1-2].
 - *Enforcement.* A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated, respectively, by this Act shall forfeit not less than \$50.00 nor more than \$500.00... Any and all of the sections of this Act may be enforced by an official designated by the Oneida Business Committee for separate issues, or for all issues [1 O.C. 114.6-4 – 114.6-9].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in the Notary Act law. The new requirements of the proposed Citations law appear to apply to any citations issued under the Notary Act.
- **Sanitation Ordinance [3 O.C. 306]**
 - *Purpose.* The purpose of the Sanitation Ordinance is to assure that any water and sanitary utilities that are developed within the jurisdiction of the Oneida Tribe shall be operated and maintained in a manner that is fiscally responsible, responsive to customer needs, environmentally safe and governmentally functional [4 O.C. 408].
 - *Enforcement.* Any person who shall continue any violation beyond the time limit provided for in sec. (b) may be assessed a fine of not more than \$250.00 [4 O.C. 408.11].
 - *Conclusion.* The proposed Citations law does not conflict with the enforcement provisions in Sanitations Ordinance. The new requirements of the proposed Citations law appear to apply to any citations issued under the Sanitation Ordinance law.
- D. References to Other Laws.** The following laws of the Nation are referenced in the Citations law. The proposed Citations law does not conflict with any of the referenced laws.
 - *Garnishment law.* The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court [8 O.C. 807.6-2(d)].
 - *Per Capita law.* The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court [8 O.C. 807.6-2(d)].
 - *Rules of Appellate Procedure.* Any person wishing to contest the determination of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure [8 O.C. 807.6-3].
- E. Existing Judiciary Rules.** The Oneida Business Committee recently adopted Judiciary law Rule #1 – Oneida Trial Court Rules. This new rule, developed by the Judiciary and adopted by the Oneida Business Committee on September 25, 2019, includes procedures for how citation hearings are held at the Judiciary [8 O.C. 801 Judiciary law Rule #1 – 1.17 Citation Hearings].
 - *Conclusion.* The proposed Citations law does not conflict with the citation hearing procedures in Judiciary Law Rule No. 1 – Oneida Trial Court Rules.

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. *Effect on Existing Rights.* The proposed Citations law protects due process rights by:
- Requiring that all citations be properly noticed, including a notice of the defendant's rights and privileges, hearing dates and information;
 - Ensuring that defendants have the right to contest their citations in the Nation's Judiciary;
 - Establish a formal process for stipulations that require defendants to acknowledge that they are waiving their rights to contest the citation in court and sign a statement that they enter into the agreement free of duress and coercion.

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. *Enforcement.* Each law of the Nation typically includes an "enforcement" section which gives authority to a specific agency or department to enforce the law. Most laws of the Nation are enforced by the Oneida Police Department or Conservation Wardens. For more information, see "Section 6: Existing Legislation."

SECTION 9. OTHER CONSIDERATIONS

- A. *Current Citation Data.* The following data is provided for information:
- *Oneida Police Department*
 - Nineteen (19) Domestic Animals citations issued between September 2018 - August 2019. The most common citations were "mistreatment of animals" and "animal running at large."
 - The department did not report issuing citations under any other laws of the Nation.
Source: Email communication with OPD (9/9/19).
 - *Oneida Conservation Wardens*
 - Oneida Police Department reported that Conservation issued no citations between September 2018 - August 2019.
 - Conservation issued at least one Hunting, Fishing and Trapping citation in 2017.
Source: Email communication with OPD (9/11/19).
 - *Conclusion:* Based on available data, the most common citations issued by the Nation involve the Domestic Animals law or the Hunting, Fishing and Trapping law.
- B. *Laws in Progress that Include Citations.* At the time this analysis was drafted, the LOC is actively working on drafting or amending the following laws which include citations:
- The Oneida Food Service Code
 - Recycling and Solid Waste Disposal law.
- C. *Fiscal Impact.* Review the fiscal impact statement submitted by the Finance Department for any fiscal impacts.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].
 - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].

Title 8. Judiciary - Chapter 807

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Laws of issues/matters

CITATIONS

807.1. Purpose and Policy
807.2. Adoption, Amendment, Repeal
807.3. Definitions
807.4. Commencement of a Citation Action

807.5. Stipulations
807.6. Hearing Procedure
807.7. Exclusion

807.1. Purpose and Policy

807.1-1. *Purpose.* The purpose of this law is to provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation.

807.1-2. *Policy.* It is the policy of the Nation to provide a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.

807.2. Adoption, Amendment, Repeal

807.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__.

807.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

807.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

807.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

807.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

807.3. Definitions

807.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Authorized attorney" means an attorney of the Nation who represents the department or entity of the officer who issued the citation.

(b) "Citation" means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against an individual of a violation of law.

(c) "Court" means the Nation's Trial Court, Family Court, or any other specific courts or divisions of the Nation's Judiciary created by a law of the Nation which have been granted jurisdiction to hear matters of citations.

(d) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeals within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(e) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(f) "Nation" means the Oneida Nation.

(g) “No contest” means a plea by which a defendant will accept the charged violation of law but does not plead or admit guilt.

(h) “Officer” means an individual authorized by a law of the Nation to issue a citation for a violation of said law.

(i) “Person” means a natural person, sole proprietorship, partnership, corporation, limited liability company, or any other form of a legal entity.

807.4. Commencement of a Citation Action

807.4-1. *Action.* The issuance of a citation shall commence a civil action in the Judiciary for a violation of a law of the Nation for the purpose of collecting a fine or penalty imposed by the law in the name of the Nation.

807.4-2. *Authority to Issue.* An officer may issue a citation to any person he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation.

807.4-3. *Form of Citation.* A citation shall contain the following information:

- (a) The name of the officer who issued the citation.
- (b) The name, address, and date of birth of the defendant.
- (c) The enrollment number and/or license number of the defendant, if applicable.
- (d) Information about the alleged violation including:
 - (1) the violation alleged;
 - (2) the law violated;
 - (3) the time and place of the occurrence of the violation; and
 - (4) a description of the violation.
- (e) A notice to appear at a date, time and place for the citation pre-hearing, and a statement as to whether the appearance at the pre-hearing is mandatory.
- (f) Provisions for payment of citation and stipulation in lieu of an appearance in Court, if applicable.
- (g) Notice that if the defendant does not pay the citation or stipulate to an agreement prior to the pre-hearing and fails to appear in Court at the time fixed in the citation or provide written notice to the Court that he or she is contesting the citation, the Court may issue a default judgment which may include any fine amount due, restitution and/or suspension of any rights, privileges, or licensures, or any other penalty authorized by law.
- (h) Notice that failure to satisfy a fine, restitution, or any other part of the judgment, may result in per capita attachment, wage garnishment, revocation, suspension of any rights, privileges, licensures, and/or any other action authorized by law and/or other collection processes available to the Court.
- (i) Any other relevant information.

807.4-4. *Service of a Citation.* The defendant is served with a citation when one of the following occurs:

- (a) *Personal Service.* The citation is provided to the defendant directly by the officer, or a copy of the citation is left at the defendant’s home or usual place of abode by the officer:
 - (1) in the presence of a competent family member at least fourteen (14) years of age who shall be informed of the contents of the citation; or
 - (2) in the presence of a competent adult who resides in the home or usual place of abode of the defendant, who shall be informed of the contents of the citation.
- (b) *Mail Service.* If personal service is not possible, and the defendant’s address is known or with reasonable diligence can be ascertained, then mail service may be used. For service

by mail, a copy of the citation may be delivered to the defendant's last known address by certified mail with return receipt. The certified mail return receipt shall be signed by the defendant or a competent family member at least fourteen (14) years of age or an adult who resides in the home of the defendant.

(1) The certified mail return receipt shall be filed with the Court as proof of service. (c) *Service by Publication.* If after a showing of due diligence personal service and mail service were not possible, then service may be completed by publication as a last resort. The publication shall be in the Nation's newspaper and shall be designated as "Legal Notice." The department of the officer and/or authorized attorney shall publish this notice at least two (2) times within a thirty (30) day period. The two (2) notices shall be published a minimum of ten (10) days before the citation pre-hearing.

(1) Copies of the two (2) published notices and written report stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service.

(2) If service by publication is required and there is insufficient time for proper service before the pre-hearing, the Court may, on its own, order different time limits for service by publication and/or re-schedule the pre-hearing appropriately in order to provide for fair notice and opportunity for the defendant to respond.

(3) The Court may order the defendant to reimburse the department of the officer and/or the authorized attorney for any costs incurred from service by publication.

807.4-5. *Filing of a Citation.* Absent exigent circumstances, the department of the officer who issued the citation shall file the citation with the Court along with any applicable proof of service at least thirty (30) days prior to the date of the pre-hearing.

(a) Citations may be filed in person or electronically transmitted to the Court. Citations that are electronically transmitted to the Court are deemed filed upon confirmation of receipt by the Clerk of Court assigned to the branch of the Judiciary that will hear the citation.

(b) After filing the citation with the Court, the department of the officer who issued the citation shall forward the citation and all relevant accompanying information to the authorized attorney. Relevant information to accompany the citation may include, but is not limited to, a narrative by the officer and/or history of violations by the defendant.

807.4-6. *Amendments to the Citation.* A citation may be amended by an officer or the authorized attorney prior to the citation pre-hearing. A copy of the amended citation shall be provided to the defendant in accordance with section 807.4-4, and filed with the Court, at least five (5) days before the citation pre-hearing. After the hearing, the citation may only be amended at the discretion of the Court, upon notice to the parties and an opportunity to be heard.

807.5. Stipulations

807.5-1. *Authority for Stipulations and Case Settlement.* An authorized attorney of the Nation is granted the discretion to seek the settlement of a citation.

(a) When seeking to enter into a stipulation the authorized attorney shall explain to the defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

807.5-2. *Form of Stipulation.* Any stipulation between an authorized attorney and the defendant shall be in writing and signed. The stipulation shall include the following:

(a) A summary of the citation violation information included on the citation;

(b) The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;

(c) A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest and thereby waives his or her right to contest the citation with the Court; and

(d) A statement that all parties signed the agreement free of duress and coercion.

807.5-3. *Submission of the Stipulation to the Court.* If the authorized attorney and defendant reach an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's approval.

(a) If the Court enters an order approving the stipulation as written, a copy of the order shall be provided to the authorized attorney and defendant.

(b) If the Court does not enter an order approving the stipulation as written or requests clarification, the Court shall schedule the matter for a hearing. The Court shall provide the authorized attorney and defendant notice of the hearing date and written explanation as to why the Court did not approve the stipulation of the parties.

807.5-4. If the authorized attorney and defendant do not reach an agreement as to a stipulation, then the parties shall proceed with the citation hearing process.

807.5-5. Compliance with a stipulation shall be monitored by the authorized attorney. The authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a motion for contempt if the defendant is non-compliant with the terms of the stipulation.

807.6. Hearing Procedure

807.6-1. *Citation Pre-Hearing.* All citations shall include a pre-hearing date with the Court which shall be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law of the Nation.

(a) Appearance at the pre-hearing shall be mandatory only when a law, policy, rule, or resolution of the Nation requires a mandatory appearance for that specific violation of law.

(b) If an appearance is not mandatory, and a person does not wish to contest the citation, a person may pay the fine and/or penalty as listed on the citation prior to the pre-hearing date.

(1) If the person pays the fine and/or penalty as listed on the citation prior to the pre-hearing date the citation shall be considered satisfied.

(c) If a person wishes to contest the citation, the person shall provide notice to the Court in one (1) of the following manners:

(1) appear at the pre-hearing to contest the citation; or

(2) if an appearance is not mandatory, send written notice to the Court, with a copy to the Oneida Law Office, prior to the pre-hearing notifying the Court that the defendant wishes to contest the citation.

(d) At the pre-hearing the Court shall accept pleas which either contest or admit committing the act for which the citation was issued, or a plea of no contest.

(1) If the defendant admits committing the act for which the citation was issued the Court shall provide a statement that by admitting that he or she committed the act for which the citation was issued the defendant thereby waives his or her right to contest the citation with the Court. The Court shall obtain an affirmative acknowledgment from the defendant of that waiver of rights.

(e) In addition to scheduling requested hearings, the Court may also make conditional orders at the pre-hearing which are effective until the matter is resolved.

(f) If a defendant does not appear at the pre-hearing or submit written notice that he or she is contesting the citation when there is a non-mandatory appearance, and the defendant has

not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the Court may proceed to enter a default judgment.

(1) A default judgment may include any fine amount due, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty authorized by law.

(2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days to satisfy a default judgment by paying any fine and/or complying with any condition or penalty ordered.

807.6-2. Citation Hearing. For all persons entering a plea contesting the fact that he or she committed the act for which a citation was issued, the Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the pre-hearing when possible.

(a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

(b) As a result of the citation hearing the Court may issue an order which includes a determination as to the underlying violation of law as well as any fine amount, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty as authorized by law.

(c) A defendant who fails to satisfy a lawful order of the Court shall be subject to punishment for contempt of court which may include fines, revocation and/or suspension of any rights, privileges, licensures, or any other action authorized by law.

(d) The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court.

807.6-3. Appeals of the Court's Determinations. Any person wishing to contest the determination of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

807.7. Exclusion

807.7-1. This law shall not apply to any law of the Nation which delegates hearing authority to a hearing body other than the Oneida Judiciary.

End.

Adopted – BC-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Larry Barton, Chief Financial Officer
 RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Rae Skenandore, Financial Management Analyst

DATE: January 28, 2020

RE: **Fiscal Impact of the Citations Law**

I. Estimated Fiscal Impact Summary

Law: Citations Law		Draft 3
Implementing Agency	Oneida Police Department Oneida Conservation Wardens Oneida Environmental Health Safety and Land Division Oneida Licensing Department Oneida Judiciary Oneida Utilities Department	
Estimated time to comply	Immediately	
Estimated Impact	Current Fiscal Year	Ten Year Estimate
Total Estimated Fiscal Impact	No impact	No impact

II. Background

Legislative History

This is a new Law that was originally placed on the Legislative Operating Committee Active Files List on May 15, 2019. A public meeting was held on November 22, 2019.

Summary of Content

A summary of the Law is as follows;

- A. The purpose of this Law is to provide a process that governs citations.
- B. The Law applies to those citations that are required to be resolved before the Oneida Judiciary.

- C. The Law defines a citation as a “legal document that services as a notice or summons to appear in a Court of the Oneida Nation in response to a charge against an individual for the violation of a law”.
- D. For most Laws, the authority to issue a citations is delegated to officers of the Oneida Police Department or Oneida Conservation Wardens.
- E. A Person is defined as “a natural person, sole proprietorship, partnership, corporation, limited liability company (LLC), or any other form of a legal entity.
- F. A citation must include the following:
1. Identifying Information;
 2. Information About the Alleged Violation;
 3. Court Hearing & Fine Information.
- G. Citations must be served in one of the following manners:
1. Personal Service;
 2. Mail Service;
 3. Service by Publication.
- H. Proof of service and the citation must be filed in writing with the Oneida Judiciary.
- I. Attorneys of the Oneida Law Office have the authority for Stipulations and Case Settlement.
- J. Stipulations must be written and signed and include the following:
1. A summary of the information on the citation;
 2. The details of the stipulation;
 3. A statement that the defendant admits that they committed the act or is entering a plea of no contest and waives their right to contest the citation;
 4. A statement that all parties signed free of duress and coercion.
- K. Stipulations are submitted to the court for approval. If denied, a hearing is scheduled.
- L. Hearing procedure includes the following:
1. A Citation Pre-Hearing set at least thirty (30) days after the citation was issued.

- a) Defendants may appear, unless a mandatory appearance is required.
 - b) If the fine and/or penalty is paid prior to the pre-hearing, the citation is satisfied.
 - c) If a person wishes to contest the citation, they shall:
 - (1) appear at the pre-hearing to contest the citation; or
 - (2) if an appearance is not mandatory, send written notice to the Court, with a copy to the Oneida Law Office, prior to the pre-hearing notifying the Court that the defendant wishes to contest the citation.
 - d) At the pre-hearing the Court shall accept pleas which either contest or admit committing the act for which the citation was issued, or a plea of no contest.
 - e) The Court may also make conditional orders at the pre-hearing.
 - f) If a defendant does not appear at the pre-hearing or submit written notice and the defendant has not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the Court may proceed to enter a default judgment.
 - (1) A default judgment may include any fine amount due, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty authorized by law.
 - (2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days to satisfy a default judgment by paying any fine and/or complying with any condition or penalty ordered.
2. If a citation is being contested, the Court shall schedule a hearing within ninety (90) days of the pre-hearing date.
- a) The burden of proof is clear and convincing evidence.
 - b) The Court order may include the determination and any fine amount, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty as authorized law.
 - c) A defendant who fails to satisfy a lawful order shall be subject to punishment for contempt of court which may include fines, revocation and/or suspension of any rights, privileges, licensures, or any other action authorized by law.

d) Failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court.

e) Any person wishing to contest the determination may appeal to the Appellate Court.

III. Methodology and Assumptions

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

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

III. Executive Summary of Findings

A request was sent to the areas under the General Manager, the Judiciary, and the Oneida Police Department. Several areas stated that the Citations Law is essentially a redefinition of process that is already in place. Therefore, there would be no additional start up, staffing, or office costs. Affected entities are prepared to comply immediately.

III. Financial Impact

No impact.

IV. Recommendation

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



Legislative Operating Committee
February 5, 2020

Indian Preference in Contracting Law Amendments

Submission Date: 4/17/19	Public Meeting: 12/19/19
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a

Summary: *The purpose of the amendments to this Law is to complete an overview of any amendments and updates that might be needed for this law.*

4/17/19 LOC: Motion by Jennifer Webster to add the Indian Preference in Contracting law to the active files list with a medium priority and Ernest Stevens III as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

5/20/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Stensloff, Jeff House, Cathy Bachhuber. The purpose of this work meeting was to discuss why the law was added to the AFL and what portions of the law needed to be addressed through amendments. The group identified potential areas for amendments and policy considerations for the LOC. Discussed that the notes from the meeting will be compiled and the LOC will begin making policy considerations – additional meetings to have further discussions of those considerations and the law in general will be scheduled.

6/5/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin considering potential amendments to the Law – based on the discussion and suggestions from the last work meeting. The LOC did not complete an initial review of the beginning policy considerations so an additional work meeting will be scheduled this week.

6/6/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue the discussion and consideration of potential amendments to the Law from the June 6 LOC work session – based on the discussion and suggestions for potential amendments from the May 20 LOC work meeting.

7/25/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Patricia Garvey, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the law line-by-line and discuss potential amendments, as well as to review and confirm prior issues the LOC decided to support and not support so we can move forward with amendments to this law.

9/26/19: *Work Meeting.* Present: Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff, Paul

Witek, Jameson Wilson. The purpose of this work meeting was for Indian Preference, Purchasing, and Community Economic Development Divisions Engineering to educate and discuss with the LOC on the internal spreadsheets that are used for scoring, SOPs, and a proposed fine schedule.

10/21/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Witek. The purpose of this work meeting was to review the draft of the proposed amendments and the fine and penalty resolution with the affected entities.

10/24/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was for the LOC to review the draft of the proposed amendments to the law.

11/6/19 LOC: Motion by Ernest Stevens III to approve the draft and the legislative analysis for the Indian Preference in Contracting Law Amendments; seconded by Kirby Metoxen. Motion carried unanimously.

11/14/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the updated draft fine and penalty resolution and discuss specific fine amounts for each violation.

11/20/19 LOC: Motion by Ernest Stevens III to approve the public meeting packet and forward the Indian Preference in Contracting law amendments to a public meeting on December 19, 2019; seconded by Kirby Metoxen. Motion carried unanimously.

12/12/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was for the LOC to review and discuss the fine and penalty resolution. LOC directed one change be made to the resolution.

12/19/19: *Public Meeting Held.* Present: David P. Jordan, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Jameson Wilson, Rae Skenandore, Crystal Meltz, Amy Hacker, Jeffrey House. One (1) person gave oral comments during the public meeting.

12/30/19: *Public Comment Period Closed.* Two (2) submissions of written comments were received during the public comment period.

Next Steps:

- Accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
DATE: February 5, 2020
RE: Indian Preference in Contracting Law Amendments: Public Meeting Comment Review

On December 19, 2019, a public meeting was held regarding the proposed amendments to the Indian Preference in Contracting law (“the Law”). The public comment period was then held open until December 30, 2019. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period.

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

Comments 1 through 2 – Purpose of the Law:

502.1. Purpose and Policy

502.1-1. Purpose. The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

Jeffrey S. House (written): Thank you Chairman Jordan and Vice-Chairman Metoxen and members of the Legislative Operating Committee for allowing me to comment on the drafted amendments to the Indian Preference in Contracting law. I join you today as a representative of Oneida ESC group, a tribal corporation that is 100% owned by the Oneida Nation. I would like to begin my comments by highlighting the purpose of the law in Section 502.1-1; which is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. These two drivers: “Increase economic benefits for the Nation” and “maximum utilization of Indian workers and businesses,” I believe are the core objectives of the law and cannot be over emphasized.

The Oneida Nation has a greater than \$740 million impact on Brown and Outagamie Counties and is responsible for more the 5,460 jobs according to a St. Norbert College Study conducted in 2018. That equates to \$89 million in government revenue, of which \$33.4 million is for state and local government. I believe the purpose of the Law is to keep as much of impact on the Oneida Nation reservation.

Jeffrey S. House (oral): Uhh thank you Councilwoman Webster and Chairman Jordan for allowing me to provide this testimony. I join you today as a representative of Oneida ESC group, a tribal corporation that is one hundred percent (100%) owned by the Oneida Nation.

Thank you Jenny for reading the purpose of the Law, that's my first, or I would like to give my comments by highlighting the purpose of the Law. As you have stated, which is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. These two drivers: "Increase economic benefits for the Nation" and "maximum utilization of Indian workers and businesses," I believe are the core objectives of the law and cannot be over emphasized.

The Oneida Nation has a greater than seven hundred and forty million dollar (\$740,000.000) impact on Brown and Outagamie Counties and is responsible for more than five thousand four hundred and sixty (5,460) jobs according to a St. Norbert College Study conducted in 2018. That equates to eighty-nine million dollars (\$89,000,000) in government revenue, of which thirty-three point four million (\$33,400,000) is for state and local government. I believe the purpose of the Law is to keep as much of impact on the Oneida Nation Reservation.

Response

The commenter highlights the purpose of the Law, and provides some statistics on the Nation's economic impact on Brown and Outagamie Counties.

As there are no suggestions being requested, or questions asked by this comment, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 3 – Jurisdiction of the Nation:

502.1. Purpose and Policy

502.1-1. Purpose. The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

502.3. Definitions

502.3-1. 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.

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

502.6. Application of Indian Preference to Contracts

502.6-1. Application of the Law. Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over three thousand dollars (\$3,000) that meet the requirements of (a) and/or (b) below:

(a) This law shall apply to:

(1) all contracts, subcontracts, and compliance agreements to which the Nation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the Nation, whereby goods and services are provided on or near the Reservation; and

Eric McLester (written): I am providing written comments in support of the proposed changes to the Indian Preference Law. As the Agent for the Oneida Golf Enterprise, I am in full support of the purpose of the law which is to increase "economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation." I would recommend that these economic benefits not be limited to just on or near the Reservation, and that wording similar to the "Joint Ventures" definition, be included that allows for economic development on a "project-specific basis" for projects off Reservation.

Response

The commenter expresses that the Law should apply to projects off and not near the Reservation.

The Law provides that Indian preference shall be applied to all contracts, subcontracts, and compliance agreements to which the Nation is a party, or the agreements are entered into on behalf of the Nation, whereby goods and services are provided on or near the Reservation. [5 O.C. 502.1-1, 502.6-1(a)(1)]. The Law defines "Reservation" as all the lands within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law. [5 O.C. 502.3-1(bb)].

The definition of Reservation in this Law is consistent with the Constitution and Bylaws of the Oneida Nation which provides that the jurisdiction of the Nation extends to the territory within the present confines of the Oneida Reservation and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law. [Constitution and Bylaws of the Oneida Nation, Article I]. Simply speaking, jurisdiction is the power of a government to affect persons, property, and circumstances within its territory.

The application of this Law is specific to projects which occur on or near the Reservation because this is the territory where the Nation has jurisdiction, and the Nation only has the authority to affect persons, property, and circumstances within its territory.

Since the applicability of this Law is consistent with the territorial jurisdiction of the Nation, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 4 – Definition of Joint Venture:

502.3. Definitions

502.3-1. 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.

(v) “Joint venture” means a one-time grouping of two (2) or more entities in a business undertaking.

502.5. Certification of Entities

502.5-8. Joint Ventures. All joint ventures seeking certification as an Indian-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

(a) Certification for a joint venture shall be issued on a project specific basis.

Eric McLester (written): The language referring to Joint Ventures speaks to these ventures being one-time or short-term partnerships but there are times when long term ventures make good business sense. I would recommend language be added that long term joint ventures can be considered on a project. specific basis if it makes good business sense to do so. The Tribe should be open to every sound business opportunity and not limit or restrict new ventures.

Response

The commenter discusses the language referring to joint ventures and states that long term joint ventures should also be considered in addition to one-time or short-term joint ventures.

The Law provides that joint ventures seeking certification as an Indian-owned business are required to submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification. [5 O.C. 502.5-8]. Joint ventures are a one (1) time grouping of two (2) or more entities in a business undertaking. [5 O.C. 502.3-1(v)]. Joint ventures typically occur when two (2) or more parties agree to pool their resources for the purpose of accomplishing a specific task or project. The Law then clarifies that certification for a joint venture shall be issued on a project specific basis. [5 O.C. 502.5-8(a)]. The Law does not specify any requirements as to whether joint ventures are short term business groupings or long-term business groupings, instead it is all dependent on the term of the project for which the two (2) entities are applying for certification on.

It was the intent of the Legislative Operating Committee that revising the Law to allow for joint ventures of Indian-owned business would provide more opportunities for Indian-owned businesses. Therefore, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 5 through 6 – Support for Definition of Tribal Corporation:

502.3. Definitions

502.3-1. 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.

(ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

Jeffrey S. House (written): Thank you for including the language, “wholly owned,” to the definition of Tribal Corporation in Section 502.3-1(ee). Entities such as Oneida ESC Group are now defined in the Law other than as an entity with all other non-Oneida and non-Indian businesses and companies.

Jeffrey S. House (oral): Thank you for including the language, “wholly owned,” to the definition of Tribal Corporation in Section 502.3-1(ee). Entities such as Oneida ESC Group are now defined in the Law other than as an entity with all other non-Oneida and non-Indian businesses and companies.

Response

The commenter expresses gratitude to the Legislative Operating Committee for expanding the definition of Tribal Corporations to include corporations that are wholly owned by the Nation in addition to those corporations that are chartered by the Nation, as this clarifies that the Oneida ESC Group is a Tribal Corporation under the Law.

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

LOC Consideration

Comment 7 – Concern with Definition of Tribal Corporation:

502.3. Definitions

502.3-1. 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.

(ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

Eric McLester (written): Regarding the Definition of Tribal Corporation, the requirement that "a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation" is again limiting to a Corporations success. Why would you limit any Tribal investment, joint venture, partnership, etc, to only those wholly owned by the Tribe? I would recommend the Tribe support any business venture the Tribe has a stake in to be given preference.

Response

The commenter provides that the definition of “Tribal corporation” under the Law is limiting the success of a Tribal corporation by requiring that a Tribal corporation be wholly owned by the Nation.

The Law defines a “Tribal corporation” as a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation. [5 O.C. 502.3-1(ee)]. To be considered a Tribal corporation, the corporation can be chartered by the Nation, wholly owned by the Nation, or both. So even if a corporation is not wholly owned by the Nation, but it was chartered by the Nation, that would still make it a Tribal corporation.

It is important to remember though that in terms of the application of this Law, a Tribal corporation does not automatically receive Indian preference because it was chartered or is wholly owned by the Nation. Instead, just like any other business or corporation, the Tribal corporation must still meet the criteria to be certified as an Indian-owned business. The Law provides that in order to seek certification as an Indian-owned business, the following criteria shall be met by the applicant entity:

- There is Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity.
 - Indian financial ownership is established where the Nation, members of the Nation and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of distributed net profits, and would receive fifty-one percent (51%) or more of the entity’s assets upon dissolution.
 - Indian control is established where the Nation, member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent (51%) of voting rights or other controlling decisional authority.
 - Indian Management is established where an Indian owner(s) is directly involved in the entity’s management, this can be shown where at least one (1) Indian owner is directly involved in the daily operations of the entity on a full-time basis and in a senior-level position; or at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.
- The entity can demonstrate financial responsibility, including but not limited to, evidence of an adequate line of credit, contributions of sufficient working capital, applicable

required bonding and insurance, materials and/or equipment necessary to perform applicable work.

- The entity can provide past and current licensing or certifications, including any penalties, or other punitive actions or debarments taken by any licensing body within the past ten (10) years.

[5 O.C. 502.5-1(a)-(c)].

Therefore, as long as a Tribal corporation can meet the criteria for certification as an Indian-owned business provided for in section 502.5-1 of the Law, the Tribal corporation would be eligible for Indian preference. There is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 8 through 9 – Certification Renewal:

502.5. Certification of Entities

502.5-5. Notification Requirements. A certified entity shall report the following to the Indian Preference Office within ten (10) business days of such an occurrence:

- (a) changes in the ownership or control status of the entity;
- (b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or
- (c) any other changes that could:
 - (1) affect an entity's eligibility for certification;
 - (2) affect the financial liability of any entity, contracting party or the Nation; and/or
 - (3) alter the status of the qualifications of the entity.

502.5-6. Certification Renewal. Certification is granted on an annual basis and shall lapse after one (1) year unless renewed.

- (a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.
- (b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however, the responsibility for renewal is upon the entity.

Jeffrey S. House (written): In Section 502.5-7 regarding Certification Renewal. I would recommend Tribal Corporations be exempt for annual renewals. The previous paragraph, Section 502.5-5(a) requires that Certified entities shall report change of ownership within 10 days and therefore would require re-certification at that point. We see no benefit for Tribal Corporations to have to repeatedly re-certify when they are 100% owned by the Oneida Nation and for the Indian Preference Office to spend time, energy, and money for a renewal process that is guaranteed.

Jeffrey S. House (oral): In Section 502.5-7 regarding Certification Renewal. I would recommend Tribal Corporations be exempt for annual renewals. The previous paragraph, Section 502.5-5(a) requires that Certified entities shall report change of ownership within ten (10) days and therefore would require re-certification at that point. We see no benefit for Tribal Corporations to have to repeatedly re-certify when they are one hundred percent (100%) owned by the Oneida Nation and for the Indian Preference Office to spend time, energy, and money for a renewal process that is guaranteed.

Response

The commenter requests that Tribal Corporations be exempt from the requirement to renew its Indian-owned business certification on an annual basis, due to the fact that the Law already requires a certified entity to notify the Indian Preference Office of any changes in the ownership or control status of the entity.

The certification that an entity is an Indian owned business, and therefore is eligible for Indian preference under the Law, is granted on an annual basis. [5 O.C. 502.5-6]. In order to prevent a lapse in certification, a certified entity must renew its certification by providing the Indian Preference Office a renewal application and annual reporting form. [5 O.C. 502.5-6(a)]. In addition to the certification renewal requirements required by the Law, a certified entity is required to notify the Indian Preference Office within ten (10) business days of any of the following occurrences:

- changes in the ownership or control status of the entity;
- suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or
- any other changes that could:
 - affect an entity's eligibility for certification;
 - affect the financial liability of any entity, contracting party or the Nation; and/or
 - alter the status of the qualifications of the entity.

[5 O.C. 502.5-5(a)-(c)].

Whether to require a Tribal Corporation, or any certified entity, to renew its Indian-owned business certification on an annual basis, or simply be required to follow the notification requirements found in section 502.5-5 of the Law, is a policy consideration for the Legislative Operating Committee. Requiring annual renewals of certification ensures that the Indian Preference Office maintains up to date information on the certified entity to ensure that the certified entity continues to meet the criteria to be certified as an Indian-owned business. Eliminating the requirement to renew certification on an annual basis, and instead relying on the notification requirements of section 505.5-5 may eliminate some time and effort spent by the Indian Preference Office in processing renewal applications and promote greater efficiency.

The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted. Certification as an Indian-owned business shall be renewed on an annual basis by all certified entities, and all certified entities are required to follow the notification requirements provided in section 502.5-5 of the Law.

2. The Law should be revised so that Tribal Corporations are exempt from the requirement to renew certification on an annual basis, due to the fact that the requirements to follow the notification requirements of section 502.5-5 should be sufficient to ensure that the Indian Preference Office is notified of all relevant events that may occur. If the Legislative Operating Committee makes this determination then the following revision is recommended:

502.5-6. *Certification Renewal.* Certification is granted on an annual basis and shall lapse after one (1) year unless renewed.

(a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.

(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however, the responsibility for renewal is upon the entity.

(c) Exemption for Tribal Corporations. Tribal corporations shall be exempt from the requirement to renew certification on an annual basis. Certification for a Tribal corporation is granted until such a time that the Indian Preference Office is made aware that there have been changes that may affect the certification status of a Tribal corporation in accordance with the notification requirements of section 502.5-5.

(1) When a Tribal corporation complies with the notification requirements of section 502.5-5 the Tribal corporation shall also apply for renewal of its certification.;

(A) The Indian Preference Office shall provide the Tribal corporation with a renewal application and annual reporting form.

(B) The Tribal corporation shall return the renewal application and annual reporting form to the Indian Preference Office within (X) days.

3. The Law should be revised to eliminate the requirement to renew certification on an annual basis, and instead certification as an Indian-owned business should remain current until the Indian Preference Office is noticed that the status of the certified entity has changed in accordance with the notification requirements of section 502.5-5 of the Law. If the Legislative Operating Committee makes this determination then the following revision is recommended:

502.5-6. *Certification Renewal.* Certification is granted ~~on an annual basis and shall lapse after one (1) year unless renewed.~~ until such a time that the Indian Preference Office is made aware that there have been changes that may affect the certification status of a certified entity in accordance with the notification requirements of section 502.5-5.

(a) When an entity complies with the notification requirements of section 502.5-5 the entity shall also ~~To~~ apply for a renewal of its certification.;

(1) The Indian Preference Office shall provide the ~~each~~ certified entity shall complete and return with a renewal application and

annual reporting form, ~~so that the Indian Preference Office may update its records.~~

(2) The certified entity shall return the renewal application and annual reporting form to the Indian Preference Office within (X) days.

~~(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however, the responsibility for renewal is upon the entity.~~

LOC Consideration

Comments 10 through 11 – Joint Ventures:

502.5. Certification of Entities

502.5-8. Joint Ventures. All joint ventures seeking certification as an Indian-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

(a) Certification for a joint venture shall be issued on a project specific basis.

Jeffrey S. House (written): We agree and applaud the Committee for Section 502.5-8 in regards in Joint Ventures. We believe allowing joint ventures to be certified as Indian Owned, assuming each JV meets the certification criteria, is a good opportunity for tribally owned businesses, enterprises, and tribal corporations to increase competitive strength on a case-by-case basis.

Jeffrey S. House (oral): We agree and applaud the Committee for Section 502.5-8 in regards in Joint Ventures. We believe allowing joint ventures to be certified as Indian Owned, assuming each JV meets the certification criteria, is a good opportunity for tribally owned businesses, enterprises, and tribal corporations to increase competitive strength on a case-by-case basis.

Response

The commenter commends the Legislative Operating Committee for revising the Law to allow joint ventures of Indian-owned businesses. The Legislative Operating Committee was hopeful that this revision to the Law would provide more opportunities for Indian-owned businesses.

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

LOC Consideration

Comments 12 through 14 – Exclusive Utilization of Corporations:

502.3. Definitions

502.3-1. 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.

(n) “Enterprise” means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.

(u) “Internal service” means any service provided for free or at cost for the Nation and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.

502.6. Application of Indian Preference to Contracts

502.6-2. *Non-Applicability of the Law.*

(b) *Internal Services and Enterprises.* The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The Nation shall exclusively utilize internal services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business.

(2) If an internal service or enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or enterprise.

Jeffrey S. House (written): Section 502.6-2(b)(1) states the Nation shall exclusively utilize services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business. We feel this should include Tribal Corporations. At the very least, include the phrase “may include Tribal Corporations.” If the purpose of the Oneida Indian Preference in Contracting is maximum utilization of Indian businesses, why wouldn’t the Nation include language for Tribal corporations? The Nation receives the distribution of profits, the Nation earns the economic benefit of a growing company, and more of the economic impact of the Oneida Nation remains within the Oneida Nation.

The Indian Preference in Contracting Law initially included Tribal Preference for corporations but it was removed with the amendments to the law adopted by OBC Resolution 3-26-13-A.

Jeffrey S. House (oral): Section 502.6-2(b)(1) states the Nation shall exclusively utilize services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business. We feel this should include Tribal Corporations. At the very least, include the phrase “may include Tribal Corporations.” If the

purpose of the Oneida Indian Preference in Contracting is maximum utilization of Indian businesses, why wouldn't the Nation include language for Tribal corporations? The Nation receives the distribution of profits, the Nation earns the economic benefit of a growing company, and more of the economic impact of the Oneida Nation remains within the Oneida Nation. The Indian Preference in Contracting Law initially included Tribal Preference for corporations but it was removed with the amendments to the law adopted by OBC Resolution 03-26-13-A.

Eric McLester (written): Where ever possible and when allowable by contracting rules and laws, Tribal Corporations should be given sole source preference so that the businesses are supported, and revenue and resources are invested back into Tribal investments, regardless if they are 1% owned or wholly owned businesses. It makes good sense to re-invest and support any business the Tribe has a vested interest in seeing succeed.

Response

The commenters state that the Law should require the Nation to exclusively utilize Tribal corporations if the Tribal corporation could or does provide the necessary goods and services in the ordinary course of business. The first commenter alludes that if the purpose of the Law is to maximize the utilization of Indian businesses, then why would the Nation not exclusively utilize corporations as it is the Nation that earns an economic benefit from the corporation. The first commenter also provides that the Law initially included Tribal preference for corporations but it was moved with amendments to the Law adopted in 2013.

Indian preference is required to be applied to all contracts, subcontracts, or compliance agreements over three thousand dollars (\$3,000), except where prohibited or limited by law or grant funding requirements, where the Nation is a party, or the contract is entered into on behalf of, or for the benefit of the Nation, whereby goods and services are provided on or near the Reservation. [5 O.C. 502.6-1].

The Law then goes on to state that Indian preference is not applied in situations where an internal service or enterprise of the Nation could or does provide the necessary goods and services in the ordinary course of business. [5 O.C. 502.6-2(b)]. In the case where an internal service or enterprise of the Nation could or does provide the necessary goods and services in the ordinary course of business, the Nation shall exclusively utilize the internal service or enterprise. [5 O.C. 502.6-2(b)(1)]. But if an internal service or enterprise is unable to fulfill some or all of the requirements of a contract, then Indian preference under this Law shall apply to any outsourcing conducted by the internal service or enterprise. [5 O.C. 502.6-2(b)(2)]. An internal service is any service provided for free or at cost for the Nation and includes but is not limited to such services as advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support. [5 O.C. 502.3-1(u)]. An enterprise is any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing. [5 O.C. 502.3-1(n)].

When discussing the application of Indian preference, it is important to remember that it is ultimately the Nation that is a party to the contract and responsible for expending the funds for the

contract. So even if the Nation receives a portion of the distribution of the profits from a Tribal corporation's business, the Nation still has to expend the funds to pay the initial contract. The exclusive utilization of internal services and enterprises when the internal service or enterprise could or does provide the necessary goods and services can be attributed to the fact that the internal service is providing the good or service for free or at cost for the Nation, and the Nation has direct control over the internal service or enterprise as they are both internal operations of the Nation. Internal services and enterprise can be distinguished from Tribal corporations based on the fact that Tribal corporations are not providing a good or service to the Nation for free or at no cost, and the Nation does not have direct control over the actions of the Tribal corporations.

It is also important to remember that the purpose of the Law is to provide for the maximum utilization of Indian workers and businesses on projects of the Nation. [5 O.C. 502.1-1]. It is the maximum utilization of Indian workers and businesses, not the exclusive utilization of Indian workers and businesses, that this Law aims to provide. The requirement for the exclusive utilization of Tribal corporations could potentially block the utilization of any other privately owned Indian business from contracting with the Nation where a Tribal corporation could provide the good or service. This could also serve as a deterrent for members of the Nation and other Indians that might otherwise consider starting or expanding a business in the same areas as a Tribal corporation. The goal of the Law is not to simply drive business to corporations of the Nation. The use of Indian workers and businesses is maximized in this Law through the application of an Indian preference percentage discount that is applied to contract bids that provides the Indian-owned business an advantage while still promoting competitive bidding. [5 O.C. 502.6-9, 502.6-10].

Additionally, although the comment is incorrect in the statement that the Law initially included preference for corporations but it was removed with the amendments to the law adopted by the Oneida Business Committee through resolution BC-03-27-13-B, it is important to note that sole source contracting for Oneida and Indian-owned businesses was a policy that was pursued by the Nation nearly ten (10) years ago and was ultimately unsuccessful.

The Oneida Business Committee adopted resolution BC-11-24-10-C titled, "*Sole Source Contracting for Oneida and Indian-owned Businesses*" for the purpose of requiring that except where prohibited by law or grant funding requirements, all Tribal departments, programs, and entities shall exclusively utilize Oneida businesses first, and then certified Indian-owned businesses, unless none were available and qualified to fulfill a contract. An Oneida business was defined as a business which is certified by the Indian Preference Department as eligible for receiving Indian preference, where such business is majority-owned by the Nation or by one or more members of the Nation. This resolution required that where exactly one (1) Oneida business is available and qualified to meet contract requirements then the contract shall be sole sourced to that business. The resolution also addressed when there were two (2) or more Oneida businesses, as well as situations involving Indian-owned businesses when there were no Oneida businesses available, and provided reporting requirements for the Oneida Purchasing Department, requirements for the negotiation of contracts, and disciplinary procedures for those employees who did not follow the policy.

Less than two (2) years later, the Oneida Business Committee took action to rescind resolution BC-11-24-10-C through the adoption of resolution BC-05-23-12-B titled, "*Rescinding Resolution*

BC-11-24-10-C Regarding Sole Source Contracting for Oneida and Indian-owned Businesses.”

This resolution highlighted that although resolution BC-11-24-10-C was adopted for the purposes of strengthening and supporting the Indian Preference law, reconsideration of the sole source requirement was needed for the best interests of the Nation. This resolution provided that although the sole source requirement brought needed attention to the bidding process and created a needed awareness of businesses owned and operated by members of the Nation, it also brought much needed attention to bid results and the ability to obtain market priced bids. Resolution BC-05-23-12-B concluded with the statement that any positive outcomes of the sole source requirement were undermined by long term negative effects of being able to obtain competitive market bidding and the bidding process such that rescinding resolution BC-11-24-10-C was a necessary action.

Since the purpose of this Law is the maximum utilization, not the exclusive utilization, of Indian workers and businesses, and the Law purposefully intends not to provide exclusive utilization, or sole sourcing, to Oneida or Indian owned businesses based on its prior negative effects on the Nation, and in an effort to encourage competitive bidding, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 15 through 16 – Indian Preference References in Federal Law:

Jeffrey S. House (oral): Interestingly, the Office of Native American Programs issued guidance for the Native American Housing Assistance and Self-Determination Reauthorization Act, or NAHASDA, of 2008 with regards to regulatory changes relating to Indian Preference and tribal preference.

A notice issue on July 11, 2013, just three months after the OBC resolution, outlined Indian Preference and tribal preference. The guidance, which is now Title 25 of the United States Code, Chapter 14 Subchapter II Sec. 450e (2) - Wage and Labor Standards, states that preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title. Indian-owned economic enterprise, as defined by section 1452, means any Indian owned as defined by the Secretary of the Interior commercial, industrial, or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than fifty-one (51) per centum of the enterprise.

The guidance on Tribal Preference further states that when an Indian Tribe has adopted a tribal preference law, regulation, or ordinance governing preference in employment and contracting, that Tribal Preference law will govern any preferences in employment and contracting under the Indian Housing Block Grant program. 25 USC 4111 (k) states: “notwithstanding any other provision of law, with respect to any grant or portion of a grant made on behalf of an Indian tribe under this

chapter that is intended to benefit a Indian tribe, the tribal employment and contract preference laws, including regulations and tribal ordinance, adopted by the Indian tribe shall receive the benefit \apply with respect to the administration of the grant or portion of a grant.”

That’s it, good thing I submitted them.

Jeffrey S. House (written): Interestingly, the Office of Native American Programs (ONAP) issued guidance for the Native American Housing Assistance and Self-Determination Reauthorization Act (NAHASDA) of 2008 with regards to regulatory changes relating to Indian Preference and tribal preference. A notice issue on July 11, 2013, just three months after the OBC resolution, outlined Indian Preference and tribal preference. The guidance, which is now Title 25 of the United States Code, Chapter 14 Subchapter II Sec. 450e (2) - Wage and Labor Standards, states that “preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.” Indian-owned economic enterprise, as defined by section 1452, means any Indian owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise. The guidance on Tribal Preference further states that when an Indian Tribe has adopted a tribal preference law, regulation, or ordinance governing preference in employment and contracting, that Tribal Preference law will govern any preferences in employment and contracting under the Indian Housing Block Grant program. 25 USC 4111 (k) states: “notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this chapter that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).”

Another example is 25 CFR Part 170.910 under the Tribal Transportation Program (TTP), which states: “Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP.” Included in this testimony is attachment A, a letter from the Department of Interior, Bureau of Indian Affairs, Branch of Road Tony Saccoman to Chairman Tehassi Hill stating “It is allowable under the Tribal Transportation Program (TTP) laws and regulations (FAST Act and 25 CFR Part 170), for Tribes to complete engineering and construction work with qualified in-house Tribal employees and/or Tribal-owned companies without implementing the formal solicitation/bid process for those services or activities.”

This is allowed in many US Federal Acquisition Regulations (FAR), Code of Federal Regulations (CFR), and related federal laws. For example, in 13 CFR part 124 – 8a, the US Small Business Administration allows contracting officers to sole-source work to small disadvantaged businesses, woman-owned businesses, veteran and service disabled veteran-owned businesses up to \$9.9 million without justification and up to \$22 million with justification.

There is additional language in Public Law 93-638 using the same language and these are just a few examples. The point is the USC, FARs, and other federally mandated procurement regulations

provide for preference for tribal economic enterprises and tribally owned corporations and so too should the Oneida Nation.

Response

The commenter provides information on various references to Indian preference and tribal preference within the federal laws and regulations. The commenter states that the federal regulations provide for preference for tribal economic enterprises and tribally owned corporations and so too should the Oneida Nation.

The Nation does indeed provide a preference to Indian-owned businesses, including Tribal corporations, through the Indian Preference in Contracting law. The Constitution and Bylaws of the Oneida Nation provides for the Oneida Nation's sovereignty, and ability to promulgate and enforce its own laws and ordinances. *[Article IV, Section 1(f)]*. The Legislative Procedures Act, adopted by the General Tribal Council in 2013, further provides a process for the development and adoption of laws of the Nation. *[1 O.C. 109.1-1]*.

Through this Law certified Indian-owned businesses are given preference through the use of an Indian preference percentage discount on contract bids. *[5 O.C. 502.6-9, 502.6-10]*. When more than one (1) bid is received on a contract, the specific Indian preference discount is applied based on whether the contract is a construction contract or non-construction contract, and the specific dollar amount of the contract. *[5 O.C. 502.6-9, 502.6-10]*. After the appropriate Indian preference discount has been subtracted from bids from certified Indian-owned businesses, if a bid from a certified entity is less than the total of the apparent low bid after Indian preference is applied, then the contract shall be awarded to the certified entity. *[5 O.C. 502.6-11(a)]*.

Since the Nation does in fact provide preference to Indian-owned businesses, including Tribal corporations, through the use of this Law, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 17 – Applying Indian Preference to Contract Bids:

502.6. Application of Indian Preference to Contracts

502.6-9. *Applying Indian Preference to Non-Construction Contracts.* Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

502.6-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

- (a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;
- (b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;
- (c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment of a bid;
- (d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment of a bid;
- (e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of a bid;
- (f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of a bid;
- (g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment of a bid;
- (h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid; and

Jeffrey S. House (written): Although not contained in the law, we are aware that the Indian Preference Office uses a scoring formula when evaluating qualified bidders. Tribal Corporations should receive maximum allowable points for all construction and non-construction contracts. Also, the law should define the qualifiers used in the scoring system.

Response

The commenter provides that he is aware that although not contained in the Law, the Indian Preference Office uses a scoring formula when evaluating qualified bidders. The commenter then states that the Law should define the qualifiers used in the scoring system, and that Tribal corporations should receive the maximum allowable points for all construction and non-construction contracts.

The Law sets forth various criteria for the certification of an Indian-owned business. [5 O.C. 502.5-1(a)-(c)]. Once an entity has been certified as an Indian-owned business, the entity is eligible for an Indian preference percentage discount to be applied to its bids on both construction and non-construction contracts. [5 O.C. 502.6-9, 502.6-10]. The amount of the Indian preference percentage discount to be applied is set forth by the Law, and is dependent on whether the contract is a construction or non-construction contract, and the specific dollar amount of the bid. [5 O.C. 502.6-9, 502.6-10]. Under the Law, as long as an entity is certified as an Indian-owned business, then the entity should be receiving the Indian preference percentage discount that is provided by the Law for the specific contract type and dollar amount. The Law does not qualify the amount of Indian preference percentage discount that is applied to a certified entity's bid to be based on any additional scoring.

It is important to note that Indian preference is just one aspect of a greater overall scoring system for evaluating contract bids.

