



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
February 19, 2020
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
 - 1. February 5, 2020 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 - 1. Indian Preference in Contracting Law Amendments (pg. 5)
 - 2. Vehicle Driver Certification and Fleet Management Amendments (pg. 66)
 - 3. Curfew Law Amendments (pg. 139)
 - 4. Domestic Animals Law Amendments (pg. 154)
 - 5. Tobacco Emergency Amendments (pg. 184)
 - 6. Petition: N. Dallas – Make a Funeral Home and Petition: N. Dallas - Hold on Building (pg. 199)
- IV. New Submissions**
 - 1. Petition: M. Debraska – Increase General Tribal Council Meeting Stipend (pg. 204)
 - 2. Boards, Committees and Commissions Law Emergency Amendments (pg. 205)
- V. Additions**
- VI. Administrative Updates**
 - 1. FY 20 First Quarterly LOC Report (pg. 206)
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
February 05, 2020
9:00 a.m.

Present: Kirby Metoxen, Jennifer Webster, Daniel Guzman King

Excused: David P. Jordan, Ernest Stevens III

Others Present: Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Kristen Hooker, Jennifer Falck, Rae Skenandore, Jameson Wilson, Leyne Orosco, Lee Cornelius. *Present via Teleconference:* Arthur Elm III, Diane Hill, Michael Coleman.

I. Call to Order and Approval of the Agenda

Kirby Metoxen called the February 5, 2020, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda with the addition of the Oneida Land Commission Bylaws Amendments; seconded by Daniel Guzman King. Motion carried unanimously.

II. Minutes to be Approved

1. January 15, 2020

Motion by Jennifer Webster to approve the January 15, 2020, 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 (5:46-10:14)

Motion by Jennifer Webster to approve the Citation law adoption packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

2. Indian Preference in Contracting Amendments (10:15-14:01)

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 Daniel Guzman King. Motion carried unanimously.

3. Southeastern Wisconsin Oneida Tribal Services (SEOTS) Advisory Board Bylaws Amendments (14:03-15:59)

Motion by Daniel Guzman King to approve forwarding the amended Southeastern Wisconsin Oneida Tribal Services Advisory Board bylaws packet to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

IV. New Submissions



1. **Petition: Nancy Dallas – Funeral Home (16:01-16:53)**
Motion by Jennifer Webster to add the petition: Nancy Dallas - Make a Funeral Home to the active files list; seconded by Daniel Guzman King. Motion carried unanimously.
2. **Petition: Nancy Dallas – Hold on Building (16:55-18:31)**
Motion by Jennifer Webster to add the petition: Nancy Dallas - Hold on Building to the active files list; seconded by Daniel Guzman King. Motion carried unanimously.
3. **Oneida Nation Emergency Planning Committee Bylaws Amendments (18:34-20:08)**
Motion by Jennifer Webster to add the Oneida Nation Emergency Planning Committee Bylaws Amendments to the active files list; seconded by Daniel Guzman King. Motion carried unanimously.
4. **Curfew Law Amendments (20:09-22:11)**
Motion by Jennifer Webster to add the Curfew Law amendments to the active files list for a technical amendment with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.
5. **Domestic Animals Law Amendments (23:39-24:55)**
Motion by Daniel Guzman King to add Domestic Animals amendments to the active files list for a technical amendment with Ernest Stevens III as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

V. Additions

1. **Oneida Land Commission Bylaws (25:00-28:26)**
Motion by Daniel Guzman King to add the Oneida Land Commission Bylaws amendments to the active files list as agreed upon in our joint meeting; seconded by Jennifer Webster. Motion carried unanimously.

VI. Administrative Items

1. **E-poll Results: Sanctions and Penalties for Elected Officials Law – Approve Updated Materials and Fiscal Impact Statement Request (28:38-31:27)**
Motion by Jennifer Webster to enter into record the e-poll results: Sanctions and Penalties for Elected Officials Law – Approve Updated Materials and Fiscal Impact Statement Request; seconded by Daniel Guzman King. Motion carried unanimously.
2. **E-Poll Results: Sanctions and Penalties for Elected Officials Law – Approve Adoption Packet and Forward to Oneida Business Committee. (31:28-33:18)**
Motion by Jennifer Webster to ratify the January 21, 2020, e-poll results into record; seconded by Daniel Guzman King. Motion carried unanimously.
3. **E-poll Results: Sanctions and Penalties for Elected Officials Law – Rescind Motion Approving Adoption Packet (33:21-35:44)**
Motion by Jennifer Webster to enter into the record the January 21, 2020, e-poll results for the rescission of the January 21, 2020, LOC motion approving the Sanctions and Penalties for elected Officials Law adoption packet and forward to the OBC for inclusion on the tentative March 2020 GTC meeting agenda; seconded Daniel Guzman King. Motion carried unanimously.

4. Boards, Committees, and Commissions One-Year Evaluation Report (35:50-37:00)

Motion by Daniel Guzman King to accept the Boards, Committees, and Commissions law one-year evaluation report; seconded by Jennifer Webster. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Jennifer Webster to adjourn at 9:37 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee
February 19, 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.

2/5/20 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 Daniel Guzman King. Motion carried unanimously.

2/5/20: *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and consider the public comments that were received during the public meeting and subsequent public comment period. The LOC directed some revisions to be made to the draft based on the comments.

Next Steps:

- Accept the updated public comment review memorandum, draft, and legislative analysis.
- Approve the Indian Preference in Contracting law amendments 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 March 4, 2020.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
DATE: February 19, 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. On February 5, 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 of the oral and written comments received within the public meeting and public comment period.

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

The Legislative Operating Committee determined no revision to the Law was necessary based on these comments as the commenter is providing background information.

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

The Legislative Operating Committee determined there was no revision to the Law needed based on this comment since an explanation on the Nation's territorial jurisdiction was provided.

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

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment as the Law does not specify any requirements as to the length of joint ventures. The Legislative Operating Committee is hopeful that revising the Law to allow for joint ventures of Indian-owned business will provide more opportunities for Indian-owned businesses.

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

The Legislative Operating Committee determined there was no revision to the Law needed based on these comments. The Legislative Operating Committee thanks the commenter for expressing his support and gratitude for the revised definition of Tribal corporation.

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

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment based on the fact that 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.

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 502.5-5 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 ~~Te~~ 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

The Legislative Operating Committee determined that 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.

The Legislative Operating Committee determined that the following revision should be made to the Law:

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 ten (10) days.

The Legislative Operating Committee made this decision after a discussion on whether a Tribal corporation should be required to renew its certification as an Indian-owned business on an annual basis. The Legislative Operating Committee discussed the benefits of requiring annual renewal of certification, which includes ensuring that the Indian Preference Office maintains the most up to

date information on the Tribal corporation to ensure that it continues to meet the criteria for certification. But ultimately the efficiency of relaying on the notification requirements of section 502.5-5, and saving time and effort by no longer requiring annual certification renewal from Tribal corporations, which should be held to a higher standard of expectations for sharing information with the Indian Preference Office than other Indian-owned businesses, is what led the Legislative Operating Committee to this decision on revising the Law.

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

The Legislative Operating Committee determined there was no revision to the Law needed based on these comments. The Legislative Operating Committee thanks the commenter for expressing his support for this provision of the Law.

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 enterprises 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

The Legislative Operating Committee determined there was no revision to the Law needed based on these comments. The Legislative Operating Committee reiterates that the purpose of this Law is the maximum utilization, not the exclusive utilization, of Indian workers and businesses. The Law purposefully intends not to provide exclusive utilization, or sole sourcing, to any Oneida or Indian owned businesses – which has occurred in the past with negative effects. Instead, the Law provides an advantage to Oneida or Indian owned businesses through the Indian preference percentage discount that is applied to contract bids, which still encourages competitive bidding to occur without sacrificing an Indian preference advantage.

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

The Legislative Operating Committee appreciated the background and information on how federal policies and regulations incorporate Indian preference and tribal preference, but determined that no revision to the Law was needed based on these comments.

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

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment since the Law is clear on how Indian preference should be applied to contract bids. The Legislative Operating Committee decided that communication will be sent to the Indian Preference Office to ensure that the Law is being complied with correctly in terms of how an Indian preference percentage discount is currently being applied to contract bids of certified entities.

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 he or she meets the minimum qualifications for a particular skill or trade, there is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment since the Law already provides that a qualified trades worker is only qualified for Indian preference for employment if he or she meets the minimum qualifications for a particular skill or trade.

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

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment since the Law already provides that a qualified trades worker is only qualified for Indian preference for employment if he or she meets the minimum qualifications for a particular skill or trade.

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

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

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

The Legislative Operating Committee determined that there is no revision to the Law needed based on these comments. The Legislative Operating Committee reiterates that the purpose of this Law is the maximum utilization, not the exclusive utilization, of Indian workers and businesses. 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.

Title 5. Business - Chapter 502
Yukwatʼnhas Ukwehu·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.

(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 ten (10) days.

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

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

(b) Reference this law, and shall contain an 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 the 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:

(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).

502.6-11. *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.

(c) Bid shopping is prohibited.

502.6-12. *Monitoring the Contract.* Once a contract is awarded to an entity, the Indian Preference Office shall perform the following monitoring duties:

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

(b) Require and review weekly workforce reports;

(c) Provide training to assist certified entities with understanding their rights and abilities under this law; and

(d) Receive feedback from contractors regarding the performance of any certified entity 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.

- 559 (3) Place the entity's certification in probationary status for a period not to exceed
560 six (6) months; or suspend, revoke, or deny renewal of the entity's certification;
561 (A) Once certification is revoked, an entity shall not be eligible to apply for
562 re-certification until one (1) year has passed from the effective date of the
563 revocation.
564 (B) At any time that certification is suspended, revoked, or has lapsed, a
565 formerly certified entity shall not qualify for Indian preference.
566 (C) Where a certified entity loses certification:
567 (i) the contractor may be required to replace that entity with another
568 certified entity if the work has not begun or performance under a
569 contract has not commenced, unless replacement is impossible or
570 would cause undue hardship; or
571 (ii) the Indian Preference Office may authorize the contractor to
572 continue to utilize that entity without regard to Indian preference if
573 work has already begun or performance under a contract has
574 commenced.
- 575 (4) Issue a fine;
576 (A) The Indian Preference Office shall be delegated authority to develop a
577 fine and penalty schedule that may be imposed upon any person or entity
578 violating provisions of this law. The fine and penalty schedule shall be
579 adopted by the Oneida Business Committee through resolution.
580 (B) No fines or penalties may be assessed against the Nation, the Indian
581 Preference Office, or other department of the Nation, or employees engaged
582 in their official duties under this law.
- 583 (5) Re-negotiate a compliance agreement with the contractor to include additional
584 opportunities for qualified trades workers or certified entities; and/or
585 (6) Request the appropriate entity withdraw any licensing issued by the Nation.
- 586 (b) An individual or entity may contest an action taken by the Indian Preference Office by
587 filing a complaint with the Trial Court within ten (10) business days after the date of
588 issuance of the Indian Preference Office's decision.
- 589 502.9-6. *Additional Enforcement Measures.* If the Indian Preference Office is unable to facilitate
590 a satisfactory resolution, and a notice of non-compliance or action against a certified entity's
591 certification has not resulted in a successful resolution, the Indian Preference Office may file an
592 action with the Trial Court, seeking appropriate relief, including but not limited to:
- 593 (a) An injunction;
594 (b) Specific performance, including but not limited to:
595 (1) reinstatement of a qualified trades worker at the previous wage;
596 (2) immediate removal of employees hired in violation of this law; and/or
597 (3) employment, promotion or additional training for Indian preference-eligible
598 parties injured by a violation;
599 (c) Payment of back pay, damages, and/or costs associated with the enforcement of an
600 order issued by the Trial Court, including but not limited to filing fees, attorney fees, and/or
601 costs incurred by the Indian Preference Office in bringing an action. Provided that, no
602 money damages may be claimed in any suit against the Nation, the Indian Preference Office
603 or other departments of the Nation, or officials of the Nation or employees engaged in their
604 official duties under this law; and/or
605 (d) Any other action the Trial Court deems lawful, equitable, and necessary to ensure
606 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-__-__-__-__

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
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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.

(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 ten (10) days.

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

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

(b) Reference this law, and shall contain an 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 the 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:

(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).

502.6-11. *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.

(c) Bid shopping is prohibited.

502.6-12. *Monitoring the Contract.* Once a contract is awarded to an entity, the Indian Preference Office shall perform the following monitoring duties:

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

(b) Require and review weekly workforce reports;

(c) Provide training to assist certified entities with understanding their rights and abilities under this law; and

(d) Receive feedback from contractors regarding the performance of any certified entity 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-__-__-__-__



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AMENDMENTS TO INDIAN PREFERENCE IN CONTRACTING LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Ernie Stevens III	SPONSOR: Ernie Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none"> To update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation; To raise the threshold to apply Indian Preference from one thousand five hundred dollars (\$1,500) to three-thousand dollars (\$3,000) for any contracts entered into by the Nation; To permit joint ventures to qualify for Indian Preference on a project-specific basis; To exempt tribal corporations from having to submit a certification renewal application on an annual basis; Set a new timeline for Indian Preference Office to review contracts; Clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution. 		
Purpose	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].		
Affected Entities	Indian Preference Office, Purchasing Department, Oneida Judiciary, Oneida Police Department, Oneida Licensing Department, Corporations chartered and/or wholly owned by the Nation, and any department or entity of the Nation that enters into projects or contracts greater than \$3,000.		
Related Legislation	Open Records and Open Meetings law, Vendor Licensing law, Personnel Policies and Procedures; Independent Contractor Policy, Travel and Expense Policy.		
Public Meeting	A public meeting was held on December 19, 2019.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Nation's Indian Preference in Contracting law was adopted on July 29, 1998 and most recently amended on March 27, 2013. The purpose of this law is to increase economic benefits for the Nation and members of the Nation by providing maximum utilization of Indian workers and businesses on projects of the Nation. The Nation's Indian Preference Office is responsible for monitoring and enforcing Indian Preference in contracting.
- B. This law was added to the LOC's Active file List on April 17, 2019 at the request of Councilmember Ernie Stevens III. The original intent of the amendments was to update the definition of "tribal entity." Since that time, a work group of representatives from relevant entities and departments have met to

review the law. Many of the proposed amendments reflect the feedback and suggestions of this work group.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities of the Nation participated in the development of this law and legislative analysis: Indian Preference Office, Purchasing Department, Law Office, Community and Economic Development Division, and Oneida ESC Group.
- B. The following laws of the Nation were reviewed in drafting this analysis: Open Meetings and Open Records law, Vendor Licensing law, Personnel Policies and Procedures, Independent Contractor Policy, Travel and Expense Policy, Layoff Policy, Furlough Policy, Oneida Nation Law Enforcement Ordinance.

SECTION 4. PROCESS

- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was added to the Active Files List on April 17, 2019.
- C. A public meeting was held on December 19, 2019 with the public comment period held open until December 30, 2019.
- C. At the time this legislative analysis was developed, the following work meetings had been held regarding developments of these amendments and legislative analysis:
 - May 20, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Oneida ESC Group.
 - June 5, 2019 Work Meeting: LOC.
 - June 6, 2019 Work Meeting: LOC.
 - July 25, 2019 Work Meeting: LOC, Law Office, Indian Preference, Purchasing.
 - September 26, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Community Economic Development.
 - October 21, 2019 Work Meeting: Indian Preference, Community Economic Development.
 - October 24, 2019 Work Meeting: LOC.
 - November 14, 2019 Work Meeting: Indian Preference and Purchasing.
 - December 12, 2019 Work Meeting: LOC.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Definition of Tribal Corporation.** The Indian Preference law applies to tribal corporations to the extent that those corporations enter into contracts with the Oneida Nation [5 O.C. 502.6-1(b)]. Previously, the definition of tribal corporation was “a corporation chartered by the Oneida Tribe of Indians of Wisconsin pursuant to the Constitution and Bylaws of the Oneida Tribe.” This definition has been updated to “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)].
 - **Effect.** Some of the corporations owned by the Nation are chartered in other states. For example, Oneida ESC Group is incorporated in the state of Nevada, but wholly owned by the Oneida Nation. This updated definition clarifies that this law will apply to all of the Nation’s corporations regardless of where they are chartered, organized or incorporated.

Chart 1. List of Oneida Nation Corporations.

<i>Tribal Corporation</i>	
<i>Oneida Airport Hotel Corporation</i>	Chartered by Oneida Nation.
<i>Bay Bancorporation</i>	Incorporated under WI Business Corporation law. Wholly owned by Oneida Nation.
<i>Oneida ESC Group, LLC</i>	Limited liability company (LLC) organized under Nevada law. Wholly owned by Oneida Nation.
<i>Oneida Golf Course Enterprise Corporation</i>	Chartered by Oneida Nation.
<i>Oneida Seven Generations Corporation.</i>	Chartered by Oneida Nation. Currently in the process of being dissolved.

B. Joint Ventures. Joint ventures will now qualify for Indian Preference on a project-specific basis.

- *What is a Joint Venture?* A “joint venture” is a one-time grouping of two (2) or more entities in a business undertaking [5 O.C. 502.3-1(v)]. A joint venture is a partnership where each party jointly undertakes a transaction for mutual profit. Each member of the joint venture contributes assets and shares risk [Cornell Law Legal Information Institute (LII)]. For example, two companies may form a joint venture to bid on a construction project that they otherwise would be unable to complete on their own.
- *Joint Ventures Now Eligible for Indian Preference.* Previously, joint ventures were not eligible to receive Indian Preference. These amendments will permit joint ventures to receive Indian Preference on a project-specific basis [5 O.C. 502.5-8]. In other words, the joint venture will only receive Indian Preference for the specific project they are bidding on. Because joint ventures are typically a short-term partnership, any future joint venture will need to reapply for Indian Preference each time they bid on a project.
- *Effect.* Entities that form joint ventures to bid on projects will now qualify for Indian Preference provided they meet all other requirements of this law.

C. Threshold to Apply Indian Preference. Currently, the Indian Preference law applies to all of the Nation’s contracts over \$1,500 except where prohibited by law or grant funding requirements. These amendments raise this threshold. Now, the Indian Preference law will only apply to the Nation’s contracts over \$3,000 [5 O.C. 502.6-1].

- *Justification.* This change was made at the recommendation of the Purchasing Department to match the Nation’s current procurement threshold. The Nation’s procurement policy requires three bids for any contract or purchase over \$3,000. Setting both the Indian Preference and three-bid thresholds at \$3,000 will make both policies easier to implement for the Nation. Purchasing also explained that most Indian Preference vendors bid on projects above \$3,000, such as construction-related projects. Therefore, Purchasing Department predicts that the higher threshold will have minimal impact on most Indian Preference vendors.
- *Effect.* Indian Preference will only apply to contracts greater than \$3,000. Any vendors bidding on projects between \$1,500 and \$2,999 will no longer receive Indian Preference.

D. New Timeline for Indian Preference Office to Review Contracts. The current Indian Preference law already requires that projects must be submitted to the Indian Preference Office for review before being posted or announced for bids. However, the current law does not include a timeframe for the Indian Preference office to complete this review.

- *New Timeline.* These amendments add a new timeline for when the Indian Preference office must complete this review. Now, the Indian Preference Office must complete their review within five

(5) business days [5 O.C. 502.6-4]. The intent is to ensure that projects can be posted in a timely manner.

E. *Fine and Penalty Schedule for Indian Preference Violations.* The current Indian Preference law already authorizes the Indian Preference Office to develop and the Business Committee to approve a fine and penalty schedule for violations of this law. However, no fine and penalty schedule has been adopted.

- *Changes.* Previously, this law stated that fine amounts must be no less than \$100 and no more than \$1,000. These amendments remove this limitation. In addition, the amendments also specify that the fine amounts will be adopted by the Business Committee by resolution. [5 O.C. 502.9-5(a)(4)].

F. *Certification Renewal Exemption for Tribal Corporations.* Indian Preference certification is granted on an annual basis and expires after one (1) year. Each year, certified entities must submit a renewal application and reporting form to maintain their certification. This ensures that entities still meet the requirements for Indian preference. Tribal corporations will now be exempt from having to submit a certification renewal form on an annual basis. [5 O.C. 502.5-6(c)].

- *Background:* Tribal corporations are chartered and/or wholly owned by the Oneida Nation. Compared to a private entity, tribal corporations are unlikely to experience a change in ownership or control that would impact their Indian Preference certification status without the Nation being aware of it. Therefore, the requirement to submit renewal forms each year has been deleted. Tribal corporations will still be required to notify that Indian Preference Office of any occurrence that would impact their eligibility for certification in accordance with 502.5-5.

G. *Minor Drafting Changes.* Minor drafting changes have been made throughout the law, such as changing “Tribe” to “Nation” or moving the order of existing sections.

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. These amendments do not conflict with any of the referenced laws.

- *Open Records and Open Meetings law.* 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. [5 O.C. 502.5-7 and 502.9-3(c)(2)].
- *Personnel Policies and Procedures.* 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 [5 O.C. 502.6-7].
- *Vendor Licensing.* All contracts this law applies to must include reference to the Nation’s laws governing vendor licensing and provide the contracting parties with directions on how to access that document [5 O.C. 502.6-8(c)].

B. *Other Laws that Reference Indian Preference in Contracting:* The following laws of the Nation reference Indian Preference in Contracting. These amendments do not conflict with any of the referenced laws.

- *Independent Contractor Policy.* “It is... the policy of the Tribe that the order of preference, as set out in the Tribe’s Indian Preference law, be used in the selection of independent contractors” [5 O.C. 503.1-2(b)].

- *Travel and Expense Policy*. In regard to business expenses, “Considerations should be given to patronizing tribally owned business and Indian Preference vendors certified by the Compliance division” [2 O.C. 219.9-4(f)].
- *Judiciary Canons of Judicial Conduct*. “Nothing in these canons shall be construed as prohibiting a Judge from affiliating with, using the facilities of, or attending events sponsored by organizations that support Native American issues, exercise tribal or Indian Preference...” [8 O.C. 802.3.2.2].

C. ***Other Laws that Reference Indian Preference in Hiring***: The following laws of the Nation reference Indian Preference as it relates to the Nation’s hiring process. The standards set in this law do not apply to preference “as applicable to employees hired through the Nation's HRD or pursuant to an employment contract” [5 O.C. 502.6-2(a)]. The Nation’s Indian preference in hiring process is located in Section III of the Nation’s Personnel Policies and Procedures. These amendments do not conflict with any of the referenced laws.

- *Layoff Policy*. “The Oneida Tribe recognizes Indian preference in the development of layoff SOPs. Indian preference as used in this policy shall mean a preference granted to retain the Oneida member employee when all other things being equal with non-member employees. Provided that, a manager may identify critical positions within the business unit which shall not be subject to Indian Preference” [2 O.C. 207.4-1].
- *Furlough Policy*. “Indian preference may not be used as a consideration in identifying employees to be furloughed” [2 O.C. 205.5-4].
- *Oneida Nation Law Enforcement Ordinance*. “The following positions shall be held only by members of the Oneida Tribe: Police Chief, Assistant Chief, Police Lieutenant or Sergeant, Conservation Director, Assistant Conservation Director... All other positions and appointments shall be subject to the Indian Preference rules of the Oneida Tribe” [3 O.C. 301.5-3(d)].

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

A. ***Enforcement***. The Nation’s Indian Preference Office is authorized to enforce this law [5 O.C. 502.4-1 502.9-5]. In addition, the Oneida Police Department is authorized to enforce orders issued by the Trial Court, such as cease-and-desist orders [5 O.C. 502.9-8].

SECTION 8. OTHER CONSIDERATIONS

A. ***Fine and Penalty Schedule***. At the time this analysis was drafted, the Indian Preference Office is developing a fine and penalty schedule for consideration by the Oneida Business Committee. The LOC intends to bring a proposed fine and penalty schedule resolution to the Oneida Business Committee at the time these amendments are up for adoption.

B. ***Fiscal Impact***. A fiscal impact statement has not yet been requested.

- 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)].



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: February 19, 2020
RE: Indian Preference in Contracting Law Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Indian Preference in Contracting 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].

Oneida Business Committee resolution BC-09-25-19-A titled, “*Interpreting ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, provide a fiscal impact statement to the Legislative Operating Committee.

On February 19, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Indian Preference in Contracting law. Therefore, the LOC is directing

the Finance Department to provide a fiscal impact statement on the proposed amendments to the Child Support law by March 4, 2020.

A copy of the proposed amendments to the Indian Preference in Contracting 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 amendments to the Indian Preference in Contracting law by March 4, 2020.



Legislative Operating Committee
February 19, 2020

Vehicle Driver Certification and Fleet Management Law Amendments

Submission Date: 2/7/18	Public Meeting: 1/23/20
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *The Human Resources Department and the Law Office have recommended changes to this law since its recent adoption and implementation.*

2/7/18 LOC: Motion by Ernest Stevens III to add the Vehicle Driver and Fleet Management amendments to active files list as a medium priority and assign Jennifer Webster as the sponsor. Seconded by Kirby Metoxen. Motion carried unanimously.

7/15/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Barbara Kolitsch, Robert Keck, Destiny Prendiville. The purpose of this work meeting was to begin discussing potential amendments to the law. The work group reviewed the law line by line and discussed revisions that should be presented to the LOC for consideration.

7/29/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the law. The work group continued reviewing the law line by line and discussing revisions that should be presented to the LOC for consideration.

8/13/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Barbara Kolitsch, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster. The purpose of this work meeting was to continue discussing potential amendments to the Vehicle Driver Certification and Fleet Management law, as well as review research that was conducted on questions that arose during prior work meetings.

9/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to discuss a plan to move this item forward, as well as begin discussion policy considerations that will affect potential amendments to this law.

10/2/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Nic Reynolds, Robert Keck, Wendy Alvarez, Gunladunt Webster, Rick Fuss. After the previous three work meetings with HRD and Risk Management the LRO took many of their suggestions and recommendations and brought that information to the LOC. The LOC began making policy considerations. The purpose of this work meeting was to review the first draft of the proposed amendments to the

Law and obtain input from the effected entities so that information can be brought back to the LOC.

10/16/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review an updated draft of the proposed amendments and begin making policy considerations.

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 to review an updated draft of the proposed amendments, and make decisions as to how to move this item forward. LRO will schedule a work meeting between LOC, HRD, Risk Management, and Fleet Management.

11/5/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Robert Keck, Wendy Alvarez, Gunladunt Webster, Matthew J. Denny, Leyne Orosco. The purpose of this work meeting was to review the proposed draft and discuss any potential revisions that need to be made before it is placed on the LOC agenda on December 4, 2019.

12/4/19 LOC: Motion by Ernest Stevens III to approve the draft and legislative analysis of the amendments to the Vehicle Driver Certification and Fleet Management law and forward to a work meeting for further discussion; seconded by Kirby Metoxen. Motion carried unanimously.

12/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss and consider the considerations contained in the legislative analysis, as well as the comments that were received during the LOC meeting. LRO will update the draft and analysis based on these discussions, and prepare a public meeting packet to come to the next LOC meeting.

12/18/19 LOC: Motion by Kirby Metoxen to approve the public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 16, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

12/18/19: *E-Poll Conducted.* E-Poll was titled "Approval of January 23, 2020, Updated Public Meeting for the Vehicle Driver Certification and Fleet Management Law Amendments." The requested action of this e-poll was to approve the updated public meeting packet and forward the Vehicle Driver Certification and Fleet Management law amendments to a public meeting to be held on January 23, 2020, instead of January 16, 2020. The e-poll was approved by David P. Jordan, Jennifer Webster, Ernest Stevens III, Kirby Metoxen. Daniel Guzman King did not provide a response.

1/15/20 LOC: 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.

1/23/20: *Public Meeting Held.* Present: Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Nicolas Reynolds, Geraldine Danforth, Jacque Boyle, Barbara Kolitsch, Michelle Myers, Carol Silva, Rae Skenandore, Jeffrey Prevost, Lisa A. Moore. Two (2) individuals provided oral comments during the public meeting.

1/30/20: *Public Comment Period Closed.* Two (2) individuals submitted written comments 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



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54115-0365
 Oneida-nsn.gov



TO: Legislative Operating Committee (LOC)
 FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
 DATE: February 19, 2020
 RE: Vehicle Driver Certification and Fleet Management Amendments: Public Meeting
 Comment Review

On January 23, 2020, a public meeting was held regarding the proposed amendments to the Vehicle Driver Certification and Fleet Management law (“the Law”). The public comment period was then held open until January 30, 2020. 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.

Comment 1 – Support for Revisions to Law:

Barbara Kolitsch (written): Hi –The below comments are to be directed to the Legislative Reference Office, but there’s no such email, so I am submitting to Clorissa and LOC in hopes it will get to the correct office. I provided oral comments today, Jan 23, 2020. Below includes testimony I provided as well as testimony I did not have time to provide in the allotted five minutes. I appreciate the work on the LRO in revising this law. The revisions are well done! Thank you! It’s simpler and easier to follow! I recommend some additional revisions...

Response

The commenter expresses support for the proposed revisions to the Law, and provides that she has submitted some additional potential revisions for the Legislative Operating Committee’s consideration.

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

LOC Consideration

Comments 2 through 4 – Mandatory Requirement of Training for all Employees:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

210.5. Responsibilities of a Certified Driver

210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

Barbara Kolitsch (oral): Do I need to state my name or anything? Hello, my name is Barb Kolitsch. I work for Personnel Services in the Gaming Division. I'll start my comments in regarding the training that's required for the Vehicle Driver Training or vehicle driver policy. And I am going to speak initially from my training experience. I was a training director for many years, over twenty (20) years, I was a teacher for many, for a couple of years, I was a health educator for a couple of years and also coach and I'll tell you and anyone who reads these comments, training doesn't change behavior. So, when we look at a training that's required every three years, not only do people not remember what they were trained on every three years, training isn't changing behavior. There are other ways to help change behavior of a driver and (inaudible) called the influencer, there are a lot of better ideas on how to change behaviors if we are looking at changing behaviors of drivers. So, I would recommend to remove that driving requirement or that training requirement from the drivers, the three years, every three years having to do safety training, because I don't think that, you know a ten (10) to twenty (20) minute education on safety, driver safety, is changing behaviors of your drivers. What I would recommend though, is if we have drivers and I noticed in the packet here today that we have a lot of at-fault accidents and at-fault drivers. And so what I would recommend is then taking those at-fault drivers and putting them into a specialized course. I looked up before I came here, there are online courses that an employee could be responsible for paying for it if they are an at-fault driver and these online courses guarantee that they increase the, the behaviors of drivers. So, there are online courses, the one in particular that I looked at, specifically for fleet drivers for companies, was twenty- ninety-five (\$27.95). So, it's something that, maybe an idea for increasing at-fault or decreasing the at-fault drivers that we have using that sort of type of, you know looking at drivers who are actually not making good decisions and putting them through training may be a better decision than putting everybody in general through training.

Barbara Kolitsch (written): Training requirements: Safety every three years for all drivers – please remove safety training requirement for all. As a former Training Director, Trainer, School Teacher, Health Teacher, and professional Coach (35 years), training/teaching or education does not result in behavior change. Requiring all employees who drive to take safety training every

three years is not going to change behaviors of our drivers. When I took the training, it was more-so an act of getting through the training for compliance reasons. The reason I feel this way is because I have only been in one accident in my life...I was rearended at no fault of my own. My belief, and most people's belief will be that they are doing the training due to other people being bad drivers. In the Public Hearing materials I noticed that of the accidents tracked, the majority of them were our employees being at-fault. To improve and change behaviors, the law should place the burden on the drivers to take safety training who have an on-duty at-fault accident, and make the employee pay for that training. I found an on-line educational site for drivers where the company claims proven behavior and success rates with their training program for \$27.95. I would require drivers who are reported to be at-risk drivers and those who have accidents while performing driving duties for the Oneida Nation. For example, if I get a ticket while driving on official duty, require me to take training.

