



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2nd Floor Norbert Hill Center

December 2, 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. November 4, 2020 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Industrial Hemp Law (pg. 3)
2. Community Support Fund Law Amendments (pg. 49)

IV. New Submissions

1. Nuisance Law (pg. 71)
2. Oneida Nation Gaming Ordinance Amendments (pg. 78)

V. Additions

VI. Administrative Updates

1. E-Poll Results: Approval of the Pandemic Relief Assistance Law Emergency Adoption Packet (pg. 80)
2. E-Poll Results: Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet (pg. 100)
3. Active Files List Sixty Day Update (pg. 132)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
November 4, 2020
9:00 a.m.

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

Excused: Kirby Metoxen

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

I. Call to Order and Approval of the Agenda

David Jordan called the November 4, 2020, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Daniel Guzman King. Motion carried unanimously.

II. Minutes to be Approved

1. October 21, 2020 LOC Meeting Minutes

Motion by Jennifer Webster to approve the October 21, 2020 LOC meeting minutes and forward to the Oneida Business Committee; seconded by Daniel Guzman King. Motion carried unanimously.

III. Current Business

IV. New Submissions

V. Additions

VI. Administrative Items

1. LOC FY20 Fourth Quarter Report

Motion by Jennifer Webster to approve the LOC FY20 Fourth Quarter Report and forward it to the Oneida Business Committee; seconded by Marie Summers. Motion carried unanimously.

2. Virtual Meeting Standard Operating Procedure

Motion by Marie Summers to approve and adopt the Virtual Meeting Standard Operating Procedure; seconded by Daniel Guzman King. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Daniel Guzman King to adjourn at 9:05 a.m.; seconded by Marie Summers. Motion carried unanimously.





Legislative Operating Committee
December 2, 2020

Industrial Hemp Law

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 Oneida, as well as federal, law 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.

10/21/20 LOC: Motion by Kirby Metoxen to reject the fiscal impact statement, due to the incomplete indeterminate conclusion, and direct that a completed fiscal impact statement be prepared and brought back to the LOC; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to direct that Finance works with Environmental, Health and Safety to come up with the fiscal impact statement; seconded by Marie Summers. Motion carried unanimously.

Motion by Jennifer Webster to direct that the LRO work with Councilman Daniel Guzman King to update the adopting resolution to include an acknowledgement of Chaz

Wheelock's contributions to the development and promotion of Industrial Hemp within the Nation; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Jennifer Webster to direct that the LRO schedule a work meeting with the Environmental, Health, Safety and Land Division to discuss implementation capacity and concerns in light of the Tier V Budget Contingency caused by the COVID-19 pandemic; seconded by Kirby Metoxen. Motion carried unanimously.

10/23/20: *Workgroup Meeting with LOC.* Present: David Jordan, Jennifer Webster, Kirby Metoxen, Marie Summers, Daniel Guzman-King, Kristen Hooker, Patrick Pelky, Sylvia Cornelius, Nicole Rommel. This meeting was held per the directive of the LOC during its meeting of October 21, 2020. The purpose of this meeting was to discuss the Division's ability to implement the Industrial Hemp law under the current circumstances caused by the COVID-19 pandemic if adopted by the Oneida Business Committee. The next step is for the drafting attorney to add thresholds to the adopting resolution that would trigger when the law gets sent to the USDA for approval as the Nation's regulatory plan under the 2018 Farm Bill.

10/29/20: *LOC Work Meeting.* Present: David Jordan, Jennifer Webster, Kirby Metoxen, Marie Summers, Daniel Guzman-King, RC Metoxen, Kristal Hill, Kristen Hooker, Clorissa Santiago. The purpose of this work meeting was to review the updated Industrial Hemp Law Adoption Resolution and Proclamation of Appreciation regarding Chaz Wheelock. The next step is for the drafting attorney to finalize the adoption materials for purposes of adding to the LOC's meeting agenda once the updated fiscal impact statement is completed by the Finance Department/EHSLD.

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: December 2, 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 Updated 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, Land and Agriculture Division (“Division”) [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 Division 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 Division 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 Division, the Community and Economic Development Division; the Environmental Resource Board; and the 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 December 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, BC-10-08-20-A and BC-11-10-20-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.

Contingent on USDA approval, is that the Nation submit a certification along with its Law, or regulatory plan, stating that, upon said approval, the Nation will have the resources and personnel necessary to begin carrying out the practices and procedures set forth therein. If the USDA would determine 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.

As a result of the COVID-19 pandemic and Tier V budget reductions relating thereto, at least half of the Nation’s workforce has been placed on furlough or laid off. In addition, the Nation’s Chief Financial Officer has identified that complete financial recovery from the impacts of COVID-19 may take as long as two (2) to three (3) years and operations, including services and employment levels, may not return to pre-pandemic levels.

Due to the uncertain nature of the COVID-19 pandemic, including its financial constraints on the Nation and the potential effect on the Division's staffing levels to last beyond the Public Health State of Emergency, the Division expressed concern over its current capacity to implement and administer the Law once approved by the USDA. Given the Division's concerns, as well as the consequences for not acting in accordance with the requisite certification, the adopting resolution contains certain thresholds that must be met before the Nation will be allowed to send the Law to the USDA for approval. The thresholds are as follows:

1. That, the Division has created all standard operating procedures required under the Law;
2. That, the Division has presented any resolution(s) required under the Law to the Oneida Business Committee for approval; and
3. That, the Division Director provides written confirmation to the Oneida Business Committee that the Division has sufficient resources and staff to begin the implementation and administration of the Nation's industrial hemp plan in accordance with the Law.

Once these thresholds are satisfied, the Law would be sent to the USDA for approval as the Nation's regulatory plan, along with the following certification which is set forth in the adopting resolution:

BE IT FINALLY RESOLVED, that, contingent upon satisfaction of these thresholds, the Oneida Business Committee hereby certifies that, upon approval by the USDA, the Nation will have 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.

And, once approved by the USDA as the Nation's regulatory plan, the Law will become effective within ten (10) business days following the Nation's receipt of said approval.

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 granted 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, Land & Agricultural Division (“Division”);
- 31 and
- 32
- 33 **WHEREAS,** the Law provides the process and eligibility requirements for persons to obtain and
- 34 maintain the requisite license to participate in hemp production per the Nation’s regulatory
- 35 plan; and
- 36
- 37 **WHEREAS,** the Law defines what constitutes an “acceptable hemp THC level” for purposes of
- 38 producing hemp plants in compliance with the Law and provides the requisite sampling/
- 39 testing methods by which to accurately determine whether a hemp plant exceeds the
- 40 acceptable hemp THC level; and
- 41
- 42 **WHEREAS,** the Law mandates disposal and destruction of any hemp crop that exceeds the acceptable
- 43 hemp THC level and provides the requisite process for its disposal/destruction; and

- 44
45 **WHEREAS,** the Law sets forth certain reporting and record-keeping requirements on the part of the
46 licensee and the Division that will allow the Nation to track hemp production within the
47 Reservation and ensure compliance with the Law; and
48
- 49 **WHEREAS,** the Law provides enforcement mechanisms for the Division to detect and respond to
50 instances of non-compliance with the Law that include due process protections for the
51 licensee; and
52
- 53 **WHEREAS,** in accordance with the Legislative Procedures Act, a legislative analysis and fiscal impact
54 statement were developed for this Law; and
55
- 56 **WHEREAS,** a public meeting on the proposed Law was not held in accordance with the Legislative
57 Procedures Act due to the COVID-19 pandemic; and
58
- 59 **WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a *“Declaration of Public Health State of*
60 *Emergency”* regarding COVID-19, declaring a Public Health State of Emergency for the
61 Nation until April 12, 2020, the declaration of which was subsequently extended until
62 December 13, 2020, through resolutions BC-03-28-20-A, BC-05-06-20-A, BC-06-10-20-A,
63 BC-07-08-20-A, BC-09-09-20-A, BC-10-08-20-A and BC-11-10-20-A; and
64
- 65 **WHEREAS,** on March 24, 2020, the Nation’s COVID-19 Core Decision Making Team issued a *“Safer*
66 *at Home”* declaration which prohibits all public gatherings of any number of people and
67 orders all individuals present within the Oneida Reservation to stay at home or at their
68 place of residence, with certain exceptions allowed; and
69
- 70 **WHEREAS,** the Nation’s COVID-19 Core Decision Making Team modified the *“Safer at Home”*
71 declaration on April 21, 2020, with the issuance of an *“Updated Safer at Home”* declaration;
72 on May 19, 2020, with a *“Safer at Home Declaration, Amendment, Open for Business”*
73 declaration; and on June 10, 2020, with the issuance of a *“Stay Safer at Home”* declaration;
74 and
75
- 76 **WHEREAS,** on March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a
77 *“Suspension of Public Meetings under the Legislative Procedures Act”* declaration which
78 suspended the Legislative Procedures Act’s requirement to hold a public meeting during
79 the public comment period, but allows members of the community to still participate in the
80 legislative process by submitting written comments, questions, data or input on proposed
81 legislation to the Legislative Operating Committee via e-mail during the public comment
82 period; and
83
- 84 **WHEREAS,** although a public meeting was not held for the proposed legislation, the public comment
85 period for the Law was held open until July 9, 2020 for the submission of written comments;
86 and
87
- 88 **WHEREAS,** the Legislative Operating Committee received five (5) submissions of written comments,
89 for a total of twenty-five (25) comments, during the public comment period; and
90
- 91 **WHEREAS,** the Legislative Operating Committee reviewed and considered all public comments and
92 any changes made based on those comments have been incorporated into the proposed
93 Law; and
94