Therefore, the Legislative Operating Committee should consider communicating with the Indian Preference Office to ensure that the Law is being applied correctly in terms of how an Indian preference percentage discount is currently being applied to contract bids of certified entities. But since the Law is already clear on how preference is applied to contract bids, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 18 – Compliance Agreements:

502.7. Compliance Agreements

502.7-1. *Compliance Agreements.* Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. *Contents of a Compliance Agreement.* A compliance agreement shall include, but is not limited to, the following information:

- (a) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar; and
- (b) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing wage scales of the Nation and/or federal or state governments.

502.8. Skills Bank and Qualified Trades Workers

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

Jeffrey S. House (written): We fully support the purpose of the law “of maximum utilization of Indian workers.” The Compliance Agreement in Section 502.7-2, (a) states that the agreement shall include “Negotiate Numerical hiring goals and time tables that specify the minimum number of Indians that must be utilized per contract dollar.” The Indian Preference Law should recognize that business and contractors may have nontrade qualifications, such as possession of a valid non-probationary driver’s license, passing a background check, and passing a drug screen. The Oneida Nation includes such language for its employees.

Response

The commenter mentions that a compliance agreement is required to include numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar, but wants to Law to recognize that businesses and contractors may have additional non-trade qualifications.

Once a bid is accepted, but before work commences on a project, the Law requires that each contractor meet with the Indian Preference Office to negotiate and execute a compliance agreement. [5 O.C. 502.7-1]. The compliance agreement is required to include the numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar, as well as what the compensation of qualified trades workers would be. [5 O.C. 502.7-2]. This is required because it is a goal of the Nation to achieve one hundred percent (100%) participation of qualified trades workers on projects. [5 O.C. 502.8-1].

The Indian Preference Office is tasked with the responsibility of establishing and administering a Skills Bank representing the official compilation of qualified trades workers eligible for Indian preference which serves as the exclusive referral source under this list. [5 O.C. 502.8-1, 502.8-2]. The Skills Bank lists the names and qualifications of the qualified trades workers. [5 O.C. 502.8-2]. When a certified entity is required to fill positions in accordance with this Law, like when required to in order to comply with numerical hiring goals of a compliance agreement, the certified entity shall hire qualified trades workers from the Skills Bank. [5 O.C. 502.8-3].

The Law then goes on to provide that placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference. [5 O.C. 502.8-5]. But a qualified trades worker shall only be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade. [5 O.C. 502.8-5]. This provision takes in account that businesses and contractors have additional minimum non-trade qualifications that would need to be met by a qualified trades worker.

Since the Law already provides that a qualified trades worker is only qualified for Indian preference for employment if her or she meetings the minimum qualifications for a particular skill or trade, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 19 – Qualifications of Qualified Trades Workers :

502.8. Skills Bank and Qualified Trades Workers

502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

- (a) proof of enrollment or proof that the individual is a first-generation descendant of the Nation;
- (b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;
- (c) proof of a driver's license, including any endorsements, if applicable;
- (d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:
 - (1) past and current licensing;
 - (2) credentials and certifications; and
 - (3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

Jeffrey S. House (written): We note that Section 8-4 (c) includes the proof of a driver's license but it should also state that the applicant should possess a valid non-probationary driver's license. Section 502.8-4 should also provide that the contractor may have additional non-trade related qualification such as passing a background check and drug screen.

Response

The commenter states that the requirement of section 502.8-4(c) that an applicant submit proof of a driver's license, including any endorsements, if applicable, should instead require a non-probationary driver's license. The commenter also states that this section of the Law should provide that the contractor may have additional non-trade related qualifications.

Section 502.8-4 of the Law provides what documentation an applicant is required to provide in addition to an application in order to be added to the Nation's Skills Bank. Documentation that is required to be provided by an applicant includes:

- proof of enrollment or proof that the individual is a first-generation descendant of the Nation;
 - education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;
 - proof of a driver's license, including any endorsements, if applicable;
 - if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:
 - past and current licensing;
 - credentials and certifications; and
 - information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.
- [5 O.C. 502.8-4(a)-(d)].

Since section 502.8-4 reflect the Nation's requirements for the documentation an applicant for the Skills Bank is required to submit, and does not reflect the specific qualifications to be hired by a business or contractor as a qualified trades worker, it would be unnecessary to include a statement that the contractor may have additional non-trade related qualifications in this provision of the Law.

The Law does clarify that placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference, but a qualified trades worker shall only be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade. [5 O.C. 502.8-5]. This provision takes in account that businesses and contractors have additional minimum non-trade qualifications that would need to be met by a qualified trades worker.

Additionally, the commenter provides no explanation as to why a valid non-probationary driver's license should be specified in section 502.8-4(c) of the Law instead of its current language of a driver's license, which already implies the necessity of its validity.

Since the purpose of this provision of the Law is to provide the documentation that is required to be submitted by an applicant for the Skills Bank, and the Law later clarifies that placement in the Skills Bank means the qualified trades worker is eligible to receive Indian preference but is not eligible for employment unless he or she meets the minimum qualifications for the skill or trade, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 20 – Oneida ESC Group's Willingness to Follow Law:

Jeffrey S. House (written): Oneida ESC Group is proud to follow the Indian Preference in Contracting Law. We work diligently in hiring qualified Indian talent, and working with Native American owned companies, particularly Oneida-owned businesses. We have a strong record of complying with Indian Preference in Contracting Law and working with the Indian Preference Office and we look forward to hiring more qualified trade workers who are Oneida.

Response

The commenter states that the Oneida ESC Group will comply with the Law. There is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 21 through 22 – Additional Preference for Tribal Corporations:

Jeffrey S. House (written): Without adoption of some of these recommend changes, the law provides little effective preference for Tribal Corporations when the Nation is within its rights and obligations. Other than Indian Preference to Construction Contracts discount found in Section 502.6-10, there are no other preferences given to Tribal Corporations.

Tribal Corporations are valuable assets to the long-term economic strength of the Nation. Prudent, effective preferences that will increase the proper use of these assets will strengthen the Nation's economic stability and will empower Tribal Corporations to grow and increase the economic benefits for the Nation—a core objective of the Section 502.1-1.

Because the Nation invests in these business and corporations, the Nation should utilize them to their fullest capacity to maximize the economic benefits and return on the Nation's investments. Thank you.

Eric McLester (written): The law should support and drive business back to the corporations the Tribe has created to allow for those businesses to be as successful as possible.

Thank you for the opportunity to provide feedback on the amendments to the Indian Preference Law.

Response

Both commenters express the belief that Tribal corporations should be given more preference under the Law, and that business should be driven to the Tribal corporations so that they may be successful.

The purpose of the Law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. [5 O.C. 502.1-1]. The policy of the Nation is to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials. [5 O.C. 502.1-1].

It is not the intent or purpose of this Law to treat Tribal corporations differently than other Indian-owned businesses or workers. The goal of this Law is the maximum, not exclusive, utilization of Indian businesses and workers. It is the policy that Indian preference provisions are applied fairly in all situations.

The commenter states that “*the law provides little effective preference for Tribal Corporations*” and that “*Other than Indian Preference to Construction Contracts discount found in Section 502.6-10, there are no other preferences given to Tribal Corporations.*” This comment fails to acknowledge that Tribal corporations are being provided the full extent of preferences that are provided by this Law, the same preferences that are provided to any certified Indian-owned business. The sole preference that is provided to certified Indian-owned business under this Law is in fact the Indian preference percentage discounts on contracts. [5 O.C. 502.6-9, 502.6-10].

The response to Comments twelve (12) through fourteen (14) in this memorandum provides a more in-depth response to the request to exclusively utilize Tribal corporations. The request to increase business and profits of Tribal corporations through providing additional preferences not available to other Indian owned businesses or through the exclusive use of Tribal corporations is not consistent with the intent of this Law. The Indian preference percentage discounts on contracts that is provided by this Law allocates a preference to Indian-owned businesses while still encouraging competitive bids and good work ethic amongst the companies, which ensures that the Nation is getting the best price and service for the project. Therefore, there is no revision to the Law recommended based on this comment.

LOC Consideration

Title 5. Business - Chapter 502
~~INDIAN PREFERENCE IN CONTRACTING~~
Yukwat^nhas Ukwehu=w# Kayanl^hsla
Laws concerning the hiring of the Oneida People

~~502.1. Purpose and Policy~~
~~502.2. Adoption, Amendment, Conflicts~~
~~502.3. Definitions~~
~~502.4. Jurisdiction~~
~~502.5. Indian Preference Office~~
~~502.6. Certification of Entities~~
~~502.7. Application of Indian Preference~~
~~502.8. Skills Bank and Qualified Trades Workers~~
~~502.9. Compliance Agreements~~
~~502.10. Office Investigations and Enforcement~~

INDIAN PREFERENCE IN CONTRACTING

~~502.1. Purpose and Policy~~
~~502.2. Adoption, Amendment, Conflicts~~
~~502.3. Definitions~~
~~502.4. Jurisdiction~~
~~502.5. Certification of Entities~~

~~502.6. Application of Indian Preference to Contracts~~
~~502.7. Compliance Agreements~~
~~502.8. Skills Bank and Qualified Trades Workers~~
~~502.9. Investigations and Enforcement~~

502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the ~~Tribes~~Nation and ~~Tribal~~ members of the Nation by providing for the maximum utilization of Indian workers and businesses on ~~Tribal~~ projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the ~~Tribes~~:

- (a) ~~To~~Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and
- (b) ~~To~~to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the ~~Tribes~~Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and ~~shall be effective immediately.~~amended by resolution BC- - - - .

502.2-2. This law may be amended ~~pursuant to the procedures set out in Tribal law~~or repealed by the Oneida Business Committee ~~and/or the Oneida~~ General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. ~~However, this law specifically supersedes the following:~~

- (a) ~~BC 04 03 96 A Indian Preference Policy Rider I~~
- (b) ~~BC 05 22 96 A Technical Amendments to Rider I Policy~~
- (c) ~~BC 06 10 98 D Amendment to Resolution 5 22 96 A~~
- (d) ~~BC 07 29 98 B Indian Preference Law~~

~~(e) BC 03-27-02-A Sections 9-14 of the Indian Preference Law~~

~~(f) BC 03-26-03-A Amendment to Indian Preference Law Addendum~~

502.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin.~~

~~502.2-6. Adoption and enforcement of this law does not waive the sovereign immunity of the Oneida Tribe of Indians of Wisconsin~~Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a)~~ (a) “Agent” means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

~~(b)~~ (b) “Bid” means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

~~(c)~~ (c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

~~(d)~~ (d) “Broker” means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

(e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

~~(f)~~ (f) “Certification” means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.

~~(g)~~ (g) “Certified entity. See Entity, Certified entity

~~(h)~~ (h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor, identifying specific Indian preference-related requirements for a Tribal project.

~~(i)~~ (i) “Construction contract” means any contract issued to build, repair or remodel structures, and includes subcontracts and other construction agreements.

~~(j)~~ (j) “Contractor” means one who enters into a contract.

~~(k)~~ (k) “Core work crew” means the minimum amount of the contractor’s key employees that are essential to start up and continue work on a Tribal project.

~~(l)~~ (l) “Days” means calendar days, except as otherwise provided.

~~(m)~~ (m) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.

~~(n)~~ (n) “Employer” means any entity, except the Oneida Tribe of Indians of Wisconsin, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.

~~(o)~~ (o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental enterprise, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Tribe.

~~(p)~~ (p) (g) “Certified entity” means an entity that has received certification as an Indian-owned business from the Indian Preference Office.

~~“(h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.~~

~~(i) “Construction contract” means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.~~

~~(j) “Contractor” means one who enters into a contract.~~

~~(k) “Core work crew” means the minimum amount of the contractor’s key employees, who perform a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unfamiliar with and/or untrained in the employer’s procedures and routines, that are essential to start up and continue work on a project.~~

~~(l) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.~~

~~(m) “Employer” means any entity—means, except the Nation, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.~~

~~(n) “Enterprise” means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.~~

~~(o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental body, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all Tribal employment and contract activities within the jurisdiction of the Nation.~~

~~(2) (p) “Entities of the Nation” means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations, such as Oneida Seven Generations Corporation or Oneida Tribal Integrated Enterprises.~~

~~(q) “Front” means a business entity that is strategically structured, financed, operated or staffed such as to unfairly take advantage of Indian preference as granted under this law.~~

~~(r) “Indian” means an enrolled member of any federally-recognized Indian tribe.~~

~~(s) “Indian-owned business” means an entity which is majority owned and managed by an Indian.~~

~~(t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.~~

~~(u) “Internal service” means any service provided for free or at cost for the TribeNation and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.~~

~~(v) “Joint venture” means an entity that is fifty percent (50%) owned and managed by an Indian.~~

~~(u) “Key employee” means a one who performs a critical function such that an employer would risk likely financial damage-time grouping of two (2) or loss if that task were assigned to a person unfamiliar with and/or untrained more entities in the employer’s procedures and routinesa business undertaking.~~

~~(w) “Lowest responsible bidder” means a bidder who, after any Indian preference discounts are applied, submits the lowest bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.~~

~~(x) “Office(x) “Nation” means the Indian Preference Office or its designee.~~

~~(x) “Oneida” means the Oneida Tribe of Indians of Wisconsin Nation.~~

125 ~~“Outsource(y) “Non-construction contract” means to obtain goods or any contract other~~
126 ~~than a service from a third party, instead of having~~construction contract, and includes
127 ~~subcontracts and other agreements.~~

128 ~~(y) (z) “Project” means any effort whereby the Nation or an entity of the Nation contracts~~
129 ~~for labor and/or goods or services be provided from within the Tribe by a Tribal entity or~~
130 ~~Tribal enterprise that will support or benefit any aspect of the Nation’s government,~~
131 ~~holdings, infrastructure, workplace, economy or community.~~

132 ~~(z) (aa)~~ “Qualified trades worker” means a skilled worker qualified to perform
133 services for the trade in which the person is trained, and includes general laborers.

134 ~~(aa) (bb)~~ “Reservation” means all the lands within the exterior boundaries of the
135 Reservation of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, as created pursuant to the
136 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal
137 law.

138 ~~(bb) “Skills Bank” means the services provided by the Office, whereby listings of qualified~~
139 ~~trades workers are maintained and made available for those required to comply with this~~
140 ~~law.~~

141 ~~(ee) (cc)~~ “Subcontractor” means a trade contractor, ~~who is awarded a contract for the~~
142 ~~supply of services pursuant to a construction agreement,~~ or a junior or secondary contractor
143 who performs some or all of the prime contractor’s contractual obligations.

144 ~~(dd) “Trade contractor” means an entity that is awarded a contract for the supply of services~~
145 ~~pursuant to a construction agreement, including all entities that enter into any subcontracts.~~

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

147 ~~(dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the~~
148 ~~judicial system that was established by Oneida General Tribal Council resolution GTC-01-~~
149 ~~07-13-B, and then later authorized to administer the judicial authorities and responsibilities~~
150 ~~of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.~~

151 ~~(ff) (ee)~~ “Tribal corporation” means a corporation chartered ~~and/or wholly owned~~ by the
152 ~~Oneida Tribe of Indians of Wisconsin~~Nation pursuant to the Constitution and Bylaws of
153 the Oneida ~~Tribe.~~Nation.

154 ~~(gg) “Tribal enterprise” means any internal operation owned and operated by the Tribe that~~
155 ~~generates revenues through its core business functions, including but not limited to: Oneida~~
156 ~~Gaming, Oneida Retail, Oneida Farm, and Oneida Printing.~~

157 ~~(hh) Tribal entity. See Entity, Tribal entity.~~

158 ~~(ii) “Tribal project” means any effort whereby the Tribe or a Tribal entity contracts for~~
159 ~~labor and/or goods or services that will support or benefit any aspect of the Tribal~~
160 ~~government, holdings, infrastructure, workplace, economy or community.~~

162 **502.4. Jurisdiction**

163 502.4-1. The ~~Indian Preference~~ Office shall ~~have authority over matters relating to the~~
164 ~~interpretation~~implement, monitor, and ~~enforcement of~~enforce this law ~~as set out within this~~
165 ~~law and other applicable laws and policies relating to Indian preference.~~

166 502.4-2. The ~~Tribe’s judicial system~~Trial Court shall have ~~exclusive~~jurisdiction over all ~~other~~
167 matters ~~relating~~related to the interpretation and enforcement of this law.

168 502.4-23. The ~~Indian Preference~~ Office and ~~the Tribe’s judicial system~~Trial Court shall have
169 jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this
170 law applies, as well as jurisdiction over all subcontractors, employees, or other entities working
171 with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance
172 agreement.

502.5. Indian Preference Office

~~502.5-1. An Indian Preference Office is hereby created for the purpose of implementing, monitoring and enforcing this law and other applicable laws and policies relating to Indian preference.~~

~~502.5-2. The Office shall have the following duties, along with other responsibilities as may be listed throughout this law.~~

(a) Certification of Entities-

~~502.5-1. (1) Verify information provided by entities seeking~~*Criteria for Certification as an Indian-Owned Business. In order to seek* ~~certification and make determination of eligibility.~~

~~(2) Issue certification.~~

~~(b) Skills Bank. Establish and maintain a Skills Bank and actively recruit qualified trades workers for listing in the Skills Bank.~~

~~(1) Identify, initiate, and sponsor training, internship and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.~~

~~(2) Cooperate with other Tribal programs to provide counseling and support to assist Indians in retaining employment.~~

~~(c) Negotiations. Negotiate compliance agreements that include, but are not limited to the following:~~

~~(1) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per Tribal contract dollar.~~

~~(2) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing federal, state and/or Tribal wage scales.~~

~~(d) Monitoring.~~

~~(1) Perform on site inspections to verify compliance with this law.~~

~~(2) Require and review weekly workforce reports.~~

~~(3) Establish a mandatory training process for Tribal entities that do contracting or bidding as a regular function of their duties.~~

~~(4) Provide training to assist certified entities with understanding their rights and abilities under this law.~~

~~(5) Receive feedback from contractors regarding the performance of any certified entity or qualified trades worker.~~

~~(e) Investigations. Investigate written complaints and respond to inquiries.~~

~~(f) Enforcement.~~

~~(1) Enforce compliance agreements and the provisions of this law.~~

~~(2) Create internal procedures to implement and carry out the provisions of this law.~~

~~(3) Suspend or revoke certification of entities or remove trades workers from the Skills Bank.~~

~~(4) Issue Notices of Noncompliance.~~

~~(5) Represent the interests of the Tribe in bringing or defending Indian preference-related actions before the Tribe's judicial system relating to noncompliance with~~

219 this law, a compliance agreement, or regulations or policies issued pursuant to this
220 law.

221 (6) Establish a schedule of fines in accordance with 502.10-3, and impose such
222 fines in accordance with 502.10-4.

223 ~~502.5-3. Records.~~ Any records created and maintained by the Office shall be made available in
224 accordance with applicable Tribal and federal law.

225 ~~502.5-4.~~ Within the scope of authority defined in this law, the Office may enter into cooperative
226 agreements with federal and state agencies, subject to the approval of the Oneida Business
227 Committee.

228 ~~502.5-5.~~ Prior to the posting or announcement of a contract for any Tribal project, the
229 specifications for such project shall be submitted to the Office.

230 (a) The Office shall, with experts identified from other Tribal entities, review the
231 specifications, including bidding requirements, to ensure that there are no unnecessary and
232 unjustifiable restrictions that may:

233 ~~(1) preclude certified entities from bidding or being eligible to fulfill the contract~~
234 ~~or subcontract;~~

235 ~~(2) disqualify qualified trades workers from employment opportunities created~~
236 ~~under such contract or subcontract; or~~

237 ~~(3) create conditions that would make bidding, compliance, or employment unduly~~
238 ~~burdensome for qualified trades workers or certified entities.~~

239 ~~(b) Unbundling a Contract.~~ The Office may require that specific portions of a contract be
240 outsourced to internal services, Tribal enterprises, certified entities and/or qualified trades
241 workers, even if a single entity is capable of providing all of the goods and/or services
242 required under the contract. Provided that, such outsourcing shall not cause undue hardship,
243 unnecessary delay or additional expenses in completing the Tribal project.

245 **502.6. Certification of Entities**

246 ~~502.6-1.~~ Applicants seeking certification of an Indian-owned business shall submit a completed
247 and signed application to the Office, along with any documentation required under the following
248 criteria shall be met by 502.6-4.

249 ~~502.6-2.~~ The Office may interview the applicant(s) and/or request additional information as may
250 be necessary to make a determination regarding certification. entity:

251 ~~502.6-3.~~ Within thirty (30) days of receiving the application and any additional requested
252 information, the Office shall inform the applicant of a determination to:

253 ~~(a) grant the certification; or~~

254 ~~(b) deny the certification, including a full written explanation of the reason for the denial;~~
255 ~~or~~

256 ~~(c) grant probationary certification for a period of up to one (1) year, if so determined by~~
257 ~~the Office for reasonable and just cause as identified and set out in regulations. During the~~
258 ~~probationary period, the applicant shall satisfy any conditions imposed by the Office, and~~
259 ~~the Office shall monitor the activities of the applicant, and may request and receive such~~
260 ~~information as necessary to ensure compliance with this law. The Office shall either grant~~
261 ~~or deny full certification at the end of the probationary period, or upon petition by the~~
262 ~~applicant, whichever occurs first.~~

263 ~~502.6-4.~~ Certification may be granted to entities that qualify in accordance with the criteria listed
264 in this law. In order to receive certification, an applicant entity shall provide proof of:

265 ~~(a) (a)~~ There is Indian financial ownership, control and management of at least fifty-one
266 percent (51%) of the entity. Evidence of both financial ownership and control shall be

embodied in the entity's organizational documents, including, but not limited to the documents of incorporation, stock ownership, or a partnership agreement.

(1) *Indian Financial Ownership.* Indian financial ownership is established where the ~~Tribe, Tribal~~Nation, members of the Nation and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of distributed net profits, and would receive fifty-one percent (51%) or more of the entity's assets upon dissolution.

(2) *Indian Control.* Indian control is established where the ~~Tribe, Tribal~~Nation, member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent (51%) of voting rights or other controlling decisional authority.

(3) *Indian Management.* Indian Management is established where an Indian owner(s) is directly involved in the entity's management, this can be shown where:

(A) at least one (1) Indian owner is directly involved in the daily operations of the entity on a full-time basis and in a senior-level position; or

(B) at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.

~~(b) Financial~~(b) The entity can demonstrate financial responsibility, including but not limited to, evidence of an adequate line of credit, contributions of sufficient working capital, applicable required bonding and insurance, materials and/or equipment necessary to perform applicable work.

~~(c) A#~~The entity can provide past and current licensing or certifications, including any penalties, or other punitive actions or debarments taken by any licensing body within the past ten (10) years.

502.6-5-2. Application. The applicant entity shall submit a completed and signed application to the Indian Preference Office, along with any documentation proving the entity meets the criteria for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the applicant and/or request additional information as may be necessary to make a determination regarding certification.

502.5-3. Certification Determination. Within thirty (30) days of receiving the application and any additional requested information, the Indian Preference Office shall inform the applicant of a determination to:

(a) grant the certification;

(b) deny the certification, including a full written explanation of the reason for the denial;
or

(c) grant probationary certification for a period of up to one (1) year, if so determined by the Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law.

(3) The Indian Preference Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office shall mail a certificate to the entity.- Granting an entity certification does not convey any comment

regarding the ability of the entity to perform any work nor does it guarantee that an entity has met all the qualifications to obtain work under any particular contract where Indian preference may be applied.

502.6-5-5. Notification Requirements. A certified entity shall report the following to the Indian Preference Office within ten (10) business days of such an occurrence:

- (a) changes in the ownership or control status of the entity; ~~and/or~~
- (b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or
- (c) any other changes that could:
 - (1) affect an entity's eligibility for certification;
 - (2) affect the financial liability of any entity, contracting party or the Tribe, Nation; ~~and/or~~
 - (3) alter the status of the qualifications of the entity.

502.5-6-7. Certification Renewal. Certification is granted on an annual basis, and shall lapse after one (1) year unless renewed.

- (a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.
- (b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however, the responsibility for renewal is upon the entity.

502.6-8-7. Open Records. In accordance with the Open Records ~~Nation's laws~~ and Open Meetings ~~law~~ policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. Provided ~~further, that,~~ all information given for purposes of receiving certification, including financial information, is subject to internal audit of the Tribe ~~Nation~~.

502.6-9-8. Joint Ventures. ~~Joint~~ All joint ventures ~~shall not be certified~~ seeking certification as ~~eligible for Indian preference even though one equal fifty percent (50%) partner is an Indian that shares in equal financial ownership, control and direct involvement with-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.~~

- (a) Certification for a joint venture shall be issued on a project specific basis.

502.6-10-9. Brokers, Agents and Franchises.

- (a) *Brokers.* Brokers shall be certified as an Indian-owned business only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker to maintain an establishment and to keep commodities in stock.

- (1) To qualify as an Indian-owned business, the broker shall provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business.
 - (2) The broker shall also provide proof that he owes no fiduciary responsibility nor has a fixed or permanent relationship to any one company. A broker shall hold himself or herself out for employment to the public generally and that the employment is not that of being a special agent for a single client.

(b) *Agents*. Agents who are employees of a non-Indian-owned business or who merely represent a company, such as an insurance agent or real estate agent for a non-Indian-owned business, shall not be certified as an Indian-owned business.

(c) *Franchises*. A franchise may be certified as an Indian-owned business if the franchisee does not pay the franchisor a share or percentage of revenue or profits, but only compensates the franchisor through licensing, royalty and franchise fees as set out by contract, and/or for services provided, such as training and advising.

502.6-115-10. *Fronts are Prohibited*. Entities shall be disqualified from certification as an Indian preference-eligibility-owned business in all situations where the entity operates as a front in order to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

(a) The Indian Preference Office shall not certify entities that operate solely as fronts.

(b) No entity shall manipulate its business structure or misrepresent the roles of Indian individuals or entities in such a way as to become eligible for Indian preference in a manner inconsistent with the purpose and intent of this law.

(c) Examples of fronts include but are not limited to:

(1) Entities that represent that they are exercising management control of a Tribal project in order to qualify for Indian preference when in fact such management control is exercised by a non-Indian entity-;

(2) Entities where Indians have senior management titles without the correlating responsibilities, control, or knowledge of operations; where the entity only qualifies for certification because an Indian holds that senior management role-;

(3) Entities, not including legitimate brokers, that derive profit only by providing goods or services at an increased cost, where such goods or services could be acquired directly on the open market and/or from the entity's source without paying a marked-up cost-; and/or

(4) Any other situation where the Indian Preference Office determines that the application of Indian preference would in fact predominantly or substantially benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-owned businesses only benefit by assisting the non-Indian or non-Indian-owned business with receiving the contract.

502.76. Application of Indian Preference to Contracts

502.76-1. *Application of the Law*. Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over onethree thousand five hundred dollars (\$1,500.003,000) that meet the requirements of (a) and/or (b) below-;

(a) This law shall apply to:

(1) all contracts, subcontracts, and compliance agreements to which the TribeNation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the TribeNation, whereby goods and services are provided on or near the Reservation-; and

(2) all subcontractors, employees, or other entities working with, for, on behalf of a party to a contract, subcontract or compliance agreement as identified in (1), in fulfilling such contract, subcontract, or compliance agreement-.

(b) *Tribal Corporations*. This law shall apply to Tribal corporations to the extent such corporations enter into contracts with the TribeNation.

502.76-2. *Non-Applicability of the Law*.

(a) TribalIndian Preference in Hiring of Employees- of the Nation. The standards set out in this law shall not apply to preference as applicable to Tribalemployees hired through

the ~~Oneida Nation's~~ Human Resources ~~department~~Department or pursuant to an employment contract.

(b) *Internal Services and ~~Tribal~~ Enterprises.* The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The ~~Tribe~~Nation shall exclusively utilize internal services and ~~Tribal~~ enterprises whenever an internal service of the ~~Tribe~~Nation or ~~Tribal~~ enterprise could or does provide the necessary goods and services in the ordinary course of business.

(2) If an internal service or ~~Tribal~~ enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or ~~Tribal~~ enterprise.

502.6-3. Contract Specifications Review. Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or unjustifiable restrictions that may:

~~502.7-3.~~(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;

(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; and/or

(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) Unbundling a Contract. The Indian Preference Office may require that specific portions of a contract be outsourced to internal services, enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

~~502.7-4.~~6-5. Cooperative Agreements. Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. Cultural Setting of Contracts. All parties to a contract to which this law applies shall recognize that any operations are taking place within a unique cultural setting within the ~~community of the Tribe.~~Nation. Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian workers so as to promote rather than hinder the employment of Indians.

(a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies, the worker shall provide reasonable advance notice to the contractor in requesting such time off.

(b) Where attendance at traditional cultural activities or ceremonies requires a worker to take time off from a regularly scheduled shift or workday, such time may be paid or unpaid, at the discretion of the employer or as established by contract or compliance agreement.

~~502.6-7-5. ~~Tribal~~ Employees.~~of the Nation. In the execution of employment duties and in accordance with the ~~Tribe's Personnel Policies~~Nation's laws and ~~Procedures, Tribal policies~~

governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the TribeNation or Tribal entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation that do contracting or bidding as a regular function of their duties.

~~502.7-6-8.~~ *Contracts and Attachments.* All contracts this law applies to shall:

(a) Stipulate that compliance with this law is required, and that violation of any portion of this law or applicable compliance agreement may be deemed a material and substantial breach of contract, enforceable:

(1) As set forth by the terms of the original contract for a breach of contract; and

(2) In accordance with the provisions of this law.

(b) Reference this law, and shall contain an ~~Acknowledgment Clause~~acknowledgment clause, whereby the contractor shall agree to the following:

(1) The contractor has read and understands the provisions of this law-;

(2) The contractor understands how this law affects the contractor's rights and responsibilities-; and

(3) The contractor agrees that the provisions of this law shall govern the performance of the parties.

(c) Reference ~~Chapter 56 of the Oneida Code of Laws, Oneida Vendor Licensing~~Nation's laws governing vendor licensing, and provide the contracting parties with directions on how to access that document.

502.6-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

502.6-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

~~502.7-7. In the event that a dispute may arise regarding this law or a compliance agreement, all affected parties shall cooperate in good faith with the Office toward a mutually satisfactory resolution.~~

(a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;

(b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;

(c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of a bid;

(g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment of a bid;

(h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid; and

(i) plus one percent (1%) of any amount over two million dollars (\$2,000,000).

~~502.7-8~~6-11. *Awarding the Contract.* After the appropriate discount has been subtracted from preferred bids, the following shall be used to determine which bidder is awarded the contract:

(a) If a bid from a certified entity is less than the total of the apparent low bid after Indian preference is applied, then the contract shall be awarded to the certified entity.

(b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.

~~502.7-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.~~

~~502.7-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:~~

~~(a) ten percent (10%) of the first \$50,000 segment of a bid.~~

~~(b) plus nine percent (9%) of the next \$50,000 segment of a bid.~~

~~(c) plus eight percent (8%) of the next \$100,000 segment of a bid.~~

~~(d) plus seven percent (7%) of the next \$100,000 segment of a bid.~~

~~(e) plus six percent (6%) of the next \$100,000 segment of a bid.~~

~~(f) plus five percent (5%) of the next \$100,000 segment of a bid.~~

~~(g) plus four percent (4%) of the next \$500,000 segment of a bid.~~

~~(h) plus two percent (2%) of the next \$1,000,000 segment of a bid.~~

~~(i) plus one percent (1%) of any amount over \$2,000,000.~~

~~502.7-11. Bid shopping is prohibited.~~

~~502.8. Skills Bank and Qualified Trades Workers~~

~~502.8-1. The 6-12. Monitoring the Contract. Once a contract is awarded to an entity, the Indian Preference Office shall establish~~perform the following monitoring duties:

~~(a) Perform on-site inspections to verify compliance with this law;~~

~~(b) Require and administer a Skills Bank~~review weekly workforce reports;

~~(c) Provide training to assist with providing Indians and first generation descendants~~certified entities with employment opportunities. The goalunderstanding their rights and abilities under this law; and

~~(d) Receive feedback from contractors regarding the performance of the Tribe is to achieve one hundred percent (100%) participation of any certified entity or qualified trades workers on Tribal projects~~worker.

~~502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.~~

~~502.8-3. The Office shall regularly update the Skills Bank listings.~~

~~502.8-4. Entities required to fill positions in accordance with 502.6-13. In the event that a dispute may arise regarding this law and/or a compliance agreement under 502.9, all affected parties shall contact~~cooperate in good faith with the Indian Preference Office prior to the commencement of any worktoward a mutually satisfactory resolution.

~~(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:~~

~~(1) Members of the Oneida Tribe.~~

~~(2) First generation descendants of Oneida Tribal members.~~

~~(3) Members of other federally recognized Indian tribes.~~

~~(b) If a law or grant funding requirements prohibit the hiring of qualified trades workers in accordance with 502.8-4(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.~~

(c) ~~If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted in accordance with 502.8-4.~~

~~502.8-5. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:~~

~~(a) proof of enrollment or proof that the individual is a first generation descendant of the Oneida Tribe.~~

~~(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field.~~

~~(c) if applicable, proof of a driver license, including any endorsements.~~

~~(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:~~

~~(1) past and current licensing, credentials and certifications, including information related to penalties or punitive actions taken by any licensing body within the past ten (10) years; and~~

~~(2) any required or possessed insurance and/or bonding.~~

~~502.8-6. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.~~

~~502.8-7. Wage and Hour Standards, Layoffs and Terminations, Call Backs, Promotions, Unions.~~

~~(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.~~

~~(b) In making any layoffs or terminations, all contractors shall notify the Office prior to laying off or terminating a qualified trades worker.~~

~~(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.~~

~~(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.~~

~~(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Office and shall call back qualified trades workers before bringing back other employees.~~

~~(e) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.~~

~~502.8-8. Construction Contracts: Core Work Crew. As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Office, they may be~~

~~employed on the Tribal project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.~~

~~(a) For the purposes of employment on a Tribal project, the Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor's core work crew.~~

~~(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Office that such actions were not intended to circumvent the provisions of this law.~~

~~(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.~~

502.9.

502.7. Compliance Agreements

~~502.9-1. Compliance Agreements. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.~~ Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. Contents of a Compliance Agreement. A compliance agreement shall include, but is not limited to, the following information:

(a) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar; and

(b) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing wage scales of the Nation and/or federal or state governments.

~~502.7-3. 502.9-2. Term of a Compliance Agreement.~~ Where a contract lasts for more than one (1) year, compliance agreements shall be reviewed annually and revised as necessary to reflect changes in hiring plans or the number of certified entities available.

~~502.9-3-4.~~ Unless prior written consent of the Indian Preference Office has been received, a contractor shall not deviate from an executed compliance agreement by adding or removing any subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or by filling a vacancy with a non-qualified trades worker or a non-certified entity.

~~502.9-4-5.~~ Limited Waivers. The Indian Preference Office shall establish standard operating procedures to provide for emergency conditions and situations whereby a limited waiver of compliance may be authorized, in situations where a contractor has made a significant and documented good faith effort to achieve compliance, or can demonstrate that compliance is not practical for reasons other than pricing.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.

(a) The Indian Preference Office shall identify, initiate, and sponsor training, internship, and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.

(b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.

~~502.10-~~ The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference Office prior to the commencement of any work.

(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

(1) Members of the Nation;

(2) First generation descendants of the Nation; and then

(3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.

(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted by the Indian Preference Office.

502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

(a) proof of enrollment or proof that the individual is a first-generation descendant of the Nation;

(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;

(c) proof of a driver's license, including any endorsements, if applicable;

(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:

(1) past and current licensing;

(2) credentials and certifications; and

(3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

~~502.8-6. Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.~~

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.

(b) In making any layoffs or terminations, all contractors shall notify the Indian Preference Office prior to laying off or terminating a qualified trades worker.

(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.

(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.

(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Indian Preference Office and shall call back qualified trades workers before bringing back other employees.

(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

502.8-7. Construction Contracts: Core Work Crew. As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Indian Preference Office, they may be employed on the project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a project, the Indian Preference Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor's core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Indian Preference Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

502.9. Investigations and Enforcement

502.10-1. ~~Office Investigations~~ Any Complaints. An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by a perceived an act of noncompliance non-compliance with:

(a) this law;

(b) a compliance agreement; and/or

(c) any standard operating procedure issued pursuant to this law, who wishes to complain shall file a written complaint with the Office.

502.9-2. Contents of the Complaint. A complaint shall provide such include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint

and carry out an investigation. ~~Wherever possible, the complainant shall provide the Office with, such as~~ evidence of any discriminatory practices, alleged misconduct, or other ~~noncompliance~~ non-compliance.

~~(a) 502.9-3. Complaint Investigation.~~ Upon receipt of a complaint or after witnessing ~~noncompliance~~ non-compliance with this law while conducting its monitoring duties, the Indian Preference Office shall conduct an investigation.

~~(1) If the Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Tribe or community, the Office shall immediately refer the complaint or information to the appropriate Tribal department or authority for investigation. The Office may also independently investigate such complaint or information for purposes of ensuring compliance with this law, and shall have the authority to review the results of any other investigation conducted by another Tribal department or authority in accordance with the Open Records and Open Meetings Law.~~

~~(2)~~ (a) In conducting an investigation, ~~the~~ to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;

(2) interview and ~~shall have the right to~~ speak to workers; and ~~to~~

(3) conduct inspections of the job site(s).

~~(3b)~~ Information collected during an Indian Preference Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or administrative proceeding or in accordance with ~~Tribal law. Provided that, any report or recommendation prepared by the Office for use at a hearing shall be promptly released to the complainant and alleged violator.~~ a law of the Nation.

~~(b1)~~ Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.

~~(c)~~ If, after conducting the Indian Preference Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation under.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this section, the law.

(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation's laws and policies governing open records.

502.9-4. Alleged Violation Has No Merit. If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the ~~issue will~~ complaint shall be closed. A

(a) The complainant may appeal file a complaint to contest this decision to with the Tribe's judicial system Nation's Trial Court within ten (10) business days after issuance of such notice.

~~(1) The complainant's appeal may only request the Tribe's judicial system~~ (b) The Trial Court shall then conduct an in-camera inspection of the investigation completed by the Indian Preference Office. - During an in-camera inspection, only a judge(s) may review the information obtained by the Indian Preference Office during the investigation, as this information is confidential and disclosure is not necessary.

(2c) If, after reviewing the ~~Office's investigation, the Tribe's judicial system~~ determines that there is sufficient evidence of a genuine and material issue of noncompliance, the Tribe's judicial system shall order the Office to take action in accordance with 502.10-4 and/or 502.10-5, as if the Office's original investigation had determined that sufficient evidence of a genuine and material issue of noncompliance existed.

(3) ~~If, after reviewing the~~ Indian Preference Office's investigation, the ~~Tribe's judicial system~~ Trial Court determines the alleged violation has no merit, the ~~Tribe's judicial system~~ Trial Court shall notify all parties in writing that the ~~issue~~ matter will be ~~closed~~ dismissed and no further appeals of the matter will be accepted.

~~502.10-2. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.~~

~~502.10-3. Fines and Fees.~~

(a) ~~The Office shall establish, and the Oneida Business Committee shall approve:~~

(1) ~~a schedule of fines that may be imposed upon any person or entity violating provisions of this law. Each offense shall result in a fine of no less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); and a separate offense shall be deemed committed on each day during which a violation occurs or continues.~~

(2) ~~a schedule of penalty fees that may be imposed upon any person or entity on all amounts due on monetary judgments not paid within at least thirty (30) days of the initial judgment.~~

(b) ~~No fines or penalty fees may be assessed against the Tribe, the Office or other Tribal departments, or employees engaged in their official duties under this law.~~

~~502.10-4.(d) If, after~~ an reviewing the Indian Preference Office's investigation ~~under~~ 502.10-1, the ~~Office reasonably believes~~ Trial Court determines that there is sufficient evidence of a genuine and material issue of ~~noncompliance~~ non-compliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.
502.9-5. Alleged Violation Has Merit. If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

(a1) Attempt to reach an informal or formal resolution of the alleged
noncompliance-non-compliance;

(A) If a formal resolution is reached, any agreement shall be in writing and signed by all parties. The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the written agreement. -Breach of the terms of the written agreement may be a cause of action for litigation before the ~~Tribe's judicial system~~ Trial Court.

(b2) Issue a ~~Notice~~ notice of ~~Noncompliance~~ non-compliance to the entity by certified mail-;

(A) The ~~Notice~~ notice shall state the specific violation(s) alleged, the requirements that must be met to ensure compliance with this law, and shall provide a reasonable amount of time, not to exceed thirty (30) days, wherein

the entity shall provide evidence that it has taken the steps necessary to come into compliance.

(e3) Place the entity's certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity's certification;

(A) Once certification is revoked, an entity shall not be eligible to re-apply for re-certification until one (1) year has passed from the effective date of the revocation.

(B) At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference. ~~Where a certified entity loses certification:~~

(C) Where a certified entity loses certification:

(i) the contractor may be required to replace that entity with another certified entity if the work has not begun or performance under a contract has not commenced, unless replacement is impossible or would cause undue hardship; or

(2i) the Indian Preference Office may authorize the contractor to continue to utilize that entity without regard to Indian preference if work has already begun or performance under a contract has commenced.

(d4) Issue a fine:

(A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.

(B) No fines as established or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under 502.10-3 this law.

(e5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or

(f6) Request the appropriate entity withdraw any licensing issued by the TribeNation.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office's decision.

502.10-5-9-6. Additional Enforcement Measures. If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a ~~Notice~~notice of ~~Noncompliance~~non-compliance or action against a certified entity's certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the ~~Tribe's judicial system~~Trial Court, seeking appropriate relief, including but not limited to:

(a) An injunction;

(b) Specific performance, including but not limited to:

(1) reinstatement of a qualified trades worker at the previous wage;

(2) immediate removal of employees hired in violation of this law; and/or

(3) employment, promotion or additional training for Indian preference-eligible parties injured by a violation;

(c) Payment of back pay, damages, and/or costs associated with the enforcement of an order issued by the ~~Tribe's judicial system~~Trial Court, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an

action. Provided that, no money damages may be claimed in any suit against the ~~Tribe~~Nation, the Indian Preference Office or other ~~Tribal~~departments of the Nation, or ~~Tribal~~officials of the Nation or employees engaged in their official duties under this law; ~~and/or~~

(d) ~~Other~~Any other action the ~~Tribe's judicial system~~Trial Court deems lawful, equitable, and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by ~~noncompliance~~non-compliance.

~~502.10-6-7.~~ Although relief granted by the ~~Tribe's judicial system under 502.10-5~~Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian Preference Office nor the ~~Tribe~~Nation represents those individuals and/or entities in any action for non-compliance with this law.

~~502.10-7-8.~~ *Cease-and-Desist Orders.* The Oneida ~~Tribal~~ Police ~~are~~Department is hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the ~~Tribe's judicial system~~Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida ~~Tribal~~ Police Department shall not be civilly liable for enforcing such orders so long as the ~~Commission~~Trial Court signs the order.

~~502.10-8.~~ *Appeals.*

~~(a) Any appeal from an action taken by the Office shall be filed with the Tribe's judicial system within ten (10) business days after the date of issuance of the Office's decision. Any decision not appealed within the required time frame shall become final.~~

~~(b) Except as otherwise stated in this law, a party may appeal orders, rulings and judgments of the Tribe's judicial system in accordance with the applicable rules of appellate procedure.~~

502.9-9. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

End.

Adopted BC-03-27-13-B

Amended BC- - - -

Title 5. Business - Chapter 502
Yukwatʼnhas Ukwéhu·wé Kayanlʼhsla
Laws concerning the hiring of the Oneida People
INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy
502.2. Adoption, Amendment, Conflicts
502.3. Definitions
502.4. Jurisdiction
502.5. Certification of Entities

502.6. Application of Indian Preference to Contracts
502.7. Compliance Agreements
502.8. Skills Bank and Qualified Trades Workers
502.9. Investigations and Enforcement

502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and amended by resolution BC-__-__-__-__.

502.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

502.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Agent” means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

(b) “Bid” means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

(c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

(d) “Broker” means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

- (e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (f) “Certification” means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.
- (g) “Certified entity” means an entity that has received certification as an Indian-owned business from the Indian Preference Office.
- (h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.
- (i) “Construction contract” means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.
- (j) “Contractor” means one who enters into a contract.
- (k) “Core work crew” means the minimum amount of the contractor’s key employees, who perform a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unfamiliar with and/or untrained in the employer’s procedures and routines, that are essential to start up and continue work on a project.
- (l) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.
- (m) “Employer” means any entity, except the Nation, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.
- (n) “Enterprise” means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.
- (o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental body, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Nation.
- (p) “Entities of the Nation” means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations.
- (q) “Front” means a business entity that is strategically structured, financed, operated or staffed such as to unfairly take advantage of Indian preference as granted under this law.
- (r) “Indian” means an enrolled member of any federally-recognized Indian tribe.
- (s) “Indian-owned business” means an entity which is majority owned and managed by an Indian.
- (t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.
- (u) “Internal service” means any service provided for free or at cost for the Nation and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.
- (v) “Joint venture” means a one-time grouping of two (2) or more entities in a business undertaking.

(w) “Lowest responsible bidder” means a bidder who, after any Indian preference discounts are applied, submits the lowest bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.

(x) “Nation” means the Oneida Nation.

(y) “Non-construction contract” means any contract other than a construction contract, and includes subcontracts and other agreements.

(z) “Project” means any effort whereby the Nation or an entity of the Nation contracts for labor and/or goods or services that will support or benefit any aspect of the Nation’s government, holdings, infrastructure, workplace, economy or community.

(aa) “Qualified trades worker” means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.

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

(cc) “Subcontractor” means a trade contractor, who is awarded a contract for the supply of services pursuant to a construction agreement, or a junior or secondary contractor who performs some or all of the prime contractor’s contractual obligations.

(dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

502.4. Jurisdiction

502.4-1. The Indian Preference Office shall implement, monitor, and enforce this law and other applicable laws and policies relating to Indian preference.

502.4-2. The Trial Court shall have jurisdiction over all matters related to the interpretation and enforcement of this law.

502.4-3. The Indian Preference Office and Trial Court shall have jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this law applies, as well as jurisdiction over all subcontractors, employees, or other entities working with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance agreement.

502.5. Certification of Entities

502.5-1. *Criteria for Certification as an Indian-Owned Business.* In order to seek certification as an Indian-owned business the following criteria shall be met by the applicant entity:

(a) There is Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity. Evidence of both financial ownership and control shall be embodied in the entity’s organizational documents, including, but not limited to the documents of incorporation, stock ownership, or a partnership agreement.

(1) *Indian Financial Ownership.* Indian financial ownership is established where the Nation, members of the Nation and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of distributed net profits, and would receive fifty-one percent (51%) or more of the entity’s assets upon dissolution.

(2) *Indian Control.* Indian control is established where the Nation, member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent (51%) of voting rights or other controlling decisional authority.

(3) *Indian Management.* Indian Management is established where an Indian owner(s) is directly involved in the entity's management, this can be shown where:

(A) at least one (1) Indian owner is directly involved in the daily operations of the entity on a full-time basis and in a senior-level position; or

(B) at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.

(b) The entity can demonstrate financial responsibility, including but not limited to, evidence of an adequate line of credit, contributions of sufficient working capital, applicable required bonding and insurance, materials and/or equipment necessary to perform applicable work.

(c) The entity can provide past and current licensing or certifications, including any penalties, or other punitive actions or debarments taken by any licensing body within the past ten (10) years.

502.5-2. *Application.* The applicant entity shall submit a completed and signed application to the Indian Preference Office, along with any documentation proving the entity meets the criteria for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the applicant and/or request additional information as may be necessary to make a determination regarding certification.

502.5-3. *Certification Determination.* Within thirty (30) days of receiving the application and any additional requested information, the Indian Preference Office shall inform the applicant of a determination to:

(a) grant the certification;

(b) deny the certification, including a full written explanation of the reason for the denial; or

(c) grant probationary certification for a period of up to one (1) year, if so determined by the Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law.

(3) The Indian Preference Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office shall mail a certificate to the entity. Granting an entity certification does not convey any comment regarding the ability of the entity to perform any work nor does it guarantee that an entity has met all the qualifications to obtain work under any particular contract where Indian preference may be applied.

502.5-5. *Notification Requirements.* A certified entity shall report the following to the Indian Preference Office within ten (10) business days of such an occurrence:

- (a) changes in the ownership or control status of the entity;
- (b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or
- (c) any other changes that could:
 - (1) affect an entity's eligibility for certification;
 - (2) affect the financial liability of any entity, contracting party or the Nation; and/or
 - (3) alter the status of the qualifications of the entity.

502.5-6. *Certification Renewal.* Certification is granted on an annual basis and shall lapse after one (1) year unless renewed.

(a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.

(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however, the responsibility for renewal is upon the entity.

502.5-7. *Open Records.* In accordance with the Nation's laws and policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. Provided that, all information given for purposes of receiving certification, including financial information, is subject to internal audit of the Nation.

502.5-8. *Joint Ventures.* All joint ventures seeking certification as an Indian-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

(a) Certification for a joint venture shall be issued on a project specific basis.

502.5-9. *Brokers, Agents and Franchises.*

(a) *Brokers.* Brokers shall be certified as an Indian-owned business only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker to maintain an establishment and to keep commodities in stock.

(1) To qualify as an Indian-owned business, the broker shall provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business.

(2) The broker shall also provide proof that he owes no fiduciary responsibility nor has a fixed or permanent relationship to any one company. A broker shall hold himself or herself out for employment to the public generally and that the employment is not that of being a special agent for a single client.

(b) *Agents.* Agents who are employees of a non-Indian-owned business or who merely represent a company, such as an insurance agent or real estate agent for a non-Indian-owned business, shall not be certified as an Indian-owned business.

(c) *Franchises.* A franchise may be certified as an Indian-owned business if the franchisee does not pay the franchisor a share or percentage of revenue or profits, but only compensates the franchisor through licensing, royalty and franchise fees as set out by contract, and/or for services provided, such as training and advising.