Barbara Kolitsch (written): Training as prevention is great, but maybe it should be “voluntary” for most drivers, and mandatory for drivers who demonstrate risky on-the-job driving, or drivers who get a ticket while on duty, or drivers who have an at-fault accident while on duty. If I voluntarily take training I'm much more likely to learn by the nature I'm choosing to take it – to learn. If I'm mandated, I'm much more likely to go through the motions. This is human behavior. If I'm mandated to watch it due to my behavior at my own cost – I think I would pay attention if there's risk of losing my job if it happens again (though disciplinary action – in the new version of the law.) I mentioned a book called *Influencer* in my inperson comments. This testimony is further supported in the research presented in the book. I was certified as a Trainer to teach the training *Influencer* in 2018. Believe me, if I felt training would change behaviors, I would feel much safer on the road. I've been hit 11 times while riding my bicycle by distracted drivers. I've had many friends hit by cars on their bikes and one friend killed on his bike. This experience has made me a more attentive as a driver because I know it's so easy to be distracted these days! I wouldn't recommend putting all of our drivers on a bicycle to observe how most drivers are so distracted, there has to be a better way than traditional “training”.

Response

The commenter provides her disbelief that requiring every employee of the Nation to complete a driver safety training provided and monitored by the Human Resources Department would have any impact on the behavior or driving capabilities of an employee. Instead, the commenter suggests that the mandatory training requirement be removed from the Law and replaced with a requirement that any employee who has an at-fault accident while on duty be required to take a driver safety course.

The Law provides that in order to receive driver certification a person shall complete all driver training requirements imposed by the Nation or any federal or state agency regulations. [2 O.C. 210.4-2(d)]. The Law further provides that any individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years. [2 O.C. 210.5-2]. An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies is exempt from the requirement to complete the driver safety training provided by the Human Resources Department. [2 O.C. 210.5-2(a)].

What driver safety requirements to impose on an employee of the Nation is a policy consideration for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following considerations:

1. The Law should remain as currently drafted to require that in order to receive and maintain driver certification a person shall complete and maintain all driver training requirements imposed by the Nation or any federal or state agency regulations.
2. The Law should be revised so that the mandatory training requirement is removed from the Law and replaced with a requirement that any employee who has an at-fault accident while on duty be required to take a driver safety course. If the Legislative Operating Committee makes this determination then the following revision is recommended:

210.5. Responsibilities of a Certified Driver

210.5-2. *Training Responsibilities.* An individual with driver certification shall ~~complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.~~

~~(a) Exemption. An individual who is required to~~ maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies. ~~shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.~~

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. *Internal Review.* The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

(a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action and/or a driver safety training requirement based on the motor vehicle crash or incident resulting in damage to a vehicle

210.8. Suspension of Driver Certification and Other Enforcement

210.8-8. *Driver Safety Training.* A supervisor may require that an individual complete a driver safety training, at his or her own expense, if the individual:

- (a) is involved in an at-fault motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business;
- (b) receives a moving violation while driving a fleet vehicle or personal vehicle driven on official business; and
- (c) has his or her driver's license suspended or revoked by the State or becomes invalid for any other reason.

LOC Consideration

Comments 5 through 6 – Administrative Difficulty of Tracking Training:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

- (a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

- (b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.

- (c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.5. Responsibilities of a Certified Driver

210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

Barbara Kolitsch (oral): And then it's also difficult, it's a tracking, something that has to be tracked, it's a lot of administrative work to track whether somebody has been trained or not. Recently we just went through somewhat of an audit with training and we had drivers who were required to have the training who didn't. So, again it's an administrative nightmare, there is a lot of responsibility put on HR and put on supervisors to make sure that they have that training.

Barbara Kolitsch (written): Tracking training is a huge administrative burden. As former Training Director at Human Resources, every time we had required training for large groups, there are legitimate reasons people are noncompliant: leave of absence, vacation, business (customer priority), staff shortage, staff emergency, etc. In a recent self-audit in Gaming the Personnel Services staff found there were some Gaming employees who needed drivers safety training and never had taken it almost three years ago. Gaming has a very high compliance rate in training requirements from my experience as former Training Director, yet we still missed a few. Some may feel it's our job (HR or Personnel Services), but in reality it's the supervisor's job to make sure employees are in compliance with policies and procedures. There's a lot for supervisors to

track, so this may be an important thing to track, but may be put on the backburner when there's a business to run and customers/clients/and more urgent matters to deal with. Safety training is not urgent, it's purpose is meant to help prevent accidents.

Response

The commenter provides insight on the administrative burden that is placed on the Human Resources Department and supervisors with tracking compliance with driver safety training. The commenter provides this information for the Legislative Operating Committee to consider in regard to the request to remove the mandatory requirement of driver safety training for all certified drivers of the Nation.

The Law currently requires that an individual obtain driver certification from the Human Resources Department before operating a fleet vehicle or personal vehicle on official business. [2 O.C. 210.4-1]. One qualification for receiving driver certification is completing all driver training requirements imposed by the Nation or any federal or state agency regulations. [2 O.C. 210.4-2(d)]. The Nation's Human Resources Department is delegated the responsibility for determining whether an individual meets all qualifications before approving or denying a driver certification. [2 O.C. 210.4-3]. Additionally, a supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business. [2 O.C. 210.4-4].

The Law currently places responsibilities on both the supervisor and the Human Resources Department to ensure that an individual meets the qualifications for and has obtained driver certification before being allowed to operate a fleet vehicle or a personal vehicle while conducting official business. This is for the purpose of limiting the liability of the Nation by ensuring that only certified drivers are permitted to operate a fleet vehicle or a personal vehicle on official business. If the Law is going to require that an individual obtain driver certification, then the responsibility to determine if someone meets the qualifications and has obtained driver certification needs to be delegated to an individual or entity.

Additionally, in the previous comment, the Legislative Operating Committee was specifically asked to consider the utility of imposing mandatory driver safety training on every individual who wishes to obtain and maintain driver certification. It is recommended that the Legislative Operating Committee take into consideration the administrative burden tracking driver safety training imposes on the supervisors and Human Resources Department when making that consideration.

LOC Consideration

Comments 7 through 8 – Disqualification of Driver Certification for Moving Violations:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

Barbara Kolitsch (oral): My next comment is regarding the driving record and moving violations. My question to the LOC or the LRO is, when someone is off duty, why do we penalize an employee? So, for example, if the State law says I can drive, why can't I drive for the job? I do think we should track on duty violations and again tie that back to training and tie that back to disciplinary action if somebody is violating their driving rules that we have in the organization or driving laws that the State or Federal regulations have. So, what was added into the new vehicle driver policy was moving violations, and again, if I have three speeding tickets in the next two years I become not certifiable and if these violations were all off duty, why is the organization punishing me for something that I did off duty? I think we all do things off duty that we wouldn't do at work, so I'm not sure what the correlation is really.

Barbara Kolitsch (written): Driving record – please remove the consideration of violations on driving record – including drug and alcohol related I challenge the Committee to assess the requirement to be certified and only consider my driving record while on duty. If the state of Wisconsin says I can drive, and in the case of a personal vehicle – I'm paying for my insurance, why can't I drive? I understand that if I cause an accident that causes more liability that I carry, the Tribe's insurance kicks in, but I'm paying for the speeding tickets with my higher insurance rates. If I have three speeding tickets in the next two years, I would lose my job? And this doesn't consider at all the fact that I had these tickets off duty. Everyone makes personal choices in their lives, and we all make some while off-duty that we may not do at work. Why does my off-duty behavior certify or not certify me to be able to drive. In most cases we look at a person's state license...example: to teach, practice medicine, social work, day care, etc. So we recognize that license. Why don't we recognize this state license to drive?

Response

The commenter asks the Legislative Operating Committee to reconsider qualifying driver certification on an individual's driving record, due to the belief that it is unfair to use what may be an individual's behavior while off duty in the consideration of whether that individual should receive driver certification from the Nation. The commenter recommends that in order to receive driver certification a person simply maintains a valid Wisconsin driver's license.

The Law provides that in order to receive driver certification a person shall have a driving record that does not reflect any of the following conditions:

1. Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
2. An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
[2 O.C. 210.4-2(c)].

The qualification based on the individual's driving record is in addition to qualifications that the individual:

- is at least eighteen (18) years of age or older;
- holds a valid Wisconsin driver's license;
- completes all driver training requirements imposed by the Nation or any federal or state agency regulations;
- satisfies any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and
- maintains minimum insurance requirements for a personal vehicle if the individual will be using his or her personal vehicle to conduct official business.
[2 O.C. 210.4-2(a)-(f)].

What qualifications to use when determining if an individual qualifies for driver certification is a policy consideration for the Legislative Operating Committee. The overall policy of this law is to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation. [2 O.C. 210.1-2]. One way that this Law ensures the safety of the community and employees of the Nation, while also minimizing the liability of the Nation when damage to vehicles or property occurs as a result of a motor vehicle crash is through the driving record check of all potential certified drivers.

A review of an individual's driving record when determining if an individual is qualified for driver certification is not a new provision included in the amendments to this Law, although it is being modified. The currently effective version of the Law, as adopted through resolution BC-06-28-17-C, provides that in order to be certified, an individual shall pass a driving record check by the Human Resources Department to verify that the driver has no citation or conviction related to a traffic incident, and no driving citation or conviction involving drugs or alcohol, within the time period that would make the driver ineligible for certification under this law. [BC-06-28-17-C - 2 O.C. 210.8-1(d)]. This means that if an individual has any citation or conviction related to a traffic incident, then that person is not eligible to become a certified driver. Due to the fact that the Law lacked clarity as to what exactly a "traffic incident" included, the Nation's Human Resources Department had many issues with how to interpret this provision and determine if an individual should be certified for driving. Because of these interpretation issues, the Human Resources Department issued an interpretation in 2017 that defined a traffic incident as "any traffic incident that results in the loss of an applicant's and/or employee's valid Wisconsin driver's license."

Prior to the 2017 version of the Law, the Vehicle Driver Certification Policy, which was originally adopted by the Oneida Business Committee on October 21, 1992 and then amended through resolution BC-09-09-98-A, also prohibited a person from obtaining driver certification if he or she

had certain driving violation convictions within a three (3) year time period. [BC-09-09-98-A – I.A.4(a)-(b)].

Since at least 1992, the Nation has worked towards ensuring the safety of the community and employees while also minimizing the liability of the Nation by qualifying certification as a driver for the Nation on a review of an individual's driving record. The specifics of what citations or convictions could disqualify an individual from receiving his or her driving certification during the driving record review has changed throughout the years.

Whether or not to include a review of an individual's driving record when determining if an individual meets the qualifications to obtain driver certification, or simply base qualification off of the fact that an individual has a valid Wisconsin driver's license, is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) year, and/or an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.
2. The Law should be revised so that a review of an individual's driving record is not required to qualify for driver certification, and all that is necessary for qualification for driver certification in terms of driving record or licensure is that the individual has a valid Wisconsin driver's license. If the Legislative Operating Committee makes this determination then the following revision is recommended:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- ~~(c) Have a driving record that does not reflect any of the following conditions:~~
- ~~(1) Three (3) or more moving violations and/or at fault motor vehicle crashes in the past two (2) years; and/or~~
 - ~~(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.~~

LOC Consideration

Comments 9 through 10 – Drug and Alcohol Related Offenses:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
- (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

- (a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

Barbara Kolitsch (oral): In addition to that the drug and alcohol violation was reduced from three years to one year, again I think if the State says I can drive with an Occupational License, why can't I drive with the organization? I don't think any of the instances where somebody comes up with a drug and alcohol violation driving, it's not been at work, it's been off work and if we correlate that to our drug and alcohol policy, our drug and alcohol policy was created in the 1990s to be a helping hand policy because Oneidas, well not specifically Oneidas, Native Americans have the highest abuse rate of drugs and alcohol. They are the highest of any ethnicity in the U.S. It's a helping hand policy. This is a cutthroat policy. If I have, if I tonight go out and celebrate a birthday with a friend, have one too many, get pulled over, get a drunk driving, I'm out of a job. Where if I come to work drunk, I drink at work, I get referred to EAP and I get help and I get assistance, so I'm not sure, again the correlation of off duty violations and on duty violations. Okay. I can submit the rest in writing.

Barbara Kolitsch (written): Drug and alcohol related offenses. Native Americans have the highest rate of drug/alcohol addition than any other ethnicity. Our Drug and Alcohol Policy recognizes this, and was developed in the 1990's to be a helping hand policy. I can come to work drunk or drink at work and the consequence is to be referred to EAP. If I follow the requirements of the EAP agreement, I can go back to work. On the other hand - if I go out and have two drinks get pulled over and get an OWI - I will lose my job. One strike. This does not match the values of the Oneida Nation as I've known them for 30 years. How does having an OWI correlate to my on-duty driving? It will not likely correlate for most employees. If the drug/alcohol driving violation occurred during work time, I can understand a firm repercussion, but how does it relate to the job when I may have simply made a poor judgement after having a couple of drinks?

Response

The commenter asks the Legislative Operating Committee to reconsider qualifying driver certification on an individual's driving record, specifically a driving record demonstrating any citation or conviction related to a drug and/or alcohol offense. The commenter provides that other laws of the Nation, such as the Drug and Alcohol Free Workplace law, provide assistance to individuals with drug and/or alcohol issues instead of simply punishing the individual for his or her actions, and this Law should follow suit. The commenter also shares the belief that it is unfair

to use what may be an individual's behavior while off duty in the consideration of whether that individual should receive driver certification from the Nation.

The Law provides that in order to receive driver certification an individual shall have a driving record that does not reflect an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months. [2 O.C. 210.4-2(c)(2)]. The overall policy of this law is to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation. [2 O.C. 210.1-2]. One way that this Law ensures the safety of the community and employees of the Nation, while also minimizing the liability of the Nation when damage to vehicles or property occurs as a result of a motor vehicle crash is through the driving record check of all potential certified drivers to determine if the individual has a citation or conviction related to drug or alcohol offenses.

Additionally, if after an individual obtains his or her driver certification that individual's driver's license is suspended or revoked by the State, for any reason including drug and/or alcohol related offenses, the Law requires that the individual's driver certification be suspended. [2 O.C. 210.8-2]. Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a suspension or leave from work. [2 O.C. 210.8-1]. The individual's driver certification is suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification. [2 O.C. 210.8-3].

An individual's action of obtaining an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation, even if that action occurred while the individual was off duty, have an impact on the individual's driver certification because an OWI, DUI, or PAC citation typically results in the suspension of the individual's driver's license for some period of time. The suspension of an individual's driver's license results in the suspension of driver certification.

So although an individual obtaining a citation for an OWI, DUI, or PAC may always have an impact on the individual's driver certification if the individual's driver's licenses was suspended or revoked as a result, how far back in time to review a individual's driving record to determine if the individual meets the qualifications to obtain driver certification is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and an individual shall not obtain his or her driver certification if he or she has an OWI, DUI, or PAC citation within the last twelve (12) months.
2. The Law should be revised so that a different time period for the review of an individual's driving record for an OWI, DUI, or PAC citation is included. If the Legislative Operating Committee makes this determination then the LOC would have to make a determination as to how far back in time the driving record should be reviewed, and the following revision is recommended:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

- (c) Have a driving record that does not reflect any of the following conditions:
 - (1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or
 - (2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last ___(time period)___ (#)___ ~~twelve (12) months.~~

LOC Consideration

Comment 11 – Current Challenges for Personnel Services:

Barbara Kolitsch (written): Current challenges/issues from Personnel Services. One of our first commitments to the Oneida Nation in Personnel Services is to employ Oneida members. This policy negatively impacts mainly Oneida enrolled members. We don't want to be in the business of screening out Oneida enrolled candidates because of their driving record such as OWI. We lose good candidates this way! We've lost good employees this way.

Response

The commenter provides that a current challenge the Personnel Services Department faces is screening out Oneida enrolled job applicants due to not meeting the qualifications for driver certification. The commenter expresses that this may have a negative effect on the Nation's goal to employ members of the Oneida Nation.

When amending this Law, the Legislative Operating Committee focused on balancing the employment needs of the Nation with the need to minimize the liability of the Nation and encourage safety. Because the Legislative Operating Committee determined that the amendments to the Law better accomplish this balance, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comments 12 through 13 – Insurance Requirements:

210.4. Driver Certification

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

(f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:

(1) the individual's insurance covers:

(A) one hundred thousand dollars (\$100,000) per person;

(B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and

(C) twenty-five thousand dollars (\$25,000) property damage; or

(2) the individual's insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation's Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

Jacque Boyle (oral): Jacque Boyle, Public Works Director. There is a few things. As far as submitting insurance, we do get notification that insurance has, needs to be renewed for each employee that has a driver's requirement, personal driver's requirement. Unfortunately, there are instances that can occur where the employee then terminates the insurance and there is really no way for us to follow-up on that. So, I'm not sure what we can do, I don't think I can call the insurance company and say is this still in effect. So, so what they are doing is getting insurance, submitting the paperwork that's good for six months, but they could actually cancel it the next day.

Barbara Kolitsch (written): Employees have lapse of insurance, and supervisors don't consistently deal with lapse. A lapse today should result in suspension of certification, and today, some are not held accountable. It's difficult to track an employee who may drop insurance between coverage periods and pick up a new company, which will not show coverage. My only recommendation is for employees to somehow show continuation of coverage when they change insurance companies. Some supervisors aren't following up to ensure their employee has the required insurance prior to the employee continuing to drive.

Response

The commenters express concern that an employee can obtain insurance to become a certified driver, but then immediately cancel the insurance and the supervisor would not know.

The Law requires that an individual maintains minimum insurance requirements for a personal vehicle if that individual may use his or her personal vehicle to conduct official business. [2 O.C. 210.4-2(f)]. An individual is required to provide his or her insurance information to the Human Resources Department. [2 O.C. 210.4-3(a)]. A supervisor is required to ensure that the individual

has received his or her driver certification from the Human Resources Department before the supervisor can allow the individual to drive a fleet vehicle or a personal vehicle on official business. [2 O.C. 210.4-4]. If an individual does not maintain the minimum insurance requirements for a personal vehicle then a supervisor may take disciplinary action against that individual. [2 O.C. 210.8-7(e)]. A supervisor who fails to ensure that his or her employee has received driver certification from the Human Resources Department prior to allowing that employee to drive a fleet vehicle or a personal vehicle on official business is also subject to disciplinary action for failing to comply with a provision of this law. [2 O.C. 210.8-7(a)].

Since the Law already requires that an individual maintain the minimum insurance requirements on a personal vehicle if that individual is going to use his or her personal vehicle to conduct official business, and allows for discipline if an individual or supervisor is not complying with the provisions of the Law, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 14 – Referral to EAP:

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

Barbara Kolitsch (written): Referral to EAP (210.8(a)). I'm unsure the value of this referral. There's an EAP policy, DOT policy, DAFWP policy – all which spell out reasons/ways to do an EAP referral. This isn't value-added in the Vehicle Driver/Fleet law. Please contact me if you have any questions regarding my comments. Thank you!

Response

The commenter states that she does not think there is value in including section 210.8-2(a) of the Law because it is duplicative of provision in other laws that more clearly detail when a referral to the Employee Assistance Program should occur.

Section 210.8-2(a) of the Law provides that a supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

The commenter is correct that other laws of the Nation provide when it may be necessary to refer an employee to the Employee Assistance Program. For example, the Drug and Alcohol Free

Workplace law provides that an employee that engages in prohibited behavior, such as being under the influence of prohibited drugs and/or alcohol while on duty, for the first time shall be removed from duty without pay and shall receive a mandatory referral to the Employee Assistance Program for an assessment. [2 O.C. 202.11-5(a)(1)].

Although section 210.8-2(a) may be duplicative of requirements of other laws of the Nation, it serves as a notice or reminder to a supervisor that may be reviewing this Law that other laws of the Nation may require a referral to the Employee Assistance Program for the individual's violation in conjunction with any consequences that result from this Law.

Whether or not to include section 210.8-2(a) in the Law is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted and include section 210.8-2 in the Law as a notice to supervisors of the responsibility to refer an employee to the Employee Assistance Program in accordance with other applicable laws of the Nation.
2. The Law should be revised to remove section 210.8-2(a) due to the fact that it is duplicative of other laws of the Nation that more clearly detail when a referral to the Employee Assistance Program should occur. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

210.8. Suspension of Driver Certification and Other Enforcement

210.8-2. *Qualifications for Suspension.* A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

~~(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.~~

LOC Consideration

Comment 15 – Approval of Authorized Passengers:

210.6. Fleet Vehicles

210.6-7. Authorized Passengers. In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- (c) Any other individual who is authorized to be a passenger by the Fleet Management Department.

Jacque Boyle (oral): Another item is in the law it says that Fleet Management needs to authorize all passengers or individuals that may not be employees, that's going to be very hard for us to administer. So I think that should be approved by the supervisor and area manager of whose using the vehicle. So, especially for Recreation or different, you know, events, we would have a hard time identifying each and every individual in the vehicle.

Response

The commenter provides that it would be difficult for the Fleet Management Department to provide the necessary authorization for passengers in fleet vehicles, and this responsibility would be better handled by supervisors who would have better knowledge of the appropriateness of authorizing an individual to be a passenger.

The Law provides that in addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- a person being transported as part of a program or service of the Nation;
- a person being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- any other individual who is authorized to be a passenger by the Fleet Management Department.

[2 O.C. 210.6-7(a)-(c)].

Which department to delegate the authority to authorize a passenger of a fleet vehicle to is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee can make one of the following determinations:

1. The Law should remain as currently drafted and require that any additional passengers receive authorization from the Fleet Management Department.
2. The Law should be revised so that it is the supervisor of the individual, and not the Fleet Management Department, that provides authorization for additional passengers. If the Legislative Operating Committee makes this determination, then the following revision is recommended:

210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

- (a) Individuals being transported as part of a program or service of the Nation;
- (b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or
- (c) Any other individual who is authorized to be a passenger by the employee, elected or appointed official, or volunteer's supervisor~~Fleet Management Department.~~

LOC Consideration

Comment 16 – Suspending Driver Certification as a Result of a Motor Vehicle Crash:

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-2. Internal Review. The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

- (a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action based on the motor vehicle crash or incident resulting in damage to a vehicle.
- (b) The internal review shall be completed as soon as possible after a motor vehicle crash has been reported.
- (c) Following an internal review, Fleet Management and Risk Management shall issue a report. Copies of the report shall be:
 - (1) provided to the driver, the driver's supervisor, and the driver's area manager; and
 - (2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

Jacque Boyle (oral): And I do want to reiterate what Barb said as far as managing the training. I think that if there is an incident, that that training should be required, especially if it's repetitive. We do have a lot of specialized vehicles for snow removal and the current policy says that if there is an incident, Risk Management, the Fleet Manager, HRD investigate and make a recommendation and typically it is to remove their driving privileges. If we did that, in order to do the job that's required, that would mean we would have to put someone untrained in that vehicle, untrained on the route to take care of that job for the five days, ten days or fifteen days, I don't think that's sending the right message either. It also encourages employees not to report, because they know there's some negative consequences, but actually if we address it through training, especially if it's, you know, multiple incidents, and I'm talking about fender benders, not very serious accidents, that the training would actually help them to drive better.

Response

The commenter expresses support for the earlier comment that mandatory training should occur when an employee has an at-fault accident or receives a moving violation while on duty, instead of requiring it for all certified drivers of the Nation on a triennial basis.

The commenter also discusses a situation that arises under the currently effective law, where when conducting an internal review of a motor vehicle crash, the Fleet Management Department and the Risk Management Department may recommend that the individual who is involved in a motor vehicle crash has his or her driver certification suspended. [BC-06-28-17-C – 2 O.C. 210.9-4(a)(2)]. The commenter provides that suspending the driver certification of an individual involved in a motor vehicle crash results in someone who may not have the proper training or familiarity

being put into that vehicle for work until the original individual has completed his or her suspension, and also results in employees not reporting motor vehicle crashes or damage to a vehicle in fear of having his or her driver certification suspended.

The proposed amendments to the Law handle the suspension of driver certification in a different manner than the current Law. Under the proposed amendments to the Law, an individual's driver certification shall only be suspended when the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason. [2 O.C. 210.8-2]. For other violations of the Law, a supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation. [2 O.C. 210.8-7]. Disciplinary action can be taken against an individual for any of the following actions:

- Failing to comply with any provision of this law;
 - Failing to complete any applicable driver training requirements;
 - Driving a fleet vehicle without being certified under the provisions of this law;
 - Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury; and
 - Not maintaining the minimum insurance requirements for a personal vehicle.
- [2 O.C. 210.8-7(a)-(e)].

The Law still requires that the Fleet Management Department and the Risk Management Department coordinate and conduct an internal review for a motor vehicle crash or damage to a vehicle involving a fleet vehicle or a personal vehicle that as driven while conducting official business. [2 O.C. 210.7-2]. But, since the suspension of driver certification only occurs when an individual has his or her driver's license suspended or revoked by the State, if an individual is involved in a motor vehicle crash or a situation involving damage to a vehicle that did not result in the suspension or revocation of the individual's license, then the Fleet Management Department and Risk Management Department will no longer recommend suspension of driver certification as a result of the internal review, but can recommend disciplinary action be taken. [2 O.C. 210.7-2(a)].

Since the commenter's concerns of suspending the driver certification of an individual who is involved in a motor vehicle crash or damage involving a vehicle is already addressed through the proposed amendments to the Law, and the Legislative Operating Committee has already been asked to consider mandatory training requirements for those involved in an at-fault accident or moving violation while on duty, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 17 – Use of GPS Equipment to Monitor Drivers:

Jacque Boyle (oral): We are, in conjunction with that, we are looking at implementing a GPS system throughout the fleet vehicles, so that it will give feedback on how that driver is doing. Hard braking, speeding, where they've been and we're getting very close to implementing a contract with a vendor and starting out with some of the vehicles. So, two things, it will allow the vehicle to last longer and hopefully give us feedback on how that driver is performing. That's all I have.

Response

The commenter provides the Legislative Operating Committee with information that the Department of Public Works is currently working on implementing a GPS system throughout fleet vehicles that will help monitor the driving of employees of the Nation.

Since this is just information being provided regarding the implementation of GPS equipment in fleet vehicles, there is no revision to the Law recommended based on this comment.

LOC Consideration

Comment 18 – Compliance with BIA Motor Vehicle Operation Policy:

Candice Skenandore (written): Background. The Oneida Nation (Nation) has entered into a Compact and Funding Agreement with the US Department of Interior (DOI) since 1994. In accordance with Section 20 of the Nation's current Funding Agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either comparable or superior to that of the DOI's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary. In addition, the Nation agrees to comply with Executive Order 13513 pursuant to the current Funding Agreement. Below you will find the Section 20 of the Funding Agreement in verbatim. Attached is the May 3, 2006 BIA Motor Vehicle Operation Policy and Executive Order 13513 for your reference.

Response

The commenter provides that through its Compact and Funding Agreement with the U.S. Department of Interior, the Nation has agreed to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and has agreed to comply with Executive Order 13513.

Since this information is being provided to the Legislative Operating Committee for information purposes and to serve as a reminder of the requirements of the Nation's Compact and Funding

Agreement with the U.S. Department of Interior, there is no revision to the Law recommended on this comment.

LOC Consideration

Comment 19 – Conflicts with BIA Motor Vehicle Operation Policy:

Candice Skenandore (written): Section 20 Motor Vehicle Operation Policy - The Tribe certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operation of motor vehicles while performing duties to implement the terms of the Agreement. The Tribe's policy is either comparable or superior to the May 3, 2006 Motor Vehicle Operation Policy for the BIA issued by the Associate Deputy Secretary. The Tribe's policy includes compliance with Executive Order 13513 prohibiting texting while driving.

There may be areas where the proposed law and BIA Motor Vehicle Operation Policy conflict. In order to avoid compromising the Nation's funding agreement, the LOC may want to consider making changes to the proposed law to align with the BIA Policy or insert language in the proposed law that states that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

It should be noted that the following programs, services, functions, and activities are currently found within the Nation's BIA funding agreement; however, this is likely to change once the Nation negotiates a new funding agreement by the end of CY 2021.

Administrative Direction
Rights Protection
Aid to Tribal Government
Law Enforcement
Facilities Management
Economic Development
Housing Improvement Program
Road Maintenance
Community Fire Protection
Agriculture
Real Estate Services
Real Estate Appraisals
Environmental Quality

Safety Management
Forestry Management
Wildlife Management
Indian Child Welfare
Services to Children, Elderly, and Families
Welfare Assistance
Education (Scholarship, Adult Education)
Employment Assistance
Johnson O'Malley
Litigation Support
Fish Hatchery
Water Management
Hunting and Fishing Rights

There are some areas within the Nation that contribute to the operation of but are not identified as compacted programs, services, functions, and activities. The Nation receives contract support costs for these types of positions. It is unclear whether and under what circumstances the Department of Interior would consider driving to be part of an employee's performance of duties to implement the Compact on the basis of the Nation's receipt of contract support costs.

Please let me know if you have any questions.

[See Attached May 3, 2006 BIA Motor Vehicle Operation Policy and Executive Order 13513]

Response

The commenter provides that through its Compact and Funding Agreement with the U.S. Department of Interior, the Nation has agreed to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and has agreed to comply with Executive Order 13513. The commenter then goes on to provide that there may be areas where the proposed Law and the Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy conflict. In an effort to avoid compromising the Nation's funding agreement, the commenter recommends that the Legislative Operating Committee consider revising the Law to be consistent with the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy, or include a provision in the Law that provides that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

When drafting the amendments to the Law the Legislative Operating Committee was not aware of the Nation's agreement to self-administer a motor vehicle operations policy that is either comparable or superior to that of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary, and comply with Executive Order 13513. Now that the Legislative Operating Committee has been made aware of this obligation and potential for conflicts, the Legislative Operating Committee will have to determine how to move forward.

An example of a conflict that may exist between the Law and the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy exists in how drug and/or alcohol related offenses are handled when determining if an individual is eligible for driver certification. The Law provides that a person shall not be eligible for driver certification if the individual has a driving record that demonstrates an operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months. [2 O.C. 210.4-2(c)(2)]. On the other hand, Section II.D. of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy provides that in order to be authorized to drive on official business an employee must have no convictions or uncontested citations within the three (3) year period immediately preceding their submittal of GTA Form 3607, Motor Vehicle Operator's License and Driving Record, for reckless driving, driving while intoxicated (DWI), driving under the influence (DUI), or leaving the scene of an accident.

The Legislative Operating Committee has to make a decision on how to handle to potential conflicts between the Law and the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy. The Legislative Operating Committee may make one of the following determinations:

1. Direct that a comprehensive analysis of the Department of Interior's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy is completed and includes a comparison with the Law to identify any potential conflicts, and then deter this item to a work meeting to consider revisions to the Law that would eliminate such conflicts.
2. Revise the Law so that it includes a provision that provides that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to compliance with the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent. If the Legislative Operating Committee makes this determination, then it is recommended that the Legislative Operating Committee direct the Human Resources Department and the Self Governance Department to collaborate to identify the positions that would be required to comply with the BIA Motor Vehicle Operations Policy, and then the following revision is recommended:

210.4-5. *Exemption.* An individual whose duties with respect to the implementation of a contract, agreement, or compact of the Nation include driving may be subject to compliance with a motor vehicle operation policy as provided in the contract, agreement, or compact of the Nation when this law is less stringent than the said motor vehicle operation policy.