95 **WHEREAS,** if adopted, this Law will act as the Nation's regulatory plan to be submitted to the USDA for
96 approval in accordance with the requirements of the 2018 Farm Bill and USDA regulations
97 promulgated in accordance therewith; and
98

99 **WHEREAS,** upon receipt of the Nation's plan, the USDA will have sixty (60) days to approve or reject
100 it, with an opportunity for amendment and resubmission in the event of a rejection; and
101

102 **WHEREAS,** once approved by the USDA, the Nation will be required to assume the administration and
103 regulation of hemp production that occurs within its jurisdiction in accordance with the Law;
104 and
105

106 **WHEREAS,** contingent on USDA approval, is that the Nation submit a certification along with the Law
107 (i.e. the regulatory plan) which states that, upon said approval, the Nation will have the
108 resources and personnel necessary to begin carrying out the practices and procedures set
109 forth therein; and
110

111 **WHEREAS,** in response to the COVID-19 pandemic and the Nation's Public Health State of Emergency
112 declaration, the Oneida Business Committee adopted resolution BC-04-08-20-C titled,
113 "*Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020*"; and
114

115 **WHEREAS,** resolution BC-04-08-20-C adopted Tier V budget reductions from the Budget Contingency
116 Plan that was put in place pursuant to the Nation's Budget Management and Control law
117 which included five percent (5%) mandatory budget cuts across the Nation, reduction of all
118 funding to go to essential services only, and layoffs/furloughs; and
119

120 **WHEREAS,** at least half of the Nation's workforce has been placed on furlough or laid off due to the
121 COVID-19 pandemic and Public Health State of Emergency declaration; and
122

123 **WHEREAS,** the Nation's Chief Financial Officer has identified that complete financial recovery from the
124 impacts of COVID-19 may take as long as two (2) to three (3) years and operations,
125 including services and employment levels, may not return to pre-pandemic levels; and
126

127 **WHEREAS,** due to the uncertain nature of the COVID-19 pandemic, including its financial constraints
128 on the Nation and the potential effect on the Division's staffing levels to last beyond the
129 Public Health State of Emergency, the Division has expressed a concern over its current
130 capacity to implement and administer the Law once approved by the USDA; and
131

132 **WHEREAS,** the Oneida Business Committee wants to ensure that the Nation; specifically, the Division,
133 is ready to implement and administer the Nation's Industrial Hemp law as indicated in the
134 requisite certification as soon as it receives approval from the USDA; and
135

136 **WHEREAS,** to ensure readiness, the Oneida Business Committee intends to refrain from sending the
137 Law and accompanying certification to the USDA for approval as the Nation's regulatory
138 plan until the thresholds set forth below have been met by the Division.
139

140 **NOW THEREFORE BE IT RESOLVED,** that the Industrial Hemp law is hereby adopted and shall become
141 effective within ten (10) business days of receiving approval from the USDA.
142

143 **BE IT FURTHER RESOLVED,** that the Industrial Hemp law will not be sent to the USDA for approval as
144 the Nation's regulatory plan until the following thresholds have been satisfied by the Division:
145

1. the Division has created all standard operating procedures required under the Law;

2. the Division has presented any resolution(s) required under the Law to the Oneida Business Committee for approval; and
3. the Division Director provides written confirmation to the Oneida Business Committee that the Division has sufficient resources and staff to begin the implementation and administration of the Nation's industrial hemp plan in accordance with the Law.

BE IT FINALLY RESOLVED, that, contingent upon satisfaction of these thresholds, the Oneida Business Committee hereby certifies that, upon approval by the USDA, the Nation will have 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.



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: December 2, 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 December 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, BC-10-08-20-A and BC-11-10-20-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, unless identified to be effective for a shorter period of time. [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 approval from the USDA.

Contingent on USDA approval, is that the Nation submit a certification along with the Law stating that, upon said approval, the Nation will have the resources and personnel necessary to begin carrying out the practices and procedures set forth therein. Consequences exist if the USDA determines that the Nation's certification was without merit.

To ensure that the Nation is ready to implement and administer the Law upon approval by the USDA, especially given the concern raised by EHSLD over its capacity to do so following budget and staffing cuts caused by the COVID-19 pandemic, the adopting resolution sets forth certain thresholds that must be met by EHSLD before the Law may be submitted to the USDA. The thresholds are as follows:

1. That the Division has completed all standard operating procedures required under the Law;
2. That the Division has presented any resolution(s) required under the Law to the Oneida Business Committee for approval; and
3. That the Division Director provides written confirmation to the Oneida Business Committee that the Division has sufficient resources and staff to begin the implementation and administration of the Nation's industrial hemp plan in accordance with the Law.

Once these thresholds are met, the Law will be sent to the USDA for approval as the Nation's regulatory plan, along with the aforementioned certification which is set forth in the adopting resolution. And, once approved by the USDA, the Law will become effective within ten (10) business days thereafter.

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.



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 Oneida, as well as 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, Land and Agriculture 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 declaration of the Nation’s COVID-19 Core Decision Making Team titled, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> .
Fiscal Impact	The Finance Department provided a fiscal impact statement on September 11, 2020 and then followed with an updated fiscal impact statement on November 2, 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:

- 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 set forth in the proposed 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

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

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)).

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 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 scientist in Wisconsin invented a machine that could harvest and process hemp more efficiently.¹⁷ Soon thereafter, hemp mills were 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.

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

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.

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

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 jurisdictions.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

²² 2017 WI Act 100.

²³ *Id.*

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.*

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.

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 jurisdictions, 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.

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

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 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.

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, Land and Agriculture 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.
- October 23, 2020: Work meeting with Division and LOC.
- October 29, 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.
- On November 10, 2020, the Oneida Business Committee adopted resolution BC-11-10-20-A titled, “*Extension of Declaration of Public Health State of Emergency Until December 13, 2020*” which further extended the Nation’s Public Health State of Emergency until December 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 within ten (10) business days following said approval, meaning it will then 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. Given this broad definition, nearly any activity related to hemp cultivation within the jurisdiction of the Nation would be governed by this Law. [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.
 - If, upon audit, the USDA determines that the Nation is not acting in accordance with its certification of readiness, the Nation could be subject to a corrective action plan and, if multiple instances of non-compliance are found, a revocation of approval to assume regulatory authority over the production of hemp within its boundaries.
 - 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. However, to ensure that the Nation is ready to perform in accordance with the certification once approved by the USDA, the certification, as well as the adopting resolution, contains a triggering clause that prohibits the Law from being sent to the USDA for approval until the following thresholds are met by the Division:
 - The Division creates all standard operating procedures required under the Law;
 - The Division has presented any resolution(s) required under the Law to the Oneida Business Committee for approval; and
 - The Division Director provides written confirmation to the Oneida Business Committee that the Division has sufficient resources and staff to begin the implementation and administration of the Nation's industrial hemp plan in accordance with the Law.

D. Compliance. All hemp produced within the jurisdiction of the Nation must meet the requirements of the Law, which incorporates all mandatory provisions from 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)].
- The Division, 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 the Division. [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 the Division [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 the Division 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 the Division [5 O.C. 508.6-2(a)(6)];
 - “Criminal History Report” is defined within the Law to mean the U.S. Federal Bureau of Investigation’s Identity History Summary. [5 O.C. 508.3-1(g)].
 - As indicated, the Law requires the Division 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 the Division 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 the Division requires under the standard operating procedure it created pursuant to the Law [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 forward copies of the same to the Division [5 O.C. 508.7-2(c)];
 - As indicated, the Law requires the Division to provide public information on how to report to the Farm Service Agency.
 - Licensees must report planting, pre-harvest and post-harvest activities to the Division in the manner indicated within the Division’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 the Division and, if deemed necessary by the Division, with the USDA [5 O.C. 508.7-2(b)]; and
 - Licensees are required to immediately notify the Division 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 the Division’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 the Division. [5 O.C. 508.7-3(b)(1)].
- *Division Oversight.* The Division 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 Licensee’s contact information, which must include the address of residence [5 O.C. 508.6-2(a)(1)];
 - The locations of the Licensee’s growing sites [5 O.C. 508.6-2(a)(2)]; and
 - Information relating to the Licensee’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 the Division or designees of the Division 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 hemp THC 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 the Division 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 Licensees) or by outsourcing to an appropriate individual or entity of the Division'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 corrective action plan that was issued by the Division 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 hemp THC 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 the Division 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 the Division 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 the Division 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 the Division 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 the Division 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 of Readiness.* In the event the Oneida Business Committee decides to adopt this Law, it would then have to be sent to the USDA for approval before implementation could begin. Contingent on USDA approval, is that the Nation include a certification stating that, upon said approval, the Nation will have the resources and personnel necessary to begin carrying out the practices and procedures set forth therein. Should the USDA determine otherwise during an audit of the Nation's plan, the following could occur:
- 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.
 - *Impact of COVID-19 on Certification.* In response to COVID-19 and the Nation's Public Health State of Emergency declaration, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, "Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020."
 - Resolution BC-04-08-20-C adopted Tier V budget reductions from the Budget Contingency Plan, created under the Budget Management and Control law, which included five percent (5%) mandatory budget cuts across the Nation, reduction of all funding to go to essential services only, and layoffs/furloughs.
 - At least half of the Nation's workforce has been placed on furlough or laid off due to the COVID-19 pandemic and Public Health State of Emergency declaration.
 - The Nation's Chief Financial Officer has identified that complete financial recovery from the impacts of COVID-19 may take as long as two (2) to three (3) years and operations, including services and employment levels, may not return to pre-pandemic levels.
 - Due to the uncertain nature of the pandemic, including its financial constraints on the Nation and the potential effect on the Division's staffing levels to last beyond the Public Health State of Emergency, the Division expressed a concern over its current capacity to implement and administer the Law once approved by the USDA.
 - *Adopting Resolution.* To ensure the Nation's readiness to perform in accordance with the requisite certification, the adopting resolution includes the following thresholds that must be met before the Law may be sent to the USDA for approval as the Nation's regulatory plan:
 - That the Division has created all standard operating procedures required under the Law;
 - That the Division has presented any resolution(s) required under the Law to the Oneida Business Committee for approval; and