502.5-10. *Fronts are Prohibited.* Entities shall be disqualified from certification as an Indian-owned business in all situations where the entity operates as a front in order to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

(a) The Indian Preference Office shall not certify entities that operate solely as fronts.

(b) No entity shall manipulate its business structure or misrepresent the roles of Indian individuals or entities in such a way as to become eligible for Indian preference in a manner inconsistent with the purpose and intent of this law.

(c) Examples of fronts include but are not limited to:

(1) Entities that represent that they are exercising management control of a project in order to qualify for Indian preference when in fact such management control is exercised by a non-Indian entity;

(2) Entities where Indians have senior management titles without the correlating responsibilities, control, or knowledge of operations; where the entity only qualifies for certification because an Indian holds that senior management role;

(3) Entities, not including legitimate brokers, that derive profit only by providing goods or services at an increased cost, where such goods or services could be acquired directly on the open market and/or from the entity's source without paying a marked-up cost; and/or

(4) Any other situation where the Indian Preference Office determines that the application of Indian preference would in fact predominantly or substantially benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-owned businesses only benefit by assisting the non-Indian or non-Indian-owned business with receiving the contract.

502.6. Application of Indian Preference to Contracts

502.6-1. *Application of the Law.* Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over three thousand dollars (\$3,000) that meet the requirements of (a) and/or (b) below:

(a) This law shall apply to:

(1) all contracts, subcontracts, and compliance agreements to which the Nation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the Nation, whereby goods and services are provided on or near the Reservation; and

(2) all subcontractors, employees, or other entities working with, for, on behalf of a party to a contract, subcontract or compliance agreement as identified in (1), in fulfilling such contract, subcontract, or compliance agreement.

(b) *Tribal Corporations.* This law shall apply to Tribal corporations to the extent such corporations enter into contracts with the Nation.

502.6-2. *Non-Applicability of the Law.*

(a) *Indian Preference in Hiring of Employees of the Nation.* The standards set out in this law shall not apply to preference as applicable to employees hired through the Nation's Human Resources Department or pursuant to an employment contract.

(b) *Internal Services and Enterprises.* The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The Nation shall exclusively utilize internal services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business.

(2) If an internal service or enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or enterprise.

502.6-3. *Contract Specifications Review.* Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or unjustifiable restrictions that may:

(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;

(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; and/or

(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) *Unbundling a Contract.* The Indian Preference Office may require that specific portions of a contract be outsourced to internal services, enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

502.6-5. *Cooperative Agreements.* Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. *Cultural Setting of Contracts.* All parties to a contract to which this law applies shall recognize that any operations are taking place within a unique cultural setting within the Nation. Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian workers so as to promote rather than hinder the employment of Indians.

(a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies, the worker shall provide reasonable advance notice to the contractor in requesting such time off.

(b) Where attendance at traditional cultural activities or ceremonies requires a worker to take time off from a regularly scheduled shift or workday, such time may be paid or unpaid, at the discretion of the employer or as established by contract or compliance agreement.

502.6-7. *Employees of the Nation.* In the execution of employment duties and in accordance with the Nation's laws and policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the Nation or entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation that do contracting or bidding as a regular function of their duties.

502.6-8. *Contracts and Attachments.* All contracts this law applies to shall:

(a) Stipulate that compliance with this law is required, and that violation of any portion of this law or applicable compliance agreement may be deemed a material and substantial breach of contract, enforceable:

(1) As set forth by the terms of the original contract for a breach of contract; and

- 321 (2) In accordance with the provisions of this law.
- 322 (b) Reference this law, and shall contain an acknowledgment clause, whereby the
- 323 contractor shall agree to the following:
- 324 (1) The contractor has read and understands the provisions of this law;
- 325 (2) The contractor understands how this law affects the contractor's rights and
- 326 responsibilities; and
- 327 (3) The contractor agrees that the provisions of this law shall govern the
- 328 performance of the parties.
- 329 (c) Reference the Nation's laws governing vendor licensing, and provide the contracting
- 330 parties with directions on how to access that document.
- 331 502.6-9. *Applying Indian Preference to Non-Construction Contracts.* Where more than one (1)
- 332 bid is received for a non-construction contract, an Indian preference percentage discount of five
- 333 percent (5%) shall be applied to all bids received from certified Indian-owned businesses.
- 334 502.6-10. *Applying Indian Preference to Construction Contracts.* Where more than one (1) bid
- 335 is received for a construction contract, the discount applied to bids from certified Indian-owned
- 336 businesses shall be:
- 337 (a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;
- 338 (b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;
- 339 (c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment
- 340 of a bid;
- 341 (d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment
- 342 of a bid;
- 343 (e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of
- 344 a bid;
- 345 (f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of
- 346 a bid;
- 347 (g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment
- 348 of a bid;
- 349 (h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid;
- 350 and
- 351 (i) plus one percent (1%) of any amount over two million dollars (\$2,000,000).
- 352 502.6-11. *Awarding the Contract.* After the appropriate discount has been subtracted from
- 353 preferred bids, the following shall be used to determine which bidder is awarded the contract:
- 354 (a) If a bid from a certified entity is less than the total of the apparent low bid after
- 355 Indian preference is applied, then the contract shall be awarded to the certified entity.
- 356 (b) If none of the certified entity bids are less than the total of the apparent low bid after
- 357 the Indian preference discount is applied, the contract shall be awarded to the lowest
- 358 responsible bidder.
- 359 (c) Bid shopping is prohibited.
- 360 502.6-12. *Monitoring the Contract.* Once a contract is awarded to an entity, the Indian
- 361 Preference Office shall perform the following monitoring duties:
- 362 (a) Perform on-site inspections to verify compliance with this law;
- 363 (b) Require and review weekly workforce reports;
- 364 (c) Provide training to assist certified entities with understanding their rights and abilities
- 365 under this law; and
- 366 (d) Receive feedback from contractors regarding the performance of any certified entity
- 367 or qualified trades worker.

502.6-13. In the event that a dispute may arise regarding this law or a compliance agreement, all affected parties shall cooperate in good faith with the Indian Preference Office toward a mutually satisfactory resolution.

502.7. Compliance Agreements

502.7-1. *Compliance Agreements.* Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. *Contents of a Compliance Agreement.* A compliance agreement shall include, but is not limited to, the following information:

(a) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar; and

(b) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing wage scales of the Nation and/or federal or state governments.

502.7-3. *Term of a Compliance Agreement.* Where a contract lasts for more than one (1) year, compliance agreements shall be reviewed annually and revised as necessary to reflect changes in hiring plans or the number of certified entities available.

502.7-4. Unless prior written consent of the Indian Preference Office has been received, a contractor shall not deviate from an executed compliance agreement by adding or removing any subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or by filling a vacancy with a non-qualified trades worker or a non-certified entity.

502.7-5. *Limited Waivers.* The Indian Preference Office shall establish standard operating procedures to provide for emergency conditions and situations whereby a limited waiver of compliance may be authorized, in situations where a contractor has made a significant and documented good faith effort to achieve compliance, or can demonstrate that compliance is not practical for reasons other than pricing.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.

(a) The Indian Preference Office shall identify, initiate, and sponsor training, internship, and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.

(b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers. The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference Office prior to the commencement of any work.

(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

- (1) Members of the Nation;
- (2) First generation descendants of the Nation; and then
- (3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.

(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted by the Indian Preference Office.

502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

- (a) proof of enrollment or proof that the individual is a first-generation descendant of the Nation;
- (b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;
- (c) proof of a driver's license, including any endorsements, if applicable;
- (d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:
 - (1) past and current licensing;
 - (2) credentials and certifications; and
 - (3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

502.8-6. *Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.*

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.

(b) In making any layoffs or terminations, all contractors shall notify the Indian Preference Office prior to laying off or terminating a qualified trades worker.

(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.

(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.

(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Indian Preference Office and shall call back qualified trades workers before bringing back other employees.

(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

502.8-7. *Construction Contracts: Core Work Crew.* As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Indian Preference Office, they may be employed on the project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a project, the Indian Preference Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor's core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Indian Preference Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

502.9. Investigations and Enforcement

502.9-1. *Complaints.* An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by an act of non-compliance with:

(a) this law;

(b) a compliance agreement; and/or

(c) any standard operating procedure issued pursuant to this law.

502.9-2. *Contents of the Complaint.* A complaint shall include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint and carry out an investigation, such as evidence of any discriminatory practices, alleged misconduct, or other non-compliance.

502.9-3. *Complaint Investigation.* Upon receipt of a complaint or after witnessing non-compliance with this law while conducting its monitoring duties, the Indian Preference Office shall conduct an investigation.

(a) In conducting an investigation to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;

(2) interview and speak to workers; and

(3) conduct inspections of the job site.

(b) Information collected during an Indian Preference Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or administrative proceeding or in accordance with a law of the Nation.

(1) Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.

(c) If the Indian Preference Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this law.

(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation's laws and policies governing open records.

502.9-4. *Alleged Violation Has No Merit.* If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the complaint shall be closed.

(a) The complainant may file a complaint to contest this decision with the Nation's Trial Court within ten (10) business days after issuance of such notice.

(b) The Trial Court shall then conduct an in-camera inspection of the investigation completed by the Indian Preference Office. During an in-camera inspection only a judge may review the information obtained by the Indian Preference Office during the investigation as this information is confidential and disclosure is not necessary.

(c) If after reviewing the Indian Preference Office's investigation, the Trial Court determines the alleged violation has no merit, the Trial Court shall notify all parties in writing that the matter will be dismissed and no further appeals of the matter will be accepted.

(d) If after reviewing the Indian Preference Office's investigation the Trial Court determines that there is sufficient evidence of a genuine and material issue of non-compliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.

502.9-5. *Alleged Violation Has Merit.* If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

(1) Attempt to reach an informal or formal resolution of the alleged non-compliance;

(A) If a formal resolution is reached, any agreement shall be in writing and signed by all parties. The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the written agreement. Breach of the terms of the written agreement may be a cause of action for litigation before the Trial Court.

(2) Issue a notice of non-compliance to the entity by certified mail;

(A) The notice shall state the specific violation(s) alleged, the requirements that must be met to ensure compliance with this law, and shall provide a reasonable amount of time, not to exceed thirty (30) days, wherein the entity shall provide evidence that it has taken the steps necessary to come into compliance.

(3) Place the entity's certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity's certification;

(A) Once certification is revoked, an entity shall not be eligible to apply for re-certification until one (1) year has passed from the effective date of the revocation.

(B) At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference.

(C) Where a certified entity loses certification:

(i) the contractor may be required to replace that entity with another certified entity if the work has not begun or performance under a contract has not commenced, unless replacement is impossible or would cause undue hardship; or

(ii) the Indian Preference Office may authorize the contractor to continue to utilize that entity without regard to Indian preference if work has already begun or performance under a contract has commenced.

(4) Issue a fine;

(A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.

(B) No fines or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under this law.

(5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or

(6) Request the appropriate entity withdraw any licensing issued by the Nation.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office's decision.

502.9-6. *Additional Enforcement Measures.* If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a notice of non-compliance or action against a certified entity's certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the Trial Court, seeking appropriate relief, including but not limited to:

(a) An injunction;

(b) Specific performance, including but not limited to:

(1) reinstatement of a qualified trades worker at the previous wage;

(2) immediate removal of employees hired in violation of this law; and/or

(3) employment, promotion or additional training for Indian preference-eligible parties injured by a violation;

(c) Payment of back pay, damages, and/or costs associated with the enforcement of an order issued by the Trial Court, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an action. Provided that, no money damages may be claimed in any suit against the Nation, the Indian Preference Office or other departments of the Nation, or officials of the Nation or employees engaged in their official duties under this law; and/or

(d) Any other action the Trial Court deems lawful, equitable, and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by non-compliance.

502.9-7. Although relief granted by the Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian

Preference Office nor the Nation represents those individuals and/or entities in any action for non-compliance with this law.

502.9-8. *Cease-and-Desist Orders.* The Oneida Police Department is hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida Police Department shall not be civilly liable for enforcing such orders so long as the Trial Court signs the order.

502.9-9. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

End.

Adopted BC-03-27-13-B

Amended BC-__-__-__-__



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Indian Preference in Contracting Law Amendments**
Business Committee Conference Room-2nd Floor Norbert Hill Center
December 19, 2019 12:15 p.m.

Present: David P. Jordan, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Jameson Wilson, Rae Skenandore, Crystal Meltz, Amy Hacker, Jeffrey House.

Jennifer Webster: Good Afternoon. The time is 12:15 p.m. and today's date is Thursday, December 19, 2019. I will now call to order the public meeting for the proposed amendments to the Indian Preference in Contracting law.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials of a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business day on Monday, December 30, 2019.

In attendance from the LOC is myself, Jenny Webster, and David Jordan.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. I am imposing a time limit of five (5) minutes. This time limit shall be applied equally to all persons.

We will now begin today's public meeting for the proposed amendments to the Indian Preference in Contracting law. The purpose of this law is to increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

Those who wish to speak please come forward to the microphone. First up to speak is Jeff House.

Jeffrey House: Uhh thank you Councilwoman Webster and Chairman Jordan for allowing me to provide this testimony. I join you today as a representative of Oneida ESC group, a tribal corporation that is one hundred percent (100%) owned by the Oneida Nation.

Thank you Jenny for reading the purpose of the Law, that's my first, or I would like to give my comments by highlighting the purpose of the Law. As you have stated, which is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. These two drivers: "Increase economic benefits for the Nation" and "maximum utilization of Indian workers and businesses," I believe are the core objectives of the law and cannot be over emphasized.

The Oneida Nation has a greater than seven hundred and forty million dollar (\$740,000,000) impact on Brown and Outagamie Counties and is responsible for more than five thousand four hundred and sixty (5,460) jobs according to a St. Norbert College Study conducted in 2018. That equates to eighty-nine million dollars (\$89,000,000) in government revenue, of which thirty-three point four million (\$33,400,000) is for state and local government. I believe the purpose of the Law is to keep as much of impact on the Oneida Nation Reservation.

Thank you for including the language, "wholly owned," to the definition of Tribal Corporation in Section 502.3-1(ee). Entities such as Oneida ESC Group are now defined in the Law other than as an entity with all other non-Oneida and non-Indian businesses and companies.

In Section 502.5-7 regarding Certification Renewal. I would recommend Tribal Corporations be exempt for annual renewals. The previous paragraph, Section 502.5-5(a) requires that Certified entities shall report change of ownership within ten (10) days and therefore would require re-certification at that point. We see no benefit for Tribal Corporations to have to repeatedly re-certify when they are one hundred percent (100%) owned by the Oneida Nation and for the Indian Preference Office to spend time, energy, and money for a renewal process that is guaranteed.

We agree and applaud the Committee for Section 502.5-8 in regards in Joint Ventures. We believe allowing joint ventures to be certified as Indian Owned, assuming each JV meets the certification criteria, is a good opportunity for tribally owned businesses, enterprises, and tribal corporations to increase competitive strength on a case-by-case basis.

Section 502.6-2(b)(1) states the Nation shall exclusively utilize services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business. We feel this should include Tribal Corporations. At the very least, include the phrase "may include Tribal Corporations." If the purpose of the Oneida Indian Preference in Contracting is maximum utilization of Indian businesses, why wouldn't the Nation include language for Tribal corporations? The Nation receives the distribution of profits, the Nation earns the economic benefit of a growing company, and more of the economic impact of the Oneida Nation remains within the Oneida Nation.

The Indian Preference in Contracting Law initially included Tribal Preference for corporations but it was removed with the amendments to the law adopted by OBC Resolution 03-26-13-A.

Interestingly, the Office of Native American Programs issued guidance for the Native American Housing Assistance and Self-Determination Reauthorization Act, or NAHASDA, of 2008 with regards to regulatory changes relating to Indian Preference and tribal preference.

A notice issue on July 11, 2013, just three months after the OBC resolution, outlined Indian Preference and tribal preference. The guidance, which is now Title 25 of the United States Code, Chapter 14 Subchapter II Sec. 450e (2) - Wage and Labor Standards, states that preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title. Indian-owned economic enterprise, as defined by section 1452, means any Indian owned as defined by the Secretary of the Interior commercial, industrial, or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than fifty-one (51) per centum of the enterprise.

The guidance on Tribal Preference further states that when an Indian Tribe has adopted a tribal preference law, regulation, or ordinance governing preference in employment and contracting, that Tribal Preference law will govern any preferences in employment and contracting under the Indian Housing Block Grant program. 25 USC 4111 (k) states: “notwithstanding any other provision of law, with respect to any grant or portion of a grant made on behalf of an Indian tribe under this chapter that is intended to benefit a Indian tribe, the tribal employment and contract preference laws, including regulations and tribal ordinance, adopted by the Indian tribe shall receive the benefit \apply with respect to the administration of the grant or portion of a grant.”

That’s it, good thing I submitted them.

Jennifer Webster: Yes, you can still submit them in writing. Thank you, Jeff. Anybody else wish to speak today?

With there being no more speakers registered, the public meeting for the proposed amendments to the Indian Preference in Contracting law is now closed at 12:23 p.m..

Again, a reminder, written comments may be submitted until close of business day on Monday, December 30, 2019. Thank you.

-End of Meeting-



Oneida Nation Indian Preference in Contracting

Testimony of Jeffrey S. House

President /CEO of Oneida ESC Group LLC

Before the Oneida Legislative Operating Committee, Oneida WI.

December 19, 2019

Thank you Chairman Jordan and Vice-Chairman Metoxen and members of the Legislative Operating Committee for allowing me to comment on the drafted amendments to the Indian Preference in Contracting law.

I join you today as a representative of Oneida ESC group, a tribal corporation that is 100% owned by the Oneida Nation.

I would like to begin my comments by highlighting the purpose of the law in Section 502.1-1; which is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. These two drivers: “Increase economic benefits for the Nation” and “maximum utilization of Indian workers and businesses,” I believe are the core objectives of the law and cannot be over emphasized.

The Oneida Nation has a greater than \$740 million impact on Brown and Outagamie Counties and is responsible for more the 5,460 jobs according to a St. Norbert College Study conducted in 2018. That equates to \$89 million in government revenue, of which \$33.4 million is for state and local government. I believe the purpose of the Law is to keep as much of impact on the Oneida Nation reservation.

Thank you for including the language, “wholly owned,” to the definition of Tribal Corporation in Section 502.3-1(ee). Entities such as Oneida ESC Group are now defined in the Law other than as an entity with all other non-Oneida and non-Indian businesses and companies.

In Section 502.5-7 regarding Certification Renewal. I would recommend Tribal Corporations be exempt for annual renewals. The previous paragraph, Section 502.5-5(a) requires that Certified entities shall report change of ownership within 10 days and therefore would require re-certification at that point. We see no benefit for Tribal Corporations to have to repeatedly re-certify when they are 100%

owned by the Oneida Nation and for the Indian Preference Office to spend time, energy, and money for a renewal process that is guaranteed.

We agree and applaud the Committee for Section 502.5-8 in regards in Joint Ventures. We believe allowing joint ventures to be certified as Indian Owned, assuming each JV meets the certification criteria, is a good opportunity for tribally owned businesses, enterprises, and tribal corporations to increase competitive strength on a case-by-case basis.

Section 502.6-2(b)(1) states the Nation shall exclusively utilize services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business. We feel this should include Tribal Corporations. At the very least, include the phrase “may include Tribal Corporations.” If the purpose of the Oneida Indian Preference in Contracting is maximum utilization of Indian businesses, why wouldn’t the Nation include language for Tribal corporations? The Nation receives the distribution of profits, the Nation earns the economic benefit of a growing company, and more of the economic impact of the Oneida Nation remains within the Oneida Nation.

The Indian Preference in Contracting Law initially included Tribal Preference for corporations but it was removed with the amendments to the law adopted by OBC Resolution 3-26-13-A. Interestingly, the Office of Native American Programs (ONAP) issued guidance for the Native American Housing Assistance and Self-Determination Reauthorization Act (NAHASDA) of 2008 with regards to regulatory changes relating to Indian Preference and tribal preference.

A notice issue on July 11, 2013, just three months after the OBC resolution, outlined **Indian** Preference and **tribal** preference. The guidance, which is now Title 25 of the United States Code, Chapter 14 Subchapter II Sec. 450e (2) - Wage and Labor Standards, states that “preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.” Indian-owned economic enterprise, as defined by section 1452, means any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit: Provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

The guidance on **Tribal** Preference further states that when an Indian Tribe has adopted a tribal preference law, regulation, or ordinance governing preference in employment and contracting, that Tribal Preference law will govern any preferences in employment and contracting under the Indian Housing Block Grant program. 25 USC 4111 (k) states: “notwithstanding any other provision of law, with respect to any grant (or portion of a grant) made on behalf of an Indian tribe under this chapter that is intended to benefit 1 Indian tribe, the tribal employment and contract preference laws (including

regulations and tribal ordinances) adopted by the Indian tribe that receives the benefit shall apply with respect to the administration of the grant (or portion of a grant).”

Another example is 25 CFR Part 170.910 under the Tribal Transportation Program (TTP), which states: “Indian organizations and Indian-owned economic enterprises are entitled to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the TTP.”

Included in this testimony is attachment A, a letter from the Department of Interior, Bureau of Indian Affairs, Branch of Road Tony Saccoman to Chairman Tehassi Hill stating “It is allowable under the Tribal Transportation Program (TTP) laws and regulations (FAST Act and 25 CFR Part 170), for Tribes to complete engineering and construction work with qualified in-house Tribal employees and/or Tribal-owned companies without implementing the formal solicitation/bid process for those services or activities.”

This is allowed in many US Federal Acquisition Regulations (FAR), Code of Federal Regulations (CFR), and related federal laws. For example, in 13 CFR part 124 – 8a, the US Small Business Administration allows contracting officers to sole-source work to small disadvantaged businesses, woman-owned businesses, veteran and service disabled veteran-owned businesses up to \$9.9 million without justification and up to \$22 million with justification.

There is additional language in Public Law 93-638 using the same language and these are just a few examples. The point is the USC, FARs, and other federally mandated procurement regulations provide for preference for tribal economic enterprises and tribally owned corporations and so too should the Oneida Nation.

We fully support the purpose of the law “of maximum utilization of Indian workers.” The Compliance Agreement in Section 502.7-2, (a) states that the agreement shall include “Negotiate Numerical hiring goals and time tables that specify the minimum number of Indians that must be utilized per contract dollar.” The Indian Preference Law should recognize that business and contractors may have non-trade qualifications, such as possession of a valid non-probationary driver’s license, passing a background check, and passing a drug screen. The Oneida Nation includes such language for its employees.

Oneida ESC Group is proud to follow the Indian Preference in Contracting Law. We work diligently in hiring qualified Indian talent, and working with Native American owned companies, particularly Oneida-owned businesses. We have a strong record of complying with Indian Preference in Contracting Law and working with the Indian Preference Office and we look forward to hiring more qualified trade workers who are Oneida.

We note that Section 8-4 (c) includes the proof of a driver's license but it should also state that the applicant should possess a valid non-probationary driver's license. Section 502.8-4 should also provide that the contractor may have additional non-trade related qualification such as passing a background check and drug screen.

Although not contained in the law, we are aware that the Indian Preference Office uses a scoring formula when evaluating qualified bidders. Tribal Corporations should receive maximum allowable points for all construction and non-construction contracts. Also, the law should define the qualifiers used in the scoring system.

Without adoption of some of these recommend changes, the law provides little effective preference for Tribal Corporations when the Nation is within its rights and obligations. Other than Indian Preference to Construction Contracts discount found in Section 502.6-10, there are no other preferences given to Tribal Corporations.

Tribal Corporations are valuable assets to the long-term economic strength of the Nation. Prudent, effective preferences that will increase the proper use of these assets will strengthen the Nation's economic stability and will empower Tribal Corporations to grow and *increase the economic benefits* for the Nation—a core objective of the Section 502.1-1.

Because the Nation invests in these business and corporations, the Nation should utilize them to their fullest capacity to maximize the economic benefits and return on the Nation's investments.

Thank you.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Midwest Regional Office
5600 West American Boulevard
Norman Pointe II, Suite 500
Bloomington, Minnesota 55437

IN REPLY REFER TO:

Branch of Roads

Honorable Tehassi Hill
Chairperson, Oneida Nation
P.O. Box 365
Oneida, WI 54155

Dec. 4, 2019

Dear Chairperson Hill,

It is our understanding, through the Tribe's TTP Planner, James Petitjean, there are questions regarding the bidding of engineering and/or construction work even though the Oneida Nation owns and operates the company known as Oneida Engineering Services (OES).

It is allowable under the Tribal Transportation Program (TTP) laws and regulations (FAST Act and 25CFR Part 170), for Tribe's to complete engineering and construction work with qualified in-house Tribal employees and/or Tribal owned companies without implementing the formal solicitation/bid process for those services or activities. We typically recommend Tribal Transportation Program Managers periodically review their internal costs to ensure maximum use of their TTP funding. However, if for any reason, the Tribe does determine to contract TTP Project related services or activities to outside sources, Tribe's should always follow their established contract and procurement policies that meet or exceed federal guidelines.

If you have any questions, please contact Tony Saccoman, Civil Engineer, at 612-725-4555.

Sincerely,

Civil Engineer
Midwest Region, Branch of Roads

Written comments on the Indian Preference in Contracting Law Amendments

Provided by Eric McLester 

Agent for Oneida Golf Enterprise

December 30, 2019

I am providing written comments in support of the proposed changes to the Indian Preference Law. As the Agent for the Oneida Golf Enterprise, I am in full support of the purpose of the law which is to increase "economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation." I would recommend that these economic benefits not be limited to just on or near the Reservation, and that wording similar to the "Joint Ventures" definition, be included that allows for economic development on a "project-specific basis" for projects off Reservation.

Regarding the Definition of Tribal Corporation, the requirement that "a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation" is again limiting to a Corporations success. Why would you limit any Tribal investment, joint venture, partnership, etc. to only those wholly owned by the Tribe? I would recommend the Tribe support any business venture the Tribe has a stake in to be given preference. Wherever possible and when allowable by contracting rules and laws, Tribal Corporations should be given sole source preference so that the businesses are supported, and revenue and resources are invested back into Tribal investments, regardless if they are 1% owned or wholly owned businesses. It makes good sense to re-invest and support any business the Tribe has a vested interest in seeing succeed.

The language referring to Joint Ventures speaks to these ventures being one-time or short-term partnerships but there are times when long term ventures make good business sense. I would recommend language be added that long term joint ventures can be considered on a project . specific basis if it is makes good business sense to do so. The Tribe should be open to every sound business opportunity and not limit or restrict new ventures. The law should support and drive business back to the corporations the Tribe has created to allow for those businesses to be as successful as possible.

Thank you for the opportunity to provide feedback on the amendments to the Indian Preference Law.



Legislative Operating Committee
February 5, 2020

Southeastern Wisconsin Oneida Tribal Services Advisory Board Bylaws Amendments

Submission Date: 01/15/20	Public Meeting: n/a
LOC Sponsor: Daniel Guzman King	Emergency Enacted: n/a

Summary: *The SEOTS Advisory Board (Board) submitted a request to the LOC to consider amending the Board's bylaws. The intent of the proposed amendments is to increase the number of Board members from five (5) to seven (7) and increase the meeting quorum from three (3) to four (4) Board members.*

1/15/20 LOC: Motion by Daniel Guzman King to add the SEOTS Board bylaws to the active files list for amendments with Daniel Guzman King as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

Next Steps:

- Approve forwarding the amended Southeastern Wisconsin Oneida Tribal Services Advisory Board bylaws packet to the Oneida Business Committee for consideration.



Southeastern Wisconsin Oneida Tribal Services Advisory Board Bylaws Amendments Legislative Analysis

SECTION 1. EXECUTIVE SUMMARY

Analysis by the Legislative Reference Office					
REQUESTER: Kathryn LaRoque	SPONSOR: Daniel Guzman King			ANALYST: Maureen Perkins	
Complies with the Board Bylaws and the Boards, Committees and Commissions Law	The proposed amendments comply with the requirements contained in the Board bylaws [Article VII, 7-1(c)] as established by and in accordance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(g)].				
Intent of the Amendments	The proposed amendments request an increase to both the Board membership and the number of Board members required to be present to constitute a meeting quorum.				
Members	5 members	Stipend	\$75 a month	Elected/Appointed	Appointed
Establishment	The Board was established through resolution BC-04-04-94-A, which was adopted by the Oneida Business Committee on April 4, 1994 pursuant to the authority delegated it under Article IV, Section 1 of the Oneida Nation Constitution [Article I, 1-2].				
Purpose of the Board	The Board was established for purposes of providing advice and constructive input to the Southeastern Wisconsin Oneida Tribal Services (SEOTS) Director working in partnership to formulate social services programs for the Oneida people residing in Southeastern Wisconsin by, including, but not limited to: (a) Acting as an ambassador for the SEOTS program by promoting its mission whenever possible; (b) Reviewing the SEOTS program’s budget; (c) Guiding and advising the SEOTS administration; (d) Adhering to the appropriate chain of command in any and all relative communications with the Oneida Business Committee; and (e) Carrying out all other powers and/or duties delegated to SEOTS by the laws and/or policies of the Nation [Article I, 1-3].				
Due Process	A member of the Board serves at the discretion of the Oneida Business Committee (OBC). Upon the recommendation of a member of the OBC or by recommendation by formal action requiring a majority vote of the Board [Article I, 1-6], a member of a Board may have his or her appointment terminated by the OBC. A two-thirds majority vote of the OBC shall be required to terminate the appointment of an individual. The OBC’s decision to terminate an appointment is final and not subject to appeal [1 O.C. 105.7-4].				
Related Legislation	Oneida Nation Constitution and Boards, Committees and Commissions law				
Public Meeting	Public meetings are not required for bylaws amendments.				
Fiscal Impact	A fiscal impact statement is not required for bylaws amendments.				

SECTION 2. BACKGROUND

- A. **Board History.** The Board was originally established by adoption of the bylaws by the OBC on April 4, 1994, by resolution BC-04-04-94-A. The previous Board bylaws were approved by the OBC on

November 25, 2009. The most recent bylaws were adopted by the OBC on October 9, 2019, in compliance with the Boards, Committees and Commissions law.

- a. The Boards, Committee and Commissions law required all boards, committees or commissions 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 to amend the bylaws to comply with the format and required minimum information as detailed in the law [1 O.C. 105.10].

B. **LOC Action.** The Legislative Operating Committee (LOC) accepted the Board's request to amend the Board bylaws and added the Board bylaws amendments to the active files list January 15, 2020, with Danial Guzman King as the sponsor.

- a. Board Justification. The following is the detailed description of the justification included on the agenda request form submitted to the LOC by the Board requesting the LOC to consider amending the Board's bylaws:

- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The membership was changed from 7 to 5 based on the inactivity of previous members 2 years ago. The current board has 7 committed members that are active in attending meetings, coordinating volunteers for Elections, volunteering for SEOTS events, and fundraising for board efforts. This change of membership will likely dissolve the progress made.

C. **Bylaws Amendments Requirements Met.** The Board has addressed the proposed amendments to the bylaws at two Board meetings; one to introduce the proposed bylaws amendments and one to approve the proposed bylaws amendments; as required by the bylaws amendments process contained in the current bylaws [Article VII, 7-1]. The Board acted by majority vote to discuss meeting with OBC liaisons for SEOTS, Kirby Metoxen and Daniel Guzman King, on December 6, 2019, regarding the Board bylaws. The Board acted by majority vote on December 16, 2019, to propose amending the Board bylaws. Subsequent action was taken on January 15, 2020, to approve the amended Board bylaws by majority vote.

2019 12 16 Board Meeting

V. OLD BUSINESS: (6:15 P.M.)

A. Request for support for completion of bylaws. Bylaws overdue 02/19/2019

1. Bylaws submitted 07/29/2019.
2. Bylaws approved by OBC October 9, 2019.
3. Motion by Michael Coleman to discuss meeting with OBC, liaisons for SEOTS, Kirby Metoxen and Daniel Guzman from December 6, 2019.
Ayes: Katy LaRoque, Art Elm, Diane Hill, Lloyd Ninham, Traci Sparks, Kathleen Hill.

VI. NEW BUSINESS: (6:45 P.M.)

1. Motion by Michael Coleman to request amendment of bylaws from LOC.
Seconded by Art Elm.

Ayes: Katy LaRoque, Diane Hill, Traci Sparks, Lloyd Ninham, Kitty Hill. Motion carried unanimously

2020 01 15 Board Meeting

VI. OLD BUSINESS: (7:35 P.M.)

1. Bylaws approved by OBC October 9, 2019. Motion by Michael Coleman to discuss meeting with OBC, liaisons for SEOTS, Kirby Metoxen and Daniel Guzman from December 6, 2019.

A. January 15, 2020: Kathryn LaRoque submitted agenda request: change bylaws to Legislative Operating Committee. Art Elm, Michael Coleman, Lloyd Ninham & Diane Hill in attendance via tele-conference for LOC meeting.

B. Michael Coleman motion to amend bylaws: The membership change to 7 members (4 quorum). Traci Sparks seconded.

Ayes: Katy LaRoque, Art Elm, Diane Hill, Lloyd Ninham, Traci Sparks, Kathleen Hill. Motion carried unanimously.

- D. ***OBC Approval Required.*** The proposed amendments require approval by the OBC prior to implementation in accordance with the current bylaws [Article VII, 7-1(b)] and the Boards, Committees and Commissions law [1 O.C. 105.10-3(g)].

SECTION 3. COMPLIANCE WITH THE BOARDS, COMMITTEES AND COMMISSIONS LAW

- A. ***Compliant.*** The proposed bylaws amendments comply with the required process contained in the Board bylaws [Article VII, 7-1(c)] and with all requirements established by and in accordance with the Boards, Committees and Commissions law [1 O.C. 105.10-3(g)].

SECTION 4. AMENDMENTS

- A. The proposed amendments increase the membership of the Board from five (5) members to seven (7) members [Article I, 1-5(a)] and increase the number of Board members required to be present to establish a meeting quorum from at least three (3) members to at least four (4) members [Article III, 3-4].

- ***Previous OBC Action.*** The OBC approved the current Board bylaws on October 9, 2019, which included a decrease in the Board membership from seven (7) to five (5) members, as well as a decrease to the number of members required to be present to constitute a meeting quorum from four (4) members to three (3) members [Article III, 3-4]. Additional Quorum Requirement. One of the members present to constitute a quorum must be the Chair, Vice-Chair or Secretary, in accordance with the current bylaws [Article III, 3-4]. This requirement remains in the proposed amended bylaws.

Impact. The amendment request received from the Board presented for your consideration return Board membership requirements back to the previously approved bylaws that were effective from 2009-2019. The previous bylaws contained a seven (7) member Board with four (4) members required to be present to constitute a meeting quorum [Southeastern Wisconsin Oneida Tribal Services Advisory Board Bylaws, November 25, 2009].

SECTION 5. RELATED LEGISLATION

There are no conflicts between these bylaws and the Oneida Code of Laws. The below laws are related to the requested amendment to the Board bylaws.

- A. Oneida Nation Constitution. The Constitution of the Oneida Nation contains a provision that allows for the creation of committees for the proper conduct of tribal business of the Nation [Oneida Nation Constitution, Article IV, Section 1(g)]. There are no conflicts between these bylaws and the Oneida Nation Constitution.
- B. Boards, Committees and Commissions [1 O.C. 105]. This law establishes all requirements related to elected and appointed boards, committees and commissions of the Nation. The law governs 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. The proposed bylaws follow the process contained in the current bylaws [Article VII, 7-1] in accordance with this law [1 O.C. 105.10-3(g)]. The proposed bylaws comply and there are no conflicts with the Boards, Committees and Commissions law.

SOUTHEASTERN WISCONSIN ONEIDA TRIBAL SERVICES (SEOTS) ADVISORY BOARD BYLAWS

Article I. Authority

1-1. *Name.* The name of this entity shall be the Southeastern Wisconsin Oneida Tribal Services (SEOTS) Advisory Board and may be referred to interchangeably as SEOTS or the Board.

1-2. *Establishment.* The Board was established through resolution BC-4-4-94-A, which was adopted by the Oneida Business Committee on April 4, 1994 pursuant to the authority delegated it under Article IV, Section 1 of the Oneida Nation Constitution.

1-3. *Authority.* The Board was established for purposes of providing advice and constructive input to the Southeastern Wisconsin Oneida Tribal Services (SEOTS) Director working in partnership to formulate social services programs for the Oneida people residing in Southeastern Wisconsin by, including, but not limited to:

- (a) Acting as an ambassador for the SEOTS program by promoting its mission whenever possible;
- (b) Reviewing the SEOTS program's budget;
- (c) Guiding and advising the SEOTS administration;
- (d) Adhering to the appropriate chain of command in any and all relative communications with the Oneida Business Committee; and
- (e) Carrying out all other powers and/or duties delegated to SEOTS by the laws and/or policies of the Nation.

1-4. *Office.* The official mailing address of the Board shall be:
Southeastern Wisconsin Oneida Tribal Services Advisory Board
c/o Southeastern Wisconsin Oneida Tribal Services
5233 W. Morgan Avenue
Milwaukee, WI 53220

1-5. *Membership.*

(a) *Number of Members.* The Board shall consist of ~~five (5)~~ seven (7) members who shall serve three (3) year terms.

(b) *Appointment.* Board members shall be appointed in accordance with the Boards, Committees and Commissions law.

(1) Each member shall hold office until his/her terms expires, he/she resigns, or his/her appointment is terminated in accordance with the Boards, Committees and Commissions law.

(A) *Term Expiration.* Although a member's term has expired, he or she shall remain in office until a successor has been sworn in by the Oneida Business Committee.

(B) *Resignation.* A member may resign at any time verbally at a meeting or by delivering written notice to the Oneida

Business Committee Support Office and the Board Chairperson or Chairperson's designee. The resignation is deemed effective upon acceptance by motion of a Board member's verbal resignation or upon delivery of the written notices.

(c) *Vacancies.* Vacancies on the Board shall be filled in accordance with the Boards, Committees and Commissions law.

(1) The Board Chairperson shall provide the Oneida Business Committee recommendations on all applications for appointment by the executive session in which the appointment is intended to be made.

(d) *Qualifications of Members.* Board members shall meet the following qualifications:

(1) Be an enrolled member of the Nation;

(2) Be at least eighteen (18) years of age or over; and

(3) Reside within one (1) of the following six (6) Southeastern Wisconsin Counties: Milwaukee, Racine, Kenosha, Waukesha, Ozaukee and Washington.

1-6. *Termination.* A Board member may have his or her appointment terminated in accordance with the Boards, Committees and Commissions law.

(a) Upon majority vote of the members in attendance at a Board meeting of an established quorum, the Board may, by formal motion and action, request that the Oneida Business Committee terminate a member's appointment for one (1) or more of the following reasons:

(1) Accumulating four (4) unexcused absences from regularly scheduled meetings within a twelve (12) month period.

(A) An absence shall be deemed unexcused if a member fails to provide written notice of his or her pending absence to a Board Officer at least thirty (30) minutes before the missed meeting.

(2) Failing to attend at least fifty percent (50%) of the regularly scheduled meetings within a twelve (12) month period for any reason.

(3) Using alcohol while performing official responsibilities of the Board or using illegal drugs at any time.

(4) Violating these bylaws and/or any other laws of the Nation.

(5) Receiving a felony conviction while serving on the Board.

1-7. *Trainings and Conferences.* Board members shall be required to attend mandatory trainings and/or conferences in the following areas:

(a) Robert's Rules of Order;

(b) Oneida Language Classes; and/or

(c) New Board Member Orientation by the SEOTS Director.

(d) Regardless of the number of trainings/conferences that he or she is required to attend, no member shall be eligible to receive stipends for attending more than five (5) full days of mandatory trainings/conferences per year.

Article II. Officers

2-1. *Officers.* The Board shall consist of the following Officers: Chairperson, Vice-Chairperson and Secretary.

2-2. *Responsibilities of the Chairperson.* The responsibilities, duties and limitations of the Chairperson shall be as follows:

- (a) Call and preside over all meetings of the Board.
- (b) Vote only in case of a tie.
- (c) Sign all correspondence of the Board.
- (d) Submit quarterly reports to the Oneida Business Committee, as well as annual and semi-annual reports to the Oneida General Tribal Council, in accordance with the Boards, Committees and Commissions law; and attend or designate a Board member to attend the Oneida Business Committee meeting where SEOTS' quarterly report appears on the agenda.
- (e) Assign sub-committees as necessary and maintain Board functions and responsibilities.
- (f) Prepare and follow scheduled order of business.
- (g) Perform such other duties and functions from time-to-time as may be requested by the Director of SEOTS, who is of management staff of the Oneida Nation; as required by the Constitution of the Oneida Nation; per the direction of the Oneida General Tribal Council; or as provided for by the laws of the Nation.

2-3. *Responsibilities of the Vice-Chairperson.* The responsibilities, duties and limitations of the Vice-Chairperson shall be as follows:

- (a) Perform the Chairperson's duties under section 2-2 of these bylaws, in the absence or incapacity of the Chairperson.
 - (1) In the case of termination of appointment, resignation or death of the Chairperson, the Vice-Chairperson shall become the Chairperson for the remainder of the Chairperson's term.
- (b) Notify the Oneida Business Committee Support Office of any Board vacancies or planned vacancies in accordance with the Boards, Committees and Commissions law.
- (c) Perform such other duties and functions from time-to-time as may be requested by the Director of SEOTS, who is of management staff of the Oneida Nation; as required by the Constitution of the Oneida Nation; per the direction of the Oneida General Tribal Council; or as provided for by the laws of the Nation.

2-4. *Responsibilities of the Secretary.* The responsibilities, duties and limitations of the Secretary shall be as follows:

- (a) Provide notice of meeting agendas, documents, and minutes to all Board members, as well as the public, in accordance with these bylaws and the Nation's Open Records and Open Meetings law.

- (b) Record and review the minutes of the Board's meetings and submit recorded minutes to the Oneida Business Committee Support Office in accordance with these bylaws.
- (c) Maintain files for all minutes, reports and correspondence to and from the Board in accordance with the Open Records and Open Meetings law.
- (d) Submit signed and completed A/P Check Request Forms, Minutes Approved Signature Sheets, and Meeting Attendance Sheets to the appropriate recipient.
- (e) In the event that both the Chairperson and Vice-Chairperson positions become vacant before the end of their terms, call Board meetings to fill the vacancies and preside over those meetings for the sole purpose of conducting an election of new Officers, at which point the Chairperson, or Vice-Chairperson in the absence of the Chairperson, shall preside.
- (f) Perform such other duties and functions from time-to-time as may be requested by the Director of SEOTS, who is of management staff of the Oneida Nation; as required by the Constitution of the Oneida Nation; per the direction of the Oneida General Tribal Council; or as provided for by the laws of the Nation.

2-5. *Selection of Officers.* Officers of the Board shall serve one (1) year terms.

- (a) Any member of the Board may self-nominate or be nominated for the offices of Chairperson, Vice-Chairperson or Secretary.
- (b) Elections of Officers shall take place at the first regular Board meeting of an established quorum in March of each year by majority vote of the members in attendance.
- (c) Board members may be dismissed from their Officer positions by majority vote of the members in attendance at a Board meeting of an established quorum.
- (d) Board members may hold only one (1) Officer position per Officer term.

2-6. *Budgetary Sign-Off Authority and Travel.* The Board shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

- (a) Levels of budgetary sign-off authority for the Board shall be as set forth in the manual titled, *Oneida Tribe of Indians of Wisconsin Purchasing Policies and Procedures*, for Area Directors/Enterprise Directors.
- (b) All Board Officers have sign-off authority and (2) Officers shall be required to sign-off on all budgetary requests, except as follows:
 - (1) The Oneida Business Committee Support Office shall have sign-off authority over requests for stipends, travel per diem and business expense reimbursement.
- (c) Travel shall be approved by majority vote of the members in attendance at a regular or emergency Board meeting of an established quorum.

2-7. *Personnel.* The Board shall not have authority to hire personnel for the benefit of the Board.

Article III. Meetings

3-1. *Regular Meetings.* The Board's regular meetings shall be held on the 2nd Monday of each month, beginning at 6:00 p.m., in the SEOTS building located in Milwaukee, Wisconsin.

- (a) The meeting date, time and location may change from time-to-time as determined by a majority vote of the members consisting of no less than a Board quorum so long as notice is provided to all members in writing and, along with the public, in accordance with the Open Records and Open Meetings law, prior to implementation of the new date, time and/or location.
- (b) The annual meeting schedule shall be posted in the SEOTS office, on the Nation's website and in the Kalihwisaks.
- (c) The Secretary shall provide notice of meeting agendas, documents and minutes to all Board members in writing and, along with the public, in accordance with the Open Records and Open Meetings law.

3-2. *Emergency Meetings.* Emergency meetings may convene as needed outside of regular meeting times when time sensitive issues require immediate action.

- (a) Board Officers may call emergency meetings so long as they provide notice to the entire Board via telephone call and in writing a minimum of twenty-four (24) hours prior to the beginning of the meeting.
 - (1) Notice provided to members via email must be sent to the official Oneida Nation email address that was provided to each member to conduct business electronically on behalf of the Board.
 - (2) Notice of emergency meetings shall further be provided to all members, as well as the public, in accordance with the Open Records and Open Meetings law.
- (b) Within seventy-two (72) hours after an emergency meeting, the Board shall provide the Nation's Secretary with notice of the emergency meeting, the reason for the emergency meeting, and an explanation as to why the matter could not wait until the next regular meeting.

3-3. *Joint Meetings.* Joint meetings with the Oneida Business Committee shall be held on an as needed basis per the approval of the Oneida Business Committee.

- (a) Notice of the joint meeting agenda, documents and minutes shall be provided, and the joint meeting conducted, in accordance with resolution BC-03-27-19-D titled, Oneida Business Committee Joint Meetings with Boards, Committees and Commissions – Definitions and Impact, as may be amended from time-to-time hereafter.

3-4. *Quorum.* A quorum shall consist of at least ~~three (3)~~ four (4) Board members, one of which shall be the Chairperson or the Vice-Chairperson.

- (a) The Board shall not conduct any official action without the presence of a quorum.

- (b) In lieu of the Chairperson and Vice-Chairperson, the Secretary may complete the quorum for meetings that are called pursuant to section 2-4(e) of these bylaws.

3-5. *Order of Business.* The order of business, as far as applicable, shall be as follows:

- (a) Call to Order
- (b) Adopt the Agenda
- (c) Approval of Minutes
- (d) Old Business
- (e) New Business
- (f) SEOTS Director's Report (once a month)
- (g) Other Business
- (h) Executive Session
- (i) Adjournment

3-6. *Voting.* Decisions of the Board shall be based upon a majority vote of members in attendance at a regular or emergency Board meeting of an established quorum.

- (a) The Chairperson, or Board Officer presiding in lieu of the Chairperson, shall not be allowed to vote unless a tie needs to be broken.
- (b) E-polls are allowed so long as conducted in accordance with the Boards, Committees and Commissions law.
 - (1) The Vice-Chairperson shall serve as the Chairperson's designee for the responsibility of conducting e-polls in the Chairperson's absence or discretion.

Article IV. Expectations

4-1. *Behavior of Members.* While acting on behalf of the Board, members are prohibited from:

- (a) Bullying;
- (b) Name calling;
- (c) Using excessive profanity; and/or
- (d) Engaging in other disrespectful behavior deemed inappropriate by the Board.
- (e) *Enforcement.* A member who violates this or any other section of these bylaws and/or any governing law of the Nation, may be subject to one or more of the following:
 - (1) If deemed violent or threatening during a Board meeting, dismissal from the meeting by the Chairperson or Vice-Chairperson.
 - (A) If the unwanted behavior escalates after dismissal, the proper authorities will be called.
 - (2) By majority vote of the members present at a Board meeting of an established quorum, the Board's recommendation to the Oneida Business Committee for the termination of his or her appointment.
 - (3) Disciplinary action in accordance with any law of the Nation governing sanctions and penalties for appointed officials.

- 276 4-2. *Prohibition of Violence.* Intentionally violent acts committed by a Board member that
277 inflict, attempt to inflict, or threaten to inflict emotional or bodily harm on
278 another person, or damage to property are strictly prohibited.
279
- 280 4-3. *Drug and Alcohol Use.* Alcohol use while performing official responsibilities of the Board
281 or use of illegal drugs at any time by a Board member is prohibited.
282 (a) Any member discovered to be under the influence of alcohol or an illegal
283 drug while attending a Board meeting or event will, along with any other
284 possible action under section 4-1, be dismissed by the Chairperson or Vice-
285 Chairperson from that meeting/event.
286
- 287 4-4. *Social Media.* Members shall comply with the Nation's Social Media Policy, their oath of
288 office and the following when using social media on behalf or as a
289 representative of the Board.
290 (a) Use of the SEOTS Advisory Board Facebook Page.
291 (1) If a post by a Board member on any social media platform is made
292 and it is perceived in a negative or inappropriate way, that Board
293 member shall be counseled in the following meeting.
294 (2) If a post is made by a community member and is perceived in a
295 negative or inappropriate way, one (1) of the three (3) administrators
296 will delete the comment or post. That community member will be
297 contacted by an administrator. If the conflict cannot be resolved, the
298 Board will decide how to proceed at the following Board meeting.
299
- 300 4-5. *Conflict of Interest.* Board members shall comply with all laws and policies of the Nation
301 governing conflicts of interest.
302

303 **Article V. Stipends and Compensation**

- 304 5-1. *Stipends.* Board members are eligible for the following stipends as set forth in and
305 subject to these bylaws; the Boards, Committees and Commissions law; and
306 resolution BC-05-08-19-B titled, Amending Resolution BC-09-26-18-D
307 Boards, Committees and Commissions Law Stipends, as may be further
308 amended from time-to-time hereafter:
309 (a) One (1) meeting stipend per month, provided that:
310 (1) A quorum was established;
311 (2) The meeting of the established quorum lasted for a minimum of one
312 (1) hour; and
313 (3) The member collecting the stipend was physically present for the
314 entire meeting of the established quorum.
315 (b) A stipend for attending a Judiciary hearing if the member's attendance was
316 required by official subpoena.
317 (c) A stipend for attending a duly called joint meeting between the Board and
318 the Oneida Business Committee, provided that:
319 (1) A quorum was established by the Board;

- (2) The joint meeting of the established quorum lasted for at least one (1) hour; and
- (3) The member collecting the stipend was physically present for the entire joint meeting.
- (d) A stipend for each day of attendance at a conference or training, provided that:
- (1) The member attended a full day of training or was present at the conference for a full day; and
- (2) The member's attendance at the conference or training was mandated by law, bylaws or resolution.

