



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2nd Floor Norbert Hill Center

October 21, 2020

9:00 a.m.

This Legislative Operating Committee meeting will be closed to the public due to the Public Health State of Emergency. This is a preventative measure as a result of the COVID-19 pandemic. An audio recording of the meeting will be made available on the Nation's website.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. October 7, 2020 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Industrial Hemp Law (pg. 6)

IV. New Submissions

1. Credit Collection Law (pg. 46)
2. Endowments Law Amendments (pg. 47)
3. Oneida Land Trust Law (pg. 48)
4. Medicinal Marijuana Law (pg. 49)

V. Additions

VI. Administrative Updates

1. Curfew Law: One Year Review (pg. 50)
2. Children's Code Implementation: Additional Six Month Review (pg. 51)
3. Discretion Regarding the Transfer of Cases under the Children's Code Resolution (pg. 57)
4. Further Interpretation of the "Fiscal Impact Statement" in the Legislative Procedures Act Resolution (pg. 62)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
October 7, 2020
9:00 a.m.

Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers.

Others Present: Clorissa N. Santiago, Kristen Hooker, Aliskwet Ellis, Rhiannon Metoxen, Kristal Hill, James Petitjean.

I. Call to Order and Approval of the Agenda

David Jordan called the October 7, 2020, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Kirby Metoxen to adopt the agenda with the following changes: 1. defer Current Business until after the Administrative Updates, and 2. add the Misappropriation of Funds Law under the Additions section as V.1; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be Approved

1. August 19, 2020 LOC Meeting Minutes

Motion by Jennifer Webster to approve the August 19, 2020 LOC meeting minutes and forward to the Oneida Business Committee; seconded by Daniel Guzman King. Motion carried unanimously.

2. August 28, 2020 LOC Officer Selection Minutes

Motion by Kirby Metoxen to approve the August 28, 2020 LOC officer selection minutes and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Petition: M. Debraska – Increase GTC Meeting Stipend

Motion by Jennifer Webster to accept the statement of effect for Petition: M. Debraska – Increase GTC Meeting Stipend and forward to the Oneida Business Committee; seconded by Daniel Guzman King. Motion carried unanimously.

IV. New Submissions

1. Budget Management and Control Law Amendments

Motion by Jennifer Webster to add the Budget Management and Control Law Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

2. Children's Code Emergency Amendments

Motion by Kirby Metoxen to add the Children's Code Amendments to the Active Files List



with David Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

3. Community Support Fund Law Amendments

Motion by Jennifer Webster to add the Community Support Fund Law Amendments to the Active Files List with David Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

4. Child Support Fund Law Amendments

Motion by Jennifer Webster to deny the request for amendments to the Child Support Law; seconded by Marie Summers. Motion carried unanimously.

5. Layoff Policy Amendments

Motion by Jennifer Webster to add the Layoff Policy Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Marie Summers. Motion carried unanimously.

6. Furlough Law Amendments

Motion by Jennifer Webster to add the Furlough Law Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

V. Additions

1. Misappropriation of Funds Law

Motion by Jennifer Webster to add the Misappropriation of Funds Law to the Active Files List with Marie Summers as the Sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

VI. Administrative Items

1. 2017-2020 LOC Active Files List Outstanding Items Review

Motion by Jennifer Webster to accept the memorandum titled, "2017-2020 LOC Active Files List Outstanding Items Review;" seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Jennifer Webster to add the Business Corporations Law to the Active Files List with Daniel Guzman King as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Kirby Metoxen to add the Code of Ethics Law Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Kirby Metoxen to add the Drug and Alcohol Free Law for Elected and Appointed Officials to the Active Files List with Kirby Metoxen as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to add the Emergency Management and Homeland Security Law Amendments to the Active Files List with David Jordan as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Kirby Metoxen to add the Environmental Review Law to the Active Files List with Daniel Guzman King as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Jennifer Webster to add the Guardianship Law to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Kirby Metoxen to add the Industrial Hemp Law to the Active Files List with Daniel Guzman King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to add the Investigative Leave Policy Amendments to the Active Files List with David Jordan as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Kirby Metoxen to add the Law Enforcement Ordinance Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Kirby Metoxen to add the Oneida General Welfare Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Jennifer Webster to add the Oneida Higher Education Pandemic Relief Fund Law Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to add the Oneida Nation Emergency Planning Committee Bylaws Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Jennifer Webster to add the Oneida Personnel Policies and Procedures Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Jennifer Webster to add the Oneida Trust Enrollment Committee Bylaws Amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Jennifer Webster to add Petition: M. Debraska – Increase GTC Stipend to the Active Files List with David Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster to add the Public Peace Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Kirby Metoxen to add the Real Property Law Amendments to the Active Files List with David Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster to add the Recycling and Solid Waste Disposal Law Amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Summers. Motion carried unanimously.

Motion by Kirby Metoxen to add the Sanctions and Penalties Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Kirby Metoxen to add the Taxation Law to the Active Files List with Daniel Guzman King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to add the Traffic Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Kirby Metoxen to add the Wellness Court Law to the Active Files List with Daniel Guzman King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to add the Workplace Violence Law Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Marie Summers. Motion carried unanimously.

2. E-Poll Results: Approval of Emergency Amendments to the Oneida Higher Education Pandemic Relief Fund Law

Motion by Jennifer Webster to Enter into the record the results of the August 24, 2020, e-poll titled, "Approval of Emergency Amendments to the Oneida Higher Education Pandemic Relief Fund Law;" seconded by Marie Summers. Motion carried unanimously.

3. E-Poll Results: Approve Adding Extension of the GTC Meeting Stipend Payment Policy Emergency Amendments to the Active Files List and Approve the Extension of the GTC Meeting Stipend Payment Policy Emergency Amendments Adoption Packet

Motion by Jennifer Webster to enter into the record the results of the September 14, 2020, e-poll titled, "Approve Adding Extension of the GTC Meeting Stipend Payment Policy Emergency Amendments to the Active Files List and Approve the Extension of the GTC Meeting Stipend Payment Policy Emergency Amendments Adoption Packet;" seconded by Kirby Metoxen. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Kirby Metoxen to adjourn at 9:38 a.m.; seconded by Marie Summers. Motion carried unanimously.



Legislative Operating Committee
October 21, 2020

Industrial Hemp Law

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| Submission Date: 9/6/17 | Public Meeting: Due to the COVID-19 pandemic, public meetings were suspended by declaration of the Nation's COVID-19 Core Decision Making Team. A public comment period was still offered in accordance with the Legislative Procedures Act and held open until 7/9/20. |
| LOC Sponsor: Daniel Guzman King | Emergency Enacted: n/a Expires: n/a |

Summary: *This item was carried over from the previous two terms. Following adoption of the 2018 Farm Bill and corresponding USDA regulations promulgated in accordance therewith, the Nation moved forward with the development of its own Industrial Hemp law. The purpose of the new legislation will be to authorize the production of hemp within the Reservation of the Oneida Nation; to grant the Nation primary regulatory authority over the production of hemp that occurs within its jurisdiction; and to assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal government's, laws and promotes the Nation's hemp industry to the greatest extent permitted by law.*

10/7/20 LOC: Motion by Kirby Metoxen to add the Industrial Hemp Law to the Active Files List with Daniel Guzman King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

10/7/20: *LOC Work Meeting.* Present: David Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, James Petitjean, Clorissa Santiago, Kristen Hooker, Kristal Hill, RC Metoxen. The purpose of this work meeting was to review the Industrial Hemp law adoption packet with the LOC. Next step is for the drafting attorney to finalize the adoption packet for inclusion on the October 21, 2020 LOC meeting agenda.

Next Steps:

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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: October 21, 2020
RE: Industrial Hemp Law

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

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

Overview

This item was added to the Active File List in March of 2015 after U.S. Congress had adopted the Agricultural Act of 2014, also known as the 2014 Farm Bill. With the passing of the 2014 Farm Bill, hemp could legally be produced for the first time since the 1970's, but only for research purposes and only in states that had passed legislation for the establishment of an agricultural pilot program aimed at studying the growth, cultivation or marketing of industrial hemp. In 2015, Wisconsin did not have such a law. This item was added to the AFL so that the Oneida Nation could establish its own pilot program through the development of an Industrial Hemp law ("Law").

Work on the Law was halted, however, due to a concern from the Oneida Law Office over the enabling language in the 2014 Farm Bill. In 2016, precedent came out in support of the notion that section 7606 of the 2014 Farm Bill did not authorize Indian tribes to create their own pilot program like it did for states and institutions of higher education. [*Menominee Indian Tribe of Wis. v. Drug Enforcement Admin.*, 190 F. Supp.3d 843 (2016)]. In light of this precedent, as well as a similar statement put out by the U.S. Drug Enforcement Agency, Department of Justice, Department of Agriculture, and Food & Drug Administration, the Oneida Law Office opined that the Nation would likely be prohibited from producing hemp within the Reservation unless licensed through a state pilot program created pursuant to the 2014 Farm Bill.

Shortly thereafter, Wisconsin decided to create an industrial hemp pilot program through adoption of 2017 Wisconsin Act 100. And, in 2018, the Oneida Business Committee ("OBC") adopted resolution BC-04-25-18-J titled, *Support for Industrial Hemp Pilot Program*, which authorized the Nation to participate in the state's industrial hemp pilot program for the 2018-2019 growing season. The Nation obtained its license through Wisconsin's Department of Agriculture, Trade and Consumer Protection and, after a delay on the state's end in procuring seed certification, the Nation began growing hemp in 2019 for the limited purpose of agricultural or academic research as was required by the 2014 Farm Bill. Given these restrictions, the Nation's goal for participating

in the program was to learn about hemp varieties, end-use product options, growth characteristics, labor requirements, post-harvest processing and marketability.

During the 2018-2019 growing season, U.S. Congress passed the 2018 Farm Bill. The 2018 Farm Bill made substantial changes to the way the federal government had been regulating hemp under the 2014 Farm Bill. Most significantly, it removed hemp from the controlled substances list, which allowed it to be produced for reasons other than agricultural/academic research, and granted Indian tribes regulatory authority over hemp production within their jurisdiction, meaning tribes were now permitted to create their own hemp production plans in lieu of federal or state plans so long as approved by the USDA through submission of a plan that shows compliance with the 2018 Farm Bill and the USDA Interim Final Rule (“IFR”) promulgated in accordance therewith.

Once the 2018 Farm Bill and IFR were in place, the Legislative Operating Committee (“LOC”) was able to move forward with the development of the Nation’s Industrial Hemp law. The purpose of the Law is to: authorize the production of hemp within the boundaries of the Reservation; grant the Nation primary regulatory authority over the production of hemp within its jurisdiction; assert the Nation’s inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation’s laws; and promote the Nation’s hemp industry to the greatest extent permitted by the 2018 Farm Bill and IFR. [5 O.C. 508.1-1].

This resolution adopts the proposed Industrial Hemp law which will:

- Require any person, defined to include businesses and other entities, under the jurisdiction of the Nation, who wants to produce hemp, to obtain, as well as maintain, a valid license through the Environmental, Health, Safety and Land Division (“EHSLD”) [5 O.C. 508.6];
- Provide the process and eligibility requirements for persons to obtain and maintain a license to produce hemp pursuant to the Nation’s regulatory plan [5 O.C. 508.6];
- Define what constitutes an “acceptable hemp THC level” for purposes of producing hemp plants in compliance with the Law, and provide the requisite sampling/testing methods by which to accurately determine whether a hemp crop exceeds the acceptable hemp THC level [5 O.C. 508.3-1, 508.8];
- Mandate the disposal and destruction of any hemp plant that exceeds the acceptable hemp THC level and provide the requisite process for its disposal/destruction [5 O.C. 508.8-1];
- Set forth certain reporting and record-keeping requirements on the part of the producer and the EHSLD that will allow the Nation to track hemp production within the Reservation and ensure compliance with the Law [5 O.C. 508.7]; and
- Provide enforcement mechanisms for the Nation to detect and respond to instances of non-compliance with the Law that include due process protections for the licensee [5 O.C. 508.11].

The LOC developed the proposed Law through collaboration with representatives from the Community and Economic Development Division; EHSLD; Environmental Resource Board; and Community Development Planning Committee. The LOC, as well as staff from the Legislative Reference Office, also participated in numerous hemp related conference calls with the USDA, attended various USDA sponsored trainings on hemp production under the 2018 Farm Bill, and attended two meetings hosted by the Wisconsin Tribal Conservation Advisory Council to learn more about the strategies and practices of other tribes that were pursuing legislation under the 2018 Farm Bill.

A public meeting, in accordance with the Legislative Procedures Act, was not held for the proposed Law due to the COVID-19 pandemic. During the development of the Law, the world was hit with the COVID-19 pandemic and on March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” which declared a public health state of emergency for the Nation through April 12, 2020. The Public Health State of Emergency has since been extended to November 13, 2020, through adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A and BC-10-08-20-A.

Among other declarations limiting public gatherings, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings under the Legislative Procedures Act*” on March 27, 2020. The declaration suspended the Legislative Procedure Act’s requirement to hold a public meeting during the public comment period, but allows community members to still participate in the legislative process by submitting written comments, questions, data or input on the proposed Law to the LOC via e-mail during the public comment period.

Although no public meeting on the proposed Law was held in person, the public comment period was still held open until July 9, 2020 for the submission of written comments. The LOC received five (5) submissions of written comments, for a total of twenty-five (25) comments, during the public comment period. All public comments received were accepted, reviewed and considered by the LOC and any changes made based on those comments have been incorporated into this draft.

If adopted, the Law would have to be sent to the USDA for approval before implementation may occur. Per the 2018 Farm Bill, tribes and states wanting to assume regulatory authority over hemp production within their boundaries must submit a regulatory plan that satisfies the requirements of the 2018 Farm Bill and IFR to the USDA for approval. The regulatory plan may be submitted in the form of legislation, as would be the case here. Upon receipt, the USDA has sixty (60) days to approve or reject the Law. If rejected, the Nation will have an opportunity to amend the Law for reconsideration. If the USDA approves it, the Nation will assume the administration and regulation of its industrial hemp plan in accordance with the Law.

One of the requirements of the 2018 Farm Bill is for tribes and states to submit a certification with their regulatory plan that certifies they have the resources and personnel necessary to carry out the practices and procedures required by law. The Nation’s certification is in the adopting resolution, which means, by adopting the resolution, the OBC is confirming that, immediately upon approval by the USDA, the Nation has the resources and personnel available to regulate hemp production pursuant to its Law. If the USDA finds otherwise, it may respond as follows:

- For first instances of non-compliance – the USDA will develop a corrective action plan for the Nation to ensure compliance with its Law; and
- For additional instances of non-compliance – the USDA may revoke its approval of the Law and assume regulatory authority over hemp production on the Reservation.