LOC Consideration

Title 2. Employment - Chapter 210

Lotí'sles Kayanl/sla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl/sla
they're driving law and a variety of vehicles the responsibility is attached to them
VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

~~210.1. Purpose and Policy~~
~~210.2. Adoption, Amendment, Repeal~~
~~210.3. Definitions~~
~~210.4. Tribal Department Responsibilities~~
~~210.5. Driver Responsibilities~~
~~210.6. Tribal Vehicle Usage~~
~~210.7. Rental Vehicles~~
~~210.8. Driver Certification~~
~~210.9. Motor Vehicle Crashes, Damage Involving Tribal Vehicles~~

~~210.10. Suspension and Revocation of Certification; Disciplinary Action~~
~~210.11. Reinstatement of Certification~~
~~210.1. Purpose and Policy~~
~~210.2. Adoption, Amendment, Repeal~~
~~210.3. Definitions~~
~~210.4. Driver Certification~~
~~210.5. Responsibilities of a Certified Driver~~
~~210.6. Fleet Vehicles~~
~~210.7. Motor Vehicle Crashes or Damage to Vehicles~~
~~210.8. Suspension of Driver Certification and Other Enforcement~~

210.1. Purpose and Policy

210.1-1. *Purpose.* The ~~purposes~~purpose of this law ~~are~~is to:

(a) establish standards that certify employees, elected and appointed officials, and volunteers to drive a Tribal fleet vehicle or ~~drive a~~ personal vehicle on Tribal official business; and

(b) regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to:

(a) ensure the safety of the community and employees of the ~~Oneida~~ Nation;

(b) minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and

(c) improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

210.2. Adoption, Amendment, Repeal

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C₂, and amended by resolution BC- - - - -.

210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

210.2-3. 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.

210.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. ~~Provided that, this law repeals the following:~~

(a) ~~BC-09-09-98-A (Amended Vehicle Driver Certification Policy)~~

(b) ~~BC-09-24-97-E (Oneida Vehicle Fleet Management Policy)~~

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

210.3. Definitions

210.3-1. 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) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.

(b) “Business day” means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation’s holidays.

~~(b) “Business miles” means miles driven in a vehicle by an individual in order to conduct Tribal business.~~

~~(c) “Certification” or “certified” means that a driver meets the requirements established by this law and is authorized to operate a Tribal vehicle and/or a personal vehicle on Tribal business.~~

~~(d) “Driver” means any employee, official and/or volunteer who is certified to operate a Tribal vehicle, or to drive a personal vehicle on Tribal business.~~

~~(e) “Driver’s abstract” means a driver’s official driving record, which includes, but is not limited to, any restrictions or limitations that may be imposed on the driver’s driving privileges.~~

~~(f) “Employee” means an individual who is employed by the Nation and is subject to the direction and control, but does not include elected or appointed officials, or employees of a chartered corporation of the Nation with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. “Employee” includes, but is not limited to, an individual employed by any program or enterprise of the Nation, and political appointees.~~

~~(g)~~ (d) “Entity” means a department, enterprise, program, board, committee or commission of the Nation.

(e) “Employee Assistance Program” means a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation’s employees and family members.

(f) “Fleet vehicle” means a vehicle owned or leased by the Nation.

(g) “Moving violation” means any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.

(h) “Nation” means the Oneida Nation.

~~(i) “Non-business miles” means miles driven in a Tribal vehicle that are not business-related, including commuting.~~

~~(j) “Official” means anyone who is serving on the Oneida Business Committee or the Oneida Judiciary, and any other person who is elected or appointed to a board, committee or commission created by the Oneida Business Committee or Oneida General Tribal Council.~~

~~(k)~~ (i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

(j) “Supervisor” means the direct supervisor of an employee. ~~Provided that, for~~ For volunteers, elected or appointed officials ~~and, or~~ employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor’s responsibilities under this law.

~~(l) “Tribal” or “Tribe” means the Oneida Nation.~~

~~(m)~~ (k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

210.4. Driver Certification

210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle” means a or personal vehicle owned or leased on official business.

210.4-2. Qualifications for Certification. In order to receive driver certification a person shall:

(a) Be eighteen (18) years of age or older;

(b) Hold a valid Wisconsin driver’s license;

(1) A person who holds a valid driver’s license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver’s license.

(c) Have a driving record that does not reflect any of the following conditions:

(1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or

(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

(d) Complete all driver training requirements imposed by the Nation; or any federal or state agency regulations;

(n) “Volunteer” means a person who provides a service to the Nation without receiving pay.

(o) “Workday” means a regularly scheduled workday or service day for a driver, regardless of whether the day falls on a weekday or weekend.

(e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and

(f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:

(1) the individual’s insurance covers:

(A) one hundred thousand dollars (\$100,000) per person;

(B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and

(C) twenty-five thousand dollars (\$25,000) property damage; or

(2) the individual’s insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation’s Human Resources

210.4. Tribal Department Responsibilities

210.4-1. Department of Public Works. The shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department of Public Works.

(b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.

(c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Automotive Departments Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.assist5. Responsibilities of a Certified Driver

210.5-1. General Responsibilities. While operating a fleet vehicle or a personal vehicle on official business, an individual shall:

- (a) Abide by all traffic laws;
- (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
- (c) Not drive while under the influence of prohibited drugs and/or alcohol;
- (d) Not drive if impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time, or concentration;
- (e) Not carry a weapon, whether in the open or concealed;
 - (1) Exemption. An individual who is carrying a weapon in the course of performing his or her official duties, or is participating in cultural activities or ceremonies is exempt from this requirement.
- (f) Not transport prohibited drugs and/or alcohol;
 - (1) Exemption. An employee of the Nation who is transporting prohibited drugs and/or alcohol in the course of performing his or her job duties is exempt from this requirement.
- (g) Not deliver goods or services for personal gain, or operate private pools where the riders pay the driver; and
- (h) Not use electronic devices in an unlawful manner.

210.5-2. Training Responsibilities. An individual with ~~the implementation~~ driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) Exemption. An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

210.5-3. Fleet Vehicle Responsibilities. When operating a fleet vehicle, an individual shall:

- (a) Complete a vehicle mileage log;
- (b) Not transport unauthorized passengers;
- (c) Notify the Fleet Management Department immediately of any problems with a fleet vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a fleet vehicle to complete a trip;
- (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any similar expense related to vehicle use;
- (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs fuel before it can be taken to an Oneida Retail location;
- (f) Not smoke or use electronic smoking devices or permit others to smoke or use electronic smoking devices in the fleet vehicle; and
- (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

210.5-4. Personal Vehicle Responsibilities. When operating a personal vehicle on official business, an individual shall:

- (a) Obtain permission from his or her supervisor to operate a personal vehicle on official business; and
- (b) Submit all required documents for mileage reimbursement, if seeking reimbursement for miles driven while conducting official business, within thirty (30) days of driving the miles or by the end of the current fiscal year, whichever is sooner.
 - (1) Not seeking mileage reimbursement does not exempt an individual from the provisions of this law.

210.5-5. Notification Requirements. An individual shall notify his or her supervisor if he or she:

- (a) Has his or her driver's license suspended or revoked by the State, or has his or her driver's license become invalid for any other reason;
- (b) Meets any of the conditions for disciplinary action as provided in section 210.8-7; and/or
- (c) Has any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time, or concentration.

210.64-2. Fleet Vehicles

210.6-1. Fleet Management. ~~Department.~~ The Nation's Fleet Management Department shall:

~~(a) Purchase purchase,~~ manage, and monitor the use of ~~Tribal vehicles;~~ the Nation's fleet vehicles.
The Fleet Management Department's responsibilities shall include, but are not limited to:

- (a) Maintain a list of all fleet vehicles that are available for use, including ~~the removal of vehicles permanently assigned to specific entities of the Nation;~~
- (b) Remove unsafe vehicles from the fleet;
- ~~(b)c)~~ Obtain estimates of and schedule Tribal fleet vehicle repairs when necessary;
- ~~(c) Participate in motor vehicle crash investigations;~~
- ~~(d) Participate in situations requiring approval of driver certifications;~~
- ~~(e) (d)~~ Install or remove global positioning system monitors on Tribal equipment on fleet vehicles;
- ~~(e) Ensure the Nation's logo is on all fleet vehicles; and~~
- (f) Ensure that all Tribal fleet vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident; and.
- ~~(g) Maintain a list of all fleet vehicles that are available for use by drivers; including vehicles permanently assigned to specific departments.~~

210.43-6-2. Automotive Department. The Automotive Department shall service and maintain Tribal fleet vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to the Fleet Management Department.

210.446-3. Risk Management. ~~Department.~~ The Risk Management shall:

~~(a) Secure~~ Department shall be responsible for securing and ~~maintain~~ maintaining insurance coverage for all Tribal fleet vehicles; ~~or may designate another party to do so;~~ Additional responsibilities of the Risk Management Department shall include, but is not limited to:

- ~~(b) Provide~~ (a) Providing auto insurance identification cards in every Tribal fleet vehicle;
- ~~(c) Process~~ (b) Processing all submitted vehicle claims and related information; and
- ~~(d) Submit~~ (c) Submitting claims to the insurance company; and
- ~~(e) Participate in motor vehicle crash investigations; and~~

~~(f) Participate in situations requiring approval of certifications.~~ **210.6-4. Use of a Fleet Vehicle.** A fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from lodging and/or meal sites.

(a) Prohibited Use of a Fleet Vehicles. A fleet vehicle shall not be used for any of the following purposes:

- (1) Personal use for non-business purposes;
- (2) Towing cargo for personal reasons;
- (3) Hauling loads that could structurally damage the vehicle; and/or
- (4) Jump starting vehicles, other than fleet vehicles.

210.6-5. *Permanently Assigned Fleet Vehicles.* The Fleet Management Department may permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as established by the Fleet Management Department.

(a) *Exception to Minimum Mileage Criteria.* The Fleet Management Department may grant an entity an exception to the minimum mileage criteria.

(b) An entity who is permanently assigned a fleet vehicle shall regularly schedule maintenance work and safety checks with the Automotive Department.

(c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that any individual who drives the vehicle has his or her driver certification.

210.6-6. *Temporary Use*

~~210.4 5. *Human Resources Department.* The Human Resources Department shall:~~

~~(a) Maintain a current list of drivers and provide the list to Fleet Management and the Central Accounting Department on a regular basis;~~

~~(b) Perform driving record checks and approve or deny certification based on the review of an individual's driving record; and notify the appropriate parties immediately of ineligibility in writing;~~

~~(c) Notify supervisors immediately of~~

~~(1) the certification status of his or her employees or volunteers; and~~

~~(2) of any cancelation or lapse in a personal vehicle driver's insurance coverage.~~

~~(d) Assist supervisors with the administration of suspensions and/or revocations of certification;~~

~~(e) Request and maintain records of proof of insurance on personal vehicles driven on Tribal business;~~

~~(f) Participate in motor vehicle crash investigations;~~

~~(g) Maintain documentation of all required driver training and regulatory compliance;~~

~~(h) Perform, or delegate to another person to perform, the supervisory responsibilities identified in this law, for drivers who do not have a supervisor.~~

~~210.4 6. *Environmental Health & Safety Division.* The Environmental Health & Safety Division shall provide driver safety training as included herein, and provide the Human Resources Department with the names of drivers who have completed training after each training session.~~

~~210.4 7. *Supervisors.* For drivers who do not have a supervisor, the Human Resources Department shall either assume the supervisor's responsibilities, or shall delegate those responsibilities to another person.~~ *Fleet Vehicle.* An individual in an entity. Supervisors of drivers shall:

~~(a) Ensure those drivers who report to them are certified before allowing those employees to drive a Tribal vehicle or a personal vehicle on Tribal business.~~

~~(b) Ensure drivers have the appropriate license, training certification(s), and insurance information on file with the Human Resources Department.~~

~~(c) Ensure all motor vehicle crashes and damages are reported in accordance with this law.~~

~~(d) Ensure that all Tribal vehicle mileage is recorded and submitted to Fleet Management in accordance with requirements established by Fleet Management.~~

~~(e) Approve expense reports submitted for personal vehicle mileage reimbursement.~~

~~(f) Promptly take appropriate action to investigate:~~

~~(1) all infractions of this law of which they become aware, including but not limited to, allegations of alcohol or drug use while using a Tribal vehicle or personal not permanently assigned a fleet vehicle for Tribal business.~~

~~(2) allegations of a history of unsafe driving, regardless of whether or not the employee has ever been charged with an offense.~~

~~(g) Ensure that all employees who directly report to them abide by this law.~~

~~(h) Implement disciplinary action against employee drivers who violate this law, in accordance with the Nation's laws governing employment.~~

~~(i) When necessary, refer drivers to:~~

~~(1) the Environmental Health & Safety Division or an appropriate agency or training source for additional driver training; and/or~~

~~(2) the Employee Assistance Program, in accordance with applicable policies and procedures of the Nation.~~

210.5. Driver Responsibilities

~~210.5 1. While operating a Tribal vehicle or a personal vehicle on Tribal business, drivers shall:~~

~~(a) Abide by all provisions of this law.~~

~~(b) Follow all traffic laws, respect property, be courteous and use good judgment.~~

~~(c) Wear seat belts and require passengers to wear seat belts at all times.~~

~~(d) Not drive while:~~

~~(1) under the influence of controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle when taken; or~~

~~(2) impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time or concentration.~~

~~(e) Not transport controlled substances, intoxicating beverages, or any passenger that is in possession of controlled substance or intoxicating beverages; without prior written approval from his or her supervisor to do so.~~

~~(1) Exemptions. Employees of the Nation who are transporting such substances, beverages or passengers in the course of performing their job duties are exempt from this requirement.~~

~~(f) Not transport unauthorized passengers.~~

~~(g) Not use devices such as cell phones, whether for talking or texting; notebook or laptop computers; books or book applications; newspapers or magazines; and two way radios unless the vehicle is safely stopped.~~

~~(1) Exemptions. The following are exempt from this requirement:~~

~~(A) Authorized emergency vehicle communication equipment~~

~~(B) Navigation devices~~

~~(C) Communication equipment used while performing services for the Nation.~~

210.6. Tribal Vehicle Usage

~~210.6 1. Drivers who do not have access to a permanently assigned Tribal vehicle and who are unable to use a vehicle assigned to another department, may request to use a Tribal fleet vehicle to conduct Tribal business by submitting a request to the Fleet Management. Whenever possible, such requests shall be made at least one (1) week in advance.~~
Department.

(a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance, unless urgent circumstances arise.

(b) Before determining whether a fleet vehicle is available, or approving the use of a fleet vehicle, the Fleet Management Department shall confirm that:

(1) The individual requesting the fleet vehicle has his or her driver certification;

(2) The individual has authorization to use the fleet vehicle from his or her supervisor, if an employee, or by the individual's entity, if the individual is an elected or appointed official of the Nation or volunteer; and

322 (3) Any passengers are authorized to travel in a fleet vehicle.
323 (c) The Fleet Management Department may combine vehicle use for travel to the same
324 destination.
325 (d) The Fleet Management Department may cancel reservations that are not fulfilled in a
326 timely manner ~~and may combine vehicle use for travel to the same destination.~~
327 ~~(b) Before determining whether a Tribal vehicle is available or approving the use of a~~
328 ~~Tribal vehicle, Fleet Management shall confirm that:~~
329 ~~(1) the driver is certified;~~
330 ~~(2) the driver has written consent to use a Tribal vehicle; provided by the driver's~~
331 ~~supervisor, if the driver is an employee; or by the driver's entity, if the driver is an~~
332 ~~official or volunteer.~~
333 ~~(3) any passengers are authorized to travel in a Tribal vehicle, in accordance with~~
334 ~~210.6-3.~~
335 ~~(c) Before approving the use of a permanently assigned Tribal vehicle by any driver; the~~
336 ~~department shall be responsible for confirming that the requirements of (b) are met.~~
337 210.6-2.7. Authorized Passengers. In order to have a Tribal vehicle permanently assigned to an
338 entity, the entity shall drive a minimum number of miles annually, as determined by Fleet
339 Management. Exceptions to the mileage criteria may be granted upon request by an entity and
340 with written approval from Fleet Management.
341 ~~(a) Entities who have a permanently assigned vehicle shall regularly schedule service~~
342 ~~work, maintenance work and safety checks with the Automotive Department.~~
343 210.6-3. The following individuals may travel in a Tribal vehicle:
344 ~~(a) Employees;~~ addition to the employees, elected or appointed officials, or volunteers who are ~~on~~
345 ~~Tribal business;~~ authorized to use a fleet vehicle, the following individuals shall be authorized to
346 be a passenger in a fleet vehicle:
347 ~~(b)a~~ Individuals being transported as part of a program or service of the Nation;
348 ~~(e)b~~ Individuals being transported during the normal and ordinary course of representing
349 and/or conducting business on behalf of the Nation; and /or
350 ~~(d) Individuals~~ (c) Any other individual who ~~are~~ is authorized, ~~by Oneida Business~~
351 ~~Committee motion, to travel in a Tribal vehicle. The Oneida Business Committee may~~
352 ~~request input from~~ be a passenger by the Fleet Management ~~before making a determination~~
353 ~~on these requests~~ Department.
354 210.6-4. When a driver uses a Tribal vehicle, he or she shall:
355 ~~(a) Complete a vehicle mileage log. Vehicle mileage logs shall be provided in each Tribal~~
356 ~~vehicle.~~
357 ~~(b) Notify Fleet Management immediately of any problem(s) with a Tribal vehicle that may~~
358 ~~be a safety or mechanical hazard, or of any incidents that result in the inability of a Tribal~~
359 ~~vehicle to complete a trip.~~
360 ~~(c) Be personally responsible for all traffic citation costs, parking ticket costs or any similar~~
361 ~~expense related to vehicle use.~~
362 ~~(d) Use Oneida One Stops for fueling Tribal vehicles, unless the Tribal vehicle needs fuel~~
363 ~~before it can be taken to an Oneida One Stop.~~
364 ~~(e) Not smoke, and not permit others to smoke, in the Tribal vehicle.~~
365 ~~(f) Ensure the interior of the vehicle is kept in good condition, clean and free of debris.~~
366 210.6-5. Tribal vehicles shall be used for business miles. When away from the work site, a Tribal
367 vehicle may also be used for incidental purposes, such as travel to and from lodging and meal sites.
368 Tribal vehicles shall not be used for any of the following:
369 (a) Personal use or non-business miles, except as authorized under the Business Committee
370 Vehicle Policy.

(b) ~~Vacation.~~

(c) ~~Towing cargo for personal reasons.~~

(d) ~~Hauling loads that could structurally damage the vehicle.~~

(e) ~~Delivering goods or services for personal gain, or operating private pools where the riders pay the driver.~~

(f) ~~Transporting hitchhikers.~~

(g) ~~Jump starting vehicles, other than Tribal vehicles.~~

~~210.6-6. Tribal logos shall be placed on all Tribal vehicles.~~

~~210.6-7. Additional Equipment, 210.6-8. Modifications.~~

~~(a) to Fleet Vehicles.~~ Modifications to ~~Tribal~~fleet vehicles for personal reasons are not permitted. Modifications to ~~Tribal~~fleet vehicles for operating purposes may be allowed only with the approval of ~~the~~ Fleet Management- Department.

~~(1) Provided that, this shall not be construed to prohibit drivers from making temporary, non permanent modifications, such as adjusting the positions of vehicle seats or mirrors.~~

~~(b) Fleet Management may equip Tribal vehicles with Global Positioning Systems (GPS) to monitor vehicle usage.~~

~~(c)~~(a) Radar detection devices shall not be installed or used in ~~Tribal~~fleet vehicles.

210.7. Rental Vehicles

~~210.7-1. Rental vehicles are considered Tribal vehicles for the purpose of this law. All provisions of this law apply to rental vehicle usage. Vehicles~~210.6-9. Rental Vehicles. An individual shall have his or her driver certification before using a rental vehicle to conduct official business. An individual shall operate the rental vehicle with the same responsibilities and restrictions as a fleet vehicle.

~~(a) A vehicle shall be rented in accordance with the Oneida Travel and Expense Policy~~Nation's laws and drivers of rental vehicles shall be certified in accordance with this law.

~~210.7-2. policies governing travel.~~ Every vehicle ~~rental~~rented shall include the purchase of the maximum collision damage waiver offered by ~~the~~ rental ~~companies~~company.

210.8. Driver Certification

~~210.8-1. Certification. All persons shall be certified before operating a Tribal vehicle or personal vehicle on Tribal business. In order to be certified, an individual shall:~~

~~(a) Be eighteen (18) years of age or older.~~

~~(b) Satisfy any additional experience requirements established by law or by rules promulgated by the Human Resources Department, that apply for the vehicle being assigned or used.~~

~~(c) Hold a valid, non probationary Wisconsin driver's license and provide proof of such license, including any commercial endorsement(s), to the Human Resources Department within thirty (30) days after his or her start of employment or time of election, appointment or volunteer service.~~

~~(1) Drivers with commercial driver's licenses may be restricted to only operating Tribal vehicles within the state of Wisconsin.~~

~~(2) An occupational license is a valid, non probationary driver's license if the driver's abstract which accompanies the occupational license allows the driver to operate vehicles for his or her job with the Nation.~~

~~(3) Individuals with a driver's license from a state other than Wisconsin shall obtain a Wisconsin driver's license within thirty (30) days after their first day of actual employment or service and provide a copy to the Human Resources Department.~~

~~(d) Pass a driving record check by the Human Resources Department to verify the driver has a valid, non-probationary driver's license as identified in (c); and to verify the driver has no citation or conviction related to a traffic incident, and no driving citation or conviction involving drugs or alcohol, within the time period(s) that would make the driver ineligible for certification under this law.~~

~~(1) The individual shall have his or her driving record checked by the Human Resources Department prior to his or her hire date or start date.~~

~~(A) State Department of Motor Vehicle reports shall be used to determine whether an individual passes the driving record check.~~

~~(B) An individual with a driver's license from a state other than Wisconsin shall have his or her driving record checked based on that state's license.~~

~~(2) The Nation reserves the right to check driving records of a driver at any time. All drivers shall authorize the Human Resources Department to check his or her driving record.~~

~~(3) The Nation reserves the right to allow insurance carriers or agents to check driving records at any time. This review shall be deemed to be a review by the Nation.~~

~~(e) Complete all driver training requirements imposed by the Nation, an individual entity, or by any federal or state agency regulations.~~

~~(1) Except as provided in (e)(2), drivers who are certified to operate a Tribal vehicle shall complete driver safety training every three (3) years.~~

~~(A) The training program shall be administered, scheduled, and documented by the Environmental Health & Safety Division.~~

~~(B) A break in employment or service of one hundred eighty (180) days or greater requires retraining.~~

~~(C) Drivers shall be paid their regular wage for all required training.~~

~~(2) Tribal vehicle drivers who are subject to specialized driver safety training requirements imposed by state or federal regulatory agencies are exempt from the driver safety training required in (e)(1), provided that, such drivers shall complete all required driver safety training according to the applicable regulations before operating a Tribal vehicle to which the regulations apply.~~

~~210.8 2. Additional Requirements for Personal Vehicle Drivers. In addition to the requirements listed in 210.8 1, the following also apply for drivers of personal vehicles on Tribal business.~~

~~(a) Insurance. Each driver shall provide the Human Resources Department with written proof that he or she carries at least the minimum insurance coverage required by this law. Drivers shall maintain updated proof of vehicle insurance and provide copies to the Human Resources Department. The Human Resources Department may request written proof of insurance from drivers at any time.~~

~~(1) The minimum insurance requirements on a personal vehicle are:~~

~~—— (A) one hundred thousand dollars (\$100,000) per person;~~

~~(B) three hundred thousand dollars (\$300,000) per accident for bodily injury; and~~

~~—— (C) twenty five thousand dollars (\$25,000) property damage.~~

~~(2). A driver shall immediately notify the Human Resources Department of any cancellation or lapse in his or her insurance coverage. No driver may drive a personal vehicle on Tribal business during the time he or she does not have the required minimum personal auto insurance coverage.~~

~~(3) If a personal vehicle driver's required insurance lapses, the Human Resources Department shall immediately remove the driver from the list of certified drivers, and notify the driver's supervisor once this action has been taken.~~

~~(b) Mileage Reimbursement.~~

~~(1) A driver who operates a personal vehicle on Tribal business shall be reimbursed for any business miles driven if he or she:~~

~~(A) was certified at the time and had written proof of required insurance on file with the Human Resources Department.~~

~~(B) had prior consent from his or her supervisor to travel those miles on Tribal business.~~

~~(2) While driving on Tribal business, drivers of personal vehicles shall not use their vehicle for personal gain of any kind.~~

~~(3) All provisions of this law apply to drivers of personal vehicles on Tribal business regardless of whether or not vehicle mileage reimbursement is submitted.~~

~~210.8 3. Additional Requirements~~

~~(a) Individual entities may require stricter certification procedures and standards that do not conflict with these standards; including but not limited to, specialized requirements regarding age, experience, training, and licensing. Such procedures and standards shall be submitted to Fleet Management, Risk Management and the Human Resources Department for review and approval.~~

~~(b) Drivers are subject to all specialized requirements imposed by state or federal regulatory agencies; including but not limited to, regulatory requirements pertaining to the use of drugs and alcohol.~~

~~210.8 4. Drivers shall immediately notify their supervisor; and the supervisor shall immediately notify the Human Resources Department in writing, of any of the following:~~

~~(a) An arrest, charge or conviction for any:~~

~~(1) motor vehicle operation violation involving drugs or alcohol; or~~

~~(2) criminal offense related to a traffic incident.~~

~~(b) Any restriction, suspension, revocation, cancellation or, if applicable, reinstatement of driving privileges related to his or her driver's license.~~

~~210.8 5. Drivers shall immediately notify their supervisor of any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time or concentration. Supervisors shall notify the Human Resources Department, in writing, of such information when appropriate.~~

210.9. Motor Vehicle Crashes; or Damage Involving Tribal to Vehicles

~~210.9 1. This section shall apply in the event a driver is involved in a motor vehicle crash while driving a Tribal vehicle or a personal vehicle on Tribal business; and/or in the event that a Tribal vehicle is damaged during use. Provided that, if the Travel and Expense Policy has more restrictive requirements regarding accident reporting, the provisions of that policy shall apply.~~

~~210.9 2. In the event of a motor vehicle crash or damage involving the vehicle, drivers fleet vehicle or personal vehicle driven on official business, an individual shall be subject to the following reporting requirements; provided that, if a driver an individual sustains injuries that make it impossible to meet the reporting deadlines identified herein; the driver shall instead make the required reports as soon as he or she is able to do so:~~

~~(a) immediately report the crash or damage to local law enforcement if it results in any of the following:~~

~~(1) death of a person;~~

(2) an injury to the driver or another person that requires medical ~~intervention by law enforcement or emergency personnel, or treatment at a medical facility;~~
~~or attention;~~
(2) ~~death of a person; or~~
(3) damage to property that does not belong to the driver or the Nation; or
(4) ~~a Tribal~~ vehicle being disabled and/or needing to be towed.

(b) immediately report the motor vehicle crash or damage to his or her supervisor; ~~and~~
(c) provide the Fleet Management Department and Risk Management Department with a completed auto incident report by the end of the next business day immediately following the motor vehicle crash or damage.
~~(d) comply with any applicable alcohol and drug testing requirements established in other laws of the Nation.~~

210.9-3. ~~Drivers shall follow any additional, applicable motor vehicle crash reporting requirements for vehicles regulated by a state or federal agency.~~

210.9-4.7-2. *Internal Review.* ~~Whenever necessary, The~~ Fleet Management Department and Risk Management Department shall coordinate and conduct an internal ~~reviews~~review of the auto incident report for a motor vehicle crash and/or damage to a vehicle ~~crashes involving Tribal vehicles. Internal reviews may include other personnel as deemed appropriate by.~~

(a) Fleet Management and Risk Management:

(a) ~~Fleet Management and Risk Management shall have investigative authority to:~~
(1) ~~determine fault, if not determined by law enforcement; and/or~~
(2) may recommend whether a driver's certification an individual should be suspended subject to disciplinary action based on the motor vehicle crash or incident resulting in damage to a vehicle.

(b) ~~Internal reviews~~ The internal review shall be completed as soon as practicable possible after a motor vehicle crash has been reported; ~~and shall be conducted in accordance with industry standards of practice.~~

(c) Following an internal review, Fleet Management and Risk Management shall issue ~~an investigation~~a report. Copies of the investigation report shall be:

(1) provided to the driver, the driver's supervisor, and the driver's supervisor area manager; and
(2) ~~retained by~~ provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

210.8 for a minimum. Suspension of Driver Certification and Other Enforcement

210.8-1. three ~~(Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of driver certification is non-appealable.~~

210.8-2. Qualifications for Suspension. A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

210.8-3) years. Length of Suspension. The individual's driver certification shall be suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification.

210.9-5. If, while driving a Tribal vehicle, a driver is determined to be, or admitted 210.8-4. Notification of Suspension. The supervisor shall notify the Human Resources Department in

writing if he or she suspends the driver certification of an individual and shall provide the basis for the suspension. Once notified of a suspension of driver certification the Human Resources Department shall remove the individual from the list of current certified drivers.

210.8-5. Reasonable Accommodations to Suspension. If the suspension of an individual's driver certification affects the individual's ability to perform his or her job duties, a supervisor may take one of the following actions:

- (a) Reassign the individual to a position which does not require driving;
- (b) Provide non-driving accommodation within the position;
- (c) Remove the driving requirement from the job description;
- (d) Place the individual on unpaid leave until the individual obtains his or her driver certification; or
- (e) Terminate the individual because a valid driver's license is an essential requirement of the position.

210.8-6. Reinstatement of Driver Certification. An individual may have his or her driver certification reinstated upon a review by the Human Resources Department that the individual again meets all the qualifications for driver certification provided for in section 210.4-2.

210.8-7. Other Enforcement Actions. A supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation, for any of the following actions:

- (a) Failing to comply with any provision of this law;
- (b) Failing to complete any applicable driver training requirements;
- (c) Driving a fleet vehicle without being certified under the provisions of this law;
- (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury, the driver may have his or her certification suspended; and

210.10. Suspension and Revocation of Certification; Disciplinary Action

~~210.10-1. Any driver who violates this law may be subject to suspension of his or her vehicle driver certification, and/or driving privileges.~~

~~(a) Driving Privilege Suspensions.~~

~~(1) In certain situations, a supervisor may temporarily suspend a driver's driving privileges without suspending the driver's certification. When a driver's driving privileges are suspended, the driver shall not be permitted to drive a Tribal vehicle or to drive a personal vehicle on Tribal business.~~

~~(A) A supervisor shall temporarily suspend a driver's driving privileges:~~

~~(1) When the driver is unable to provide proof that the driver carries any insurance required by this law, or~~

~~(2) When the driver has not satisfied any driver training requirements as required by this law; but has made arrangements to complete the required driver training within a reasonable period of time.~~

~~(3) Upon request from the Human Resources Department, in conjunction with the Risk Management Department, pending an investigation that appears likely to lead to a suspension of certification.~~

(4) ~~In any other situation where the supervisor is unable to determine whether the driver has valid certification and is eligible to drive a Tribal vehicle or a personal vehicle on Tribal business.~~

~~(B) When a supervisor suspends a driver's driving privileges; the supervisor shall promptly notify both the driver and the Human Resources Department, in writing, of the suspension, including the effective date; as well as the conditions that the employee is required to meet before the suspension may be lifted. The supervisor shall also notify both the driver and the Human Resource Department, in writing, once the driver's driving privileges are reinstated.~~

~~(C) A driver's driving privileges shall automatically be reinstated after the driver satisfactorily fulfills the conditions identified by the supervisor when the driving privileges are suspended.~~

~~(b) Certification Suspensions. A driver shall have his or her certification suspended for any of the following:~~

~~(1) Refusing to allow the Nation or an insurance carrier check his or her driving record.~~

~~(2) Failing to immediately notify his or her supervisor of any information as required in 210.8-4 or elsewhere in this law.~~

~~(3) Noncompliance with motor vehicle crash reporting requirements established by this law.~~

~~(4) Failing to complete any applicable driver training requirements.~~

~~(5) Being arrested, charged or convicted of a motor vehicle operation violation involving drugs, alcohol or criminal offense related to a traffic incident.~~

~~(6) Having his or her driver's license restricted, suspended, revoked or cancelled by the state.~~

~~(7) Knowingly driving a Tribal vehicle without being certified under the provisions of this law.~~

~~(8) For a personal vehicle certification, not~~ **(e) Not** maintaining the minimum insurance requirements for a personal vehicle.