5-2. *Compensation.* Besides reimbursement for travel, per diem and business expenses authorized by the Boards, Committees and Commissions law, members shall not be entitled to any other form of compensation for duties/activities performed on behalf of the Board.

Article VI. Records and Reporting

6-1. *Agenda Items.* Agendas shall be maintained in a consistent format furnished by the Oneida Business Committee Support Office.

6-2. *Minutes.* Minutes shall be typed and in a consistent format designed by the Oneida Business Committee Support Office to generate the most informative record of the Board's meetings.

(a) Within thirty (30) days of Board approval, the Secretary shall submit the minutes to the Oneida Business Committee Support Office for filing.

6-3. *Attachments.* Handouts, reports, memoranda and the like shall be attached to the minutes and agenda of the meeting in which they were presented to be maintained in accordance with the Open Records and Open Meetings law.

6-4. *Oneida Business Committee Liaison.* The Board shall regularly communicate with the Oneida Business Committee member who is its designated liaison.

(a) The frequency and method of communication shall be as agreed upon by the Board and liaison, but no less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council.

(b) The purpose of the liaison relationship is to uphold the ability of the liaison to act as support to the Board.

6-5. *Audio Recordings.* All meetings of the Board shall be audio recorded using a device approved and/or furnished by the Oneida Business Committee Support Office.

(a) Audio recordings shall be maintained on the network in accordance with the Open Records and Open Meetings law.

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

Article VII. Amendments

7-1. *Amendments.* These bylaws may be amended by majority vote of the members in attendance at a Board meeting of an established quorum.

- (a) Proposed amendments to these bylaws must be presented at one Board meeting and cannot be approved until a subsequent Board meeting.

- (1) A majority vote of the members in attendance at a Board meeting of an established quorum is required before bylaws amendments will be forwarded to the Oneida Business Committee for approval.

- (b) Amendments shall be approved by the Oneida Business Committee and/or the General Tribal Council, before implementation.

- (c) Amendments to these bylaws must conform to the requirements of the Boards, Committees and Commissions law, as well as any other policy of the Nation.

- (d) The Board shall conduct a review of its bylaws no less than on an annual basis.

These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee at a duly called meeting held on _____, 2020, by the Secretary of the Oneida Business Committee's signature.

Lisa Summers, Secretary
Oneida Business Committee

**SOUTHEASTERN WISCONSIN ONEIDA TRIBAL SERVICES (SEOTS) ADVISORY
BOARD BYLAWS**

Article I. Authority

1-1. *Name.* The name of this entity shall be the Southeastern Wisconsin Oneida Tribal Services (SEOTS) Advisory Board and may be referred to interchangeably as SEOTS or the Board.

1-2. *Establishment.* The Board was established through resolution BC-4-4-94-A, which was adopted by the Oneida Business Committee on April 4, 1994 pursuant to the authority delegated it under Article IV, Section 1 of the Oneida Nation Constitution.

1-3. *Authority.* The Board was established for purposes of providing advice and constructive input to the Southeastern Wisconsin Oneida Tribal Services (SEOTS) Director working in partnership to formulate social services programs for the Oneida people residing in Southeastern Wisconsin by, including, but not limited to:

- (a) Acting as an ambassador for the SEOTS program by promoting its mission whenever possible;
- (b) Reviewing the SEOTS program's budget;
- (c) Guiding and advising the SEOTS administration;
- (d) Adhering to the appropriate chain of command in any and all relative communications with the Oneida Business Committee; and
- (e) Carrying out all other powers and/or duties delegated to SEOTS by the laws and/or policies of the Nation.

1-4. *Office.* The official mailing address of the Board shall be:
Southeastern Wisconsin Oneida Tribal Services Advisory Board
c/o Southeastern Wisconsin Oneida Tribal Services
5233 W. Morgan Avenue
Milwaukee, WI 53220

1-5. *Membership.*

(a) *Number of Members.* The Board shall consist of seven (7) members who shall serve three (3) year terms.

(b) *Appointment.* Board members shall be appointed in accordance with the Boards, Committees and Commissions law.

(1) Each member shall hold office until his/her terms expires, he/she resigns, or his/her appointment is terminated in accordance with the Boards, Committees and Commissions law.

(A) *Term Expiration.* Although a member's term has expired, he or she shall remain in office until a successor has been sworn in by the Oneida Business Committee.

(B) *Resignation.* A member may resign at any time verbally at a meeting or by delivering written notice to the Oneida

Business Committee Support Office and the Board Chairperson or Chairperson's designee. The resignation is deemed effective upon acceptance by motion of a Board member's verbal resignation or upon delivery of the written notices.

(c) *Vacancies.* Vacancies on the Board shall be filled in accordance with the Boards, Committees and Commissions law.

(1) The Board Chairperson shall provide the Oneida Business Committee recommendations on all applications for appointment by the executive session in which the appointment is intended to be made.

(d) *Qualifications of Members.* Board members shall meet the following qualifications:

(1) Be an enrolled member of the Nation;

(2) Be at least eighteen (18) years of age or over; and

(3) Reside within one (1) of the following six (6) Southeastern Wisconsin Counties: Milwaukee, Racine, Kenosha, Waukesha, Ozaukee and Washington.

1-6. *Termination.* A Board member may have his or her appointment terminated in accordance with the Boards, Committees and Commissions law.

(a) Upon majority vote of the members in attendance at a Board meeting of an established quorum, the Board may, by formal motion and action, request that the Oneida Business Committee terminate a member's appointment for one (1) or more of the following reasons:

(1) Accumulating four (4) unexcused absences from regularly scheduled meetings within a twelve (12) month period.

(A) An absence shall be deemed unexcused if a member fails to provide written notice of his or her pending absence to a Board Officer at least thirty (30) minutes before the missed meeting.

(2) Failing to attend at least fifty percent (50%) of the regularly scheduled meetings within a twelve (12) month period for any reason.

(3) Using alcohol while performing official responsibilities of the Board or using illegal drugs at any time.

(4) Violating these bylaws and/or any other laws of the Nation.

(5) Receiving a felony conviction while serving on the Board.

1-7. *Trainings and Conferences.* Board members shall be required to attend mandatory trainings and/or conferences in the following areas:

(a) Robert's Rules of Order;

(b) Oneida Language Classes; and/or

(c) New Board Member Orientation by the SEOTS Director.

(d) Regardless of the number of trainings/conferences that he or she is required to attend, no member shall be eligible to receive stipends for attending more than five (5) full days of mandatory trainings/conferences per year.

Article II. Officers

2-1. *Officers.* The Board shall consist of the following Officers: Chairperson, Vice-Chairperson and Secretary.

2-2. *Responsibilities of the Chairperson.* The responsibilities, duties and limitations of the Chairperson shall be as follows:

- (a) Call and preside over all meetings of the Board.
- (b) Vote only in case of a tie.
- (c) Sign all correspondence of the Board.
- (d) Submit quarterly reports to the Oneida Business Committee, as well as annual and semi-annual reports to the Oneida General Tribal Council, in accordance with the Boards, Committees and Commissions law; and attend or designate a Board member to attend the Oneida Business Committee meeting where SEOTS' quarterly report appears on the agenda.
- (e) Assign sub-committees as necessary and maintain Board functions and responsibilities.
- (f) Prepare and follow scheduled order of business.
- (g) Perform such other duties and functions from time-to-time as may be requested by the Director of SEOTS, who is of management staff of the Oneida Nation; as required by the Constitution of the Oneida Nation; per the direction of the Oneida General Tribal Council; or as provided for by the laws of the Nation.

2-3. *Responsibilities of the Vice-Chairperson.* The responsibilities, duties and limitations of the Vice-Chairperson shall be as follows:

- (a) Perform the Chairperson's duties under section 2-2 of these bylaws, in the absence or incapacity of the Chairperson.
 - (1) In the case of termination of appointment, resignation or death of the Chairperson, the Vice-Chairperson shall become the Chairperson for the remainder of the Chairperson's term.
- (b) Notify the Oneida Business Committee Support Office of any Board vacancies or planned vacancies in accordance with the Boards, Committees and Commissions law.
- (c) Perform such other duties and functions from time-to-time as may be requested by the Director of SEOTS, who is of management staff of the Oneida Nation; as required by the Constitution of the Oneida Nation; per the direction of the Oneida General Tribal Council; or as provided for by the laws of the Nation.

2-4. *Responsibilities of the Secretary.* The responsibilities, duties and limitations of the Secretary shall be as follows:

- (a) Provide notice of meeting agendas, documents, and minutes to all Board members, as well as the public, in accordance with these bylaws and the Nation's Open Records and Open Meetings law.

- (b) Record and review the minutes of the Board's meetings and submit recorded minutes to the Oneida Business Committee Support Office in accordance with these bylaws.
- (c) Maintain files for all minutes, reports and correspondence to and from the Board in accordance with the Open Records and Open Meetings law.
- (d) Submit signed and completed A/P Check Request Forms, Minutes Approved Signature Sheets, and Meeting Attendance Sheets to the appropriate recipient.
- (e) In the event that both the Chairperson and Vice-Chairperson positions become vacant before the end of their terms, call Board meetings to fill the vacancies and preside over those meetings for the sole purpose of conducting an election of new Officers, at which point the Chairperson, or Vice-Chairperson in the absence of the Chairperson, shall preside.
- (f) Perform such other duties and functions from time-to-time as may be requested by the Director of SEOTS, who is of management staff of the Oneida Nation; as required by the Constitution of the Oneida Nation; per the direction of the Oneida General Tribal Council; or as provided for by the laws of the Nation.

2-5. *Selection of Officers.* Officers of the Board shall serve one (1) year terms.

- (a) Any member of the Board may self-nominate or be nominated for the offices of Chairperson, Vice-Chairperson or Secretary.
- (b) Elections of Officers shall take place at the first regular Board meeting of an established quorum in March of each year by majority vote of the members in attendance.
- (c) Board members may be dismissed from their Officer positions by majority vote of the members in attendance at a Board meeting of an established quorum.
- (d) Board members may hold only one (1) Officer position per Officer term.

2-6. *Budgetary Sign-Off Authority and Travel.* The Board shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

- (a) Levels of budgetary sign-off authority for the Board shall be as set forth in the manual titled, *Oneida Tribe of Indians of Wisconsin Purchasing Policies and Procedures*, for Area Directors/Enterprise Directors.
- (b) All Board Officers have sign-off authority and (2) Officers shall be required to sign-off on all budgetary requests, except as follows:
 - (1) The Oneida Business Committee Support Office shall have sign-off authority over requests for stipends, travel per diem and business expense reimbursement.
- (c) Travel shall be approved by majority vote of the members in attendance at a regular or emergency Board meeting of an established quorum.

2-7. *Personnel.* The Board shall not have authority to hire personnel for the benefit of the Board.

Article III. Meetings

3-1. *Regular Meetings.* The Board's regular meetings shall be held on the 2nd Monday of each month, beginning at 6:00 p.m., in the SEOTS building located in Milwaukee, Wisconsin.

- (a) The meeting date, time and location may change from time-to-time as determined by a majority vote of the members consisting of no less than a Board quorum so long as notice is provided to all members in writing and, along with the public, in accordance with the Open Records and Open Meetings law, prior to implementation of the new date, time and/or location.
- (b) The annual meeting schedule shall be posted in the SEOTS office, on the Nation's website and in the Kalihwisaks.
- (c) The Secretary shall provide notice of meeting agendas, documents and minutes to all Board members in writing and, along with the public, in accordance with the Open Records and Open Meetings law.

3-2. *Emergency Meetings.* Emergency meetings may convene as needed outside of regular meeting times when time sensitive issues require immediate action.

- (a) Board Officers may call emergency meetings so long as they provide notice to the entire Board via telephone call and in writing a minimum of twenty-four (24) hours prior to the beginning of the meeting.
 - (1) Notice provided to members via email must be sent to the official Oneida Nation email address that was provided to each member to conduct business electronically on behalf of the Board.
 - (2) Notice of emergency meetings shall further be provided to all members, as well as the public, in accordance with the Open Records and Open Meetings law.
- (b) Within seventy-two (72) hours after an emergency meeting, the Board shall provide the Nation's Secretary with notice of the emergency meeting, the reason for the emergency meeting, and an explanation as to why the matter could not wait until the next regular meeting.

3-3. *Joint Meetings.* Joint meetings with the Oneida Business Committee shall be held on an as needed basis per the approval of the Oneida Business Committee.

- (a) Notice of the joint meeting agenda, documents and minutes shall be provided, and the joint meeting conducted, in accordance with resolution BC-03-27-19-D titled, Oneida Business Committee Joint Meetings with Boards, Committees and Commissions – Definitions and Impact, as may be amended from time-to-time hereafter.

3-4. *Quorum.* A quorum shall consist of at least four (4) Board members, one of which shall be the Chairperson or the Vice-Chairperson.

- (a) The Board shall not conduct any official action without the presence of a quorum.

- (b) In lieu of the Chairperson and Vice-Chairperson, the Secretary may complete the quorum for meetings that are called pursuant to section 2-4(e) of these bylaws.

3-5. *Order of Business.* The order of business, as far as applicable, shall be as follows:

- (a) Call to Order
- (b) Adopt the Agenda
- (c) Approval of Minutes
- (d) Old Business
- (e) New Business
- (f) SEOTS Director's Report (once a month)
- (g) Other Business
- (h) Executive Session
- (i) Adjournment

3-6. *Voting.* Decisions of the Board shall be based upon a majority vote of members in attendance at a regular or emergency Board meeting of an established quorum.

- (a) The Chairperson, or Board Officer presiding in lieu of the Chairperson, shall not be allowed to vote unless a tie needs to be broken.
- (b) E-polls are allowed so long as conducted in accordance with the Boards, Committees and Commissions law.
 - (1) The Vice-Chairperson shall serve as the Chairperson's designee for the responsibility of conducting e-polls in the Chairperson's absence or discretion.

Article IV. Expectations

4-1. *Behavior of Members.* While acting on behalf of the Board, members are prohibited from:

- (a) Bullying;
- (b) Name calling;
- (c) Using excessive profanity; and/or
- (d) Engaging in other disrespectful behavior deemed inappropriate by the Board.
- (e) *Enforcement.* A member who violates this or any other section of these bylaws and/or any governing law of the Nation, may be subject to one or more of the following:
 - (1) If deemed violent or threatening during a Board meeting, dismissal from the meeting by the Chairperson or Vice-Chairperson.
 - (A) If the unwanted behavior escalates after dismissal, the proper authorities will be called.
 - (2) By majority vote of the members present at a Board meeting of an established quorum, the Board's recommendation to the Oneida Business Committee for the termination of his or her appointment.
 - (3) Disciplinary action in accordance with any law of the Nation governing sanctions and penalties for appointed officials.

- 4-2. *Prohibition of Violence.* Intentionally violent acts committed by a Board member that inflict, attempt to inflict, or threaten to inflict emotional or bodily harm on another person, or damage to property are strictly prohibited.
- 4-3. *Drug and Alcohol Use.* Alcohol use while performing official responsibilities of the Board or use of illegal drugs at any time by a Board member is prohibited.
- (a) Any member discovered to be under the influence of alcohol or an illegal drug while attending a Board meeting or event will, along with any other possible action under section 4-1, be dismissed by the Chairperson or Vice-Chairperson from that meeting/event.
- 4-4. *Social Media.* Members shall comply with the Nation's Social Media Policy, their oath of office and the following when using social media on behalf or as a representative of the Board.
- (a) Use of the SEOTS Advisory Board Facebook Page.
- (1) If a post by a Board member on any social media platform is made and it is perceived in a negative or inappropriate way, that Board member shall be counseled in the following meeting.
- (2) If a post is made by a community member and is perceived in a negative or inappropriate way, one (1) of the three (3) administrators will delete the comment or post. That community member will be contacted by an administrator. If the conflict cannot be resolved, the Board will decide how to proceed at the following Board meeting.
- 4-5. *Conflict of Interest.* Board members shall comply with all laws and policies of the Nation governing conflicts of interest.

Article V. Stipends and Compensation

- 5-1. *Stipends.* Board members are eligible for the following stipends as set forth in and subject to these bylaws; the Boards, Committees and Commissions law; and resolution BC-05-08-19-B titled, Amending Resolution BC-09-26-18-D Boards, Committees and Commissions Law Stipends, as may be further amended from time-to-time hereafter:
- (a) One (1) meeting stipend per month, provided that:
- (1) A quorum was established;
- (2) The meeting of the established quorum lasted for a minimum of one (1) hour; and
- (3) The member collecting the stipend was physically present for the entire meeting of the established quorum.
- (b) A stipend for attending a Judiciary hearing if the member's attendance was required by official subpoena.
- (c) A stipend for attending a duly called joint meeting between the Board and the Oneida Business Committee, provided that:
- (1) A quorum was established by the Board;

- (2) The joint meeting of the established quorum lasted for at least one (1) hour; and
- (3) The member collecting the stipend was physically present for the entire joint meeting.
- (d) A stipend for each day of attendance at a conference or training, provided that:
- (1) The member attended a full day of training or was present at the conference for a full day; and
- (2) The member's attendance at the conference or training was mandated by law, bylaws or resolution.

5-2. *Compensation.* Besides reimbursement for travel, per diem and business expenses authorized by the Boards, Committees and Commissions law, members shall not be entitled to any other form of compensation for duties/activities performed on behalf of the Board.

Article VI. Records and Reporting

6-1. *Agenda Items.* Agendas shall be maintained in a consistent format furnished by the Oneida Business Committee Support Office.

6-2. *Minutes.* Minutes shall be typed and in a consistent format designed by the Oneida Business Committee Support Office to generate the most informative record of the Board's meetings.

(a) Within thirty (30) days of Board approval, the Secretary shall submit the minutes to the Oneida Business Committee Support Office for filing.

6-3. *Attachments.* Handouts, reports, memoranda and the like shall be attached to the minutes and agenda of the meeting in which they were presented to be maintained in accordance with the Open Records and Open Meetings law.

6-4. *Oneida Business Committee Liaison.* The Board shall regularly communicate with the Oneida Business Committee member who is its designated liaison.

(a) The frequency and method of communication shall be as agreed upon by the Board and liaison, but no less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council.

(b) The purpose of the liaison relationship is to uphold the ability of the liaison to act as support to the Board.

6-5. *Audio Recordings.* All meetings of the Board shall be audio recorded using a device approved and/or furnished by the Oneida Business Committee Support Office.

(a) Audio recordings shall be maintained on the network in accordance with the Open Records and Open Meetings law.

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

Article VII. Amendments

7-1. *Amendments.* These bylaws may be amended by majority vote of the members in attendance at a Board meeting of an established quorum.

- (a) Proposed amendments to these bylaws must be presented at one Board meeting and cannot be approved until a subsequent Board meeting.

- (1) A majority vote of the members in attendance at a Board meeting of an established quorum is required before bylaws amendments will be forwarded to the Oneida Business Committee for approval.

- (b) Amendments shall be approved by the Oneida Business Committee and/or the General Tribal Council, before implementation.

- (c) Amendments to these bylaws must conform to the requirements of the Boards, Committees and Commissions law, as well as any other policy of the Nation.

- (d) The Board shall conduct a review of its bylaws no less than on an annual basis.

These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee at a duly called meeting held on _____, 2020, by the Secretary of the Oneida Business Committee's signature.

Lisa Summers, Secretary
Oneida Business Committee



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



AGENDA REQUEST FORM

- 1) Request Date: _____
- 2) Contact Person(s): _____
 Dept: _____
 Phone Number: _____ Email: _____
- 3) Agenda Title: _____
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:

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

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

- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:

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

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

Signature of Requester:

Kristen M. Hooker

Please send this form and all supporting materials to:

LOC@oneidation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
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AGENDA REQUEST FORM

- 1) Request Date: January 22, 2020
- 2) Contact Person(s): Kristen M. Hooker
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4411 Email: LOC@oneidanation.org
- 3) Agenda Title: Petition: Nancy Dallas - Hold on Building
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On January 22, 2020, the Oneida Business Committee approved a
motion to direct the Legislative Reference Office to complete and submit
the Statement of Effect for Petition: Nancy Dallas - Hold on Building.

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

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

- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
Urgent in order to meet the deadline for submission to the Oneida Business Committee

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

Signature of Requester:

Kristen M. Hooker

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
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 Oneida, WI 54155
 Phone 920-869-4376



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AGENDA REQUEST FORM

- 1) Request Date: January 28, 2020
- 2) Contact Person(s): Kristen M. Hooker
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4411 Email: LOC@oneidanation.org
- 3) Agenda Title: Oneida Nation Emergency Planning Committee Bylaws Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Per the Boards, Committees and Commissions law ("Law"), the Oneida
Nation Emergency Planning Committee is required to amend its bylaws
to conform with the requirements of the law.

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

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

- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

The Law requires that entities update their bylaws within a reasonable time after its adoption on 9/26/18.

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

Signature of Requester:

Kristen M. Hooker

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376



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 Oneida Business Committee
 Legislative Operating Committee
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AGENDA REQUEST FORM

- 1) Request Date: 1/30/2020
- 2) Contact Person(s): Clorissa N. Santiago
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Curfew Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
A technical amendment to to the Curfew law is being sought to properly
define the Nation's territorial jurisdiction.

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

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

- 5) Please list any laws, policies or resolutions that might be affected:
Curfew Law
- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Law Office
- 7) Do you consider this request urgent? ☐ Yes ☒ No
 If yes, please indicate why:

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

Signature of Requester:

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376



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AGENDA REQUEST FORM

- 1) Request Date: 1/30/2020
- 2) Contact Person(s): Clorissa N. Santiago
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Domestic Animals Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
A technical amendment to to the Domestic Animals law is being sought
to properly define the Nation's territorial jurisdiction.

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

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

- 5) Please list any laws, policies or resolutions that might be affected:
Domestic Animals Law
- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Law Office
- 7) Do you consider this request urgent? ☐ Yes ☒ No
 If yes, please indicate why:

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

HANDOUT ADD-ON

130 of 255



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



AGENDA REQUEST FORM

- 1) Request Date: February 5, 2020
- 2) Contact Person(s): Rae Skenandore OLC Chair
Dept: Oneida Land Commission
Phone Number: (920) 869-4337 Email: olc-rske@oneidanation.org
- 3) Agenda Title: Oneida Land Commission Bylaws Changes
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The Oneida Land Commission is requesting the LOC to add the OLC
bylaws to the active files list as agreed to at the 2-3-20 joint meeting,
please place this item on the 2-5-20 LOC agenda for approval and to
forward to the OBC

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

- 1) OLC Epoll and results
- 2) _____
- 3) _____
- 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:

- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Business Committee

- 7) Do you consider this request urgent? ☒ Yes ☐ No

If yes, please indicate why:

The commission would like this finished before the next caucus

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

Signature of Requester:



Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

A good mind. A good heart. A strong fire.

From: [Lee J. Cornelius](#)
To: [Donald McLester](#); [Julie Barton](#); [Michael Mousseau](#); [Pat Cornelius](#); [Rae Skenandore](#); [Rebecca Webster](#); [Sherrole Benton](#)
Subject: Epoll Request - Request Loc to add OLC Bylaws to active files list
Date: Tuesday, February 04, 2020 11:11:00 AM

Oneida Land Commission is requesting that their bylaws be placed on the active files list for changes at the next Legislative Operating Committee meeting February 5, 2020. The next Oneida Land Commission meeting is February 10, 2020 not giving us the opportunity to take action without an Epoll.

Motion to request LOC to add the Oneida Land Commission Bylaws to the to the LOC Active Files List at the February 5, 2020 LOC Meeting. We request LOC Take action by making a motion to change section 1-5.d.4. as shown “Not be employed within any the Nation’s Audit Department, Finance Department, Law Office or other department associated with items (a) – (j) in section 1-3” of these bylaws; as a Division Director or Area Manager for the Nation; or as an independent contractor for Land Management or any other department of the Nation associated with items (a) – (j) in section 1-3 of these bylaws.” and forward to the Oneida Business Committee.

Deadline for response will be at 2:00 pm today February 4, 2020.

Lee Cornelius
 Recording Clerk
 Business Committee Support Office (BCSO)



A good mind. A good heart. A strong fire.

office 920.869.4495
 fax 920.869.4040

CONFIDENTIALITY NOTICE: This message and any included attachments are intended only for the addressee. This message may contain privileged, confidential, or proprietary information. Unauthorized forwarding, printing, copying, distribution, or use of such information is strictly prohibited and may be unlawful. If you have received this message in error, please inform us promptly by reply e-mail, then delete the e-mail and destroy any printed copy.

Re: Epoll Request - Request Loc to add OLC Bylaws to active files list



Pat Cornelius

To: Sherrole Benton; Lee J. Cornelius; Donald McLester; Julie Barton; Michael Mousseau; Rae Skenandore; Rebecca Webster

approved



Rebecca Webster

To: Lee J. Cornelius

Sorry, I only replied to Sherole.

Sent from my iPhone

Begin forwarded message:

From: Rebecca Webster <rwebste3@oneidanation.org>

Date: February 4, 2020 at 1:44:46 PM CST

To: Sherrole Benton <plc-sben@oneidanation.org>

Subject: Re: Epoll Request - Request Loc to add OLC Bylaws to active files list

Approve

Sent from my iPhone

On Feb 4, 2020, at 1:26 PM, Sherrole Benton <plc-sben@oneidanation.org> wrote:

Appove

RE: Epoll Request - Request Loc to add OLC Bylaws to active files list



Sherrole Benton

To: Lee J. Cornelius; Donald McLester; Julie Barton; Michael Mousseau; Pat Cornelius; Rae Skenandore; Rebecca Webster

Approve

From: Lee J. Cornelius <leej@oneidanation.org>

Re: Epoll Request - Request Loc to add OLC Bylaws to active files list



Donald McLester

To: Michael Mousseau; Lee J. Cornelius; Julie Barton; Pat Cornelius; Rebecca Webster; Sherrole Benton; Rae Skenandore

approve

Re: Epoll Request - Request Loc to add OLC Bylaws to active files list



Michael Mousseau

To: Lee J. Cornelius; Donald McLester; Julie Barton; Pat Cornelius; Rebecca Webster; Sherrole Benton; Rae Skenandore

Approve

Thank You,
Mike M.

Re: Epoll Request - Request Loc to add OLC Bylaws to active files list

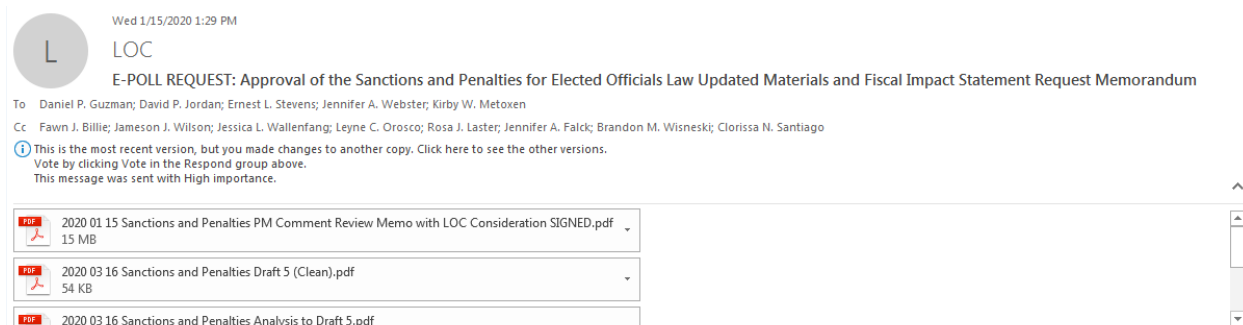


Rae Skenandore

To: Lee J. Cornelius; Donald McLester; Julie Barton; Michael Mousseau; Pat Cornelius; Rebecca Webster; Sherrole Benton

Approve

January 15, 2020, Legislative Operating Committee E-Poll Approval of the Sanctions and Penalties for Elected Officials Law Updated Materials and Fiscal Impact Statement Request Memorandum



Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Sanctions and Penalties for Elected Officials law updated public comment review memorandum, draft, legislative analysis, and the approval of the fiscal impact statement request memorandum to the Finance Department.

EXECUTIVE SUMMARY

The Legislative Operating Committee is currently developing a Sanctions and Penalties for Elected Officials law (“the Law”). The Legislative Operating Committee held a public meeting on the proposed Law on January 7, 2020. The public comment period on the proposed Law was then held open until January 14, 2020. One (1) person provided oral comments during the public meeting and the Legislative Operating Committee received two (2) submissions of written comments.

During the January 15, 2020, Legislative Operating Committee meeting the Legislative Operating Committee approved a motion to accept the public comments and public comment review memorandum for the Law and defer this matter to a work meeting for further consideration. Later that day the Legislative Operating Committee held a work meeting to review and consider all public comments that were received during the public meeting and public comment period. Ultimately, the Legislative Operating Committee determined no changes to the proposed Law were needed based on the public comments received.

Now that the Legislative Operating Committee has reviewed and considered all the public comments that were received, the next step is to update the public comment review memorandum to include the LOC’s considerations, as well as the draft and legislative analysis. Then the next step in the legislative process is to request a fiscal impact statement.

The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and can include: startup costs, personnel, office costs, documentation costs, and an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The Legislative Operating is now being asked to approve by e-poll the updated public comment review memorandum, draft, updated legislative analysis, and fiscal impact statement request memorandum, and to forward the fiscal impact statement request memorandum, with accompanying draft and legislative analysis, to the Finance Department directing that a fiscal impact statement of the proposed Sanctions and Penalties for Elected Officials law be prepared and submitted to the LOC by January 20, 2020.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for February 5, 2020, and immediate action is required by the Legislative Operating Committee to submit the request for a fiscal impact statement to the Finance Department so that the fiscal impact statement can be returned to the Legislative Operating Committee by January 20, 2020, so that the Legislative Operating Committee can approve the adoption packet for the Sanctions and Penalties for Elected Officials law, via e-poll, so that the adoption packet may be included on the January 22, 2020, Oneida Business Committee meeting agenda as a handout.

REQUESTED ACTION

Approve the updated public comment review memorandum, draft, legislative analysis, and fiscal impact statement request memorandum, and forward the fiscal impact statement request memorandum, with accompanying draft and legislative analysis, to the Finance Department directing that a fiscal impact statement of the proposed Sanctions and Penalties for Elected Officials law be prepared and submitted to the Legislative Operating Committee by January 20, 2020.

DEADLINE FOR RESPONSE

January 15, 2020 at 3:00 p.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS:

The e-poll was approved by David P. Jordan, Jennifer Webster, Ernest Stevens III, Kirby Metoxen. Daniel Guzman King did not provide a response.



Wed 1/15/2020 1:32 PM

David P. Jordan

Re: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Updated Materials and Fiscal Impact Statement Request Memorandum

To LOC

Cc Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski; Clorissa N. Santiago

Approve

Sent from my iPhone



Wed 1/15/2020 1:44 PM

Jennifer A. Webster

Re: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Updated Materials and Fiscal Impact Statement Request Memorandum

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski; Clorissa N. Santiago

Approve



Wed 1/15/2020 1:47 PM

Ernest L. Stevens

Re: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Updated Materials and Fiscal Impact Statement Request Memorandum

To Jennifer A. Webster; LOC; Daniel P. Guzman; David P. Jordan; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski; Clorissa N. Santiago

Approve. Daniel says Approve.

Get [Outlook for Android](#)

Wed 1/15/2020 1:47 PM

Kirby W. Metoxen

Re: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Updated Materials and Fiscal Impact Statement Request Memorandum

To Daniel P. Guzman; David P. Jordan; LOC; Ernest L. Stevens; Jennifer A. Webster

Cc Jameson J. Wilson; Leyne C. Orosco; Clorissa N. Santiago; Rosa J. Laster; Jennifer A. Falck; Jessica L. Wallenfang; Brandon M. Wisneski; Fawn J. Billie

support

Sent from Workspace ONE Boxer

On Jan 15, 2020 1:46 PM, "Ernest L. Stevens" <esteven4@oneidnation.org> wrote:

Approve. Daniel says Approve.

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TO: Legislative Operating Committee
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney **CNS**
DATE: January 15, 2020
RE: Sanctions and Penalties for Elected Officials Law: Public Meeting Comment Review with LOC Consideration

On January 7, 2020, a public meeting was held regarding the proposed Sanctions and Penalties for Elected Officials law ("the Law"). The public comment period was then held open until January 14, 2020. On January 15, 2020, the Legislative Operating Committee reviewed and considered all public comments that were received.

This memorandum is submitted as the Legislative Operating Committee's review and consideration of the written comments received within the public comment period.

Comment 1 – Addressing Appointed Officials in the Law:

Bonnie Pigman (oral): Yes, my name is Bonnie Pigman and I am an eligible voting General Tribal Council member, #5361. These are my public comments for the record. There are points which I have to, I wish to have considered before this draft law, Sanctions and Penalties for Elected Officials, is scheduled to be presented to General Tribal Council on January 20, 2020.

Point 1: In March 2019, the General Tribal Council was presented with this Sanctions and Penalties draft law, which was covered, which covered both appointed and elected officials. The General Tribal Council directed this draft law be deferred for at least sixty (60) days to allow for additional time for community members to consider it and have input. The LOC hosted several community meetings and it is their opinion that the Sanctions and Penalties draft law reflect revisions based on input received from those members. One particular change to the draft law was to exclude appointed BCCs and revise the draft law title to cover only elected officials. The community input asked that the Business Committee be removed as a hearing body for complaints against appointed officials. The community input did not include removing appointed individuals, appointed officials from the draft law. I feel it is important to have it noted for the record that there has been no additional draft law created for appointed officials. What sanctions and penalties will the appointed officials have to comply with if this draft law is approved by General Tribal Council? Would it not have been easier to just revise the draft law by referring all complaints to the Judiciary?

Response

The commenter expresses an opinion that she does not believe the proposed revisions to the Law reflect community input that was received and would have desired to see different revisions made to the Law in regard to appointed officials.

On March 17, 2019, the Legislative Operating Committee presented the proposed Law to the General Tribal Council (GTC). After discussion on the proposed Law, the GTC adopted a motion to defer this item for at least sixty (60) days for GTC to have additional time to consider it and have input. Since March 17, 2019, the Legislative Operating Committee has fulfilled the GTC's directive. The Legislative Operating Committee received a wide range of questions and input regarding the proposed Law during the various outreach events and efforts that were made. The Legislative Operating Committee then used the input that was received from community members during the various community outreach efforts to determine how the proposed Law should be revised to address the concerns of the community.

The Legislative Operating Committee determined that the proposed Law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The Law was then updated to remove the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials from the Law. Now, the proposed Law only addresses elected officials of the Nation and provides that those complaints against elected officials be handled by the Judiciary – Trial Court.

Additionally, the Legislative Operating Committee revised the Law to limit who can file a complaint against an elected official. Previously, the Law allowed any individual at least eighteen (18) years of age or older who in good faith has knowledge or reason to believe that an official has committed misconduct to file a complaint. The proposed Law now also requires that an individual be an enrolled member of the Nation or an employee of the Nation in order to file a complaint against an elected official.

The commenter makes the statement that, *“The community input asked that the Business Committee be removed as a hearing body for complaints against appointed officials. The community input did not include removing appointed individuals, appointed officials from the draft law.”* It is important to note that this statement is inaccurate, as the Legislative Operating Committee did receive input that guided the decision to remove appointed officials from the proposed Law. Additionally, the fact that this Law only applies to elected officials is modeled after and consistent with the Nation's Removal law which also only addresses elected officials.

The commenter also questioned what sanctions and penalties an appointed official would face for misconduct in office if the proposed Law does not address appointed officials. Appointed officials who engage in misconduct are subject to termination of appointment by the Oneida Business Committee in accordance with the Boards, Committees, and Commissions law. [1 O.C. 105.7-4, 105.18-1(c)]. Whether to create further legislation to address potential sanctions and/or penalties of an appointed official will be a policy consideration for the Legislative Operating Committee.

Since it was the intent of the Legislative Operating Committee to have the proposed Law only address elected officials of the Nation in response to input that was received during the various community outreach efforts made, there is no revision to this Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined no revision to the Law was needed based on this comment because it was the intent of the Legislative Operating Committee to have the proposed Law only address elected officials of the Nation in response to input that was received during the various community outreach efforts.

Comment 2 – Combining this Law with the Removal Law:

120.1. Purpose and Policy

120.1-1. Purpose. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

Bonnie Pigman (oral): Point 2: I attended one of the community meetings at the Elder Meal Site and I came prepared with several questions. I was only allowed to ask two. One of the two questions I asked about was why the removal law language was not being incorporated. I feel since behavior is related to removal it's subject to sanctions and penalties, it would be more logical for removal to be included in this draft law. I feel that if GTC is to approve this Sanctions and Penalties law, it would be inclusive of all sanctions and penalties related to BCCs appointed and election and elected, and I was not allowed to ask any of my other questions.

Response

The commenter expresses her belief that the Removal law should have been incorporated into this Law instead of having two separate pieces of legislation.

The purpose of this Law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. [1 O.C. 120.1-1]. Simply stated, it is the goal of this Law to address the misconduct of an official so that official can correct his or her behavior and become a more effective official, thereby potentially avoiding removal from office. The purpose of the Removal law on the other hand is to govern the removal of persons elected to serve on boards, committees, and commissions of the Nation. [1 O.C. 104.1-1].

It was the intent of the Legislative Operating Committee that this Law be developed to address the misconduct of officials that does not rise to the level of removal from office, to provide officials an opportunity to correct and improve their behavior and become more effective officials as a result. For that reason, the Legislative Operating Committee made the decision to have this Law be separate from the Removal law. This was a policy consideration that the Legislative Operating Committee made as the body that has been delegated the authority and responsibility to develop legislation on behalf of the Nation. [1 O.C. 109.4-2].

It is also important to note that in addition to the seven (7) different community outreach events the Legislative Operating Committee held regarding the Law, the Legislative Operating

Committee also allowed for written comments on the proposed Law to be submitted from July 3, 2019, until August 31, 2019, and then from September 18, 2019, until October 31, 2019. The purpose of these periods for written submissions of comments or questions was to allow the opportunity for an individual to participate and provide input even if that individual was unavailable to attend the community outreach events in person or did not get to ask all the questions he or she had during a particular community outreach event.

Since it was the intent of the Legislative Operating Committee that this Law be developed separate from the Removal law, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined no revision to the Law was needed since it was the intent of the Legislative Operating Committee that this Law be developed separate from the Removal law.

Comment 3 – Definition for the Term Entity:

120.3. Definitions

120.3-1. 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.

(g) “Entity” means a board, committee, commission, office, or other group of the Nation an individual may be elected to serve a position on, including the Oneida Business Committee.

Bonnie Pigman (oral): Point 3: In reviewing the Sanctions and Penalties law for Elected Officials draft, that draft law, I saw some areas which may conflict, or are confusing with the language in the Boards, Committees and Commissions law, a lot which is highly connected to this draft law. The first maybe with how entity is defined. The definition in the BCC law includes appointed and elected officials, but not the Business Committee. The definition in the Sanctions and Penalties Elected Officials draft law does not include appointed officials but includes the Business Committee. It seems like the BCC law would be corrected or revised to provide more clarity.

Response

The commenter expresses concern that there may be inconsistencies between this Law and the Nation’s Boards, Committees, and Commissions law. Specifically, the commenter expresses concern that the definition of “entity” is different in both laws.

The Legislative Procedures Act (“the LPA”) provides the process for the development and adoption of laws of the Nation. [1 O.C. 109.1-1, 109.1-2]. In addition to providing the process for the adoption of new legislation or amendments to current legislation, the LPA also provides the consistent format and organization each law is required to follow. [1 O.C. 109.11-1]. The LPA requires that each law has a section that is dedicated to definitions. [1 O.C. 109.11-1(c)]. The definitions included in a law are of words that are used in a technical sense throughout the law, so

if a word is not specifically defined in a law then it is to be used in its ordinary sense. [1 O.C. 109.11-1(c)].

The term “entity” is used in a different technical sense in this Law than the Boards, Committees, and Commissions law. This Law defines an entity as “a board, committee, commission, office, or other group of the Nation an individual may be elected to serve a position on, including the Oneida Business Committee.” [1 O.C. 109.3-1(g)]. This definition references only elected officials and not appointed officials of the Nation because the Law only applies to elected officials of the Nation. The Boards, Committees, and Commissions law defines an entity 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 Boards, Committees, and Commissions law further clarifies that the Law does not apply to the Oneida Business Committee. [1 O.C. 105.1-1(a)]. The definition included in the Boards, Committees, and Commissions law applies to both elected and appointed officials of the Nation because the Boards, Committees, and Commissions law has a wider breadth of application than this Law.

It is not accurate to state that there is a conflict between this Law and the Boards, Committees, and Commissions law because the definition for the term “entity” varies between the two laws. Each law can provide its own definition for the technical use of a term specifically within the law. It is important for a reader to reference the definition section of a particular law instead of utilizing a definition from a different law because the term may not be used in the same technical sense in both pieces of legislation.

Since this Law and the Boards, Committees, and Commissions law purposefully define the term “entity” in different manners, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined no revision to the Law was needed since the definition for “entity” is purposefully different in this Law than in the Boards, Committees, and Commissions law.

Comment 4 – Application of Sanctions and Penalties for Appointed Officials in the Boards, Committees, and Commissions Law:

120.1. Purpose and Policy

120.1-1. Purpose. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

Bonnie Pigman (oral): The second matter refers to the BCC law, Section 105.18, Enforcement. This section refers to members of the entity being found to be in violation of this law to be subject to sanctions and penalties. How are appointed officials to be held to sanctions and penalties, when

appointed officials are not included in this draft law of the Sanctions and Penalties for Elected Officials? Thank you.

Response

The commenter expresses concern that this Law does not apply to appointed officials of the Nation, but the Boards, Committees, and Commissions law references sanctions and penalties of an appointed official.

The commenter is correct that this Law does not apply to appointed officials. The purpose of this Law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office. [1 O.C. 120.1-1]. The Law further clarifies that any reference to an “official” throughout the Law means a person who is elected to serve a position for the Nation, including a position on a board, committee, or commission, or office of the Nation, including the Oneida Business Committee. [1 O.C. 120.3-1(j)].

The Boards, Committees, and Commissions law on the other hand, has a wider range of application and does apply to both elected and appointed officials of the Nation. [1 O.C. 105.1-1, 105.3-1(h)]. The Boards, Committees, and Commissions law contains a provision which addresses its enforcement. [1 O.C. 105.18-1]. Any member of an entity found to be in violation of the Boards, Committees, and Commissions law may be subject to:

- sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
 - removal pursuant to any laws or policies of the Nation’s governing removal, if the individual is a member of an elected entity; or
 - termination of appointment by the Oneida Business Committee, if the individual is a member of an appointed entity.
- [1 O.C. 105.18-1(a)-(c)].

The Boards, Committees, and Commissions law’s reference of “sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties” is not a direct reference to this Law, but instead a general reference to any law of the Nation that may govern sanctions and/or penalties. Although this Law focuses its application to elected officials of the Nation and does not apply to appointed officials, there may be future legislation that will specifically apply to appointed officials of the Nation, just as there is current legislation that applies to and provides specific sanctions and/or penalties for appointed officials who violate said law.

The Nation’s Social Media Policy and Computer Resources Ordinance are examples of current legislation that contains a sanction and/or penalty for an appointed official who violates the Law.

- The Social Media Policy allows an appointed official to be designated by its board, committee, or commission as the administrator of the entity’s social media account. [2 O.C. 218.6-1(a)]. An administrator who violates the Social Media Policy may face the consequence, or sanction and/or penalty, of being removed as administrator of that social media account or having the social media account taken offline. [2 O.C. 218.8-1, 218.8-2].
- The Computer Resources Ordinance provides that a user, which may be an appointed member of a board, committee, or commission of the Nation, may utilize computer

resources for authorized activities, and even engage in personal use of computer resources when it does not interfere with the mission or operations of the entity. [2 O.C. 215.3-1(f), 215.4-1, 215.4-2]. The Computer Resources Ordinance then sets forth what constitutes inappropriate personal use, and limitations on use. [2 O.C. 215.5, 215.7]. If an appointed official of a board, committee, or commission violates the Computer Resource Ordinance then that appointed official may be subject to the sanction of limitation or loss of access to the computer resources. [2 O.C. 215.9-1].

The fact that this Law does not apply to appointed officials of the Nation does not create an inconsistency with section 105.18-1(a) of the Boards, Committees, and Commissions law. Therefore, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined no revision to the Law was needed based on this comment.

Comments 5 through 6 – Governmental Separation of Powers:

Travis Wallenfang (written): Good Afternoon, I have submitted my comments to the record as they relate to the Public Rule making process for the Sanctions and Penalties Laws and its process. As it is stated on the Oneida Website:

With the establishment of the 3 branches of government which are Executive, Legislative, and Judicial Branches all within the Oneida Nation, it is important to notice that the purpose of these three separate branches was to make sure no individual or group will have too much power.

- The Executive Branch –Consists of The Oneida Business Committee (OBC) is comprised of four Officers (Chair, Vice-Chair, Treasurer, and Secretary) and five (5) at-large Councilmembers. The OBC oversees the following executive managers of the Nation's organization:
 - Gaming General Manager
 - Community & Economic Development Division Director
 - Comprehensive Health Division Director – Operations
 - Comprehensive Health Division Director – Medical
 - Comprehensive Housing Division Director
 - Environmental Health Safety & Land Division Director
 - Governmental Services Division Director
 - Internal Services Division Director
 - Public Works Division Director
 - Retail Enterprise Area Manager
 - Human Resource Area Manager
- The Legislative Branch- main responsibility is the creation of laws and refers to the preparation and enactment of laws by a legislative body through its lawmaking process. The legislative process includes evaluating, amending, and voting on proposed laws and is concerned with the words used in the bill to communicate the values, judgments, and purposes of the proposal.

The Oneida Legislative Operating Committee's (LOC) purpose and mission is to enhance the policy making capabilities of the OBC(OBC) and General Tribal Council (GTC) by drafting laws and policies and reviewing past and current laws and policies of the tribe. The LOC is also responsible for maintaining the Oneida Register.

Article II. Officers

2-1. *Officers.* The LOC shall have two (2) officers: Chairperson and Vice-Chairperson.

2-2. *Duties of the Chairperson.* The LOC Chairperson shall:

- (a) Preside at all meetings of the LOC;
- (b) Sign all correspondence of the LOC;
- (c) Submit the approved minutes to the Tribal Secretary for action and approval by the Oneida Business Committee;
- (d) Monitor the budget of the LOC;
- (e) Submit a semi-annual report to the GTC;
- (f) Supervise the supervising attorney of the Legislative Reference Office; and
- (g) Other duties as assigned by the LOC.

2-3. *Duties of the Vice-Chairperson.* In the absence or incapacity of the LOC Chairperson, the LOC Vice-Chairperson shall perform the duties of the LOC Chairperson.

2-4. *How Chosen.* The LOC shall meet within twenty-four (24) hours of taking the Oath of Office for the OBC to elect officer positions. The officer positions shall be chosen by majority vote of all LOC members in attendance at the meeting. Said vote shall be made part of the LOC record.

(a) *Length of Term.* The term of office for a LOC officer shall coincide with his or her term on the LOC, unless an officer resigns in accordance with 2-4(b) or the LOC changes officers in accordance with 2-4(c).

(b) *Resignation.* A LOC officer may resign as a LOC officer by presenting his or her resignation in writing to the LOC. Resignations are effective upon approval of the LOC.

(c) *Changing Officers.* Upon request of a LOC member, the LOC shall consider electing Page 1 of 3 a new officer(s) at a duly called meeting. Any new officer(s) shall be elected by majority vote of all present LOC members.

(d) *Officer Vacancy.* In the event of a vacancy in an officer position, the LOC shall vote to elect a new officer at a duly called LOC meeting. The officer position shall be elected by majority vote of all present LOC members.

2-5. *Personnel.* In the event of a vacancy in an officer position, the LOC shall vote to elect a new officer at a duly called LOC meeting. The officer position shall be elected by majority vote of all present LOC members.

2-5. *Personnel.* The Legislative Reference Office is the support office under the direction and supervision of the LOC. The LOC may employ such personnel in the Legislative Reference Office as it deems necessary to carry out the duties and responsibilities of the LOC.

- (a) The LOC shall approve the staff structure for the Legislative Reference Office.
- (b) The LOC shall be responsible for negotiating the contract for the supervising attorney of the Legislative Reference Office and forwarding the contract to the OBC for approval.
- (c) The supervising attorney of the Legislative Reference Office shall be directly supervised by the LOC Chairperson.

Article III. Meetings

3-1. *Regular Meetings.* The LOC meetings shall be held on the first and third Wednesdays of each month at 9:00a.m.

- (a) The meeting dates, time and location may change from time to time as determined by the LOC but shall be within the Reservation boundaries unless notified to the LOC membership prior to designating the meeting location.
- (b) Notice of meeting location, agenda, and materials shall be forwarded by the Chairperson with the assistance of the Legislative Reference Office.

3-2. *Special Meetings.* Special meetings of the LOC may be called by the LOC Chairperson or by OBC directive.