Requested Action

Approve the Resolution: Industrial Hemp Law.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Industrial Hemp Law

- 1
- 2
- 3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 4 recognized by the laws of the United States of America; and
- 5
- 6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 7
- 8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 10
- 11 **WHEREAS,** the Agricultural Improvement Act of 2018, otherwise known as the 2018 Farm Bill, removed
- 12 hemp from the controlled substances list, permitting hemp to be produced for reasons other
- 13 than research and education as was previously restricted under the 2014 Farm Bill; and
- 14
- 15 **WHEREAS,** the 2018 Farm Bill further grants tribes and states regulatory authority over the production
- 16 of hemp within their jurisdictions; provided, the tribes and states that intend to exercise
- 17 such authority submit a regulatory plan to the United States Department of Agriculture
- 18 ("USDA") for approval prior to implementation; and
- 19
- 20 **WHEREAS,** the purpose of the Industrial Hemp law ("Law") is to authorize hemp production within the
- 21 boundaries of the Oneida Reservation; grant the Nation primary regulatory authority over
- 22 the production of hemp under its jurisdiction; assert the Nation's inherent sovereign
- 23 authority by creating a hemp production plan that regulates hemp as an agricultural
- 24 commodity consistent with the Nation's laws; and promote the Nation's hemp industry to
- 25 the greatest extent permitted by the 2018 Farm Bill and USDA regulations promulgated in
- 26 accordance therewith; and
- 27
- 28 **WHEREAS,** the Law requires any persons, defined to include businesses and other entities, under the
- 29 jurisdiction of the Nation, who want to produce hemp, to obtain, as well as maintain, a valid
- 30 license through the Environmental, Health, Safety and Land Division ("Division"); and
- 31
- 32 **WHEREAS,** the Law provides the process and eligibility requirements for persons to obtain and
- 33 maintain the requisite license to participate in hemp production per the Nation's regulatory
- 34 plan; and
- 35
- 36 **WHEREAS,** the Law defines what constitutes an "acceptable hemp THC level" for purposes of
- 37 producing hemp plants in compliance with the Law and provides the requisite sampling/
- 38 testing methods by which to accurately determine whether a hemp plant exceeds the
- 39 acceptable hemp THC level; and
- 40
- 41 **WHEREAS,** the Law mandates disposal and destruction of any hemp crop that exceeds the acceptable
- 42 hemp THC level and provides the requisite process for its disposal/destruction; and
- 43

- WHEREAS,** the Law sets forth certain reporting and record-keeping requirements on the part of the producer and the Division that will allow the Nation to track hemp production within the Reservation and ensure compliance with the Law; and
- WHEREAS,** the Law provides enforcement mechanisms for the Division to detect and respond to instances of non-compliance with the Law that include due process protections for the licensee; and
- WHEREAS,** in accordance with the Legislative Procedures Act, a legislative analysis and fiscal impact statement were developed for this Law; and
- WHEREAS,** a public meeting on the proposed Law was not held in accordance with the Legislative Procedures Act due to the COVID-19 pandemic; and
- WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a *“Declaration of Public Health State of Emergency”* regarding COVID-19, declaring a Public Health State of Emergency for the Nation until April 12, 2020, the declaration of which was subsequently extended until November 13, 2020, through resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-09-09-20-A and BC-10-08-20-A; and
- WHEREAS,** on March 24, 2020, the Nation’s COVID-19 Core Decision Making Team issued a *“Safer at Home”* declaration which prohibits all public gatherings of any number of people and orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed; and
- WHEREAS,** the Nation’s COVID-19 Core Decision Making Team modified the *“Safer at Home”* declaration on April 21, 2020, with the issuance of an *“Updated Safer at Home”* declaration; on May 19, 2020, with a *“Safer at Home Declaration, Amendment, Open for Business”* declaration; and on June 10, 2020, with the issuance of a *“Stay Safer at Home”* declaration; and
- WHEREAS,** on March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a *“Suspension of Public Meetings under the Legislative Procedures Act”* declaration which suspended the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period; and
- WHEREAS,** although a public meeting was not held for the proposed legislation, the public comment period for the Law was held open until July 9, 2020 for the submission of written comments; and
- WHEREAS,** the Legislative Operating Committee received five (5) submissions of written comments, for a total of twenty-five (25) comments, during the public comment period; and
- WHEREAS,** the Legislative Operating Committee reviewed and considered all public comments and any changes made based on those comments have been incorporated into the proposed Law; and

94 **WHEREAS,** if adopted, this Law will act as the Nation's regulatory plan to be submitted to the USDA for
95 approval in accordance with the requirements of the 2018 Farm Bill and USDA regulations
96 promulgated in accordance therewith; and
97

98 **WHEREAS,** upon receipt of the Nation's plan, the USDA will have sixty (60) days to approve or reject
99 it, with an opportunity for amendment and resubmission in the event of a rejection; and
100

101 **WHEREAS,** once approved by the USDA, the Nation will assume the administration and regulation of
102 hemp production that occurs within its jurisdiction in accordance with the Law; and
103

104 **NOW THEREFORE BE IT RESOLVED,** that the Industrial Hemp law is hereby adopted and shall become
105 effective upon approval by the USDA.
106

107 **BE IT FURTHER RESOLVED,** that the Oneida Business Committee hereby certifies that, upon approval
108 by the USDA, the Nation has the resources and personnel necessary to carry out the practices and
109 procedures set forth in the Law, consistent with the 2018 Farm Bill and USDA regulations promulgated in
110 accordance therewith.



Statement of Effect *Industrial Hemp Law*

Summary

This resolution adopts the Industrial Hemp law, which authorizes the cultivation of hemp within the boundaries of the Oneida Reservation and grants the Nation regulatory authority over hemp production that falls under its jurisdiction.

Submitted by: Kristen M. Hooker, Staff Attorney, Legislative Reference Office
Date: October 21, 2020

Analysis by the Legislative Reference Office

This resolution adopts the proposed Industrial Hemp law (“Law”). The purpose of the Law is to authorize the production of hemp within the boundaries of the Oneida Reservation; grant the Nation primary regulatory over the production of hemp under its jurisdiction; assert the Nation’s inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation’s laws; and promote the Nation’s hemp industry to the greatest extent permitted by the 2018 Farm Bill and USDA regulations promulgated in accordance therewith. [5 O.C. 508.1-1].

The proposed Law will:

- Require any persons, defined to include businesses and other entities, under the jurisdiction of the Nation, who want to produce hemp, to obtain, as well as maintain, a valid license through the Environmental, Health, Safety and Land Division (“EHSLD”) [5 O.C. 508.6];
- Provide the process and eligibility requirements for persons to obtain and maintain the requisite license to produce hemp pursuant to the Nation’s regulatory plan [5 O.C. 508.6];
- Define what constitutes an “acceptable hemp THC level” for purposes of producing hemp plants in compliance with the Law and provide the requisite sampling/testing methods by which to accurately determine whether a hemp plant exceeds the acceptable hemp THC level [5 O.C. 508.3-1 & 508.8];
- Mandate the disposal and destruction of any hemp crop that exceeds the acceptable hemp THC level and provide the requisite process for its disposal/destruction [5 O.C. 508.8-1];
- Set forth certain reporting and record-keeping requirements on the part of the producer and EHSLD that will allow the Nation to track hemp production within the Reservation and ensure compliance with the Law [5 O.C. 508.7]; and
- Provide enforcement mechanisms for EHSLD to detect and respond to instances of non-compliance with the Law that include due process protections for the licensee [5 O.C. 508.11].

The Legislative Procedures Act (“LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a standardized process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The LPA requires that for all proposed legislation both a

legislative and fiscal analysis be developed. [1 O.C. 109.6 & 109.7]. The proposed Law complied with these requirements.

The LPA also requires that a public comment period be provided for interested parties to submit data, views or arguments relating to proposed legislation and that a public meeting be held during the public comment period to solicit oral comments. [1 O.C. 109.8]. A public meeting on the proposed Law was not held due to the COVID-19 pandemic. In early 2020, the world was hit with the COVID-19 pandemic, which resulted in many countries experiencing the effects of health issues and mortality, as well as vast economic impacts.

In accordance with the Emergency Management and Homeland Security law, on March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020. [3 O.C. 302.8-1]. The Public Health State of Emergency for the Nation has since been extended until November 13, 2020, through resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-09-09-20-A and BC-10-08-20-A.

On March 17, 2020, the Oneida Business Committee (“OBC”) adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team (“COVID-19 Team”). [3 O.C. 302.10]. Once a public health state of emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation’s laws, policies, procedures, regulations or standard operating procedures which will be of immediate impact for purposes of protecting the health, safety and general welfare of the Nation’s community, members and employees. [3 O.C. 302.10-2]. The declarations are to remain in effect for the duration of the public health state of emergency. [3 O.C. 302.10-3].

On March 24, 2020, the COVID-19 Team issued a “*Safer at Home*” declaration prohibiting all public gatherings of any number of people and ordering all individuals present within the Oneida Reservation to stay at home or at their place of residence with certain exceptions allowed. On April 21, 2020, the COVID-19 Team issued an “*Updated Safer at Home*” declaration which allowed for gaming and golf operations to resume. On May 19, 2020, the COVID-19 Team issued a “*Safer at Home Declaration, Amendment, Open for Business*” permitting businesses to re-open under certain safer business practices but directing that individuals within the Reservation should continue to stay at home and continue to social distance. Then, on June 10, 2020, the COVID-19 Team issued a “*Stay Safer at Home*” declaration that lessened some of the “*Safer at Home Declaration, Amendment, Open for Business*” restrictions, while still providing guidance.

On March 27, 2020, the COVID-19 Team issued a “*Suspension of Public Meetings Under the Legislative Procedures Act*” declaration which suspended the LPA’s requirement to hold a public meeting during a public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data or input on proposed legislation to the Legislative Operating Committee (“LOC”) via e-mail during the public comment period.

Although a public meeting for the Industrial Hemp law was not held, the public comment period was held open until July 9, 2020. The LOC received five (5) submissions of written comments, for

a total of twenty-five (25) comments, during the public comment period. All public comments received were accepted, reviewed and considered by the LOC and any changes made based on those comments have been incorporated into the Law. The proposed Law complies with the public review requirements of the LPA as modified by the COVID-19 Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.

If this resolution is adopted by the OBC, the Law will be submitted to the United States Department of Agriculture ("USDA") as the Nation's regulatory plan. Per the 2018 Farm Bill, tribes and states wanting to exercise regulatory authority over hemp production within their jurisdictions must submit a regulatory plan to the USDA for approval that demonstrates compliance with the 2018 Farm Bill and USDA regulations promulgated in accordance therewith. Implementation of the Law cannot occur until the Nation receives the approval from the USDA.

It is also worth noting that the resolution includes the following certification as is required by the 2018 Farm Bill and USDA regulations promulgated in accordance therewith:

the Oneida Business Committee hereby certifies that, upon approval by the USDA, the Nation has the resources and personnel necessary to carry out the practices and procedures set forth in the Law, consistent with the 2018 Farm Bill and USDA regulations promulgated in accordance therewith.

By including this language, a prerequisite to USDA approval, the Oneida Business Committee is certifying that, immediately upon approval of its regulatory plan, the Nation has the resources and personnel available to administer and regulate hemp production in accordance with the Law. Per the 2018 Farm Bill, if the USDA finds otherwise, it can take such action as:

- For first instances of non-compliance, the USDA will develop a corrective action plan for the Nation to ensure compliance with the Law; and
- For additional instances of non-compliance, the USDA may revoke its approval of the Nation's plan and assume regulatory authority over hemp production on the Reservation.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws. Adoption of this resolution complies with the Legislative Procedures Act as modified by the COVID-19 Core Decision Making Team's "*Suspension of Public Meetings under the Legislative Procedures Act*" declaration.

Title 5. Business - Chapter 508

[Oneida Language]

[Oneida Translation]

INDUSTRIAL HEMP

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508.1. Purpose and Policy

508.1-1. *Purpose.* The purpose of this law is to:

- (a) Authorize the production of hemp within the Reservation of the Oneida Nation;
- (b) Grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation;
- (c) Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with Oneida, as well as federal, law; and
- (d) Promote the Nation's hemp industry to the maximum extent permitted by law.

508.1-2. *Policy.* The Agricultural Improvement Act of 2018, commonly referred to as the 2018 Farm Bill, provides an opportunity for Indian Nations to engage in hemp production through the submission of a hemp production plan for approval to the United States Department of Agriculture. The Farm Bill recognizes that Indian Nations, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. It is the policy of the Nation to exercise its inherent sovereign authority through self-governance. It is further the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

508.2. Adoption, Amendment, Repeal

508.2-1. This law was adopted by the Oneida Business Committee by resolution BC-____-____-____.

508.2-2. 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.

508.2-3. 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.

508.2-4. 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.

508.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

508.3. Definitions

508.3-1. 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) "Acceptable hemp THC level" means when the application of the measurement of

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37 uncertainty (“MU”) to the reported delta-9 tetrahydrocannabinol content concentration
38 level on a dry weight basis produces a distribution or range of not more than 0.3 percent.

39 (b) “Applicant” means a person who applies to the Nation for a license to participate in
40 the Nation’s hemp production plan established by this law.

41 (c) “Cannabis” means a genus of flowering plants in the family Cannabaceae of which
42 *Cannabis sativa* is a species and refers to any form of the plant whereby the delta-9
43 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

44 (d) “Controlled Substances Act” means the act, codified in 21 U.S.C. 801, *et seq.*,
45 establishing the U.S. federal drug policy for regulating the manufacture, importation,
46 exportation, possession, use and distribution of certain substances.

47 (e) “Conviction” means any plea of guilty or nolo contendere, or any finding of guilt,
48 except when the finding of guilt is subsequently overturned on appeal, pardoned or
49 expunged.

50 (f) “Corrective action plan” means a plan established by the Division for a producer to
51 correct a negligent violation or other form of non-compliance with the Nation’s hemp
52 production plan and/or this law.

53 (g) “Criminal History Report” means the U.S. Federal Bureau of Investigation’s Identity
54 History Summary.

55 (h) “Culpable mental state greater than negligence” means to act intentionally, knowingly,
56 willfully or recklessly.

57 (i) “Decarboxylated” means the completion of the chemical reaction that converts THC-
58 acid (“THC-A”) into delta-9-THC, the intoxicating component of cannabis. The
59 decarboxylated value is also calculated using a conversion formula that sums delta-9-THC
60 and eighty-seven and seven tenths (87.7) percent of THC-A.

61 (j) “Decarboxylation” means the removal or elimination of carboxyl group from a
62 molecule or organic compound.

63 (k) “Delta-9 tetrahydrocannabinol, delta-9-THC or THC” means the primary psychoactive
64 component of cannabis. For purposes of the Nation’s plan, delta-9-THC and THC are
65 interchangeable.

66 (l) “Division” means the Oneida Environmental, Health, Safety and Land Division or other
67 named entity delegated the authority to carry out the responsibilities and powers set forth
68 in section 508.5-2 of this law.

69 (m) “Drug Enforcement Administration or DEA” means the federal law enforcement
70 agency under the U.S. Department of Justice that is the lead agency for domestic
71 enforcement of the Controlled Substances Act.

72 (n) “Dry weight basis” means the ratio of the amount of moisture in a sample to the amount
73 of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance
74 after removing the moisture from the substance. Percentage of THC on a dry weight basis
75 means the percentage of THC, by weight, in a cannabis item (plant, extract or other
76 derivative) after excluding moisture from the item.

77 (o) “Expunged” means when a conviction is removed from an individual’s criminal history
78 record and there are no legal disabilities or restrictions associated with the expunged
79 conviction, other than the fact that the conviction may be used for sentencing purposes for

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subsequent convictions.

(p) “Farm Bill” means the Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490, as may be amended from time-to-time hereafter, along with the Interim Final Rule for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture on October 29, 2019 and as may be finalized and further amended from time-to-time hereafter.

(q) “Farm Service Agency or FSA” means the USDA agency charged with assisting in information collection on land being used for hemp production.

(r) “Gas chromatography or GC” means a type of chromatography in analytical chemistry used to separate, identify and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

(s) “Geospatial location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

(t) “Handle” means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing and, where cannabis plants exceed the acceptable hemp THC level, shall also mean to dispose of those plants.

(u) “Hemp” means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(v) “High-performance liquid chromatography or HPLC” means a type of chromatography technique in analytical chemistry used to separate, identify and quantify each component in a mixture.

(w) “Information sharing system” means the database mandated under the Farm Bill which allows USDA to share information collected under tribal, state and USDA plans with tribal, federal, state, and local law enforcement.