- That the Division Director provides written confirmation to the Oneida Business Committee that the Division has sufficient resources and staff to begin the implementation and administration of the Nation's industrial hemp plan in accordance with the Law.

B. *Fiscal Impact.* A fiscal impact statement of the proposed Law was provided by the Finance Department on September 11, 2020 and again on November 2, 2020 as an updated document.

- 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-10-28-20-A titled, "*Further Interpretation of 'Fiscal Impact Statement' in the Legislative Procedures Act,*" requires that, when developing a fiscal impact statement for the adoption of proposed legislation by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, unless granted an extension of time, provide a fiscal impact statement to the Legislative Operating Committee.

Title 5. Business - Chapter 508 INDUSTRIAL HEMP

508.1. Purpose and Policy
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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 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 percent.

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- (b) “Applicant” means a person who applies to the Nation for a license to participate in the Nation’s hemp production plan established by this law.
- (c) “Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species and refers to any form of the plant whereby the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
- (d) “Controlled Substances Act” means the act, codified in 21 U.S.C. 801, *et seq.*, establishing the U.S. federal drug policy for regulating the manufacture, importation, exportation, possession, use and distribution of certain substances.
- (e) “Conviction” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned or expunged.
- (f) “Corrective action plan” means a plan established by the Division for a producer to correct a negligent violation or other form of non-compliance with the Nation’s hemp production plan and/or this law.
- (g) “Criminal History Report” means the U.S. Federal Bureau of Investigation’s Identity History Summary.
- (h) “Culpable mental state greater than negligence” means to act intentionally, knowingly, willfully or recklessly.
- (i) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid (“THC-A”) into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-A.
- (j) “Decarboxylation” means the removal or elimination of carboxyl group from a molecule or organic compound.
- (k) “Delta-9 tetrahydrocannabinol, delta-9-THC or THC” means the primary psychoactive component of cannabis. For purposes of the Nation’s plan, delta-9-THC and THC are interchangeable.
- (l) “Division” means the Oneida Environmental, Health, Safety, Land and Agriculture Division or other named entity delegated the authority to carry out the responsibilities and powers set forth in section 508.5-2 of this law.
- (m) “Drug Enforcement Administration or DEA” means the federal law enforcement agency under the U.S. Department of Justice that is the lead agency for domestic enforcement of the Controlled Substances Act.
- (n) “Dry weight basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract or other derivative) after excluding moisture from the item.
- (o) “Expunged” means when a conviction is removed from an individual’s criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions.
- (p) “Farm Bill” means the Agricultural Improvement Act of 2018, Pub. L. 115-334,

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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 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

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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

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

(A) The license not being subject to a pending revocation or suspension

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- 211 under section 508.11 of this law; and
- 212 (B) The transferee or assignee undergoing and being approved for licensure
- 213 pursuant to the application process set forth in section 508.6-2 of this law.
- 214 (b) *License Period.* All licenses shall be valid for a period of three (3) years from the date
- 215 of issuance unless otherwise revoked at an earlier date pursuant to this law or any other
- 216 applicable law of the Nation.
- 217 508.6-2. *Application Process.* Any person under the jurisdiction of the Nation who wishes to
- 218 engage in the production of hemp shall apply to the Division for licensure in accordance with this
- 219 section.
- 220 (a) Applicants must submit a complete application to the Division pursuant to the process
- 221 set forth in the standard operating procedure adopted by the Division before the application
- 222 will be accepted or considered. The application process shall require, at a minimum, that
- 223 the applicant provide/submit the following:
- 224 (1) The applicant's full name, address of residency, telephone number and, if
- 225 available, email address;
- 226 (A) If the applicant represents a business or other entity where the business/
- 227 entity will be the producer, the applicant shall be required to provide the
- 228 business/entity's:
- 229 (i) Full business/entity name;
- 230 (ii) Principal business/entity location address;
- 231 (iii) Key participants' full name and title;
- 232 (iv) EIN number or, if no EIN number, Social Security Number; and
- 233 (v) Email address, if available.
- 234 (2) The street address (if possible), legal description and geospatial location for
- 235 each field, greenhouse, building or site where hemp will be cultivated, handled,
- 236 processed or stored;
- 237 (3) Proof of ownership of the land and/or property where hemp will be produced;
- 238 or proof of permission from the land/property owner to utilize the land and/or
- 239 property where hemp will be produced for hemp production;
- 240 (4) A description of the intended output (e.g. raw hemp or some other hemp
- 241 product), method of cultivation (e.g. organic, natural or genetically modified) and
- 242 any pesticides, herbicides or other potentially hazardous materials the applicant
- 243 intends to use;
- 244 (5) An acknowledgment that by signing the application, the applicant is agreeing
- 245 to abide by all rules and regulations governing the Nation's plan and is further
- 246 certifying that the information provided in and submitted with the application is
- 247 accurate and truthful;
- 248 (6) A Criminal History Report that was completed no greater than sixty (60) days
- 249 before the application submission date;
- 250 (A) For businesses/entities, a Criminal History Report shall be completed
- 251 for each of the key participants.
- 252 (7) The licensing fee set pursuant to the fee schedule created by the Division and
- 253 approved by the Oneida Business Committee through resolution; and

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(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 shall 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

(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

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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.

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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.

(b) Producers shall be responsible to pay any fees associated with the sampling and testing

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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.

- (f) Producers shall be required to harvest their crop not more than fifteen (15) days

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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

(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

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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 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-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: October 22, 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	\$86,500	\$1,885,787

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 an 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 in excess of \$86,500. 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 estimates the annual cost for personnel in the first year to be \$85,500 and documentation costs to be an additional \$1,000. However, due to the fact this is a start-up operation, this amount is subject to wide variability and is completely dependent upon unknown variables.

The Environmental Health, Safety, and Land Division identifies one full-time equivalent employee is necessary in the first year and an additional full-time equivalent will be necessary to complete sections 508.6, 508.7, 508.8, 508.9, and 508.10.

Inclusion of one (1) additional full-time equivalent in years two through ten (10) as indicated by the Environmental Health, Safety, and Land Division, the estimated ten (10) year fiscal impact for the Hemp Law is approximately \$1,885,787. However, due to the fact this is a start-up operation, this amount is subject to wide variability and is completely dependent upon unknown variables.