- (a) Special meetings shall address a specific purpose(s) and convene at a time outside of the regular scheduled meeting time.
- (b) Special meetings shall require a written notice to each member of the LOC at least twenty-four (24) hours prior to the meeting start time.

3-3. *Quorum.* A quorum shall consist of three (3) persons and shall include the LOC Chairperson or LOC Vice-Chairperson. 3-4. *Order of Business.* The agendas for the regular meetings of the LOC shall contain the order of business as follows:

- (a) Call to Order and Approval of the Agenda
- (b) Minutes
- (c) Current Business
- (d) New Submissions
- (e) Additions
- (f) Administrative Updates
- (g) Executive Session
- (h) Recess/ Adjourn

3-5. *Voting.* Voting shall be in accordance with simple majority vote of the LOC members present at a duly called meeting. The LOC Chairperson shall have voting privileges in all matters which come before the LOC.

Article IV. Reporting

4-1. *Format.* Agenda items shall be in an identified format.

4-2. *Minutes.* Minutes shall be typed and in a consistent format designed to generate the most Page 2 of 3 informative record of the LOC meetings.

- (a) All minutes shall be submitted to the Tribal Secretary's Office within thirty (30) calendar days after approval by the LOC.
- (b) Actions taken by the LOC are valid when minutes are approved, provided that, minutes are submitted to the Tribal Secretary's Office in accordance with 4-

2(a).

(c) Copies of the minutes shall be available for review and copy in accordance with the Open Records and Open Meetings Law.

4-3. *Backup.* Handouts, reports, memoranda and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.

4-4. *Reporting.* The LOC is responsible for reporting to the OBC and General Tribal Council.

(a) The LOC Chairperson shall submit reports to the OBC and GTC on behalf of the LOC.

(b) Reports to the OBC and GTC shall be made regularly and as requested.

Article V. Amendments

5-1. *Amendments to Bylaws.* The LOC may amend the Bylaws upon approval of the LOC at a regularly scheduled meeting and with subsequent approval of the OBC.

Article VI. Outstanding Legislation

6-1. Any outstanding legislation at the end of a term shall be presented for consideration to the newly elected LOC within sixty (60) days after the new LOC takes office.

Approval Date of May 28, 2014.

The Concern is:

- LOC is comprised of the five (5) council members from OBC. - The questions I have are as follows:
 - How is there separation of the three branches of government in the Oneida Nation when Five of the OBC members from the Executive branch of government are also members of the LOC?
 - The 5 OBC members also the LOC:
 - Committee Chair- Councilman David P. Jordan
 - Committee Vice-Chair- Councilman Kirby Metoxen
 - Committee Member- Councilman Ernest Stevens III
 - Committee Member- Councilman Daniel Guzman King
 - Committee Member- Councilwoman Jennifer Webster

The separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. Three branches are created in the Constitution. The Legislative, composed of the House and Senate, is set up in:

Article 1. The Executive, composed of the President, Vice-President, and the Departments, is set up in

Article 2. The Judicial, composed of the federal courts and the Supreme Court, is set up in

Article 3. Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

- Legislative Operating Committee

Purpose and Mission: The purpose and mission of the LOC is to enhance the policy making capabilities of the OBC and GTC by drafting laws and policies and reviewing past and current laws and policies of the tribe. The LOC is also responsible for maintaining the Oneida Register.

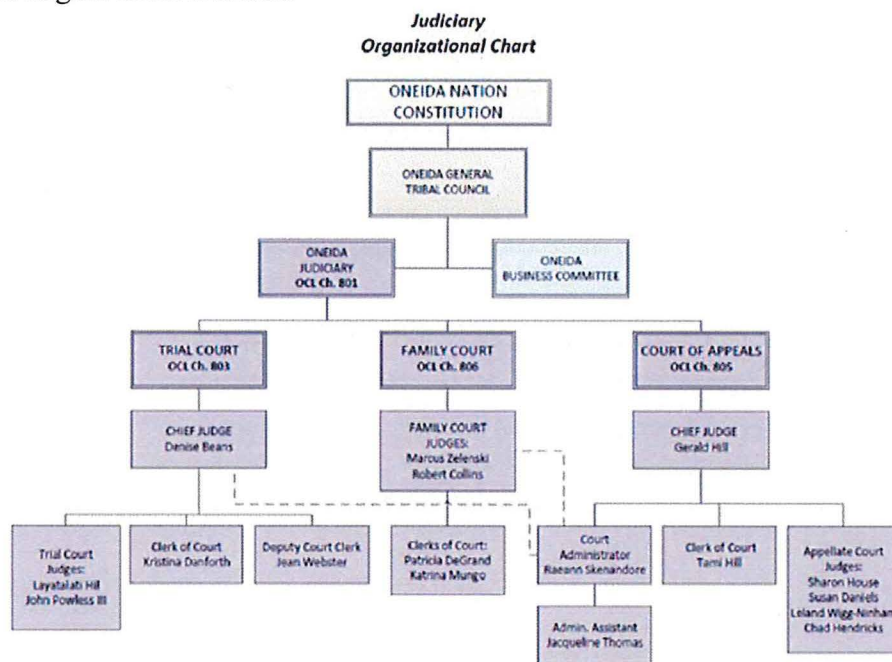
- Is this not a direct Conflict of Interest? Because the Legislative and the Executive branches are to be separate, but the Oneida Nation has them intertwined and overlapping? Conflict of Interest- is a perception of a conflict of interest is a conflict of interest.
- What qualifications do they OBC have to establish these laws?
- What kind of requirements have been established for people holding OBC and LOC positions like this? Is there any relevant experience or minimum requirements of education for this branch of government like?
 - Tribal Governments?
 - Principles of Federal Indian Law?
 - Civil Jurisdiction in Indian Country?
 - Principles of Federal Indian Law?
 - Tribal Gaming Laws?
 - Federal Contract & Compacts?
- The Judicial Branches- On August 19, 1991, the Oneida GTC adopted a resolution creating the Oneida Appeals Commission, later known as the Oneida Tribal Judicial System. The judicial system was created to enhance and protect the self-government and sovereignty of the Oneida Nation while also providing for a governmental separation of powers. The creation of the Judiciary built on the foundation that was laid by the Oneida Tribal Judicial System by granting the Trial Court and Court of Appeals expanded subject matter jurisdiction and further developing a process for peacemaking and mediation. A branch of the Court was also created to address matters affecting the Oneida people as it pertains to the family and children. This is the Oneida Family Court. The Judicial Branches are generally in charge of deciding the meaning of laws, how to apply them to real situations, and whether a law breaks the rules of the Constitution. In May of 2015 Nation members voted to amend the Oneida Tribal Constitution by Secretarial Election. One of the amendments, Article V, Section 1, establishes a Judiciary to exercise the judicial authority of the Oneida Nation. After an appeal of the Secretarial Election in 2016 was upheld, the Oneida GTC adopted Resolution #03-19-17-A which states in part “NOW THEREFORE BE IT RESOLVED, that in accordance with Article V, Section 2 of the Oneida Nation’s Constitution, the GTC delegates the Oneida Nation’s judicial authority pursuant to the Article V of the Constitution to the Oneida Judiciary, created pursuant to the Judiciary Law adopted by resolution GTC-01-07-13-B.

Vision

The Vision of the Oneida Judiciary is to administer a fair, objective, independent, timely and lawful judicial branch of the Oneida government. The Oneida Judiciary is guided by the wisdom of our heritage and traditions as well as the requirements of modern circumstances, laws and statutes.

Mission

The Mission of the Oneida Judiciary is to provide a fair, orderly, and neutral forum for the resolution of issues that may arise out of governance of the Oneida Nation and civil actions amongst its members, other people residing on the Oneida Reservation, and those doing business with Oneida Tribal entities. It is our mission to operate as an independent branch of our government entrusted by the GTC to protect the Sovereignty of the Oneida Nation and the Rights of its citizens.



Travis Wallenfang (written): In order to resolve these potential conflicts of interests and other concerns, the OBC/LOC Members shall be recused from establishing their own laws against them of misconduct in office because this directly interferes with the established separate branches of government and the laws to make them held accountable. Without the proper education it is difficult to let the people in these positions write laws as they directly affect them as this should be brought to the GTC to make them aware of these issues.

Response

The commenter discusses the separation of powers within a government and the qualifications an individual should have to hold a position within that government. The commenter believes a conflict of interest exists within the fact that the Legislative Operating Committee members that develop and draft legislation for the Nation are a part of the Oneida Business Committee which adopts legislation of the Nation. These comments are outside the scope of the public meeting on the proposed Sanctions and Penalties for Elected Officials law.

In an effort for this memorandum to provide clarifying information to members of the community, members of the Legislative Operating Committee participating in the drafting and development of law, and then participating in the approval and adoption of that law as members of the Oneida Business Committee is not a conflict of interest.

General Tribal Council prescribed the manner in which legislation of the Nation should be drafted, developed, and adopted through the adoption of the Legislative Procedures Act. The Legislative Procedures Act provides a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The Legislative Procedures Act provides:

1. The Legislative Operating Committee is the legislative committee of the Nation that is responsible for the development of laws of the Nation. [1 O.C. 109.4-1, 109.4-2].
2. The Legislative Operating Committee handles requests for legislation and determines if the request for the development of legislation should be accepted or denied. [1 O.C. 109.5].
3. The Legislative Operating Committee will direct an agency of the Nation to complete a fiscal impact statement for all legislation. [1 O.C. 109.6].
4. A legislative analysis shall be completed by the Legislative Reference Office and provided to the Legislative Operating Committee. [1 O.C. 109.7].
5. The Legislative Operating Committee will hold open a public comment period with a public meeting, and then consider fully all comments received. [1 O.C. 109.8].
6. The Legislative Operating Committee shall forward the legislation, legislative analysis and fiscal impact statement to the Oneida Business Committee when legislation is ready for consideration. [1 O.C. 109.9-1].
7. The Oneida Business Committee shall consider the adoption of the legislation or forward the legislation to the General Tribal Council for consideration. [1 O.C. 109.9-1].

Additionally, the General Tribal Council adopted the Nation's Ten Day Notice Policy, which clarifies that the Legislative Operating Committee shall consist of the Oneida Business Committee members who are not officers of the Oneida Business Committee. [1 O.C. 110.4-1(b)].

The adoption of both the Ten Day Notice Policy and the Legislative Procedures Act clearly demonstrates General Tribal Council's intention to have the members of the Legislative Operating Committee draft and develop legislation of the Nation, and then the members of the Oneida Business Committee adopt legislation, or forward legislation to the General Tribal Council for adoption. Therefore, no conflict exists between the role the members of the Legislative Operating Committee play with the role those same members play as part of the Oneida Business Committee.

Additionally, the Legislative Operating Committee has made the determination that the General Tribal Council, and not the Oneida Business Committee, should be the adopting authority for this Law, and therefore this Law will be presented to the General Tribal Council for the final consideration of adoption.

Since the comments are outside the scope of the public meeting for the Law, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined no revision to the Law was needed based on this comment.

Comment 7 – Role of the Oneida Business Committee in the Complaint Process:

120.1. Purpose and Policy

120.1-1. Purpose. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

120.3. Definitions

120.3-1. 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.

(j) “Official” means any person who is elected to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee.

120.5. Filing of a Complaint

120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation’s Trial Court pursuant to the Nation’s Rules of Civil Procedure.

120.6. Complaint Procedure

120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of officials.

Travis Wallenfang (written): Another concern is when the complaints affect multiple OCB Members and or relatives in positions and their ability to vote on these issues. To file the complaint should not be in the OBC Support Office as there is a conflict of interests if the OBC is the one who reviews the complaints. These complaints should be filed in the Judicial as a formal document which needs to be formally recorded and documented.

12.6-1 --- Due to the fact that an appointed official serves at the discretion of the OBC, all complaints alleged against an appointed official shall be handled by the Oneida Business Committee. --- this is a conflict.

120.6-2. *Receipt of Complaint.* Upon receiving a complaint, the OBC Support Office shall:

(a) immediately forward copies of the complaint, including any supporting documentation, to:

- (1) all members of the OBC for review; and
- (2) the individual who is the subject of the complaint.

(b) place the complaint on the executive session portion of the agenda of a regular or special meeting of the OBC for an initial review which shall occur within thirty (30) business days after the initial receipt of a complaint.

120.6-5. *Conflict of Interest.* (a) Failure of an OBC member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties. Is this redundant or does it warrant immediate actions of removal for the Conflict of Interests as this is morally and ethically wrong?

120.6-6. *Initial Review.* (2) (A) If the OBC dismisses the complaint based on a determination that the complaint was frivolous, false, or made with a malicious intent, the complainant may be subject to:

- (i) a fine not to exceed five hundred dollars (\$500); not to exceed one (1) year; and/or

- (ii) prohibition from filing another complaint for a period of time
- (iii) A civil suit in the Nation's Trial Court brought by the official accused by the frivolous, false or malicious allegation.

- What happens is it is the OBC after making the complaint have accused the complainant of frivolous, false or malicious allegation and try's to remove them from their positions within the Oneida Nation?
- Is their grounds for immediate removal?

Response

The commenter questions and provides input on a prior draft of the Law which provided that the Oneida Business Committee would serve as a hearing body for complaints filed against appointed officials of the Nation.

Based on the various community input that was received throughout the Legislative Operating Committee's various outreach efforts as a result of the March 17, 2019, General Tribal Council directive, the Legislative Operating Committee determined that the proposed Law should be revised to better address the concerns of the community.

The LOC determined that the proposed Law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The LOC updated the Law to remove the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials from the Law. Now, the Law only addresses elected officials of the Nation and provides that those complaints against elected officials be handled by the Judiciary – Trial Court. [1 O.C. 120.6-1].

Since this comment references a prior draft of the proposed Law, and the revised Law addresses these concerns, there is no revision recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined no revision to the Law was needed based on this comment.

Comments 8 through 9– Specific Sanctions and Penalties:

120.7. Sanctions and Penalties

120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.

120.7-2. Sanctions and penalties may include:

(a) Verbal Reprimand. A verbal reprimand may be imposed on the official.

(1) The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.

(2) To impose the verbal reprimand, the presiding Oneida Business Committee Chairperson, or another Oneida Business Committee member if the verbal reprimand is imposed against the presiding Oneida Business Committee Chairperson, shall read a statement that identifies:

- (A) The Trial Court's findings regarding the specific actions or inaction taken by the official that were found to be misconduct;
- (B) The reasons why the official's actions or inactions amounted to misconduct;
- (C) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation's officials and is not acceptable; and
- (D) A direction to the official to refrain from engaging in future misconduct.

(b) *Public Apology.* The official may be ordered to make a public apology. The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the public apology. The public apology shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting. The public apology shall:

- (1) identify the specific misconduct committed by the official;
- (2) recognize that the official's actions or inactions were wrong;
- (3) identify the effects of the official's misconduct; and
- (4) include a clear and unambiguous apology from the official.

(c) *Written Reprimand.* A written reprimand may be imposed on the official by publication on the Nation's official media outlets, as determined by the Oneida Business Committee. The Trial Court may publish a written reprimand which includes the information required for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).

(d) *Suspension.* An official may be suspended from performing his or her duties as an official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if the official serves in a full-time capacity.

(1) During a suspension, the official shall not:

- (A) attend meetings, trainings or any other event as part of the entity;
- (B) attend conferences or other events on behalf of, or as a representative of, the entity;
- (C) vote or participate in any activities of the entity;
- (D) perform work on behalf of the entity; or
- (E) be eligible for any compensation, including regular pay, stipends, or mileage reimbursement.

(2) When an official is suspended, the Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific start and end date of the suspension.

(3) If a suspension is imposed on multiple officials of the same entity at one time, the Trial Court shall impose the suspensions of the officials on a staggered basis to avoid an interruption of the official business and function of the entity.

(e) **Restitution.** An official may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the official's misconduct.

(f) **Fines.** An official may be ordered to pay a fine not to exceed two thousand and five hundred dollars (\$2,500).

(1) Fines shall be paid to the Trial Court.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.

(3) Money received from fines shall be deposited into the General Fund.

(4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

(g) **Loss of Stipend.** An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed two (2) meetings.

(h) **Mandatory Participation in Training.** An official may be ordered to participate in and complete a training class or program that will assist the official in addressing and improving his or her behaviors and/or actions.

(1) The mandated training class or program may address a variety of topics including, but not limited to, anger management, sexual harassment, or other sensitivity training.

(i) **Removal.** The Trial Court may recommend that the process for removing an elected official as contained in the Nation's laws and/or policies governing removal be initiated.

Travis Wallenfang (written): 120.8-2. Sanctions and penalties may include:

o Remove the (a) Verbal Reprimand, As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.

o Remove the (c) Written Reprimand As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.

o In sections (d) Suspension and (e) Restitution, and (f) Fines, Should be combined. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.

o (g) Loss of Stipend- Should happen regardless and immediately. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards. (h) Mandatory Participation in Training- should be included at any level to help the official to learn their ways to be accepted back to the community. As a political or public figure of the Nation, there should be a zero tolerance for this because they are to be held to a higher standards.

Brian A. Doxtator (written): Delete Verbal, Written. This mirrors how operational employees are dealt with. Should only include: Apology, Restitution, Reprimand, Fine. Delete Training, makes no sense to require training of an elected official. Include Forgiveness policy; or requiring the elected official to request apology from ONCOA.

Response

Both commenters provide that some sanctions and penalties should be removed from the Law as an option either because as a political or public figure there should be a zero tolerance for misconduct and the official should be held to a higher standard, or because it too closely resembles how operational employees are dealt with. The commenters also provide that other sanctions should be imposed on a mandatory basis no matter the misconduct, or that other policies, such as a policy governing forgiveness should be pursued.

The purpose of this Law is not only to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office, but to also provide an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. [1 O.C. 120.1-1]. The Legislative Operating Committee made the decision to include a variety of different types of sanctions and penalties of varying degrees of severity in an effort to ensure that the Law contained enough flexibility to address the specific instance of misconduct that occurred. If the goal is to provide an opportunity for the official to take corrective action to improve his or her performance, then the sanction or penalty imposed needs to be specifically chosen to best address the misconduct that occurred.

The Trial Court is responsible for determining the appropriate sanction to impose when there is a finding of clear and convincing evidence that the official engaged in misconduct. [1 O.C. 120.6-5(a)]. When determining the appropriate sanction or sanctions to impose, the Law provides the Trial Court with factors that should be considered if deemed relevant, including but not limited to:

- the seriousness or severity of the misconduct;
- whether the conduct was intentional or not;
- the likelihood of repetition;
- the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
- whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
- the official's remorse, or
- the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
- any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

[1 O.C. 120.7-3(a)-(h)].

The Trial Court may then determine which sanction most appropriately addresses the misconduct of the official. The Trial Court may choose one or multiple sanctions to impose against an official, including:

- verbal reprimand;
- public apology;
- written reprimand;
- suspension;
- restitution;

- fines;
- loss of stipend;
- mandatory participation in training; and/or
- recommendation for removal.

[1 O.C. 120.7-2(a)-(i)].

Additionally, it is important to note that this Law does not prevent or prohibit an individual from utilizing the process contained in the Removal law for removing an elected official from office if any of the following conditions exist:

- an elected official failed to attend four (4) regularly scheduled meetings without a written explanation;
- an elected official, other than an Oneida Business Committee member, failed to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason;
- an elected official intentionally mis-used Tribal funds;
- an elected official engaged in alcohol use while performing official responsibilities or used illegal drugs at any time;
- an elected official no longer meets the qualifications for office;
- an elected official violated a law of the Nation which specifies removal as a penalty; or
- an elected official receives a felony conviction while in office.

[1 O.C. 104.4-1(a)-(g)].

Based on the fact that it was the Legislative Operating Committee's goal to include a variety of different types of sanctions and penalties of varying degrees of severity in an effort to ensure that the Law contained enough flexibility to address the specific instance of misconduct that occurred, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined no revision to the Law was needed since the Legislative Operating Committee's goal was to include a variety of different types of sanctions and penalties of varying degrees of severity to ensure that the Law contained enough flexibility to address the specific instance of misconduct that occurred.

Comment 10 – When to File a Complaint:

120.5. Filing of a Complaint

120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

Travis Wallenfang (written): o 120.5-2. *When to File.* The Time Frame of when a Complaint can be brought forward. There should be no timeframe given the severity and should be deemed as long as any the Officials are in office.

Response

The commenter states that there should be no timeframe for when an individual may file a complaint against an official, as long as the complaint is filed when that official is still in office.

The Law provides that a complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days. [1 O.C. 120.5-2]. The purpose of including a timeframe for when complaints may be filed against an elected official is to ensure that a resolution for the alleged misconduct can be achieved within a reasonable length of time.

The purpose of this Law is not only to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office, but to also provide an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. [1 O.C. 120.1-1]. Requiring that the complaint be filed within ninety (90) days of the misconduct occurring or being discovered ensures that the misconduct of an official is addressed within a reasonable amount of time and the official is then given an opportunity to correct his or her behavior and become a better official. If the misconduct of an official is not addressed within a reasonable amount of time then that allows for an opportunity for the official to repeat the behavior that resulted in misconduct.

Additionally, the ninety (90) day timeframe for filing a complaint encourages an individual with a valid complaint to pursue action with reasonable diligence. If an individual waits too long to file a complaint against an official then there may be necessary evidence that is lost during that time that can no longer be used to support the complaint.

Whether to include a timeframe for filing a complaint within the Law is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may make one (1) of the following determinations:

1. The Law should remain as currently drafted and a complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.
2. The Law should be revised to eliminate any timeframe requirements for the filing of a complaint. If the Legislative Operating Committee makes this decision, then the following revision is recommended:

120.5. Filing of a Complaint

~~120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.~~

3. The Law should be revised to eliminate the ninety (90) day timeframe, and instead include a different timeframe requirement for the filing of a complaint – such as the suggestion that a complaint may be filed as long as the official still holds office. If the Legislative Operating Committee makes this decision, then the Legislative Operating Committee would have to determine the new timeframe and consider the following revision:

120.5. Filing of a Complaint

120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ~~ninety (90)~~ days (include timeframe).

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment. The Law should remain as currently drafted and a complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

Comment 11 – Where to File a Complaint:

120.5. Filing of a Complaint

120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall include the following information:

- (a) The name(s) of the official alleged to have committed the misconduct;
- (b) The entity or entities upon which the official serves;
- (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- (d) The specific details of the official's misconduct;
- (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated by the official;
- (f) Names of any witnesses of the alleged misconduct, or individuals who may have knowledge pertinent to the alleged misconduct;
- (g) The contact information for the person filing the complaint, which at minimum shall include the person's name, address, and telephone number;
- (h) A notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant's knowledge;
- (i) Any supporting documentation; and
- (j) Any other information required by the Nation's Rules of Civil Procedure.

120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure.

Travis Wallenfang (written): o 120.5-3. *Contents of the Complaint* information should be sent to the Judiciary. o 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court-Oneida Judiciary.

Response

The commenter states that the information included on the complaint should be sent to the Judiciary and complaints against an official should be filed with the Nation's Trial Court.

The Law provides that all complaints against an official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure. [1 O.C. 120.5-4]. The information that must be

included on the complaint that is filed with the Nation's Trial Court is also provided in great detail in the Law. [1 O.C. 120.5-3(a)-(j)].

Since the Law already requires that complaints alleged against an official be filed with the Nation's Trial Court, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 12 – Retaliation Prohibited:

120.5. Filing of a Complaint

120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

(a) If an individual alleges that retaliatory action has been threatened or taken based on the individual's complaint, or cooperation with directives authorized under this law, the individual may file a complaint for the retaliatory action in accordance with section 120.5 of this law.

Travis Wallenfang (written):o 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

There is nothing which stipulates the retaliations from the filing of these complaints against any of the officials that has been received by the complainant's. Retributions to be paid for creating a hostile work place or environment.

Response

The commenter provides a concern about retaliation as a result of filing a complaint, and how that retaliation may affect a work environment.

The Law provides that retaliation against any individual who makes a complaint, a party or witness to a complaint, an individual offering testimony or evidence for a complaint, or an individual complying with a directive authorized under this Law is prohibited. [1 O.C. 120.5-5]. The Law clarifies that retaliation shall include any form of adverse or punitive action by, or caused by, any official. [1 O.C. 120.5-5]. If an individual alleges that retaliatory action has been threatened or taken based on his or her complaint, or cooperation with directives authorized under this law, then

the individual may file a complaint for the retaliatory action in accordance with section 120.5 of the Law. [1 O.C. 120.5-5(a)].

Since the Law prohibits retaliation against an individual as a result of the filing of a complaint or participating in a complaint, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment since the Law already prohibits retaliation against an individual as a result of the filing of a complaint or participating in a complaint.

Comment 13 – Misconduct:

120.4. Misconduct

120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.

120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:

- (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;**
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;**
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and**
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials.**

Travis Wallenfang (written): As this is related to OBC’s Sanctions and Penalties law’s which establish a set of sanctions and penalties to be imposed upon all elected and appointed officials of the Nation, including the OBC, for misconduct in office. This should also include unethical conduct affecting the integrity of the Nation.

Response

The commenter provides that the Law should address unethical conduct affecting the integrity of the Nation, not just misconduct in office.

The Law provides that it is the obligation of every official to behave in a manner that promotes the highest ethical and moral standard, as it is the high moral and ethical standards amongst officials of the Nation that is essential to the conduct of government. [1 O.C. 120.4-1].

An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct, which includes:

- a violation of the Constitution or any of the Nation’s laws, policies, or rules;

- a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

[1 O.C. 120.4-2(a)-(d)].

Since the Law already provides that misconduct includes any activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment since the Law already provides that misconduct includes any activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

Comment 14 – Review of Navajo Nation Law:

Travis Wallenfang (written): Included is a copy of the Navajo Government Law. In reviewing of the Navajo Chapter 6. Ethics in Government Law it is important to also review the following sections as they would be beneficial to the Oneida Nation as it relates to the Sanctions and Penalties and any other applicable sections within the Oneida Nations Government Law which can be found at the link below:

Link: https://www.nnethicsrules.navajonsn.gov/Portals/0/Files/Law/ethics_in_government_law.pdf?ver=2013-11-15-111228-707

- **Subchapter 2.** Standards of Conduct and Restricted Activities of Public Officials and Employees
- **Subchapter 4.** Implementation and Compliance with Ethics in Government Law; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations
- **Subchapter 5.** Sanctions and Penalties
- **Subchapter 6.** Ethics and Rules Office

[See attached Law]

Response

The commenter suggests reviewing a law of the Navajo Nation.

Although the laws and/or policies of the Navajo Nation were not reviewed in the development of this Law, laws and policies from the following Nations were reviewed:

1. Ho Chunk Nation;
2. Oglala Sioux Tribe;
3. Pokagon Band of Potawatomi Indians;
4. Rosebud Sioux;

5. Siletz Tribe;
6. Skokomish Indian Tribe; and
7. Pit River Tribe.

The provisions of this law were developed after consulting other tribal laws and policies and the Nation's own laws and policies. Research demonstrated that there are many different models and processes being used by various tribes to address the misconduct of officials.

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 15 – Specific Reference to the Nation's Ethics Law:

120.4. Misconduct

120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.

120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:

- (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

Brian Doxtator (written): Since the ethics law specifically eludes to removal, then I believe the ethics law should be specifically mentioned.

Response

The commenter states that since the Nation's Code of Ethics contains a specific reference to removal as an enforcement mechanism for violations, a specific reference to the Code of Ethics should be included in this Law. [1 O.C. 103.6-1(a)].

This Law provides that misconduct includes a violation of the Constitution or any of the Nation's laws, policies, or rules. [1 O.C. 120.4-2(a)]. A broad reference to any and all laws, policies, or rules of the Nation was included in the Law instead of specific references to each law that may reference removal. The Law was drafted this way because there are many laws of the Nation that reference removal, and the list of laws that reference removal can be ever changing, so it would be impossible to create an exhaustive list that does not become quickly outdated.

Examples of laws of the Nation that contain a reference to removal include, but are not limited to:

- Code of Ethics law [1 O.C. 103.6-1(a)];
- Conflict of Interest law [2 O.C. 217.6-2];
- Oneida Nation Gaming Ordinance [5 O.C. 501.6-12];
- Legal Resource Center law [8 O.C. 811.7-2];
- Election law [1 O.C. 102.4-4];
- Boards, Committees and Commissions law [1 O.C. 118-1(b)];
- Ten Day Notice Policy [1 O.C. 110.6-5(a)(2)];
- Oneida Nation Law Enforcement Ordinance [3 O.C. 301.6-4];
- Open Records Open Meetings Law [1 O.C. 107.11-5]; and
- Budget Management and Control law [1 O.C. 121.12-2].

Many laws of the Nation reference removal because the Removal law provides that an elected official may be removed from office for violating a law of the Nation which specifies removal as a penalty. [1 O.C. 104.4-1(f)].

The Legislative Operating Committee made the policy decision to include general references to the Nation's laws, policies, or rules instead of specifically naming laws, policies, and rules in an effort to ensure that any references do not become outdated if the name of a law, policy, or rule changes, or more laws, policies, or rules are developed that would need to be referenced. Therefore, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 16 – Confidentiality of Hearings:

120.6. Complaint Procedure

120.6-4. Confidentiality. All complaints alleged against an official of the Nation shall be handled in a confidential manner.

- (a) All hearings and/or proceedings related to a complaint shall be closed to the general public.
- (b) All records of hearings and/or proceedings shall not be subject to public review or inspection. An official's record of conduct shall only be made available for review by the Trial Court.
- (c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.

Brian Doxtator (written): Since this is for elected officials, hearings and proceedings should NOT be closed.

Response

The commenter provides that hearings and/or proceedings related to a complaint alleged against an elected official should not be closed and confidential.

The Law provides that all hearings and/or proceedings related to a complaint shall be closed to the general public. [1 O.C. 120.6-4(a)]. The Law further states that all records of hearings and/or proceedings shall not be subject to public review or inspection, and the official's record of conduct shall only be made available for review by the Trial Court. [1 O.C. 120.6-4(b)]. The only information that is made public regarding a complaint under this Law is the decision of the Trial Court regarding a complaint and any sanctions and/or penalties that are imposed against an official. [1 O.C. 120.6-4(c)].

The Nation's Judiciary law provides that the proceedings of the Trial Court shall be public, and members of the general public may freely attend the same, except if expressly prohibited by law, as is done by this Law. [8 O.C. 801.4-4]. Additionally, the Oneida Judiciary Rules of Civil Procedure states that the records of all hearings and matters shall be available except where they are prohibited from disclosure by the Oneida Judiciary Rules of Civil Procedure, or any other law, court order, or rule of the Nation, as is done by this Law. [8 O.C. 803.32-2].

The Legislative Operating Committee determined that the Law should treat the handling of complaints against elected officials as confidential to prevent any frivolous or unfounded complaints from damaging the reputation of an official. For that reason, the Law only shares with the public the Trial Court's ultimate decision and any sanctions or penalties that were imposed against the official once the Trial Court has determined there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence. [1 O.C. 120.6-3, 120.6-4(c), 120.6-5(a)].

Whether or not to protect the confidentiality of a hearing or proceeding held in accordance with this Law is a policy determination for the Legislative Operating Committee. The Legislative Operating Committee may make one (1) of the following determinations:

1. The Law should remain as currently drafted and provide that all hearings and/or proceedings related to a complaint shall be closed to the general public, all records of hearings and/or proceedings shall not be subject to public review or inspection, and that the only information that is made public regarding a complaint under this Law is the decision of the Trial Court regarding a complaint and any sanctions and/or penalties that are imposed against an official.
2. The Law should be revised so that hearings and proceedings are not closed to the general public and all records of hearings and proceedings are subject to public review or inspection. If the Legislative Operating Committee makes this determination then the following revisions are recommended:

~~120.6-4. Confidentiality. All complaints alleged against an official of the Nation shall be handled in a confidential manner.~~

~~(a) All hearings and/or proceedings related to a complaint shall be closed to the general public.~~

~~(b) All records of hearings and/or proceedings shall not be subject to public review or inspection. An official's record of conduct shall only be made available for review by the Trial Court.~~

~~(c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.~~

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment. The Law should remain as currently drafted and provide that all hearings and/or proceedings related to a complaint shall be closed to the general public, all records of hearings and/or proceedings shall not be subject to public review or inspection, and that the only information that is made public regarding a complaint under this Law is the decision of the Trial Court regarding a complaint and any sanctions and/or penalties that are imposed against an official.

Title 1. Government and Finances - Chapter 120
Kalihwahníla'tú Okhale? Atatlihwá'thlewáhtu Kayanlása
Giving strength to the issues and Forgiving oneself for the issue at hand Laws
SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

120.1. Purpose and Policy
120.2. Adoption, Amendment, Repeal
120.3. Definitions
120.4. Misconduct
120.5. Filing of a Complaint

120.6. Complaint Procedure
120.7. Sanctions and Penalties
120.8. Effect of Resignation by an Official
120.9. Record of Conduct in Office

120.1. Purpose and Policy

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

(a) This law applies to members of the Oneida Business Committee.

(b) This law does not apply to judges of the Oneida Nation Judiciary.

(c) This law does not apply to members of corporate entities of the Nation.

120.1-2. *Policy.* It is the policy of the Nation to ensure that elected officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

120.1-3. It is the intent of the Nation that all elected officials strive to exhibit and uphold the Nation's core values of The Good Mind as expressed by Onayote'a'ka, which includes:

(a) Kahletsyalása. The heart felt encouragement of the best in each of us.

(b) Kanolukhwása. Compassion, caring, identity, and joy of being.

(c) Ka'nikuhli'yó. The openness of the good spirit and mind.

(d) Ka'tshatstása. The strength of belief and vision as a People.

(e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our future.

(f) Twahwahtsílawayá. All of us are family.

(g) Yukwatsístayá. Our fire, our spirit within each one of us.

120.2. Adoption, Amendment, Repeal

120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__.

120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

120.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

120.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

120.3. Definitions

120.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Business Committee Support Office” means the office that provides administrative support for the Oneida Business Committee and various other governmental operations.
- (b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding holidays recognized by the Nation.
- (c) “Clear and convincing evidence” means that it is substantially more likely than not that the facts presented are true.
- (d) “Complainant” means an individual who has made a complaint.
- (e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.
- (f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.
- (g) “Entity” means a board, committee, commission, office, or other group of the Nation an individual may be elected to serve a position on, including the Oneida Business Committee.
- (h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.
- (i) “Nation” means the Oneida Nation.
- (j) “Official” means any person who is elected to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee.
- (k) “Restitution” means compensation to an individual or entity for an injury, damage or loss.
- (l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving on boards, committees and commissions of the Nation to offset the expenses of being a member on the board, committee or commission.
- (m) “Substantiate” means to find that the complaint or allegation in the complaint is valid because there is clear and convincing evidence.
- (n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

120.4. Misconduct

120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.

120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:

- (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials.

120.5. Filing of a Complaint

120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older who is an enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has

knowledge or reason to believe that an official has committed misconduct, may file a written complaint.

120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall include the following information:

- (a) The name(s) of the official alleged to have committed the misconduct;
- (b) The entity or entities upon which the official serves;
- (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- (d) The specific details of the official's misconduct;
- (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated by the official;
- (f) Names of any witnesses of the alleged misconduct, or individuals who may have knowledge pertinent to the alleged misconduct;
- (g) The contact information for the person filing the complaint, which at minimum shall include the person's name, address, and telephone number;
- (h) A notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant's knowledge;
- (i) Any supporting documentation; and
- (j) Any other information required by the Nation's Rules of Civil Procedure.

120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure.

120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

- (a) If an individual alleges that retaliatory action has been threatened or taken based on the individual's complaint, or cooperation with directives authorized under this law, the individual may file a complaint for the retaliatory action in accordance with section 120.5 of this law.

120.6. Complaint Procedure

120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of officials.

120.6-2. Any official who is the subject of a complaint has the right to be represented by an attorney or advocate, at his or her own expense, for any actions or proceedings related to the complaint.

120.6-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.

120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled in a confidential manner.

- (a) All hearings and/or proceedings related to a complaint shall be closed to the general public.
- (b) All records of hearings and/or proceedings shall not be subject to public review or inspection. An official's record of conduct shall only be made available for review by the Trial Court.

(c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.

120.6-5. *Determination of the Trial Court.* In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.

(a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.

(b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.

120.6-6. *Appeal.* The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:

(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances; or

(b) Procedural irregularities occurred which prevented a fair and impartial hearing.

120.6-7. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official's record of conduct in office.

120.7. Sanctions and Penalties

120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.

120.7-2. Sanctions and penalties may include:

(a) *Verbal Reprimand.* A verbal reprimand may be imposed on the official.

(1) The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.

(2) To impose the verbal reprimand, the presiding Oneida Business Committee Chairperson, or another Oneida Business Committee member if the verbal reprimand is imposed against the presiding Oneida Business Committee Chairperson, shall read a statement that identifies:

(A) The Trial Court's findings regarding the specific actions or inaction taken by the official that were found to be misconduct;

(B) The reasons why the official's actions or inactions amounted to misconduct;

(C) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation's officials and is not acceptable; and

(D) A direction to the official to refrain from engaging in future misconduct.

(b) *Public Apology.* The official may be ordered to make a public apology. The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the public apology. The public apology shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting. The public apology shall:

- (1) identify the specific misconduct committed by the official;
 - (2) recognize that the official's actions or inactions were wrong;
 - (3) identify the effects of the official's misconduct; and
 - (4) include a clear and unambiguous apology from the official.
- (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication on the Nation's official media outlets, as determined by the Oneida Business Committee. The Trial Court may publish a written reprimand which includes the information required for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).
- (d) *Suspension*. An official may be suspended from performing his or her duties as an official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if the official serves in a full-time capacity.
- (1) During a suspension, the official shall not:
 - (A) attend meetings, trainings or any other event as part of the entity;
 - (B) attend conferences or other events on behalf of, or as a representative of, the entity;
 - (C) vote or participate in any activities of the entity;
 - (D) perform work on behalf of the entity; or
 - (E) be eligible for any compensation, including regular pay, stipends, or mileage reimbursement.
 - (2) When an official is suspended, the Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific start and end date of the suspension.
 - (3) If a suspension is imposed on multiple officials of the same entity at one time, the Trial Court shall impose the suspensions of the officials on a staggered basis to avoid an interruption of the official business and function of the entity.
- (e) *Restitution*. An official may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the official's misconduct.
- (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five hundred dollars (\$2,500).
- (1) Fines shall be paid to the Trial Court.
 - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.
 - (3) Money received from fines shall be deposited into the General Fund.
 - (4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.
- (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed two (2) meetings.
- (h) *Mandatory Participation in Training*. An official may be ordered to participate in and complete a training class or program that will assist the official in addressing and improving his or her behaviors and/or actions.
- (1) The mandated training class or program may address a variety of topics including, but not limited to, anger management, sexual harassment, or other sensitivity training.

(i) *Removal*. The Trial Court may recommend that the process for removing an elected official as contained in the Nation's laws and/or policies governing removal be initiated.

120.7-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining the appropriate sanction or sanctions to impose, the Trial Court may consider all factors it deems relevant, including but not limited to:

- (a) the seriousness or severity of the misconduct;
- (b) whether the conduct was intentional or not;
- (c) the likelihood of repetition;
- (d) the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
- (e) whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
- (f) the official's remorse, or
- (g) the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
- (h) any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

120.7-4. The Trial Court may impose a sanction and/or penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent or burdensome sanction and/or penalty.

120.7-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other applicable laws. In addition to any sanctions and penalties that may be imposed in accordance with this law, officials who commit misconduct in office may be subject to other consequences; including but not limited to:

- (a) removal in accordance with the Nation's laws and/or policies governing removal;
- (b) criminal prosecution, for misconduct that also violates applicable criminal law;
- (c) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- (d) penalties for specific misconduct as authorized by any other law of the Nation.

120.7-6. An official who does not comply with a sanction and/or penalty that has been imposed against him or her by the Trial Court may be subject to the following:

- (a) additional sanctions and/or penalties that result from a complaint of misconduct filed in accordance with this Law based on the non-compliance;
- (b) removal in accordance with the Nation's laws and policies governing removal.

120.8. Effect of Resignation by an Official

120.8-1. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by the Trial Court.

120.8-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion of the Trial Court.

120.9. Record of Conduct in Office

120.9-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.

120.9-2. The record of conduct in office maintained for each official shall include, at a minimum:

- (a) a copy of each complaint filed against the official;
- (b) recording and/or transcript from any hearings and/or proceedings;

(c) the outcome of the complaint, and
(d) any sanctions or penalties imposed upon an official.
120.9-3. The record of conduct in office for each official shall be maintained for a period of no less than seven (7) years.

End.

Adopted – GTC-__-__-__-__



Kalihwahnla-t&= Okhale> Atatlihwa>thlew@htu Kayanl^sla
Giving strength to the issues and Forgiving oneself for the issue at hand Laws

SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against elected officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [120.1-1].		
Affected Entities	All elected officials of the Nation; Any enrolled tribal member or employee age 18 years and older who has knowledge that an official committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards. This law does not apply to appointed officials.		
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita law; and any of the Nation's laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the hearing to answer the allegations and provide evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting for an earlier draft of this law was held on October 4, 2018. A 2 nd public meeting for the updated draft was held on January 7, 2020.		
Fiscal Impact	A fiscal impact statement for an earlier draft of this law was prepared by the Finance Department on December 27, 2018. An updated fiscal analysis was requested on January 25, 2020.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 A. When an elected official of the Nation commits misconduct while in office, there are few remedies
- 3 available for the Nation to discipline that official. Currently, elected officials may be removed in
- 4 accordance with the Removal Law. However, there may be instances of misconduct that do not rise to

the level of removal. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more appropriate.

- B.** This law creates a formal complaint process that gives tribal members, employees and entities an opportunity to file complaints against elected officials while ensuring that due process rights for those accused are protected. This law also creates a range of potential sanctions and penalties for officials who violate the laws of the Nation or commit other forms of misconduct.
- C.** During the Special Election held on July 9, 2016, the following referendum question was approved by a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for elected officials?” The Election Law requires the Oneida Business Committee to present referendum questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action [Election Law 1 O.C. 102.12-9(c)].
- D.** On March 17, 2019, the Legislative Operating Committee presented an earlier draft of the proposed Sanctions and Penalties law to GTC for consideration. During this meeting, GTC directed that the Sanctions and Penalties law be deferred for at least sixty (60) days for GTC to have additional time to consider it and have input.
- E.** Between July and November of 2019, the LOC conducted additional outreach for the community regarding the proposed Sanctions and Penalties law. This included outreach events in both Oneida and Milwaukee, articles in the Kalihwisaks, and opportunities to submit written comments.
- F.** Based on input received from community members during the various outreach efforts, as well as the discussion during the March 17, 2019, GTC Meeting, the LOC determined that the draft should be revised. This revised draft removes the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials from the law. In addition, complaints will now be filed only by enrolled tribal members or employees of the Nation aged 18 years or older.
- G.** This law will apply to elected officials of the Nation, including members of the following entities:

ELECTED BOARDS, COMMITTEES AND COMMISSIONS
<ul style="list-style-type: none">Oneida Business CommitteeOneida Election BoardOneida Gaming CommissionOneida Land Claims CommissionOneida Land CommissionOneida Nation Commission on Aging (ONCOA)Oneida Nation School BoardOneida Trust Enrollment CommitteeGTC Legal Resource Center Advocates and Attorney

**This law does not apply to members of appointed boards, members of the Judiciary or corporate entities of the Nation.*

SECTION 3. CONSULTATION AND OUTREACH

- A.** The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:
- Ho Chunk Nation Code of Ethics 2 HCC 1;
 - Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
 - Pokagon Band of Potawatomi Indians Ethics Code;

- Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
 - Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
 - Skokomish Code of Ethics S.T.C. 1.05;
 - Pit River Tribal Government Code of Conduct Section 80.
- B.** The Business Committee Support Office, Records Management Department, Human Resources Department and representatives from the following Boards, Committees and Commissions were consulted in the development of this law and analysis:
- Anna John Resident Centered Care Community Board (AJRCCC);
 - Oneida Election Board;
 - Oneida Environmental Resource Board (ERB);
 - Oneida Gaming Commission;
 - Oneida Land Commission;
 - Oneida Police Commission
 - Oneida Pow-wow Committee;
 - Oneida Trust Enrollment Committee, and
 - Oneida Nation Veterans Affairs Committee (ONVAC).
- C.** *Community Outreach Events.* In addition to the public meeting(s) required by the LPA held on October 4, 2018 and January 7, 2020, the LOC held the following outreach events on this legislation:
- May 3, 2018: Community pot-luck meeting at Norbert Hill Center to gather community input.
 - July 11, 2019: Community outreach event held prior to GTC meeting at Radisson Conference Center.
 - July 17, 2019: Community outreach held at Norbert Hill Center in Oneida.
 - August 9, 2019: Community outreach held at Veteran’s Breakfast in Oneida.
 - August 15, 2019: Community outreach held at Farmer’s Market in Oneida.
 - October 7, 2019: Community outreach held at Elder Congregate Mealsite in Oneida.
 - October 16, 2019: Community outreach held at SEOTS Building in Milwaukee.

SECTION 4. PROCESS

- A.** Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B.** The law was originally added to the Active Files List on October 15, 2014 and was carried over from the previous term. The law was re-added to the Active Files List on September 6, 2017.
- C.** At the time this legislative analysis was developed, the following work meetings had been held regarding the most recent efforts to develop this law and legislative analysis:
- September 6, 2017: LOC work meeting.
 - November 1, 2017: LOC work meeting with representatives from the following boards, committees and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and committees were invited to attend this work meeting.
 - December 6, 2017: LOC work meeting.
 - March 9, 2018: LOC work meeting.
 - May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support Office, and representatives from the following boards, committees and commissions: Police Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and commissions were invited to attend this meeting.

- May 11, 2018: LOC work meeting.
- July 9, 2018: Work meeting with BC Support Office.
- August 1, 2018: LOC work meeting.
- October 17, 2018: LOC work meeting.
- October 25, 2018: LOC work meeting.
- December 20, 2018: Work meeting with Cultural Heritage.
- January 2, 2019: LOC Work meeting.
- January 24, 2019: LOC Work meeting.
- February 4, 2019: LOC Work meeting.
- February 6, 2019: LOC work meeting.
- February 8, 2019: LOC work meeting.
- February 14, 2019: LOC work meeting.
- February 20, 2019: LOC work meeting.
- March 1, 2019: LOC work meeting.
- March 15, 2019: LOC work meeting.
- March 20, 2019: LOC work meeting.
- March 28, 2019: LOC work meeting.
- May 1, 2019: LOC work meeting.
- June 13, 2019: LOC work meeting.
- August 21, 2019: LOC work meeting.
- October 16, 2019: LOC work meeting.
- October 31, 2019: LOC work meeting.
- November 6, 2019: LOC work meeting.
- November 15, 2019: LOC work meeting.
- November 20, 2019: LOC work meeting.
- November 26, 2019: LOC work meeting.
- December 2, 2019: LOC work meeting.

SECTION 5. CONTENTS OF THE LEGISLATION.

A. *What Qualifies as Misconduct.* The Oneida Nation expects elected officials to uphold high ethical and moral standards. Officials who engage in misconduct may be subject to sanctions and penalties. This section describes what behaviors could be considered misconduct [120.4]. Under this law, the definition of misconduct is very broad and includes any of the following:

- Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.
 - Examples include the Code of Ethics and Conflict of Interest Law.
- Violating the bylaws or standard operating procedures of the board the official serves on.
- Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- Any other activity that does not uphold the moral and ethical standards expected of the Nation's officials.

B. *Filing a Complaint.*

- *Who Can File a Complaint?* Under this law, any enrolled member of the Nation or employee of the Nation age 18 years or older can file a complaint, so long as they have knowledge or reason to

believe that an official has committed misconduct. Entities of the Nation, such as a board, committee or commission, can also file complaints against elected officials.

- *When to File Complaint?* The complaint must be filed within 90 days of when the alleged misconduct occurred or was discovered [120.5-1 & 5-2].

- *Contents of the Complaint.* Complaints must include the following information [120.5-3]:

- Information about the official, including the official's name and the entity they serve on.
- Information about the alleged misconduct, including date, time, location and specific details.
- The specific law, policy, rule or bylaw that the official violated.
- Information about any witnesses or others with knowledge of the violation.
- Contact information of the individual filing the complaint.
- Supporting documents and any other information required by the Rules of Civil Procedure [8 O.C. 803.5-1].

- *Where to File Complaints?* Complaints against elected officials are filed with the Trial Court, with is located within the Oneida Judiciary [120.5-4].

- *Retaliation.* Retaliation against someone who files a complaint or cooperates with a misconduct investigation is not allowed [120.5-5].

C. *Complaint Procedure.* Complaints against elected officials, including members of the Oneida Business Committee, will be heard by the Nation's Trial Court [120.6-1]. The law outlines the process for how the Judiciary will hear the complaint:

- *Right to an Attorney or Advocate.* Any official who has been accused of misconduct has the right to be represented by an attorney or an advocate, at their own expense [120.6-2].

- *Legal Resource Center.* The Legal Resource Center Law established an office to provide legal advice and representation to Tribal members and employees in cases before the Judiciary.

- *Burden of Proof.* The burden of proof for allegations made under this law is "clear and convincing evidence" [120.6-3]. This is the same standard the Nation uses in misconduct cases against judges in the Oneida Judiciary [8 O.C. 801.12-6(c)].

- This means that the person filing the complaint must provide evidence "indicating that the [allegation] to be proved is highly probably or reasonably certain" [Black's Law Dictionary]. This is a greater burden than "preponderance of the evidence," the standard in most civil trials, but less than evidence "beyond a reasonable doubt," which is used for criminal trials.