(x) “Key participant” means a sole proprietor, partner in a partnership, or person with executive managerial control in a corporation such as a chief executive officer, chief operating officer and chief financial officer, but not non-executive managers such as farm, field or shift managers.

(y) “Law enforcement agency” means any tribal, federal, state or local law enforcement agency.

(z) “Lot” means a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(aa) “Marijuana” means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

(bb) “Measurement of uncertainty or MU” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(cc) “Nation” means the Oneida Nation.

(dd) “Nation’s plan” means the criteria and regulations set forth in this law to govern the production of hemp within the jurisdiction of Nation and serves as the “plan” as required by the Farm Bill to be submitted to and approved by the USDA for the Nation to assume

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primary regulatory authority over the production of hemp within its jurisdiction.

(ee) “Negligence” means a failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth in this law.

(ff) “Person” means a natural person, corporation, cooperative, consortium, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust partnership, limited liability partnership, association or other form of legal business entity, including another governmental entity.

(gg) “Phytocannabinoid” means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9-THC and cannabidiol (“CBD”).

(hh) “Postdecarboxylation” means in the context of testing methodologies for THC concentration levels in hemp a value determined after the process of decarboxylation that determines the total potential delta-9-THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in any given sample.

(ii) “Produce or production” means to cultivate, process, handle or store hemp plants for market in the United States.

(jj) “Producer” means a person licensed by the Division to produce hemp under the Nation’s plan.

(kk) “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 lands added thereto pursuant to federal law.

(ll) “Reverse distributor” means a person who is registered with the DEA to dispose of marijuana under the Controlled Substances Act.

(mm) “USDA” means the United States Department of Agriculture.

508.4. Application

508.4-1. This law regulates the production of hemp within the jurisdiction of the Nation and shall be effective upon approval from the USDA as the Nation’s plan under the Farm Bill.

(a) In furtherance of the Nation’s inherent authority and the regulatory objectives set forth in the Farm Bill, the Nation finds that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation.

(b) Consistent with sections 508.1-1 and 508.1-2, this law shall be liberally construed to the greatest extent authorized under the Farm Bill to fulfill the purpose and policy for which it was adopted.

508.4-2. All hemp production within the jurisdiction of the Nation must meet the requirements

of this law and any applicable portions of the Farm Bill.

- (a) The regulations and penalties imposed by this law extend to any person engaged in activities related in any way, directly or indirectly, to hemp production, whether licensed or not.

508.4-3. Nothing in this law shall be construed to prohibit hemp or hemp products, produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113), from being transported or shipped through the Reservation.

508.4-4. Nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation's environmental and land use laws.

508.5. Authority

508.5-1. *General.* This law is enacted under the inherent sovereign authority of the Oneida Nation to regulate hemp as an agricultural commodity in compliance with the Farm Bill.

- (a) By enacting this law, the Nation does not waive its sovereign immunity or consent to suit in any court, whether the court is tribal, federal, or state, and the enactment of this law shall not be construed to be a waiver of the sovereign immunity of the Nation, its offices, departments, agents, subsidiaries, corporations or enterprises nor a consent to suit against the Nation in any court.

508.5-2. *Authority of the Division.* The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation's plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:

- (a) Provide prospective producers with information necessary to participate in the Nation's plan, to include, but not be limited to:
- (1) How to determine prospective geospatial locations;
 - (2) How to obtain and properly submit a Criminal History Report; and
 - (3) How to share requisite information with the Farm Service Agency.
- (b) Issue licenses to produce hemp and make all decisions relating thereto;
- (c) Conduct inspections and investigate complaints;
- (d) Develop standard operating procedures, protocols and forms necessary to administer this law;
- (e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

508.6. Licensing Requirements

508.6-1. *License Required.* Any person engaging in or intending to engage in hemp production within the jurisdiction of the Nation shall only do so pursuant to a valid license issued by the Division in accordance with this law.

- (a) *Valid License.* For purposes of this law, a valid license means the license is unexpired, unsuspended and unrevoked.

- (1) A license may not be transferred or assigned absent prior approval from the

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Division, which, at a minimum, shall be contingent upon:

(A) The license not being subject to a pending revocation or suspension under section 508.11 of this law; and

(B) The transferee or assignee undergoing and being approved for licensure pursuant to the application process set forth in section 508.6-2 of this law.

(b) *License Period.* All licenses shall be valid for a period of three (3) years from the date of issuance unless otherwise revoked at an earlier date pursuant to this law or any other applicable law of the Nation.

508.6-2. *Application Process.* Any person under the jurisdiction of the Nation who wishes to engage in the production of hemp shall apply to the Division for licensure in accordance with this section.

(a) Applicants must submit a complete application to the Division pursuant to the process set forth in the standard operating procedure adopted by the Division before the application will be accepted or considered. The application process shall require, at a minimum, that the applicant provide/submit the following:

(1) The applicant's full name, address of residency, telephone number and, if available, email address;

(A) If the applicant represents a business or other entity where the business/entity will be the producer, the applicant shall be required to provide the business/entity's:

(i) Full business/entity name;

(ii) Principal business/entity location address;

(iii) Key participants' full name and title;

(iv) EIN number or, if no EIN number, Social Security Number; and

(v) Email address, if available.

(2) The street address (if possible), legal description and geospatial location for each field, greenhouse, building or site where hemp will be cultivated, handled, processed or stored;

(3) Proof of ownership of the land and/or property where hemp will be produced; or proof of permission from the land/property owner to utilize the land and/or property where hemp will be produced for hemp production;

(4) A description of the intended output (e.g. raw hemp or some other hemp product), method of cultivation (e.g. organic, natural or genetically modified) and any pesticides, herbicides or other potentially hazardous materials the applicant intends to use;

(5) An acknowledgment that by signing the application, the applicant is agreeing to abide by all rules and regulations governing the Nation's plan and is further certifying that the information provided in and submitted with the application is accurate and truthful;

(6) A Criminal History Report that was completed no greater than sixty (60) days before the application submission date;

(A) For businesses/entities, a Criminal History Report shall be completed for each of the key participants.

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(7) The licensing fee set pursuant to the fee schedule created by the Division and approved by the Oneida Business Committee through resolution; and

(8) Any further information, disclosure or consent required under the Division's governing standard operating procedure.

(b) Applications for renewal, transfer and assignment shall be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change as defined in the Division's governing standard operating procedure.

(1) The initial fee for license transfers and assignments shall be prorated for that term as set forth in the licensing fee schedule created by the Division and approved by the Oneida Business Committee through resolution.

(c) A license modification shall be requested pursuant to the process set forth within the Division's governing standard operating procedure if there is any change to the information submitted in the initial or renewal application including, but not limited to, the sale of a business/entity, the production of hemp in a new location, or a change in any key participants who are producing under the license.

(1) Applicants shall notify the Division immediately should there be any change in the information provided during the application process.

(d) The application and all materials submitted during the application process, whether pursuant to a request for an initial, renewed, transferred/assigned or modified license, shall become the property of the Nation and shall be maintained by the Division for a minimum of seven (7) years.

508.6-3. *License Eligibility.*

(a) Applicants who materially falsify any information provided in or along with their application shall be deemed ineligible for licensure.

(b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.

(1) *Exception.* Persons lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date shall not be considered ineligible hereunder.

508.6-4. *License Issuance.* Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.

(a) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:

(1) That the applicant be notified of his or her eligibility within thirty (30) days following the Division's receipt of a complete application;

(2) That denial of an application for licensure, license renewal, license transfer/assignment or license modification be provided to the applicant in writing and include the basis for denial, as well as information on how to appeal the Division's decision;

(3) That each applicant deemed eligible for licensure shall be assigned a license identification number; and

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(4) That for each license it issues, the Division, in cooperation with the Area of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7) years.

508.7. Required Recordkeeping and Reporting

508.7-1. Division Reporting.

(a) *Hemp Grower Report.* By the first of each month, the Division shall submit to the USDA a report providing the contact information and the status of the license issued for each producer under the Nation's plan. The report shall contain:

(1) For each new producer who is a natural person, the producer's:

- (A) Full name;
- (B) License identification number;
- (C) Address of residency;
- (D) Telephone number;
- (E) Email address (if available); and
- (F) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial location.

(2) For each new producer that is a business/entity, the business/entity's:

- (A) Full business/entity name;
- (B) License identification number;
- (C) Principal business/entity location address;
- (D) Full name, title and email address (if available) of each key participant;
- (E) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial location.

(3) For each producer that was included in a previous report and whose reported information has changes, the report shall include the previously reported information and the new information.

(b) *Hemp Disposal Report.* By the first of each month, the Division shall submit a report to the USDA of any occurrence of non-conforming plants or plant materials and provide a disposal record for those plants and plant materials that contains:

- (1) The producer's name and address of residency;
- (2) The producer's license identification number;
- (3) Location information, such as lot number, location type and geospatial location or other location descriptor for the production area subject to disposal;
- (4) Information on the agent handling the disposal; and
- (5) The total acreage.

(c) *Annual Report.* By December 15 of each year, the Division shall submit an annual report to the USDA that contains the following information:

- (1) Total planted acreage;
- (2) Total harvested acreage; and

(3) Total disposed of acreage.

508.7-2. *Producer Reporting.*

(a) *Planting and Harvesting.* The Division shall create a standard operating procedure which sets forth a process for producers to report planting, pre-harvest and post-harvest information to the Division that will allow for the Division to carry out its reporting duties under section 508.7-1 of this law in a timely manner.

(b) *Test Results.* Producers shall share any test results obtained under section 508.8 of this law with the Division and, as required, to the USDA pursuant to the process set forth in the Division's standard operating procedure for producer reporting.

(c) *FSA Reporting.* Upon the issuance of a license, producers shall report their hemp crop acreage to the FSA using form FSA-578 or any alternative form approved by the FSA for purposes hereof.

(1) The report shall include, at a minimum:

(A) The producer's contact information and license number;

(B) The crop acreage; and

(C) The specific location where hemp is being produced.

(i) The specific location where hemp is being produced must be identified, to the extent practicable, by the geospatial location for each lot, greenhouse, building or site where hemp will be produced.

(2) Producers are responsible for filling out and filing the FSA-578 or alternative form consistent with the process set by the FSA.

(3) Producers shall be responsible for forwarding a copy of the FSA-578 or alternative form to the Division at the same time they file it with the FSA.

(d) *Convictions.* Within five (5) business days of conviction, the producer must notify the Division of any felony convictions that would subject the producer to immediate revocation under section 508.11-4 of this law.

508.7-3. *Recordkeeping.*

(a) The Division shall retain for a minimum of (7) years all information required to be collected in section 508.6 of this law for every license it issues, renews, transfers/assigns and modifies in accordance with the Nation's plan.

(b) The Division and producers shall retain all documentation referenced within sections 508.7 and 508.8 of the law for a period of at least seven (7) years.

(1) Producers shall retain the documentation in a manner that it can be readily provided to the Division upon request.

508.8. Sampling and Testing

508.8-1. *General.* Samples of all hemp produced under the Nation's plan must be collected and tested in accordance with this section of the law to determine whether it exceeds the acceptable hemp THC level.

(a) Subject to section 508.8-1(a)(1), the Division shall be responsible for the collection and testing of samples of all hemp produced under the Nation's plan.

(1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the collection and testing of samples hereunder.

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(b) Producers shall be responsible to pay any fees associated with the sampling and testing of their hemp production.

(c) Alternative sampling and testing protocols may be used in place of the protocols set forth herein if approved by the USDA as being comparable and similarly reliable to the baseline mandated by the Farm Bill.

508.8-2. *Sampling*. The method used for sampling must:

(a) Require that the sample is taken from the flower material of the cannabis plant;

(b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level;

(c) Ensure that a representative sample is collected that represents a homogeneous composition of the lot; and

(d) Ensure that samples of hemp plant material from one lot are not commingled with hemp plant material from other lots.

508.8-3. *Protocol for the Collection of Samples*. The hemp to be selected for sampling shall be determined by a representative of the Division or the agent/agency appointed by the Division and, subject to section 508.8-1(c), shall be collected as follows:

(a) Producers shall be required to report in writing to the Division at least fifteen (15) days before an expected harvest date that a crop is about to be harvested.

(1) The Division's receipt of a harvest notification triggers a site inspection and sample collection by the Division, or the agent/agency appointed by the Division.

(2) Producers shall not harvest any crop prior to samples being collected.

(b) The Division shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.

(1) During a scheduled sample collection, the producer or authorized representative of the producer shall be present at the growing site.

(2) The Division, or agent/agency appointed by the Division, shall be provided with complete and unrestricted access to all hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the production of hemp and other cannabis plants, if any, and all locations listed in the producer's application.

(c) A separate sample shall be taken for each variety and from each lot of a given variety.

(d) Cuttings shall be collected to make one representative sample as follows:

(1) The top twenty (20) cm of the hemp plant's flower, including female floral material, shall be clipped;

(2) Cuttings from at least five (5) hemp plants within the lot shall be taken and the complete sample shall be placed in a paper bag;

(3) The bag shall be sealed by folding over the top once and stapling shut;

(4) The bag shall be labeled with a sample identification that includes, at a minimum, the last four (4) numerical digits of the producer's license identification number, the date (MM/DD/YY) of collection, and a two (2) digit sequential sample number assigned by the Division, or agent/agency appointed by the Division.

(e) The sample shall be transported to the Division for storage in a secure area until it is sent to the testing lab for analysis.

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(f) Producers shall be required to harvest their crop not more than fifteen (15) days following the date of the sample collection.

(1) If the producer fails to complete the harvest within fifteen (15) days of the sample collection, a secondary sample of the lot shall be required to be submitted for testing.

(2) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material without prior written permission from the Division.

(3) Floral materials harvested for phytocannabinoid extraction shall not be moved beyond the processor, or commingled, or extracted, until the Division releases the material.

(4) Producers shall be notified within thirty (30) days of sampling of the status of the testing.

(A) Any producer may request additional testing at its cost if it is believed that the original delta-9 THC concentration level test results were in error.

508.8-4. *Testing.* Subject to section 508.8-1(c), sample testing shall be completed by one of the DEA-registered laboratories designated by the Division for meeting the requirements of the Nation's plan and the Farm Bill.

(a) Laboratories designated by the Division hereunder shall be approved by the Oneida Business Committee through resolution.

508.8-5. *Testing Protocol.*

(a) *Methodology.* The testing process shall be able to accurately identify whether a sample contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC level by including, at a minimum, a validated testing methodology that uses:

(1) Postdecarboxylation or other similarly reliable method;

(2) Considers the potential conversion of THC-A in hemp into THC; and

(3) A test result that measures total available THC derived from the sum of the THC and THC-A content.

(A) Testing methodologies meeting the requirements of this section include gas or liquid chromatography with detection.

(b) The total THC concentration level shall be determined and reported on a dry weight basis.

(1) Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:

(A) Laboratory quality assurance must ensure the validity and reliability of test results;

(B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;

(C) The demonstration of testing validity must ensure consistent, accurate and analytical performance;

(D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of the Nation's plan; and

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- (E) An effective disposal procedure for hemp plants that are produced that do not meet the requirements of the Nation's plan.
- (c) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with the Nation's plan.
- (1) Lots that do not test at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.
- (2) The Division shall ensure the lot is disposed of in accordance with the Nation's plan, the Controlled Substances Act and the DEA regulations.
- (3) The Division shall notify the USDA of its intent to dispose of non-conforming plants and verify disposal by submitting required documentation.
- (d) Measurement of uncertainty must be estimated and reported with test results.
- (1) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

508.9. Disposal of Noncompliant Plants

508.9-1. If the test results conclude that the THC levels exceed the acceptable hemp THC level, the lot represented by the sample shall be destroyed in accordance with this section.