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.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Proclamation of Appreciation

- 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 late Charles Frederick Whitney Wheelock "Chaz", Tsyata'ti (Along the Riverbank),
- 12 Turtle Clan of the Oneida Nation, transformed the conversation on tribal sovereignty, our
- 13 relationship to the environment, strategic planning for the next seven generations, and the
- 14 acceptance of Industrial Hemp in our community; and
- 15
- 16 **WHEREAS,** as one of the founders of the Indigenous Environmental Network ("IEN"), a network of
- 17 Indigenous, grassroots activists dedicated to addressing environmental and economic
- 18 justice issues internationally, Chaz infused the mission of IEN into his professional life; and
- 19
- 20 **WHEREAS,** over the last five (5) years, Chaz focused on the education of Industrial Hemp and the
- 21 development of regenerative economies, which ranged from Chaz standing on his van in
- 22 the middle of downtown Oneida, while dressed as SpongeBob SquarePants, holding a sign
- 23 that simply said "Legalize Hemp", to his thoughtful leadership in directing hemp focused
- 24 non-profits to educate the Oneida community on the benefits of the plant; and
- 25
- 26 **WHEREAS,** more recently, Chaz, along with Oneida Community Integrated Food Systems, was
- 27 responsible for a hemp booth being set up at the Oneida Farmers Market and, as one of
- 28 his final projects for the Oneida community, Chaz created a just transition model based on
- 29 agriculture research and food security; and
- 30
- 31 **WHEREAS,** the Oneida community did not only benefit from Chaz's wisdom and strategic planning to
- 32 elevate the conversation on Industrial Hemp; Chaz's network and guidance contributed to
- 33 the State of Wisconsin, as well as the United States of America, legalizing hemp; and
- 34
- 35 **WHEREAS,** Chaz was an influential Elder who inspired the next seven generations of Indigenous
- 36 thinkers and activists; and
- 37
- 38 **WHEREAS,** the Oneida Business Committee does wish to recognize Chaz's contribution to the
- 39 development of the Nation's first Industrial Hemp law, as well as his remarkable dedication
- 40 to the promotion and advancement of the Industrial Hemp industry within the Oneida Nation
- 41 and throughout the United States of America.
- 42

43 **NOW THEREFORE BE IT RESOLVED**, that the Oneida Business Committee does hereby express its
44 sincere appreciation to the late Charles Frederick Whitney “Chaz” Wheelock on behalf of the Oneida Nation
45 for offering his expertise during the development of the Nation’s first Industrial Hemp law, as well as his
46 dedication, time, knowledge, passion and diligence in advocating and advancing the Industrial Hemp
47 industry in general.



Legislative Operating Committee
December 2, 2020

Community Support Fund Law Amendments

Submission Date: 10/7/20	Public Meeting: N/A
LOC Sponsor: David P. Jordan	Emergency Enacted: N/A

Summary: *On September 2, 2021, the Governmental Services Division Director, on behalf of Economic Support, submitted a request for amendments to be made to the Community Support Fund law to take the requirement for income verification out of the Law, since none of the Community Support Fund Law Rules review income as a basis for program eligibility. The request also identified various potential amendments to the Community Support Fund Law Rule Handbook.*

10/7/20 LOC: 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.

10/15/20: *Work Meeting.* Present: Clorissa N. Santiago, Delia Smith, Andrea Frayre, Margaret Kruse. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to read through the Community Support Fund law line by line and discuss any potential amendments that should be made to the law. The Administrative Rulemaking process was also discussed since the Economic Support Department will also be seeking amendments to the Community Support Fund Law Rule Handbook.

10/21/20: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristen Hooker, Rhiannon Metoxen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the draft of suggested amendments by the Economic Support Department.

10/29/20: *Work Meeting.* Present: Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Delia Smith, Andrea Frayre, Margaret Kruse, Kristen Hooker, Rhiannon Metoxen, Kristal Hill, James Petitjean. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review with Economic Support issues that the LOC determined during the October 21, 2020, work meeting that they wanted more information and clarity on.

Next Steps:

- Approve Community Support Fund Law Amendments draft and legislative analysis.

Title 1. Government and Finances – Chapter 125**COMMUNITY SUPPORT FUND****Kayaʔtakenhásla tsiʔ niyukwana:táya***It is helpful where our community lays***COMMUNITY SUPPORT FUND**

125.1. Purpose and Policy

125.2. Adoption, Amendment, Repeal

125.3. Definitions

125.4. Responsibilities, Eligibility and Qualifications

125.5. Priorities for Consideration

125.6. Items Covered by the Fund

125.7. Items not Covered by the Fund

125.8. Application Requirements

125.9. Appeal

125.1. Purpose and Policy

125.1-1. *Purpose.* The purpose of this law is to assist the greatest number of members of the Oneida Nation who apply for assistance to the Fund in times of a catastrophic event, catastrophic illness, or injury, or emergency event when no other resources for assistance exist.

125.1-2. *Policy.* It is the policy of the Oneida Nation to assist their people in a time of need after a catastrophic event, catastrophic illness, or injury, or emergency event, when there is no other assistance available or all other assistance has been exhausted.

125.2. Adoption, Amendment, Repeal

125.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-15-96-A and amended by resolutions BC-01-08-97-G, BC-12-11-13-D-~~and~~, BC-01-11-17-B, and BC- -

125.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

125.2-3. 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.

125.2-4. 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.

125.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

125.3. Definitions

125.3-1. 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) “Applicant” means the subject of the application for assistance.

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

(c) “Case manager” means an employee within the Fund Operator responsible for administering Fund benefits.

(d) “Catastrophic event” means a natural or man-made incident, which results in substantial damage or loss requiring major financial resources to repair or recover ~~(i.e.,~~ including, but not limited to, a house fire, tornado, flood, or other disaster);.

(e) “Catastrophic illness or injury” means a serious debilitating illness, injury, impairment, or physical or mental condition that involves:

(1) In-patient care;

(2) A period of continuing treatment due to a chronic serious health condition ~~(such~~

~~as~~including, but not limited to, chemotherapy~~,~~ radiation, dialysis, daily~~/or~~ weekly therapy resulting from trauma~~, etc.~~;

(3) A period of illness or injury that is long-term due to a condition for which treatment may be ineffective ~~(i.e.,~~including, but not limited to, stroke~~,~~ or terminal disease~~, etc.)~~; or

(4) Multiple treatments either for restorative surgery after an accident or other injury, or for a chronic condition~~(i.e.,~~including, but not limited to cancer or kidney disease~~)~~;

(f) “Emergency event” means a situation that poses an immediate risk to health, life, safety, property, or environment. Emergencies require urgent intervention to prevent further illness, injury, death, or other worsening of the situation.

(g) “Emergency medical travel” means an unexpected serious health situation or occurrence, requiring the immediate presence of immediate family~~(i.e.,~~including, but not limited to, end of life situation~~,~~ or life support~~, etc.)~~;

(h) “Fund” means the Community Support Fund.

(i) “Fund Operator” means the Economic Support Services Department, or other area within the Governmental Services Division designated authority over the operation of the Fund.

~~(j)~~ “Immediate family” means that group of persons who make up a family unit normally defined as an applicant’s husband, wife, children, sister, mother, father, son, daughter, brother, in-laws, step-family, grandparents~~sister, grandparent, grandchild, aunt, uncle, niece, nephew, cousin, and grandchildren, and/or a person~~any of these relations attained through marriage or legal adoption, as well as a person who has legal responsibility for the applicant~~, or a person the applicant has legal responsibility of.~~

~~(k)~~ “Legal guardian” means a person who has the legal authority to care for the personal and property interests of another person granted through Court order.

~~(l)~~ “Legal responsibility” means specific duties imposed upon a person to care or provide for another including liability for personal obligations as granted through a Power of Attorney or Court order.

~~(m)~~ “Major medical surgery” means a surgical procedure that carries a degree of risk to the patient’s life, or the potential for severe disability if something goes wrong during surgery. It is a surgical procedure that usually requires a patient to be put under general anesthesia and given respiratory assistance because he or she cannot breathe independently.

~~(n)~~ “Nation” means the Oneida Nation.

~~(o)~~ “Public health emergency” means the occurrence or imminent threat of an illness or health condition which:

(1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and

(2) poses a high probability of any of the following:

(A) a large number of deaths or serious or long-term disability among humans; or

(B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people.

~~(p)~~ “Rule” means a set of requirements enacted in accordance with the Administrative Rulemaking law.

~~(e) “Tribal” means the Oneida Nation.~~

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

125.4. Responsibilities, Eligibility and Qualifications

~~125.4-1. The Social Services Area of the Governmental Services Division shall be responsible for operation~~Responsibilities of the Fund, but may designate Operator. The Fund Operator shall have the following responsibilities in regard to the operation of the Fund ~~to~~ :
~~(a department within its control.~~

~~(a)~~ (a) Administrative Rulemaking. The ~~operators of the Fund~~ Operator shall promulgate rules, for the administration of the Fund ~~that are consistent with this law. The rules which:~~

(1) ~~shall include the list of categories the Fund covers and a cap that sets the amount of assistance per event/per household, except for funeral expenses which shall be set per event/per person;~~ and

(2) ~~may include additional items not listed in section 125.6, as long as the rule does not conflict with~~ any provision of this law.

~~(b)~~ (b) Communication and Education. The Fund Operator shall ensure that the Nation’s membership is informed of what assistance is available through the Fund, how to apply for assistance, and who is eligible for assistance.

125.4-2. Reporting Requirements. The Governmental Services Division Director shall report quarterly to the Oneida Business Committee. The report shall include, but is not limited to, the amount of funds paid out under each category of the Fund.

~~(e) The Social Services Area or designee shall ensure that the Nation’s membership is informed of what assistance is available through the Fund, how to apply for assistance, and who is eligible for assistance.~~

~~125.4-23.~~ Eligibility for assistance provided under the Fund is reserved for enrolled members of the Nation. Applications may be made by a non-member on the behalf of an enrolled member of the Nation, provided the requested funds will benefit the member only and the non-member has one (1) of the following relationships to the applicant:

- (a) Is a parent of the applicant;
- (b) Is the legal guardian of the applicant; or
- (c) Has legal responsibility for the applicant.