~~(c) Supervisors who fail to uphold this law may face disciplinary action, in accordance with the laws of the Nation governing employment.~~

~~(d) Regardless of whether a violation results in suspension of certification,~~

~~(1) employees who violate this law may also be subject to disciplinary action, in accordance with laws of the Nation governing employment;~~

~~(2) officials who violate this law may also be subject to sanctions and penalties in accordance with applicable laws of the Nation; including but not limited to, removal from office for elected officials and termination of appointment for appointed officials.~~

~~210.10-2. Except as provided in 210.11-2(d) and 210.10-7(b), suspension of a vehicle driver certification or of driving privileges, is not appealable.~~

~~210.10-3. Suspensions Affecting Employment Status. Suspension of certification is a suspension of driving privileges and is not leave from work. Individuals who have their driving privileges suspended in accordance with 210.10-1(a), or who have their certification suspended and their ability to perform their duties as an employee affected by that suspension may request, in writing, that their supervisor and a Human Resources Department representative determine what, if any, options may be available to them. Options may include, but are not limited to: non-driving accommodation within the home department; reassignment to a position which does not require driving; a leave of absence without pay; or termination of employment.~~

210.10-4. The minimum length of a suspension shall be based on the number of prior suspensions that have occurred within the past three (3) years from the date of the incident that resulted in the most recent suspension:

(a) The first time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than five (5) full time workdays.

(b) The second time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than ten (10) full time workdays.

(c) The third time a driver has his or her vehicle driver certification suspended, the suspension shall last no less than fifteen (15) full time workdays.

(d) Drivers who incur more than three (3) vehicle driver certification suspensions under this law within a three (3) year period shall lose their vehicle driver certification for three (3) years, beginning with the date of the incident that resulted in the most recent suspension.

210.10-5. Due to the seriousness of a citation for the operation of motor vehicles involving drugs or alcohol, vehicle driver certification shall be suspended upon the issuance of a driving citation involving drugs or alcohol. Certification may only be reinstated upon the dismissal of the citation or upon three (3) years passing from the date of citation.

210.10-6. A break in employment or service of one hundred eighty (180) days or greater shall clear the driver's record of any vehicle driver certification suspensions, except for three (3) year suspensions resulting from a violation that involved drugs or alcohol. However, all prior suspensions may be used in re-employment consideration.

210.10-7. Notwithstanding any other provision of this law, the Nation reserves the right to suspend an individual's certification or extend a certification suspension. Certification may be suspended; or an existing suspension may be extended, based on the best interests of the Nation and in accordance with the following:

(a) For officials and volunteers: upon unanimous agreement between the Human Resources Department, Fleet Management and Risk Management.

(b) For employees: A supervisor may suspend an employee's certification or extend an existing suspension, when the supervisor determines it is appropriate to do so. The employee may appeal this adverse employment action in accordance with the employment laws of the Nation.

210.11. Reinstatement of Certification

210.11-1. Vehicle driver certifications that are suspended for thirty (30) days or less shall be automatically reinstated upon expiration of the suspension.

210.11-2. A driver whose certification is suspended for thirty one (31) days or more, may have his or her certification reinstated in accordance with the following:

(a) The driver may request reinstatement of his or her certification after:

(1) A certification suspension has concluded or any citation(s) are dismissed or the individual is cleared of any charges alleged in a citation that resulted in a driving certification suspension; and

(2) Three (3) years have passed since the individual was convicted of a motor vehicle operation citation involving drugs or alcohol; and

(3) The state removes a driver's license suspension; and

(4) Written proof has been submitted to the Human Resources Department that the individual has any required insurance coverage.

(b) Upon receiving a request to reinstate an individual's certification, the Human Resources Department shall:

(1) check the individual's driving record to ensure the individual has no violations on his or her driving record preventing reinstatement; and

(2) ~~verify the written proof of insurance submitted by the individual, provided it meets the requirements of this law.~~

~~(c) If the individual passes the driving record check and his or her proof of insurance is verified, the individual's certification shall be reinstated upon approval of the Human Resources Department.~~

~~(1) Exception. For an individual's fourth (4th) suspension or a suspension due to a conviction of motor vehicle operation citation involving drugs or alcohol the individual's certification may only be reinstated if the following requirements are met:~~

~~(A) For officials and volunteers: certification may only be reinstated upon unanimous approval of the Human Resources Department, Fleet Management and Risk Management.~~

~~(B) For employees: The supervisor shall notify the Human Resources Department, Area Manager, and Risk Management of the request; and may reinstate the employee's certification if none of those entities object.~~

~~(d) Any official, volunteer or employee may seek review of a decision not to reinstate certification, by filing an appeal with the Judiciary.~~

End.

Adopted BC-06-28-17-C.

Amended BC- - - - .

Title 2. Employment - Chapter 210

Lotí'sles Kayanl'ásla Khale? Nya?teka?sléhtake Lonatlíhute? Kayanl'ásla
they're driving law and a variety of vehicles the responsibility is attached to them
VEHICLE DRIVER CERTIFICATION AND FLEET MANAGEMENT

210.1. Purpose and Policy
210.2. Adoption, Amendment, Repeal
210.3. Definitions
210.4. Driver Certification

210.5. Responsibilities of a Certified Driver
210.6. Fleet Vehicles
210.7. Motor Vehicle Crashes or Damage to Vehicles
210.8. Suspension of Driver Certification and Other Enforcement

210.1. Purpose and Policy

210.1-1. *Purpose.* The purpose of this law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business and regulate the use of all vehicles owned and leased by the Nation.

210.1-2. *Policy.* It is the policy of the Nation to ensure the safety of the community and employees of the Nation; minimize the Nation's liability when physical damage to vehicles and/or property damage occurs as a result of a motor vehicle crash; and improve the efficiency and effectiveness of the use of vehicles owned by the Nation.

210.2. Adoption, Amendment, Repeal

210.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-28-17-C, and amended by resolution BC-__-__-__.

210.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

210.2-3. 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.

210.2-4. 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.

210.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

210.3. Definitions

210.3-1. 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) "Area manager" means an employee's supervisor's supervisor; or, an individual designated to be the area manager by a General Manager position.

(b) "Business day" means Monday through Friday, from 8:00 a.m. to 4:30 p.m.; excluding the Nation's holidays.

(c) "Employee" means an individual employed by the Nation, but does not include elected or appointed officials, or employees of a chartered corporation of the Nation.

(d) "Entity" means a department, enterprise, program, board, committee or commission of the Nation.

(e) "Employee Assistance Program" means a professional counseling program staffed by clinical social workers licensed by the State of Wisconsin which offers services to the Nation's employees and family members.

(f) "Fleet vehicle" means a vehicle owned or leased by the Nation.

(g) "Moving violation" means any violation of motor vehicle or traffic law that is committed by the driver of a vehicle while the vehicle is moving. A moving violation does

not include parking violations, equipment violations, or paperwork violations relating to insurance, registration or inspection.

(h) “Nation” means the Oneida Nation.

(i) “Prohibited drug” means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substances included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. Prohibited drugs also includes prescription medication or over-the-counter medicine when used in an unauthorized or unlawful manner.

(j) “Supervisor” means the direct supervisor of an employee. For volunteers, elected or appointed officials, or employees without a direct supervisor, it means the Human Resources Department or any party who has been designated by the Human Resources Department as responsible for performing a supervisor’s responsibilities under this law.

(k) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

210.4. Driver Certification

210.4-1. An individual shall obtain driver certification from the Human Resources Department before operating a fleet vehicle or personal vehicle on official business.

210.4-2. *Qualifications for Certification.* In order to receive driver certification a person shall:

(a) Be eighteen (18) years of age or older;

(b) Hold a valid Wisconsin driver’s license;

(1) A person who holds a valid driver’s license from a state other than Wisconsin shall have thirty (30) days after his or her first day of employment or service to obtain a Wisconsin driver’s license.

(c) Have a driving record that does not reflect any of the following conditions:

(1) Three (3) or more moving violations and/or at-fault motor vehicle crashes in the past two (2) years; and/or

(2) An operating while intoxicated (OWI), driving under the influence (DUI), or prohibited alcohol concentration (PAC) citation within the last twelve (12) months.

(d) Complete all driver training requirements imposed by the Nation or any federal or state agency regulations;

(e) Satisfy any other requirements specific to the job description and/or vehicle that may be used by or assigned to the person; and

(f) Maintain one (1) of the following minimum insurance requirements for a personal vehicle if the individual may use his or her personal vehicle to conduct official business:

(1) the individual’s insurance covers:

(A) one hundred thousand dollars (\$100,000) per person;

(B) three hundred thousand dollars (\$300,000) per motor vehicle crash for bodily injury; and

(C) twenty-five thousand dollars (\$25,000) property damage; or

(2) the individual’s insurance covers two hundred and fifty thousand dollars (\$250,000) combined single limit.

210.4-3. The Nation’s Human Resources Department shall be responsible for determining whether an individual meets all the qualifications before approving or denying a driver certification.

(a) An individual shall provide his or her appropriate license, training certification, and insurance information to the Human Resources Department.

(b) The Human Resources Department shall have the authority to check the driving record of an individual at any time.

(c) The Human Resources Department shall maintain a current list of all certified drivers and provide the list to Fleet Management, Risk Management, and Central Accounting on a regular basis.

210.4-4. A supervisor shall ensure that an individual has received his or her driver certification from the Human Resources Department before allowing the individual to drive a fleet vehicle or a personal vehicle on official business.

210.5. Responsibilities of a Certified Driver

210.5-1. *General Responsibilities.* While operating a fleet vehicle or a personal vehicle on official business, an individual shall:

- (a) Abide by all traffic laws;
- (b) Wear a seat belt and require any passengers to wear a seat belt at all times;
- (c) Not drive while under the influence of prohibited drugs and/or alcohol;
- (d) Not drive if impaired by a medical or physical condition or other factor that affects a driver's motor skills, reaction time, or concentration;
- (e) Not carry a weapon, whether in the open or concealed;
 - (1) *Exemption.* An individual who is carrying a weapon in the course of performing his or her official duties, or is participating in cultural activities or ceremonies is exempt from this requirement.
- (f) Not transport prohibited drugs and/or alcohol;
 - (1) *Exemption.* An employee of the Nation who is transporting prohibited drugs and/or alcohol in the course of performing his or her job duties is exempt from this requirement.
- (g) Not deliver goods or services for personal gain, or operate private pools where the riders pay the driver; and
- (h) Not use electronic devices in an unlawful manner.

210.5-2. *Training Responsibilities.* An individual with driver certification shall complete the driver safety training provided and monitored by the Human Resources Department every three (3) years.

- (a) *Exemption.* An individual who is required to maintain compliance with any specialized driver safety training requirements imposed by state or federal regulatory agencies shall be exempt from the requirement to complete the driver safety training provided by the Human Resources Department.

210.5-3. *Fleet Vehicle Responsibilities.* When operating a fleet vehicle, an individual shall:

- (a) Complete a vehicle mileage log;
- (b) Not transport unauthorized passengers;
- (c) Notify the Fleet Management Department immediately of any problems with a fleet vehicle that may be a safety or mechanical hazard, or of any incidents that result in the inability of a fleet vehicle to complete a trip;
- (d) Be personally responsible for all traffic citation costs, parking ticket costs, or any similar expense related to vehicle use;
- (e) Use Oneida Retail locations for fueling fleet vehicles, unless the fleet vehicle needs fuel before it can be taken to an Oneida Retail location;
- (f) Not smoke or use electronic smoking devices or permit others to smoke or use electronic smoking devices in the fleet vehicle; and
- (g) Ensure the interior of the vehicle is kept in good condition, clean, and free of debris.

210.5-4. *Personal Vehicle Responsibilities.* When operating a personal vehicle on official business, an individual shall:

(a) Obtain permission from his or her supervisor to operate a personal vehicle on official business; and

(b) Submit all required documents for mileage reimbursement, if seeking reimbursement for miles driven while conducting official business, within thirty (30) days of driving the miles or by the end of the current fiscal year, whichever is sooner.

(1) Not seeking mileage reimbursement does not exempt an individual from the provisions of this law.

210.5-5. *Notification Requirements.* An individual shall notify his or her supervisor if he or she:

(a) Has his or her driver's license suspended or revoked by the State, or has his or her driver's license become invalid for any other reason;

(b) Meets any of the conditions for disciplinary action as provided in section 210.8-7; and/or

(c) Has any impairment by a medical or physical condition or other factor that affects his or her motor skills, reaction time, or concentration.

210.6. Fleet Vehicles

210.6-1. *Fleet Management Department.* The Nation's Fleet Management Department shall purchase, manage, and monitor the use of the Nation's fleet vehicles. The Fleet Management Department's responsibilities shall include, but are not limited to:

(a) Maintain a list of all fleet vehicles that are available for use, including vehicles permanently assigned to specific entities of the Nation;

(b) Remove unsafe vehicles from the fleet;

(c) Obtain estimates of and schedule fleet vehicle repairs when necessary;

(d) Install or remove equipment on fleet vehicles;

(e) Ensure the Nation's logo is on all fleet vehicles; and

(f) Ensure that all fleet vehicles are equipped with a mileage log and an auto incident kit which contains forms and instructions for reporting any incident.

210.6-2. *Automotive Department.* The Automotive Department shall service and maintain fleet vehicles according to factory recommendations, or the maintenance schedule established by the Automotive Department, whichever is stricter. Any vehicle deemed unsafe by the Automotive Department shall be reported to the Fleet Management Department.

210.6-3. *Risk Management Department.* The Risk Management Department shall be responsible for securing and maintaining insurance coverage for all fleet vehicles. Additional responsibilities of the Risk Management Department shall include, but is not limited to:

(a) Providing auto insurance identification cards in every fleet vehicle;

(b) Processing all submitted vehicle claims and related information; and

(c) Submitting claims to the insurance company.

210.6-4. *Use of a Fleet Vehicle.* A fleet vehicle may be permanently assigned to an entity for use or requested for use on a temporary basis. A fleet vehicle shall be used for conducting official business of the Nation. When used for travel purposes, a fleet vehicle may also be used for incidental purposes such as travel to and from lodging and/or meal sites.

(a) *Prohibited Use of a Fleet Vehicles.* A fleet vehicle shall not be used for any of the following purposes:

(1) Personal use for non-business purposes;

(2) Towing cargo for personal reasons;

(3) Hauling loads that could structurally damage the vehicle; and/or

(4) Jump starting vehicles, other than fleet vehicles.

210.6-5. *Permanently Assigned Fleet Vehicles.* The Fleet Management Department may permanently assign a fleet vehicle to an entity if the entity meets the minimum mileage criteria as established by the Fleet Management Department.

(a) *Exception to Minimum Mileage Criteria.* The Fleet Management Department may grant an entity an exception to the minimum mileage criteria.

(b) An entity who is permanently assigned a fleet vehicle shall regularly schedule maintenance work and safety checks with the Automotive Department.

(c) An entity that is permanently assigned a fleet vehicle is responsible for ensuring that any individual who drives the vehicle has his or her driver certification.

210.6-6. *Temporary Use of a Fleet Vehicle.* An individual in an entity that is not permanently assigned a fleet vehicle may request to use a fleet vehicle for the purpose of conducting official business by submitting a request to the Fleet Management Department.

(a) Requests for the use of a fleet vehicle shall be made at least one (1) week in advance, unless urgent circumstances arise.

(b) Before determining whether a fleet vehicle is available, or approving the use of a fleet vehicle, the Fleet Management Department shall confirm that:

(1) The individual requesting the fleet vehicle has his or her driver certification;

(2) The individual has authorization to use the fleet vehicle from his or her supervisor, if an employee, or by the individual's entity, if the individual is an elected or appointed official of the Nation or volunteer; and

(3) Any passengers are authorized to travel in a fleet vehicle.

(c) The Fleet Management Department may combine vehicle use for travel to the same destination.

(d) The Fleet Management Department may cancel reservations that are not fulfilled in a timely manner.

210.6-7. *Authorized Passengers.* In addition to the employees, elected or appointed officials, or volunteers who are authorized to use a fleet vehicle, the following individuals shall be authorized to be a passenger in a fleet vehicle:

(a) Individuals being transported as part of a program or service of the Nation;

(b) Individuals being transported during the normal and ordinary course of representing and/or conducting business on behalf of the Nation; and/or

(c) Any other individual who is authorized to be a passenger by the Fleet Management Department.

210.6-8. *Modifications to Fleet Vehicles.* Modifications to fleet vehicles for personal reasons are not permitted. Modifications to fleet vehicles for operating purposes may be allowed only with the approval of the Fleet Management Department.

(a) Radar detection devices shall not be installed or used in fleet vehicles.

210.6-9. *Rental Vehicles.* An individual shall have his or her driver certification before using a rental vehicle to conduct official business. An individual shall operate the rental vehicle with the same responsibilities and restrictions as a fleet vehicle.

(a) A vehicle shall be rented in accordance with the Nation's laws and policies governing travel. Every vehicle rented shall include the purchase of the maximum collision damage waiver offered by the rental company.

210.7. Motor Vehicle Crashes or Damage to Vehicles

210.7-1. In the event of a motor vehicle crash or damage involving the fleet vehicle or personal vehicle driven on official business, an individual shall be subject to the following reporting requirements; provided that, if an individual sustains injuries that make it impossible to meet the

reporting deadlines identified herein; the driver shall instead make the required reports as soon as he or she is able to do so:

(a) immediately report the crash or damage to local law enforcement if it results in any of the following:

- (1) death of a person;
- (2) an injury to the driver or another person that requires medical attention;
- (3) damage to property that does not belong to the driver or the Nation; or
- (4) a vehicle being disabled and/or needing to be towed.

(b) immediately report the motor vehicle crash or damage to his or her supervisor; and

(c) provide the Fleet Management Department and Risk Management Department with a completed auto incident report by the end of the next business day immediately following the motor vehicle crash or damage.

210.7-2. Internal Review. The Fleet Management Department and Risk Management Department shall coordinate and conduct an internal review of the auto incident report for a motor vehicle crash and/or damage to a vehicle.

(a) Fleet Management and Risk Management may recommend whether an individual should be subject to disciplinary action based on the motor vehicle crash or incident resulting in damage to a vehicle.

(b) The internal review shall be completed as soon as possible after a motor vehicle crash has been reported.

(c) Following an internal review, Fleet Management and Risk Management shall issue a report. Copies of the report shall be:

- (1) provided to the driver, the driver's supervisor, and the driver's area manager; and
- (2) provided to the Human Resources Department if the Fleet Management Department and Risk Management Department recommend disciplinary action.

210.8. Suspension of Driver Certification and Other Enforcement

210.8-1. Suspension of driver certification is the suspension of an individual's ability to drive a fleet vehicle or personal vehicle on official business and is not a leave from work. Suspension of driver certification is non-appealable.

210.8-2. Qualifications for Suspension. A supervisor shall suspend an individual's driver certification if the individual's driver's license is suspended or revoked by the State or becomes invalid for any other reason.

(a) A supervisor shall, when necessary, refer drivers to the Employee Assistance Program in accordance with applicable laws and policies of the Nation.

210.8-3. Length of Suspension. The individual's driver certification shall be suspended until a time in which the individual has obtained a valid driver's license and meets the qualifications for reinstatement of driver certification.

210.8-4. Notification of Suspension. The supervisor shall notify the Human Resources Department in writing if he or she suspends the driver certification of an individual and shall provide the basis for the suspension. Once notified of a suspension of driver certification the Human Resources Department shall remove the individual from the list of current certified drivers.

210.8-5. Reasonable Accommodations to Suspension. If the suspension of an individual's driver certification affects the individual's ability to perform his or her job duties, a supervisor may take one of the following actions:

- (a) Reassign the individual to a position which does not require driving;
- (b) Provide non-driving accommodation within the position;
- (c) Remove the driving requirement from the job description;

(d) Place the individual on unpaid leave until the individual obtains his or her driver certification; or

(e) Terminate the individual because a valid driver's license is an essential requirement of the position.

210.8-6. *Reinstatement of Driver Certification.* An individual may have his or her driver certification reinstated upon a review by the Human Resources Department that the individual again meets all the qualifications for driver certification provided for in section 210.4-2.

210.8-7. *Other Enforcement Actions.* A supervisor may take disciplinary action against an individual in accordance with the Nation's laws and policies governing employment if the individual is an employee, or in accordance with the laws and policies of the Nation governing sanctions and penalties if the individual is an elected or appointed official of the Nation, for any of the following actions:

- (a) Failing to comply with any provision of this law;
- (b) Failing to complete any applicable driver training requirements;
- (c) Driving a fleet vehicle without being certified under the provisions of this law;
- (d) Admitting to, or being determined to be, partially or entirely at fault in a motor vehicle crash involving vehicle damage, property damage, or personal injury; and
- (e) Not maintaining the minimum insurance requirements for a personal vehicle.

End.

Adopted BC-06-28-17-C.

Amended BC-__-__-__-__.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**
Vehicle Driver Certification and Fleet Management Law Amendments
Business Committee Conference Room-2nd Floor Norbert Hill Center
January 23, 2020 12:15 p.m.

Present: Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Nicolas Reynolds, Geraldine Danforth, Jacque Boyle, Barbara Kolitsch, Michelle Myers, Carol Silva, Rae Skenandore, Jeffrey Prevost, Lisa A. Moore.

Kirby Metoxen: Everybody, Council Member Kirby Metoxen, Vice Chair of the LOC, and I'll be facilitating the Community Meeting. This is the Vehicle Driver Certification and Fleet Management Law Amendments Public Meeting script. Okay, the time is 12:15 p.m. and today's date is Thursday, January 23, 2020. I will now call to order the public meeting for the proposed amendment to the Vehicle Driver Certification and Fleet Management 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 for 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. There was a sign in sheet put in the back of the room, so if you came in before it was placed there, you can stop in and sign that. 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 or by mail, interoffice mail or e-mail or fax as provided on the public meeting notice. These comments must be received by close of business day on Thursday, January 30, 2020.

In attendance from the LOC is myself, Kirby Metoxen as Vice Chair.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. As the pending LOC member, as the presiding LOC member, 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 with the proposed amendments to the Vehicle Driver Certification and Fleet Management law. The purpose of this law is to establish standards that certify employees, elected and appointed officials, and volunteers to drive a fleet vehicle or personal vehicle on official business, and to regulate the use of all vehicles owned and leased by the Nation.

Those who wish to speak please come to the microphone. And was there any names on, does anybody want to come up to the microphone for any comments? Yes, Barb if you could come to the mike.

Barbara Kolitsch: Do I need to state my name or anything?

Kirby Metoxen: Yes.

Barbara Kolitsch: Hello, my name is Barb Kolitsch. I work for Personnel Services in the Gaming Division. I'll start my comments in regarding the training that's required for the Vehicle Driver Training or vehicle driver policy. And I am going to speak initially from my training experience. I was a training director for many years, over twenty (20) years, I was a teacher for many, for a couple of years, I was a health educator for a couple of years and also coach and I'll tell you and anyone who reads these comments, training doesn't change behavior. So, when we look at a training that's required every three years, not only do people not remember what they were trained on every three years, training isn't changing behavior. There are other ways to help change behavior of a driver and (inaudible) called the influencer, there are a lot of better ideas on how to change behaviors if we are looking at changing behaviors of drivers. So, I would recommend to remove that driving requirement or that training requirement from the drivers, the three years, every three years having to do safety training, because I don't think that, you know a ten (10) to twenty (20) minute education on safety, driver safety, is changing behaviors of your drivers. What I would recommend though, is if we have drivers and I noticed in the packet here today that we have a lot of at-fault accidents and at-fault drivers. And so what I would recommend is then taking those at-fault drivers and putting them into a specialized course. I looked up before I came here, there are online courses that an employee could be responsible for paying for it if they are an at-fault driver and these online courses guarantee that they increase the, the behaviors of drivers. So, there are online courses, the one in particular that I looked at, specifically for fleet drivers for companies, was twenty- ninety-five (\$27.95). So, it's something that, maybe an idea for increasing at-fault or decreasing the at-fault drivers that we have using that sort of type of, you know looking at drivers who are actually not making good decisions and putting them through training may be a better decision than putting everybody in general through training.

And then it's also difficult, it's a tracking, something that has to be tracked, it's a lot of administrative work to track whether somebody has been trained or not. Recently we just went through somewhat of an audit with training and we had drivers who were required to have the training who didn't. So, again it's an administrative nightmare, there is a lot of responsibility put on HR and put on supervisors to make sure that they have that training.

My next comment is regarding the driving record and moving violations. My question to the LOC or the LRO is, when someone is off duty, why do we penalize an employee? So, for example, if the State law says I can drive, why can't I drive for the job? I do think we should track on duty violations and again tie that back to training and tie that back to disciplinary action if somebody is violating their driving rules that we have in the organization or driving laws that the State or Federal regulations have. So, what was added into the new vehicle driver policy was moving violations, and again, if I have three speeding tickets in the next two years I become not certifiable

and if these violations were all off duty, why is the organization punishing me for something that I did off duty? I think we all do things off duty that we wouldn't do at work, so I'm not sure what the correlation is really. In addition to that the drug and alcohol violation was reduced from three years to one year, again I think if the State says I can drive with an Occupational License, why can't I drive with the organization? I don't think any of the instances where somebody comes up with a drug and alcohol violation driving, it's not been at work, it's been off work and if we correlate that to our drug and alcohol policy, our drug and alcohol policy was created in the 1990s to be a helping hand policy because Oneidas, well not specifically Oneidas, Native Americans have the highest abuse rate of drugs and alcohol. They are the highest of any ethnicity in the U.S. It's a helping hand policy. This is a cutthroat policy. If I have, if I tonight go out and celebrate a birthday with a friend, have one too many, get pulled over, get a drunk driving, I'm out of a job. Where if I come to work drunk, I drink at work, I get referred to EAP and I get help and I get assistance, so I'm not sure, again the correlation of off duty violations and on duty violations.

Kirby Metoxen: Barb, we're at the five (5) minutes.

Barbara Kolitsch: Okay. I can submit the rest in writing.

Kirby Metoxen: Yes. Okay. Are there any other comments regarding the, any other comments? And Barb, it was quite interesting listening to you. I would let you go on, but the five (5) minute policy.

[Inaudible]

Kirby Metoxen: Pardon.

[Inaudible]

Kirby Metoxen: Originally I was thinking, ahh we got a lot of comments, there is more people at this meeting than other community meetings. And this is just a reminder that written comments may be submitted to the Nation's Secretary's office or to the LRO, in person, by mail, interoffice mail, e-mail, fax on the public meeting notice. These comments must be received by the close of business day on Thursday, January 30, 2020. That's just a reminder.

If there are no other comments we will wait fifteen (15) minutes and then we will adjourn the meeting.

I want to ask the audience some questions, but it states the public meeting is not a question and answer period, so it even stifles me.

Jacque did you want to come up?

[Inaudible]

Kirby Metoxen: Clorissa how much time do we have before we call the meeting?

Clorissa N. Santiago: Five (5) more minutes.

Kirby Metoxen: Five (5) more minutes. Okay Jacque.

Jacque Boyle: Jacque Boyle, Public Works Director. There is a few things. As far as submitting insurance, we do get notification that insurance has, needs to be renewed for each employee that has a driver's requirement, personal driver's requirement. Unfortunately, there are instances that can occur where the employee then terminates the insurance and there is really no way for us to follow-up on that. So, I'm not sure what we can do, I don't think I can call the insurance company and say is this still in effect. So, so what they are doing is getting insurance, submitting the paperwork that's good for six months, but they could actually cancel it the next day.

Another item is in the law it says that Fleet Management needs to authorize all passengers or individuals that may not be employees, that's going to be very hard for us to administer. So I think that should be approved by the supervisor and area manager of whose using the vehicle. So, especially for Recreation or different, you know, events, we would have a hard time identifying each and every individual in the vehicle.

Kirby Metoxen: Yep.

Jacque Boyle: And I do want to reiterate what Barb said as far as managing the training. I think that if there is an incident, that that training should be required, especially if it's repetitive. We do have a lot of specialized vehicles for snow removal and the current policy says that if there is an incident, Risk Management, the Fleet Manager, HRD investigate and make a recommendation and typically it is to remove their driving privileges. If we did that, in order to do the job that's required, that would mean we would have to put someone untrained in that vehicle, untrained on the route to take care of that job for the five days, ten days or fifteen days, I don't think that's sending the right message either. It also encourages employees not to report, because they know there's some negative consequences, but actually if we address it through training, especially if it's, you know, multiple incidents, and I'm talking about fender benders, not very serious accidents, that the training would actually help them to drive better. We are, in conjunction with that, we are looking at implementing a GPS system throughout the fleet vehicles, so that it will give feedback on how that driver is doing. Hard braking, speeding, where they've been and we're getting very close to implementing a contract with a vendor and starting out with some of the vehicles. So, two things, it will allow the vehicle to last longer and hopefully give us feedback on how that driver is performing. That's all I have.

Kirby Metoxen: Okay, thanks Jacque. I knew we could do it.

[Inaudible]

Kirby Metoxen: Clorissa with that being said did we hit our?

[Inaudible]

Kirby Metoxen: Are there any other comments? With there being no more speakers registered, the public meeting for the proposed amendment to the Vehicle Driver Certification and Fleet Management law is now closed and the time is 12:36 p.m.

Written comments may be submitted until the close of business day on Thursday, January 30, 2020. Thank you all for coming.

-End of Meeting-

From: [Barbara A. Kolitsch](#)
To: [Legislative Operating Committee](#); [Clorissa N. Santiago](#)
Cc: [Lucy A. Neville](#); [Brenda J. Mendolla-Buckley](#)
Subject: Vehicle Driver and Fleet Management Law Public Comments
Date: Thursday, January 23, 2020 3:25:17 PM
Attachments: [image001.png](#)
[image002.png](#)

Hi –

The below comments are to be directed to the Legislative Reference Office, but there's no such e-mail, so I am submitting to Clorissa and LOC in hopes it will get to the correct office.

I provided oral comments today, Jan 23, 2020. Below includes testimony I provided as well as testimony I did not have time to provide in the allotted five minutes.

I appreciate the work on the LRO in revising this law. The revisions are well done! Thank you! It's simpler and easier to follow! I recommend some additional revisions...

Training requirements: Safety every three years for all drivers – **please remove safety training requirement for all**

As a former Training Director, Trainer, School Teacher, Health Teacher, and professional Coach (35 years), training/teaching or education does not result in behavior change. Requiring all employees who drive to take safety training every three years is **not** going to change behaviors of our drivers. When I took the training, it was more-so an act of getting through the training for compliance reasons. The reason I feel this way is because I have only been in one accident in my life...I was rear-ended at no fault of my own. My belief, and most people's belief will be that they are doing the training due to other people being bad drivers. In the Public Hearing materials I noticed that of the accidents tracked, the majority of them were our employees being at-fault. To improve and change behaviors, the law should place the burden on the drivers to take safety training who have an on-duty at-fault accident, and make the employee pay for that training. I found an on-line educational site for drivers where the company claims proven behavior and success rates with their training program for \$27.95. I would require drivers who are reported to be at-risk drivers and those who have accidents while performing driving duties for the Oneida Nation. For example, if I get a ticket while driving on official duty, require me to take training.

Tracking training is a huge administrative burden. As former Training Director at Human Resources, every time we had required training for large groups, there are legitimate reasons people are non-compliant: leave of absence, vacation, business (customer priority), staff shortage, staff emergency, etc. In a recent self-audit in Gaming the Personnel Services staff found there were some Gaming employees who needed drivers safety training and never had taken it almost three years ago. Gaming has a very high compliance rate in training requirements from my experience as former Training Director, yet we still missed a few. Some may feel it's our job (HR or Personnel Services), but in reality it's the supervisor's job to make sure employees are in compliance with policies and procedures. There's a lot for supervisors to track, so this may be an important thing to track, but

may be put on the backburner when there's a business to run and customers/clients/and more urgent matters to deal with. Safety training is not urgent, it's purpose is meant to help prevent accidents.

Training as prevention is great, but maybe it should be "voluntary" for most drivers, and mandatory for drivers who demonstrate risky on-the-job driving, or drivers who get a ticket while on duty, or drivers who have an at-fault accident while on duty. If I voluntarily take training I'm much more likely to learn by the nature I'm choosing to take it – to learn. If I'm mandated, I'm much more likely to go through the motions. This is human behavior. If I'm mandated to watch it due to my behavior at my own cost – I think I would pay attention if there's risk of losing my job if it happens again (though disciplinary action – in the new version of the law.) I mentioned a book called Influencer in my in-person comments. This testimony is further supported in the research presented in the book. I was certified as a Trainer to teach the training Influencer in 2018.