- (a) In the event test results exceed the acceptable hemp THC level, that harvest must be segregated from other harvested lots and remain segregated.

(1) Leaf and floral material from the harvest of that lot must then be destroyed.

- (b) If a variety is designated as a prohibited variety, the Division shall require the producer to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Division for destruction by composting or burning.

508.9-2. Destruction

- (a) Subject to section 508.9-2(a)(1), the Division shall be responsible to facilitate the disposal of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.

(1) The destruction of hemp that exceeds the acceptable hemp THC level shall be carried out by a reverse distributor, a USDA approved law enforcement officer or other agent/agency so long as authorized under the Farm Bill and/or any regulation promulgated in accordance therewith.

- (b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.

- (c) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the Nation's plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.

(1) The notification shall include the test results from the representative samples.

508.10. Compliance

508.10-1. *Inspections.* The Division shall conduct scheduled inspections of all producers and production sites at least once per growing season to verify that hemp is not being produced in violation of this law.

(a) In addition to scheduled inspections, the Division shall have authority to conduct random inspections of all producers and production sites at any time.

(b) Whether a scheduled or random inspection, the Division shall be granted unrestricted access to the production sites.

508.10-2. Producers must maintain copies of all records and reports necessary to demonstrate compliance with the Nation's plan for a minimum of seven (7) years.

508.11. Enforcement

508.11-1. *General.* Violations with this law shall be subject to enforcement solely in accordance with this section.

508.11-2. *Negligent Violations.* A producer that negligently violates the Nation's plan and/or this law shall not, as a result of that violation, be subject to any criminal enforcement action by the Tribal, federal, state or local government.

(a) Negligent violations shall include, but not be limited to:

(1) A failure to provide a legal description of land on which the producer produces hemp;

(2) A failure to obtain a license from the Division to produce hemp;

(3) The production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.

(A) Cannabis produced with a delta-9 tetrahydrocannabinol concentration of not more than 0.5 percent on a dry weight basis shall not be considered a negligent violation if the producer made reasonable efforts to grow hemp.

(i) The cannabis plants and plant materials from such representative samples must still be disposed of in accordance with section 508.9 of this law.

(b) If the Division finds that a negligent violation occurred, it shall establish a corrective action plan that includes, at a minimum:

(1) A plan to correct the violation;

(2) A reasonable date by which producers shall correct the negligent violation; and

(A) The Division shall be responsible to monitor producers under corrective action plans for implementation and adherence thereto.

(3) A requirement that producers periodically report to the Division on their compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation.

(c) Producers found to have negligently violated this law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation.

508.11-3. *Violations Made with a Culpable Mental State Greater Than Negligence.*

(a) If it determines that a producer violation was committed with a culpable mental state

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greater than negligence, the Division shall immediately report the producer to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the state charged with receiving such information.

508.11-4. *Enforcement.*

(a) *Suspensions.*

(1) The Division may suspend a license if it determines that the producer has:

(A) Engaged in conduct considered a violation of this law; or

(B) Failed to comply with a corrective plan or other written order of the Division relating to a negligent violation of this law.

(2) Producers whose licenses have been suspended shall be prohibited from:

(A) Absent written permission from the Division, handling or removing hemp or cannabis from the location where hemp or other cannabis was located at the time when the Division issued its notice of suspension; and

(B) Producing hemp during the period of suspension.

(3) A suspended license may be restored after a minimum waiting period of one (1) year.

(A) Producers whose license have been suspended may be required to comply with a corrective action plan before having their licenses restored.

(b) *Immediate Revocation.* The Division shall immediately revoke a license if it finds that the producer:

(1) Plead guilty to, or is convicted of, any felony related to a controlled substance or a violent/sex crime;

(2) Made materially false statements during the application process or to Division representatives while in the process of monitoring or enforcing this law with a culpable mental state greater than negligence;

(3) Was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence; or

(4) Was found to have negligently violated this law three (3) times in a five (5) year period.

508.12. Appeals

508.12-1. Any person aggrieved by an action of the Division may appeal to the Judiciary in accordance with governing laws of the Nation.

End.

Adopted - BC-__-__-__-__



INDUSTRIAL HEMP LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

| <i>Analysis by the Legislative Reference Office</i> | |
|---|---|
| Intent of the Proposed Law | <p>To authorize hemp production within the boundaries of the Reservation and to grant the Oneida Nation primary regulatory authority over hemp production by setting forth criteria that all persons under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Mandatory licensing and the process for licensure; ▪ A definition of what constitutes an “acceptable hemp THC level” for the processing and distribution of hemp plants; ▪ Sampling and testing requirements to accurately determine whether a hemp plant exceeds the acceptable hemp THC level; ▪ Requirements for the destruction and reporting of hemp crops that exceed the acceptable hemp THC level; ▪ Reporting requirements so the Nation can track hemp production within the Reservation and ensure it is being produced in compliance with the Law; and ▪ Enforcement mechanisms, which include due process protections, for the Nation to detect and respond to non-compliance with the Law. |
| Purpose | <ul style="list-style-type: none"> ○ To authorize the production of hemp within the Reservation of the Oneida Nation [5 O.C. 508.1-1(a)]; ○ To grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation [5 O.C. 508.1-1(b)]; ○ To assert the Nation’s inherent sovereign authority by creating a plan for the production and regulation of hemp as an agricultural commodity consistent with the Nation, as well as the federal, law [5 O.C. 508.1-1(c)]; and ○ To promote the Nation’s hemp industry to the maximum extent permitted by law [5 O.C. 508.1-1(d)]. |
| Affected Entities | Any person under the jurisdiction of the Nation who wishes to produce hemp; the Environmental, Health, Safety and Land Division; the Area of Land Management; the Oneida Police Department; and the Nation’s Judiciary. |
| Related Legislation | Rules of Civil Procedure; Rules of Appellate Procedure. |
| Public Meeting | A public comment period was held open until July 9, 2020. A public meeting was not held per the Nation’s COVID-19 Core Decision Making Team’s declaration titled, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> . |
| Fiscal Impact | A fiscal impact statement was provided by the Finance Department on September 11, 2020. |

SECTION 2. INDUSTRIAL HEMP

A. What is Industrial Hemp? Industrial hemp (“hemp”) is a highly versatile crop that belongs to the cannabis sativa plant species.¹ There are three main parts of the hemp plant that are harvested to produce over 25,000 products today:

¹ Ryan LeCloux, “Regulating Wisconsin’s Hemp Industry,” *Wisconsin Policy Project*, vol. 2, no. 9 (August 2019).

- Stalk – the stalk is harvested for its fiber, which can be used to make such products as rope, textiles, yarn, paper, construction materials, plastics and car parts;
- Seeds – the seeds are harvested for use in such products as cooking oil, dietary supplements, hygienic products (e.g. shampoo and lotion) and medicinal/pharmaceutical products; and
- Hemp Flower – the hemp flower is harvested for cannabidiol (“CBD”), which is a non-psychoactive chemical compound that has been purported to possess medicinal and therapeutic benefits.²

B. *Industrial Hemp v. Marijuana.* Like hemp, marijuana belongs to the cannabis sativa plant species, and thus, botanically, both plants are the same.³ Legally, however, the plants vary based on their level of delta-9 tetrahydrocannabinol (“THC”). THC is the chemical in cannabis that provides the psychoactive effect, with hemp having a significantly lower THC concentration level (typically, less than one (1) percent) when compared to marijuana, which has an average THC concentration between ten (10) percent and thirty (30) percent.⁴

- A THC concentration of around one (1) percent is the generally accepted threshold for the plant to have a psychoactive effect that people associate with the “high” sensation.⁵
- Under federal law, hemp is defined as having a THC concentration of not more than 0.3 percent on a dry weight basis, which is the same definition that is being proposed in this Law to ensure hemp production is regulated in accordance with the 2018 Farm Bill.⁶

SECTION 3. HISTORY OF INDUSTRIAL HEMP (PRE-1970)

A. *Hemp Production in the United States.* The United States has a rich history of growing hemp for industrial and agricultural purposes that dates back to the colonial period.⁷ Hemp was brought to the American colonies in 1645 as a source of fiber to make cloth, paper, canvas and rope.⁸ It played a significant role in producing the ropes and canvas necessary for ships.⁹

In 1937, however, the federal government passed the Marijuana Tax Act, which taxed all forms of marijuana, including hemp, and put in place restrictions that made it significantly more difficult to grow hemp.¹⁰ The restrictions were briefly loosened during WWII due to the shortage of imported fibers, as well as the increased domestic demand for fibers, caused by the war.¹¹ The federal government even created a program called “Hemp for Victory” to promote hemp production in the United States.¹² As a result, hemp fiber became pivotal in producing much needed war materials, including thread for shoes, rope, and other materials for building ships, as well as calking vessels.¹³

After the war, U.S. hemp production declined significantly when the federal government resumed the strict regulations it had put in place through adoption of the Marijuana Tax Act. And, in 1970, the hemp

² *Id.*

³ *Id.*

⁴ *Id.* (citing Renee Johnson, “Hemp as an Agricultural Commodity,” *Congressional Research Service* (June 22, 2018)).

⁵ *Id.* (citing Renee Johnson, “Defining Hemp: A Fact Sheet,” *Congressional Research Service* (March 22, 2019)).

⁶ 7 U.S.C. s. 5940(a)(2).

⁷ Ryan LeCloux, “Regulating Wisconsin’s Hemp Industry,” *Wisconsin Policy Project*, vol. 2, no. 9 (August 2019).

⁸ *Id.* (citing Economic Research Service, “Industrial Hemp in the United States: Status and Market Potential,” *U.S. Department of Agriculture* (January 2000)).

⁹ *Id.* (citing Carey Reed, “8 Things You Didn’t Know about Hemp,” *PBS NewsHour* (October 17, 2015)).

¹⁰ *Id.* (citing Gerald J. McKenna, “The current Status of Medical Marijuana in the United States,” *Hawaii Journal of Medicine & Public Health* 73, no. 4 (April 2014)).

¹¹ *Id.* (citing Carey Reed, “8 Things You Didn’t Know about Hemp,” *PBS NewsHour* (October 17, 2015)).

¹² *Id.* (citing Deb Kozel, “Industrial Hemp Update,” *Iowa Legislative Services Agency* (February 1, 2019)).

¹³ *Id.* (citing Albert Hazen Wright, “Wisconsin’s Hemp Industry,” *Wisconsin Bulletin* 293, *Madison: Agricultural Experiment Station of the University of Wisconsin* (1918)).

industry was outlawed entirely when the federal government passed the Controlled Substances Act, identifying marijuana, which was defined to include hemp, as a Schedule I drug.

B. *Hemp Production in the State of Wisconsin.* The State of Wisconsin harvested its first hemp crop in 1908.¹⁴ Wisconsin proved well-suited for hemp cultivation due to its humid and temperate climate, as well as its fertile soil.¹⁵ This, in turn, led to a rapid growth in the state's hemp production industry, which was further bolstered by advances in technology that were occurring around the same time.¹⁶

In 1917, a Wisconsin scientist invented a machine that could harvest and process hemp more efficiently.¹⁷ Hemp mills were then constructed throughout the state to process hemp stalks into fiber. Climate suitability, coupled with such technological advancements, made Wisconsin the hub for hemp fiber production in the United States and, by 1920, the country's top hemp producer.¹⁸

Wisconsin remained the country's top hemp producing state until the 1950's, when the hemp fiber industry as a whole was becoming largely diminished in the United States.¹⁹ By 1957, Wisconsin had harvested its last hemp crop and would not witness a reemergence of the crop until the adoption of the 2014 Farm Bill.²⁰

SECTION 4. HISTORY OF INDUSTRIAL HEMP (POST-1970)

A. *2014 Farm Bill.* In 2014, Congress passed the Agricultural Act of 2014, also known as the 2014 Farm Bill, legalizing the production of hemp for the first time since 1970.²¹ The 2014 Farm Bill allowed states to create agricultural pilot programs to study the growth, cultivation and marketing of industrial hemp. However, it did not change hemp's classification as a Schedule I drug, and thus, hemp remained illegal for all other purposes, which meant that:

- Hemp products could only be sold for purposes of marketing research;
- Hemp products could not be sold in states that did not have a hemp pilot program;
- Hemp seeds and plants could not be transported over state lines;
- Individuals had to be registered with the U.S. Drug Enforcement Agency to import viable cannabis seeds; and
- Rules for controlled substances still applied to products containing hemp, meaning they could not be manufactured or distributed without the U.S. Food and Drug Administration's approval.

In 2017, the State of Wisconsin established a hemp pilot program in accordance with the 2014 Farm Bill, officially launching its program in time for the 2018 growing season.²² The state's pilot program required state licensure for participants of the program, registration fees, a research plan through a university or state department of agriculture, background checks, testing of crops for acceptable THC levels and other regulatory provisions.²³

¹⁴ *Id.*

¹⁵ *Id.* (citing Jerry Apps, "Wisconsin Agriculture: A History," *Wisconsin Historical Society Press* (2015)).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Carol Spaeth-Bauer, "Looking at an Exciting Future for Industrial Hemp," *Wisconsin State Farmer* (December 19, 2018).

²⁰ *Id.*

²¹ Agricultural Act of 2014, Pub. L. 113-79, section 7606.

²² 2017 WI Act 100.

²³ *Id.*

The 2014 Farm Bill did not designate Indian tribes as “states” for the purpose of producing industrial hemp under their own pilot programs. Therefore, tribes desiring to participate in a pilot program could only do so by obtaining a license through the state department appointed by the state to administer its pilot program.²⁴ In Wisconsin, it was the Department of Agriculture, Trade and Consumer Protection (“DATCP”) that was appointed to register the state’s program.

The Oneida Nation participated in the Wisconsin Hemp Pilot Research Project in 2019 by obtaining a license through DATCP.²⁵ Along with licensure, the major project components included registration fees, reporting, recordkeeping, inspections, testing, and destruction protocol for plants that exceeded a THC concentration level of 0.3 percent.²⁶ The Nation’s goals for participating in the program were to learn about hemp varieties, end-use product options, growth characteristics, labor requirements, post-harvest processing, and marketability.

B. 2018 Farm Bill. In 2018, Congress enacted the 2018 Farm Bill, which made substantial changes to the way the federal government had been regulating hemp under the 2014 Farm Bill.²⁷ Most significantly, it removed hemp from the controlled substances list and granted Indian tribes regulatory authority over hemp production within their jurisdiction.²⁸ Under the 2018 Farm Bill:

- Hemp is defined as the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3 percent on a dry weight basis;
- The United States Department of Agriculture (“USDA”) is required to establish a permanent federal hemp program that will act to phase out state pilot programs created under the 2014 Farm Bill by terminating them one (1) year after the USDA releases regulations to govern hemp production under the 2018 Farm Bill;
- Tribes and states are authorized to establish their own hemp production programs in lieu of the USDA’s program so long as they submit a plan for approval to the USDA which includes the specific requirements set forth in the 2018 Farm Bill, as well as the USDA regulations created in accordance therewith; and
- Tribes and states are not allowed to prohibit the transportation of hemp or hemp products across their boundary lines even if they do not have a hemp program.²⁹

SECTION 5. LEGISLATIVE DEVELOPMENT

A. Legislative Background. This Industrial Hemp law was first added to the Active Files list in March of 2015, after U.S. Congress had adopted the 2014 Farm Bill. Under the 2014 Farm Bill, hemp could legally be produced, but only for research purposes and only in states that had passed legislation for the establishment of an agricultural pilot program aimed at studying the growth, cultivation or marketing of industrial hemp. In 2015, the State of Wisconsin did not have such a law. The Law was added to the Active Files List so that the Oneida Nation could establish its own pilot program under the 2014 Farm Bill.