~~125.4-34.~~ Residency within the state of Wisconsin is not a prerequisite for assistance, ~~except for requests for a security deposit in accordance with section 125.6-2 from the Fund.~~

~~125.4-45.~~ The Fund is a fund of last resort and provides assistance when there is no other financial assistance available or all other assistance has been exhausted. Applicants shall first seek out other resources that can meet the needs of their request. ~~Proof of requesting assistance from other sources shall be provided with the application.~~

~~125.4-56.~~ The following types of catastrophic events, and catastrophic illnesses or injuries qualify an applicant for assistance:

- (a) Terminally ill;
- (b) Physically challenged or incapacitated;
- (c) Major medical surgery;

(d) Life threatening ~~(i.e., including, but not limited to,~~ cancer, AIDS, stroke, disabling injuries due to motor vehicle accident, ~~etc.);~~

(e) ~~—~~ Natural disaster ~~(i.e., including, but not limited to,~~ tornado, fire, flood, ~~etc.);~~

~~(f) Public health emergency;~~ and

~~(fg) Death in immediate family as identified in section 125.6-1(n);~~

125.4-~~67~~. Assistance may be denied or limited for applicants who have elected not to be covered by employer benefits such as disability or health insurance.

125.4-~~78~~. Except as otherwise provided in section 125.6-4, all payments shall be provided directly to the service provider.

125.4-~~89~~. Assistance available under the Fund is subject to change according to fiscal year funding levels.

125.4-~~910~~. Oneida programs and enterprises are not eligible for these funds.

125.5. Priorities for Consideration

125.5-1. The case manager shall determine the level of assistance to be provided based on:

(a) Severity of ~~the catastrophic~~ event, ~~catastrophic~~ illness, ~~or~~ injury, or emergency event;

(b) Cost ~~(usual and customary fees);~~

(c) Amount of time elapsed since ~~the~~ catastrophic event, ~~catastrophic~~ illness, ~~or~~ injury, or emergency event occurred; and

(d) The Fund's appropriate promulgated rules.

125.5-2. The case manager shall assess each individual case, prioritize, and assist with immediate needs. Priorities are as follows:

(a) Life-threatening emergency requests;

(b) Emergency medical travel; and

(c) Other needs.

125.6. Items Covered by the Fund

125.6-1. Requests for assistance from the Fund shall be tied to or be a result of a catastrophic event, ~~catastrophic~~ illness, ~~or~~ injury, or emergency event. Upon verification of a catastrophic event, ~~catastrophic~~ illness, ~~or~~ injury, or emergency event, the Fund may be used for the following:

(a) COBRA Insurance Payments;

(b) Prescriptions not available through an Indian Health Services clinic;

(c) Medical transportation ~~or~~ emergency medical travel including vehicle repairs;

(d) Medical-related equipment, supplies, or furniture;

(e) Medical bills ~~(including~~ dental, optical, hospital), not covered by insurance;

(f) Mortgage payments and rent payments ~~(including security deposits);~~ where no other resources exist ~~in accordance with section 125.6-2;~~

(g) Utility disconnections ~~in accordance with section 125.6-3;~~

(h) Inpatient Treatment ~~(with a limit of once per lifetime);~~

(i) Fire recovery ~~and~~ natural disaster assistance;

(j) Home renovations required for handicap accessibility;

(k) Family Medical Leave Act wage replacement;

(l) Waiting period for a Social Security Disability Determination rent and utility assistance ~~up to a maximum of twelve (12) months;~~

(m) Appliance repair for essential appliances ~~as defined in the rules which the Fund operator shall develop;~~ and/or

(n) Travel expenses to arrange or attend a funeral for immediate family members ~~outside the state where an applicant resides, in accordance with section 125.6-4.~~

125.6-2. ~~Security deposit~~Deposit. The Fund shall only provide assistance for a security deposit when it is tied to or a result of a catastrophic event, catastrophic illness or injury, or emergency event, on an emergency basis which shall include, but is not limited to, pending eviction and homelessness. ~~Security deposit assistance is limited to Tribal members who are Wisconsin residents only.~~

(a) The applicant shall demonstrate the ability to fulfill the terms of the rental lease. The operators of the Fund shall not co-sign any lease.

~~(b) Security deposits are non-transferable and the amount paid for a security deposit shall be paid back to the Fund before another security deposit is issued at any time in the future.~~

~~(e)~~(b) Only one (1) request per household shall be considered; ~~multiple consecutive requests may be made.~~

125.6-3. *Utilities*. Assistance for the payment of utilities shall only be allowed once every two (2) years by the person listed as responsible to pay with the utility company. ~~An applicant shall demonstrate that he or she applied to his or her local Energy Assistance Program before applying for assistance from the Fund.~~

125.6-4. ~~Funeral expenses~~Travel Expenses. An applicant may receive assistance with travel expenses, up to a maximum amount of five hundred dollars (\$500), to arrange or attend a funeral for immediate family members ~~outside the state where the applicant resides.~~ Unless the rules allow for direct payment to the travel provider by the Fund Operator, such assistance is required to be in the form of reimbursement, provided that mileage assistance shall always be in the form of reimbursement.

125.7. Items not Covered by the Fund

125.7-1. The Fund shall not be used to cover payments that are not for a catastrophic event, catastrophic illness, or injury, or emergency event as defined above. The following is a list of items not covered by the Fund; however, this is not an exhaustive list:

(a) Car payments;

(b) Taxes;

(c) Credit card or charge accounts;

(d) Commercial loans;

(e) Defaults, fines, or bankruptcy charges;

(f) Expenses not tied to basic needs ~~(such as~~ cable, internet, memberships, etc~~);~~;

(g) Legal fees, court costs, judgments;

~~(h) Homeless lodging assistance;~~

(h) Lodging assistance due to homelessness, or for any other reason not related to a catastrophic event or emergency event;

(i) Health membership fees;

(j) Food and personal care items;

(k) Stabilization rent assistance;

(l) Insurance deductibles;

(m) Home renovations not related to handicap accessibility; and

(n) Department of Corrections re-entry assistance.

125.7-2. Benefits may be denied or limited if evidence is found regarding the applicant as to the following:

(a) The catastrophic event, catastrophic illness; or injury or emergency event is the result of a violation of the law as proven by a citation or criminal conviction;

(b) The applicant or others in the household benefiting from assistance from the Fund are non-compliant with the requirements of other Nation programs, policies or laws; and/or

(c) The applicant or others in the household benefiting from assistance from the Fund are non-compliant with the requirements of the Fund.

125.7-3. When a decision is made to approve, deny, or limit benefits, the case manager shall provide an explanation of the decision in writing to the applicant with a copy placed in the applicant's file.

125.8. Application Requirements

125.8-1. To be considered for assistance and before receiving assistance the applicant shall complete the full application process. All applicants shall cooperate with the case manager to assist the case manager in comprehensively addressing the needs of the applicant(s). Every application shall contain a space for the applicant to identify a preferred method of contact. This shall be the primary contact method. Case managers shall follow up every contact with written correspondence, in order to make responses to the applicant in a timely manner so as to meet the applicant's needs.

125.8-2. Supporting documentation is required in all cases. The applicant is responsible to provide all documentation requested by the case manager. No assistance may be provided without sufficient documentation of:

(a) The catastrophic event, catastrophic illness; or injury, or emergency event;

(b) Proof that the applicant sought assistance from other agencies with an explanation of benefits received or refusal of assistance by the other agencies;

(c) Enrollment in the Nation; and

~~(d) All household income the last thirty (30) business days immediately prior to the submission of the application; and~~

~~(e)~~ (d) Status of employment which shall include the following as applicable:

(1) Leave of absence paperwork;

(2) Balance of personal and vacation time accumulation; and

(3) Disability insurance or workmen's compensation coverage.

125.8-3. Documentation includes, but is not limited to:

(a) Medical reports;

(b) Bills or statements;

(c) Estimates;

(d) Letters;

(e) Police or fire reports;

(f) Obituary or formal notice of death;

(g) Check stubs;

(h) Pictures or photographs;

(i) Applications for assistance from other agencies; and/or

(j) Approval of assistance or denial of assistance letters from other agencies.

125.8-4. Requests submitted without supporting documentation shall be kept on file for thirty (30) business days.

(a) The case manager shall request additional information be provided when an application contains insufficient information to make an informed decision.

(b) Applicants may deliver, scan, fax, mail, or e-mail additional requested information.

(c) Failure to submit the requested information within the thirty (30) business days shall result in closing the application file, with no further action taken in regard to that application.

(d) Applicants shall be sent a notice that the file has been closed and reason(s) for the file being closed.

(e) After the file is closed, the applicant shall start the application process over again in order to be considered for assistance from the Fund. However, no applicant may re-apply for the same catastrophic event, catastrophic illness, or injury, or emergency event more than the limit stated within this law or the Fund's rules.

125.8-5. Applications for assistance shall be made within a reasonable time period, not to exceed thirty (30) forty-five (45) business days of a catastrophic event ~~or, catastrophic illness, or injury~~, or emergency event. Applications made after thirty (30) forty-five (45) business days shall not be considered.