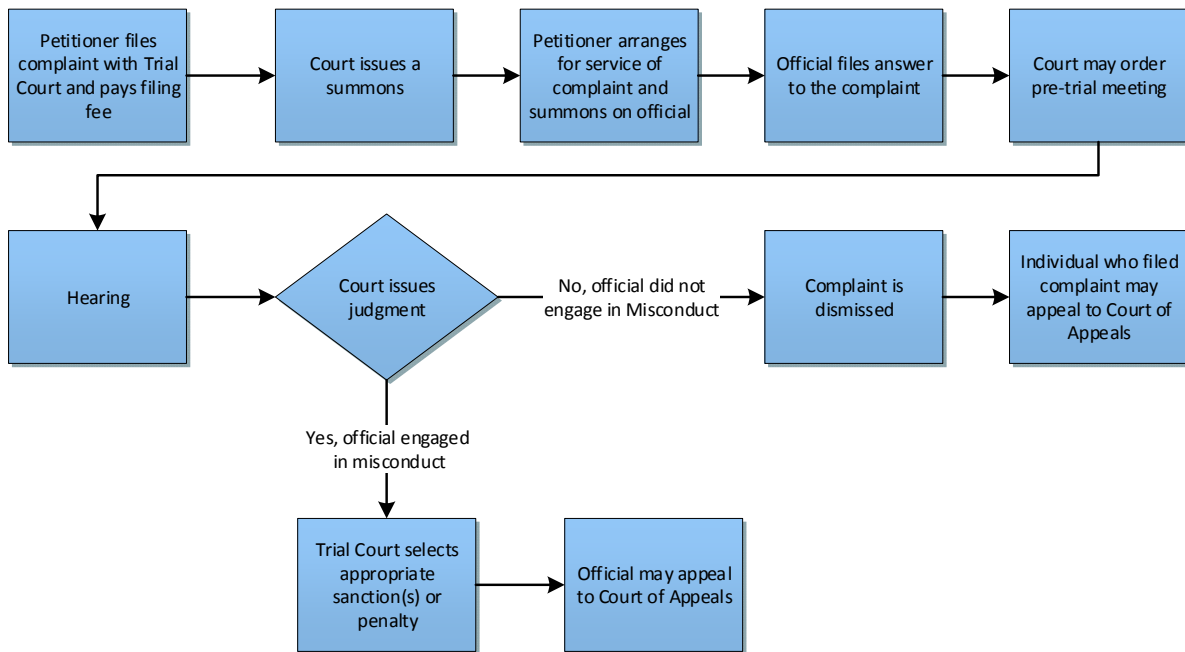
- *Confidentiality.* All complaints against officials of the nation will be handled confidentially, with hearings and proceedings regarding the complaint closed to the public. Records of the hearings will be kept confidential. However, the final decision of the Judiciary and any sanctions and penalties imposed against an official will be public information [120.6-4].

- *Judiciary Law.* The Judiciary Law states that proceedings of the court are open to the public except for peacemaking, mediation, proceedings where the judge has safety or confidentiality concerns, or "if expressly prohibited by law" [8 O.C. 801.4-4].

D. *Hearings Under Rules of Civil Procedure.* All hearings under this law must follow the Judiciary Rules of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court using the Rules of Civil Procedure. For more detailed information regarding the trial court process, see the Judiciary Rules of Civil of Civil Procedure in the Nation's Code of Laws.

- 170 ▪ *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a
171 standard complaint form with instructions to fill out the complaint.
 - 172 ○ *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the
173 complaint to include the full name and address of the plaintiff and defendant, why the
174 defendant is being sued, facts supporting each claim, why the trial court has jurisdiction,
175 specifically what relief is sought from the defendant, and a summons [*Oneida Judiciary*
176 *Rules of Civil Procedure 803.5-1*].
 - 177 ○ *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a
178 general civil case. However, individuals may request a fee waiver from the court for the
179 following reasons: unemployed, health/medical, or below poverty level.
 - 180 ○ *Summons:* A summons is a document ordering a defendant to appear before a judge. The
181 Trial Court has a standard summons form.
- 182 ▪ *Complaint and Summons are served on Official.* The complaint and summons must be delivered to
183 the elected official within 30 days after the complaint is filed. In addition, for complaints against
184 officials, notice must also be served to the Secretary's office. The petitioner must provide proof to
185 the Court that the complaint and summons were delivered to the defendant within 10 days of
186 delivery. If proof of service is not completed, then the case will be dismissed [*Rules of Civil*
187 *Procedure 8 O.C. 803.5*].
- 188 ▪ *Official Files an Answer.* The official responds to the complaint by filing an answer. The official
189 can either admit to or deny the allegations made in the complaint and provide defenses to each
190 claim made in the complaint [*Rules of Civil Procedure 8 O.C. 803.7*].
- 191 ▪ *Pre-Trial Meeting.* A pre-trial meeting may be scheduled between the judge, petitioner and
192 defendant. The purpose for this meeting could include preparing for the trial, creating a plan
193 regarding discovery, or facilitating a settlement, such as peacemaking [*Rules of Civil Procedure*
194 *803.12*].
- 195 ▪ *Hearing.* Hearings are conducted in accordance with the Rules of Civil Procedure, which may
196 include opening statements, presentation of the parties' cases, rebuttals and closing statements
197 [*Rules of Civil Procedure 8 O.C. 803.38*].
- 198 ▪ *Judgment.* If the Trial Court determines, by clear and convincing evidence, that there is enough
199 evidence to substantiate the allegations of misconduct by the official, then the Trial Court will
200 impose any sanctions and penalties that they deem appropriate. If the Trial Court does not find
201 there is clear and convincing evidence to support the allegations, the complaint will be dismissed
202 [*120.6-5*].
- 203 ▪ *Appeals.* Both the official accused of misconduct and the individual who filed the complaint have
204 the right to appeal the decision of the Trial Court to the Court of Appeals. The appeal must be filed
205 with the Court of Appeals in accordance with the Rules of Appellate Procedure [*120.6-6*].
 - 206 ○ *Timeline for Appeal.* Appeals of judgments of the Trial Court must be filed with the Court
207 of Appeals within 30 days after the judgment was rendered [*8 O.C 805.5-2(a)*].

Chart 2. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.



E. Sanctions and Penalties. This law includes a list of sanctions and penalties that may be imposed on an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected official. Officials may receive one or more of the following penalties. The Trial Court will select whichever penalty it deems appropriate [120.7].

- **Conditional Penalties.** Sanctions and penalties may be imposed on a conditional basis. For example, an official could be ordered to make a public apology and attend mandatory training, or otherwise face suspension [120.7-4].
- **Failure to Comply.** If an official fails to comply with a sanction or penalty imposed against them, that official can face additional sanctions as a result of additional misconduct complaints under this law. An example would be an official failing to pay a fine, failing to attend mandatory training or violating the terms of their suspension [120.7-6].

Chart 3. List of Potential Sanctions and Penalties for Elected Officials.

Potential Sanctions and Penalties:
<ul style="list-style-type: none"> ▪ Verbal Reprimand ▪ Public Apology ▪ Written Reprimand ▪ Suspension ▪ Restitution ▪ Fines ▪ Loss of Stipend ▪ Mandatory Training ▪ Removal, in accordance with Removal Law

- 233 ▪ **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement
234 describing the official’s misconduct. The chairperson will also state that the official’s behavior was
235 unacceptable and direct the official not to engage in misconduct again [120.7-2(a)].
- 236 ▪ **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting.
237 The apology must include a description of the misconduct, a statement that the actions were wrong,
238 a description of the harm caused by the misconduct, and a “clear and unambiguous” apology
239 [120.7-2(b)].
- 240 ▪ **Written Reprimand.** The Judiciary Trial Court may publish a written reprimand in the Nation’s
241 official media outlets. The Nation’s official media outlets are the Oneida Nation website and the
242 Kalihwisaks newspaper [BC Resolution #03-22-17-B]. The written reprimand will include the same
243 information as a verbal reprimand [120.7-2(c)].
- 244 ▪ **Suspension.** The Trial Court may suspend part-time officials for up to two (2) meetings. Full-time
245 officials, such as members of the Business Committee or Gaming Commission, may be suspended
246 for up to fifteen (15) business days. During a suspension, the official cannot attend meetings,
247 trainings, or conferences. The official also cannot vote or perform work for the entity. In addition,
248 the official cannot earn any stipends, salary or mileage during the suspension [120.7-2(d)].
 - 249 ○ *Multiple Suspensions on One Entity.* If multiple officials on the same entity are suspended
250 at the same time, the suspensions must be imposed on a staggered basis so that the business
251 of the Nation is not interrupted. For example, if multiple members of the Business
252 Committee are suspended, each member will be suspended one at a time on a staggered
253 basis [120.7-2(d)(3)].
- 254 ▪ **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly
255 received benefit, such as returning funds or paying to replace damaged property. The point of
256 restitution is to make someone whole. [120.7-2(e)].
- 257 ▪ **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a
258 fine is a punishment. The maximum amount of each fine is \$2500 [120.7-2(f)].
 - 259 ○ *Fine Process.* All fines will be paid to the trial court and deposited into the Nation’s
260 General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld
261 on final appeal. If the fine is not paid on time, the Nation may collect the money through
262 garnishment or the official’s per capita payment.
 - 263 ○ *Community Service Alternative.* An official can complete community service to make up
264 all or part of their fine. The rate earned for community service will be the Nation’s
265 minimum wage, which is currently \$10.10 per hour. The Nation currently allows
266 community service for fines issued in the Hunting, Fishing and Trapping Law [Hunting
267 Fishing and Trapping 4 O.C. 406.10-5(a)].
- 268 ▪ **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of elected
269 boards may receive up to two (2) meeting stipends per month, so this could amount to the loss of
270 one month’s stipends for a member of a board that meets twice monthly [Boards, Committees and
271 Commissions law 1 O.C. 105.13-3(b)].
- 272 ▪ **Mandatory Training.** An official can be ordered to complete a mandatory training program to
273 address their behavior. Examples include anger management or sexual harassment training [120.7-
274 2(h)].

- 275 ▪ **Removal.** The Trial Court can recommend that the removal process be initiated for an official in
276 accordance with the Removal Law. However, this would only be a recommendation. The Removal
277 Law provides a strict process that must be followed to remove elected officials [120.7-2(i)].
 - 278 ○ *Removal Law Process.* In order to remove an elected official, an eligible voter must file a
279 petition with the Secretary signed by at least 30% of the vote cast in the previous general
280 election. For example, the number of votes cast in the 2017 general election was 1612, so
281 the number of signatures needed to initiate removal is approximately 484. Then, the
282 Judiciary conducts a preliminary review to determine whether there is sufficient grounds
283 for removal. If so, the Judiciary holds a hearing. If the Judiciary determines that sufficient
284 grounds for removal has been proven, the findings are forwarded to the Nation's
285 Chairperson, who schedules a GTC meeting. At the GTC meeting, an elected official may
286 be removed from office after a 2/3 vote [Removal Law 1 O.C. 104].
- 287 **F. Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court may consider the
288 following when deciding which sanction or penalty to apply [120.7-3].
 - 289 ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to repeat
290 the misconduct.
 - 291 ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
 - 292 ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
 - 293 ▪ Whether any prior complaints have been filed against the official. For example, whether this is the
294 first complaint against the official or represents a pattern of behavior.
- 295 **G. Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an
296 official who commits misconduct may also experience other consequences. These include [120.7-5]:
 - 297 ▪ Removal from office in accordance with the Removal law.
 - 298 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft
299 or violent acts.
 - 300 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for
301 damages.
 - 302 ▪ Any other penalties listed in another law of the Oneida Nation.
 - 303 ○ For example, a violation of the Computer Resources Ordinance may result in loss of access
304 to the Nation's computer resources [Computer Resources Ordinance 2 O.C. 215.9-1].
- 305 **H. Effect of Resignation by an Official.** If an official resigns from office after a complaint has been filed,
306 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning
307 from office does not end or prevent an investigation [120.8].
- 308 **I. Record of Conduct in Office.** A record of conduct for each official will be maintained by the BC
309 Support Office, which will include copies of complaints filed against the official, outcome of the
310 complaints, and any sanctions and penalties the official received. This record will be maintained for at
311 least seven (7) years [120.9].
 - 312 ▪ *Public Access to Record of Conduct.* The record of conduct maintained by the BC Support Office
313 will only be made available for review to the Trial Court. The purpose of the record of conduct is
314 so that the Trial Court can review previous complaints against the official when determining a
315 potential sanction or penalty [120.6-4(b)].
 - 316 ▪ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court regarding
317 a complaint against an elected official and any sanctions and penalties imposed against an official
318 will be public information [120.6-4(c)].

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. *References to the Other Laws of the Nation:* The following laws of the Nation are referenced in this law. This law does not conflict with any of the referenced laws.
- *Rules of Civil Procedure.* Complaints against an official shall be filed in accordance with the Nation's Trial Court in accordance with the Rules of Civil Procedure [120.5-4].
 - *Rules of Appellate Procedure.* Appeals of the Trial Court's decision shall be filed pursuant to the Nation's Rules of Appellate Procedure.
 - *Garnishment Law.* If an official is ordered to pay a fine in accordance with this law and does not pay according to the deadline, the Trial Court may seek to collect that fine through the Nation's garnishment process [120.7-2(f)(2)].
 - *Per Capita Law.* If an official is ordered to pay a fine in accordance with this law and does not pay according to the deadline, the Trial Court may seek to collect that fine through the Nation's per capita attachment process [120.7-2(f)(2)].

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. *Due Process.* Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.

SECTION 8. OTHER CONSIDERATIONS

- A. *Complaints against Judiciary.* The Judiciary Law already contains a process for reprimand, suspension and removal of judges for willful misconduct in office. The complaint and hearing procedure for complaints against judges can be found in the Judiciary law [Judiciary law 8 O.C. 801.12]. Therefore, the Judiciary is not included in this law.
- B. *Judiciary Conflicts of Interest.* The Oneida Tribal Judiciary Canons of Judicial Conduct requires a Judge to withdraw from any matter where the Judge has or could be perceived to have a conflict of interest. Violating the Oneida Tribal Judiciary Canons of Judicial Conduct would be grounds for reprimand under the Nation's Judiciary law [Judiciary Canons of Judicial Conduct 8 O.C. 802.2-2].
- C. *Complaints Against Appointed Officials.* This law applies to elected officials only. Appointed officials are appointed by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law and serve at BC's discretion. If an appointed official commits misconduct, the that official's board, committee or commission or a member of the BC may recommend termination of appointment. A member of an appointed entity may have their appointment terminated by a 2/3 majority vote of the Oneida Business Committee [Boards, Committees and Commissions 1 O.C. 105.7-4].
- D. *Code of Ethics.* Most other tribal, municipal and state governments place sanctions and penalties within their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are closely related. The Code of Ethics is currently on the LOC's Active Files List for potential amendments. Updating the Code of Ethics would provide additional guidance to elected officials, individuals filing complaints, and the Judiciary when they begin hearing complaints under this law.
- E. *Comparison to Other Nations.* Research of other tribal nations indicate that there are many different processes for sanctions and penalties of public officials. There is no uniform standard used by all tribal governments. Examples of other sanctions and penalties processes are provided for information:

Chart 4. Sanctions and Penalties Process of other Tribal Nations

Tribe	Where Complaints Are Filed	Who Investigates or Hears the Complaint	Who Decides the Sanction or Penalty
Oneida Nation (proposed)	<i>Judiciary</i>	<i>Judiciary</i>	<i>Judiciary</i>
Siletz	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
Ho Chunk	Judiciary	Judiciary	President
Rosebud Sioux	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
Skokomish	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

*Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.

- F. Number of Potential Complaints.** Since the Nation currently has no formal sanctions and penalties process, it is not possible to predict the number of complaints that may be filed against elected officials.
- *Conclusion:* Given the uncertainty regarding the number of potential complaints, the Judiciary should be prepared to possibly process a large number of complaints upon passage of this law.
- G. Impact of Suspension on Full-Time Officials.** Members of the Oneida Business Committee and Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials would impact salaries, benefits such as health insurance, and access to workplaces. The Human Resources Department reports that they have a suspension procedure in place for employees of the Nation, and that this procedure could be applied or modified for suspension of full-time officials.
- *Conclusion:* Since notifications of suspension go to the BC Support Office, it is suggested that the BC Support Office work with HRD to develop a process should suspensions of full-time BC members or Gaming Commissioners occur.
- H. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on the LOC’s Active Files List and may be amended in the future.
- I. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [*Legislative Procedures Act 1 O.C. 109.6-1*].
 - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [*Legislative Procedures Act 1 O.C. 109.6-1(a and b)*].



TO: Lawrence E. Barton, Chief Financial Officer
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer
Rae M. Skenandore, Financial Management Analyst
FROM: David P. Jordan, Legislative Operating Committee Chairman
DATE: January 15, 2020
RE: Sanctions and Penalties for Elected Officials Law Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing a Sanctions and Penalties for Elected Officials law. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

On January 15, 2020, the Legislative Operating Committee approved the final draft of the proposed Sanctions and Penalties for Elected Officials law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed Sanctions and Penalties for Elected Officials law by January 20, 2020.

A copy of the proposed Sanctions and Penalties for Elected Officials law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed Sanctions and Penalties for Elected Officials law by January 20, 2020.

Title 1. Government and Finances - Chapter 120

SANCTIONS AND PENALTIES

Kalihwahníla·tú· Okhale? Atatlihwá?thlewáhtu Kayanlásla

Giving strength to the issues and Forgiving oneself for the issue at hand Laws

SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

~~120.1. Purpose and Policy~~

~~120.2. Adoption, Amendment, Repeal~~

~~120.3. Definitions~~

~~120.4. Misconduct~~ ~~120.1. Purpose and Policy~~

~~120.2. Adoption, Amendment, Repeal~~

~~120.3. Definitions~~

~~120.4. Misconduct~~

~~120.5. Filing of a Complaint~~

~~120.6. Complaint Procedure~~

~~120.7. Sanctions and Penalties~~

~~120.8. Effect of Resignation by an Official~~

~~120.9. Record of Conduct in Office~~

~~120.5. Filing of a Complaint~~

~~120.6. Complaint Alleged Against an Appointed Official~~

~~120.7. Complaint Alleged Against an Elected Official~~

~~120.8. Sanctions and Penalties~~

~~120.9. Effect of Resignation by an Official~~

~~120.10. Record of Conduct in Office~~

120.1. Purpose and Policy

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected ~~and appointed~~ officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

(a) This law applies to members of the Oneida Business Committee.

(b) This law does not apply to judges of the Oneida Nation Judiciary.

(c) This law does not apply to members of corporate entities of the Nation.

120.1-2. *Policy.* It is the policy of the Nation to ensure that elected ~~and appointed~~ officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

120.1-3. It is the intent of the Nation that all elected ~~and appointed~~ officials strive to exhibit and uphold the Nation's core values of The Good Mind as expressed by Onlayote'a'ka, which includes:

(a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.

(b) Kanolukhwásla. Compassion, caring, identity, and joy of being.

(c) Ka'nikuhli·yó. The openness of the good spirit and mind.

(d) Ka'tshatstásla. The strength of belief and vision as a People.

(e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our future.

(f) TwahwahtsílawayΛ. All of us are family.

(g) YukwatsístayΛ. Our fire, our spirit within each one of us.

120.2. Adoption, Amendment, Repeal

120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__.

120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

120.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

120.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

120.3. Definitions

120.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a) “Affirmative defense” means a fact or set of facts other than those alleged by the complainant which, if proven by the official, defeats or mitigates the consequences of the official’s otherwise unlawful conduct.~~

~~(b) “Answer” means a formal written statement addressing the dispute on the merits and presents any defenses and counterclaims.~~

~~(e)~~(a) “Business Committee Support Office” means the office that provides administrative support for the Oneida Business Committee and various other governmental operations.

~~(d)~~(b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding holidays recognized by the Nation.

~~(e)~~(c) “Clear and convincing evidence” means that it is substantially more likely than not that the facts presented are true.

~~(f)~~(d) “Complainant” means an individual who has made a complaint.

~~(g)~~(e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

~~(h)~~(f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

~~(i)~~(g) “Entity” means a board, committee, commission, office, ~~unincorporated agency,~~ or other group of the Nation an individual may be ~~appointed or~~ elected to serve a position on, including the Oneida Business Committee.

~~(j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be supported by a good faith argument. Most often frivolous complaints are intended to merely harass, delay, or embarrass the opposition.~~

~~(k)~~(h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

~~(i)~~(j) “Nation” means the Oneida Nation.

~~(m)~~(j) “Official” means any person who is elected ~~or appointed~~ to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee.

~~(n)~~(k) “Restitution” means compensation to an individual or entity for an injury, damage or loss.

~~(o)~~(l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving on boards, committees and commissions of the Nation to offset the expenses of being a member on the board, committee or commission.

~~(p)~~(m) “Substantiate” means to find that the complaint or allegation in the complaint is valid because there is clear and convincing evidence.

~~(q)~~(n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

120.4. Misconduct

120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.

120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:

- (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

120.5. Filing of a Complaint

120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, ~~or~~ who is an enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has knowledge or reason to believe that an official has committed misconduct, may file a written complaint.

120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall include the following information:

- (a) The name(s) of the official alleged to have committed the misconduct;
- (b) The entity or entities upon which the official serves;
- (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- (d) The specific details of the official's misconduct;
- (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated by the official;
- (f) Names of any witnesses of the alleged misconduct, or individuals who may have knowledge pertinent to the alleged misconduct;
- (g) The contact information for the person filing the complaint, which at minimum shall include the person's name, address, and telephone number;
- (h) A notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant's knowledge;
- (i) Any supporting documentation; and
- (j) Any other information required by the Nation's Rules of Civil Procedure ~~if the complaint is alleging misconduct of an elected official.~~

120.5-4. *Where to File.*

~~(a) Appointed Official.~~ Complaints against an ~~appointed official shall be filed with the Business Committee Support Office.~~

~~(b) Elected Official.~~ Complaints against an ~~elected~~ official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure.

120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

(a) If an individual alleges that retaliatory action has been threatened or taken based on the individual's complaint, or cooperation with directives authorized under this law, the individual may file a complaint for the retaliatory action in accordance with section 120.5 of this law.

120.5-6. Complaint Procedure

120.6-1. Jurisdiction of the Trial Court. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of officials.

120.6-2. Any official who is the subject of a complaint has the right to be represented by an attorney or advocate, at his or her own expense, for any actions or proceedings related to the complaint.

120.5-76-3. Burden of Proof. In a civil action against an official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.

120.6-4. Confidentiality. All complaints alleged against an official of the Nation shall be handled in a confidential manner.

(a) All hearings and/or proceedings related to a complaint shall be closed to the general public.

(b) All records of hearings and/or proceedings shall not be subject to public review or inspection. An official's record of conduct shall only be made available for review ~~to the Oneida Business Committee and by~~ the Trial Court.

(c) *Exception.* A decision of the Trial Court ~~or the Oneida Business Committee~~ regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.

120.6-Complaints Alleged Against an Appointed Official

~~-5. Determination 120.6-1. Due to the fact that an appointed official serves at the discretion of the Oneida Business Committee, all complaints alleged against an appointed official shall be handled by the Oneida Business Committee.~~

~~120.6-2. Receipt of Complaint. Upon receiving a complaint, the Business Committee Support Office shall:~~

~~(a) immediately forward copies of the complaint, including any supporting documentation, to:~~

~~(1) all members of the Oneida Business Committee for review; and~~

~~(2) the individual who is the subject of the complaint.~~

~~(b) place the complaint on the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee for an initial review which shall occur within thirty (30) business days after the initial receipt of a complaint.~~

~~120.6-3. Mediation. The complainant or the official who is the subject of the complaint shall have up to five (5) business days after the initial receipt of the complaint to contact the Business Committee Support Office and request mediation.~~

~~(a) If both the complainant and the official who is the subject of the complaint agree to mediation, then the Business Committee Support Office shall schedule a mediation between the parties. The intent of this mediation meeting is to resolve the complaint prior to commencing an initial review.~~

~~(b) The Business Committee Support Office shall utilize a trained mediator to facilitate the mediation meeting. Every mediator shall have at least twenty five (25) hours of mediation training or at least three (3) years of experience in dispute resolution.~~

~~(c) The mediation shall occur before the investigatory hearing is scheduled to take place.~~

~~(d) If a resolution is reached during mediation, the Oneida Business Committee shall be informed of the resolution before the initial review and the complaint shall be formally dismissed during the initial review.~~

~~(e) If the matter is not resolved through mediation, the initial review shall occur as prescribed by this law.~~

~~120.6 4. Answer to the Complaint. The individual who is the subject of the complaint shall have ten (10) business days after receiving his or her copy of the complaint, to submit to the Business Committee Support Office a written answer setting forth any admission, denial, affirmative defense, or other relevant information upon which the official intends to rely during proceedings related to the complaint.~~

~~(a) The Business Committee Support Office shall immediately forward the answer and any supporting documentation to all members of the Oneida Business Committee upon receipt from the individual who is the subject of the complaint.~~

~~120.6 5. Conflict of Interest. An Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee, shall immediately recuse himself or herself and shall not participate in any portion of the complaint process.~~

~~(a) Failure of an Oneida Business Committee member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties.~~

~~120.6 6. Initial Review. The Oneida Business Committee shall perform an initial review of an allegation of misconduct on the part of an official. The purpose of the initial review shall be to determine whether the allegation made within the complaint has merit.~~

~~(a) During the initial review the Oneida Business Committee shall review the complaint and the written answer; as well as any supporting documentation.~~

~~(b) In order to determine if a complaint has merit, the Oneida Business Committee will discuss if whether assuming the facts alleged are true, said facts would support a determination of misconduct.~~

~~(c) The Oneida Business Committee shall determine, by majority vote, whether the complaint has merit.~~

~~(1) Upon a finding that the complaint has merit, the Oneida Business Committee shall schedule an investigatory hearing to consider the specific allegations identified in the complaint.~~

~~(A) The investigatory hearing shall occur within thirty (30) business days after the initial review has concluded and shall take place during the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee.~~

~~(2) Upon finding that a complaint has no merit, the Oneida Business Committee shall dismiss the complaint. The Oneida Business Committee shall send notice that the complaint was dismissed to the complainant and the official who is the subject of the complaint within five (5) business days.~~

~~(A) If the Oneida Business Committee dismisses the complaint based on a determination that the complaint was frivolous, false, or made with a malicious intent, the complainant may be subject to:~~

~~(i) a fine not to exceed five hundred dollars (\$500);~~

(ii) ~~prohibition from filing another complaint for a period of time not to exceed one (1) year; and/or~~

(iii) ~~a civil suit in the Nation's Trial Court brought by the official accused by the frivolous, false or malicious allegation.~~

~~120.6-7. Notice of the Investigatory Hearing. The Business Committee Support Office shall provide the complainant, the official who is the subject of the complaint, and any other individual compelled to attend the hearing with written notice of the date and the time of the investigatory hearing at least ten (10) business days before the investigatory hearing.~~

~~120.6-8. Investigatory Hearing. The purpose of the investigatory hearing is for the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.~~

~~(a) When conducting an investigatory hearing, the Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to:~~

~~(1) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or~~

~~(2) produce physical evidence that is relevant to the allegations.~~

~~(b) The Oneida Business Committee shall provide an opportunity for the official who is the subject of the complaint to answer all allegations and to provide witness testimony, documents, and other evidence on his or her own behalf.~~

~~(c) The Oneida Business Committee shall also provide the complainant the opportunity to answer questions, provide witness testimony or additional information, and/or to otherwise speak on his or her own behalf.~~

~~(d) The hearing shall be informal and conducted as the interests of justice so require, and shall be recorded by the Business Committee Support Office.~~

~~120.6-9. Deliberation of the Oneida Business Committee. At the conclusion of the investigatory hearing, the Oneida Business Committee shall excuse everyone from executive session for the deliberation of the Oneida Business Committee. Prior to making a final determination as to whether to substantiate the complaint, the Oneida Business Committee shall:~~

~~(a) consider all evidence and information provided, and shall have a full and complete discussion of all aspects of the complaint and answer; and~~

~~(b) have a full and complete discussion of all potential sanctions and penalties that may be imposed, if appropriate.~~

~~120.6-10. Determination by the Oneida Business Committee. After the investigatory hearing has concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee shall in open session of a regular or special Oneida Business Committee meeting, by majority vote, declare whether the Oneida Business Committee has determined there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.~~

~~(a) If the Oneida Business Committee finds that there is clear and convincing evidence that the official engaged in misconduct, the Oneida Business Committee shall, by majority vote, determine and impose appropriate sanctions and/or penalties.~~

~~(b) If the Oneida Business Committee does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.~~

~~(c) Within ten (10) business days after the investigatory hearing, the Oneida Business Committee shall issue a written decision and provide copies of the decision to:~~

~~(1) the complainant,~~

~~(2) the official who is the subject of the complaint, and~~

~~(3) the Business Committee Support Office, for recordkeeping.~~

~~120.6-11. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Oneida Business Committee's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

120.7. Complaints Alleged Against an Elected Official

~~120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to the Nation's Rules of Civil Procedure.~~

~~120.7-2. In a civil action against an elected official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.~~

~~120.7-3. In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.~~

(a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.

(b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.

~~120.7-4-6-6. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

~~120.6-7-5. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official's record of conduct in office.~~

120.8-7. Sanctions and Penalties

~~120.8-7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.~~

~~120.8-7-2. Sanctions and penalties may include:~~

~~(a) Verbal Reprimand. A verbal reprimand may be imposed on the official.~~

(1) The ~~Oneida Business Committee or~~ Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.

(2) To impose the verbal reprimand, the presiding Oneida Business Committee Chairperson, or another Oneida Business Committee member if the verbal reprimand is imposed against the presiding Oneida Business Committee Chairperson, shall read a statement that identifies:

(A) ~~The Oneida Business Committee or~~ Trial Court's findings regarding the specific actions or inaction taken by the official that were found to be misconduct;

(B) The reasons why the official's actions or inactions amounted to misconduct;

(C) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation's officials and is not acceptable; and

(D) A direction to the official to refrain from engaging in future misconduct.

(b) *Public Apology.* The official may be ordered to make a public apology. ~~The Oneida Business Committee or~~ The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the public apology. The public apology shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting. The public apology shall:

(1) identify the specific misconduct committed by the official;

(2) recognize that the official's actions or inactions were wrong;

(3) identify the effects of the official's misconduct; and

(4) include a clear and unambiguous apology from the official.

(c) *Written Reprimand.* A written reprimand may be imposed on the official by publication on the Nation's official media outlets, as determined by the Oneida Business Committee. ~~The Oneida Business Committee or the~~ The Trial Court may publish a written reprimand which includes the information required for the verbal reprimand as stated in section 120.87-2(a)(2)(A)-(D).

(d) *Suspension.* An official may be suspended from performing his or her duties as an official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if the official serves in a full-time capacity.

(1) During a suspension, the official shall not:

(A) attend meetings, trainings or any other event as part of the entity;

(B) attend conferences or other events on behalf of, or as a representative of, the entity;

(C) vote or participate in any activities of the entity;

(D) perform work on behalf of the entity; or

(E) be eligible for any compensation, including regular pay, stipends, or mileage reimbursement.

(2) When an official is suspended, the ~~Oneida Business Committee or~~ Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific start and end date of the suspension.

(3) If a suspension is imposed on multiple officials of the same entity at one time, the ~~Oneida Business Committee or the~~ Trial Court shall impose the suspensions of the officials on a staggered basis to avoid an interruption of the official business and function of the entity.

(e) *Restitution.* An official may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the official's misconduct.

(f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five hundred dollars (\$2,500).

(1) Fines shall be paid to the Trial Court.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. ~~Cash shall not be accepted for payment of fines.~~ If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.

(3) Money received from fines shall be deposited into the General Fund.

(4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

(g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed two (2) meetings.

(h) *Mandatory Participation in Training*. An official may be ordered to participate in and complete a training class or program that will assist the official in addressing and improving his or her behaviors and/or actions.

(1) The mandated training class or program may address a variety of topics including, but not limited to, anger management, sexual harassment, or other sensitivity training.

~~(i) *Termination of Appointment*. An appointed official may have his or her appointment terminated by the Oneida Business Committee in accordance with the Nation's laws and/or policies governing boards, committees, and commissions.~~

~~(i)~~ *Removal*. The Trial Court may recommend that the process for removing an elected official as contained in the Nation's laws and/or policies governing removal be initiated.

120.87-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining the appropriate sanction or sanctions to impose, the ~~Oneida Business Committee or the~~ Trial Court may consider all factors it deems relevant, including but not limited to:

(a) the seriousness or severity of the misconduct;

(b) whether the conduct was intentional or not;

(c) the likelihood of repetition;

(d) the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;

(e) whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;

(f) the official's remorse, or

(g) the official's willingness and ability to take steps to mitigate the harm caused by the violation, and

(h) any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

120.87-4. The ~~Oneida Business Committee and/or the~~ Trial Court may impose a sanction and/or penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent or burdensome sanction and/or penalty.

120.87-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other applicable laws. In addition to any sanctions and penalties that may be imposed in accordance with this law, officials who commit misconduct in office may be subject to other consequences; including but not limited to:

(a) removal in accordance with the Nation's laws and/or policies governing removal, ~~if an elected official;~~

(b) ~~termination of appointment by the Oneida Business Committee, if an appointed official;~~

(~~e~~) criminal prosecution, for misconduct that also violates applicable criminal law;

(~~d~~) civil liability, in accordance with the applicable law of any jurisdiction; and/or

(~~e~~) penalties for specific misconduct as authorized by any other law of the Nation.

120.87-6. An official who does not comply with a sanction and/or penalty that has been imposed against him or her by ~~either the Oneida Business Committee or the~~ Trial Court may be subject to the following:

(a) additional sanctions and/or penalties that result from a complaint of misconduct filed in accordance with this Law based on the non-compliance;

(b) ~~termination of appointment by the Oneida Business Committee in accordance with the Nation's laws and policies governing boards, committees, and commissions, if the official was appointed to his or her position; and/or~~

(~~e~~) removal in accordance with the Nation's laws and policies governing removal, ~~if the official was elected to his or her position.~~

120.98. Effect of Resignation by an Official

120.98-1. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by ~~either the Oneida Business Committee or the~~ Trial Court.

120.98-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion of the ~~Oneida Business Committee or~~ Trial Court.

120.109. Record of Conduct in Office

120.109-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.

120.109-2. The record of conduct in office maintained for each official shall include, at a minimum:

(a) a copy of each complaint filed against the official;

(b) recording and/or transcript from any hearings and/or proceedings;

(c) the outcome of the complaint, and

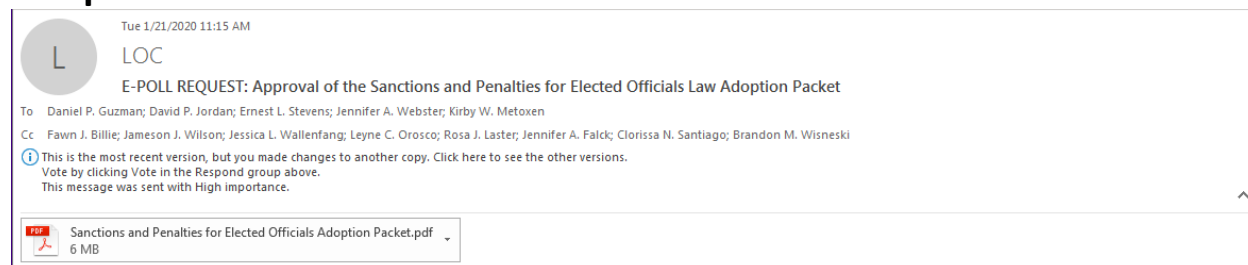
(d) any sanctions or penalties imposed upon an official.

120.109-3. The record of conduct in office for each official shall be maintained for a period of no less than seven (7) years.

End.

Adopted – GTC-__-__-__-__

January 21, 2020, Legislative Operating Committee E-Poll Approval of the Sanctions and Penalties for Elected Officials Law Adoption Packet



Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Sanctions and Penalties for Elected Officials law adoption packet.

EXECUTIVE SUMMARY

The Legislative Operating Committee is currently developing a Sanctions and Penalties for Elected Officials law ("the Law"). The purpose of this Law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

The Legislative Operating Committee is being asked to approve the adoption packet for the Sanctions and Penalties for Elected Officials law, which includes:

1. Memorandum from the Legislative Operating Committee to the General Tribal Council;
2. Resolution: Sanctions and Penalties for Elected Officials Law;
3. Statement of Effect: Sanctions and Penalties for Elected Officials Law;
4. Sanctions and Penalties for Elected Officials Law Legislative Analysis;
5. Sanctions and Penalties for Elected Officials Law (Clean Draft);
6. Sanctions and Penalties for Elected Officials Law (Redline Draft Demonstrating Changes Since the Draft Presented at the 3/17/19 GTC Meeting); and
7. Sanctions and Penalties for Elected Officials Fiscal Impact Statement.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for February 5, 2020, and immediate action is required by the Legislative Operating Committee to approve the adoption packet for the Sanctions and Penalties for Elected Officials law via e-poll so that the adoption packet may be included on the January 22, 2020, Oneida Business Committee meeting agenda as a handout.

REQUESTED ACTION

Approve the adoption packet for the Sanctions and Penalties for Elected Officials law and forward to the Oneida Business Committee for inclusion on the tentative March 2020 Special General Tribal Council meeting agenda.

DEADLINE FOR RESPONSE

January 21, 2020 at 1:00 p.m.

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

E-POLL RESULTS:

The e-poll was approved by Ernest Stevens III, Daniel Guzman King, Jennifer Webster, Kirby Metoxen, David P. Jordan.

 Tue 1/21/2020 11:17 AM
Ernest L. Stevens
 RE: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Adoption Packet
 To LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen
 Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago; Brandon M. Wisneski

Approve

 Tue 1/21/2020 11:24 AM
Daniel P. Guzman
 RE: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Adoption Packet
 To LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen
 Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago; Brandon M. Wisneski

approve

 Tue 1/21/2020 11:25 AM
Jennifer A. Webster
 RE: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Adoption Packet
 To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen
 Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago; Brandon M. Wisneski

Approve

 Tue 1/21/2020 12:01 PM
Kirby W. Metoxen
 RE: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Adoption Packet
 To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster
 Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago; Brandon M. Wisneski

Approve

Kirby Metoxen
 Kirby Metoxen, Councilman
kmtox@oneidafire.org
 Work Phone: (920) 869-4441
 Fax: (920) 869-4040



A good mind. A good heart. A strong fire.

 Tue 1/21/2020 12:03 PM
David P. Jordan
 RE: E-POLL REQUEST: Approval of the Sanctions and Penalties for Elected Officials Law Adoption Packet
 To LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen
 Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Clorissa N. Santiago; Brandon M. Wisneski; David P. Jordan

Approve



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



TO: General Tribal Council
FROM: David P. Jordan, Legislative Operating Committee Chairperson
DATE: March 16, 2020
RE: Sanctions and Penalties Law

Summary

On March 17, 2019, the Legislative Operating Committee (“the LOC”) presented a proposed Sanctions and Penalties law (“the Law”) to the General Tribal Council (“the GTC”). GTC was asked to consider the adoption of this Law which would establish a set of sanctions and penalties that may be imposed upon all elected and appointed officials of the Nation for misconduct in office, including the Oneida Business Committee (“the OBC”). During the last four (4) years the GTC has discussed sanctioning an official during at least eleven (11) GTC meetings, but the requests to sanction an official have been declined. Often times the request to sanction an official have been declined due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct. After discussion on the proposed Law, the GTC took the following actions:

- *Motion by Becky Webster to adopt the resolution entitled Sanctions and Penalties Law on pages 5 and 6 of the meeting packet; with the amendment to the law to limit those who have standing to file a complaint to Tribal Members only. Seconded by Jamie Willis. Motion not voted on; item deferred, see amendment.*
- *Amendment to the main motion by Mike Debraska to defer item IV.A. for at least sixty (60) days for GTC to have additional time to consider it and have input. Seconded by Tina Danforth. Motion carried by show of hands.*



The LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.

Community Outreach Efforts

Rather than just waiting the sixty (60) days to see if anyone came forward with input, the LOC planned and hosted many opportunities for members of the community to become more informed about the Law and provide input and suggestions as to what should be addressed in the Law.

EFFORTS FOR OUTREACH AND INPUT	
<i>Opportunities for Input Prior to the March 17, 2019 GTC Meeting:</i>	
November 1, 2017	Work Meeting with all Boards, Committees, and Commissions Invited
May 3, 2018	Community Meeting Potluck
October 4, 2018	Public Meeting*
October 11, 2018	Public Comment Period Closed*
February 7, 2019	Article Published in the Kalihwisaks
February 21, 2019	Informational Video Posted on Facebook
<i>Opportunities for Input After the March 17, 2019 GTC Meeting:</i>	
July 11, 2019	Community Outreach Event held at the Radisson Hotel and Conference Center prior to GTC Meeting
July 17, 2019	Community Outreach Event held at the Norbert Hill Center
August 9, 2019	Community Outreach Event held during Oneida Veteran's Breakfast
August 15, 2019	Community Outreach Event held during Oneida Farmer's Market
August 31, 2019	First Period for Written Submissions Closed
September 19, 2019	Article Published in the Kalihwisaks
October 7, 2019	Community Outreach Event held at Elder Congregate Meal Site
October 18, 2019	Community Outreach Event held at SEOTS
October 25, 2019	Input Opportunity at Community Budget Meeting
October 31, 2019	Second Period for Written Submissions Closed
November 7, 2019	Article Published in the Kalihwisaks
December 19, 2019	Article Published in the Kalihwisaks

* The public meeting and public comment period are required by the Legislative Procedures Act.

What opportunities for input did the LOC provide before March 17, 2019?

Before providing what efforts the LOC made after the March 17, 2019, GTC directive to defer this item for GTC to have additional time to consider it and have input, it is important to note the efforts that were already made as the LOC provided various opportunities for members of the community to provide input during the development of the Law.

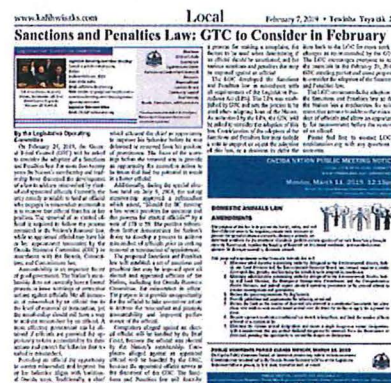
Work Meetings and Community Meetings. On November 1, 2017, the LOC invited all members of boards, committees, and commissions of the Nation to attend a work meeting to provide input on what the Law should address. The LOC then held a community meeting on the proposed Law on May 3, 2018. This community meeting was a potluck style meeting where those community members in attendance shared input, questions, and concerns regarding the Law.

Public Meeting and Public Comment Period. On October 4, 2018, the LOC held a public meeting, as required by the Legislative Procedures Act, where members of the community can provide oral testimony of views or questions on the proposed Law. For those who were unable to attend the public meeting in person, the LOC held open a comment period until October 11, 2018, which is a timeframe where written comments on the Law were accepted. Notices for community

meetings and public meetings were published in the Kalihwisaks, on the Nation's website, and on Facebook as well as electronically provided to all directors, managers, and supervisors of the Nation.

LOC Meeting Agendas. The proposed Law was on eleven (11) LOC meeting agendas prior to the March 17, 2019, GTC meeting. The LOC holds meetings on the first and third Wednesday of every month at 9:00 a.m. in the Norbert Hill Center Business Committee Conference Room and encourages members of the community to attend and participate by asking questions and/or providing input during those meetings.

Kalihwisaks Article. Leading up to the March 17, 2019, GTC meeting the LOC published an informational article in the February 7, 2019, Kalihwisaks edition in an effort to provide the community background on why this Law was created and information on what the Law would do. This was an effort by the LOC to encourage the community to be prepared to discuss and consider this item. The article included the LOC's email address and encouraged individuals to contact the LOC with any questions or concerns.



Article as it appeared in the February 7, 2019, Kalihwisaks edition.



Behind the scenes look at Councilman Daniel Guzman King filming the Sanctions and Penalties law informational video.

the proposed Law.

Community Outreach Events. The LOC has held six (6) community outreach events. Notices for these community outreach events were published in the July 3, 2019, and September 19, 2019, Kalihwisaks editions and published on the Nation's website. At the community outreach events the LOC had informational flyers, drafts of the Law, and a frequently asked questions document available for people to take and learn more. At many of the community

Informational Video. The LOC then developed an informational video that was shared on Facebook on February 21, 2019, which provided information on the purpose of the Law and included a link to the Nation's website for additional information, including "frequently asked questions." This video was viewed nearly 4,000 times.

What opportunities for input has the LOC provided since the March 17, 2019, directive?

Since the March 17, 2019, GTC directive to allow additional time for members of GTC to consider the Law and have input, the LOC has made many additional efforts to provide an opportunity for community engagement with



Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer's Market.

outreach events the LOC gave a short presentation on the Law and had open discussion on the proposed Law with those in attendance. At one (1) event the LOC even read the Law aloud line by line with the community member in attendance in an effort to educate, answer questions, and collect concerns. The LOC was available during these community outreach events to answer questions and collect input from community members. The community outreach events were held at the following dates and locations:

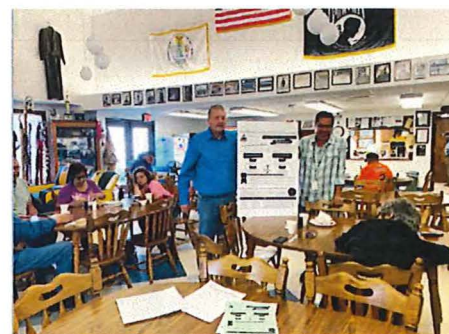
- July 11, 2019, held at the Radisson hotel and conference center prior to the GTC meeting;
- July 17, 2019, held at the Norbert Hill Center;
- August 9, 2019, held during the Oneida Veteran's Breakfast;
- August 15, 2019, held at the Oneida Farmer's Market;
- October 7, 2019, held at the Elder Congregate Meal Site; and
- October 18, 2019, held in Milwaukee at the South Eastern Oneida Tribal Services (SEOTS) building.



Councilwoman Jennifer Webster and LOC Chairman David P. Jordan at the Oneida Farmer's Market.



LOC members held a community outreach event at the SEOTS building in Milwaukee.

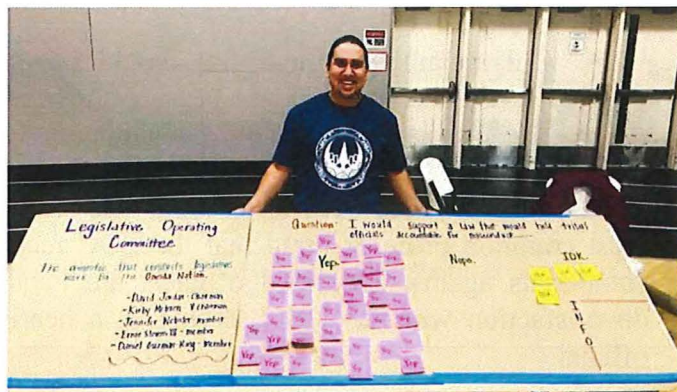


LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at Oneida Veteran's Breakfast.

Period for Written Submissions of Comments. Understanding that not everyone is available to attend community outreach events in person, the LOC also allowed for written comments on the proposed Law to be submitted from July 3, 2019, until August 31, 2019, and then from September 18, 2019, until October 31, 2019. Written submissions of comments were received from two (2) individuals.

Kalihwisaks Articles. In addition to the various community outreach events, the LOC also published multiple articles in the Kalihwisaks about the proposed Law. An article was published in the September 19, 2019, Kalihwisaks edition for the purpose of informing the community on the various outreach efforts the LOC has made for the proposed Law. Another article was then published in the November 7, 2019, Kalihwisaks edition for the purpose of informing the community why the LOC is the body developing the Law. An article published in the December 19, 2019, Kalihwisaks edition highlighted the various legislative efforts the LOC made during 2019, including its efforts for this Law and its intent to bring this Law to the GTC in March 2020. All articles encouraged the reader to contact that LOC at LOC@oneidanation.org with any questions.

Community Budget Meeting. During the October 25, 2019, Community Budget Meeting the LOC had an interactive display at the Legislative Reference Office's booth which allowed those community members in attendance to provide input by responding to the statement, *"I would support a law that would hold tribal officials accountable for misconduct."* Individuals could respond with either a "Yep," "No," or "IDK." Thirty-seven (37) individuals responded with "Yep," four (4) individuals responded with "IDK," and no one responded with "No."



Councilman Daniel Guzman King with the information collected at the Community Budget Meeting held on October 25, 2019. 37 of the 41 people who participated stated they would support a law to hold officials accountable for misconduct.

Input Received from Community Outreach Efforts

Most of the engagement during the community outreach events that resulted from the March 17, 2019, GTC directive focused on educating the community on the purpose and provisions of the Law and answering questions that community members may have on the Law.

Some members of the community did take the opportunity to provide input to the LOC on issues they would like to see addressed in the Law. Some of the input the LOC has received includes:

- We should eliminate every board, committee, or commission of the Nation that is not required by law or grant. We can have employees of the Nation doing the work instead of elected and appointed officials.
- We cannot fault the misconduct of boards, committees, and commissions when there is no performance outcome associated with boards, committees, and commissions, or any way to ensure that the boards, committees, and commissions are aligned with the vision of the Nation as a whole.
- Internal Audit should be delegated the authority to handle investigations of complaints of appointed officials that come before the OBC.
- Complaints against appointed officials should go to the Judiciary and not go to the OBC.
- The Law should only address complaints against elected officials, and not address appointed officials.
- Verbal and written reprimands should be removed from the Law. Political figures should be held to a higher standard and there should be zero tolerance for misconduct.
- Sanctions such as loss of stipend and mandatory participation in training should be a mandatory and immediate sanction for any misconduct.
- There should not be a timeframe for when complaints can be brought forward, you should be able to bring a complaint forward as long as that official is in office.
- To reduce frivolous complaints there should be a requirement that the complainant have standing and was the person aggrieved by the conduct of an official.