²⁴ USDA Clarifies Industrial Hemp Production for Indian Tribes. USDA: Agricultural Marketing Service. ams.usda.gov. March 2020.

²⁵ Resolution BC-04-25-18-J, *Support for Industrial Hemp Pilot Program*.

²⁶ Hemp Pilot Research Program. WI. Department of Agriculture, Trade, and Consumer Protection. [Datcp.wi.gov/Pages/ProgramsServices/Hemp](https://datcp.wi.gov/Pages/ProgramsServices/Hemp). March 2020.

²⁷ Agricultural Improvement Act of 2018, Pub. L. 115-334, section 11106.

²⁸ *Id.*

²⁹ *Id.*

Work on the Law halted, however, due to a concern over the enabling language of the 2014 Farm Bill. In 2016, precedent came out in support of the notion that section 7606 of the 2014 Farm Bill did not authorize Indian tribes to create their own pilot program like it did for states and institutions of higher education.³⁰ In light of this precedent, as well as a similar statement put out by the U.S. Drug Enforcement Agency, Department of Justice, Department of Agriculture, and Food & Drug Administration, the Oneida Law Office opined that the Nation would likely be prohibited from producing hemp within the Reservation unless licensed through a state pilot program created pursuant to the 2014 Farm Bill.

Shortly thereafter, Wisconsin decided to create an industrial hemp pilot program through adoption of 2017 Wisconsin Act 100. And, in 2018, the Oneida Business Committee adopted resolution BC-04-25-18-J titled, *Support for Industrial Hemp Pilot Program*, which authorized the Nation to participate in the state's industrial hemp pilot program for the 2018-2019 growing season. The Nation obtained its license through Wisconsin's Department of Agriculture, Trade and Consumer Protection and, after a delay by the state in procuring seed certification, the Nation began growing hemp in 2019 for the limited purpose of agriculture and academic research as was the extent of the authorization under the 2014 Farm Bill. Given these restrictions, the Nation's goal for participating in the program was to learn about hemp varieties, end-use product options, growth characteristics, labor requirements, post-harvest processing and marketability.

Although the Nation was producing hemp under Wisconsin's pilot program, it remained intent on creating its own program to administer and regulate hemp as a sovereign nation. Thus, the proposed Law was carried over from the previous term and added back onto the Active Files List for the 2017-2020 term.

- B. 2018 Farm Bill.** During the 2018-2019 growing season, U.S. Congress passed the 2018 Farm Bill. The 2018 Farm Bill made substantial changes to the way the federal government had been regulating hemp under the 2014 Farm Bill. Most significantly, it removed hemp from the controlled substances list, which allowed it to be produced for reasons other than agricultural/academic research, and granted Indian tribes regulatory authority over hemp production within their jurisdiction, meaning tribes were now permitted to create their own hemp production plans in lieu of federal or state plans so long as approved by the USDA through submission of a plan that shows compliance with the 2018 Farm Bill and the USDA Interim Final Rule ("IFR") promulgated in accordance therewith.

With the 2018 Farm Bill and IFR in place, the Legislative Operating Committee ("LOC") was able to move forward with the development of the Nation's own Industrial Hemp law. On October 7, 2020, the Law was carried over from the 2017-2020 term and added back on to the Active Files List for the 2020-2023 term to finalize for purposes of adoption consideration.

The Nation believes that hemp is a valuable agricultural crop, as well as commodity, and that, through proper regulation, hemp can be put to its highest and best use, providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members. The proposed Law will create a framework and a licensing program for the Oneida Nation to regulate hemp and hemp producers on the Oneida Reservation. The Law will be submitted to the USDA as the Nation's regulatory plan for USDA approval in accordance with the 2018 Farm Bill and IFR.

³⁰ *Menominee Indian Tribe of Wis. v. Drug Enforcement Admin.*, 190 F. Supp.3d 843 (2016).

SECTION 6. CONSULTATION AND OUTREACH

A. **Hemp Team.** With the Oneida Business Committee’s adoption of resolution BC-04-25-18-J titled, *Support for Industrial Hemp Pilot Program*, a Hemp Team was created to administer the Nation’s hemp production under the State of Wisconsin’s industrial hemp pilot program. The Hemp Team was also consulted on a regular basis during the drafting phase of this legislation and proved pivotal in the development of the proposed Law. The Hemp Team consisted of members from the following areas within the Oneida Nation:

- The Community & Economic Development Division;
- The Environmental, Health, Safety and Land Division (“Division”);
- The Environmental Resources Board; and
- The Community Development Planning Committee (“CDPC”).

B. **Outside Resources.**

- The LRO staff attorney, as well as members of the LOC, participated in several conference calls with the USDA and attended various USDA sponsored trainings to stay up to date on the most current regulatory information regarding the 2018 Farm Bill and the IFR.
- The LRO staff attorney, as well as members of the LOC, attended two (2) meetings held by the Wisconsin Tribal Conservation Advisory Council (“WTCAC”) to learn more about hemp and the strategies/practices of other tribes pursuing legislation and regulatory programs under the 2018 Farm Bill.

SECTION 7. PROCESS

A. The development of this Law has followed the process set forth in the Legislative Procedures Act (“LPA”), as modified by the COVID-19 Core Decision Making Team’s *“Suspension of Public Meetings Under the Legislative Procedures Act”* declaration more fully discussed below. The proposed Law was added to the Active Files List on March 18, 2015. It was then carried over from the 2014-2017 term and added back onto the Active Files List on September 6, 2017 for the 2017-2020 term. Just recently, the proposed Law was carried over from the 2017-2020 term and added back onto the Active Files List for the 2020-2023 term.

B. The following work meetings were held regarding the development of this Law and legislative analysis:

- August 1, 2018: Work meeting with LOC.
- August 28, 2018: Work meeting with CDPC.
- October 25, 2018: Work meeting with LOC.
- December 5, 2018: Work meeting with LOC.
- February 5, 2019: Work meeting with Hemp Team.
- April 11, 2019: Work meeting with LOC.
- July 2, 2019: Work meeting with Hemp Team.
- July 9, 2019: Work meeting with Hemp Team.
- July 15, 2019: Work meeting with LOC.
- September 11, 2019: Work meeting with Hemp Team.
- October 24, 2019: Work meeting with Hemp Team.
- November 14, 2019: Work meeting with Hemp Team.
- December 23, 2019: Work meeting with Hemp Team.
- January 30, 2020: Work meeting with LOC.
- February 14, 2020: Work meeting with Hemp Team.
- February 21, 2020: Work meeting with Hemp Team.
- March 12, 2020: Work meeting with Hemp Team.
- April 8, 2020: Work meeting with LOC.
- April 15, 2020: Work meeting with LOC.

- April 16, 2020: Work meeting with LOC.
- April 23, 2020: Work meeting with LOC.
- April 28, 2020: Work meeting with LOC.
- May 7, 2020: Work meeting with LOC.
- May 15, 2020: Work meeting with LOC.
- May 28, 2020: Work meeting with LOC.
- July 16, 2020: Work meeting with LOC.
- October 7, 2020: Work meeting with LOC.

C. ***COVID-19 Pandemic's Effect on the Legislative Process.*** The world is currently facing a pandemic of the coronavirus disease 2019 ("COVID-19"). The COVID-19 outbreak originated in Wuhan, China and has spread to many other countries throughout the world, including the United States of America. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts to the stock market and businesses. A public meeting for the proposed Law was not held due to the COVID-19 pandemic, based on the following:

- ***Declaration of a Public Health State of Emergency.***
 - On March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" in response to the COVID-19 pandemic, which declared a Public Health State of Emergency for the Nation until April 12, 2020, setting into place the necessary authority for action to be taken and allowing the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
 - On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, "*Extension of March 12th Declaration of Public Health State of Emergency*" which extended the Nation's Public Health State of Emergency until May 12, 2020.
 - On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, "*Extension of Declaration of Public Health State of Emergency Until June 11, 2020*" which further extended the Nation's Public Health State of Emergency until June 11, 2020.
 - On June 10, 2020, the Oneida Business Committee adopted resolution BC-06-10-20-A titled, "*Extension of Declaration of Public Health State of Emergency Until July 12, 2020*" which further extended the Nation's Public Health State of Emergency until July 12, 2020.
 - On July 8, 2020, the Oneida Business Committee adopted resolution BC-07-08-20-A titled, "*Extension of Declaration of Public Health State of Emergency Until August 11, 2020*" which further extended the Nation's Public Health State of Emergency until August 11, 2020.
 - On August 6, 2020, the Oneida Business Committee adopted resolution BC-08-06-20-A titled, "*Extension of Declaration of Public Health State of Emergency Until September 11, 2020*" which further extended the Nation's Public Health State of Emergency until September 11, 2020.
 - On September 9, 2020, the Oneida Business Committee adopted resolution BC-09-09-20-A titled, "*Extension of Declaration of Public Health State of Emergency Until October 12, 2020*" which further extended the Nation's Public Health State of Emergency until October 12, 2020.
 - On October 8, 2020, the Oneida Business Committee adopted resolution BC-10-08-20-A titled, "*Extension of Declaration of Public Health State of Emergency Until November 13, 2020*" which further extended the Nation's Public Health State of Emergency until November 13, 2020.
- ***COVID-19 Core Decision Making Team Declarations: Safer at Home.***
 - On March 24, 2020, the Nation's COVID-19 Core Decision Making Team issued a "*Safer at Home*" declaration which ordered all individuals present within the Oneida Reservation

to stay at home or their place of residence, with certain exceptions allowed. This declaration prohibited all public gatherings of any number of people.

- On April 21, 2020, the COVID-19 Core Decision Making Team issued an “*Updated Safer at Home*” declaration which allowed for gaming and golf operations to resume.
- On May 19, 2020, the COVID-19 Core Decision Making Team issued a “*Safer at Home Declaration, Amendment, Open for Business*” which directed that individuals within the Oneida Reservation continued to stay at home, that businesses could re-open under certain safer business practices, and that social distancing be practiced by all persons.
- On June 10, 2020, the COVID-19 Core Decision Making Team issued a “*Stay Safer at Home*” declaration which lessened the restrictions from the “*Safer at Home Declaration, Amendment, Open for Business*” while still providing guidance.
- *COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act.*
 - On March 27, 2020, the COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which suspended the LPA's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data or input on proposed legislation to the LOC via e-mail during the public comment period.
 - Although a public meeting was not held on the proposed Industrial Hemp law, a public comment period was still held open until July 9, 2020, in accordance with the LPA and the COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.
 - The LOC received five (5) submissions of written comments, for a total of twenty-five (25) comments, during the public comment period. All public comments received were accepted, reviewed and considered by the LOC and any changes made based on those comments have been incorporated into the proposed Law.

SECTION 8. CONTENTS OF THE LEGISLATION

A. *Purpose of the Law.*

- *Self-Governance.* The 2018 Farm Bill recognizes that Indian tribes, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. To exercise that right, Indian tribes, as well as any state wishing to assume primary regulatory authority over hemp production, must submit a regulatory plan to the USDA for approval that includes, at a minimum, the processes and prohibitions required by the 2018 Farm Bill and IFR. This Law will be submitted to the USDA as the Nation’s regulatory plan. [5 O.C. 508.4-1].
- *Enabling Legislation.* Once approved by the USDA as the Nation’s regulatory plan, the Law will go into effect, meaning it will enable, or authorize, the production of hemp within the boundaries of the Oneida Reservation and grant the Nation regulatory authority over hemp production that occurs within its jurisdiction. [5 O.C. 508.1-1].
 - With respect to hemp “production”, the Law defines it to include cultivation, processing, handling or storing of hemp plants for market in the United States. [5 O.C. 508.3-1(ii)].

B. *Application.* This Law regulates the production of hemp within the boundaries of the Oneida Nation and applies to all persons under the jurisdiction of the Nation that intend to engage, whether directly or indirectly, in the production of hemp. [5 O.C. 508.4-1].

- In the Law, “person” is defined to include a corporation, cooperative, consortium, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust partnership, limited liability partnership, association or other form of legal business entity, including another governmental entity. [5 O.C. 508.3-1(ff)].

- The Law provides that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation. [5 O.C. 508.4-1].

C. *Effectiveness.* Per the requirements of the 2018 Farm Bill and USDA regulations created thereunder, the Law will not become effective until approved by the USDA. [5 O.C. 508.4-1].

- Before the legislation is submitted to the USDA for approval, the 2018 Farm Bill further requires that the Oneida Business Committee certify in writing that the Nation is capable and prepared to implement the Law upon USDA approval.
 - The Law’s adopting resolution contains the requisite certification and, if approved by the Oneida Business Committee, the resolution will be included with the Law when submitted to the USDA for approval.

D. *Compliance.* All hemp produced within the jurisdiction of the Nation must meet the requirements of the Law, which incorporates all applicable portions of the 2018 Farm Bill and IFR. [5 O.C. 508.4-2].

- Understanding that the 2018 Farm Bill, as well as the IFR, are subject to amendments which could result in a change to some of the current requirements that may better serve the policy behind the Law, “Farm Bill” is broadly defined to include the IFR, as well as any subsequent amendments to either versions, so that adjustments can potentially be made without having to undergo amendments to this Law. [5 O.C. 508.3-1(p)]. To that end, the Law also includes the following provision:
 - Consistent with sections 508.1-1 and 508.1-2, this law shall be liberally construed to the greatest extent authorized under the Farm Bill to fulfill the purpose and policy for which it was adopted. [5 O.C. 508.4-1(c)].
- EHSLD, as the assigned administrator, is responsible for providing the public with information on how to participate in hemp production in compliance with the Law. [5 O.C. 508.5-2]. This includes, at a minimum, information on how to:
 - Determine prospective geospatial locations [5 O.C. 508.5-2(a)(1)];
 - Obtain and properly submit a criminal history report [5 O.C. 508.5-2(a)(2)]; and
 - Share requisite information with the Farm Service Agency [5 O.C. 508.5-2(a)(3)].

E. *Licensure.* Persons intending to produce hemp or participate in the production of hemp must first obtain a license from EHSLD. [5 O.C. 508.6-1].

- *License Application Process.* To obtain a license to produce hemp, persons must:
 - Fill out the application form created by EHSLD [5 O.C. 508.6-2(a)];
 - Provide the street address (if possible), legal description and geospatial location for each field, greenhouse, building or site where hemp will be cultivated, handled, processed or stored [5 O.C. 508.6-2(a)(2)];
 - As indicated, the Law requires EHSLD to provide public information on how to determine geospatial locations.
 - Provide proof of ownership of the land or property where hemp will be produced; or proof of permission to use another’s land/property for hemp production [5 O.C. 508.6-2(a)(3)];
 - Provide a description of the intended use of the hemp crop; the intended method of cultivation; and whether the applicant intends to use any pesticides, herbicides or other potentially hazardous materials during the cultivation process [5 O.C. 508.6-2(a)(4)];
 - Acknowledge, through execution of the application, that they are agreeing to abide by all rules and regulations governing the Nation’s plan and are certifying that the information they provided in and submitted with the application is accurate and truthful [5 O.C. 508.6-2(a)(5)];

- Persons found to have materially falsified any information provided in or along with their application shall be deemed ineligible for licensure. [5 O.C. 508.6-3].
- Provide a criminal history report that has been completed no greater than sixty (60) days before the date the person submits the application to EHSLD [5 O.C. 508.6-2(a)(6)];
 - Criminal history report means the U.S. Federal Bureau of Investigation's Identity History Summary. [5 O.C. 508.3-1(g)].
 - As indicated, the Law requires EHSLD to provide public information on how to obtain and properly submit a criminal history report during the application process.
 - Applicants with a state or felony conviction relating to a controlled substance are ineligible for licensure for a period of ten (10) years from the date of conviction unless they had been lawfully producing hemp under the 2014 Farm Bill before December 20, 2018 and had been convicted before that date. [5 O.C. 508.6-3].
- Pay the licensing fee set pursuant to the fee schedule created by EHSLD and approved by the Oneida Business Committee through resolution [5 O.C. 508.6-2(a)(7)]; and
- Provide any further information, disclosure or consent EHSLD requires under a standard operating procedure [5 O.C. 508.6-2].
- *License Period.* A license to produce hemp is valid for a period of three (3) years from the date it was issued. [5 O.C. 508.6-1(b)].