Believe me, if I felt training would change behaviors, I would feel much safer on the road. I've been hit 11 times while riding my bicycle by distracted drivers. I've had many friends hit by cars on their bikes and one friend killed on his bike. This experience has made me a more attentive as a driver because I know it's so easy to be distracted these days! I wouldn't recommend putting all of our drivers on a bicycle to observe how most drivers are so distracted, there has to be a better way than traditional "training".

Driving record – **please remove the consideration of violations on driving record – including drug and alcohol related**

I challenge the Committee to assess the requirement to be certified and only consider my driving record while **on duty**. If the state of Wisconsin says I can drive, and in the case of a personal vehicle – I'm paying for my insurance, why can't I drive? I understand that if I cause an accident that causes more liability that I carry, the Tribe's insurance kicks in, but I'm paying for the speeding tickets with my higher insurance rates. If I have three speeding tickets in the next two years, I would lose my job? And this doesn't consider at all the fact that I had these tickets off duty. Everyone makes personal choices in their lives, and we all make some while off-duty that we may not do at work. Why does my off-duty behavior certify or not certify me to be able to drive. In most cases we look at a person's state license...example: to teach, practice medicine, social work, day care, etc. So we recognize that license. Why don't we recognize this state license to drive?

Drug and alcohol related offenses. Native Americans have the highest rate of drug/alcohol addiction than any other ethnicity. Our Drug and Alcohol Policy recognizes this, and was developed in the 1990's to be a **helping hand** policy. I can come to work drunk or drink at work and the consequence is to be referred to EAP. If I follow the requirements of the EAP agreement, I can go back to work. On the other hand - if I go out and have two drinks get pulled over and get an OWI – I will lose my job. One strike. This does not match the values of the Oneida Nation as I've known them for 30 years. How does having an OWI correlate to my on-duty driving? It will not likely correlate for most employees. If the drug/alcohol driving violation occurred during work time, I can understand a firm repercussion, but how does it relate to the job when I may have simply made a poor judgement after having a couple of drinks?

Current challenges/issues from Personnel Services

One of our first commitments to the Oneida Nation in Personnel Services is to employ Oneida members. This policy negatively impacts mainly Oneida enrolled members. We don't want to be in the business of screening out Oneida enrolled candidates because of their driving record such as OWI. We lose good candidates this way! We've lost good employees this way.

Employees have lapse of insurance, and supervisors don't consistently deal with lapse. A lapse today should result in suspension of certification, and today, some are not held accountable.

It's difficult to track an employee who may drop insurance between coverage periods and pick up a new company, which will not show coverage. My only recommendation is for employees to somehow show continuation of coverage when they change insurance companies.

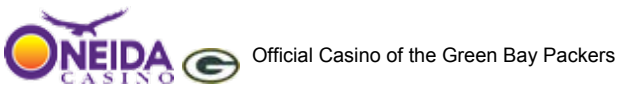
Some supervisors aren't following up to ensure their employee has the required insurance prior to the employee continuing to drive.

Referral to EAP (210.8(a))

I'm unsure the value of this referral. There's an EAP policy, DOT policy, DAFWP policy – all which spell out reasons/ways to do an EAP referral. This isn't value-added in the Vehicle Driver/Fleet law.

Please contact me if you have any questions regarding my comments. Thank you!

Barb Kolitsch, SHRM-CP
Personnel Services Manager
920.429.3083





Memo

To: Legislative Operating Committee
 From: Candice E. Skenandore, Self-Governance Coordinator
 Date: January 29, 2020
 Re: Public Comments Regarding Vehicle Driver Certification and Fleet Management

Background

The Oneida Nation (Nation) has entered into a Compact and Funding Agreement with the US Department of Interior (DOI) since 1994. In accordance with Section 20 of the Nation's current Funding Agreement, the Nation agrees to self-administer a motor vehicle operations policy that is either comparable or superior to that of the DOI's Bureau of Indian Affairs' May 3, 2006 Motor Vehicle Operation Policy issued by the Associate Deputy Secretary. In addition, the Nation agrees to comply with Executive Order 13513 pursuant to the current Funding Agreement. Below you will find the Section 20 of the Funding Agreement in verbatim. Attached is the May 3, 2006 BIA Motor Vehicle Operation Policy and Executive Order 13513 for your reference.

Section 20

Motor Vehicle Operation Policy – *The Tribe certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operation of motor vehicles while performing duties to implement the terms of the Agreement. The Tribe's policy is either comparable or superior to the May 3, 2006 Motor Vehicle Operation Policy for the BIA issued by the Associate Deputy Secretary. The Tribe's policy includes compliance with Executive Order 13513 prohibiting texting while driving.*

There may be areas where the proposed law and BIA Motor Vehicle Operation Policy conflict. In order to avoid compromising the Nation's funding agreement, the LOC may want to consider making changes to the proposed law to align with the BIA Policy or insert language in the proposed law that states that any current and future employee whose duties with respect to implementation of the Compact include driving may be subject to the BIA Motor Vehicle Operation Policy and Executive Order 13513 when the Nation's Vehicle Driver Certification and Fleet Management law is less stringent.

It should be noted that the following programs, services, functions, and activities are currently found within the Nation's BIA funding agreement; however, this is likely to change once the Nation negotiates a new funding agreement by the end of CY 2021.

Administrative Direction
 Rights Protection
 Aid to Tribal Government
 Law Enforcement
 Facilities Management

Economic Development
 Housing Improvement Program
 Road Maintenance
 Community Fire Protection
 Agriculture

Real Estate Services
 Real Estate Appraisals
 Environmental Quality
 Safety Management
 Forestry Management
 Wildlife Management
 Indian Child Welfare
 Services to Children, Elderly, and Families
 Welfare Assistance

Education (Scholarship, Adult Education)
 Employment Assistance
 Johnson O'Malley
 Litigation Support
 Fish Hatchery
 Water Management
 Hunting and Fishing Rights

There are some areas within the Nation that contribute to the operation of but are not identified as compacted programs, services, functions, and activities. The Nation receives contract support costs for these types of positions. It is unclear whether and under what circumstances the Department of Interior would consider driving to be part of an employee's performance of duties to implement the Compact on the basis of the Nation's receipt of contract support costs.

Please let me know if you have any questions.



United States Department of the Interior

**BUREAU OF INDIAN AFFAIRS
NATIONAL INTERAGENCY FIRE CENTER
3833 SOUTH DEVELOPMENT AVENUE
BOISE, IDAHO 83705-5354**

April 28, 2009

Memorandum

To: BIA-NIFC Staff
From: Director, Branch of Wildland Fire Management
Subject: Motor Vehicle Operation Policy

A handwritten signature in black ink, appearing to read "Lyle Carlin", is positioned to the right of the "From:" line.

To conform to the Motor Vehicle Operation Policy memorandum dated May 3, 2006, and to bring NIFC staff into compliance with current Department of Interior (DOI) and Bureau Motor Vehicle Operation Policy, all employees are required to respond to this memorandum no later than May 15, 2009.

In 5 CFR 930, and DOI Policy 485 DM 16, all employees who operate a motor vehicle on official duty for the Bureau must meet all requirements addressed. Motor vehicles include Government Owned Vehicles (GOV), lease or rentals, and Privately Owned Vehicles (POV).

Employees and Supervisors must complete GSA Form 3607, and sign the "Acknowledgement of Receipt and Understanding" Form. Completed copies will be sent to Teresa Wesley, Administrative Assistant at NIFC in a sealed Blue "Special Attention Mail Envelope". All forms must be complete, and signed certifying statements are correct. Supervisors will be required to complete and sign the Supervisory Review section.

All drivers will receive Defensive Driver training within three (3) months of hire and refresher training every 3 years thereafter. Documentation will be submitted to verify completion or recertification.

Individuals qualified, and current to operate specialized machinery such as All Terrain Vehicles (ATV), Fork Lifts, Snowmobiles, etc. will be required to add in the remarks section any certifications. All specialized equipment requests will require documentation of training, and currency for addition to the Motor Vehicle Operator's Identification Card (OF-346).

All completed GSA Form 3607 will be validated with the National Drivers Registry for accuracy. All personnel who receive a favorable determination, and have completed Defensive Driver training/recertification will be issued an Motor Vehicles Authorization Card that will be valid four (4) years from issuance with a current state issued driver's license.

For questions or more information, please contact Tony Beitia, NIFC Wildland Fire Safety Specialist at (208)-387-5177 or via email at tony_beitia@nifc.gov.

Attachments:

Motor Vehicle Operation Policy Memorandum, May 03, 2006
Motor Vehicle Operator's license and Driving Record – GSA Form 3607
Acknowledge of Receipt and Understanding Form

5 CRF 930 Link: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div6&view=text&node=5:2.0.1.1.41.1&idno=5>

DOI motor Vehicle Safety Policy 485 DM 16 Link:
http://74.125.95.132/search?q=cache:1Phf4a3turcJ:206.131.241.18/elips/DM_word/3246.doc+485+DM+16&hl=en&ct=clnk&cd=2&gl=us



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

Division of Forestry

JUN 19 2006

Memorandum

To: All Regional Directors

From: Director, Bureau of Indian Affairs *W. M. Eggle*

Subject: Clarification of Motor Vehicle Operation Policy for the Wildland Fire Program

A new Bureau of Indian Affairs (BIA) Motor Vehicle Operation Policy was issued on May 3, 2006. This memorandum provides clarification regarding implementation of that policy within the BIA Wildland Fire Program.

The BIA Motor Vehicle Operation Policy provides direction for Indian Affairs motor vehicle operators. There have been recent questions from the field as to whether this policy applies to our non-BIA federal and non-federal cooperators that respond to wildland fires in Indian Country. Each year a large number of our cooperators respond to assist with our wildland fires. These individuals are "resource ordered" through the interagency wildland fire dispatch system. These cooperator individuals include and are not limited to non-federal partners such as state wildland fire personnel and rural or volunteer fire departments; other federal agencies such as Bureau of Reclamation and United States Geological Survey; international firefighters such as Canadian and Australian individuals; Administratively Determined (ADs) hires from non-BIA agencies, and; other agency federally retained contractors such as helicopter pilots and fuel truck drivers. Individuals assist from throughout the nation and the number of individuals required each year is dependent on the fire situation. There is no way to identify in advance which individuals will respond to assist on a particular incident. Therefore, it is impractical to secure a driving record for these responders and issue a BIA Motor Vehicle Operator Authorization Card. Without the aid of these cooperators each year, the BIA would not be able to fulfill its trust responsibility for wildland fire protection.

With respect to the BIA Wildland Fire Program the BIA, Motor Vehicle Operation Policy applies only to individuals that are Indian Affairs employees as defined in the policy. It does not apply to our federal and non-federal cooperators that respond to wildland fires on Indian lands.

If you have any questions or comments, please contact Lyle Carlile, Chief, Branch of Fire Management at 208-387-5575



THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON, DC 20240

MAY - 3 2006

Memorandum

To: Deputy Assistant Secretaries
Director, Bureau of Indian Affairs
Director, Office of Indian Education Programs
All Central Office Directors
All Regional Directors
All Education Line Officers

From: Associate Deputy Secretary *James E. Casar*

Subject: Motor Vehicle Operation Policy

In compliance with the requirements of 5 CFR 930 and the Department's Motor Vehicle Safety Policy, 485 DM 16, this Motor Vehicle Operation Policy (Policy) is to establish clear responsibilities for employees, supervisors, and managers, and to promote the safe and prudent operations of motor vehicles while performing assigned duties in support of Indian Affairs (IA). This Policy supersedes the New Motor Vehicle Operation Policy for the Bureau of Indian Affairs (BIA) signed by the Assistant Secretary - Indian Affairs on March 19, 2004.

I. Definitions

- A. **Employee.** All permanent, temporary, intermittent, and contract employees; interns; student teachers; and administratively determined (AD) emergency workers as defined in 5 U.S.C. 2105.
- B. **Motor Vehicle.** A Government owned, rented or leased motor vehicle and/or privately owned, rented or leased motor vehicle, with a gross vehicle weight (GVW) of less than 26,000 pounds, designed to transport less than 15 people, and which does not haul hazardous materials or tow vehicles with a GVW of 10,000 pounds or more (e.g. sedans, light trucks, sports utility vehicles (SUVs) and all terrain vehicles (ATVs).
- C. **Motor Vehicle Operator.** An employee who drives a motor vehicle, including commercial motor vehicles, in the performance of their duties and responsibilities.
- D. **Commercial Operator.** An employee who operates a commercial vehicle and is required to possess a Commercial Driver's License (CDL).
- E. **Commercial Motor Vehicle.** A vehicle having a GVW rating of more than 26,000 pounds, a vehicle towing a trailer weighing 10,000 pounds or more, a vehicle hauling hazardous material which requires display signs noting the hazardous material content

of the vehicle, a vehicle designed to transport 15 or more people including the driver, or a school bus. Operators of these vehicles must have a valid CDL.

II. Driver Qualifications

An employee may be authorized to drive on Indian Affairs business if he or she satisfies the following requirements:

- A. Be 18 years of age or older;
- B. Has a valid State driver's license;
- C. Has the requisite experience needed to drive the type of vehicle being assigned or used;
- D. Has no convictions or uncontested citations within the three-year period immediately preceding their submittal of GSA Form 3607, Motor Vehicle Operator's License and Driving Record, for Reckless Driving, Driving While Intoxicated (DWI), Driving Under the Influence (DUI) or Leaving the Scene of an Accident;
- E. Has not demonstrated a pattern of unsafe driving or behaviors (e.g. drug or alcohol abuse, unusual aggression, etc.) that would cause a supervisor to question the likelihood that the individual will drive safely and prudently while on Indian Affairs business; and
- F. Possesses current Motor Vehicle Operators Authorization from his/her supervisor.

III. Roles and Responsibilities

- A. Deputy Assistant Secretaries, BIA Director, Deputy Directors and Regional Directors, and Director, Office of Indian Education Programs (OIEP) are responsible for carrying out the requirements of this policy within their areas of responsibility.
- B. Managers, supervisors, contracting officers and awarding officials must:
 - 1. Carefully consider whether duties and responsibilities assigned to an employee require the operation of a government-owned or government-leased motor vehicle, commercial motor vehicle, rental motor vehicle, or privately-owned or privately-leased motor vehicle in the performance of official or contractual duties, responsibilities or activities, including duties of record and other duties assigned or historically assigned to such positions or activities;
 - 2. Ensure that each IA Motor Vehicle Operator under their supervision possesses a valid driver's license that indicates State authorization to operate the class of vehicle required in the performance of duties. This responsibility is met by ensuring each employee completes the annual Authorization Process

described in Section 7 of this memorandum, which includes a requirement to conduct an annual review of the employee's current license and a current motor vehicle driving record. If at any time the supervisor has a concern with an employee's driving record, he or she will initiate a review of the employee's driving record. Failure to meet this responsibility may result in disciplinary action against the supervisor;

3. Ensure that all term contracts and commercial contracts under their administration, at the time of contract renewal, include certification from the contractors certifying that they will self-administer and ensure compliance with the requirements of this policy;
4. Based on available information, ensure no authorization is given to individuals with restricted driving privileges (i.e., home to work licenses);
5. Ensure that no Motor Vehicle Operator is permitted to operate a government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle and/or privately owned or leased motor vehicle in the performance of official duties while: (a) intoxicated by ingesting controlled substances or consuming intoxicating beverages, including any impairment resulting from the use of prescription or over-the-counter drugs; or (b) impaired by a medical or physical condition, or other factor that affects his/her motor skills, reaction time, or concentration;
6. Immediately terminate driving privileges for a Motor Vehicle Operator who is:
 - a. Arrested for, charged with, or convicted of Reckless Driving, Driving While Intoxicated (DWI), or Driving Under the Influence (DUI);
 - b. Arrested for, charged with, or convicted of a criminal offense related to a traffic incident involving alcohol or drugs, including but not limited to vehicular homicide, vehicular manslaughter, or endangerment;
 - c. Disqualified from holding a State driver's license, including restriction, suspension, revocation, or cancellation of a State driver's license for the type and class of vehicle operated;
 - d. Upon request, fails to provide a valid CDL medical certificate;
 - e. Not in possession of a current IA/BIA/OIEP Motor Vehicle Operator Authorization Card;
7. As directed in 5 CFR 930.113, take appropriate action when a Motor Vehicle Operator:

- a. Is convicted for operating a motor vehicle under the intoxicating influence of alcohol, narcotics, or pathogenic drugs;
 - b. Is convicted of leaving the scene of an accident without making his or her identity known;
 - c. Is not qualified to operate a Government owned or leased vehicle safely because of a physical or medical condition;
 - d. No longer possesses a State license by revocation or suspension;
 - e. Fails to report incidences noted in paragraph 6 above to his or her supervisor; and
 - f. Exhibits behaviors inconsistent with the safe and prudent operation of a motor vehicle;
8. Where appropriate, recommend the Employee Assistance Program (EAP) and other programs to employees whose performance appears impaired by the use of controlled substances, prescription drugs, or intoxicating beverages; and
9. Take appropriate actions to investigate allegations of employee's alcohol or drug abuse problem or a history of unsafe driving, regardless of whether or not the employee has ever been charged with an offense. Supervisors may at their discretion, consider a pattern of unsafe driving acts as a factor in determining whether an employee meets driver qualifications. (For example, an employee is convicted of DWI or other unsafe driving practices over a 10-year period, with DWI arrest longer than three-years preceding their submittal of GSA Form 3607, Motor Vehicle Operator's License and Driving Record).

C. The Division of Safety and Risk Management will:

- 1. Receive and process Motor Vehicle Operator License and Driving Record forms (GSA Form 3607) for their service area.
 - a. The Division of Safety and Risk Management is responsible for Central Office West Programs in Albuquerque, NM; Lakewood, CO; Boise, ID (NIFC). The Division is also responsible for Office of Law Enforcement Services (OLEs) and Office of Indian Education Programs (OIEP) Central Office West;
 - b. The Central Office East Collateral Duty Safety Officer is responsible for Central Office East Programs in Washington, DC; Reston, VA; and Herndon, VA; and
 - c. Regional Safety Managers are responsible for all regional programs, including OIEP within the region.

2. Conduct the annual evaluation of the applicant's driving record.
 3. Return GSA Form 3607 with certification to the supervisor after processing.
 4. Document any conflicts or concerns with respect to an employee's driving qualifications.
- D. Employees, generally, have responsibility to inform supervisors of operator incidences or behaviors that would be considered covered by this policy or represent unsafe driving behavior. All employees share an affirmative duty to ensure our vehicles are used properly by responsible individuals who have a high regard for both personal and public safety while operating a government vehicle. Employees may report any suspected violations to the Indian Affairs Motor Vehicle Hotline: (505) 563-5460.

IV. Operator Requirements

Motor Vehicle Operators must:

- A. Comply with State, local and tribal traffic laws and the lawful instruction of emergency and law enforcement personnel;
- B. Abstain from ingesting controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle when taken, to avoid being impaired;
- C. Not transport intoxicating beverages, controlled substances, or any passenger who is in possession of intoxicating beverages or controlled substances without written approval of immediate supervisor. Exceptions to this prohibition are allowed for social services, emergency, and law enforcement personnel whose duties and responsibilities require otherwise;
- D. Not transport unauthorized passengers in a Government owned or leased motor vehicle;
- E. Report to his/her supervisor any medical or physical condition, including the use of controlled substances, prescription or over-the-counter drugs, which may impair the driver from the safe operation of a motor vehicle;
- F. Successfully complete motor vehicle safety training at least every three years;
- G. Notify their supervisor if their State driving privileges are restricted, suspended, revoked, or canceled, or if they have been otherwise disqualified from holding a license. Employees are also responsible for reporting any situation that may alter

their authorization or ability to operate a motor vehicle, such as any legal or court ordered suspension of driving privileges or any limiting medical condition;

- H. Report all incidents involving a Government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or a privately owned or leased motor vehicle that occur during the performance of their official duties;

Report all on-duty incidents involving a Government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or a privately owned or leased motor vehicle that could result in a violation, citation, charge, arrest, warrant, or civil action;

- J. Report all incidents involving a Government owned or leased motor vehicle, commercial motor vehicle, rental motor vehicle, or privately owned or leased motor vehicle and the use of controlled substances or intoxicating beverages; impairment resulting from prescription or over-the-counter drugs, illness, or medical condition; or other factors that impair concentration, motor skills or reaction time;
- K. Report any restriction, suspension, revocation, or cancellation of their driver's license, for any length of time, or any disqualification from holding a State, commercial, or international operator's license; and
- L. Notify supervisors of these incidents no later than the following business day after their occurrence. Failure to inform the supervisor of any such situation may subject employees to disciplinary action.

V. Authorization Procedures

- A. All employees and term contract employees whose job requires operation of a motor vehicle must annually request authorization to operate a motor vehicle in carrying out the duties of their positions.
- B. All employees and term contract employees must annually submit to their supervisor GSA Form 3607, Motor Vehicle Operator's License and Driving Record to renewal. In completing the form, individuals will provide a response to all questions (Section II) and certify that their statements are true and correct to the best of their knowledge (Section III).
- C. Supervisors will review the GSA Form 3607 for accuracy and completeness, complete and sign Section IV – Supervisory Review, and forward to the appropriate safety office for the receipt of application for their regions.
- D. The appropriate safety office will review the submitted forms and request a copy of the applicant's driving record from the appropriate State motor vehicle office(s) and if appropriate and where feasible, the tribal court where employees primarily operate motor vehicles within that tribal jurisdiction.

- B. Upon a receipt of a favorable review of the driving record, the safety officer will complete Section V – Certification of Eligibility and Authorization, sign and date, certifying that the individual meets his IA driver qualifications.**
- F. With the safety officer's certification, the supervisor may issue a Motor Vehicle Operator authorization Card (Attachment 2). The Card will be issued for a period of five years.**
- G. Based on the safety officer's report that the applicant is not qualified, the supervisor will not issue or will revoke a Motor Vehicle Operator Authorization Card. Supervisors are reminded that they may be personally liable if they authorize an employee to operate a motor vehicle on government business if an employee is determined not to be qualified by virtue of failing to meet qualification standards.**

VI. Failure to Report Incidents Involving Motor Vehicles

Failure of the motor vehicle operator to report such incidents of traffic citations or accident violations to the supervisor as soon as possible after the occurrence, but no later than the next business day, may result in disciplinary or other adverse action.

Attachments

Attachment 2

MOTOR VEHICLE OPERATOR'S LICENSE AND DRIVING RECORD (See Privacy Act Information on reverse)				TO BE COMPLETED BY CERTIFYING OFFICIAL ONLY CARD NUMBER - FROM OF-348			
APPLICANT'S NAME (Last, First, Middle Initial)				DATE ISSUED		DATE EXPIRES	
NAME OF ORGANIZATION		OFFICE TELEPHONE NUMBER		VEHICLE (S) APPLICANT IS REQUESTED TO OPERATE <input type="checkbox"/> TYPE A - PASSENGER VEHICLES <input type="checkbox"/> TYPE B - TRUCKS > 1 TON AND ALL-WHEEL-DRIVE <input type="checkbox"/> TYPE C - TRACTOR-TRAILER & TRAILER PULLING <input type="checkbox"/> TYPE D - PASSENGER CARRYING BUSES <input type="checkbox"/> TYPE E - SPECIAL PURPOSE VEHICLES, SUCH AS AMBULANCES, FIRE APPARATUS, WRECKERS, CRANES, EARTH MOVING EQUIPMENT, ETC. SPECIFY TYPE:			
OFFICE MAILING ADDRESS (Include ZIP CODE)							
SECTION I - PERSONAL DATA FROM CURRENT DRIVERS LICENSE							
STATE	LICENSE NUMBER	DATE ISSUED	DATE EXPIRES	RESTRICTIONS ON STATE LICENSE			
STATE LICENSE TO OPERATE (Vehicle)		SEX	BIRTH DATE	COLOR of HAIR	COLOR of EYES	HGT.	WGT.
RESIDENTIAL ADDRESS		CITY		STATE		ZIP CODE	
SECTION II - DRIVING RECORD							
A - RECORD OF TYPES OF VEHICLES DRIVEN DURING THE PAST FOUR YEARS							
TYPE OF VEHICLES DRIVEN			ESTIMATED MILES DRIVEN		ESTIMATED DAYS DRIVEN		
B - RECORD OF DRIVING CONVICTIONS (Except Parking) DURING THE PAST FOUR YEARS							
DATE	NATURE OR TYPE OF VIOLATION		CITY AND STATE		ACTION TAKEN		
C - RECORD OF ACCIDENTS DURING THE PAST FOUR YEARS							
DATE	NATURE OF ACCIDENT		CITY AND STATE		ACTION TAKEN		
D - RECORD OF SUSPENSION OR REVOCATION OF LICENSE DURING THE PAST FOUR YEARS							
DATE	REASON FOR SUSPENSION OR REVOCATION		CITY AND STATE		ACTION TAKEN		

SECTION II - DRIVING RECORD (Continued)

E. RECORD OF CONVICTIONS OPERATING UNDER THE INFLUENCE OF ALCOHOL, NARCOTICS OR PATHOGENIC DRUGS			
DATE	REASON FOR CONVICTION (INCLUDING TRIBAL COURT)	CITY AND STATE	ACTION TAKEN

F. RECORD OF ABUSE OR NEGLECT TO OR UNAUTHORIZED USE OF GOVERNMENT VEHICLES			
DATE	INFRACTION	CITY AND STATE	ACTION TAKEN

SECTION III - APPLICANT'S CERTIFICATION

ANY FALSE STATEMENT IN THIS APPLICATION MAY RESULT IN DENIAL, SUSPENSION, OR REVOCATION OF IDENTIFICATION CARD. I CERTIFY THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.	
APPLICANT'S SIGNATURE	DATE SIGNED

SECTION IV - SUPERVISORY REVIEW

APPLICANT IN MY OPINION <input type="checkbox"/> IS <input type="checkbox"/> IS NOT <input type="checkbox"/> CONSIDERED QUALIFIED TO SAFELY OPERATE THE VEHICLE (S) FOR WHICH AUTHORIZATION IS REQUESTED. (Explain, if needed).		
SUPERVISOR'S SIGNATURE	TITLE	DATE SIGNED

SECTION V - CERTIFICATION OF ELIGIBILITY AND AUTHORIZATION

TYPES OF VEHICLES AUTHORIZED TO OPERATE <input type="checkbox"/> TYPE A - PASSENGER CARS, STATION WAGONS, CARRYALLS, AND TWO WHEEL DRIVE TRUCKS, ONE TON AND UNDER. <input type="checkbox"/> TYPE B - ALL TRUCKS OVER ONE TON AND VEHICLES WITH MORE THAN TWO-WHEELED DRIVE - EXCEPT THOSE LISTED UNDER TYPES C, D, AND E. <input type="checkbox"/> TYPE C - TRACTOR-TRAILER VEHICLES, AND OTHER TRAILER PULLING VEHICLES - INCLUDING SEDANS ETC. WHEN SUCH VEHICLES ARE USED TO PULL TRAILERS. <input type="checkbox"/> TYPE D - PASSENGER CARRYING BUSES. <input type="checkbox"/> TYPE E - SPECIAL PURPOSE VEHICLES SUCH AS AMBULANCES, FIRE APPARATUS, WRECKERS, CRANES, GRADERS, EARTH MOVING EQUIPMENT, AND OVERSIZED VEHICLES. (Specify particular type.)		
SIGNATURE OF CERTIFYING OFFICIAL	ORGANIZATION	DATE
REMARKS		
IN COMPLIANCE WITH THE PRIVACY ACT OF 1974, the following information is provided: Solicitation of the information is authorized by the Federal Property Administrative Services Act of 1949, as amended. Authority for solicitation is Executive Order 9397, dated November 22, 1943. Disclosure of the information is voluntary. The principal purposes are (1) to provide necessary data to determine whether the applicant is competent to operate a Federal motor vehicle; and (2) to provide a written record of the applicant's previous driving record, physical fitness, and ability. The information contained on this form may be transferred outside GSA as a routine use to appropriate Federal, State, or local organizations when relevant to civil, criminal, and regulation investigation or prosecution or pursuant to a request by GSA, or such other agency in connection with the hiring or retention of an employee, the issuance of a security clearance, the investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit. Failure to provide requested information may result in denial of the applicant's request for a motor vehicle operator's identification card.		



**United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
NATIONAL INTERAGENCY FIRE CENTER
3833 SOUTH DEVELOPMENT AVENUE
BOISE, IDAHO 83705-5354**

April 29, 2009

ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING

I, _____ hereby acknowledge receipt and understanding of the
Motor Vehicle Operation Policy of May 3, 2006.

Signature

Date

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 1, 2009

EXECUTIVE ORDER

FEDERAL LEADERSHIP ON REDUCING TEXT MESSAGING WHILE DRIVING

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7902(c) of title 5, United States Code, and the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 101 et seq., and in order to demonstrate Federal leadership in improving safety on our roads and highways and to enhance the efficiency of Federal contracting, it is hereby ordered as follows:

Section 1. Policy. With nearly 3 million civilian employees, the Federal Government can and should demonstrate leadership in reducing the dangers of text messaging while driving. Recent deadly crashes involving drivers distracted by text messaging while behind the wheel highlight a growing danger on our roads. Text messaging causes drivers to take their eyes off the road and at least one hand off the steering wheel, endangering both themselves and others. Every day, Federal employees drive Government-owned, Government-leased, or Government-rented vehicles (collectively, GOV) or privately-owned vehicles (POV) on official Government business, and some Federal employees use Government-supplied electronic devices to text or e-mail while driving. A Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment will help save lives, reduce injuries, and set an example for State and local governments, private employers, and individual drivers. Extending this policy to cover Federal contractors is designed to promote economy and efficiency in Federal procurement. Federal contractors and contractor employees who refrain from the unsafe practice of text messaging while driving in connection with Government business are less likely to experience disruptions to their operations that would adversely impact Federal procurement.

Sec. 2. Text Messaging While Driving by Federal Employees. Federal employees shall not engage in text messaging (a) when driving GOV, or when driving POV while on official Government business, or (b) when using electronic equipment supplied by the Government while driving.

Sec. 3. Scope of Order. (a) All agencies of the executive branch are directed to take appropriate action within the scope of their existing programs to further the policies of this order and to implement section 2 of this order. This includes, but is not limited to, considering new rules and programs, and reevaluating existing programs to prohibit text messaging while driving, and conducting education, awareness, and other outreach for Federal employees about the

safety risks associated with texting while driving. These initiatives should encourage voluntary compliance with the agency's text messaging policy while off duty.

(b) Within 90 days of the date of this order, each agency is directed, consistent with all applicable laws and regulations: (i) to take appropriate measures to implement this order, (ii) to adopt measures to ensure compliance with section 2 of this order, including through appropriate disciplinary actions, and (iii) to notify the Secretary of Transportation of the measures it undertakes hereunder.

(c) Agency heads may exempt from the requirements of this order, in whole or in part, certain employees, devices, or vehicles in their respective agencies that are engaged in or used for protective, law enforcement, or national security responsibilities or on the basis of other emergency conditions.

Sec. 4. Text Messaging While Driving by Government Contractors, Subcontractors, and Recipients and Subrecipients. Each Federal agency, in procurement contracts, grants, and cooperative agreements, and other grants to the extent authorized by applicable statutory authority, entered into after the date of this order, shall encourage contractors, subcontractors, and recipients and subrecipients to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or GOV, or while driving POV when on official Government business or when performing any work for or on behalf of the Government. Agencies should also encourage Federal contractors, subcontractors, and grant recipients and subrecipients as described in this section to conduct initiatives of the type described in section 3(a) of this order.

Sec. 5. Coordination. The Secretary of Transportation, in consultation with the Administrator of General Services and the Director of the Office of Personnel Management, shall provide leadership and guidance to the heads of executive branch agencies to assist them with any action pursuant to this order.