Additionally, during the March 17, 2019, GTC meeting the following input was received:

- This Law allows for too many people to file a complaint resulting in the official being in

court.

- Only members of the Nation should have standing to file a complaint against our officials.
- The OBC should not be a hearing body for appointed officials.
- The Judiciary should not be a hearing body for complaints against elected officials.

The LOC carefully considered all input that was received during the various outreach events. The most common piece of input that the LOC received about the proposed Law referenced how complaints against appointed officials are handled under the Law. Many people expressed dissatisfaction with the OBC serving as a hearing body for complaints against an appointed official.

Why do we need a Sanctions and Penalties law?

If an official of the Nation engages in misconduct, the only remedy available today to hold that official accountable is removal from office. Removal from office must be pursued in accordance with the Removal law if an elected official. Although not every instance of misconduct rises to the level of removal from office, that does not mean that we should fail to address or attempt to correct every instance of misconduct. The Nation is currently lacking a process to issue warnings, suspensions, or other corrective actions against an official for his or her misconduct.

The desire for a process to be able to better hold officials accountable for misconduct in office has been discussed within the Nation for more than twenty (20) years. From 2016 to 2019, the GTC has discussed sanctioning an official, whether through suspension or loss of stipend or wage, during at least eleven (11) GTC meetings. The requests to sanction an official have often times been declined due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct while still protecting the due process rights of that official. In November 2018 the GTC even considered a petition regarding “*Rescinding the Removal law*” for the purpose of addressing disciplinary actions such as suspensions or removals of officials through an easier process than what the Removal law provides.

Additionally, during the Special Election held on July 9, 2016, the Nation’s voting membership was asked to consider a referendum question of “*Should the BC develop a law which provides for sanctions and due process for elected officials?*” This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59), requiring this topic to come before the GTC for consideration and discussion.

Most other governments, including tribal, local, state and federal, have some sort of sanctions and penalties process for officials. Through the adoption of this Law the GTC can close the current gap by providing a process to address the misconduct of officials and empower themselves to take action to hold officials accountable.

Conclusion

The LOC has fulfilled the March 17, 2019, GTC directive to defer this item for at least sixty (60) days for GTC to have additional time to consider it and have input. The LOC then used the input that was received from community members during the various community outreach efforts to

determine how the proposed Law should be revised to address the concerns of the community.

The LOC determined that the proposed Law should be revised so that the Oneida Business Committee is removed as a hearing body for complaints. The LOC has updated the Law to remove the OBC as a hearing body for complaints against appointed officials by removing all references to appointed officials from the Law. Now, the proposed Law only addresses elected officials of the Nation and provides that those complaints against elected officials be handled by the Judiciary – Trial Court.

Additionally, the LOC revised the Law to limit who can file a complaint against an elected official. Previously, the Law allowed any individual at least eighteen (18) years of age or older who in good faith has knowledge or reason to believe that an official has committed misconduct file a complaint. The proposed Law now also requires that an individual be an enrolled member of the Nation or an employee of the Nation in order to file a complaint against an elected official.

The LOC held a public meeting on the proposed revisions to the Law on January 7, 2020. This public meeting was held in accordance with the Legislative Procedures Act and provided an opportunity for members of the community to provide oral testimony of views or questions on the proposed Law. For those who were unable to attend the public meeting in person, the LOC held open a comment period until January 14, 2020, which is a timeframe where written comments on the Law were accepted. Notice for this public meeting was published in the Kalihwisaks, on the Nation's website, and electronically provided to all directors, managers, and supervisors of the Nation.

Attached to this memorandum for review and consideration are the following updated documents:

- Resolution: Sanctions and Penalties for Elected Officials Law;
- Statement of Effect: Sanctions and Penalties for Elected Officials Law;
- Sanctions and Penalties for Elected Officials Law Legislative Analysis;
- Sanctions and Penalties for Elected Officials Law (Clean Draft);
- Sanctions and Penalties for Elected Officials Law (Redline Draft Demonstrating Changes Since the Draft Presented at the 3/17/19 GTC Meeting); and
- Sanctions and Penalties for Elected Officials Fiscal Impact Statement.

The LOC is asking the GTC to consider the adoption of the updated Sanctions and Penalties for Elected Officials law.

Requested Action

Adopt the updated Resolution: Sanctions and Penalties for Elected Officials Law

PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS



Interactive display from the Community Budget Meeting where 37 of the 41 participants stated they would support a law that held officials accountable for misconduct.



LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.



LOC Chairman David P. Jordan and Councilwoman Jennifer Webster in Milwaukee discussing the Sanctions and Penalties law with a community member.



Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer's Market.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen conversing about the Sanctions and Penalties law with those in attendance at the Oneida Veterans Breakfast.

PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS



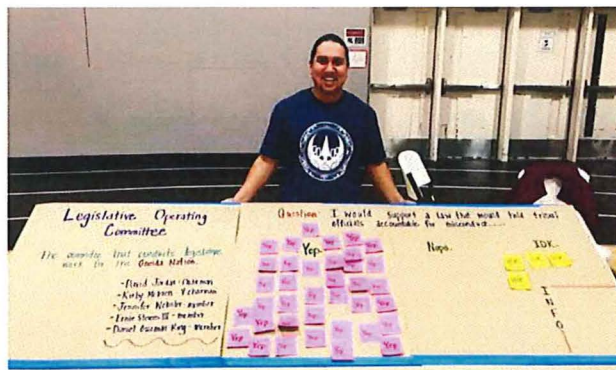
Above: LOC members in Milwaukee holding a community outreach event at the SEOTS building.
Below: LOC's materials for the Sanctions and Penalties law outreach events.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at the Oneida Veterans Breakfast community outreach event.



LOC Vice-Chairman Kirby Metoxen presenting on the Sanctions and Penalties law at the Elder Congregate Meal Site.



Left: Councilman Daniel Guzman King collecting input at the Community Budget Meeting.

Right: LOC Chairman David P. Jordan and Councilwoman Jennifer Webster at the Oneida Farmer's Market.



Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

GTC Resolution # _____ Sanctions and Penalties for Elected Officials Law

- 1
- 2
- 3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 4 recognized by the laws of the United States of America; and
- 5
- 6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 7
- 8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 10
- 11 **WHEREAS,** the purpose of the Sanctions and Penalties for Elected Officials law ("the Law") is to
- 12 establish a consistent set of sanctions and penalties that may be imposed upon elected
- 13 officials of the Nation for misconduct in office for the purpose of providing an opportunity
- 14 for the official to take corrective action to address the misconduct and promote
- 15 accountability and improved performance of the official; and
- 16
- 17 **WHEREAS,** the Law will require an elected official of the Nation to behave in a manner that promotes
- 18 the highest ethical and moral standard; and
- 19
- 20 **WHEREAS,** the Law will subject an elected official of the Nation to sanctions and penalties for behaving
- 21 in a manner that constitutes misconduct; and
- 22
- 23 **WHEREAS,** the Law will provide a process for filing a complaint alleging misconduct against an elected
- 24 official, including who may file a complaint, when to file a complaint, where a complaint
- 25 may be filed, and the necessary contents of a complaint; and
- 26
- 27 **WHEREAS,** the Law will prohibit retaliation against any individual who makes a complaint, is a witness
- 28 to a complaint, or offers testimony or evidence; and
- 29
- 30 **WHEREAS,** the Law will require all complaints alleged against an elected official to be handled in a
- 31 confidential manner; and
- 32
- 33 **WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an elected
- 34 official to the Judiciary - Trial Court; and
- 35
- 36 **WHEREAS,** the Law will allow an appeal of a decision of the Trial Court to be made to the Nation's
- 37 Court of Appeals; and
- 38
- 39 **WHEREAS,** the Law provides the various sanctions and penalties that may be imposed against an
- 40 elected official, and the factors that shall be used when determining the appropriate
- 41 sanctions and/or penalties to impose; and
- 42

GTC Resolution # _____
Sanctions and Penalties for Elected Officials Law
Page 2 of 2

43 **WHEREAS,** the Law will clarify that the imposition of sanctions and/or penalties does not exempt an
44 official from individual liability for the underlying misconduct, and does not limit any
45 penalties that may be imposed in accordance with other laws; and
46

47 **WHEREAS,** the Law will provide for the effect of a resignation by an elected official; and
48

49 **WHEREAS,** the Law will require that the Business Committee Support Office maintain a record of
50 conduct in office for each elected official; and
51

52 **WHEREAS,** in accordance with the Legislative Procedures Act a public meeting on the proposed Law
53 was held on October 4, 2018, the public comment period was held open until October 11,
54 2018, and the public comments were reviewed and accepted by the Legislative Operating
55 Committee on October 17, 2018, and October 25, 2018; and
56

57 **WHEREAS,** a proposed Sanctions and Penalties law was presented to the General Tribal Council for
58 consideration on March 17, 2019; and
59

60 **WHEREAS,** on March 17, 2019, after discussion the General Tribal Council took action to defer this
61 item for at least at least sixty (60) days for the General Tribal Council to have additional
62 time to consider it and have input; and
63

64 **WHEREAS,** after the March 17, 2019, directive the Legislative Operating Committee held seven (7)
65 community outreach events, allowed for the written submission of comments and
66 questions, and published three (3) articles in the Kalihwisaks regarding the proposed Law
67 and outreach efforts; and
68

69 **WHEREAS,** based on the input received during the various community outreach events, the Legislative
70 Operating Committee decided to revise the Law to eliminate the Oneida Business
71 Committee as a hearing body for complaints against appointed officials by removing all
72 references to appointed officials throughout the Law, as well as limit who can file a
73 complaint to enrolled members of the Nation or employees of the Nation; and
74

75 **WHEREAS,** a second public meeting on the proposed Law was held on January 7, 2020, in accordance
76 with the Legislative Procedures Act, the public comment period was held open until
77 January 14, 2020, and the public comments were reviewed and accepted by the Legislative
78 Operating Committee on January 15, 2020;
79

80 **NOW THEREFORE BE IT RESOLVED,** that the Sanctions and Penalties for Elected Officials law is hereby
81 adopted and shall become effective ten (10) business days after the date of the adoption of this resolution.
82
83



Statement of Effect

Sanctions and Penalties for Elected Officials Law

Summary

This resolution adopts a Sanctions and Penalties for Elected Officials law for the purpose of establishing a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

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

Date: January 15, 2020

Analysis by the Legislative Reference Office

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts a Sanctions and Penalties for Elected Officials law (“the Law”), which complies with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

This resolution adopts the proposed Law which will establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

The Sanctions and Penalties for Elected Officials law will:

- Require an elected official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
 - who may file a complaint [1 O.C. 120.5-1];
 - when a complaint may be filed, [1 O.C. 120.5-2];
 - where a complaint may be filed [1 O.C. 120.5-4]; and
 - the necessary contents of a complaint [1 O.C. 120.5-3];
- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence complying with directives under this law [1 O.C. 120.5-5];
- Require all complaints alleged against an elected official to be handled in a confidential manner [1 O.C. 120.6-4];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [1 O.C. 120.6-1];

- Allow for an individual to appeal the decision of the Trial Court to the Nation's Court of Appeals [1 O.C. 120.6-6];
- Provide sanctions and penalties that may be imposed against an elected official [1 O.C. 120.7-2];
- Provide factors to be used when determining the appropriate sanctions and/or penalties to impose [1 O.C. 120.7-3];
- Clarify that the imposition of sanctions and/or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [1 O.C. 120.7-5];
- Discuss the effect of a resignation by an elected official [1 O.C. 120.8]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected official [1 O.C. 120.9].

In accordance with the LPA, a public meeting on the proposed Law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018.

The Legislative Operating Committee presented a proposed Law to the General Tribal Council for consideration on March 17, 2019. After discussion on the Law, the General Tribal Council took action to defer this item for at least sixty (60) days for the General Tribal Council to have additional time to consider it and have input.

After the March 17, 2019, directive the Legislative Operating Committee held seven (7) community outreach events, allowed for the written submission of comments and questions, and published two (2) articles in the Kalihwisaks regarding the proposed Law and outreach efforts. Based on the input received during the various community outreach events, the Legislative Operating Committee decided to revise the Law to eliminate the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials throughout the Law, as well as limit who can file a complaint to enrolled members of the Nation or employees of the Nation.

A second public meeting on the proposed Law was held on January 7, 2020. Four (4) members of the community attended the public meeting with one (1) person providing oral comments. The public comment period closed on January 14, 2020. The Legislative Operating Committee received two (2) submissions of written comments during the public comment period. All public comments were accepted, reviewed, and considered by the Legislative Operating Committee on January 15, 2020.

The Sanctions and Penalties law will become effective ten (10) business days after the adoption of the resolution by the General Tribal Council.

Conclusion

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



Kalihwahnla-t&= Okhale> Atatlihwa>thlew@htu Kayanl^sla
Giving strength to the issues and Forgiving oneself for the issue at hand Laws

SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against elected officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [120.1-1].		
Affected Entities	All elected officials of the Nation; Any enrolled tribal member or employee age 18 years and older who has knowledge that an official committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards. This law does not apply to appointed officials.		
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita law; and any of the Nation's laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the hearing to answer the allegations and provide evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting for an earlier draft of this law was held on October 4, 2018. A 2 nd public meeting for the updated draft was held on January 7, 2020.		
Fiscal Impact	A fiscal impact statement for an earlier draft of this law was prepared by the Finance Department on December 27, 2018. An updated fiscal analysis was prepared on January 20, 2020.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 A. When an elected official of the Nation commits misconduct while in office, there are few remedies
- 3 available for the Nation to discipline that official. Currently, elected officials may be removed in
- 4 accordance with the Removal Law. However, there may be instances of misconduct that do not rise to

the level of removal. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more appropriate.

- B.** This law creates a formal complaint process that gives tribal members, employees and entities an opportunity to file complaints against elected officials while ensuring that due process rights for those accused are protected. This law also creates a range of potential sanctions and penalties for officials who violate the laws of the Nation or commit other forms of misconduct.
- C.** During the Special Election held on July 9, 2016, the following referendum question was approved by a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for elected officials?” The Election Law requires the Oneida Business Committee to present referendum questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action [Election Law 1 O.C. 102.12-9(c)].
- D.** On March 17, 2019, the Legislative Operating Committee presented an earlier draft of the proposed Sanctions and Penalties law to GTC for consideration. During this meeting, GTC directed that the Sanctions and Penalties law be deferred for at least sixty (60) days for GTC to have additional time to consider it and have input.
- E.** Between July and November of 2019, the LOC conducted additional outreach for the community regarding the proposed Sanctions and Penalties law. This included outreach events in both Oneida and Milwaukee, articles in the Kalihwisaks, and opportunities to submit written comments.
- F.** Based on input received from community members during the various outreach efforts, as well as the discussion during the March 17, 2019, GTC Meeting, the LOC determined that the draft should be revised. This revised draft removes the Oneida Business Committee as a hearing body for complaints against appointed officials by removing all references to appointed officials from the law. In addition, complaints will now be filed only by enrolled tribal members or employees of the Nation aged 18 years or older.
- G.** This law will apply to elected officials of the Nation, including members of the following entities:

ELECTED BOARDS, COMMITTEES AND COMMISSIONS
<ul style="list-style-type: none">Oneida Business CommitteeOneida Election BoardOneida Gaming CommissionOneida Land Claims CommissionOneida Land CommissionOneida Nation Commission on Aging (ONCOA)Oneida Nation School BoardOneida Trust Enrollment CommitteeGTC Legal Resource Center Advocates and Attorney

**This law does not apply to members of appointed boards, members of the Judiciary or corporate entities of the Nation.*

SECTION 3. CONSULTATION AND OUTREACH

- A.** The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:
- Ho Chunk Nation Code of Ethics 2 HCC 1;
 - Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
 - Pokagon Band of Potawatomi Indians Ethics Code;

- Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
 - Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
 - Skokomish Code of Ethics S.T.C. 1.05;
 - Pit River Tribal Government Code of Conduct Section 80.
- B.** The Business Committee Support Office, Records Management Department, Human Resources Department and representatives from the following Boards, Committees and Commissions were consulted in the development of this law and analysis:
- Anna John Resident Centered Care Community Board (AJRCCC);
 - Oneida Election Board;
 - Oneida Environmental Resource Board (ERB);
 - Oneida Gaming Commission;
 - Oneida Land Commission;
 - Oneida Police Commission
 - Oneida Pow-wow Committee;
 - Oneida Trust Enrollment Committee, and
 - Oneida Nation Veterans Affairs Committee (ONVAC).
- C.** *Community Outreach Events.* In addition to the public meeting(s) required by the LPA held on October 4, 2018 and January 7, 2020, the LOC held the following outreach events on this legislation:
- May 3, 2018: Community pot-luck meeting at Norbert Hill Center to gather community input.
 - July 11, 2019: Community outreach event held prior to GTC meeting at Radisson Conference Center.
 - July 17, 2019: Community outreach held at Norbert Hill Center in Oneida.
 - August 9, 2019: Community outreach held at Veteran’s Breakfast in Oneida.
 - August 15, 2019: Community outreach held at Farmer’s Market in Oneida.
 - October 7, 2019: Community outreach held at Elder Congregate Mealsite in Oneida.
 - October 16, 2019: Community outreach held at SEOTS Building in Milwaukee.

SECTION 4. PROCESS

- A.** Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B.** The law was originally added to the Active Files List on October 15, 2014 and was carried over from the previous term. The law was re-added to the Active Files List on September 6, 2017.
- C.** At the time this legislative analysis was developed, the following work meetings had been held regarding the most recent efforts to develop this law and legislative analysis:
- September 6, 2017: LOC work meeting.
 - November 1, 2017: LOC work meeting with representatives from the following boards, committees and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and committees were invited to attend this work meeting.
 - December 6, 2017: LOC work meeting.
 - March 9, 2018: LOC work meeting.
 - May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support Office, and representatives from the following boards, committees and commissions: Police Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and commissions were invited to attend this meeting.

- May 11, 2018: LOC work meeting.
- July 9, 2018: Work meeting with BC Support Office.
- August 1, 2018: LOC work meeting.
- October 17, 2018: LOC work meeting.
- October 25, 2018: LOC work meeting.
- December 20, 2018: Work meeting with Cultural Heritage.
- January 2, 2019: LOC Work meeting.
- January 24, 2019: LOC Work meeting.
- February 4, 2019: LOC Work meeting.
- February 6, 2019: LOC work meeting.
- February 8, 2019: LOC work meeting.
- February 14, 2019: LOC work meeting.
- February 20, 2019: LOC work meeting.
- March 1, 2019: LOC work meeting.
- March 15, 2019: LOC work meeting.
- March 20, 2019: LOC work meeting.
- March 28, 2019: LOC work meeting.
- May 1, 2019: LOC work meeting.
- June 13, 2019: LOC work meeting.
- August 21, 2019: LOC work meeting.
- October 16, 2019: LOC work meeting.
- October 31, 2019: LOC work meeting.
- November 6, 2019: LOC work meeting.
- November 15, 2019: LOC work meeting.
- November 20, 2019: LOC work meeting.
- November 26, 2019: LOC work meeting.
- December 2, 2019: LOC work meeting.

SECTION 5. CONTENTS OF THE LEGISLATION.

A. *What Qualifies as Misconduct.* The Oneida Nation expects elected officials to uphold high ethical and moral standards. Officials who engage in misconduct may be subject to sanctions and penalties. This section describes what behaviors could be considered misconduct [120.4]. Under this law, the definition of misconduct is very broad and includes any of the following:

- Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.
 - Examples include the Code of Ethics and Conflict of Interest Law.
- Violating the bylaws or standard operating procedures of the board the official serves on.
- Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- Any other activity that does not uphold the moral and ethical standards expected of the Nation's officials.

B. *Filing a Complaint.*

- *Who Can File a Complaint?* Under this law, any enrolled member of the Nation or employee of the Nation age 18 years or older can file a complaint, so long as they have knowledge or reason to

believe that an official has committed misconduct. Entities of the Nation, such as a board, committee or commission, can also file complaints against elected officials.

- *When to File Complaint?* The complaint must be filed within 90 days of when the alleged misconduct occurred or was discovered [120.5-1 & 5-2].

- *Contents of the Complaint.* Complaints must include the following information [120.5-3]:

- Information about the official, including the official's name and the entity they serve on.
- Information about the alleged misconduct, including date, time, location and specific details.
- The specific law, policy, rule or bylaw that the official violated.
- Information about any witnesses or others with knowledge of the violation.
- Contact information of the individual filing the complaint.
- Supporting documents and any other information required by the Rules of Civil Procedure [8 O.C. 803.5-1].

- *Where to File Complaints?* Complaints against elected officials are filed with the Trial Court, with is located within the Oneida Judiciary [120.5-4].

- *Retaliation.* Retaliation against someone who files a complaint or cooperates with a misconduct investigation is not allowed [120.5-5].

C. *Complaint Procedure.* Complaints against elected officials, including members of the Oneida Business Committee, will be heard by the Nation's Trial Court [120.6-1]. The law outlines the process for how the Judiciary will hear the complaint:

- *Right to an Attorney or Advocate.* Any official who has been accused of misconduct has the right to be represented by an attorney or an advocate, at their own expense [120.6-2].

- *Legal Resource Center.* The Legal Resource Center Law established an office to provide legal advice and representation to Tribal members and employees in cases before the Judiciary.

- *Burden of Proof.* The burden of proof for allegations made under this law is "clear and convincing evidence" [120.6-3]. This is the same standard the Nation uses in misconduct cases against judges in the Oneida Judiciary [8 O.C. 801.12-6(c)].

- This means that the person filing the complaint must provide evidence "indicating that the [allegation] to be proved is highly probably or reasonably certain" [Black's Law Dictionary]. This is a greater burden than "preponderance of the evidence," the standard in most civil trials, but less than evidence "beyond a reasonable doubt," which is used for criminal trials.

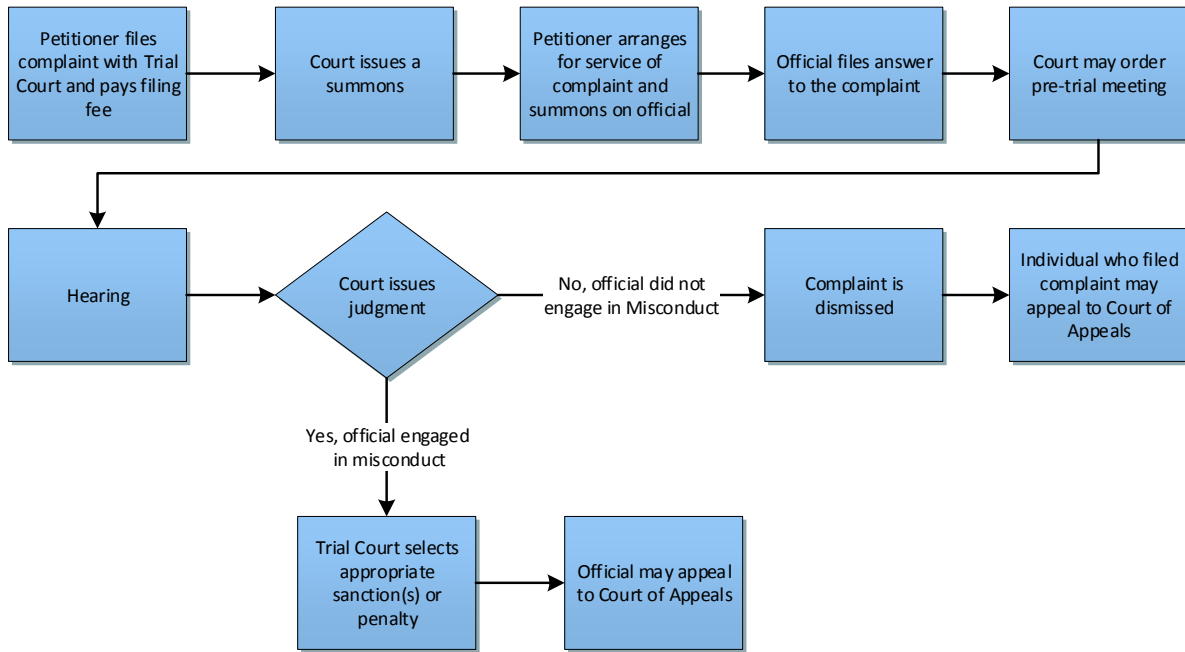
- *Confidentiality.* All complaints against officials of the nation will be handled confidentially, with hearings and proceedings regarding the complaint closed to the public. Records of the hearings will be kept confidential. However, the final decision of the Judiciary and any sanctions and penalties imposed against an official will be public information [120.6-4].

- *Judiciary Law.* The Judiciary Law states that proceedings of the court are open to the public except for peacemaking, mediation, proceedings where the judge has safety or confidentiality concerns, or "if expressly prohibited by law" [8 O.C. 801.4-4].

D. *Hearings Under Rules of Civil Procedure.* All hearings under this law must follow the Judiciary Rules of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court using the Rules of Civil Procedure. For more detailed information regarding the trial court process, see the Judiciary Rules of Civil of Civil Procedure in the Nation's Code of Laws.

- 170 ▪ *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a
171 standard complaint form with instructions to fill out the complaint.
 - 172 ○ *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the
173 complaint to include the full name and address of the plaintiff and defendant, why the
174 defendant is being sued, facts supporting each claim, why the trial court has jurisdiction,
175 specifically what relief is sought from the defendant, and a summons [*Oneida Judiciary*
176 *Rules of Civil Procedure 803.5-1*].
 - 177 ○ *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a
178 general civil case. However, individuals may request a fee waiver from the court for the
179 following reasons: unemployed, health/medical, or below poverty level.
 - 180 ○ *Summons:* A summons is a document ordering a defendant to appear before a judge. The
181 Trial Court has a standard summons form.
- 182 ▪ *Complaint and Summons are served on Official.* The complaint and summons must be delivered to
183 the elected official within 30 days after the complaint is filed. In addition, for complaints against
184 officials, notice must also be served to the Secretary's office. The petitioner must provide proof to
185 the Court that the complaint and summons were delivered to the defendant within 10 days of
186 delivery. If proof of service is not completed, then the case will be dismissed [*Rules of Civil*
187 *Procedure 8 O.C. 803.5*].
- 188 ▪ *Official Files an Answer.* The official responds to the complaint by filing an answer. The official
189 can either admit to or deny the allegations made in the complaint and provide defenses to each
190 claim made in the complaint [*Rules of Civil Procedure 8 O.C. 803.7*].
- 191 ▪ *Pre-Trial Meeting.* A pre-trial meeting may be scheduled between the judge, petitioner and
192 defendant. The purpose for this meeting could include preparing for the trial, creating a plan
193 regarding discovery, or facilitating a settlement, such as peacemaking [*Rules of Civil Procedure*
194 *803.12*].
- 195 ▪ *Hearing.* Hearings are conducted in accordance with the Rules of Civil Procedure, which may
196 include opening statements, presentation of the parties' cases, rebuttals and closing statements
197 [*Rules of Civil Procedure 8 O.C. 803.38*].
- 198 ▪ *Judgment.* If the Trial Court determines, by clear and convincing evidence, that there is enough
199 evidence to substantiate the allegations of misconduct by the official, then the Trial Court will
200 impose any sanctions and penalties that they deem appropriate. If the Trial Court does not find
201 there is clear and convincing evidence to support the allegations, the complaint will be dismissed
202 [*120.6-5*].
- 203 ▪ *Appeals.* Both the official accused of misconduct and the individual who filed the complaint have
204 the right to appeal the decision of the Trial Court to the Court of Appeals. The appeal must be filed
205 with the Court of Appeals in accordance with the Rules of Appellate Procedure [*120.6-6*].
 - 206 ○ *Timeline for Appeal.* Appeals of judgments of the Trial Court must be filed with the Court
207 of Appeals within 30 days after the judgment was rendered [*8 O.C 805.5-2(a)*].

Chart 2. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.



E. Sanctions and Penalties. This law includes a list of sanctions and penalties that may be imposed on an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected official. Officials may receive one or more of the following penalties. The Trial Court will select whichever penalty it deems appropriate [120.7].

- **Conditional Penalties.** Sanctions and penalties may be imposed on a conditional basis. For example, an official could be ordered to make a public apology and attend mandatory training, or otherwise face suspension [120.7-4].
- **Failure to Comply.** If an official fails to comply with a sanction or penalty imposed against them, that official can face additional sanctions as a result of additional misconduct complaints under this law. An example would be an official failing to pay a fine, failing to attend mandatory training or violating the terms of their suspension [120.7-6].

Chart 3. List of Potential Sanctions and Penalties for Elected Officials.

Potential Sanctions and Penalties:
<ul style="list-style-type: none"> ▪ Verbal Reprimand ▪ Public Apology ▪ Written Reprimand ▪ Suspension ▪ Restitution ▪ Fines ▪ Loss of Stipend ▪ Mandatory Training ▪ Removal, in accordance with Removal Law

- 233 ▪ **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement
234 describing the official’s misconduct. The chairperson will also state that the official’s behavior was
235 unacceptable and direct the official not to engage in misconduct again [120.7-2(a)].
- 236 ▪ **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting.
237 The apology must include a description of the misconduct, a statement that the actions were wrong,
238 a description of the harm caused by the misconduct, and a “clear and unambiguous” apology
239 [120.7-2(b)].
- 240 ▪ **Written Reprimand.** The Judiciary Trial Court may publish a written reprimand in the Nation’s
241 official media outlets. The Nation’s official media outlets are the Oneida Nation website and the
242 Kalihwisaks newspaper [BC Resolution #03-22-17-B]. The written reprimand will include the same
243 information as a verbal reprimand [120.7-2(c)].
- 244 ▪ **Suspension.** The Trial Court may suspend part-time officials for up to two (2) meetings. Full-time
245 officials, such as members of the Business Committee or Gaming Commission, may be suspended
246 for up to fifteen (15) business days. During a suspension, the official cannot attend meetings,
247 trainings, or conferences. The official also cannot vote or perform work for the entity. In addition,
248 the official cannot earn any stipends, salary or mileage during the suspension [120.7-2(d)].
 - 249 ○ *Multiple Suspensions on One Entity.* If multiple officials on the same entity are suspended
250 at the same time, the suspensions must be imposed on a staggered basis so that the business
251 of the Nation is not interrupted. For example, if multiple members of the Business
252 Committee are suspended, each member will be suspended one at a time on a staggered
253 basis [120.7-2(d)(3)].
- 254 ▪ **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly
255 received benefit, such as returning funds or paying to replace damaged property. The point of
256 restitution is to make someone whole. [120.7-2(e)].
- 257 ▪ **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a
258 fine is a punishment. The maximum amount of each fine is \$2500 [120.7-2(f)].
 - 259 ○ *Fine Process.* All fines will be paid to the trial court and deposited into the Nation’s
260 General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld
261 on final appeal. If the fine is not paid on time, the Nation may collect the money through
262 garnishment or the official’s per capita payment.
 - 263 ○ *Community Service Alternative.* An official can complete community service to make up
264 all or part of their fine. The rate earned for community service will be the Nation’s
265 minimum wage, which is currently \$10.10 per hour. The Nation currently allows
266 community service for fines issued in the Hunting, Fishing and Trapping Law [Hunting
267 Fishing and Trapping 4 O.C. 406.10-5(a)].
- 268 ▪ **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of elected
269 boards may receive up to two (2) meeting stipends per month, so this could amount to the loss of
270 one month’s stipends for a member of a board that meets twice monthly [Boards, Committees and
271 Commissions law 1 O.C. 105.13-3(b)].
- 272 ▪ **Mandatory Training.** An official can be ordered to complete a mandatory training program to
273 address their behavior. Examples include anger management or sexual harassment training [120.7-
274 2(h)].

- 275 ▪ **Removal.** The Trial Court can recommend that the removal process be initiated for an official in
276 accordance with the Removal Law. However, this would only be a recommendation. The Removal
277 Law provides a strict process that must be followed to remove elected officials [120.7-2(i)].
 - 278 ○ *Removal Law Process.* In order to remove an elected official, an eligible voter must file a
279 petition with the Secretary signed by at least 30% of the vote cast in the previous general
280 election. For example, the number of votes cast in the 2017 general election was 1612, so
281 the number of signatures needed to initiate removal is approximately 484. Then, the
282 Judiciary conducts a preliminary review to determine whether there is sufficient grounds
283 for removal. If so, the Judiciary holds a hearing. If the Judiciary determines that sufficient
284 grounds for removal has been proven, the findings are forwarded to the Nation's
285 Chairperson, who schedules a GTC meeting. At the GTC meeting, an elected official may
286 be removed from office after a 2/3 vote [Removal Law 1 O.C. 104].
- 287 **F. Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court may consider the
288 following when deciding which sanction or penalty to apply [120.7-3].
 - 289 ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to repeat
290 the misconduct.
 - 291 ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
 - 292 ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
 - 293 ▪ Whether any prior complaints have been filed against the official. For example, whether this is the
294 first complaint against the official or represents a pattern of behavior.
- 295 **G. Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an
296 official who commits misconduct may also experience other consequences. These include [120.7-5]:
 - 297 ▪ Removal from office in accordance with the Removal law.
 - 298 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft
299 or violent acts.
 - 300 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for
301 damages.
 - 302 ▪ Any other penalties listed in another law of the Oneida Nation.
 - 303 ○ For example, a violation of the Computer Resources Ordinance may result in loss of access
304 to the Nation's computer resources [Computer Resources Ordinance 2 O.C. 215.9-1].
- 305 **H. Effect of Resignation by an Official.** If an official resigns from office after a complaint has been filed,
306 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning
307 from office does not end or prevent an investigation [120.8].
- 308 **I. Record of Conduct in Office.** A record of conduct for each official will be maintained by the BC
309 Support Office, which will include copies of complaints filed against the official, outcome of the
310 complaints, and any sanctions and penalties the official received. This record will be maintained for at
311 least seven (7) years [120.9].
 - 312 ▪ *Public Access to Record of Conduct.* The record of conduct maintained by the BC Support Office
313 will only be made available for review to the Trial Court. The purpose of the record of conduct is
314 so that the Trial Court can review previous complaints against the official when determining a
315 potential sanction or penalty [120.6-4(b)].
 - 316 ▪ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court regarding
317 a complaint against an elected official and any sanctions and penalties imposed against an official
318 will be public information [120.6-4(c)].

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. *References to the Other Laws of the Nation:* The following laws of the Nation are referenced in this law. This law does not conflict with any of the referenced laws.
- *Rules of Civil Procedure.* Complaints against an official shall be filed in accordance with the Nation's Trial Court in accordance with the Rules of Civil Procedure [120.5-4].
 - *Rules of Appellate Procedure.* Appeals of the Trial Court's decision shall be filed pursuant to the Nation's Rules of Appellate Procedure.
 - *Garnishment Law.* If an official is ordered to pay a fine in accordance with this law and does not pay according to the deadline, the Trial Court may seek to collect that fine through the Nation's garnishment process [120.7-2(f)(2)].
 - *Per Capita Law.* If an official is ordered to pay a fine in accordance with this law and does not pay according to the deadline, the Trial Court may seek to collect that fine through the Nation's per capita attachment process [120.7-2(f)(2)].

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. *Due Process.* Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.

SECTION 8. OTHER CONSIDERATIONS

- A. *Complaints against Judiciary.* The Judiciary Law already contains a process for the reprimand, suspension and removal of judges for willful misconduct in office, including a hearing and complaint procedure [Judiciary law 8 O.C. 801.12]. Therefore, this law does not apply to members of the Judiciary.
- B. *Judiciary Conflicts of Interest.* The Oneida Tribal Judiciary Canons of Judicial Conduct requires a Judge to withdraw from any matter where the Judge has or could be perceived to have a conflict of interest. Violating the Oneida Tribal Judiciary Canons of Judicial Conduct would be grounds for reprimand under the Nation's Judiciary law [Judiciary Canons of Judicial Conduct 8 O.C. 802.2-2].
- C. *Complaints Against Appointed Officials.* This law applies to elected officials only. Appointed officials are appointed by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law and serve at the BC's discretion. If an appointed official commits misconduct in office, termination of appointment may be recommended by a member of the BC or by the entity the official serves on. An appointed official may have their appointment terminated by a 2/3 majority vote of the Oneida Business Committee [Boards, Committees and Commissions 1 O.C. 105.7-4].
- D. *Code of Ethics.* Most other tribal, municipal and state governments place sanctions and penalties within their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are closely related. The Code of Ethics is currently on the LOC's Active Files List for potential amendments. Updating the Code of Ethics would provide additional guidance to elected officials, individuals filing complaints, and the Judiciary when they begin hearing complaints under this law.
- E. *Comparison to Other Nations.* Research of other tribal nations indicate that there are many different processes for sanctions and penalties of public officials. There is no uniform standard used by all tribal governments. Examples of other sanctions and penalties processes are provided for information:

Chart 4. Sanctions and Penalties Process of other Tribal Nations

Tribe	Where Complaints Are Filed	Who Investigates or Hears the Complaint	Who Decides the Sanction or Penalty
Oneida Nation (proposed)	<i>Judiciary</i>	<i>Judiciary</i>	<i>Judiciary</i>
Siletz	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
Ho Chunk	Judiciary	Judiciary	President
Rosebud Sioux	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
Skokomish	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

*Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.

- F. Number of Potential Complaints.** Since the Nation currently has no formal sanctions and penalties process, it is not possible to predict the number of complaints that may be filed against elected officials.
- *Conclusion:* Given the uncertainty regarding the number of potential complaints, the Judiciary should be prepared to possibly process a large number of complaints upon passage of this law.
- G. Impact of Suspension on Full-Time Officials.** Members of the Oneida Business Committee and Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials would impact salaries, benefits such as health insurance, and access to workplaces. The Human Resources Department reports that they have a suspension procedure in place for employees of the Nation, and that this procedure could be applied or modified for suspension of full-time officials.
- *Conclusion:* Since notifications of suspension go to the BC Support Office, it is suggested that the BC Support Office work with HRD to develop a process should suspensions of full-time BC members or Gaming Commissioners occur.
- H. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on the LOC’s Active Files List and may be amended in the future.
- I. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [*Legislative Procedures Act 1 O.C. 109.6-1*].
 - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [*Legislative Procedures Act 1 O.C. 109.6-1(a and b)*].

Title 1. Government and Finances - Chapter 120
Kalihwahníla'tú Okhale? Atatlihwá'thlewáhtu Kayanlása
Giving strength to the issues and Forgiving oneself for the issue at hand Laws
SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

120.1. Purpose and Policy
120.2. Adoption, Amendment, Repeal
120.3. Definitions
120.4. Misconduct
120.5. Filing of a Complaint

120.6. Complaint Procedure
120.7. Sanctions and Penalties
120.8. Effect of Resignation by an Official
120.9. Record of Conduct in Office

120.1. Purpose and Policy

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

(a) This law applies to members of the Oneida Business Committee.

(b) This law does not apply to judges of the Oneida Nation Judiciary.

(c) This law does not apply to members of corporate entities of the Nation.

120.1-2. *Policy.* It is the policy of the Nation to ensure that elected officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

120.1-3. It is the intent of the Nation that all elected officials strive to exhibit and uphold the Nation's core values of The Good Mind as expressed by Onayote'a'ka, which includes:

(a) Kahletsyalása. The heart felt encouragement of the best in each of us.

(b) Kanolukhwása. Compassion, caring, identity, and joy of being.

(c) Ka'nikuhli'yó. The openness of the good spirit and mind.

(d) Ka'tshatstása. The strength of belief and vision as a People.

(e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our future.

(f) Twahwahtsílawayá. All of us are family.

(g) Yukwatsístayá. Our fire, our spirit within each one of us.

120.2. Adoption, Amendment, Repeal

120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__.

120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

120.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

120.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

120.3. Definitions

120.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Business Committee Support Office” means the office that provides administrative support for the Oneida Business Committee and various other governmental operations.
- (b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding holidays recognized by the Nation.
- (c) “Clear and convincing evidence” means that it is substantially more likely than not that the facts presented are true.
- (d) “Complainant” means an individual who has made a complaint.
- (e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.
- (f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.
- (g) “Entity” means a board, committee, commission, office, or other group of the Nation an individual may be elected to serve a position on, including the Oneida Business Committee.
- (h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.
- (i) “Nation” means the Oneida Nation.
- (j) “Official” means any person who is elected to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee.
- (k) “Restitution” means compensation to an individual or entity for an injury, damage or loss.
- (l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving on boards, committees and commissions of the Nation to offset the expenses of being a member on the board, committee or commission.
- (m) “Substantiate” means to find that the complaint or allegation in the complaint is valid because there is clear and convincing evidence.
- (n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

120.4. Misconduct

120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.

120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:

- (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials.

120.5. Filing of a Complaint

120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older who is an enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has

knowledge or reason to believe that an official has committed misconduct, may file a written complaint.

120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall include the following information:

- (a) The name(s) of the official alleged to have committed the misconduct;
- (b) The entity or entities upon which the official serves;
- (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- (d) The specific details of the official's misconduct;
- (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated by the official;
- (f) Names of any witnesses of the alleged misconduct, or individuals who may have knowledge pertinent to the alleged misconduct;
- (g) The contact information for the person filing the complaint, which at minimum shall include the person's name, address, and telephone number;
- (h) A notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant's knowledge;
- (i) Any supporting documentation; and
- (j) Any other information required by the Nation's Rules of Civil Procedure.

120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure.

120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

- (a) If an individual alleges that retaliatory action has been threatened or taken based on the individual's complaint, or cooperation with directives authorized under this law, the individual may file a complaint for the retaliatory action in accordance with section 120.5 of this law.

120.6. Complaint Procedure

120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of officials.

120.6-2. Any official who is the subject of a complaint has the right to be represented by an attorney or advocate, at his or her own expense, for any actions or proceedings related to the complaint.

120.6-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.

120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled in a confidential manner.

- (a) All hearings and/or proceedings related to a complaint shall be closed to the general public.
- (b) All records of hearings and/or proceedings shall not be subject to public review or inspection. An official's record of conduct shall only be made available for review by the Trial Court.

(c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.

120.6-5. *Determination of the Trial Court.* In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.

(a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.

(b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.

120.6-6. *Appeal.* The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:

(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances; or

(b) Procedural irregularities occurred which prevented a fair and impartial hearing.

120.6-7. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official's record of conduct in office.

120.7. Sanctions and Penalties

120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.

120.7-2. Sanctions and penalties may include:

(a) *Verbal Reprimand.* A verbal reprimand may be imposed on the official.

(1) The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.

(2) To impose the verbal reprimand, the presiding Oneida Business Committee Chairperson, or another Oneida Business Committee member if the verbal reprimand is imposed against the presiding Oneida Business Committee Chairperson, shall read a statement that identifies:

(A) The Trial Court's findings regarding the specific actions or inaction taken by the official that were found to be misconduct;

(B) The reasons why the official's actions or inactions amounted to misconduct;

(C) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation's officials and is not acceptable; and

(D) A direction to the official to refrain from engaging in future misconduct.

(b) *Public Apology.* The official may be ordered to make a public apology. The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the public apology. The public apology shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting. The public apology shall:

- 176 (1) identify the specific misconduct committed by the official;
177 (2) recognize that the official's actions or inactions were wrong;
178 (3) identify the effects of the official's misconduct; and
179 (4) include a clear and unambiguous apology from the official.
- 180 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
181 on the Nation's official media outlets, as determined by the Oneida Business Committee.
182 The Trial Court may publish a written reprimand which includes the information required
183 for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).
- 184 (d) *Suspension*. An official may be suspended from performing his or her duties as an
185 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
186 the official serves in a full-time capacity.
- 187 (1) During a suspension, the official shall not:
- 188 (A) attend meetings, trainings or any other event as part of the entity;
189 (B) attend conferences or other events on behalf of, or as a representative
190 of, the entity;
191 (C) vote or participate in any activities of the entity;
192 (D) perform work on behalf of the entity; or
193 (E) be eligible for any compensation, including regular pay, stipends, or
194 mileage reimbursement.
- 195 (2) When an official is suspended, the Trial Court shall submit written notices to
196 both the official and to the Business Committee Support Office of the specific start
197 and end date of the suspension.
- 198 (3) If a suspension is imposed on multiple officials of the same entity at one time,
199 the Trial Court shall impose the suspensions of the officials on a staggered basis to
200 avoid an interruption of the official business and function of the entity.
- 201 (e) *Restitution*. An official may be ordered to pay restitution, which may include the
202 repayment of any improperly received benefit, or any other payment which is intended to
203 make another whole after suffering losses as a result of the official's misconduct.
- 204 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
205 hundred dollars (\$2,500).
- 206 (1) Fines shall be paid to the Trial Court.
- 207 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
208 on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial
209 Court may seek to collect the money owed through the Nation's garnishment and/or
210 per capita attachment process.
- 211 (3) Money received from fines shall be deposited into the General Fund.
- 212 (4) Community service may be substituted for part or all of any fine at the minimum
213 wage rate of the Nation for each hour of community service.
- 214 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
215 on an entity not to exceed two (2) meetings.
- 216 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
217 complete a training class or program that will assist the official in addressing and
218 improving his or her behaviors and/or actions.
- 219 (1) The mandated training class or program may address a variety of topics
220 including, but not limited to, anger management, sexual harassment, or other
221 sensitivity training.

(i) *Removal.* The Trial Court may recommend that the process for removing an elected official as contained in the Nation's laws and/or policies governing removal be initiated.

120.7-3. *Factors in Determining an Appropriate Sanction and/or Penalty.* When determining the appropriate sanction or sanctions to impose, the Trial Court may consider all factors it deems relevant, including but not limited to:

- (a) the seriousness or severity of the misconduct;
- (b) whether the conduct was intentional or not;
- (c) the likelihood of repetition;
- (d) the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
- (e) whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
- (f) the official's remorse, or
- (g) the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
- (h) any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

120.7-4. The Trial Court may impose a sanction and/or penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent or burdensome sanction and/or penalty.

120.7-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other applicable laws. In addition to any sanctions and penalties that may be imposed in accordance with this law, officials who commit misconduct in office may be subject to other consequences; including but not limited to:

- (a) removal in accordance with the Nation's laws and/or policies governing removal;
- (b) criminal prosecution, for misconduct that also violates applicable criminal law;
- (c) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- (d) penalties for specific misconduct as authorized by any other law of the Nation.

120.7-6. An official who does not comply with a sanction and/or penalty that has been imposed against him or her by the Trial Court may be subject to the following:

- (a) additional sanctions and/or penalties that result from a complaint of misconduct filed in accordance with this Law based on the non-compliance;
- (b) removal in accordance with the Nation's laws and policies governing removal.

120.8. Effect of Resignation by an Official

120.8-1. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by the Trial Court.

120.8-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion of the Trial Court.

120.9. Record of Conduct in Office

120.9-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.

120.9-2. The record of conduct in office maintained for each official shall include, at a minimum:

- (a) a copy of each complaint filed against the official;
- (b) recording and/or transcript from any hearings and/or proceedings;

(c) the outcome of the complaint, and
(d) any sanctions or penalties imposed upon an official.
120.9-3. The record of conduct in office for each official shall be maintained for a period of no less than seven (7) years.

End.

Adopted – GTC-__-__-__-__

Title 1. Government and Finances - Chapter 120

SANCTIONS AND PENALTIES

Kalihwahníla·tú· Okhale? Atatlihwá?thlewáhtu Kayanlásla

Giving strength to the issues and Forgiving oneself for the issue at hand Laws

SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

~~120.1. Purpose and Policy~~

~~120.2. Adoption, Amendment, Repeal~~

~~120.3. Definitions~~

~~120.4. Misconduct~~ ~~120.1. Purpose and Policy~~

~~120.2. Adoption, Amendment, Repeal~~

~~120.3. Definitions~~

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~~120.5. Filing of a Complaint~~

~~120.6. Complaint Procedure~~

~~120.7. Sanctions and Penalties~~

~~120.8. Effect of Resignation by an Official~~

~~120.9. Record of Conduct in Office~~

~~120.5. Filing of a Complaint~~

~~120.6. Complaint Alleged Against an Appointed Official~~

~~120.7. Complaint Alleged Against an Elected Official~~

~~120.8. Sanctions and Penalties~~

~~120.9. Effect of Resignation by an Official~~

~~120.10. Record of Conduct in Office~~

120.1. Purpose and Policy

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected ~~and appointed~~ officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

(a) This law applies to members of the Oneida Business Committee.

(b) This law does not apply to judges of the Oneida Nation Judiciary.

(c) This law does not apply to members of corporate entities of the Nation.

120.1-2. *Policy.* It is the policy of the Nation to ensure that elected ~~and appointed~~ officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

120.1-3. It is the intent of the Nation that all elected ~~and appointed~~ officials strive to exhibit and uphold the Nation's core values of The Good Mind as expressed by Onlayote'a'ka, which includes:

(a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.

(b) Kanolukhwásla. Compassion, caring, identity, and joy of being.

(c) Ka?nikuhli·yó. The openness of the good spirit and mind.

(d) Ka?tshatstásla. The strength of belief and vision as a People.

(e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our future.

(f) TwahwahtsílawayΛ. All of us are family.

(g) YukwatsístayΛ. Our fire, our spirit within each one of us.

120.2. Adoption, Amendment, Repeal

120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__.

120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

120.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

120.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

120.3. Definitions

120.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a) “Affirmative defense” means a fact or set of facts other than those alleged by the complainant which, if proven by the official, defeats or mitigates the consequences of the official’s otherwise unlawful conduct.~~

~~(b) “Answer” means a formal written statement addressing the dispute on the merits and presents any defenses and counterclaims.~~

~~(e)~~(a) “Business Committee Support Office” means the office that provides administrative support for the Oneida Business Committee and various other governmental operations.

~~(d)~~(b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding holidays recognized by the Nation.

~~(e)~~(c) “Clear and convincing evidence” means that it is substantially more likely than not that the facts presented are true.

~~(f)~~(d) “Complainant” means an individual who has made a complaint.