F. Maintaining Licensure. Persons licensed to produce hemp ("Licensee") must adhere to the following to maintain their licensure:

- *Acceptable Hemp THC Level.* Licensees are prohibited from producing hemp plants that exceed the acceptable hemp THC level. [5 O.C. 508.11].
 - A hemp plant exceeds the acceptable hemp THC level "when the application of the measurement of uncertainty (MU) to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range of not more than 0.3%." [5 O.C. 508.3-1].
- *Reporting.* Licensees are required to report as follows:
 - Upon issuance of their license, Licensees must report their hemp crop acreage to the Farm Service Agency and to forward copies of the same to EHSLD [5 O.C. 508.7-2(c)];
 - As indicated, the Law requires EHSLD to provide public information on how to report to the Farm Service Agency.
 - Licensees must report planting, pre-harvest and post-harvest activities to EHSLD in the manner indicated within EHSLD's standard operating procedures [5 O.C. 508.7-2(a)];
 - Licensees must share any test results, obtained under the Law's testing provisions, with EHSLD and, if deemed necessary by EHSLD, with the USDA [5 O.C. 508.7-2(b)]; and
 - Licensees are required to immediately notify EHSLD of any changes in their application status and, within five (5) days of conviction, any felony convictions relating to controlled substances or violent/sex crimes [5 O.C. 508.6-2(c)(1) & 508.7-2(d)].
 - Licensees must maintain the above reports, along with all other information referenced within the Law or EHSLD's standard operating procedures, for a period of at least seven (7) years. [5 O.C. 508.7-3(b)].
 - The information must be maintained in a manner that allows the Licensee to easily access it upon request of EHSLD. [5 O.C. 508.7-3(b)(1)].
- *EHSLD Oversight.* EHSLD is required to undergo the following to ensure Licensees are producing hemp in accordance with the Law:
 - That it collects and maintains, for at least seven (7) years, specific information on each license it issues, including:
 - The producer's contact information;

- The locations of the producer's growing sites; and
- Information relating to the producer's acreage; crop sampling, testing and results; and destruction of non-compliant plants. [5 O.C. 508.7-1].
- That it conducts inspections and investigates complaints [5 O.C. 508.5];
 - Licensees are required to grant EHSLD or designees of EHSLD complete access to their growing sites to conduct inspections, sampling and, if necessary, disposal of non-compliant plants. [5 O.C. 508.7-2].
- That it samples and tests hemp crops pursuant to the protocol set forth in the Law to determine whether they exceed the acceptable THC concentration level and, if they do, that it destroys the non-compliant plants in accordance with the 2018 Farm Bill [5 O.C. 508.8]; and
 - The Law provides that EHSLD may collect samples, facilitate testing and oversee destruction of non-compliant plants using representatives of the Nation (so long as they are not the actual producers) or by outsourcing to an appropriate individual or entity of EHSLD's choosing. [5 O.C. 508.8].
 - The sampling, testing and destruction protocols set forth in the Law are per the requirements of the 2018 Farm Bill and IFR. However, the Law carves out flexibility for the Nation to use alternative protocols at such time that the federal guidelines allow for it. [5 O.C. 508.8].
- That it enforces the Law through appropriate means, including the issuance of corrective actions and mandatory reporting to the USDA for non-compliance that has a culpable mental state greater than negligence [5 O.C. 508.7-1].
 - Licensees are required to comply with any EHSLD corrective action plan that was issued for non-compliance. [5 O.C. 508.11].

G. *Sampling, Testing and Destruction.* The 2018 Farm Bill and IFR set forth specific protocols that must be followed for collecting samples of each hemp crop; for testing those samples; and, if a sample tests above the acceptable THC concentration level, for destroying the entire crop associated with that sample. To ensure compliance with the 2018 Farm Bill and IFR, this Law has adopted these protocols in their entirety, but carved out flexibility for the Nation to adopt different protocols in the event the federal government decides to loosen some of its current sampling, testing and disposal requirements. [5 O.C. 508.8-1].

H. *Enforcement and Appeals.*

- *Violations.* The Law provides that violators of the Law shall not, as a result of the violation, be subject to any criminal enforcement action by the Tribal, Federal, State or local government. [5 O.C. 508.11]. It then divides violations into the following two (2) categories:
 - Negligent violations, which include, but are not limited to:
 - A failure to provide a legal description of land on which the Licensee produces hemp [5 O.C. 508.11-2(a)(1)];
 - A failure to obtain a license from EHSLD to produce hemp [5 O.C. 508.11-2(a)(2)]; and
 - The production of hemp with a concentration exceeding the acceptable hemp THC level [5 O.C. 508.11-2(a)(3)].
 - The Law affords some flexibility with respect to hemp that is produced with a THC concentration in excess of 0.3 percent, but not more than 0.5 percent, in that it does not consider this to be a negligent violation so long as the Licensee made reasonable efforts to grow hemp, but still requires that the crop be destroyed. [5 O.C. 508.11-2(a)(3)(A)(i)].

- Violations made with a culpable mental state greater than negligence, which the Law defines as acting intentionally, knowingly, willfully, or recklessly. [5 O.C. 508.11].
- *Enforcement.*
 - If EHSLD finds that a negligent violation occurred, the Law requires it to establish a corrective action plan that includes, at a minimum:
 - A plan to correct the violation [5 O.C. 508.11-2(b)(1)];
 - A reasonable date by which the Licensee shall correct the negligent violation [5 O.C. 508.11-2(b)(2)]; and
 - A requirement that the Licensee periodically reports to EHSLD on Licensee's compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation [5 O.C. 508.11-2(b)(3)].
 - Licensees found to have negligently violated the Law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation. [5 O.C. 508.11].
 - If EHSLD determines that a Licensee violation was committed with a culpable mental state greater than negligence, the Law requires that it immediately report the Licensee to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the state charged with receiving such information. [5 O.C. 508.11].
- *Appeals.* The Law allows for appeals of decisions of EHSLD to be filed with the Judiciary in accordance with the Nation's governing laws. [5 O.C. 508.12].

SECTION 9. OTHER CONSIDERATIONS

- A. *Certification by Oneida Business Committee.* Under the 2018 Farm Bill and IFR, in the event the OBC decides to adopt this Law, it will have to include a certification to the USDA that it is ready and capable of implementing the Law as soon as approved by the USDA.
- The resolution adopting the proposed Industrial Hemp law includes the following clause:
 - BE IT FURTHER RESOLVED, that the Oneida Business Committee hereby certifies that, upon approval by the USDA, the Nation has the resources and personnel necessary to carry out the practices and procedures set forth in the Law, consistent with the 2018 Farm Bill and USDA regulations promulgated in accordance therewith.
 - By adopting the Law through this resolution, the Oneida Business Committee is confirming to the USDA that, upon approval of its regulatory plan, the Nation has the resources and personnel available to regulate hemp production in accordance with the Law.
 - If the USDA found otherwise during an audit of the Nation's hemp production plan, the USDA could take the following action:
 - For first instances of non-compliance – the USDA could develop a corrective action plan for the Nation to follow to ensure compliance with its Law; and
 - For additional instances of non-compliance, the USDA may revoke its approval of the Law and assume regulatory authority over hemp production within the jurisdiction of the Nation.
- B. *Fiscal Impact.* A fiscal impact statement of the proposed Law was provided by the Finance Department on September 11, 2020.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1].
 - Resolution BC-09-25-19-A titled, "Interpreting 'Fiscal Impact Statement' in the Legislative

513 *Procedures Act,*” requires that when developing a fiscal impact statement for the adoption of
514 proposed legislation by the Oneida Business Committee the Finance Department shall, within ten
515 (10) business days of final approval of draft legislation by the Legislative Operating Committee,
516 provide a fiscal impact statement to the Legislative Operating Committee.
517

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: September 11, 2020

RE: **Fiscal Impact of the Industrial Hemp Law**

I. Estimated Fiscal Impact Summary

| | | |
|--------------------------------------|---|-------------------------|
| Law: Industrial Hemp Law | | Draft 2 |
| Implementing Agency | Environmental Health, Safety, and Land Division, the Oneida Police Department, and the Nation's Judiciary | |
| Estimated time to comply | 10 days, in compliance with the Legislative Procedures Act | |
| Estimated Impact | Current Fiscal Year | 10 Year Estimate |
| Total Estimated Fiscal Impact | Indeterminate | Indeterminate |

II. Background

A. Legislative History

This is a new law authorizing hemp production within the boundaries of the Reservation and to grant the Oneida nation primary regulatory authority over hemp production.

B. Summary of Content

The purpose of the law is to:

- Authorize the production of hemp within the Reservation of the Oneida Nation;
- Grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation;

- Assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as a agricultural commodity consistent with the Nation's as well as the federal law;
- Promote the Nation's hemp industry to the maximum extent permitted by law.

III. Methodology and Assumptions

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

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

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

IV. Agency

There are no startup, personnel, office or documentation costs associated with this legislation for the Nation's Judiciary or the Oneida Police Department. There has been no response from the Environmental, Health, Safety, and Land Division. The amendments will become effective 10 days from adoption.

V. Financial Impact

The financial impact of the amendments is indeterminate. There are inherent risks in the agriculture industry that have a direct impact on the potential fiscal impact of an agriculture initiative. The most common risk comes from weather, climate, disease, market, and environmental shock. The inability to mitigate the numerous risks within the agriculture industry and the lack of production facilities within close proximity to the Nation and an unknown end product will have a direct impact on the future success of the commodity. The commodity market brings with it additional risks of volatility, margin, and market risk. The Environmental, Health, Safety and Land Division did not provide information regarding the direct operational impacts the new law poses to the division.

At this time, due indeterminate fiscal information available for the new law, the fiscal impact is also indeterminate.

VI. Recommendation

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

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: 10-7-20
- 2) Contact Person(s): Lawrence E. Barton Dept: Finance
Phone Number: x4491 Email: LBARTON@oneidanation.org
- 3) Agenda Title: Finance
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
Changes to Rules of Civil Procedure & possibly the Per Capita were requested
to facilitate the collection of Tribally owed debt in 2015. This item carried to the
next term without any action and was rejected from the 2020 Active Files list.
As an alternative, Finance is requesting the creation of a credit and collections law

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

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

- 5) Please List any laws, ordinances or resolution that might be affected:

- 6) Please List all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? ☐ Yes ☒ No

If yes, please indicate why: _____

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

Signature of Requester: 

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: October 7, 2020
- 2) Contact Person(s): Daniel Guzman King Dept: OBC/LOC
Phone Number: (920) 869-4366 Email: dguzman@oneidanation.org
- 3) Agenda Title: Endowments Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
The Endowment Law could list the numerous endowments that exist and also the ones that need to be created for the current and future needs of the people.
It then could designate an X percentage amount of funds to be saved and put into the endowments each year within the budget.
For example: 5% of the annual budget (\$0.05 for every dollar) will be designated for endowments.

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

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

- 5) Please List any laws, ordinances or resolution that might be affected:

- 6) Please List all other departments or person(s) you have brought your concern to:
Discussed with the LOC on October 7, 2020

- 7) Do you consider this request urgent? ☐ Yes ☒ No

If yes, please indicate why: _____

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

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P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: October 7, 2020
- 2) Contact Person(s): Daniel Guzman King Dept: OBC/LOC
Phone Number: (920) 869-4366 Email: dguzman@oneidanation.org
- 3) Agenda Title: Oneida Land Trust Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
A law creating an Oneida Land Trust would preserve and protect Oneida land for generations to come.
Land put into an Oneida Land Trust would then go under and remain under the jurisdiction and authority of the Oneida Nation instead of other governments.
This would also eliminate many of the land use and jurisdictional issues the tribe currently deals with.

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

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

- 5) Please List any laws, ordinances or resolution that might be affected:

- 6) Please List all other departments or person(s) you have brought your concern to:
Discussed with the LOC on October 7, 2020

- 7) Do you consider this request urgent? ☐ Yes ☒ No

If yes, please indicate why: _____

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: October 7, 2020
- 2) Contact Person(s): Daniel Guzman King Dept: OBC/LOC
 Phone Number: (920) 869-4366 Email: dguzman@oneidanation.org
- 3) Agenda Title: Medicinal Marijuana Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
This law would regulate the production, processing, and sales of medicinal marijuana on the reservation.
There is opportunity now to negotiate with the state of Wisconsin for the exclusivity of production, processing, and sales of this crop within the state.
This is also an opportunity to create a funding mechanism for drug and alcohol rehabilitation programs.
The law could mandate that all nation revenues/profits generated from the regulation, production, and sales be designated for drug prevention and rehabilitation programs.

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

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

- 5) Please List any laws, ordinances or resolution that might be affected:

- 6) Please List all other departments or person(s) you have brought your concern to:
Discussed with the LOC on October 7, 2020
- 7) Do you consider this request urgent? ☐ Yes ☒ No
 If yes, please indicate why: _____

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

Signature of Requester: _____

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376



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



TO: Oneida Business Committee
FROM: David P. Jordan, Legislative Operating Committee Chairperson
DATE: October 28, 2020
RE: Curfew Law: One Year Review

On October 9, 2019, the Oneida Business Committee adopted a Curfew law through resolution BC-10-09-19-F 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 on the parents, guardians, and/or legal custodians of a minor for the control and supervision of that minor. [3 O.C. 308.1-1].

The Curfew law provides that 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. [3 O.C. 308.5-1]. The Curfew law then provides exemptions to the curfew, as well as provides how the Oneida Police Department will enforce the law, and how the Oneida Family Court will penalize violations of the law. [3 O.C. 308.5-3, 308.6, 308.7].


Resolution BC-10-09-19-F directed that the Legislative Reference Office conduct a one (1) year review of the Curfew law and provide the Oneida Business Committee a report which details the number of citations issued by the Oneida Police Department, frequency and types of penalties issued by the Oneida Family Court, and any other relevant information.

The Legislative Reference Office communicated with the Oneida Police Department and the Oneida Family Court on the status of the Curfew law during its first year of implementation. The Oneida Police Department provided that there have been zero (0) Curfew law citations issued since the Curfew law became effective on October 23, 2019. The Oneida Family Court identified that as of September 29, 2020, there were no Curfew law citations filed with the Oneida Family Court, and therefore no penalties issued.