Sec. 6. Definitions.

(a) The term "agency" as used in this order means an executive agency, as defined in 5 U.S.C. 105, except for the Government Accountability Office.

(b) "Texting" or "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of SMS texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

(c) "Driving" means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Sec. 7. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect or alter:

(i) Authority granted by law or Executive Order to an agency, or the head thereof;

(ii) Powers and duties of the heads of the various departments and agencies pursuant to the Highway Safety Act of 1966, as amended, 23 U.S.C. 402 and 403, section 19 of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 668, sections 7901 and 7902 of title 5, United States Code, or the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 101 et seq.;

(iii) Rights, duties, or procedures under the National Labor Relations Act, 29 U.S.C. 151 et seq.; or

(iv) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,

October 1, 2009.



Legislative Operating Committee
February 19, 2020

Curfew Amendments

Submission Date: 2/5/20	Public Meeting: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

Summary: *This item was added to the Active Files List for a technical amendment to be made to remove an erroneous depiction of the Nation's territorial jurisdiction.*

2/5/20 LOC: Motion by Jennifer Webster to add Curfew Law amendments to the active files list for a technical amendment with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

Next Steps:

- Approve the draft and the legislative analysis and defer to a work meeting for further consideration.

Title 3. Health and Public Safety - Chapter 308
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We'll put our arms across to stop them
CURFEW

308.1. Purpose and Policy
308.2. Adoption, Amendment, Repeal
308.3. Definitions
308.4. Jurisdiction

308.5. Curfew
308.6. Enforcement of Curfew Violations
308.7. Penalties of Curfew Violations

308.1. Purpose and Policy

308.1-1. *Purpose.* The purpose of this law is 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.

308.1-2. *Policy.* It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours.

308.2. Adoption, Amendment, Repeal

308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F₂ and amended by resolution BC- - - - -.

308.2-2. 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.

308.2-3. 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.

308.2-4. 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.

308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

308.3. Definitions

308.3-1. 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) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A .

(b) "Family Court" means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(c) "Guardian" means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(d) “Legal custodian” means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(e) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(f) “Minor” means a person age sixteen (16) years old or younger.

(g) “Nation” means the Oneida Nation.

(h) “Parent” means the biological or adoptive parent of a child.

(j) “Public space” means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.

(j) “Relative” means any person connected with a child by blood, marriage or adoption.

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

308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court.* The Family Court has jurisdiction over any action brought under this law.

~~308.4 2. *Personal Jurisdiction.* This law applies to:~~

~~(a) All members of the Nation, individuals eligible for enrollment in the Nation, and members of other federally-recognized tribes.~~

~~(b) Individuals leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation.~~

~~(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:~~

~~(1) By entering into a consensual relationship with the Nation, or with the Nation’s entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or~~

~~(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.~~

~~308.4 3. *Territorial Jurisdiction.* This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.~~

308.5. Curfew

308.5-1. *Curfew Established.* No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.

308.5-2. *Parental Responsibility.* No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.

308.5-3. *Exemptions to Curfew.* A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:

- (a) in the performance of a duty directed by such parent, guardian, or legal custodian;
- (b) engaged in employment or an employment related activity, or traveling to or returning home from employment;
- (c) engaged in interstate travel;
- (d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;
- (e) on the sidewalk in front of his or her home or an adjacent home;
- (f) going to, attending, or returning home from a movie theatre;
- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation;
- (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
- (i) involved in an emergency situation; and/or
- (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

308.6. Enforcement of Curfew Violations

308.6-1. *Enforcement Procedure.* A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal

custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.

(e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.

308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.

308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.

(a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.

(b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

(a) *Fines.* An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.

(1) All fines shall be paid to the Judiciary.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.

(A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.

(3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.

(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.

(b) *Community service.* An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.

(1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.

(2) The Family Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.

(3) The Family Court's community service order shall specify:

(A) how many hours of community service the individual is required to complete;

(B) the time frame in which the hours shall be completed;

(C) how the individual shall obtain approval for his or her community service assignment;

(D) how the individual shall report his or her hours; and

(E) any other information the Family Court determines is relevant.

(c) *Family counseling and/or parenting programs.* An individual may be ordered to participate in a family counseling and/or a parenting program.

(d) Any other penalty as deemed appropriate by the Family Court.

308.7-2. *Staying a Curfew Penalty.* The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

End.

Adopted – BC-10-09-19-F

Amended – BC- - - -

Title 3. Health and Public Safety - Chapter 308

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We'll put our arms across to stop them

CURFEW

308.1. Purpose and Policy

308.2. Adoption, Amendment, Repeal

308.3. Definitions

308.4. Jurisdiction

308.5. Curfew

308.6. Enforcement of Curfew Violations

308.7. Penalties of Curfew Violations

308.1. Purpose and Policy

308.1-1. *Purpose.* The purpose of this law is 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.

308.1-2. *Policy.* It is the policy of the Nation to support all drug use prevention initiatives of the Nation by protecting the health, safety, and welfare of persons through the establishment of a curfew for minors in public spaces within the Reservation during certain hours in an effort to minimize the opportunity for harm to come to minors during those hours.

308.2. Adoption, Amendment, Repeal

308.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-09-19-F, and amended by resolution BC-__-__-__-__.

308.2-2. 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.

308.2-3. 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.

308.2-4. 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.

308.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

308.3. Definitions

308.3-1. 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) "Court of Appeals" means the branch of the Nation's Judiciary delegated the authority of final appeal within the Nation's Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A .

(b) "Family Court" means the branch of the Nation's Judiciary delegated the authority to administer the judicial authorities and responsibilities of the Nation related to the family and/or children, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(c) "Guardian" means the person, department, and/or agency appointed the duty and authority of guardianship of a child by a Court for the purpose of managing and caring for the child. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment

in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(d) “Legal custodian” means any person, department, and/or agency, other than a parent or guardian, to whom legal custody of a child has been granted by Court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(e) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(f) “Minor” means a person age sixteen (16) years old or younger.

(g) “Nation” means the Oneida Nation.

(h) “Parent” means the biological or adoptive parent of a child.

(j) “Public space” means any public streets, highways, roads, alleys, parks, vacant lots, or any public lands.

(j) “Relative” means any person connected with a child by blood, marriage or adoption.

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

308.4. Jurisdiction

304.4-1. *Jurisdiction of the Court.* The Family Court has jurisdiction over any action brought under this law.

308.5. Curfew

308.5-1. *Curfew Established.* No minor shall be on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation, unless the minor is accompanied by a parent, guardian, or legal custodian.

308.5-2. *Parental Responsibility.* No parent, guardian, or legal custodian shall knowingly permit or fail to take action to prevent the minor from being on any public space either on foot or in any vehicle driven or parked, between the hours of 10:00 p.m. and 6:00 a.m. within the boundaries of the Reservation.

308.5-3. *Exemptions to Curfew.* A minor shall not be in violation of the curfew, if at the time of the alleged violation the minor was:

(a) in the performance of a duty directed by such parent, guardian, or legal custodian;

(b) engaged in employment or an employment related activity, or traveling to or returning home from employment;

(c) engaged in interstate travel;

(d) attending an educational, cultural, religious, or recreational activity that was supervised by adults, or traveling to or returning home from such activity;

(e) on the sidewalk in front of his or her home or an adjacent home;

(f) going to, attending, or returning home from a movie theatre;

- (g) engaged in hunting, fishing, or trapping in accordance with the laws, policies, and rules of the Nation;
- (h) exercising rights protected by the Nation's Constitution and the United States Constitution, such as free exercise of religion, freedom of speech, and the right of assembly;
- (i) involved in an emergency situation; and/or
- (j) engaged in any other activity as deemed appropriate by the Oneida Police Department officer.

308.6. Enforcement of Curfew Violations

308.6-1. *Enforcement Procedure.* A suspected violation of curfew shall be enforced by the Oneida Police Department in the following ways:

- (a) A minor who is suspected of violating curfew may be stopped by an Oneida Police Department officer. No person shall assault, obstruct or flee from any Oneida Police Department officer enforcing or attempting to enforce the provisions of this law.
- (b) The Oneida Police Department officer shall ask the minor's name, age, and reason for violating curfew. The minor shall provide the Oneida Police Department officer identification if available. No person shall falsely represent his or her name or age to an Oneida Police Department officer.
- (c) If the Oneida Police Department officer reasonably believes based on the totality of the circumstances that a violation of curfew has occurred and not one of the exemptions in section 308.5-3 apply, the Oneida Police Department officer may take custody of the minor for the purpose of returning such minor to the care and custody of a parent, guardian, or legal custodian.
- (d) Once the Oneida Police Department officer has taken the minor into his or her custody, the minor shall provide the Oneida Police Department officer with contact information for his or her parent, guardian, or legal custodian. The Oneida Police Department officer shall contact the minor's parent, guardian, or legal custodian to come and pick up the minor and take the minor into his or her care and custody. If the minor's parent, guardian, or legal custodian is unable to pick the minor up, then the Oneida Police Department officer may bring the minor home to release the minor to the custody and care of the minor's parent, guardian, or legal custodian.
- (e) If the Oneida Police Department officer is unable to contact the minor's parent, guardian, or legal custodian after reasonable efforts are made, the Oneida Police Department officer shall attempt to locate an adult relative or other responsible adult willing and able to accept the care and custody of the minor, and may release the minor into the care and custody of such person.

308.6-2. *Warning.* The first time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer shall provide the minor and the minor's parent, guardian, or legal custodian a warning and advise the minor and parent, guardian, or legal custodian of the provisions of this law and that any subsequent curfew violations may result in the issuance of a citation and the imposition of a penalty.

308.6-3. *Issuance of a Citation.* Any subsequent time a minor is held in custody by an Oneida Police Department officer for a curfew violation the Oneida Police Department officer may issue a citation to the minor and the minor's parent, guardian, or legal custodian.

- (a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Family Court.

(b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(c) All citations for violations of this law require a mandatory appearance at the citation pre-hearing by the minor and his or her parent, guardian, or legal custodian.

308.7. Penalties of Curfew Violations

308.7-1. Upon a finding by the Family Court that a violation of this law has occurred, the minor and/or the minor's parent, guardian, or legal custodian may be subject to the following penalties:

(a) *Fines*. An individual may be ordered to pay a fine as a result of a violation of this law. The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine schedule which sets forth specific fine amounts for violations of this law.

(1) All fines shall be paid to the Judiciary.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later.

(A) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Family Court.

(3) If an individual does not pay his or her fine the Family Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process or any other collection process available to the Family Court.

(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.

(b) *Community service*. An individual may be ordered to perform community service. Community service can be used in lieu of, or in addition to, a fine.

(1) All community service assignments shall be approved by the Family Court. The Family Court shall give preference to culturally relevant community service assignments and/or community service assignments that focus on the betterment of the individual's community.

(2) The Family Court shall provide the individual a written statement of the terms of the community service order, and a statement that the community service order is monitored.

(3) The Family Court's community service order shall specify:

(A) how many hours of community service the individual is required to complete;

(B) the time frame in which the hours shall be completed;

(C) how the individual shall obtain approval for his or her community service assignment;

(D) how the individual shall report his or her hours; and

(E) any other information the Family Court determines is relevant.

(c) *Family counseling and/or parenting programs*. An individual may be ordered to participate in a family counseling and/or a parenting program.

(d) Any other penalty as deemed appropriate by the Family Court.

308.7-2. *Staying a Curfew Penalty*. The Family Court may stay the enforcement of a penalty issued as a result of a curfew violation for a period of time to be determined by the Family Court. If the individual maintains compliance with the law during the time period in which the penalty is stayed, then the Family Court may dismiss the citation. If the individual commits another violation of the law during the time period in which the penalty is stayed, then the penalty shall go into effect.

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179 *End.*

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181 Adopted – BC-10-09-19-F

182 Amended – BC-__-__-__-__



t<yethin<tshaw^late> kayanl^sla>
we'll put our arms across to stop them

AMENDMENTS TO CURFEW LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	Technical corrections to remove inaccurate or duplicative references to the Nation's territorial and personal jurisdiction.		
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].		
Affected Entities	Oneida Police Department and Oneida Judiciary.		
Related Legislation	Judiciary law.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Curfew law was first adopted by the Oneida Business Committee on October 9, 2019.
- B. Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Curfew law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Curfew law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Law Office.
- B. The following laws were reviewed in the drafting of this analysis: Judiciary law, Domestic Animals law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence.

SECTION 4. PROCESS

- A. The amendments to this law have followed the process set forth in the Legislative Procedures Act (LPA).
- B. The LOC added the amendments to the Active Files List on February 5, 2020.

SECTION 5. CONTENTS OF THE LEGISLATION

A. Deletion of Territorial Jurisdiction Section. These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Curfew law incorrectly states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.

- *Territorial Jurisdiction.* The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
- *Conclusion.* Since the reference included in the Curfew law is inaccurate, unnecessary and already located in the Nation's Constitution and Judiciary law, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction as Referenced in Constitution and Laws of the Nation.

<i>Deleted Language in Current Curfew law</i>	<i>Language in Constitution of the Oneida Nation</i>	<i>Language in Judiciary law</i>
This law extends <u>within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation</u> [3 O.C. 308.4-3].	The jurisdiction of the Oneida Nation shall extend <u>to the territory within the present confines of the Oneida Reservation</u> 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 [Article 1 – Territory]	"The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin." [8 O.C. 801.5-3].

B. Deletion of Personal Jurisdiction Section. These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.

- *Personal Jurisdiction.* The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any "non-Indians" who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
- *Conclusion.* Since the Nation's personal jurisdiction is already provided for in the Judiciary law, it has been deleted from this law for clarity.

Table 2. Comparison: Personal Jurisdiction in laws of the Nation.

<i>Deleted Language in Current Curfew law</i>	<i>Language in Judiciary law</i>
<i>Personal Jurisdiction.</i> This law applies to: (a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes; (b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held	<i>Personal Jurisdiction</i> (a) Indians. The Trial Court shall have jurisdiction over all Indians. 8 O.C. 801 – Page 5 (b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law. (1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b)

<p>in trust on behalf of the Nation or individual members of the Nation; and (c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:</p> <p>(1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or (2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].</p>	<p>above, a person shall have consented to the jurisdiction of the Trial Court by:</p> <p>(A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or (B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [8 O.C. 801.5-4].</p>
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SECTION 6. EXISTING LEGISLATION

A. *References to Territorial Jurisdiction in Other Oneida laws.* The following laws also include references to the Nation's territorial jurisdiction.

- Domestic Animals [3 O.C. 304.4-2]
 - *Conclusion.* The reference to territorial jurisdiction in the Domestic Animals law is also incorrect and will need to be updated or deleted. The LOC has added the Domestic Animals law to Active Files List for amendments.
- Judiciary [8 O.C. 801.5-3]
 - *Conclusion.* The reference to territorial jurisdiction in the Judiciary law is correct and no amendments are necessary.
- Oneida Nation Gaming Ordinance (ONGO) [5 O.C. 501.3-1]
 - *Conclusion.* The reference to territorial jurisdiction in ONGO is correct and no amendments are necessary.
- Tribal Environmental Response [4 O.C. 401.4-2]
 - *Conclusion.* The reference to territorial jurisdiction in the Tribal Environmental Response law is correct and no amendments are necessary.
- Judiciary Rules of Evidence [8 O.C. 804.5-2(a)].
 - *Conclusion.* The reference to territorial jurisdiction in the Judiciary Rules of Evidence is correct and no amendments are necessary.

SECTION 7. OTHER CONSIDERATIONS

A. *Fiscal Impact.* A fiscal impact statement has not yet been requested.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

- 71 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
72 Committee and may be prepared by any agency who may receive funding if the legislation is
73 enacted; who may administer a program if the legislation is enacted; who may have financial
74 information concerning the subject matter of the legislation; or by the Finance Office, upon request
75 of the Legislative Operating Committee [*1 O.C. 109.6-1(a) and (b)*].

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Legislative Operating Committee
February 19, 2020

Domestic Animals Amendments

Submission Date: 2/5/20	Public Meeting: n/a
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a

Summary: *This item was added to the Active Files List for a technical amendment to be made to remove an erroneous depiction of the Nation's territorial jurisdiction.*

2/5/20 LOC: Motion by Daniel Guzman King to add Domestic Animals amendments to the active files list for a technical amendment with Ernest Stevens III as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Approve the draft and the legislative analysis and defer to a work meeting for further consideration.

Title 3. Health and Public Safety - Chapter 304

~~DOMESTIC ANIMALS~~

Kátse?na Olihwa'ke

matters concerning the pet animals

DOMESTIC ANIMALS

304.1. Purpose and Policy
304.2. Adoption, Amendment, Conflicts
304.3. Definitions
~~304.4. Jurisdiction~~
~~304.5. Authority~~
~~304.6. Treatment of Animals~~
~~304.7. Dogs and Cats~~
~~304.8. Livestock~~
~~304.9. Hens~~
~~304.10. Prohibited Animals~~
~~304.11. Dangerous Animals~~

~~304.4. Authority~~
~~304.5. Treatment of Animals~~
~~304.6. Dogs and Cats~~
~~304.7. Livestock~~
~~304.8. Hens~~
~~304.9. Prohibited Animals~~
~~304.10. Dangerous Animals~~
~~304.11. Owner Liability~~
~~304.12. Enforcement of Violations~~

304.1. Purpose and Policy

304.1-1. *Purpose.* The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, and
- (c) regulating the types of animals which may be kept as domestic animals.

304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, ~~and BC-05-08-19-C,~~ and BC- - -

304.2-2. 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.

304.2-3. 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.

304.2-4. 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.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

304.3. Definitions

304.3-1. 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) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the court of final appeal within the Nation.
- (b) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected

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or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.

(c) “Fine” means a monetary punishment issued to a person violating this law.

(d) “Hen” means a female chicken of the order and family gallus gallus domesticus.

(e) “Husbandry practices” means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.

(f) “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 to administer the judicial authorities and responsibilities of the Nation.

(g) “Livestock” means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.

(h) “Nation” means the Oneida Nation.

(i) “Owner” means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.

(j) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.

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

(l) “Residential household” means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.

(m) “Tethering” means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.

(n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

(o) “Quarantine” means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

304.4. Authority Jurisdiction

304.4-1. ~~Personal Jurisdiction. This law applies to:~~

~~(a) All members of the Nation; the Nation’s entities and corporations; and members of other federally recognized tribes;~~

~~(b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and~~

~~(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the~~

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jurisdiction of the Nation:

(1) ~~By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or~~

(2) ~~By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.~~

~~304.4 2. Territorial Jurisdiction. This law extends within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation.~~

~~304.5. Authority~~

~~304.5 1. General.~~ This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.

(a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.10-2.

~~304.5 2. Authority of the Oneida Police Department and Conservation Department.~~ Oneida Police Officers and Conservation Wardens shall have the authority to:

(a) investigate complaints involving domestic animals;

(b) enforce the provisions of this law through appropriate means, including but not limited to:

(1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;

(2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and

(3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.

(A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.

~~304.5 3. Fine, Penalty, and Licensing Fee Schedule.~~ The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.

~~304.5 4. Disease Investigation and Quarantine.~~ The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.

~~304.5 5. Issuance of Licenses.~~ The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

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304.65. Treatment of Animals

304.65-1. *Food and Water.* An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.

304.65-2. *Shelter.* An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

(a) *Minimum indoor standards of shelter.* Minimum standards for indoor shelter include the following:

(1) *Temperature.* The ambient temperature of the indoor shelter shall be compatible with the health of the animal.

(2) *Ventilation.* Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

(b) *Minimum outdoor standards of shelter.* Minimum standards for outdoor shelter include the following:

(1) *Shelter from Sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.

(2) *Climatic Conditions.* Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

(3) *Adverse Weather.* If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.

(c) *Space Standards.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(1) *Dog Kennels.* Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

(A) *Dog Size Between One and Thirty-Five Pounds.* A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.

(B) *Dog Size Between Thirty-Six and Seventy-Five Pounds.* A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.

(C) *Dog Size Seventy-Six Pounds or Greater.* A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

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(d) *Sanitation Standards.* An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.

(e) *Shelter Exception for Livestock.* In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

304.65-3. *Tethering.* If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:

(a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso;

(1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.

(b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;

(c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;

(d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;

(e) the tethered animal is not sick, injured, or nursing;

(f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and

(g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.

304.65-4. *Mistreatment of Animals.* No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:

(a) normal and accepted veterinary and/or care practices; or

(b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.

304.65-5. *Mandatory Reporting.* An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

304.7. Dogs and Cats

304.76-1. *License Required.* An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.

(a) *License Period.* The license year shall commence on January 1st and end on December 31st of every year.

(b) *License Eligibility.* To be eligible for a license, the owner shall provide:

(1) the licensing fee; and

(2) proof of current rabies vaccination.

(c) *Placement of License Tag.* Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's

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collar and shall require the animal wear the collar at all times.

(1) *Exception.* A dog or cat shall not be required to wear the collar if the dog or cat is:

(A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;

(B) within the owner's residence and/or securely confined in a fenced area; and/or

(C) being shown during a competition.

304.76-2. *Rabies Vaccinations Required.* An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.

304.76-3. *Limit on the Number of Dogs and Cats.* An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.

(a) *Exception.* The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:

(1) is eligible for any grandfather provisions included in this law's adopting resolution;

(2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;

(3) resides on property zoned agricultural; and/or

(4) obtains a permit for the additional dog or cat.

(b) *Permit for Additional Dogs or Cats.* A person may keep more than two (2) dogs or three cats (3) in a single residential household if the owner obtains a permit from the Environmental, Health, Safety, and Land Division for the additional animal. The application for the permit must be signed by the owner and contain the signature of the homeowner of the residential household if the homeowner is not the applicant.

(1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) or more nuisance complaints against the residential household within one (1) calendar year caused by, or related to, the number of dogs or cats housed on the premises.

(2) If two (2) or more nuisance complaints are received against the residential household due to the number of dogs or cats housed on the premises, the owner shall reduce the number of animals within thirty (30) days.

304.76-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

(a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.

(b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with

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identification tags or license tag, the owner shall be notified as soon as reasonably possible.
304.76-5. *Nuisance*. An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

- (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or
- (b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.

304.76-6. *Investigations for Suspected Animal Bites*. The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.

(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

- (1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.
- (2) Ensure all information provided is correct.
- (3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.
- (4) If the cat or dog has current rabies vaccinations, order the owner to:
 - (A) Quarantine the animal for ten (10) days; and
 - (B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day.
- (5) If the cat or dog does not have current rabies vaccination, order the owner to:
 - (A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered, the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day; or
 - (B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

- (1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.
- (2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

304.76-7. *District Quarantine*. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida

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Conservation Warden, and/or a Public Health Officer.

(a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.

(b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

304.87. Livestock

304.87-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.

304.87-2. *Limitations on Livestock.* Livestock kept on land zoned residential are subject to the following limitations:

(a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.

(b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.

(c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.

304.87-3. *Liability for Damage Caused by Livestock at Large.* Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

304.98. Hens

304.98-1. *Hen Permit.* An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.

304.98-2. *Prohibition of Roosters.* An owner shall not keep a rooster on land zoned residential.

304.98-3. *Limit on the Number of Hens Allowed.* The number of hens an owner may keep is dependent on the size of the residential lot.

(a) An owner may keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.

(b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.

304.98-4. *Standards for Keeping Hens.* An owner shall keep hens in the following manner:

(a) No person shall keep a hen over eight (8) weeks of age in a principal structure.

(b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.

(c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.

(d) No accessory structure used to keep hens shall be located in a front or side yard.

(e) All hens shall be kept and handled in a sanitary manner to prevent the spread of

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communicable diseases amongst birds or to humans.

304.98-5. *Prohibition of Nuisance Hens*. No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

304.109. Prohibited Animals

304.109-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal.

304.109-2. *Prohibited Animals*. The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.

304.109-3. *Prohibited Animals Exception*. The prohibition of certain animals shall not apply to:

(a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.

(b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.

304.109-4. *Prohibited Animal Permit*. The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:

(a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

(b) the animal is maintained in quarters so constructed as to prevent its escape.

304.109-5. *Release of Prohibited Animals*. The Environmental, Health, Safety, and Land Division, may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.

304.109-6. *Seizure of Prohibited Animals*. An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.

(a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.

(b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.

(c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.

304.109-7. *Notice of Release or Escape*. The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.

304.10-8. *Forfeiture of the Prohibited Animal*. An owner found in violation of this section shall

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forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

304.1110. Dangerous Animals

304.1110-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:

- (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
- (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
- (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
- (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.

304.1110-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.11-1.

(a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.

(b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.

(c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.

304.1110-3. *Contesting a Dangerous Animal Determination*. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

(a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:

- (1) defend its owner or another person from an attack by a person or animal;
- (2) protect its young or another animal;
- (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
- (4) defend its owner's property against trespassers.

(b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:

- (1) *Leash and Muzzle*. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than

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four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

(2) *Confinement.* Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(3) *Signs.* The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(4) *Notification.* The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police

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Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.10-5. Appeal of the Trial Court's Decision. An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

604.10-6. Dangerous Animal Exception. The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

304.1211. Owner Liability

304.1211-1. An owner shall be liable for damages caused by his or her domestic animal.

(a) *First Offense.* The owner is liable for the full amount of damages caused by the domestic animal.

(b) *Subsequent Offenses.* The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

304.1312. Enforcement of Violations

304.1312-1. Citations. ~~Citations~~A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

~~304.13 2. Citation Pre Hearing. All citations shall include a pre-hearing date with the Trial Court which shall be set for the next scheduled monthly pre-hearing date that is at least thirty (30) days after the citation was issued.~~(a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.11.

~~(a) Persons wishing to contest a citation shall appear at the prehearing, at which time the Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued.~~

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

~~304.13 3. Citation Hearing. The Trial Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued.~~

~~304.13 4. Appeals of the Trial Court's Determinations. Any person wishing to contest the determination of the Trial Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.~~

~~304.13 5. Fines. All fines~~**304.12-2. Fines. All fines as a result of a citation** shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.

~~(a) 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.~~

~~(1) The ninety (90) day deadline for payment of fines may be extended if an alternative payment plan is approved by the Trial Court.~~

~~(b)~~**(a)** 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.

End.

Adopted - BC-03-13-96-B

Amended – BC-06-22-11-G

Amended – BC-06-28-17-B

Amended – BC-05-08-19-C

Amended – BC- - - -

Title 3. Health and Public Safety - Chapter 304
Kátse?na Olihwa'ke
matters concerning the pet animals
DOMESTIC ANIMALS

304.1. Purpose and Policy
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304.12. Enforcement of Violations

304.1. Purpose and Policy

304.1-1. *Purpose.* The purpose of this law is to:

- (a) protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) set minimum standards for the treatment of animals;
- (c) prohibit certain species of animals from being brought onto the Reservation;
- (d) regulate the keeping of livestock on lots zoned residential within the Reservation; and
- (e) establish consequences for damages caused by domestic animals.

304.1-2. *Policy.* It is the policy of the Nation to protect the health, safety, and welfare of the community by:

- (a) requiring certain basic measures to prevent the spread of disease carried by domestic animals;
- (b) establishing requirements for licensing domestic animals, and
- (c) regulating the types of animals which may be kept as domestic animals.

304.2. Adoption, Amendment, Repeal

304.2-1. This law was adopted by Oneida Business Committee by resolution BC-03-13-96-B and amended by resolutions BC-06-22-11-G, BC-06-28-17-B, BC-05-08-19-C, and BC-__-__-__.

304.2-2. 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.

304.2-3. 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.

304.2-4. 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.

304.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

304.3. Definitions

304.3-1. 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) "Court of Appeals" means the Nation's Judiciary's Court of Appeals, which is the court of final appeal within the Nation.

(b) "District Quarantine" means a rabid or otherwise diseased domestic animal is suspected or known to be within a discernible area and all such animals reasonably suspected of being infected are subject to enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animals are tested for diseases, including rabies.

(c) "Fine" means a monetary punishment issued to a person violating this law.

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(d) “Hen” means a female chicken of the order and family gallus gallus domesticus.

(e) “Husbandry practices” means accepted manner of managing resources, cultivating, and caring for animals including the breeding, feeding, and tending of the animals.

(f) “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 to administer the judicial authorities and responsibilities of the Nation.

(g) “Livestock” means any equine (i.e. horse, donkey, etc.), bovine (i.e. cow, steer, heifer, etc.), sheep, goat, pig.

(h) “Nation” means the Oneida Nation.

(i) “Owner” means any person who owns, harbors, keeps, controls or acts as a caretaker for an animal. Absent evidence of alternative adult ownership, this law presumes that domestic animals are owned by the adult homeowner or renter.

(j) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and may include, but is not limited to, the confiscation of wildlife with return of the same at the discretion of the Trial Court and restitution.

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

(l) “Residential household” means a residential lot, except for those residential lots designed as multi-family lots, in which each family unit within the lot constitutes a separate household.

(m) “Tethering” means the act of fastening an animal to a stationary object while unattended so that the animal can only range within a set radius. Tethering does not include the use of a leash to walk an animal.

(n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

(o) “Quarantine” means the act of keeping an animal in enforced isolation for a period of time to limit or prevent the spread of disease or infection and during which time said animal is tested for diseases, including rabies.

304.4. Authority

304.4-1. *General.* This law governs the keeping of all domestic animals which are commonly owned as household pets. Domestic animals include, but are not limited to, dogs, cats, ferrets, rabbits, guinea pigs, turtles, birds, pigeons, hamsters, non-venomous reptiles, amphibians, and arachnids.

(a) Domestic animals do not include prohibited animals as identified by the prohibited animals resolution provided for in section 304.10-2.

304.4-2. *Authority of the Oneida Police Department and Conservation Department.* Oneida Police Officers and Conservation Wardens shall have the authority to:

(a) investigate complaints involving domestic animals;

(b) enforce the provisions of this law through appropriate means, including but not limited to:

(1) seizing any animal that is taken, employed, used, or possessed in violation of this law and/or mistreated, rabid or otherwise in danger or dangerous;

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(2) issuing citations consistent with the fine and penalty schedule developed in accordance with this law; and

(3) using force, up to and including lethal force, to stop an immediate threat to public safety caused by an animal.

(A) Where lethal force is used, such execution shall be conducted in as humane manner as possible and, to the extent feasible, avoids damage to the animal's head for the purpose of rabies testing.

304.4-3. *Fine, Penalty, and Licensing Fee Schedule.* The Environmental, Health, Safety, and Land Division and the Environmental Resource Board are hereby delegated joint authority to develop a fine, penalty, and licensing fee schedule. The fine, penalty, and licensing fee schedule shall be adopted by the Oneida Business Committee through resolution.

304.4-4. *Disease Investigation and Quarantine.* The Environmental, Health, Safety, and Land Division, the Emergency Management Coordinator, and the Comprehensive Health Division are hereby delegated joint authority to establish standard operating procedures related to disease investigations and quarantines.

304.4-5. *Issuance of Licenses.* The Environmental, Health, Safety, and Land Division shall make all decisions related to the issuance of a license and/or permit in accordance with this law, unless otherwise noted.

304.5. Treatment of Animals

304.5-1. *Food and Water.* An owner shall provide an animal with a daily supply of food and water sufficient to maintain the animal in good health.

304.5-2. *Shelter.* An owner shall meet the minimum standards for indoor and outdoor shelter for an animal. All shelter shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

(a) *Minimum indoor standards of shelter.* Minimum standards for indoor shelter include the following:

(1) *Temperature.* The ambient temperature of the indoor shelter shall be compatible with the health of the animal.

(2) *Ventilation.* Indoor shelter facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

(b) *Minimum outdoor standards of shelter.* Minimum standards for outdoor shelter include the following:

(1) *Shelter from Sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. Caged does not include farm fencing used to confine livestock.

(2) *Climatic Conditions.* Natural or artificial shelter appropriate to the local climatic conditions for the animal concerned shall be provided as necessary for the health of the animal.

(3) *Adverse Weather.* If an animal is tied or confined unattended outdoors under weather conditions which adversely affect the health of the animal, a weather appropriate shelter of suitable size to accommodate the animal shall be provided.