125.9. Decision and Appeal

125.9-1. *Initial Decision.* The Fund Operator shall include in the Fund rules a timeline for which an initial decision is required following the submission of a complete application. Such timeline shall include available extensions for circumstances wherein the applicant has a determination of award ~~or~~ coverage pending with another support ~~or~~ assistance resource.

125.9-2. ~~*Program Appeal to the Director*~~ *Appeal of the Fund Operator.* An appeal of the case manager's decision shall be requested in writing to the ~~Program Director~~ director of the Fund Operator within ten (10) business days after receipt of notice of the initial decision. ~~Within ten (10) business days after receiving the appeal, the Program Director~~ The director of the Fund Operator shall provide the applicant with notice of his or her decision on the matter ~~— within ten (10) business days after receiving the appeal.~~

125.9-3. ~~*Area Manager Appeal*~~ *Appeal to the Governmental Services Division Director.* An appeal of the ~~Program Director's~~ director of the Fund Operator's decision shall be requested in writing to the ~~Area Manager~~ Governmental Services Division Director within ten (10) business days after receipt of notice of the ~~Program Director's~~ director of the Fund Operator's decision. ~~Within ten (10) business days after receiving the appeal, the Area Manager~~ The Governmental Services Division Director shall provide the applicant with notice of his or her decision on the matter ~~— within ten (10) business days after receiving the appeal.~~

125.9-4. *Oneida Judiciary Appeal.* An applicant may appeal a decision of the ~~Area Manager to the Oneida Court of Appeals in accordance~~ Governmental Services Division Director by filing a complaint with the ~~Rules of Appellate Procedure~~ Trial Court.

End.

Adopted - BC-05-15-96-A

Amended - BC-01-08-97-G

Amended - BC-12-11-13-D

Amended - BC-01-11-17-B

Amended – BC- - - -

Title 1. Government and Finances – Chapter 125**Kayaʔtakenhásla tsiʔ niyukwana·táya***It is helpful where our community lays***COMMUNITY SUPPORT FUND**

125.1. Purpose and Policy

125.2. Adoption, Amendment, Repeal

125.3. Definitions

125.4. Responsibilities, Eligibility and Qualifications

125.5. Priorities for Consideration

125.6. Items Covered by the Fund

125.7. Items not Covered by the Fund

125.8. Application Requirements

125.9. Appeal

125.1. Purpose and Policy

125.1-1. *Purpose.* The purpose of this law is to assist the greatest number of members of the Nation who apply for assistance to the Fund in times of a catastrophic event, catastrophic illness or injury, or emergency event when no other resources for assistance exist.

125.1-2. *Policy.* It is the policy of the Nation to assist their people in a time of need after a catastrophic event, catastrophic illness or injury, or emergency event, when there is no other assistance available or all other assistance has been exhausted.

125.2. Adoption, Amendment, Repeal

125.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-15-96-A and amended by resolutions BC-01-08-97-G, BC-12-11-13-D, BC-01-11-17-B and BC-__-__-__-__.

125.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

125.2-3. 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.

125.2-4. 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.

125.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

125.3. Definitions

125.3-1. 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) “Applicant” means the subject of the application for assistance.

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

(c) “Case manager” means an employee within the Fund Operator responsible for administering Fund benefits.

(d) “Catastrophic event” means a natural or man-made incident, which results in substantial damage or loss requiring major financial resources to repair or recover, including, but not limited to, a house fire, tornado, flood, or other disaster.

(e) “Catastrophic illness or injury” means a serious debilitating illness, injury, impairment, or physical or mental condition that involves:

(1) In-patient care;

(2) A period of continuing treatment due to a chronic serious health condition including, but not limited to, chemotherapy, radiation, dialysis, daily or weekly

therapy resulting from trauma.

(3) A period of illness or injury that is long-term due to a condition for which treatment may be ineffective including, but not limited to, stroke or terminal disease; or

(4) Multiple treatments either for restorative surgery after an accident or other injury, or for a chronic condition including, but not limited to cancer or kidney disease.

(f) “Emergency event” means a situation that poses an immediate risk to health, life, safety, property, or environment. Emergencies require urgent intervention to prevent further illness, injury, death, or other worsening of the situation.

(g) “Emergency medical travel” means an unexpected serious health situation or occurrence, requiring the immediate presence of immediate family including, but not limited to, end of life situation or life support.

(h) “Fund” means the Community Support Fund.

(i) “Fund Operator” means the Economic Support Services Department, or other area within the Governmental Services Division designated authority over the operation of the Fund.

(j) “Immediate family” means an applicant’s husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, cousin, and any of these relations attained through marriage or legal adoption, as well as a person who has legal responsibility for the applicant, or a person the applicant has legal responsibility of.

(k) “Legal guardian” means a person who has the legal authority to care for the personal and property interests of another person granted through Court order.

(l) “Legal responsibility” means specific duties imposed upon a person to care or provide for another including liability for personal obligations as granted through a Power of Attorney or Court order.

(m) “Major medical surgery” means a surgical procedure that carries a degree of risk to the patient’s life, or the potential for severe disability if something goes wrong during surgery. It is a surgical procedure that usually requires a patient to be put under general anesthesia and given respiratory assistance because he or she cannot breathe independently.

(n) “Nation” means the Oneida Nation.

(o) “Public health emergency” means the occurrence or imminent threat of an illness or health condition which:

(1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and

(2) poses a high probability of any of the following:

(A) a large number of deaths or serious or long-term disability among humans; or

(B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people.

(p) “Rule” means a set of requirements enacted in accordance with the Administrative Rulemaking law.

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

of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

125.4. Responsibilities, Eligibility and Qualifications

125.4-1. *Responsibilities of the Fund Operator.* The Fund Operator shall have the following responsibilities in regard to the operation of the Fund:

(a) *Administrative Rulemaking.* The Fund Operator shall promulgate rules for the administration of the Fund which:

(1) shall include the list of categories the Fund covers and a cap that sets the amount of assistance per event/per household, except for funeral expenses which shall be set per event/per person; and

(2) may include additional items not listed in section 125.6, as long as the rule does not conflict with any provision of this law.

(b) *Communication and Education.* The Fund Operator shall ensure that the Nation's membership is informed of what assistance is available through the Fund, how to apply for assistance, and who is eligible for assistance.

125.4-2. *Reporting Requirements.* The Governmental Services Division Director shall report quarterly to the Oneida Business Committee. The report shall include, but is not limited to, the amount of funds paid out under each category of the Fund.

125.4-3. Eligibility for assistance provided under the Fund is reserved for enrolled members of the Nation. Applications may be made by a non-member on the behalf of an enrolled member of the Nation, provided the requested funds will benefit the member only and the non-member has one (1) of the following relationships to the applicant:

(a) Is a parent of the applicant;

(b) Is the legal guardian of the applicant; or

(c) Has legal responsibility for the applicant.

125.4-4. Residency within the state of Wisconsin is not a prerequisite for assistance from the Fund.

125.4-5. The Fund is a fund of last resort and provides assistance when there is no other financial assistance available or all other assistance has been exhausted. Applicants shall first seek out other resources that can meet the needs of their request. Proof of requesting assistance from other sources shall be provided with the application.

125.4-6. The following types of catastrophic events, and catastrophic illnesses or injuries qualify an applicant for assistance:

(a) Terminally ill;

(b) Physically challenged or incapacitated;

(c) Major medical surgery;

(d) Life threatening, including, but not limited to, cancer, AIDS, stroke, disabling injuries due to motor vehicle accident;

(e) Natural disaster, including, but not limited to, tornado, fire, flood;

(f) Public health emergency; and

(g) Death in immediate family.

125.4-7. Assistance may be denied or limited for applicants who have elected not to be covered by employer benefits such as disability or health insurance.

125.4-8. Except as otherwise provided in section 125.6-4, all payments shall be provided directly to the service provider.

125.4-9. Assistance available under the Fund is subject to change according to fiscal year funding

levels.

125.4-10. Oneida programs and enterprises are not eligible for these funds.

125.5. Priorities for Consideration

125.5-1. The case manager shall determine the level of assistance to be provided based on:

- (a) Severity of the catastrophic event, catastrophic illness or injury, or emergency event;
- (b) Cost, usual and customary fees;
- (c) Amount of time elapsed since the catastrophic event, catastrophic illness or injury, or emergency event occurred; and
- (d) The Fund's appropriate promulgated rules.

125.5-2. The case manager shall assess each individual case, prioritize, and assist with immediate needs. Priorities are as follows:

- (a) Life-threatening emergency requests;
- (b) Emergency medical travel; and
- (c) Other needs.