Requested Action

Accept the Curfew Law: One Year Review as information.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: October 28, 2020
RE: Children's Code Implementation: Additional Six (6) Month Review

Timeline of the Implementation of the Children's Code

| 7/26/17 | 9/13/17 | 10/8/17 | 12/27/17 | 03/28/18 | 06/27/18 | 09/26/18 | 10/24/18 | 1/23/19 | 4/24/19 | 7/24/19 | 10/1/19 | 10/23/19 | 3/20/20 | 4/22/20 | 10/28/20 |
|--|--|---|--|---|--|---|--|--|--|--|-----------------------------------|---|--|---|--|
| Children's Code was adopted by the OBC through resolution BC-07-26-17-J. Law was set to become effective 455 calendar days after the adoption of the FY 2018 budget. OBC directed a full implementation plan be submitted to the OBC, with quarterly reports submitted thereafter, and a one (1) year review of the Children's Code itself as it relates to the full implementation. | OBC reviewed and accepted Children's Code Implementation Plan. OBC approved a draft 161 Agreement and directed negotiations begin. | GTC adopted FY18 budget. Children's Code set to become effective January 6, 2019. | OBC accepted the first quarterly report. | OBC accepted the second quarterly report. | OBC accepted the third quarterly report. | OBC accepted the fourth quarterly report. | OBC took action through resolution BC-10-24-18-A to amend resolution BC-07-26-17-J to delay the implementation of this law. Children's Code now set to become effective October 1, 2019. | OBC accepted the fifth quarterly report. | OBC accepted the sixth quarterly report. | OBC accepted the seventh quarterly report. | Children's Code became effective. | OBC accepted eighth and final quarterly report. | COVID-19 Core Decision Making Team issued "Suspension of Transfer of Cases in Resolution BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy" declaration. | Six Month Review of the Children's Code presented to the OBC. | Additional Six Month Review of the Children's Code presented to the OBC. |

On July 26, 2017, the Oneida Business Committee (OBC) adopted the Children's Code through resolution BC-07-26-17-J for the purpose of providing for the welfare, care, and protection of Oneida children. Resolution BC-07-26-17-J provided that the Children's Code would become effective four hundred and fifty-five (455) calendar days after the adoption of the Fiscal Year 2018 budget. On October 8, 2017, the General Tribal Council adopted the Fiscal Year 2018 budget through resolution GTC-10-08-17-A. In accordance with OBC resolution BC-07-26-17-J, the Children's Code was set to become effective on January 6, 2019.

On July 26, 2017, the OBC also directed that a full implementation plan be submitted to the OBC, with quarterly reports submitted thereafter, and a one (1) year review of the Children's Code itself as it relates to the full implementation. Additionally, the OBC was granted the authority to modify the effective date of the Children's Code or implementation plan as it deems necessary to successfully implement the Children's Code. On September 13, 2017, the OBC reviewed and accepted the Children's Code Implementation plan.

In October of 2018, the OBC took action through resolution BC-10-24-18-A to amend resolution BC-07-26-17-J to delay the implementation of the Children's Code. The Children's Code was then set to become effective on October 1, 2019.

On May 8, 2019, the OBC approved an amendment to the July 26, 2017, directive to complete a one (1) year review of the Children's Code to instead require that a review of the implementation of the Children's Code be conducted six (6) months after the Children's Code takes effect.

The Children's Code took effect on October 1, 2019. On October 23, 2019, the OBC adopted resolution BC-10-23-19-B to authorize discretion regarding the implementation of the Children's Code to better address the transfer of cases from Brown and Outagamie County. Then on March 20, 2020, the Nation's COVID-19 Core Decision Making Team issued a "*Suspension of Transfer of Cases in Resolution BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy*" declaration which provided that when the Children's Code becomes effective all new cases in Brown and Outagamie County shall begin in or transfer to Oneida Family Court unless such commencement or transfer would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney. This declaration remains in effect for the duration of the Nation's Public Health State of Emergency.

Eight (8) quarterly reports were presented to the OBC on the progress of the implementation of the Children's Code from December 27, 2017, until October 23, 2019. On April 22, 2020, a six (6) month review of the implementation of the Children's Code since it became effective on October 1, 2019, was presented to the OBC. During that meeting the Oneida Business Committee directed that an additional six (6) month review of the Children's Code be completed based on the fact that there were still goals and concerns related to the implementation of the Children's Code that need to be addressed, as well the need to review the potential impacts of the COVID-19 pandemic on the Children's Code.

This memorandum serves as the additional six (6) month review of how the implementation of the Children's Code has progressed since April 22, 2020.

ONEIDA FAMILY COURT

Updates Since Implementation of the Children's Code

The Oneida Family Court would like to provide the following updates on the implementation of the Children's Code since the last six (6) month review was presented to the OBC on April 22, 2020:

- *Children's Code Cases.*
 - The Oneida Family Court currently has twenty (20) active Children's Code cases and has conducted Emergency Custody Hearings, Plea Hearings, Dispositional Hearings, and Permanency Plan Hearings on child in need of protection and/or services (CHIPS) cases and a Plea Hearing on a Termination of Parental Rights case relating to a stepparent adoption. There are fifteen (15) cases that are scheduled for an in-person Permanency Plan Hearing over the course of the next six (6) months.

- On March 20, 2020, the COVID-19 Core Decision Making Team issued a declaration “*Suspension of Transfer of Cases in Resolution #BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy*” which stated that all new child welfare cases in Brown and Outagamie County shall begin in or transfer to the Oneida Family Court “*unless such commencement or transfer would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney.*”
 - Two (2) cases transferred over from Brown County on April 8, 2020, as the children's sibling has a case pending in the Oneida Family Court.
 - The Oneida Family Court is ready and available to process any original Children’s Code filings and case transfers
- *Collaboration with ICW and the Oneida Law Office.*
 - On May 27, 2020, the Oneida Family Court met virtually with the Indian Child Welfare Department to discuss the current pandemic and the Children’s Code.
 - General issues and concerns continue to be discussed and another meeting will be scheduled after the new Child Welfare Attorney is hired.
- *Updates to Court Forms.*
 - Since the Oneida Family Court started hearing Children's Code cases, several of the court forms have been modified to improve them.
 - Changes in court forms are communicated to the Indian Child Welfare Department and the Child Welfare Attorney.

ONEIDA INDIAN CHILD WELFARE DEPARTMENT

Updates Since Implementation of the Children’s Code

The Indian Child Welfare (ICW) Department would like to provide the following updates on the implementation of the Children’s Code since the last six (6) month review was presented to the OBC on April 22, 2020:

- *ICW Caseload.*
 - The ICW Department currently services one hundred and ninety-six (196) children and their families in both On-going and Initial Assessment.
 - Six (6) cases for a total of nineteen (19) children have been transferred to the jurisdiction of the Oneida Family Court since December 31, 2019.
- *ICW Staff.*
 - The ICW Department remains fully staffed, even amidst the COVID-19 crisis.
 - All ICW Department staff have the option to Telecommute and may utilize a hybrid work schedule.
- *Training of Staff.*
 - Training for staff continues through the ICW Department’s partnership with the Wisconsin Child Welfare Professional Development System (WCWPDS) as well as through a strong partnership with the Brown County Child Protection Services.
- *Collaboration with the Counties.*
 - The ICW Department has developed a strong partnership with Brown County Child Protection Services which has been very beneficial. ICW Department staff are now

included in any safety trainings Brown County Child Protection Services provides to its team.

- *Use of Reflective Practice.*
 - Reflective Practice through Oneida Behavioral Health is now being offered to staff as a resource for self-care and personal/professional growth.
 - There has been continued efforts by the ICW Department to promote a healthy and strong work environment and to support staff through this transition.
- *Case Management System.*
 - On September 30, 2020, the ICW Department had a kick-off meeting with Handel Technology to begin implementation of a case management system. This is a major project that will be a tremendous benefit to the team and families the Nation serves.
- *Urinary Analysis Memorandum of Understanding with Prevea.*
 - The ICW Department successfully pursued a urinary analysis contract with Prevea and now has services in place.
 - The ICW Department was previously unsuccessful with obtaining a urinary analysis memorandum of understanding (MOU) with Oneida Behavioral Health.
- *Receiving Home Contract.*
 - The COVID-19 pandemic caused the Nation's long-time foster home which was providing receiving home services to retire.
 - The ICW Department has now secured an alternative receiving home contract.

Remaining Goals

The Indian Child Welfare Department is still working to accomplish the following:

- *Memorandum of Understanding with Oneida Behavioral Health.*
 - The ICW Department is still working towards finalizing a memorandum of understanding with the Oneida Behavioral Health for urinary analysis services.
 - The ICW Department has been waiting for final Oneida Behavioral Health approval since December 2019.
 - This is no longer a priority of the ICW Department since a contract with Prevea for urinary analysis services has been obtained.
- *Access to eWISACWIS.*
 - The ICW Department is still awaiting access to eWISACWIS to enter the Nation's foster care placements.
 - The ICW Department predicts that this will be a long process and communication with the Wisconsin Department of Children and Families is ongoing.
 - In the meantime, the ICW Department has established a process with Brown County that has been working successfully.
- *Lack of Necessary Support Staff.*
 - The ICW is currently working on a way to solve the Nation's problem of a lack of support staff needed to manage cases.
 - Unlike the counties, the Nation does not have volunteer drivers, human services or parent support aids to help with supervised visits or any other wrap around services.
 - Much more time is being spent by the ICW Department staff on documentation and court documents which creates less time for the staff to dedicate to wrap around services which the staff assisted with previously.

Concerns

The Indian Child Welfare Department has the following concerns for the continued implementation of the Children's Code:

- *Spike in Initial Assessments.*
 - The ICW Department has seen a spike in initial assessments over the last couple months.
 - The ICW Department currently has three Initial Assessment workers. These workers are carrying very high caseloads and the ICW Department is struggling to find a resolution as to how to alleviate these caseloads.
 - Additionally, the ICW Department has had one of the Initial Assessment workers covering Access duties since the ICW Department has been denied that additional Access staff during the last two (2) budget cycle. This work around is no longer effective. If cases continue to rise without enough staff to adequately cover the caseload, the ICW Department may face more staff turnover as many staff members are overwhelmed.
- *Exposure to COVID-19.*
 - ICW Department staff continue to meet with children and families in the community and are at an increased risk of exposure to COVID-19.
 - Despite safety precautions, there are still concerns by ICW Department staff.
 - Several ICW Department staff members have had to be tested for COVID-19 several times, which impacts the staffing levels of the ICW Department.
- *Internal Limitations in Access to Emergency Support Services.*
 - The ICW Department has concerns about its access to emergency support services related to safety.
 - The ICW Department does not have a way to offer emergency support services such as fuel for clients or other emergency items when needed. ICW Department staff have been paying out of pocket for these items.
- *Legal Representation.*
 - The ICW Department has concerns that the department will need more time and commitment from its legal representation in the future for the Children's Code to be successful.
 - The ICW Department is currently in transition with its attorney assignment from the Oneida Law Office and is hoping that a permanent replacement will be assigned soon.
- *Access to Wrap Around Services.*
 - The ICW Department is concerned that it lacks access to wrap around services such as providers, volunteer drivers, or individuals to assist with supervised visitation. The lack of access to these services has been challenging and overwhelming for staff.
 - The ICW Department has been working with the Parenting staff for additional support services in hopes that this will provide relief to On-Going staff who have cases in the Oneida Family Court and no longer have access to county supports.
- *Management of Caseloads.*
 - The ICW Department has concerns about managing full caseloads of its staff.

- Cases have been on the rise and there is concern for burn out and compassion fatigue for ICW Department staff. This concern has increased since the COVID-19 pandemic.
- *COVID-19 Impact on the Nation's Budget.*
 - The ICW Department has concerns with the Nation's financial status as a result of the COVID-19 pandemic and how this may impact the staffing levels of the ICW Department in the future.

REQUESTED ACTION

Accept Children's Code Implementation Additional Six (6) Month Review

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution

Discretion Regarding the Transfer of Cases under the Children's Code

- 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 Oneida Business Committee adopted the Children's Code through resolution BC-07-26-17-J titled, "*Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy*" for the purpose of exercising the fundamental right of sovereignty and self-determination by setting forth procedures to provide for the welfare, care, and protection of Oneida children who are in need of protection or services through the preservation of the family unit; and
- WHEREAS,** resolution BC-07-26-17-J also set forth a process for the implementation of the Children's Code which addressed the transfer of cases from the jurisdiction of Brown and Outagamie County to the jurisdiction of the Oneida Family Court; and
- WHEREAS,** resolution BC-07-26-17-J provided the following guidance as to the transfer of cases, "The following determination has been made for the transfer of cases from Brown and Outagamie County jurisdiction to the jurisdiction of the Oneida Family Court:
- a. When the Children's Code becomes effective all new cases in Brown and Outagamie County shall begin in or transfer to Oneida Family Court.
 - b. Any case in Brown and Outagamie County that has started within the most recent three (3) months may transfer to the Oneida Family Court.
 - c. All other current cases may remain in Brown and Outagamie County, unless the Nation's Indian Child Welfare Department determines the case would be better suited in the Oneida Family Court or another party motions the Court to transfer jurisdiction;" and
- WHEREAS,** the Oneida Business Committee adopted resolution BC-10-24-18-A titled "*Amending Resolution BC-07-26-17-J to Delay the Implementation of the Children's Code*" which changed the date by which the Children's Code would become effective from January 6, 2019 to October 1, 2019; and
- WHEREAS,** the Oneida Business Committee then adopted resolution BC-10-23-19-B titled, "*Authorizing Discretion Regarding Implementation of Children's Code, Chapter 708*" which set forth an additional implementation delay regarding the transfer of Children In Need of Protection and Services cases until 161 Agreements with Brown and Outagamie Counties were approved because the Nation wanted to assure that funding for out-of-home placement was accessible before cases were transferred; and

WHEREAS, resolution BC-10-23-19-B amended the provision regarding the transfer of cases in resolution BC-07-26-17-J, and provided the following, "The following determination has been made for the transfer of cases from Brown and Outagamie County jurisdiction to the jurisdiction of the Oneida Family Court:

a. When the Children's Code becomes effective and the Act 161 Agreements with Brown and Outagamie Counties are approved, the Indian Child Welfare Department shall either begin all new cases in Brown and Outagamie County in the Oneida Family Court or shall seek to transfer all new cases in Brown and Outagamie County to the Oneida Family Court.

b. Any case in Brown and Outagamie County that has started within the most recent three (3) months may transfer to the Oneida Family Court.

c. All other current cases may remain in Brown and Outagamie County, unless the Nation's Indian Child Welfare Department determines the case would be better suited in the Oneida Family Court or another party motions the Court to transfer jurisdiction;" and

WHEREAS, on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding the COVID-19 pandemic, which declared a Public Health State of Emergency for the Nation until April 12, 2020, which was then subsequently extended through November 13, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, and BC-10-08-20-A; and

WHEREAS, on March 20, 2020, the Nation's COVID-19 Core Decision Making Team issued a "*Suspension of Transfer of Cases in Resolution #BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy*" declaration which amended resolution BC-07-26-17-J regarding the transfer of cases to the Oneida Family Court based on the COVID-19 pandemic and provided the following: "The following determination has been made for the transfer of cases from Brown and Outagamie County jurisdiction to the jurisdiction of the Oneida Family Court:

(a) When the Children's Code becomes effective all new cases in Brown and Outagamie County shall begin in or transfer to Oneida Family Court unless such commencement or transfer would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney;" and

WHEREAS, due to the uncertain nature of the COVID-19 pandemic, including its financial constraints on the Nation and potential effect on the Indian Child Welfare Department's staffing levels to last beyond the Public Health State of Emergency, the Indian Child Welfare Department has recommended that the discretion on the transfer of cases provided for in the March 20, 2020, declaration be adopted on a permanent basis; and

NOW THEREFORE BE IT RESOLVED, that this resolution shall supersede all prior resolutions in conflict with the directives set forth in this resolution.

BE IT FINALLY RESOLVED, the Nation's Indian Child Welfare Department and Child Welfare attorney shall begin all new Children in Need of Protection and Services cases occurring in Brown and Outagamie County in the Oneida Family Court or seek the transfer of the case to the Oneida Family Court under the Children's Code unless such commencement or transfer would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney.