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(c) *Space Standards.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

(1) *Dog Kennels.* Dog kennels shall meet the following space requirements where, if there are multiple dogs in the same kennel, the base kennel space requirement is based on the size of the largest dog and the additional kennel space requirements are based on the size of each additional dog kept in the kennel:

(A) *Dog Size Between One and Thirty-Five Pounds.* A dog that weighs between one (1) and thirty-five (35) pounds shall have a required base kennel space of sixty (60) square feet. Required additional kennel space per additional dog of this size is twelve (12) square feet.

(B) *Dog Size Between Thirty-Six and Seventy-Five Pounds.* A dog that weighs between thirty-six (36) and seventy-five (75) pounds shall have a required base kennel space of eighty (80) square feet. Required additional kennel space per additional dog of this size is eighteen (18) square feet.

(C) *Dog Size Seventy-Six Pounds or Greater.* A dog that weighs seventy-six (76) pounds or more shall have a required base kennel space of one hundred (100) square feet. Required additional kennel space per additional dog of this size is twenty-four (24) square feet.

(d) *Sanitation Standards.* An owner shall meet the minimum standards of sanitation for both indoor and outdoor shelter. Minimum sanitation standards require waste matter from the animal to be removed within twenty-four (24) hours of its deposit.

(e) *Shelter Exception for Livestock.* In the case of livestock kept on farms on land zoned agricultural, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices.

304.5-3. *Tethering.* If a kennel or enclosed yard is not available, an owner may tether an unsupervised animal as long as the owner meets the following conditions:

(a) the tether is connected to the animal with a buckle type collar or body harness made of nylon or leather not less than one inch (1") in width and at least two inches (2") greater in diameter than the animal's neck or torso;

(1) The use of a choke collar, prong collar head harness, or other similar type of head harness or collar shall be prohibited for the use of tethering.

(b) the tether is at least twelve feet (12') long and allows the animal to move in all directions unimpeded;

(c) the total weight of the tether does not exceed ten percent (10%) of the animal's body weight;

(d) the animal is tethered so as to prevent injury, strangulation, or entanglement, and allows the animal access to water and shelter;

(e) the tethered animal is not sick, injured, or nursing;

(f) the animal is not tethered on any vacant property or land or with an unoccupied dwelling; and

(g) the animal is not tethered in a manner that allows the animal to cross onto public space or property of others.

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304.5-4. *Mistreatment of Animals*. No person shall treat any animal in a manner which causes harm, injury or death. This section does not apply to:

- (a) normal and accepted veterinary and/or care practices; or
- (b) teaching, research or experimentation conducted at a facility regulated under federal or applicable state law.

304.5-5. *Mandatory Reporting*. An employee of the Nation shall report any animal mistreatment witnessed during the regular course of his or her employment with the Nation to the Oneida Police Department and any other appropriate entity.

304.7. Dogs and Cats

304.6-1. *License Required*. An owner shall be required to obtain a license for any dog or cat five (5) months of age or older on an annual basis.

(a) *License Period*. The license year shall commence on January 1st and end on December 31st of every year.

(b) *License Eligibility*. To be eligible for a license, the owner shall provide:

- (1) the licensing fee; and
- (2) proof of current rabies vaccination.

(c) *Placement of License Tag*. Upon the receipt of a license the owner shall be provided a license tag for the dog or cat. The owner shall securely attach the license tag to the animal's collar and shall require the animal wear the collar at all times.

(1) *Exception*. A dog or cat shall not be required to wear the collar if the dog or cat is:

- (A) hunting or actively involved in herding or controlling livestock if the animal is under control of its owner;
- (B) within the owner's residence and/or securely confined in a fenced area; and/or
- (C) being shown during a competition.

304.6-2. *Rabies Vaccinations Required*. An owner shall be required to obtain a rabies vaccination for any dog or cat five (5) months of age or older.

304.6-3. *Limit on the Number of Dogs and Cats*. An individual may keep no more than two (2) dogs or three (3) cats; and a total of no more than four (4) dogs and cats combined; in a single residential household.

(a) *Exception*. The limit on the number of dogs and cats a person may keep or possess does not apply to a person who:

- (1) is eligible for any grandfather provisions included in this law's adopting resolution;
- (2) keeps or possesses a litter of pups or kittens, or a portion of a litter, for a period not exceeding five (5) months from birth;
- (3) resides on property zoned agricultural; and/or
- (4) obtains a permit for the additional dog or cat.

(b) *Permit for Additional Dogs or Cats*. A person may keep more than two (2) dogs or three cats (3) in a single residential household if the owner obtains a permit from the Environmental, Health, Safety, and Land Division for the additional animal. The

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application for the permit must be signed by the owner and contain the signature of the homeowner of the residential household if the homeowner is not the applicant.

(1) By seeking a permit for an additional dog or cat the owner agrees that he or she shall reduce the number of licensed dogs or cats on the premises if there are two (2) or more nuisance complaints against the residential household within one (1) calendar year caused by, or related to, the number of dogs or cats housed on the premises.

(2) If two (2) or more nuisance complaints are received against the residential household due to the number of dogs or cats housed on the premises, the owner shall reduce the number of animals within thirty (30) days.

304.6-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

(a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.

(b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.

304.6-5. *Nuisance.* An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

(a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or

(b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.

304.6-6. *Investigations for Suspected Animal Bites.* The owner shall notify the Oneida Police Department in the event the owner's cat or dog bites a human or another domestic animal.

(a) The responding Oneida Police Officer or Oneida Conservation Warden shall:

(1) Ascertain whether the domestic animal is properly licensed and has current vaccinations.

(2) Ensure all information provided is correct.

(3) Contact the Environmental, Health, Safety, and Land Division to provide notification of the domestic animal bite.

(4) If the cat or dog has current rabies vaccinations, order the owner to:

(A) Quarantine the animal for ten (10) days; and

(B) Present the animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day.

(5) If the cat or dog does not have current rabies vaccination, order the owner to:

(A) Quarantine the animal for ten (10) days or deliver the animal to an isolation facility at the owner's expense. If a home quarantine is ordered,

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the owner shall present the domestic animal for examination by a veterinarian within twenty-four (24) hours of the bite, on the last day of quarantine and on one (1) day in between the first twenty-four (24) hours and the tenth (10th) day; or

(B) Euthanize the animal and send the specimen for analysis at the owner's expense, if the animal has exhibited any signs of rabies.

(b) Upon expiration of a quarantine period, a veterinarian may extend the quarantine period. Upon expiration of all quarantine periods, if the veterinarian certifies that the animal has not exhibited any signs of rabies, the animal may be released from quarantine.

(c) If the veterinarian certifies that the animal has exhibited any signs of rabies the following shall occur:

(1) If the animal has current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis, to be paid for by the Nation.

(2) If the animal does not have current rabies vaccinations, the Oneida Police Officer or Oneida Conservation Warden may order the animal to be euthanized and send the specimen for analysis at the owner's expense.

304.6-7. District Quarantine. A district quarantine may be initiated by staff designated by the Environmental, Health, Safety, and Land Division, an Oneida Police Officer, an Oneida Conservation Warden, and/or a Public Health Officer.

(a) If an area is subject to a district quarantine for rabies, all dogs and cats within the district shall be kept securely confined, tied, leashed or muzzled. Any dog or cat not confined, tied, leashed or muzzled is a public nuisance and may be impounded. All Oneida Police Officers and Oneida Conservation Wardens shall cooperate in the enforcement of the quarantine.

(b) An animal that is immunized against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of this section.

304.7. Livestock

304.7-1. An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep livestock on land zoned residential.

304.7-2. Limitations on Livestock. Livestock kept on land zoned residential are subject to the following limitations:

(a) One (1) large animal per one (1) acre. Examples of large animals include, but are not limited to, horses, cows, and pigs.

(b) One (1) small animal per one-half (½) acre. Examples of small animals include, but are not limited to, goats, and sheep.

(c) One (1) goat or sheep per recorded lot under one-half (½) acre when setback requirements can be met.

304.7-3. Liability for Damage Caused by Livestock at Large. Any person whose livestock escapes from its normal confined area and becomes at large is responsible for any and all damage to persons and property caused by such livestock while it is away from its normal confined area.

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304.8. Hens

304.8-1. *Hen Permit.* An owner shall obtain a conditional use permit from the Oneida Land Commission in order to keep hens on land zoned residential.

304.8-2. *Prohibition of Roosters.* An owner shall not keep a rooster on land zoned residential.

304.8-3. *Limit on the Number of Hens Allowed.* The number of hens an owner may keep is dependent on the size of the residential lot.

(a) An owner may to keep up to six (6) hens on a residential lot that is smaller than two (2) acres in size.

(b) An owner may keep up to twelve (12) hens on a residential lot two (2) acres in size or larger.

304.8-4. *Standards for Keeping Hens.* An owner shall keep hens in the following manner:

(a) No person shall keep a hen over eight (8) weeks of age in a principal structure.

(b) Hens shall be kept within a structure such as a coop or fenced area used exclusively to keep hens and shall provide at least four (4) square feet of space per hen.

(c) No accessory structure used to keep hens shall be located within twenty-five feet (25') of any principal structure which is not owned by the person permitted to keep the hens.

(d) No accessory structure used to keep hens shall be located in a front or side yard.

(e) All hens shall be kept and handled in a sanitary manner to prevent the spread of communicable diseases amongst birds or to humans.

304.8-5. *Prohibition of Nuisance Hens.* No owner may keep hens that cause any other nuisance associated with unhealthy conditions, create a public health threat, or otherwise interfere with the normal use of property or enjoyment of life by humans or animals.

304.9. Prohibited Animals

304.9-1. No person shall bring into, keep, harbor, maintain, offer for sale or barter, act as a custodian, have custody or control of, or release to the wild on the Reservation a prohibited animal.

304.9-2. *Prohibited Animals.* The Oneida Business Committee shall provide through the adoption of a resolution which orders and families of animals, whether bred in the wild or in captivity, and any or all hybrids are prohibited from being on the Reservation.

304.9-3. *Prohibited Animals Exception.* The prohibition of certain animals shall not apply to:

(a) Individuals who are eligible for any grandfather provisions included in this law's adopting resolution.

(b) A zoological park and/or sanctuary, an educational or medical institution, and/or a specially trained entertainment organization who receives a permit from the Environmental, Health, Safety, and Land Division to own, harbor or possess the prohibited animal.

304.9-4. *Prohibited Animal Permit.* The Environmental, Health, Safety, and Land Division may issue a prohibited animal permit if:

(a) the animal and animal quarters are kept in a clean and sanitary condition and maintained to eliminate objectionable odors; and

(b) the animal is maintained in quarters so constructed as to prevent its escape.

304.9-5. *Release of Prohibited Animals.* The Environmental, Health, Safety, and Land Division,

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may approve a wildlife refuge and/or sanctuary to release prohibited animals within the Reservation without applying for and receiving a prohibited animal permit.

304.9-6. *Seizure of Prohibited Animals.* An unpermitted prohibited animal may be seized by the Oneida Police Department and/or the Oneida Conservation Department.

(a) A prohibited animal that is seized shall be held by the Oneida Police Department, the Oneida Conservation Department, or its designee until it can be determined if the animal is an endangered or threatened species.

(b) At any time after such identification, the Oneida Police Department and/or Oneida Conservation Department may seek an order from the Trial Court as to the care, custody and control of the animal.

(c) If the Trial Court finds the animal has been taken, employed, used or possessed in violation of this section, the owner shall be responsible for reimbursing the Oneida Police Department and/or the Oneida Conservation Department for the cost of holding the animal and any costs incurred in identifying the animal.

304.9-7. *Notice of Release or Escape.* The owner of a prohibited animal that has been released or escapes shall immediately notify the Oneida Police Department and/or the Oneida Conservation Department and shall be liable for any cost of recapture of the animal.

304.10-8. *Forfeiture of the Prohibited Animal.* An owner found in violation of this section shall forfeit or surrender the prohibited animal to the Oneida Police Department, Oneida Conservation Department, or designee. Upon such forfeiture or surrender, the Trial Court may direct destruction or transfer of the animal to a qualified zoological, educational, or scientific institution or qualified private propagator for safekeeping, with costs assessed against the owner.

304.10. Dangerous Animals

304.10-1. *Dangerous Animals.* No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:

(a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;

(b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;

(c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or

(d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.

304.10-2. *Dangerous Animal Determination.* An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.11-1.

(a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.

(b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.

(c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days.

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304.10-3. *Contesting a Dangerous Animal Determination.* If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

(a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:

(1) defend its owner or another person from an attack by a person or animal;

(2) protect its young or another animal;

(3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or

(4) defend its owner's property against trespassers.

(b) Pending the outcome of the hearing, the animal shall be securely confined in a humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:

(1) *Leash and Muzzle.* No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

(2) *Confinement.* Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(3) *Signs.* The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(4) *Notification.* The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

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(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

304.10-5. *Appeal of the Trial Court's Decision.* An appeal of the Trial Court's decision on the dangerous animal determination may be appealed to the Nation's Court of Appeals.

(a) An appeal shall be submitted to the Court of Appeals within five (5) business days from the date of the Trial Court's decision.

(b) Upon an appeal to the Court of Appeals, the order to remove the animal from the Reservation or any order to destroy an animal is stayed pending the outcome of the appeal.

604.10-6. *Dangerous Animal Exception.* The Trial Court may provide an exception to the dangerous animal provisions of this law for a law enforcement or military animal upon presentation by the animal's owner or handler of a satisfactory arrangement for safe keeping of the animal.

304.11. Owner Liability

304.11-1. An owner shall be liable for damages caused by his or her domestic animal.

(a) *First Offense.* The owner is liable for the full amount of damages caused by the

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domestic animal.

(b) *Subsequent Offenses*. The owner shall be liable for two (2) times the full amount of damages caused by the domestic animal if the owner knew or should have known that the domestic animal previously caused damages.

304.12. Enforcement of Violations

304.12-1. *Citations*. A citation for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional orders in accordance with the fine, penalty, and licensing fee schedule. A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(a) The act of contesting a dangerous animal determination shall follow the process contained in section 304.11.

304.12-2. *Fines*. All fines as a result of a citation shall be paid to the Judiciary. Money received from fines shall be contributed to the General Fund.

(a) 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.

End.

Adopted - BC-03-13-96-B

Amended – BC-06-22-11-G

Amended – BC-06-28-17-B

Amended – BC-05-08-19-C

Amended – BC-__-__-__-__



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The real/certain laws of the territory of the nation

**AMENDMENTS TO
DOMESTIC ANIMALS LAW
LEGISLATIVE ANALYSIS**

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Legislative Reference Office	SPONSOR: Ernie Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	Technical corrections to remove inaccurate or duplicative references to the Nation's territorial jurisdiction, personal jurisdiction and citations process.		
Purpose	To protect the health, safety, and welfare of the community by requiring certain basic measures to prevent the spread of disease carried by domestic animals; set minimum standards for treatment of animals; prohibit certain species of animals from being brought onto the Reservation; regulate the keeping of livestock on lots zoned residential with in the Reservation; and establish consequences for damages caused by domestic animals [3 O.C. 304.1-1].		
Affected Entities	Oneida Police Department; Oneida Environmental Health, Safety and Land Division; Oneida Conservation Department; Oneida Environmental Resource Board; Oneida Comprehensive Health Division, Oneida Land Commission; Oneida Emergency Management Coordinator, Oneida Judiciary.		
Related Legislation	Judiciary law.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A.** The Domestic Animals law was first adopted by the Oneida Business Committee on March 13, 1996 and most recently amended on May 8, 2019. Domestic animals are animals commonly owned as household pets, such as cats and dogs.
- B.** Upon a review of the Nation's Code of Laws, the Oneida Law Office and Legislative Operating Committee (LOC) identified references to the Nation's jurisdiction that were either inaccurate or duplicative. In consultation with the Oneida Law Office, the LOC proposes technical amendments to the Domestic Animals law to remove these inaccurate or unnecessary references. The intent of these changes is not to alter how the Domestic Animals law is currently being enforced, but to ensure that all references to jurisdiction in the Nation's Code of Laws are accurate.

SECTION 3. CONSULTATION AND OUTREACH

- A.** Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Law Office.
- B.** The following laws were reviewed in the drafting of this analysis: Judiciary law, Curfew law, Oneida Nation Gaming Ordinance, Tribal Environmental Response law, Judiciary Rules of Evidence.

SECTION 4. PROCESS

- A. The amendments to this law have followed the process set forth in the Legislative Procedures Act (LPA).
- B. The LOC added the amendments to the Active Files List on February 5, 2020.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. ***Deletion of Territorial Jurisdiction Section.*** These amendments delete an incorrect reference to the Nation's territorial jurisdiction for this law. The Domestic Animals law incorrectly states that the territorial jurisdiction of this law is limited to land owned by the Nation or individual trust and/or fee land of a member of the Nation.
- *Territorial Jurisdiction.* The Nation's territorial jurisdiction is properly defined in the Constitution and Bylaws of the Oneida Nation and the Nation's Judiciary law (see below).
 - *Conclusion.* Since the reference included in the Domestic Animals law is inaccurate, unnecessary, and already located in the Nation's Constitution, it has been deleted for clarity.

Table 1. Comparison: Territorial Jurisdiction in laws of the Nation.

<i><u>Deleted Language in Current Domestic Animals law</u></i>	<i><u>Language in Oneida Constitution</u></i>	<i><u>Language in Judiciary law</u></i>
This law extends <u>within the Reservation to all land owned by the Nation and individual trust and/or fee land of a member of the Nation</u> [3 O.C. 304.4-2].	The jurisdiction of the Oneida Nation shall extend to <u>the territory within the present confines of the Oneida Reservation</u> 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 [Article 1 – Territory]	“The territorial jurisdiction of the Trial Court shall extend to <u>the Reservation</u> and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.” [8 O.C. 801.5-3].

- B. ***Deletion of Personal Jurisdiction Section.*** These amendments also delete references to the Nation's personal jurisdiction from this law. The personal jurisdiction of the Nation is already provided for in the Nation's Judiciary law.
- *Personal Jurisdiction.* The Judiciary law already clarifies that the Nation has personal jurisdiction over members of the Oneida Nation, members of other federally-recognized Indian tribes, and any “non-Indians” who have consented to the jurisdiction of the Nation (examples include a contract or lease agreement.)
 - *Conclusion.* Since the Nation's personal jurisdiction is already properly defined in the Judiciary law, it has been deleted from this law for clarity.

48 **Table 2. Comparison: Personal Jurisdiction in laws of the Nation.**

<u>Deleted Language in Current Domestic Animals law</u>	<u>Language in Judiciary law</u>
<p><i>Personal Jurisdiction.</i> This law applies to:</p> <p>(a) All members of the Nation; the Nation's entities and corporations; and members of other federally-recognized tribes;</p> <p>(b) Individuals and businesses leasing, occupying or otherwise using fee land owned by the Nation or by individual members of the Nation; and/or lands held in trust on behalf of the Nation or individual members of the Nation; and</p> <p>(c) Individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. An individual shall be considered to have consented to the jurisdiction of the Nation:</p> <p>(1) By entering into a consensual relationship with the Nation, or with the Nation's entities, corporations, or members of the Nation, including but not limited to contracts or other agreements; or</p> <p>(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner. [3 O.C. 304.4-1].</p>	<p><i>Personal Jurisdiction</i></p> <p>(a) Indians. The Trial Court shall have jurisdiction over all Indians.</p> <p>(b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law.</p> <p>(1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:</p> <p>(A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or</p> <p>(B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner [8 O.C. 801.5-4].</p>

49
50 **C. Updates to Enforcement and Citations Section.** The Citations section of the law has been updated to
51 reflect the Nation's new Citations law.

- 52 ■ *Background.* On February 12, 2020, the Oneida Business Committee adopted a Citations law to
53 establish a consistent process for citations issued for violations of all laws of the Nation. The new
54 Citations law includes a detailed process regarding prehearings, hearings and appeals.
- 55 ■ *Conclusion.* Now that these details are included in the Citations law, it is unnecessary to include
56 the same information in the Domestic Animals law. Therefore, the duplicate citation information
57 has been deleted. Instead, a reference stating that citations will be processed in accordance with the
58 procedures in the Citations law has been added [3 O.C. 304.12-1].

59 **SECTION 6. EXISTING LEGISLATION**

60 **A. References to Territorial Jurisdiction in Other Oneida laws.** The following laws also include
61 references to the Nation's territorial jurisdiction.
62

- 63 ▪ Curfew Law [3 O.C. 308.4-3]
 - 64 ○ *Conclusion:* The reference to territorial jurisdiction in the Curfew law is also incorrect and
 - 65 will need to be updated or deleted. The LOC has added the Curfew law to Active Files List
 - 66 for amendments.
- 67 ▪ Judiciary [8 O.C. 801.5-3]
 - 68 ○ *Conclusion.* The reference to territorial jurisdiction in the Judiciary law is correct and no
 - 69 amendments are necessary.
- 70 ▪ Oneida Nation Gaming Ordinance (ONGO) [5 O.C. 501.3-1]
 - 71 ○ *Conclusion.* The reference to territorial jurisdiction in ONGO is correct and no
 - 72 amendments are necessary.
- 73 ▪ Tribal Environmental Response [4 O.C. 401.4-2]
 - 74 ○ *Conclusion.* The reference to territorial jurisdiction in the Tribal Environmental Response
 - 75 law is correct and no amendments are necessary.
- 76 ▪ Judiciary Rules of Evidence [8 O.C. 804.5-2(a)].
 - 77 ○ *Conclusion.* The reference to territorial jurisdiction in the Judiciary Rules of Evidence is
 - 78 correct and no amendments are necessary.

80 **SECTION 7. OTHER CONSIDERATIONS**

81 **A. *Fiscal Impact.*** A fiscal impact statement has not yet been requested.

- 82 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
- 83 emergency legislation [1 O.C. 109.6-1].
- 84 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
- 85 Committee and may be prepared by any agency who may receive funding if the legislation is
- 86 enacted; who may administer a program if the legislation is enacted; who may have financial
- 87 information concerning the subject matter of the legislation; or by the Finance Office, upon request
- 88 of the Legislative Operating Committee [1 O.C. 109.6-1(a) and (b)].

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Legislative Operating Committee
February 19, 2020

Tobacco Emergency Amendments

Submission Date: 1/15/20	Public Meeting: n/a
LOC Sponsor: Kirby Metoxen	Emergency Enacted: n/a

Summary: *This item is being amended to comply with newly adopted federal law that changes the minimum age of anyone buying tobacco products from eighteen (18) to twenty one (21).*

1/15/20 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.

1/30/20 *Work Meeting.* Present: Brandon Wisneski, Kristen Hooker, Clorissa Santiago, Daniel Guzman, Ernest Stevens III, Jennifer Webster, David Jordan, Kirby Metoxen, Carl Artman (Oneida Law Office Attorney). The purpose of the meeting was to discuss if the Nation must change its tobacco purchase minimum age from 18 to 21.

Next Steps:

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



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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: February 26, 2020
RE: Tobacco Law Emergency Amendments

Please find the following attached backup documentation for your consideration of the Tobacco Law Emergency Amendments:

1. Resolution: Tobacco Law Emergency Amendments
2. Statement of Effect: Tobacco Law Emergency Amendments
3. Tobacco Law Emergency Amendments Legislative Analysis
4. Tobacco Law (Redline)
5. Tobacco Law (Clean)

Overview

Emergency amendments to the Tobacco law (the “Law”) are requested in order to comply with an amendment to the Federal Food, Drug, and Cosmetic Act. On December 20, 2019, President Trump signed into law an amendment to increase the minimum age of sale of tobacco products from eighteen (18) to twenty-one (21). The amendment was effective immediately. Tobacco products include cigarettes, tobacco and e-cigarettes.

The Oneida Retail operations have been compliant with the minimum age change since January 1, 2020.

The Tobacco law regulates the sale, possession, and distribution of cigarettes within the Reservation. [1 O.C. 115.1-1]. Currently, the Law does not allow the sale of tobacco products to any person under the of age of eighteen (18). [1 O.C. 115.6-3]. This emergency amendment to the Law would change the minimum age provision from eighteen (18) to twenty-one (21) years of age and become effective immediately.

Requested Action

Approve the Resolution: Tobacco Law Emergency Amendments.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Tobacco Law Emergency Amendments

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Tobacco law (the "Law") was adopted by the Oneida Business Committee by resolution BC-11-18-81-A and amended by resolution BC-10-10-07-A and BC-04-09-14-F, and BC-01-25-17-B; and
- WHEREAS,** the Law regulates the sale, possession and distribution of cigarettes within the Reservation; and
- WHEREAS,** the current Law allows for tobacco products to be sold to those persons eighteen (18) years of age and older; and
- WHEREAS,** on December 20, 2019 the Federal Food, Drug, and Cosmetic Act was amended to change the minimum age for the sale of tobacco products from eighteen (18) years to twenty-one (21) years; and
- WHEREAS,** an emergency amendment to the Law is being made to increase the minimum age in which people may buy tobacco products from eighteen (18) years of age to twenty-one (21) years of age in order to comply with federal law; and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS,** emergency adoption of legislation is allowed when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act; and
- WHEREAS,** the emergency adoption of the amendment to the Law is necessary for the preservation of the public health and general welfare of the Reservation population because it ensures the Nation is in compliance with federal law; and
- WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest; and
- WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and

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NOW THEREFORE BE IT RESOLVED, that the emergency amendments to the Tobacco law are hereby adopted on an emergency basis and shall become effective immediately.



Statement of Effect

Tobacco Law Emergency Amendments

Summary

This Resolution adopts an amendment to the Tobacco Law (the “Law”) that increases the minimum age to purchase tobacco from eighteen (18) to twenty-one (21).

Submitted by: Jennifer Falck, Legislative Reference Office

Date: February 26, 2020

Resolution: _____

Analysis by the Legislative Reference Office

The Tobacco law regulates the sale, possession, and distribution of tobacco products within the Reservation. [1 O.C. 115.1-1]. Tobacco products include cigarettes, tobacco, and e-cigarettes.

An emergency amendment to the Law is being requested in order to address public health and general welfare of the Reservation population and comply with an amendment to the Federal Food, Drug, and Cosmetic Act. On December 20, 2019, President Trump signed into law an amendment to increase the minimum age of the sale of tobacco products from eighteen (18) to twenty-one (21). The amendment was effective immediately.

Currently, the Law restricts the sale of tobacco products to those eighteen (18) and older. This amendment would increase the minimum age a person must be to purchase tobacco products to twenty-one (21).

The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population and the enactment or amendments of legislation is required sooner than would be possible under the conventional legislative process.

This amendment is considered an emergency because it impacts public health. In addition, complying with federal laws of general applicability are in the best interest of the Nation’s general welfare.

If adopted these amendments would expire on July 26, 2020.

Conclusion

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



oyú·kwa? olihwá·ke
Oh yoon gwa oh lee waa gay
matters concerning tobacco

EMERGENCY AMENDMENTS TO THE TOBACCO LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>			
REQUESTER: Legislative Reference Office	SPONSOR: Kirby Metoxen	DRAFTER: Jennifer Falck	ANALYST: Maureen Perkins
Intent of the Amendments	The intent of the proposed emergency amendments to the Tobacco law (Law) is to increase the minimum age for sales of tobacco products and from eighteen (18) to twenty-one (21) in response to a change in the federal law that was signed on December 20, 2019. The Further Consolidated Appropriations Act, 2020 [HR 18 1865-563 Section 603(a)(5)] requires an amendment to section 906(d) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 387f(d)] that became effective immediately and made it unlawful to sell tobacco products to any person younger than twenty-one (21) years of age.		
Basis of Emergency	The proposed amendments are being presented for temporary emergency approval in accordance with the Legislative Procedures Act to immediately protect public health and to bring the Nation into compliance with the change to federal law. There would not be time to process the amendments under the standard legislative process before the change in federal law became effective [1 O.C. 109.9-5].		
Purpose	The purpose of this Law is to regulate the sale, possession and distribution of cigarettes within the Reservation [1 O.C. 115.1-1].		
Affected Entities	Oneida Retail Enterprise, Oneida Casino Employees, Oneida Judiciary, Oneida Police Department		
Related Legislation	Oneida Personal Policies and Procedures, Judiciary law, Citations law		
Enforcement	All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by any Oneida law enforcement officer [1 O.C. 115.8-1]. 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(a)].		
Due Process	Oneida Nation employees who violate this Law shall be subject to disciplinary action in accordance with the Nation's laws, rules, and policies governing employment [1 O.C. 115.8-1(b)]. Persons issued citations under this law may contest the citation with the Nation's judicial system [1 O.C. 115.8-2]. Citations issued will follow the process contained in the Citations law [8 O.C. 807].		
Public Meeting	A public meeting in accordance with the Legislative Procedures Act is not required for legislation considered as an emergency [1 O.C. 109.8-1(b) and 109.9-5(a)].		
Fiscal Impact	A fiscal impact statement prepared in accordance with the Legislative Procedures Act is not required for legislation considered as an emergency [1 O.C. 109.9-5(a)].		
Expiration of Emergency Amendments	Emergency amendments are effective immediately upon approval by the Oneida Business Committee, expire six (6) months from the date of approval and may be extended for up to six (6) additional months [1 O.C. 109.9-5(b)].		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. **Background.** The Tobacco law was first adopted by the Oneida Business Committee (OBC) on March 15, 1976, and most recently amended on January 25, 2017. The proposed emergency amendments to the Tobacco law (the Law) are being requested in response to a change in federal law [*Public Law No: 116-94. Further Consolidated Appropriations Act, 2020*]. The Further Consolidated Appropriations Act, 2020, was signed into law on December 20, 2019, and effectively directed a change to the Federal Food, Drug and Cosmetic Act to raise the legal age to purchase tobacco products to at least twenty-one (21) years old effective immediately. This change in federal law applies equally to all tobacco retail outlets making it illegal on a federal level to sell tobacco products to anyone under the age of twenty-one (21). **Impact.** As a result of this change to federal law; section 115.6-3 of the Nation's Tobacco law may be amended to the restrict sales of tobacco products by striking eighteen (18) and inserting twenty-one (21) to comply with this federal requirement.
- Tobacco Products.** Tobacco products is not included in the definitions section and is therefore used in the everyday sense [*1 O.C. 115.5*].
 - Traditional Tobacco.** The Law does not apply to traditional tobacco [*1 O.C. 115.3-1*].
 - Federal Register.** The Secretary of Health and Human Services is required to publish in the Federal Register, within six (6) months, a final rule to update the regulations issued under chapter IX of the Federal Food, Drug, and Cosmetic Act to strike all instances of "18 years" and insert "21 years", update the relevant age verification requirements to require age verification for individuals under the age of 30 [*Further Consolidated Appropriations Act, 2020, p. 1492-1503*].
 - Retailer Responsibility.** The Federal amendments make it clear that it is the responsibility of the retailer to ensure that tobacco products are not sold to anyone under the age of twenty-one (21). "It shall be unlawful for any retailer to sell a tobacco product to any person younger than 21 years of age" [*Further Consolidated Appropriations Act, 2020, p. 1493*]. **Employee Responsibility.** The Nation's law further applies disciplinary action to employees who violate the Law which, as amended, includes selling tobacco products to anyone under the age of twenty-one (21) [*1 O.C. 115.8-1(b)*].
- B. The proposed emergency amendments to the Tobacco law bring the Nation into compliance with the amended federal law.