125.6. Items Covered by the Fund

125.6-1. Requests for assistance from the Fund shall be tied to or be a result of a catastrophic event, catastrophic illness or injury, or emergency event. Upon verification of a catastrophic event, catastrophic illness or injury, or emergency event, the Fund may be used for the following:

- (a) COBRA Insurance Payments;
- (b) Prescriptions not available through an Indian Health Services clinic;
- (c) Medical transportation or emergency medical travel including vehicle repairs;
- (d) Medical-related equipment, supplies, or furniture;
- (e) Medical bills including dental, optical, hospital, not covered by insurance;
- (f) Mortgage payments and rent payments including security deposits, where no other resources exist;
- (g) Utility disconnections;
- (h) Inpatient Treatment, with a limit of once per lifetime;
- (i) Fire recovery and natural disaster assistance;
- (j) Home renovations required for handicap accessibility;
- (k) Family Medical Leave Act wage replacement;
- (l) Waiting period for a Social Security Disability Determination rent and utility assistance up to a maximum of twelve (12) months;
- (m) Appliance repair for essential appliances; and/or
- (n) Travel expenses to arrange or attend a funeral for immediate family members.

125.6-2. *Security Deposit.* The Fund shall only provide assistance for a security deposit when it is tied to or a result of a catastrophic event, catastrophic illness or injury, or emergency event, on an emergency basis which shall include, but is not limited to, pending eviction and homelessness.

- (a) The applicant shall demonstrate the ability to fulfill the terms of the rental lease. The operators of the Fund shall not co-sign any lease.
- (b) Only one (1) request per household shall be considered.

125.6-3. *Utilities.* Assistance for the payment of utilities shall only be allowed once every two (2) years by the person listed as responsible to pay with the utility company. An applicant shall demonstrate that he or she applied to his or her local Energy Assistance Program before applying for assistance from the Fund.

125.6-4. *Funeral Travel Expenses.* An applicant may receive assistance with travel expenses, up to a maximum amount of five hundred dollars (\$500), to arrange or attend a funeral for immediate family members. Unless the rules allow for direct payment to the travel provider by the Fund Operator, such assistance is required to be in the form of reimbursement, provided that mileage assistance shall always be in the form of reimbursement.

125.7. Items not Covered by the Fund

125.7-1. The Fund shall not be used to cover payments that are not for a catastrophic event, catastrophic illness or injury, or emergency event as defined above. The following is a list of items not covered by the Fund; however, this is not an exhaustive list:

- (a) Car payments;
- (b) Taxes;
- (c) Credit card or charge accounts;
- (d) Commercial loans;
- (e) Defaults, fines, or bankruptcy charges;
- (f) Expenses not tied to basic needs such as cable, internet, memberships, etc.;
- (g) Legal fees, court costs, judgments;
- (h) Lodging assistance due to homelessness, or for any other reason not related to a catastrophic event or emergency event;
- (i) Health membership fees;
- (j) Food and personal care items;
- (k) Stabilization rent assistance;
- (l) Insurance deductibles;
- (m) Home renovations not related to handicap accessibility; and
- (n) Department of Corrections re-entry assistance.

125.7-2. Benefits may be denied or limited if evidence is found regarding the applicant as to the following:

- (a) The catastrophic event, catastrophic illness or injury or emergency event is the result of a violation of the law as proven by a citation or criminal conviction;
- (b) The applicant or others in the household benefiting from assistance from the Fund are non-compliant with the requirements of other Nation programs, policies or laws; and/or
- (c) The applicant or others in the household benefiting from assistance from the Fund are non-compliant with the requirements of the Fund.

125.7-3. When a decision is made to approve, deny, or limit benefits, the case manager shall provide an explanation of the decision in writing to the applicant with a copy placed in the applicant's file.

125.8. Application Requirements

125.8-1. To be considered for assistance and before receiving assistance the applicant shall complete the full application process. All applicants shall cooperate with the case manager to assist the case manager in comprehensively addressing the needs of the applicant(s). Every application shall contain a space for the applicant to identify a preferred method of contact. This shall be the primary contact method. Case managers shall follow up every contact with written correspondence, in order to make responses to the applicant in a timely manner so as to meet the applicant's needs.

125.8-2. Supporting documentation is required in all cases. The applicant is responsible to

provide all documentation requested by the case manager. No assistance may be provided without sufficient documentation of:

- (a) The catastrophic event, catastrophic illness or injury, or emergency event;
- (b) Proof that the applicant sought assistance from other agencies with an explanation of benefits received or refusal of assistance by the other agencies;
- (c) Enrollment in the Nation; and
- (d) Status of employment which shall include the following as applicable:
 - (1) Leave of absence paperwork;
 - (2) Balance of personal and vacation time accumulation; and
 - (3) Disability insurance or workmen's compensation coverage.

125.8-3. Documentation includes, but is not limited to:

- (a) Medical reports;
- (b) Bills or statements;
- (c) Estimates;
- (d) Letters;
- (e) Police or fire reports;
- (f) Obituary or formal notice of death;
- (g) Check stubs;
- (h) Pictures or photographs;
- (i) Applications for assistance from other agencies; and/or
- (j) Approval of assistance or denial of assistance letters from other agencies.

125.8-4. Requests submitted without supporting documentation shall be kept on file for thirty (30) business days.

- (a) The case manager shall request additional information be provided when an application contains insufficient information to make an informed decision.
- (b) Applicants may deliver, scan, fax, mail, or e-mail additional requested information.
- (c) Failure to submit the requested information within the thirty (30) business days shall result in closing the application file, with no further action taken in regard to that application.
- (d) Applicants shall be sent a notice that the file has been closed and reason(s) for the file being closed.
- (e) After the file is closed, the applicant shall start the application process over again in order to be considered for assistance from the Fund. However, no applicant may re-apply for the same catastrophic event, catastrophic illness or injury, or emergency event more than the limit stated within this law or the Fund's rules.

125.8-5. Applications for assistance shall be made within a reasonable time period, not to exceed forty-five (45) business days of a catastrophic event, catastrophic illness or injury, or emergency event. Applications made after forty-five (45) business days shall not be considered.

125.9. Decision and Appeal

125.9-1. *Initial Decision.* The Fund Operator shall include in the Fund rules a timeline for which an initial decision is required following the submission of a complete application. Such timeline shall include available extensions for circumstances wherein the applicant has a determination of award or coverage pending with another support or assistance resource.

125.9-2. *Appeal to the Director of the Fund Operator.* An appeal of the case manager's decision shall be requested in writing to the director of the Fund Operator within ten (10) business days after receipt of notice of the initial decision. The director of the Fund Operator shall provide the applicant with notice of his or her decision on the matter within ten (10) business days after receiving the appeal.

125.9-3. *Appeal to the Governmental Services Division Director.* An appeal of the decision of the director of the Fund Operator shall be requested in writing to the Governmental Services Division Director within ten (10) business days after receipt of notice of the director of the Fund Operator's decision. The Governmental Services Division Director shall provide the applicant with notice of his or her decision on the matter within ten (10) business days after receiving the appeal.

125.9-4. *Oneida Judiciary Appeal.* An applicant may appeal a decision of the Governmental Services Division Director by filing a complaint with the Trial Court.

End.

Adopted - BC-05-15-96-A

Amended - BC-01-08-97-G

Amended - BC-12-11-13-D

Amended - BC-01-11-17-B

Amended – BC-__-__-__-__



AMENDMENTS TO THE COMMUNITY SUPPORT FUND LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ Include a definition for Fund Operator, which is the Economic Support Services Department, or other area within the Governmental Services Division designated authority over the operation of the Fund; ▪ Revise the definition of “immediate family” to better reflect Oneida families; ▪ Include a definition for a public health emergency; ▪ Include public health emergency as a catastrophic event, catastrophic illness or injury, or emergency event that qualifies an applicant for assistance from the Fund; ▪ Clarify that the Fund may only be used for the waiting period for a Social Security Disability Determination rent and utility assistance up to a maximum of twelve (12) months; ▪ Remove the requirement that security deposit assistance only be available to those members of the Nation who are Wisconsin residents; ▪ Remove the requirement that the amount paid for a security deposit be paid back to the Fund before another security deposit is issued in the future; ▪ Clarify that an applicant must clarify that he or she applied to his or her local Emergency Assistance Program prior to applying for utility assistance from the Fund; ▪ Remove the requirement that funeral travel expenses is only provided to arrange or attend a funeral for immediate family members outside the state where the applicant resides; ▪ Clarify that lodging assistance due to homelessness or for any other reason not related to a catastrophic event or emergency event, insurance deductibles, and home renovations not related to handicap accessibility are not covered by the Fund; ▪ Remove the requirement that an applicant provide all household income the last thirty (30) business days immediately prior to the submission of the application; ▪ Expand the time period for an applicant to submit an application from thirty (30) days to forty-five (45) days; and ▪ Adjust the appeal process to reflect reorganization of the Governmental Services Division.
Purpose	To assist the greatest number of members of the Nation who apply for assistance to the Fund in times of a catastrophic event, catastrophic illness or injury, or emergency event when no other resources for assistance exist. [1 O.C. 125.1-1]
Affected Entities	Economic Support Services Department
Public Meeting	A public meeting has not yet been held.
Fiscal Impact	A fiscal impact statement has not yet been requested.

What is the Community Support Fund?