Statement of Effect

Discretion Regarding the Transfer of Cases under the Children's Code

Summary

The resolution supersedes all prior resolutions in conflict with the directives set forth in this resolution, and provides the Nation's Indian Child Welfare Department and Child Welfare attorney discretion in determining when to begin new Children in Need of Protection and Services cases occurring in Brown and Outagamie County in the Oneida Family Court or seek the transfer of the case to the Oneida Family Court under the Children's Code.

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

Date: October 16, 2020

Analysis by the Legislative Reference Office

The Oneida Business Committee adopted the Children's Code through resolution BC-07-26-17-J titled, "Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy," for the purpose of providing for the welfare, care, and protection of Oneida children through the preservation of the family unit, by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation, and acknowledging the customs and traditions of the Nation when raising an Oneida child.

Resolution BC-07-26-17-J provided that the Children's Code would become effective fifteen (15) months after the adoption of the Fiscal Year 2018 budget. On October 8, 2017, the General Tribal Council adopted the Fiscal Year 2018 budget through resolution GTC-10-08-17-A. The Children's Code was then set to become effective on January 8, 2019.

Resolution BC-07-26-17-J also provided a process for the implementation of the Children's Code, specifically, direction on how the transfer of cases from the jurisdiction of Brown and Outagamie County to the jurisdiction of the Oneida Family Court shall occur. Resolution BC-07-26-17-J provided that:

- When the Children's Code becomes effective all new cases in Brown and Outagamie County shall begin in or transfer to the Oneida Family Court;
- Any case in Brown and Outagamie County that has started within the most recent three (3) months may transfer to the Oneida Family Court; and
- All other current cases may remain in Brown and Outagamie County, unless the Nation's Indian Child Welfare Department determines the case would be better suited in the Oneida Family Court or another party motions the Court to transfer jurisdiction.

The Oneida Business Committee then took action through resolution BC-10-24-18-A titled, "Amending Resolution BC-07-26-17-J to Delay the Implementation of the Children's Code," to

amend resolution BC-07-26-17-J to delay the implementation of the Children's Code until October 1, 2019.

The Oneida Business Committee then adopted resolution BC-10-23-19-B, *Authorizing Discretion Regarding Implementation of Children's Code, Chapter 708*, which set forth an additional implementation delay regarding the transfer of Children In Need of Protection and Services cases under the Children's Code until 161 Agreements with Brown and Outagamie Counties were approved because the Nation wanted to assure that funding for out-of-home placement was accessible before cases were transferred.

Resolution BC-10-23-19-B amended the third resolve section of resolution BC-07-26-17-J, as amended by resolution BC-10-24-18-A, to provide that the following determination has been made for the transfer of cases from the jurisdiction of Brown and Outagamie County to the jurisdiction of the Oneida Family Court:

- When the Children's Code becomes effective and the Act 161 Agreements with Brown and Outagamie Counties are approved, the Indian Child Welfare Department shall either begin all new cases in Brown and Outagamie County in the Oneida Family Court or shall seek to transfer all new cases in Brown and Outagamie County to the Oneida Family Court;
- Any case in Brown and Outagamie County that has started within the most recent three (3) months may transfer to the Oneida Family Court; and
- All other current cases may remain in Brown and Outagamie County, unless the Nation's Indian Child Welfare Department determines the case would be better suited in the Oneida Family Court or another party motions the Court to transfer jurisdiction.

In response to the COVID-19 pandemic, on March 12, 2020, in accordance with the Emergency Management and Homeland Security law, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding COVID-19. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency set into place the necessary authority should action need to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until November 13, 2020, through the adoption of resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, and BC-10-08-20-A.

On March 17, 2020, the Oneida Business Committee adopted emergency amendments to the Emergency Management and Homeland Security law to create and delegate authority to a COVID-19 Core Decision Making Team ("COVID-19 Team"). [3 O.C. 302.10]. When a public health emergency has been declared, the COVID-19 Team has the authority to declare exceptions to the Nation's laws, policies, procedures, regulations, or standard operating procedures during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees. [3 O.C. 302.10-2]. These declarations remain in effect for the duration of the Public Health State of Emergency. [3 O.C. 302.10-3].

On March 20, 2020, the Nation's COVID-19 Team issued a "*Suspension of Transfer of Cases in Resolution #BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child*

Welfare Act Policy” declaration which amended resolution BC-07-26-17-J regarding the transfer of cases to the Oneida Family Court based on the COVID-19 pandemic and provided that the following determination has been made for the transfer of cases from Brown and Outagamie County jurisdiction to the jurisdiction of the Oneida Family Court:

When the Children's Code becomes effective all new cases in Brown and Outagamie County shall begin in or transfer to Oneida Family Court unless such commencement or transfer would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney.

This resolution provides that due to the uncertain nature of the COVID-19 pandemic, including its financial constraints on the Nation and potential effect on the Indian Child Welfare Department's staffing levels to last beyond the Public Health State of Emergency, the Indian Child Welfare Department has recommended that the discretion on the transfer of cases provided for in the March 20, 2020, COVID-19 Team declaration be adopted on a permanent basis.

This resolution supersedes all prior resolutions in conflict with the directives set forth in this resolution, and provides that the Nation's Indian Child Welfare Department and Child Welfare attorney shall begin all new Children in Need of Protection and Services cases occurring in Brown and Outagamie County in the Oneida Family Court or seek the transfer of the case to the Oneida Family Court under the Children's Code unless such commencement or transfer would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney.

Conclusion

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

Oneida Nation

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Oneida, WI 54155

BC Resolution

Further Interpretation of "Fiscal Impact Statement" in the Legislative Procedures Act

- 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 Legislative Procedures Act was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of ensuring there is a standard process for the development of legislation for the Nation; and
- WHEREAS,** the Legislative Procedures Act delegates authority to the Legislative Operating Committee for the development of legislation of the Nation; and
- WHEREAS,** the Legislative Operating Committee has created procedural mechanisms to implement the Legislative Procedures Act which focus on generating public and organizational input and transparency assisted by new technologies; and
- WHEREAS,** section 109.6-1 of the Legislative Procedures Act requires the development of a Fiscal Impact Statement which is an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation; and
- WHEREAS,** a Fiscal Impact Statement is required prior to legislation being forwarded to the Oneida Business Committee for consideration; and
- WHEREAS,** the Legislative Procedures Act provides that the Legislative Operating Committee may direct any affected agency who may receive funding if the legislation is enacted, may administer a program if legislation is enacted, may have financial information concerning the subject matter of the legislation, or the Finance Department to submit the Fiscal Impact Statement; and
- WHEREAS,** although not required for a public meeting, the Legislative Operating Committee has determined that having a Fiscal Impact Statement for the public meeting is important in providing transparency and understanding the full impact of a proposed law while at the same time recognizing the limited resources and time available from the Finance Department to develop multiple Fiscal Impact Statements; and
- WHEREAS,** the Legislative Operating Committee had determined that Fiscal Impact Statements from affected agencies and affected individuals will be informative during the legislative development processes and public meeting discussion; and

WHEREAS, the Legislative Operating Committee identified that the provisions of the Legislative Procedures Act regarding the Fiscal Impact Statement required clarification as to which entity would be directed to complete a Fiscal Impact Statement at which stage of the legislative process, but that this issue did not rise to the level of requiring amendments to the law; and

WHEREAS, in order to provide clarification as to how Fiscal Impact Statements in the Legislative Procedures Act would be interpreted, the Oneida Business Committee adopted resolution BC-09-25-19-A titled, "*Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act*" which provided the following: "the Fiscal Impact Statement required in section 109.6-1 of the Legislative Procedures Act shall be applied as follows.

1. *Fiscal Impact Statements for use during a Public Meeting.* When developing a Fiscal Impact Statement for proposed legislation to be used in a public meeting scheduled under section 109.8-2, the Legislative Operating Committee may use any agency who:

- a. may receive funding if the legislation is enacted;
- b. may administer a program if the legislation is enacted; or
- c. may have financial information concerning the subject matter of the legislation.

2. *Fiscal Impact Statements for use during Consideration of Adoption.* When developing a Fiscal Impact Statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee and/or General Tribal Council under section 109.9-1, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, send a Fiscal Impact Statement to the Legislative Operating Committee for inclusion in adoption materials.

WHEREAS, the Legislative Operating Committee determined that it is impracticable to limit the development of Fiscal Impact Statements for use during consideration of adoption to solely the Finance Department when the Legislative Procedures Act affords more flexibility; and

WHEREAS, the Legislative Operating Committee, for purposes of standardizing the interpretation of the Legislative Procedures Act and managing the agenda of the Oneida Business Committee, requests adoption of this updated interpretive resolution; and

NOW THEREFORE BE IT RESOLVED, that this resolution supersedes resolution BC-09-25-19-A titled, "*Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act*" and provides that the Financial Impact Statement required in section 109.6-1 of the Legislative Procedures Act shall be applied as follows:

1. *Fiscal Impact Statements for use during a Public Meeting.* When developing a Fiscal Impact Statement for proposed legislation to be used during a public meeting and public comment period scheduled under section 109.8:

a. The Legislative Operating Committee may direct that a Fiscal Impact Statement be completed by any agency who:

- i. may receive funding if the legislation is enacted;
- ii. may administer a program if the legislation is enacted; or
- iii. may have financial information concerning the subject matter of the legislation.

b. Upon approval of draft legislation for a public meeting, the Legislative Operating Committee may direct an agency to provide a neutral and unbiased Fiscal Impact Statement to the Legislative Operating Committee within ten (10) business days for inclusion in public meeting materials.

- i. If an agency cannot complete the Fiscal Impact Statement within the ten (10) business day timeframe, the agency may request an extension of this timeframe by the Legislative Operating Committee.

- 101 2. *Fiscal Impact Statements for use during Consideration of Adoption.* When developing a fiscal
102 impact statement for proposed legislation to be used for presentation to and consideration of
103 adoption by the Oneida Business Committee and/or General Tribal Council under section 109.9-1:
104 a. The Legislative Operating Committee may direct that a Fiscal Impact Statement be
105 completed by the Finance Department or any agency who:
106 i. may receive funding if the legislation is enacted;
107 ii. may administer a program if the legislation is enacted; or
108 iii. may have financial information concerning the subject matter of the legislation.
109 b. Upon final approval of draft legislation by the Legislative Operating Committee, the
110 Legislative Operating Committee may direct an agency or the Finance Department to
111 provide a neutral and unbiased Fiscal Impact Statement to the Legislative Operating
112 Committee within ten (10) business days for inclusion in adoption materials.
113 i. If an agency or the Finance Department cannot complete the Fiscal Impact
114 Statement within the ten (10) business day timeframe, the agency may request an
115 extension of this timeframe by the Legislative Operating Committee.



Statement of Effect

Further Interpretation of “Fiscal Impact Statement” in the Legislative Procedures Act

Summary

The resolution further interprets the Legislative Procedures Act to clarify who the Legislative Operating Committee may direct develop a fiscal impact statement for use during a public meeting and for use during the consideration of adoption.

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

Date: October 16, 2020

Analysis by the Legislative Reference Office

The Legislative Procedures Act (LPA) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a standard process for the development and adoption of legislation of the Nation. [1 O.C. 109.1-1]. The LPA delegates authority to the Legislative Operating Committee for the development of legislation of the Nation. [1 O.C. 109.4-2].

The LPA requires that all legislation, except emergency legislation, be accompanied by a fiscal impact statement, which is an estimate of the total fiscal year financial effects associated with the legislation. [1 O.C. 109.6-1, 109.3-1(c)]. The LPA delegates authority to the Legislative Operating Committee to direct an agency to submit a fiscal impact statement. The Legislative Operating Committee may direct that a fiscal impact statement be prepared by any agency who may receive funding if the legislation is enacted, may administer a program if the legislation is enacted, or may have financial information concerning the subject matter of the legislation; or the Finance Department. [1 O.C. 109.6-1].

If the fiscal impact statement is available, then the LPA requires that it be posted on the Oneida Register and electronically provided to all managers and directors of the Nation with the other public meeting materials ten (10) business days before a public meeting is held. [1 O.C. 109.8-2]. All fiscal impact statements are required to be completed and submitted to the Legislative Operating Committee prior to any legislation being forwarded to the Oneida Business Committee for consideration of adoption. [1 O.C. 109.6-2]. The fiscal impact statement provides information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee and/or General Tribal Council can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Oneida Business Committee adopted resolution BC-09-25-19-A titled, “*Interpreting ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” as a result of the Legislative Operating Committee seeking clarification on the interpretation of the use of fiscal impact statements within the LPA. Resolution BC-09-25-19-A clarified and limited who the Legislative Operating

Committee may direct to complete a fiscal impact statement for use during a public meeting and for use during the final adoption of legislation so that the process can be standardized and handled in a consistent manner. Resolution BC-09-25-19-A provided the following: “the Fiscal Impact Statement required in section 109.6-1 of the Legislative Procedures Act shall be applied as follows.

1. Fiscal Impact Statements for use during a Public Meeting. When developing a Fiscal Impact Statement for proposed legislation to be used in a public meeting scheduled under section 109.8-2, the Legislative Operating Committee may use any agency who:
 - a. may receive funding if the legislation is enacted;
 - b. may administer a program if the legislation is enacted; or
 - c. may have financial information concerning the subject matter of the legislation.
2. Fiscal Impact Statements for use during Consideration of Adoption. When developing a Fiscal Impact Statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee and/or General Tribal Council under section 109.9-1, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, send a Fiscal Impact Statement to the Legislative Operating Committee for inclusion in adoption materials.”

This resolution provides that the Legislative Operating Committee has determined that it is impracticable to limit the development of fiscal impact statements for use during consideration of adoption to solely the Finance Department when the Legislative Procedures Act affords more flexibility.

This resolution would supersede resolution BC-09-25-19-A and provide that the financial impact statement required in section 109.6-1 of the Legislative Procedures Act shall be applied as follows:

1. Fiscal Impact Statements for use during a Public Meeting. When developing a Fiscal Impact Statement for proposed legislation to be used during a public meeting and public comment period scheduled under section 109.8:
 - a. The Legislative Operating Committee may direct that a Fiscal Impact Statement be completed by any agency who:
 - i. may receive funding if the legislation is enacted;
 - ii. may administer a program if the legislation is enacted; or
 - iii. may have financial information concerning the subject matter of the legislation.
 - b. Upon approval of draft legislation for a public meeting, the Legislative Operating Committee may direct an agency to provide a neutral and unbiased Fiscal Impact Statement to the Legislative Operating Committee within ten (10) business days for inclusion in public meeting materials.
 - i. If an agency cannot complete the Fiscal Impact Statement within the ten (10) business day timeframe, the agency may request an extension of this timeframe by the Legislative Operating Committee.
2. Fiscal Impact Statements for use during Consideration of Adoption. When developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee and/or General Tribal Council under section 109.9-1:

- a. The Legislative Operating Committee may direct that a Fiscal Impact Statement be completed by the Finance Department or any agency who:
 - i. may receive funding if the legislation is enacted;
 - ii. may administer a program if the legislation is enacted; or
 - iii. may have financial information concerning the subject matter of the legislation.
- b. Upon final approval of draft legislation by the Legislative Operating Committee, the Legislative Operating Committee may direct an agency or the Finance Department to provide a neutral and unbiased Fiscal Impact Statement to the Legislative Operating Committee within ten (10) business days for inclusion in adoption materials.
 - i. If an agency or the Finance Department cannot complete the Fiscal Impact Statement within the ten (10) business day timeframe, the agency may request an extension of this timeframe by the Legislative Operating Committee.

Conclusion

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