~~(g)~~(e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

~~(h)~~(f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

~~(i)~~(g) “Entity” means a board, committee, commission, office, ~~unincorporated agency,~~ or other group of the Nation an individual may be ~~appointed or~~ elected to serve a position on, including the Oneida Business Committee.

~~(j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be supported by a good faith argument. Most often frivolous complaints are intended to merely harass, delay, or embarrass the opposition.~~

~~(k)~~(h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

~~(i)~~(j) “Nation” means the Oneida Nation.

~~(m)~~(j) “Official” means any person who is elected ~~or appointed~~ to serve a position for the Nation, including, but not limited to, a position on a board, committee, commission, or office of the Nation, including the Oneida Business Committee.

~~(n)~~(k) “Restitution” means compensation to an individual or entity for an injury, damage or loss.

~~(o)~~(l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving on boards, committees and commissions of the Nation to offset the expenses of being a member on the board, committee or commission.

~~(p)~~(m) “Substantiate” means to find that the complaint or allegation in the complaint is valid because there is clear and convincing evidence.

~~(q)~~(n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

120.4. Misconduct

120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest ethical and moral standard. High moral and ethical standards amongst officials of the Nation is essential to the conduct of government.

120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:

- (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

120.5. Filing of a Complaint

120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, ~~or~~ who is an enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has knowledge or reason to believe that an official has committed misconduct, may file a written complaint.

120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall include the following information:

- (a) The name(s) of the official alleged to have committed the misconduct;
- (b) The entity or entities upon which the official serves;
- (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- (d) The specific details of the official's misconduct;
- (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated by the official;
- (f) Names of any witnesses of the alleged misconduct, or individuals who may have knowledge pertinent to the alleged misconduct;
- (g) The contact information for the person filing the complaint, which at minimum shall include the person's name, address, and telephone number;
- (h) A notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant's knowledge;
- (i) Any supporting documentation; and
- (j) Any other information required by the Nation's Rules of Civil Procedure ~~if the complaint is alleging misconduct of an elected official.~~

120.5-4. *Where to File.*

~~(a) Appointed Official.~~ Complaints against an ~~appointed official shall be filed with the Business Committee Support Office.~~

~~(b) Elected Official.~~ Complaints against an ~~elected~~ official shall be filed with the Nation's Trial Court pursuant to the Nation's Rules of Civil Procedure.

120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

(a) If an individual alleges that retaliatory action has been threatened or taken based on the individual's complaint, or cooperation with directives authorized under this law, the individual may file a complaint for the retaliatory action in accordance with section 120.5 of this law.

120.5-6. Complaint Procedure

120.6-1. Jurisdiction of the Trial Court. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of officials.

120.6-2. Any official who is the subject of a complaint has the right to be represented by an attorney or advocate, at his or her own expense, for any actions or proceedings related to the complaint.

120.5-76-3. Burden of Proof. In a civil action against an official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.

120.6-4. Confidentiality. All complaints alleged against an official of the Nation shall be handled in a confidential manner.

(a) All hearings and/or proceedings related to a complaint shall be closed to the general public.

(b) All records of hearings and/or proceedings shall not be subject to public review or inspection. An official's record of conduct shall only be made available for review ~~to the Oneida Business Committee and by~~ the Trial Court.

(c) *Exception.* A decision of the Trial Court ~~or the Oneida Business Committee~~ regarding a complaint alleged against an official, and any sanctions and/or penalties that are imposed against an official, shall be public information.

120.6-Complaints Alleged Against an Appointed Official

~~-5. Determination 120.6-1. Due to the fact that an appointed official serves at the discretion of the Oneida Business Committee, all complaints alleged against an appointed official shall be handled by the Oneida Business Committee.~~

~~120.6-2. Receipt of Complaint. Upon receiving a complaint, the Business Committee Support Office shall:~~

~~(a) immediately forward copies of the complaint, including any supporting documentation, to:~~

~~(1) all members of the Oneida Business Committee for review; and~~

~~(2) the individual who is the subject of the complaint.~~

~~(b) place the complaint on the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee for an initial review which shall occur within thirty (30) business days after the initial receipt of a complaint.~~

~~120.6-3. Mediation. The complainant or the official who is the subject of the complaint shall have up to five (5) business days after the initial receipt of the complaint to contact the Business Committee Support Office and request mediation.~~

~~(a) If both the complainant and the official who is the subject of the complaint agree to mediation, then the Business Committee Support Office shall schedule a mediation between the parties. The intent of this mediation meeting is to resolve the complaint prior to commencing an initial review.~~

~~(b) The Business Committee Support Office shall utilize a trained mediator to facilitate the mediation meeting. Every mediator shall have at least twenty five (25) hours of mediation training or at least three (3) years of experience in dispute resolution.~~

~~(c) The mediation shall occur before the investigatory hearing is scheduled to take place.~~

~~(d) If a resolution is reached during mediation, the Oneida Business Committee shall be informed of the resolution before the initial review and the complaint shall be formally dismissed during the initial review.~~

~~(e) If the matter is not resolved through mediation, the initial review shall occur as prescribed by this law.~~

~~120.6 4. Answer to the Complaint. The individual who is the subject of the complaint shall have ten (10) business days after receiving his or her copy of the complaint, to submit to the Business Committee Support Office a written answer setting forth any admission, denial, affirmative defense, or other relevant information upon which the official intends to rely during proceedings related to the complaint.~~

~~(a) The Business Committee Support Office shall immediately forward the answer and any supporting documentation to all members of the Oneida Business Committee upon receipt from the individual who is the subject of the complaint.~~

~~120.6 5. Conflict of Interest. An Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee, shall immediately recuse himself or herself and shall not participate in any portion of the complaint process.~~

~~(a) Failure of an Oneida Business Committee member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties.~~

~~120.6 6. Initial Review. The Oneida Business Committee shall perform an initial review of an allegation of misconduct on the part of an official. The purpose of the initial review shall be to determine whether the allegation made within the complaint has merit.~~

~~(a) During the initial review the Oneida Business Committee shall review the complaint and the written answer; as well as any supporting documentation.~~

~~(b) In order to determine if a complaint has merit, the Oneida Business Committee will discuss if whether assuming the facts alleged are true, said facts would support a determination of misconduct.~~

~~(c) The Oneida Business Committee shall determine, by majority vote, whether the complaint has merit.~~

~~(1) Upon a finding that the complaint has merit, the Oneida Business Committee shall schedule an investigatory hearing to consider the specific allegations identified in the complaint.~~

~~(A) The investigatory hearing shall occur within thirty (30) business days after the initial review has concluded and shall take place during the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee.~~

~~(2) Upon finding that a complaint has no merit, the Oneida Business Committee shall dismiss the complaint. The Oneida Business Committee shall send notice that the complaint was dismissed to the complainant and the official who is the subject of the complaint within five (5) business days.~~

~~(A) If the Oneida Business Committee dismisses the complaint based on a determination that the complaint was frivolous, false, or made with a malicious intent, the complainant may be subject to:~~

~~(i) a fine not to exceed five hundred dollars (\$500);~~

(ii) ~~prohibition from filing another complaint for a period of time not to exceed one (1) year; and/or~~

(iii) ~~a civil suit in the Nation's Trial Court brought by the official accused by the frivolous, false or malicious allegation.~~

~~120.6-7. Notice of the Investigatory Hearing. The Business Committee Support Office shall provide the complainant, the official who is the subject of the complaint, and any other individual compelled to attend the hearing with written notice of the date and the time of the investigatory hearing at least ten (10) business days before the investigatory hearing.~~

~~120.6-8. Investigatory Hearing. The purpose of the investigatory hearing is for the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.~~

~~(a) When conducting an investigatory hearing, the Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to:~~

~~(1) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or~~

~~(2) produce physical evidence that is relevant to the allegations.~~

~~(b) The Oneida Business Committee shall provide an opportunity for the official who is the subject of the complaint to answer all allegations and to provide witness testimony, documents, and other evidence on his or her own behalf.~~

~~(c) The Oneida Business Committee shall also provide the complainant the opportunity to answer questions, provide witness testimony or additional information, and/or to otherwise speak on his or her own behalf.~~

~~(d) The hearing shall be informal and conducted as the interests of justice so require, and shall be recorded by the Business Committee Support Office.~~

~~120.6-9. Deliberation of the Oneida Business Committee. At the conclusion of the investigatory hearing, the Oneida Business Committee shall excuse everyone from executive session for the deliberation of the Oneida Business Committee. Prior to making a final determination as to whether to substantiate the complaint, the Oneida Business Committee shall:~~

~~(a) consider all evidence and information provided, and shall have a full and complete discussion of all aspects of the complaint and answer; and~~

~~(b) have a full and complete discussion of all potential sanctions and penalties that may be imposed, if appropriate.~~

~~120.6-10. Determination by the Oneida Business Committee. After the investigatory hearing has concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee shall in open session of a regular or special Oneida Business Committee meeting, by majority vote, declare whether the Oneida Business Committee has determined there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.~~

~~(a) If the Oneida Business Committee finds that there is clear and convincing evidence that the official engaged in misconduct, the Oneida Business Committee shall, by majority vote, determine and impose appropriate sanctions and/or penalties.~~

~~(b) If the Oneida Business Committee does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.~~

~~(c) Within ten (10) business days after the investigatory hearing, the Oneida Business Committee shall issue a written decision and provide copies of the decision to:~~

~~(1) the complainant,~~

~~(2) the official who is the subject of the complaint, and~~

~~(3) the Business Committee Support Office, for recordkeeping.~~

~~120.6-11. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Oneida Business Committee's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

120.7. Complaints Alleged Against an Elected Official

~~120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to the Nation's Rules of Civil Procedure.~~

~~120.7-2. In a civil action against an elected official for misconduct, the complainant has the burden of proving by clear and convincing evidence that the official engaged in misconduct.~~

~~120.7-3. In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.~~

(a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.

(b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.

~~120.7-4-6-6. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:~~

~~(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances;~~

~~or~~

~~(b) Procedural irregularities occurred which prevented a fair and impartial hearing.~~

~~120.6-7-5. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official's record of conduct in office.~~

120.8-7. Sanctions and Penalties

~~120.8-7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.~~

~~120.8-7-2. Sanctions and penalties may include:~~

~~(a) Verbal Reprimand. A verbal reprimand may be imposed on the official.~~

(1) The ~~Oneida Business Committee or~~ Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.

(2) To impose the verbal reprimand, the presiding Oneida Business Committee Chairperson, or another Oneida Business Committee member if the verbal reprimand is imposed against the presiding Oneida Business Committee Chairperson, shall read a statement that identifies:

(A) The ~~Oneida Business Committee~~ or Trial Court's findings regarding the specific actions or inaction taken by the official that were found to be misconduct;

(B) The reasons why the official's actions or inactions amounted to misconduct;

(C) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation's officials and is not acceptable; and

(D) A direction to the official to refrain from engaging in future misconduct.

(b) *Public Apology.* The official may be ordered to make a public apology. ~~The Oneida Business Committee~~ or The Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the public apology. The public apology shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting. The public apology shall:

(1) identify the specific misconduct committed by the official;

(2) recognize that the official's actions or inactions were wrong;

(3) identify the effects of the official's misconduct; and

(4) include a clear and unambiguous apology from the official.

(c) *Written Reprimand.* A written reprimand may be imposed on the official by publication on the Nation's official media outlets, as determined by the Oneida Business Committee. ~~The Oneida Business Committee~~ or The Trial Court may publish a written reprimand which includes the information required for the verbal reprimand as stated in section 120.87-2(a)(2)(A)-(D).

(d) *Suspension.* An official may be suspended from performing his or her duties as an official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if the official serves in a full-time capacity.

(1) During a suspension, the official shall not:

(A) attend meetings, trainings or any other event as part of the entity;

(B) attend conferences or other events on behalf of, or as a representative of, the entity;

(C) vote or participate in any activities of the entity;

(D) perform work on behalf of the entity; or

(E) be eligible for any compensation, including regular pay, stipends, or mileage reimbursement.

(2) When an official is suspended, the ~~Oneida Business Committee~~ or Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific start and end date of the suspension.

(3) If a suspension is imposed on multiple officials of the same entity at one time, the ~~Oneida Business Committee~~ or The Trial Court shall impose the suspensions of the officials on a staggered basis to avoid an interruption of the official business and function of the entity.

(e) *Restitution.* An official may be ordered to pay restitution, which may include the repayment of any improperly received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the official's misconduct.

(f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five hundred dollars (\$2,500).

(1) Fines shall be paid to the Trial Court.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. ~~Cash shall not be accepted for payment of fines.~~ If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.

(3) Money received from fines shall be deposited into the General Fund.

(4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

(g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed two (2) meetings.

(h) *Mandatory Participation in Training*. An official may be ordered to participate in and complete a training class or program that will assist the official in addressing and improving his or her behaviors and/or actions.

(1) The mandated training class or program may address a variety of topics including, but not limited to, anger management, sexual harassment, or other sensitivity training.

~~(i) *Termination of Appointment*. An appointed official may have his or her appointment terminated by the Oneida Business Committee in accordance with the Nation's laws and/or policies governing boards, committees, and commissions.~~

~~(i)~~ (i) *Removal*. The Trial Court may recommend that the process for removing an elected official as contained in the Nation's laws and/or policies governing removal be initiated.

120.87-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining the appropriate sanction or sanctions to impose, the ~~Oneida Business Committee or the~~ Trial Court may consider all factors it deems relevant, including but not limited to:

(a) the seriousness or severity of the misconduct;

(b) whether the conduct was intentional or not;

(c) the likelihood of repetition;

(d) the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;

(e) whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;

(f) the official's remorse, or

(g) the official's willingness and ability to take steps to mitigate the harm caused by the violation, and

(h) any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

120.87-4. The ~~Oneida Business Committee and/or the~~ Trial Court may impose a sanction and/or penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent or burdensome sanction and/or penalty.

120.87-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other applicable laws. In addition to any sanctions and penalties that may be imposed in accordance with this law, officials who commit misconduct in office may be subject to other consequences; including but not limited to:

(a) removal in accordance with the Nation's laws and/or policies governing removal, ~~if an elected official;~~

(b) ~~termination of appointment by the Oneida Business Committee, if an appointed official;~~

(~~e~~) criminal prosecution, for misconduct that also violates applicable criminal law;

(~~d~~) civil liability, in accordance with the applicable law of any jurisdiction; and/or

(~~e~~) penalties for specific misconduct as authorized by any other law of the Nation.

120.87-6. An official who does not comply with a sanction and/or penalty that has been imposed against him or her by ~~either the Oneida Business Committee or the~~ Trial Court may be subject to the following:

(a) additional sanctions and/or penalties that result from a complaint of misconduct filed in accordance with this Law based on the non-compliance;

(b) ~~termination of appointment by the Oneida Business Committee in accordance with the Nation's laws and policies governing boards, committees, and commissions, if the official was appointed to his or her position; and/or~~

(~~e~~) removal in accordance with the Nation's laws and policies governing removal, ~~if the official was elected to his or her position.~~

120.98. Effect of Resignation by an Official

120.98-1. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by ~~either the Oneida Business Committee or the~~ Trial Court.

120.98-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion of the ~~Oneida Business Committee or~~ Trial Court.

120.10.9. Record of Conduct in Office

120.109-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.

120.109-2. The record of conduct in office maintained for each official shall include, at a minimum:

(a) a copy of each complaint filed against the official;

(b) recording and/or transcript from any hearings and/or proceedings;

(c) the outcome of the complaint, and

(d) any sanctions or penalties imposed upon an official.

120.109-3. The record of conduct in office for each official shall be maintained for a period of no less than seven (7) years.

End.

Adopted – GTC-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Larry Barton, Chief Financial Officer
RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Rae Skenandore, Financial Management Analyst

DATE: January 17, 2020

RE: **Fiscal Impact of the Amendments to the Sanctions and Penalties Law For Elected Officials**

I. Estimated Fiscal Impact Summary

Law: Amendments to the Sanctions and Penalties Law For Elected Officials		Draft 5
Implementing Agency	Business Committee Support Office Oneida Judiciary	
Estimated time to comply	In compliance with the Legislative Procedure Act	
Estimated Impact	Current Fiscal Year	Ten Year Estimate
Total Estimated Fiscal Impact	No impact	No impact

II. Background

Legislative History

This is a new Law that was originally placed on the Legislative Operating Committee active files list on October 15, 2014. A public meeting was held on October 4, 2018. On March 17, 2019, the Legislation was presented to GTC for consideration and deferred for additional consideration. After amendments, a 2nd public meeting for the updated draft was held on January 7, 2020.

Summary of Content

A summary of the Law is as follows;

A. The purpose of this Law is to establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the

purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

- B. The Law applies to all elected Boards, Committees, and Commissions.
- C. This Law does not apply to members of the Judiciary or Tribal corporate entities.
- D. The definition of misconduct means wrongful, improper or unlawful conduct or behavior.
- E. Complaint Process and Requirements
 - 1. Individuals must be over 18 years old to file a complaint.
 - 2. Allegations must have occurred within the last 90 days.
 - 3. The Law outlines the requirement for the content of the complaint and where to file.
 - 4. Prohibits retaliation
- F. The Trial Court has jurisdiction to hear complaints.
- G. The Burden of Proof is on the complainant.
- H. All complaints shall be handled in a confidential manner. However, the decision and any sanctions and/or penalties shall be public information.
- I. Decisions may be appealed to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure.
- J. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination.
- K. Sanctions and Penalties may include the following:
 - 1. Verbal reprimand
 - 2. Public apology
 - 3. Written reprimand
 - 4. Suspension
 - 5. Restitution
 - 6. Fines not to exceed five thousand dollars (\$2,500) per act of misconduct.
 - 7. Loss of stipend
 - 8. Mandatory Participation in Training.
 - 9. Removal

L. The Law contains the factors to be used in determining appropriate Sanctions and/or Penalty as the following:

1. the seriousness or severity of the misconduct;
2. whether the conduct was intentional or not;
3. the likelihood of repetition;
4. the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
5. whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
6. the Official's remorse, or
7. the Official's willingness and ability to take steps to mitigate the harm caused by the violation, and
8. any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

M. The Law states that the imposition of sanctions and penalties does not exempt officials from individual liability which may include but not limited to:

1. removal in accordance with the Nation's Laws and/or policies governing removal;
2. criminal prosecution, for misconduct that also violates applicable criminal law;
3. civil liability, in accordance with the applicable Law of any jurisdiction; and/or penalties for specific misconduct as authorized by any other Law of the Nation.

N. Non-compliance may result in the following;

1. additional sanctions and/or penalties
2. removal in accordance with the Nation's Laws

O. Resignation does not impact the process or exempt individuals from sanctions and penalties.

III. Methodology and Assumptions

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

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

III. Executive Summary of Findings

The Business Committee Support Office states that there are no other apparent startup, personnel, office, or documentation costs associated with duplicating this function with the approval of this legislation.

The Oneida Judiciary does not foresee any additional costs associated with implementing this legislation.

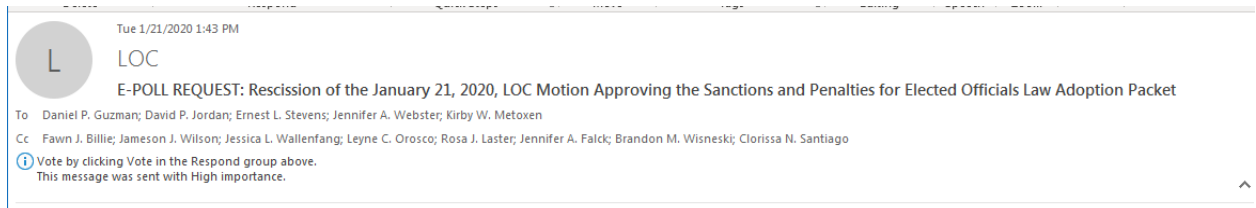
III. Financial Impact

No impact.

IV. Recommendation

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

January 21, 2020, Legislative Operating Committee E-Poll Rescission of the January 21, 2020, LOC Motion Approving the Sanctions and Penalties for Elected Officials Law Adoption Packet



Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the rescission of the January 21, 2020, Legislative Operating Committee motion approving the Sanctions and Penalties for Elected Officials law adoption packet.

EXECUTIVE SUMMARY

On January 21, 2020, the Legislative Operating Committee conducted an e-poll to approve the adoption packet for the Sanctions and Penalties for Elected Officials law and forward to the Oneida Business Committee for inclusion on the tentative March 2020 Special General Tribal Council meeting agenda. An e-poll was conducted for this matter because the next Legislative Operating Committee meeting is scheduled for February 5, 2020, and immediate action was required by the Legislative Operating Committee to approve the adoption packet for the Sanctions and Penalties for Elected Officials law via e-poll so that the adoption packet may be included on the January 22, 2020, Oneida Business Committee meeting agenda as a handout.

The Legislative Operating Committee has decided to reconsider its strategy for the presentation of the Sanctions and Penalties for Elected Official law to the General Tribal Council. The Legislative Operating Committee has determined that it no longer wishes to include the Sanctions and Penalties for Elected Officials law materials at the tentative March 2020 Special General Tribal Council meeting, and therefore the materials no longer need to be forwarded for inclusion on the January 22, 2020, Oneida Business Committee meeting agenda.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for February 5, 2020, and immediate action is required by Legislative Operating Committee to rescind its earlier motion so that the Sanctions and Penalties for Elected Officials law adoption packet is not forwarded to the Oneida Business Committee for consideration during the January 22, 2020, Oneida Business Committee meeting.

REQUESTED ACTION

Rescind the January 21, 2020, Legislative Operating Committee motion to "Approve the adoption packet for the Sanctions and Penalties for Elected Officials law and forward to the Oneida Business Committee for inclusion on the tentative March 2020 Special General Tribal Council meeting agenda."

DEADLINE FOR RESPONSE

January 21, 2020 at 3:00 p.m.


There is no supporting documentation for this e-poll.



A good mind. A good heart. A strong fire.

E-POLL RESULTS:

The e-poll was approved by David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King.




Tue 1/21/2020 1:45 PM

David P. Jordan

Approve: E-POLL REQUEST: Rescission of the January 21, 2020, LOC Motion Approving the Sanctions and Penalties for Elected Officials Law Adoption Packet

To LOC

 The sender responded: Approve.



Tue 1/21/2020 2:17 PM


Jennifer A. Webster

RE: E-POLL REQUEST: Rescission of the January 21, 2020, LOC Motion Approving the Sanctions and Penalties for Elected Officials Law Adoption Packet

To LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski; Clorissa N. Santiago

Yes, we need to rescind what we approved this morning.




Tue 1/21/2020 2:36 PM

Kirby W. Metoxen

Approve: E-POLL REQUEST: Rescission of the January 21, 2020, LOC Motion Approving the Sanctions and Penalties for Elected Officials Law Adoption Packet

To LOC

 The sender responded: Approve.



Tue 1/21/2020 2:40 PM

Ernest L. Stevens

RE: E-POLL REQUEST: Rescission of the January 21, 2020, LOC Motion Approving the Sanctions and Penalties for Elected Officials Law Adoption Packet

To LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski; Clorissa N. Santiago

Approve



Tue 1/21/2020 2:41 PM

Daniel P. Guzman

RE: E-POLL REQUEST: Rescission of the January 21, 2020, LOC Motion Approving the Sanctions and Penalties for Elected Officials Law Adoption Packet

To LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen

Cc Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Falck; Brandon M. Wisneski; Clorissa N. Santiago

Approve

What is the Legislative Operating Committee?

The Legislative Operating Committee (LOC) is a standing committee of the Oneida Business Committee (OBC). The LOC was established when the OBC adopted the Ten-Day Notice Policy (BC-08-02-00-A).

It is the LOC's responsibility to bring forth legislation to the Oneida Business Committee or the General Tribal Council (GTC) for consideration. The members of the LOC are the Oneida Business Committee members that are not officers. There are five LOC members, one acts as a chairperson and one as a vice-chairperson.

LOC meetings are open to the public and are held every first and third Wednesday in the Norbert Hill Center at 9:00am.

What is the Legislative Procedures Act?

The Legislative Procedures Act (LPA) is a law that provides a process for how the Oneida Nation will adopt laws. The LPA was adopted by the General Tribal Council (BC-01-07-13-A).

Report Highlights

The Comprehensive Policy Governing Boards, Committees, and Commissions was first adopted by the Oneida Business Committee in 1995. The purpose of the law is to provide a framework and a method of governing the Nation's boards, committees, and commissions. The law was most recently amended in September of 2018. In April 2019, the LOC directed that a one-year evaluation of the law be completed.

This report is designed to illustrate the one-year evaluation of the Boards, Committees, and Commissions law ("Law"). It includes 1) history of the Law, 2) evaluation of the 2018 goals, 3), development and adoption of the most recent amendments, 4) discussion regarding implementation, 5) discussion regarding the

one-year evaluation methods and findings, and 6) recommendations based on the evaluation.

Key Findings

- The 2019 amendments are working as they were designed. Not all the amendments are popular with the boards, committees, and commissions, but they are working as the Legislative Operating Committee intended.
- There is evidence that some entities are not satisfied with two elements of the Law- the bylaws section and the stipends and reimbursements section of the Law.

Conclusions

This evaluation concludes that Boards, Committees, and Commissions Law 2018 amendments are working as intended.

- There are no recommended changes to the law at this time.
- There are some recommendations regarding administrative process.
- There is evidence of dissatisfaction. However, most of the dissatisfaction lies with how bylaws were emended and not the Law itself.
- It continues to be important for the LOC to educate the community about the Nation's legislative process.

Recurring Points of View

Some of the comments collected were reiterated by several people;

- There is confusion about the legislative process and how laws are developed and adopted.
- Not all boards, committees, and commissions are the same in that positions are filled differently and they have different responsibilities.

- Bylaws should not need approval from the Legislative Operating Committee, or the Oneida Business Committee.
- Not all members are using their official email addresses provided by the Nation.
- Amendments to the bylaws include new restrictions to training stipends. The OBC changed this from an unlimited number of trainings that were eligible to receive stipends to five (5) full days per year. Some entities feel that is not enough training days. This policy decision has been unpopular. The definition of “full day” in regard to training is not clear.
- Entities do not want their Chairpersons to have the authority to recommend members to the Oneida Business Committee, without input from the entire entity. Some entities addressed this issue by adding language to their bylaws that require a Chairperson to collaborate with the entire entity in developing recommendations.

Introduction

The Comprehensive Policy Governing Boards, Committees, and Commissions was first adopted by the Oneida Business Committee in 1995. The purpose of the Law is to provide a framework and a method of governing the Nation’s boards, committees, and commissions. There are currently seventeen (17) boards, committees, and commissions that this Law applies to.

This Law does not apply to the Oneida Business Committee, standing committees, or tribal corporations.

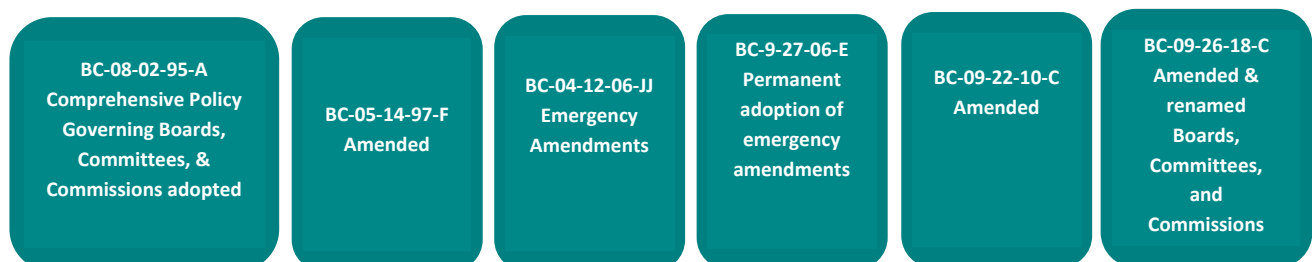
The current boards, committees, and commissions subject to this Law are: Oneida Environmental Resources Board, Oneida Nation Commission on Aging, Oneida Gaming Commission, Oneida Land Claims Commission, Oneida Land Commission, Oneida Nation Arts Board, Oneida Personnel Commission, Pardon & Forgiveness Screening Committee, Southeastern Wisconsin Oneida Tribal Services Advisory Board, Oneida Trust Enrollment Committee, Anna John Resident Centered Care Community Board, Oneida Community Library Board, Oneida Election Board, Oneida Police Commission, Oneida Powwow Committee, Oneida Nation Veteran’s Affairs Committee, and the Oneida Nation School Board.

The Law has been amended three (3) times since 1995. The most recent set of amendments renamed the Law “Boards, Committees, and Commissions”.

Evaluation of the Goals

The LOC had several goals for the 2018 amendments to the Law. The success of each goal has been evaluated for this report. Later in this report, there is discussion regarding the development of the amendments themselves and the evaluation methods used in this one- year evaluation.

Chart 1. Legislative History of the Boards, Committees, and Commissions law



Goal 1. Set new standards for each entity's bylaws

The Bylaws section of the law has been expanded and now includes the following elements; Authority, Officers, Meetings, Expectations, Stipends and Compensation, Records and Reporting, and Amendments.

The Law requires that all bylaws conform to the law and will become effective upon "approval of the Oneida Business Committee, unless where the General Tribal Council approval is additionally required". (105.10-1)

The listening sessions and the survey conducted for the purposes of the Law's one-year evaluation, indicate that there are entity members and staff that are not satisfied with this section of the Law. The most common dissatisfaction is in regard to the Oneida Business Committee's authority to approve bylaws. Several entities felt that each entity should be able to develop and adopts its own bylaws independent of any approval from the Oneida Business Committee.

The survey indicates that most people felt neutral about whether or not the bylaws section is written clearly or if it provides a clear framework for how bylaws are to be drafted. However, several participants stated that the bylaws section of the Law is overly prescriptive, does not allow enough flexibility to entities, and that some entities should enjoy more autonomy than they currently do.

Discussion

The Legislative Operating Committee's goal for the bylaws was to provide a standard format for all the entities to use in developing their bylaws. In addition to the required elements,

Chart 2. Breakdown of Boards, Committees, and Commissions

Elected Entities	7
Appointed Entities	10
Entity Officials	108 (approx.)

each entity does have the ability to add sections or provisions to their bylaws. Some entities added elements including specific behavioral expectations, meeting attendance requirements, a qualifications section for applicants, and social media guidelines. As mentioned earlier, some entities also added a requirement that an entity's Chairperson must work with all the entity members in making member recommendations to the OBC.

After the adoption of the Law in September 2018, each entity was required to amend their bylaws in order to comply with the Law. The Oneida Business Committee directed that this be completed in six (6) months. The Legislative Reference Office (LRO) was tasked with assisting the entities. The LRO's primary responsibility was to assist each entity in providing the Oneida Business Committee with updated bylaws. The LRO held two (2) training sessions with presentations, provided all entity members with the presentation slides, and a bylaws template. LRO staff answered questions as they were received, reviewed/revised drafts that were submitted by their deadline, kept entities up to date on progress, and attended meetings of the entities that requested additional assistance. The process of getting all the bylaws amended took fifteen (15) months. As of January 2020, there are two (2) entities working on their bylaws amendments yet.

There were two hurdles with regard to the bylaws amendments. First, during the process, the Oneida Business Committee became more involved in making policy decisions for the bylaws than was originally anticipated. The

Oneida Business Committee made changes to bylaws- across the board. Some of the across the board policy changes were made to achieve compliance with the law and some were made related to travel, training, vacancies, and stipends.

Second, the across the board changes were made while the LRO was in the process of assisting entities with the development of bylaws amendments. This caused confusion for several entities. Some entities reported that they were frustrated because the Oneida Business Committee was making arbitrary changes to the bylaws. But in fact, the LRO was simultaneously working on changes to the draft bylaws in order to make them compliant. The combination of the OBC's across the board changes and the LRO's suggested changes to meet compliance was confusing and frustrating.

Conclusion & Recommendations

The LOC received several comments on the Oneida Business Committee's authority in the Law to approve the bylaws of each entity. This authority to approve entity bylaws is a carryover from the previous version of the Law. No changes have been made to this section. The Oneida Business Committee has had the authority to approve bylaws since the Law was adopted in 1995, except for those bylaws that are approved by the General Tribal Council.

There is significant frustration among entities that the new requirements for bylaws are too restrictive, and that the Oneida Business Committee, by using its authority to approve bylaws, eliminated autonomy that the entities had with regard to how each board, committee, or commission operates.

The LOC has received several comments regarding the bylaws. However, the majority of

those comments focus on the process used to amend the bylaws, not the Bylaws section of the Law. 56% of people surveyed felt neutral as to whether or not the Bylaws section of the Law is drafted clearly.

The Legislative Operating Committee does not recommend making any amendments to the Law regarding the bylaws. The goal to set minimum standards for boards, committees, and commissions bylaws has been met. That being said, the LRO has discussed the process used to amend all the bylaws and will make improvements should all bylaws have to be amended at the same time again.

Goal 2. Update Reporting Requirements

The changes made to the reporting requirements are designed to ensure that the community and the OBC are kept abreast of the boards, committees, and commissions activities, as well as create efficiency. Under the new amendments, any action an entity takes is valid once approved by the entity. Previously, an action was not valid until the OBC approved the pertinent meeting minutes. Standard operating procedures must now be submitted to the Business Committee Support Office (BCSO) to be kept on file. A new provision was also added- allowing the OBC to place a hold on all stipends for that entity until the reports are received.

44% of those that completed the survey said that they were familiar with the changes that were made to the reporting requirements of the Law. Most survey takers felt neutral about whether this section of the Law is written clearly.

Discussion

The LOC did not receive comments or recommendations regarding the reporting changes to the Law. The BCSO reports that although the Oneida Business Committee had opportunities to withhold stipends for both late report submissions without extension requests, or for not attending their quarterly report meeting, the Oneida Business Committee gave those entities a second opportunity to comply with the new reporting requirements. All entities have been compliant in recent months.

Conclusion & Recommendations

The amendments associated with reporting requirements are working as intended. There are no recommended changes to this section of the Law.

Goal 3. Update appointment process to increase feedback from entity and BC members

Updates to this section of the Law include providing each OBC member and each entity's chairperson an opportunity to review member applications and to offer recommendations to the OBC. Previously, all applications were delivered to the OBC Chairperson, who would select an applicant to be voted on by the entire OBC. The OBC Chairperson was under no obligation to consult with OBC members or the entity's Chairperson.

Discussion

The purpose of this amendment is to increase the collaboration between the OBC Chairperson, the OBC members, and the entity's Chairperson in choosing quality applicants. The Law is silent on whether the entity's chairperson is required to collaborate with the other entity's members in choosing

which applicants to recommend to the OBC.

This came up at the listening sessions and in the survey, as something the entities were concerned about. The Oneida Land Commission, Oneida Arts Board, and the Oneida Environmental Resource Board added this requirement to their amended bylaws.

Conclusion & Recommendations

In an effort to maintain some autonomy for the entities, there is no recommended change for this section of the Law. If boards, committees, or commissions would like to require their chairperson to consult with members when developing member recommendations for the OBC, they are encouraged to add that to their bylaws using the amendments process.

Goal 4. Set a Procedure for Creating an Entity

This section is new to the Law. It requires that a new board, committee, or commission be created by the adoption of a law or a resolution by either the Oneida Business Committee or the General Tribal Council. The law or resolution must include purpose, powers, and responsibilities of the entity. Because a new entity will not have members, the OBC will draft the initial bylaws, and members may revise them in the future.

Discussion

The purpose of this piece of the law is to set a standard procedure for creating a new board, committee, or commission. Having one set procedure will make tracking the history of each entity simpler, as well as provide guidance for a transparent process.

Recommendations

There are no recommended changes to the Law based on the comments collected.

Goal 5. Create a Standard Electronic Polling Process

This new provision outlines how an entity may carry out e-polls. The section includes what email addresses to use, how much time must be provided for response, and how to enter the e-poll results into the record at a later meeting.

Discussion

During the first listening session, there was discussion about whether a proxy could vote on behalf of an entity member. A proxy is someone who is authorized to act on behalf of another person. The Law is silent on whether a vote by proxy is valid. In the same listening session the group discussed a scenario in which an entity member does not respond to an e-poll. The question discussed was whether that non-response would be considered an opposition or an abstention.

Recommendations

The LOC recommends that entities concerned with the use of proxies consider adding language to their bylaws.

Goal 6. Require Official Email Addresses

The Law directs that entity members use only an official Oneida Nation email address to conduct e-polls and other official business. To that end, the LOC worked with the Management Information Systems Department (MIS) to create an official email address for every entity member (approximately 108 email addresses). This project was completed in June 2019.

Discussion

The BCSO reported that initially not all members were using their official email addresses, but as time has gone by more people are using them. One issue that has become apparent, is that members that serve on more than one entity received an email address for each entity they serve on, which may be confusing or at least duplicative.

Recommendations

In an effort to simplify communication the BCSO might consider working with MIS to set up one official email address for a person, or perhaps merging two or more addresses.

Goal 7. Prohibit OBC Political Appointees from Serving on Entities

The Law now prohibits Oneida Business Committee political appointees from serving on a board, committee, or commission in order to remove any real or perceived conflict of interest.

Discussion

Since the adoption of the Law; one newly appointed political appointee resigned from an entity they served on, and there is one (1) political appointee currently serving on an entity. This political appointee is grandfathered by the adopting resolution (BC-09-26-18-A) and may complete their term of office. There were no comments received regarding this issue.

Recommendations

There are no recommendations for the political appointee segment of the Law.

Goal 8. Set New Limitations and Requirements for Stipends

The Law changed the stipends and reimbursement section significantly. The LOC's goals were to organize the stipends into one tool and to create more accountability for entities. The stipend amounts for all the entities were adopted by a single resolution (BC-09-26-18-A). Resolutions are easier to amend than laws because they are not subject to the Legislative Procedures Act. The purpose of using a resolution is to build some flexibility in adjusting stipends and to ensure that the stipends for each entity were adopted and recorded together.

The LOC added an option to pay stipends with Oneida Retail Cards instead of cash if an entity chooses to. Members must now attend an entire meeting in order to be eligible to receive a stipend. Prior to these amendments, appointed members could receive one (1) stipend per month and this has not changed. Elected officials are now restricted to two (2) stipends per month, although the stipend amounts were raised. Prior to these amendments, there was no cap on how many stipends elected officials could receive in a month. It is important to note that all entities are free to hold as many meetings as they feel is necessary to do their work. The restriction is specific to stipends only. Other changes were made to the stipend policy, but these issues received the most comments in the listening sessions and survey.

Discussion

56% of the people who completed a survey feel that the stipends, reimbursements, and compensation section of the Law is not written

clearly. However, written comments received in regard to this section's clarity were positive.

Recommendations

It is recommended that in the future, if the Law is amended that the restriction for elected officials to two (2) stipends per month be changed to twenty-four (24) meetings per year. This would create some flexibility for entities but not change the budgeted amount of funds necessary.

Development of the 2018 Amendments

This Law was placed onto the Legislative Operating Committee's active files list on April 3, 2013. The amendments did not get completed and were carried over the next two terms. The current Legislative Operating Committee (LOC) began developing amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions in September 2017. In September 2018, the Oneida Business Committee formally adopted those amendments through Resolution BC-09-26-18-B.

Early Input from Stakeholders: Using a New Approach

The Legislative Operating Committee approached these amendments with the goal of collecting input from the boards, committees, and commissions before any legislative drafting occurred. The hope was that if the boards, committees, and commissions had an opportunity to share their thoughts on any amendments before they were drafted, it would make the legislative process far more efficient and reflective of their thoughts. Typically, legislation is drafted, and then offered

to the community for input. The hope was that changes that were made to the law would be made based on community input.

The Legislative Reference Office has concluded, and research demonstrates that for some legislation, including the Boards, Committees, and Commissions law- collecting input from stakeholders and/or the community at large, and then drafting legislation that is reflective of the input collected is more efficient.¹

By using this approach, the LOC can be confident that the community had an opportunity to participate early in the legislative process. The public has another opportunity to participate during the public meeting and public comment phase.

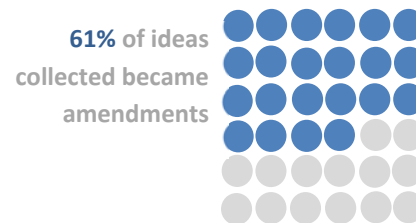
Two (2) work meetings were held in which all the boards, committees, and commissions were invited. The purpose was to review the Law in its entirety and allow participants to share their thoughts and provide their input. The input that was collected was used to guide the first draft of the amendments. The meetings were held on September 21, 2017 and February 22, 2018, and the following entities participated;

- Business Committee Support Office
- Oneida Nation School Board
- Oneida Election Board
- Oneida Gaming Commission
- Oneida Environmental Resource Board
- Oneida Land Commission
- Oneida Land Claims Commission
- Oneida Community Library Board
- Oneida Police Commission

- Oneida Powwow Committee
- Oneida Trust Enrollment Committee
- Oneida Nation Commission on Aging
- Oneida Nation Veteran's Advisory Council

What did the LOC do with the Comments Collected at the Work Meetings?

All of the comments were collected at these work meetings along with any other meetings. The LOC discussed them and came to decisions on them. In the end, several of the amendments that are now in the Law were recommendations that came directly from the boards, committees, and commissions. Twenty-two (22) of the thirty-six (36), or 61% of the suggestions collected are now in the Law.



The following is a demonstration of some of the recommendations that came directly from the work meetings held with the entities and became amendments to the Law;

- ✓ **Vacancies:** Some entities felt that filling vacancies to elected boards by appointment rather than election would increase efficiency.
- ✓ **Quorum:** Entities felt that members should be able to stay on an entity until a vacancy is filled to avoid not having a quorum.
- ✓ **Official Media Outlets:** This section was updated based on comments from members.

¹ Britt, Lori L. & Alexander, Roy, James Madison University. Stories Communities Tell: How Deliberative Practitioners Can Work with Community

- ✓ **Termination of Appointment:** Members wanted to change who can make a recommendation to terminate a member. Prior to these amendments, only the Oneida Business Committee Chairperson could make that recommendation. Entities suggested that anyone on the Oneida Business Committee should be able to make recommendations.
- ✓ **Timeframes for Appointed Positions:** Members and the Business Committee Support Office wanted these timeframes extended, so that there was enough time to complete background checks when necessary.
- ✓ **Recommendations:** Entities want to be able to make recommendations to the OBC on whom should be appointed to their entity.
- ✓ **Applications:** There was a suggestion that the applications for vacancies be provided to the entire OBC. The Law now requires that. In the past, applications were sent only to the OBC Chairperson.
- ✓ **Authority & Establishment:** Entities wanted their bylaws to demonstrate where they get their authority from, and how they were established. The Law now requires this information be included in each entity's bylaws.
- ✓ **Social Media and Violence:** After lengthy discussion, the entities recommended that the bylaws include an optional article, where entities could outline prohibited behaviors for members of the specific entity.
- ✓ **Minutes:** Now the entity can take action on a decision before the OBC approves the minutes. Before, an entity had to wait up to a month to act on a decision because their minutes hadn't yet been approved by the OBC.

- ✓ **Stipends:** Entities wanted the ability to use Oneida Retail gift cards as an option for stipend payment.
- ✓ **Hearings:** Entities recommended that people be paid a stipend for hearings at the Judiciary that they are required to attend by subpoena. That stipend type is now in the stipends resolution that sets all the stipends for all the entities.
- ✓ **Meetings:** There was a suggestion to not include a timeframe for the length of a meeting, but instead to require that members attend the entire meeting.

Evaluation Design

In April 2019, the LOC denied a request to add the Boards, Committees, and Commissions Law to the active files list for amendments. After discussing options, the LOC directed that a one-year review of the law be conducted to determine if the Law is working as intended.

Evaluation Goals

This evaluation is summative, meaning it was developed after the implementation of the 2018 amendments. Summative evaluation occurs at the end of a project cycle and is designed to provide an overall description of the project effectiveness. There are three (3) goals related to this evaluation;

1. Determine whether the goals of the 2018 amendments were met
2. Determine success of implementation of amendments
3. Make recommendations

Evaluation Plan

The Legislative Reference Office began planning the evaluation in May 2019. The Business Committee Support Office and the Intergovernmental Affairs and Communications

Department (IGAC) assisted the LRO in the evaluation planning.

Evaluation Methods and Results

Method 1: Surveys: A web-based survey was designed by the Legislative Reference Office with assistance from the Inter-Governmental Affairs Department. The survey was distributed with help from the Business Committee Support Office. The survey was available to every board, committee, and commission member (approximately 108 people) for two (2) months.

A total of nine (9) surveys were completed. Although a low number of surveys were completed, survey results can be used for directional purposes². A summary of the survey results;

- The majority of people who filled out the survey were either board, committee, or commission members, or they were Business Committee Support Office staff.
- About half the people were familiar with the amendments made to the law and the other half felt neutral about their familiarity with the amendments.
- About half of the people felt the amendments were written clearly, with the exception of the Stipends, Reimbursements, and Compensation section. 56% felt that this section is not written clearly.
- 33% feel that the new process for filling vacancies has increased efficiency, 11% disagree, and 56% were neutral on this point.

- 78% felt that the collaboration amongst the Oneida Business Committee members when making appointments has increased, and 22% feel that collaboration has improved.
- 33% agree or strongly agree that the opportunity for a board, committee, or commission's Chairperson to make recommendations to the Oneida Business Committee has improved. 67% felt neutral on this question.
- In regard to the use of official email addresses used by board, committee, and commission members increasing efficiency- the results were mixed; 33% were neutral, 33% either disagreed or strongly disagreed that the email addresses improved efficiency, and 33% agreed or strongly agreed that the email addresses improved efficiency.

Method 2: Listening Sessions: Every board, committee, and commission member was invited to attend two listening sessions. Invitations were sent via email four (4) times to approximately one hundred and eight (108) board/committee/commission members on August 15, August 26, September 18, and September 30, 2019. Chart 2. is the schedule of when invitations were emailed out and when different opportunities to participate occurred.

The goal of the listening sessions was to provide board, committee, and commission members an opportunity to review the law and share their thoughts on each section. Comments were collected and the information became part of this final evaluation report.

² M. Nuthals, Statistician, Oneida Intergovernmental Affairs & Communications Department, personal communication, November 7, 2019



This flyer was sent to all the entity members four (4) times during the evaluation period.

Table 1. Attendance and Comments at Listening Sessions		
Date	# People	# Comments
September 25, 2019, 5:00pm-7:00pm	5	60
October 4, 2019, 10:00am-12:00pm	16	61
<i>Totals</i>	21	121

Method 3: Written Comments: This third option was provided at the request of the boards, committees, and commissions for entities that wanted to provide comments but could not attend a listening session. The LOC accepted written comments from boards, committees, and commissions that were accompanied by meeting minutes that reflected the entity's support of the comments. Two (2) sets of comments were received and they focused on stipends and compensation.

Was the Implementation of the 2018 Amendments Successful?

Although the Law has been fully implemented, not all the elements of the law have been tested. Without having used those elements, this report cannot comment on their success.

That said, several parts of the Law are up and running; application process, creating an entity, appointment to an entity, oaths of office, bylaws, e-polling, reporting requirements, and stipends and compensation.

Implementation of the amendments was successful. The BCSO and MIS were very helpful in planning for changes. It is important to note that although amending the bylaws was considered a project separate from implementation of the amendments- amending the bylaws took longer than expected and some

Chart 2. August-October 2019: Schedule of Invitations and Events

S	M	T	W	Th	F	S
				AUG 1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
SEPT. 1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					
		OCT. 1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
Legend						
Invitations to listening sessions sent out on these dates to all entity members (approx. 108).						
Listening Sessions held						
The web survey ended and written comments were due						

entities have indicated that they are dissatisfied with the OBC's policy changes.

Closing Remarks

The 2018 amendments to the Boards, Committees, and Commissions Law was a substantial legislative undertaking. The Law had not been adequately updated since its original adoption in 1995.

Is the Law working in the way that the LOC intended? Yes.

The Law is meeting the goals that the LOC set for these amendments.

Does the LOC recommend changes? No.

As mentioned, the overhaul of the Law was a large undertaking that took almost six (6) years. The LOC believes that potential amendments are yet to be identified and that it would be prudent to wait on amending the law after further application.

The LOC is currently focusing on a Wellness Court, Citations law, amendments to the Children's Burial Support Fund Policy, and other legislation. The LOC's ability to develop legislation for this term ends in March 2020 for all intents and purposes. It is unlikely that anything beyond that would get adopted in this term. Amendments could be considered by the 2020-2023 LOC.

Are there elements of the Law that are unpopular? Yes.

Specifically, the changes made to the stipends and compensation section and the bylaws section have garnered the most dissatisfaction.

What lessons have been learned?

First, the LOC must continue to teach the community how the Nation's legislative process works. That outreach will continue to be a priority for the LOC. Currently, the LOC is working on outreach plans for future legislation.

Second, the LOC underestimated how the OBC would participate in amending all the bylaws. The OBC was more involved in policy decisions than the LOC had anticipated. Although not related to the Law, this lengthened the amount of time it took to amend the bylaws. Large scale projects like this will have to be planned differently in the future.

February 2020

February 2020

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

March 2020

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

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 26	27	28	29	30	31	Feb 1
2	3	4	5 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) - LOC	6 12:15pm PUBLIC MEETING: Oneida Food Service Code Amendments (BC_Conf_Room) - Kristen M. Hooker	7	8
9	10	11	12	13 10:00am LOC Work Session (BC_Exec_Conf_Room) - 12:15pm PUBLIC MEETING: Children's Burial Fund	14	15
16	17	18	19 9:00am LOC (BCCR) - Jennifer A. Falck	20	21	22
23	24	25	26	27 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	28	29

March 2020

March 2020						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2020						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 1	2	3	4 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) - LOC	5	6	7
8	9	10	11	12 10:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	13	14
15	16	17	18	19	20	21
22	23	24	25	26 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	27	28
29	30	31	Apr 1	2	3	4