SECTION 3. CONSULTATION AND OUTREACH

- A. **Compliance.** Correspondence with the Oneida Retail Division Director has revealed that the Nation has already begun to implement the federal change to the age of purchasing tobacco by raising the required minimum age to twenty-one (21) to buy tobacco within all of the Nation's retail tobacco locations [*Email Communication, January 8, 2020*]. Additionally, signs have been changed throughout the reservation and registers have been reprogrammed to reflect the age twenty-one (21). This change in federal law also affects Oneida Casino employees who are between eighteen (18) and twenty (20) years old who previously purchased cigarettes for guests of the Oneida Casino. Those purchases will now require an Oneida Nation Casino employee who is at least twenty-one (21) years old [*Kalihwisaks, January 9, 2020*].
- B. **Consultation.** The Oneida Law Office was consulted in the development of the emergency amendments to the law and legislative analysis [*Personal Communication, January 30, 2020*]. According to the Oneida Law Office; this change in federal legislation is a law of general applicability which means it applies equally and with general consistency to all people, including tribal governments [*Wildenthal, 2017*]. This change in federal law and the minimum age of twenty-one (21) years old to purchase tobacco products will apply to Kwik Trip in the same way it applies to the Oneida tobacco outlets. The change in federal law applies to the sales of tobacco products; the federal law does not mention and therefore does not apply to youth smoking or the possession of tobacco products by anyone under the age of twenty-one (21) [*Federal, Food, Drug, and Cosmetic Act – Tobacco Products*].

- 51 C. **Research.** The increase in the age to purchase tobacco products to twenty-one (21) is based on research
52 related to the age that a person begins smoking and their likelihood to become addicted. Research
53 demonstrates that if a person has never smoked by the age of eighteen (18), the odds are three-to-one
54 that he will never smoke. By age twenty-four (24) the odds are twenty-to-one [*Tobacco 21, Nicoteen*
55 *Brain*]. **Age Change in Progress Prior to Federal Amendment.** Nineteen (19) states and 540 local
56 jurisdictions had already raised the minimum age to purchase tobacco products to twenty-one (21) prior
57 to the change in Federal Legislation [*Tobacco 21, FAQ*].
58

59 SECTION 4. PROCESS

- 60 A. The LOC added the Tobacco law emergency amendments to the active files list during a regular LOC
61 meeting on February 5, 2020.
62 B. The amendments to this Law have followed the required process related to emergency legislation
63 detailed in the Legislative Procedures Act (LPA) [*1 O.C. 109.9-5*].
64 C. The proposed emergency amendment will be presented to the LOC and forwarded to the OBC for
65 consideration of approval. The LPA only requires that a legislative analysis accompany the amended
66 law for approval on an emergency basis. A public meeting and a fiscal impact statement are not
67 required for the consideration of emergency legislation [*1 O.C. 109.9-5(a)*].
68 a. The LPA defines emergency as the “immediate preservation of the public health, safety, or
69 general welfare of the reservation population and the enactment or amendment of
70 legislation is required sooner than would be possible under this law” [*1 O.C. 109.9-5*].
71 b. Emergency enacted legislation becomes effective upon approval and remains effective for
72 six (6) months from the date of approval. Emergency enacted legislation expires when six
73 (6) months has passed unless the emergency is extended for an additional six (6) months
74 [*1 O.C. 109.9-5(b)*].
75

76 SECTION 5. CONTENTS OF THE AMENDMENTS

- 77 A. The proposed emergency amendments change the age for the sale of tobacco products from prohibiting
78 sales under the age of eighteen (18) to prohibiting sales under the age of twenty-one (21) [*1 O.C. 115.6-*
79 *3*].
80

81 SECTION 6. EFFECT ON EXISTING LEGISLATION

- 82 A. The following laws were reviewed in the development of this legislative analysis: Oneida Personal
83 Policies and Procedures, Citations law and Judiciary law.
84 B. The proposed amendment does not conflict with the Nation’s Code of Laws.
85

86 SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

- 87 A. The Law is currently enforced by all Oneida Nation Tobacco Retail Locations utilizing existing staff.
88 B. Oneida Nation employees who violate this law are subject to disciplinary action in accordance with the
89 Nation’s laws, rules, and policies governing employment [*1 O.C. 115.8-1(b)*]. Persons issued citations
90 under this Law may contest the citation with the Nation’s judicial system [*1 O.C. 115.8-2*].
91 C. The Oneida Retail Division Director is responsible for the implementation of the amended Law.
92

93 SECTION 8. OTHER CONSIDERATIONS

- 94 B. **Emergency Legislation.** The Legislative Procedures Act authorizes the OBC to temporarily enact an
95 emergency law where legislation is necessary for the immediate preservation of the public health, safety
96 or general welfare of the reservation population and the enactment or amendment of legislation is
97 required sooner than would be possible by utilizing the standard legislative process [*1 O.C. 109.9-5(b)*].
98 In this situation, there would not be time to amend the law through the standard legislative process prior
99 to the changes to federal law going into effect.

- C. **Deadline for Permanent Adoption of Amendments.** If adopted on an emergency basis by the OBC as proposed on February 26, 2020; these amendments will become effective immediately and will remain in effect for up to six months (August 26, 2020), with a possibility of a one-time extension of up to an additional six months (February 26, 2021) [1 O.C. 109.9-5(b)].
- D. **Additional Amendments.** These emergency amendments only consider one amendment to change the prohibited age of sales of tobacco products from any person under the age of eighteen (18) [1 O.C. 115.6-3 of Current Law] to any person under the age of twenty-one (21) [1 O.C. 115.6-3]. Additional amendments to the Law may be considered when permanent amendments are considered.
- E. **Fiscal Impact.** A fiscal impact statement is not required.
- a. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.9-5(a)].

Research Citations

Public Law No: 116-94: Further Consolidated Appropriations Act, 2020, p. 1492-1503.

<https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-RCP116-44.PDF>

Federal, Food, Drug, and Cosmetic Act – Tobacco Products

<https://uscode.house.gov/view.xhtml?path=/prelim@title21/chapter9/subchapter9&edition=prelim>

Tobacco Twenty-One: Preventing Tobacco Addiction Foundation

Tobacco 21 FAQ: <https://tobacco21.org/federal-tobacco-21-faq/>

Tobacco 21 Nicotine Brain: <https://tobacco21.org/kids-tobacco/>

Kalihwisaks, January 9, 2020.

<https://oneida-nsn.gov/blog/2020/01/09/oneida-retail-enforcing-new-federal-tobacco-law/>

Wildenthal, B.H. (2017). Indian Sovereignty, General Federal Laws, and the Canons of Construction: An Overview and Update. *American Indian Law Journal*, 6(1) pp. 97-173.

<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1175&context=ailj>

Title 1. Government and Finances - Chapter 115

~~Oy&akwa> Olihw&ke~~
~~matters concerning tobacco~~
TOBACCO
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~~matters concerning tobacco~~

115.1. Purpose and Policy
115.2. Adoption, Amendment, Repeal
115.3. Definitions
115.4. Oneida Retail Locations

115.5. Purchase of, Title to And Possession of Tobacco Products
115.6. Restrictions on Sales
115.7. Liability
115.8. Violations

115.1. Purpose and Policy

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

115.2. Adoption, Amendment, Repeal

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, ~~and BC-01-25-17-B-, and BC-~~ - - -.

115.2-2. This law may be amended 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.

115.2-3. 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.

115.2-4. 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.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

115.3. Definitions

115.3-1. 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) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) “Electronic cigarette” means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. “Electronic cigarette” shall not include any device that is prescribed by a healthcare professional.

(c) “Employee” means a person employed by the Oneida Nation working in an Oneida retail location.

(d) “Nation” means the Oneida Nation.

(e) “Oneida Retail Location” means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) “Reservation” means all land 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 land added thereto pursuant to federal law.

(g) “Stamped Cigarettes” means cigarettes bearing valid Wisconsin tax stamps.

115.4. Oneida Retail Locations

115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.

115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation (the title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (but not title) shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

115.6. Restrictions on Sales

115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

115.6-2. The Nation reserves the right to restrict sales, volume, pricing and profit margin of stamped cigarettes sold at ~~an~~ Oneida retail location.

115.6-3. Cigarettes and electronic cigarettes shall not be sold to any person under the age of ~~eighteen (18)~~twenty-one (21). Cigarettes and electronic cigarettes for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes and electronic cigarettes at an Oneida retail location.

115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

115.8 Violations

115.8-1. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by any Oneida law enforcement officer.

(a) 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.

(b) Employees who violate this law shall be subject to disciplinary action in accordance with the Nation’s laws, rules, and policies governing employment.

115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person contests the citation with the Nation’s judicial system before the fine is to be paid.

End.

87	Adopted - BC-3-15-76-A	Adopted - BC-11-18-81-A	Amended - BC-01-25-17-B
88	Adopted - BC-9-7-77-B	Amended - BC-10-10-07-A	<u>Emergency Amended – BC- - - -</u>
89	Adopted - BC-9-4-79-C	Amended - BC-04-09-14-F	

Title 1. Government and Finances - Chapter 115

Oy&kw> Olihwa *matters concerning tobacco* **TOBACCO**

115.1. Purpose and Policy
115.2. Adoption, Amendment, Repeal
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115.5. Purchase of, Title to And Possession of Tobacco Products
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115.7. Liability
115.8. Violations

115.1. Purpose and Policy

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

115.2. Adoption, Amendment, Repeal

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, BC-01-25-17-B, and BC-__-__-__-__.

115.2-2. This law may be amended 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.

115.2-3. 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.

115.2-4. 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.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

115.3. Definitions

115.3-1. 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) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) “Electronic cigarette” means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. “Electronic cigarette” shall not include any device that is prescribed by a healthcare professional.

(c) “Employee” means a person employed by the Oneida Nation working in an Oneida retail location.

(d) “Nation” means the Oneida Nation.

(e) “Oneida Retail Location” means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) “Reservation” means all land 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 land added thereto pursuant to federal law.

(g) “Stamped Cigarettes” means cigarettes bearing valid Wisconsin tax stamps.

115.4. Oneida Retail Locations

115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.

115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation (the title shall be subject to any purchase money security interest). Possession of the stamped cigarettes (but not title) shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

115.6. Restrictions on Sales

115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

115.6-2. The Nation reserves the right to restrict sales, volume, pricing and profit margin of stamped cigarettes sold at an Oneida retail location.

115.6-3. Cigarettes and electronic cigarettes shall not be sold to any person under the age of twenty-one (21). Cigarettes and electronic cigarettes for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes and electronic cigarettes at an Oneida retail location.

115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

115.8 Violations

115.8-1. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by any Oneida law enforcement officer.

(a) 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.

(b) Employees who violate this law shall be subject to disciplinary action in accordance with the Nation’s laws, rules, and policies governing employment.

115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person contests the citation with the Nation’s judicial system before the fine is to be paid.

End.

Adopted - BC-3-15-76-A

Adopted - BC-11-18-81-A

Amended - BC-01-25-17-B

88	Adopted - BC-9-7-77-B	Amended - BC-10-10-07-A	Emergency Amended – BC-__-__-__-__
89	Adopted - BC-9-4-79-C	Amended - BC-04-09-14-F	



Legislative Operating Committee
February 19, 2020

Petition: N. Dallas – Make a Funeral Home
Petition: N. Dallas – Hold on Building

Submission Date: 2/5/20	Public Meeting: n/a
LOC Sponsor:	Emergency Enacted: n/a Expires: n/a

Summary: *These Petitions request that a General Tribal Council meeting be called to decide whether to turn the Woodland Worship Center, located at 760 Airport Drive in Oneida, Wisconsin, into a funeral home to be operated as an enterprise of the Oneida Nation.*

Petition: N. Dallas – Make a Funeral Home

1/22/20 OBC: Motion by Lisa Summers to acknowledge receipt of the petition from Nancy Dallas – Make a funeral home; Seconded by Jennifer Webster. Motion carried.

Motion by Lisa Summers to assign the petition to the April 6, 2020, tentatively scheduled special GTC meeting; Seconded by Kirby Metoxen. Motion carried.

Motion by Jennifer Webster to direct the OBC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Secretary by January 31, 2020; Seconded by Lisa Summers. Motion carried.

Motion by David P. Jordan to direct the Law, Finance, Legislative Reference Offices, and Community Development Planning Committee to complete and submit the legal review, fiscal impact statement, statement of effect, and committee statement, respectively, to the Secretary by February 18, 2020; Seconded by Lisa Summers. Motion carried.

*Amendment to the main motion by Trish King to request the Oneida Land Commission to submit a commission statement regarding the petition; Seconded by David P. Jordan. Motion carried.

2/5/20 LOC: Motion by Jennifer Webster to add the petition: Nancy Dallas – Make a Funeral Home to the active files list; Seconded by Daniel Guzman King. Motion carried.

Petition: N. Dallas – Hold on Building

1/22/20 OBC: Motion by Kirby Metoxen to acknowledge receipt of the petition from Nancy Dallas – Hold on building; Seconded by Lisa Summers. Motion carried.

Motion by Lisa Summers to assign the petition to the April 6, 2020, tentatively scheduled special GTC meeting; Seconded by Kirby Metoxen. Motion carried.

Motion by Jennifer Webster to direct the OBC Direct Report Offices to complete and submit their administrative impact statements of the petition to the Secretary by January 31, 2020; Seconded by Lisa Summers. Motion carried.

Motion by Jennifer Webster to direct the Law, Finance, Legislative Reference Offices and Community Development Planning Committee to complete and submit the legal review, fiscal impact statement, statement of effect, and committee statement, respectively, to the Secretary by February 18, 2020; Seconded by Lisa Summers. Motion carried.

2/5/20 LOC: Motion by Jennifer Webster to add the petition: Nancy Dallas – Hold on Building to the active files list; Seconded by Daniel Guzman King. Motion carried.

Next Steps:

- Approve the Petition: N. Dallas – Make a Funeral Home statement of effect and forward to the Oneida Business Committee for consideration.
- Approve the Petition: N. Dallas – Hold on Building statement of effect and forward to the Oneida Business Committee for consideration.



Statement of Effect

Petition: N. Dallas – Make a Funeral Home

Petition: N. Dallas – Hold on Building

Summary

These Petitions request that a General Tribal Council meeting be called to decide whether to turn the Woodland Worship Center, located at 760 Airport Drive in Oneida, Wisconsin, into a funeral home to be operated as an enterprise of the Oneida Nation.

Submitted By: Kristen M. Hooker, Staff Attorney, Legislative Reference Office

Date: February 13, 2020

Analysis by the Legislative Reference Office

On December 31, 2019, Petition: N. Dallas – Make a Funeral Home and Petition: N. Dallas – Hold on Building were submitted to the Oneida Business Committee Support Office by Nancy Dallas. The Petitions have since been verified by the Oneida Trust Enrollment Department. On January 22, 2020, the Oneida Business Committee acknowledged receipt of both Petitions and directed the Legislative Reference Office to complete a statement of effect by February 18, 2020.

The Petition: N. Dallas – Make a Funeral Home, requests that a meeting of the General Tribal Council (“GTC”) be called to consider whether “[t]o make a funeral home on the property of the Woodland Worship Center and have the property to be an Enterprise Division for the Oneida Nation.” Likewise, the Petition: N. Dallas – Hold on Building, requests that a GTC meeting be called to consider whether “[t]o put a hold on the building which is the Woodland Worship Center, located at 760 Airport Drive, Oneida, Wis. and to make this a funeral home.” Because both Petitions are essentially seeking the same outcome – to turn the Woodland Worship Center into a funeral home – this statement of effect will be analyzing them together.

All applicable laws and policies of the Nation were reviewed in developing this statement of effect, including the Oneida Nation Constitution (“Constitution”), the Cemetery law, the Children’s Burial Fund Policy, the Nation’s Zoning and Shoreland Protection law, and the Budget Management and Control law.

Article IV, Section 1 of the Constitution grants the GTC power to “manage all economic affairs and enterprises of the Oneida Nation” and to “promulgate and enforce ordinances . . . providing for the . . . appropriation of available tribal funds for public purposes. . . .” [*Oneida Nation Constitution Article IV Section 1(e) and (f)*]. Subject to its review, the GTC has delegated the authority set forth in Article IV of the Constitution to the OBC.

The Nation’s Zoning and Shoreland Protection law (“Law”) protects the character and stability of residential, commercial, industrial, agricultural, and other districts within the Reservation, as well as assures the orderly and beneficial development of such areas, by regulating the use of land and

buildings located therein. [6 O.C. 605.1-1]. The Law does permit the establishment and/or operation of a funeral home within areas of the Reservation that are zoned as a Commercial District (C-1). [6 O.C. 605.7-7]. However, certain provisions within the Law would have an impact on the Petitions at issue.

For example, in the likely event that a permit would be required to turn the Woodland Worship Center premises into a funeral home, section 605.6-8 of the Law provides that “[n]o permit shall be issued under this law unless the applicant’s building plans, including the site plan, if applicable, are compliant with the Tribe’s Building Code.” [6 O.C. 605.6-8]. And, with respect to parking spaces, section 605.6-10 requires mortuaries or funeral homes provide “at least fifteen (15) off-street parking spaces for each chapel or parlor, plus one (1) off-street parking space for each funeral vehicle maintained on the premises.” [6 O.C. 605.10(e)(12)].

The Nation’s Budget Management and Control law (“Budget Law”), adopted by the OBC through resolution BC-02-08-17-C, sets forth the processes that the OBC, Oneida fund units, executive managers and managers must follow when preparing the Nation’s budget for consideration by the GTC. [1 O.C. 121.1-1]. This includes that community input budget meetings occur before a budget is developed so that community members are given an opportunity to provide input as to what should be included in the upcoming fiscal year budget; that the Chief Financial Officer (“CFO”) and any other relevant managers provide responses and/or recommendations to all comments and considerations presented at the meetings; and that the Nation’s Treasurer work with the CFO to place a community budget input meeting packet on the OBC agenda no later than the last OBC Meeting in January. [1 O.C. 121-5-2(c) and (d)].

The Budget Law also requires that the Nation’s Treasurer hold, at a minimum, two (2) community informational meetings to present the contents of the budget after the OBC has approved the final draft budget, but before the final draft budget has been presented to the GTC. [1 O.C. 121.5-8]. After the informational meetings, the OBC is then required to present the budget to the GTC with a request for adoption by resolution no later than September 30th of each year unless good cause exists to extend the deadline. [1 O.C. 121.5-9 and 121.5-1]. The Nation’s FY2020 budget was adopted on September 16, 2019.

Although the Budget Law provides opportunities for members of the community to provide input at various community budget meetings throughout the budgetary process, it does not address how GTC petitions, such as the ones at issue, or directives regarding budgetary concerns affect the budgetary process provided for in the Budget Law. Nor do the Petitions identify where the funding would come from for the Nation to establish and operate a funeral home as an enterprise division. At a minimum, adoption of the Petitions would require a two-thirds vote to amend the budget since the proposed enterprise and related costs are not included within the FY2020 budget.

Likewise, absent the third-party review that GTC required by motion of January 20, 2020 to accompany petitions, such as the ones at issue, that call for economic development or financial strategy, these Petitions could only be adopted if, by a two-thirds vote, GTC overturned the need for a third-party review to be presented along with the Petitions.

Conclusion

Adoption of the Petition: N. Dallas – Make a Funeral Home and the Petition: N. Dallas – Hold on Building would not result in a legislative impact on any current laws of the Nation so long as the procedures contained in the Nation’s Zoning and Shoreland Protection and Budget Management and Control laws are followed and the decision to move forward with the Petitions absent a third-party review is approved by a two-thirds vote.

Requested Action

Accept the Petition: N. Dallas – Make a Funeral Home and the Petition: N. Dallas – Hold on Building statement of effect.



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 19, 2020
- 2) Contact Person(s): Clorissa N. Santiago
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Petition: M. Debraska - Increase GTC Meeting Stipend
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On February 12, 2020, the Oneida Business Committee directed that the
Legislative Reference Office submit a statement of effect on the Petition:
M. Debraska - Increase GTC Meeting Stipend.

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:

Timelines for petitions provided for by resolution GTC-01-21-19-A.

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

Signature of Requester:

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376



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



AGENDA REQUEST FORM

- 1) Request Date: February 19, 2020
- 2) Contact Person(s): Jennifer Falck
 Dept: LRO
 Phone Number: 869-4312 Email: jfalck@oneidanation.org
- 3) Agenda Title: Boards, Committees, and Commissions law Emergency Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On February 12, 2020 the Business Committee requested that the LOC
consider amending this 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:

In order to ensure the amendments are complete by March 2020 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:

J. A. Falck

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



Legislative Operating Committee FY2020 First Quarter Report

Current Active Files List – As of 2/12/2020

*An item that the LOC intends to finish by July 2020 (end of the 2017-2020 term)

● This item was completed and the LOC is no longer working on it

■ Work completed

■ Work completed October 1, 2019- February 12, 2020

Name of Legislation	Development	Public Input	GTC/OBC Consideration or Adoption
*Sanctions & Penalties - <i>Deferred by GTC 3/17/19</i>			●
Child Support Amendments <i>BC-01-08-20-C</i>			●
Boards, Committees, & Commissions Bylaws (15 sets)			●
Curfew <i>BC-10-09-19-F</i>			●
*Oneida Food Service Code Amendments		■	
*Industrial Hemp	■		
Taxation	■		
Wellness Court	■		
*Indian Preference in Contracting Amendments		■	
*Vehicle Driver Certification & Fleet Management		■	
*Citations Law- <i>BC adopted on 2/12/20</i>			●
*Recycling & Solid Waste Law Amendments	■		
*Children's Burial Fund		■	
*Curfew Amendments	■		
*Tobacco Emergency Amendments	■		
*Domestic Animals Amendments	■		
Real Property Amends. (<i>Emerg. Expire 7/22/20</i>)	■		
*SEOTS Bylaws Amendments	■		
*NEPC Bylaws Amendments	■		
*Land Commission Bylaws Amends.	■		
Public Peace	■		
Drug & Alcohol Free Elected/Appointed Officials	■		
Tribal Traffic Code	■		
Business Corporations	■		
Code of Ethics Amendments	■		
Rules of Civil Procedure Amendments	■		
General Welfare Exclusion- Income Exemptions	■		
Work Visas	■		
Law Enforce. Ord. Amendments- Con. Wardens	■		
Environmental Review Law	■		
Attorney Contract Policy Amendments	■		
Tribal Institutional Review Board	■		
Guardianship	■		
Uniform Commercial Code	■		
Personnel Policies & Procedures Amendments	■		
Investigative Leave Policy Amendments	■		
Workplace Violence Amendments	■		

FY20 First Quarter Executive Summary

Children's Burial Fund Policy Amendments

This law is being updated to remove outdated restrictions and to create more flexibility in using the funds. Potential amendments include; updating qualifications, clarify caskets or coffin costs are payable if identified with an invoice, expressly prohibit travel costs, remove limitations on the use of the fund to pay food expenses.

Vehicle Driver Certification and Fleet Management Amendments

Potential amendments for this law include; revise the qualifications to become a certified driver of the Nation, revise and simplify the process for suspending a person's driver certification, clarify that other violations of this law that do not result in the suspension or revocation of a driver's license will be handled by disciplinary action instead of suspension of driver certification, revise the restriction on driving while using prescription or over the counter medications, require mileage reimbursement requests to be submitted within (30) days of driving the miles or by the end of the fiscal year, whichever is sooner, ban the use of e-cigarettes in fleet vehicles, and clarify that weapons are banned in fleet vehicles and personal vehicles used for official business.

Child Support Amendments

(Update: This was adopted by the Oneida Business Committee- BC-01-08-20-C)

Amendments include; create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more, update notice requirements and timelines for initiating an action by the Child Support Department as well as sending appointment letters, notices of delinquency, notices of enforcement action, and income withholding orders, clarify how the Family Court may redact addresses and identifying information from court documents to ensure the safety of a party, make updates to how child support obligations are calculated in certain special circumstances involving shared-placement parents, split-placement parents, and a serial family obligor, repeal Child Support Rule No. 1 - Deviation from Child Support and Rule No. 2 - Enforcement Tools and move the contents of the rules into the body of the law itself, and, make additional updates and clarify language throughout the law.

Oneida Food Service Code Amendments

Potential amendments include; include mobile food trucks within the category of permanent food service establishments, add a notice and other procedural requirements to the processing of applications for licensure to operate a food service business, create exemptions for cottage food sales and prepackaged restaurants, afford licensing fee waivers to protect food service businesses or prepackaged restaurants from duplicative payments that would be caused by overlapping jurisdictions, and, allow the area manager the final determination on appeals of non-citation issued decisions unless one (1) of the three (3) express grounds exist to further appeal the decision. The public meeting was held on February 6, 2020 and the amendments will be sent to the Oneida Business Committee for consideration in the second quarter.

Committee Conference Room

Indian Preference in Contracting Policy Amendments

Proposed amendments include; update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation, raise the threshold for when Indian Preference applies to contracts from \$1,500 to \$3,000, redefine joint ventures and permit joint ventures to qualify for Indian Preference on a project-specific basis, set a new timeline for Indian Preference Office to review contracts, and, clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution. A public meeting was held on December 19, 2019 and the amendments will be sent to the Business Committee for consideration in the second quarter.

Table 2. Legislative Operating Committee Meetings in First Quarter

All LOC meetings are open to the public and are the first and third Wednesday of each month, 9:00am, at the Norbert Hill Center, in Business Committee Conference Room.

Legislative Operating Committee Meetings	
October 2, 2019	Regular LOC meeting
October 16, 2019	Regular LOC meeting
November 6, 2019	Regular LOC meeting
November 20, 2019	Regular LOC meeting
December 4, 2019	Regular LOC meeting
December 18, 2019	Regular LOC meeting cancelled

First Quarter Legislative Highlights

Completed: Boards, Committees, and Commission Bylaws Amendments

All the Nation's boards, committees, and commissions are required to amend their bylaws as a result of the adoption of the Boards, Committees, and Commissions law (formerly known as the Comprehensive Policy Governing Boards, Committees, and Commissions). The LOC assisted the entities with this project and the Oneida Business Committee approved all but two sets of bylaws in the first quarter.

Adopted: Curfew law

This law was the result of a recommendation from the Tribal Action Plan Policy Sub-Committee. The LOC agreed to work on this legislation in an effort to support all drug use prevention initiatives. The purpose of this law is to protect the health, safety, and welfare of minors. The Oneida Business Committee adopted this law on October 9, 2019, and it became effective on October 23, 2019.

The Curfew law requires that people age sixteen (16) and under not be on any public space between 10:00pm and 6:00am. The curfew hours are similar to neighboring communities. The law provides for several exemptions including; traveling to and from work, educational or

cultural activities, extracurricular activities, travel to and from movie theatres, etc. Penalties can apply to minors, parents, guardians, or legal custodians. Penalties for breaking curfew include; family counseling, parenting programs, community service including cultural activities, and monetary fines.

LOC Plans for Second Quarter

In the second quarter the LOC will focus on;

1. Child Support Amendments
2. Indian Preference in Contracting Amendments
3. Citations Law
4. Vehicle Driver Certification & Fleet Management Amendments
5. Children's Burial Fund Amendments
6. Real Property Emergency Amendments
7. Curfew Amendments
8. Domestic Animals Amendments
9. Oneida Food Service Code Amendments
10. Tobacco Emergency Amendments

Legislative Reference Office Update

The LRO will focus on the LOC's second quarter legislative priorities. In addition, the LRO is working on;

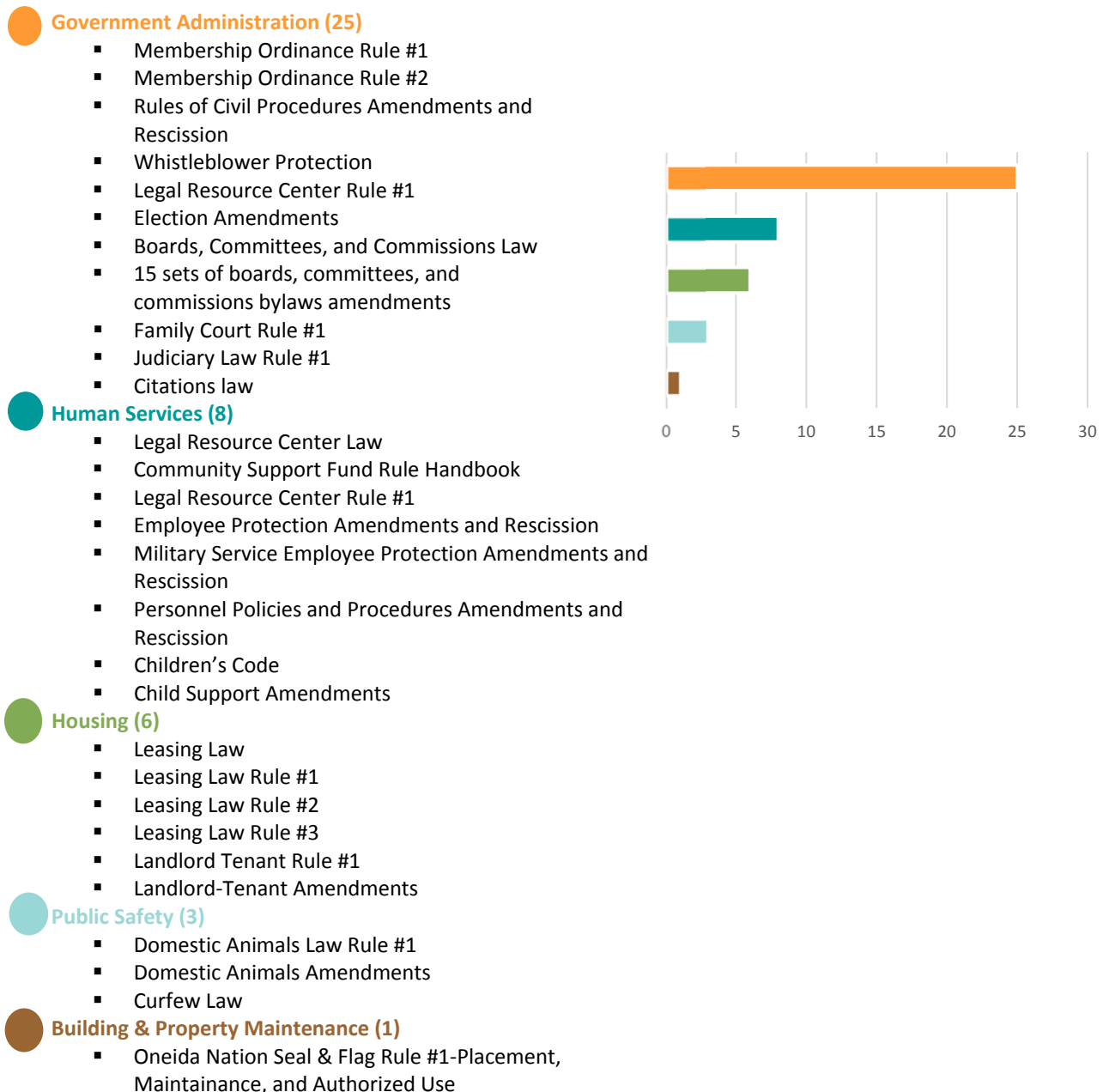
- Moving the Nation's legislative history to a digital and searchable format.
- Planning community outreach events for the LOC to discuss the community's ideas regarding the development of a Wellness Court.
- Preparing for the 2020 General Election and subsequent transition.

Completed Legislation in 2017-2020 Term

Chart 1. Illustrates what legislation has been completed since August 2017 and it indicates which General Tribal Council's priorities each piece of legislation is tied to.

Chart 1. Completed Legislation and GTC Priorities

Most of the adopted legislation completed so far in this term have addressed **Government Administration**, **Human Services**, and **Housing** priorities.



Legislative Operating Committee Contact Information

Feel free to contact the LOC with questions or comments;

- David Jordan, LOC Chairperson,
djordan1@oneidanation.org
- Kirby Metoxen, LOC Vice Chairperson,
kmetox@oneidanation.org
- Jennifer Webster, LOC member,
jwebste1@oneidanation.org
- Daniel King-Guzman, LOC Member, dguzman@oneidanation.org
- Ernest Stevens III, LOC Member, esteven4@oneidanation.org
- LOC@oneidanation.org



Legislative Operating Committee meetings are the first and third Wednesday of each month, at 9:00am, in the Norbert Hill Center. Meeting agendas and other materials are available at <https://oneida-nsn.gov/government/business-committee/standing-committees/legislative-operating-committee/>

Yaw^ko

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

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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 (BC_Conf_Room) - 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
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2020

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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 LOC CANCELLED	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 9:00am LOC Meeting (BC_Exec_Conf_Room) - LOC	2	3	4