The Community Support Fund is a resource available to members of the Nation which provides financial assistance when a member of the Nation is experiencing a catastrophic event, catastrophic illness or injury, or emergency event. Examples of a catastrophic event, catastrophic illness or injury, or emergency event include:

- | | | |
|--------------------------------------|---------|--------------------------|
| -Death in the immediate family | -Fire | -Tornado |
| -Major medical surgery | -Cancer | -Flood |
| -Injury from motor vehicle accidents | -Stroke | -Public Health Emergency |

Assistance from the Community Support Fund is only available when there is no other financial assistance available, or all other assistance has been exhausted. The Community Support Fund is funded through tribal contribution and has a budget of approximately \$350,000. The Community Support Fund can be used to assist with the following types of expenses:

- | | | |
|--|--|--|
| -Rent or mortgage | -Utility payments | -Medical travel |
| -Funeral travel | -Prescription reimbursement | -Medical bills |
| -Dental related expenses | -Optical related expenses | -Inpatient treatment |
| -Security deposits | -Automobile repairs for medical travel | -Utility disconnections |
| -Family Medical Leave Act wage replacement | -Temporary shelter due to natural disaster | -Furnace & water heater repair and replacement |
| -Medical related equipment, supplies, or furniture | -Shelter during a Social Security Disability Determination | -COBRA insurance payments |

The Community Support Fund Law Rule Handbook provides more information on how a member of the Nation may qualify for each category of assistance of the Community Support Fund and the maximum amount of assistance provided for each category of assistance. The Community Support Fund Law Rule Handbook can be found online in the Oneida Code of Laws.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. **Background.** The Community Support Fund law (“the Law”) was first adopted by the Oneida Business Committee on May 15, 1996, for the purpose of assisting the greatest number of members of the Oneida Nation who apply for assistance to the Fund in times of a catastrophic event, catastrophic illness or injury, or emergency event when no other resources for assistance exist. [1 O.C. 125.1-1].
- B. The Law was most recently amended by the Oneida Business Committee on January 11, 2017, through the adoption of resolution BC-01-11-17-B.
- C. On September 2, 2020, the Governmental Services Division Director, on behalf of the Economic Support Services Department, submitted a request for the Legislative Operating Committee to consider amendments to the Law in an effort to expand the assistance available under the Fund to members of the Nation. The Legislative Operating Committee added the Law to its Active Files List on October 7, 2020.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments of the Nation participated in the development of amendments to this Law and legislative analysis:

- Economic Support Services Department.
- B. The following laws were reviewed in the drafting of this analysis:
 - Administrative Rulemaking law; and
 - Rules of Appellate Procedure.

SECTION 4. PROCESS

- A. The amendments to this Law have followed the process set forth in the Legislative Procedures Act.
 - On September 2, 2020, the Governmental Services Division Director, on behalf of the Economic Support Services Department, submitted a request for the Legislative Operating Committee to consider amendments to the Law.
 - The LOC added the amendments to the Active Files List on October 7, 2020.
- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
 - October 15, 2020: Work meeting with Economic Support Services Department.
 - October 21, 2020: Work meeting with LOC.
 - October 29, 2020: Work meeting with LOC and Economic Support Services Department.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Definition for Immediate Family.** The proposed amendments to the Law revise the definition for “immediate family.” The Law now defines “immediate family” as an applicant’s husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, cousin, and any of these relations attained through marriage or legal adoption, as well as a person who has legal responsibility for the applicant, or a person the applicant has legal responsibility of. [1 O.C. 125.3-1(j)]. Previously, “immediate family” was defined as that group of persons who make up a family unit normally defined as husband, wife, children, sister, brother, in-laws, step family, grandparents and grandchildren, and/or a person who has legal responsibility for the applicant. The term “immediate family” is most frequently used in the Law in reference to assistance for funeral travel expenses.
 - *Effect.* The proposed amendments expand the definition of immediate family to better reflect familial relationships amongst members of the Nation. The Economic Support Services Department made the recommendation to expand this definition based on requests for assistance that have been submitted, in an effort to better meet the needs of members of the Nation.
- B. **Public Health Emergency as a Qualification for Assistance.** The proposed amendments to the Law now specify that a public health emergency as a type of catastrophic event or catastrophic illness or injury which qualifies an applicant for assistance. [1 O.C. 125.4-6(f)]. The public health emergency qualification is in addition to the following types of catastrophic events, and catastrophic illnesses or injuries that were previously specified in the Law: terminally ill, physically challenged or incapacitated, major medical surgery, life threatening, natural disaster, and death in immediate family. [1 O.C. 125.4-6].
 - *Effect.* The proposed amendment to the Law provides greater clarification that a public health emergency does qualify as a type of catastrophic event or catastrophic illness or injury a person may apply for assistance for. During the COVID-19 pandemic the Economic Support Services Department did view the Nation’s declaration of a Public Health State of Emergency as an

emergency event that would qualify a person for assistance, but requested that the Law be clarified to specify this.

C. *Utility and Rent Assistance during Waiting Period for a Social Security Disability Determination.*

The proposed amendments to the Law limit rent and utility assistance from the Fund during a waiting period for a Social Security Disability Determination to a maximum period of twelve (12) months. [1 O.C. 125.6-1(l)]. Previously, the Law provided no limitation on how long a person may receive rent and utility assistance during the waiting period for a Social Security Disability Determination.

- *Effect.* Due to the fact that the Fund is funded entirely by tribal contribution, the proposed amendment to the Law limits the period of time a person may received rent and utility assistance during a waiting period for a Social Security Disability Determination in an effort to preserve the Fund so assistance can be provided to a greater number of applicants.

D. *Security Deposit Assistance.* The proposed amendments to the Law remove the limitation that security deposit assistance only be provided to members of the Nation who are residents of Wisconsin only. [1 O.C. 125.6-2]. The proposed amendments also remove the provision which states that security deposits are non-transferable, and the requirement that the amount paid for a security deposit shall be paid back to the Fund before another security deposit is issued at any time in the future. [1 O.C. 125.6-2(b)]. The proposed amendments to the Law also removes the statement that multiple consecutive requests may be made.

- *Effect.* The removal of the requirement that security deposit assistance only be provided to members of the Nation that are residents of Wisconsin greatly expands who may be eligible to apply for security deposit assistance. It was unknown to the Economic Support Services Department why security deposit assistance was limited to residents of Wisconsin only, since that was the only type of limitation that had a residency limitation.

E. *Utilities Assistance.* The proposed amendments to the Law added a provision which states that an applicant shall demonstrate that he or she applied to his or her local Energy Assistance Program before applying for assistance from the Fund. [1 O.C. 125.6-3]. Previously, the section of the Law on utilities assistance did not mention this requirement, although the Law generally provided that applicants shall first seek out other resources that can meet the needs of their request. [1 O.C. 125.4-5].

- *Effect.* The inclusion of the statement that an applicant has to demonstrate that he or she applied to his or her local Energy Assistance Program before applying for the Fund provides further clarification on how an applicant can meet the Law's requirement of first seeking out other resources that can meet the needs of their request.

F. *Funeral Travel Expenses.* The proposed amendments to the Law remove the requirement that assistance to arrange or attend a funeral for immediate family members is only allowed when the travel is outside the state where the applicant resides. [1 O.C. 125.6-1(n), 125.6-4].

- *Effect.* The proposed amendments to the Law expand the availability of assistance for funeral travel expenses for members of the Nation. Instead of restricting assistance for funeral travel expenses to outside the state where the applicant resides, the Economic Support Services Department provided that the corresponding rule in the Community Support Fund Law Rule Handbook will include minimum distance requirements that qualify a person for assistance. The Economic Support Services Department made this recommendation based on the understanding that there may be great distances within the state the applicant resides that would prevent the applicant from attending or arranging a funeral if the applicant did not have access to assistance.

- G. *Items not Covered by the Fund.*** The proposed amendments to the Law specify additional expenses that are not eligible for assistance from the Fund. [1 O.C. 125.7-1]. The proposed amendments to the Law provide that lodging assistance due to homelessness or for any other reason not related to a catastrophic event or emergency event, insurance deductibles, and home renovations not related to handicap accessibility are not covered by the Fund. [1 O.C. 125.7-1(h)(l)(m)].
- *Effect.* The proposed amendments to the Law provide further clarification as to different expenses that will not be eligible for assistance from the Fund. The Economic Support Services Department requested that extra clarification be provided on expenses included in the proposed amendments because they receive frequent requests for assistance for these expenses which are denied for not meeting the qualifications for assistance from the Fund.
- H. *Verification of Household Income.*** The proposed amendments to the Law remove the requirement that an applicant provide verification of all household income the last thirty (30) business days immediately prior to the submission of the application. [1 O.C. 125.8-2].
- *Effect.* The proposed amendments to the Law remove the requirement to provide verification of all household income because the Economic Support Services Department determined it was unnecessary to require this information when there are no income requirements to qualify an applicant for assistance from the Fund.
- I. *Time Period for Submission of Applications.*** The proposed amendments to the Law extend the time period to submit an application for assistance to forty-five (45) days after a catastrophic event, catastrophic illness or injury, or emergency event. [1 O.C. 125.8-5]. Previously, the Law required that all applications for assistance be submitted within thirty (30) business days of a catastrophic event, catastrophic illness or injury, or emergency event.
- *Effect.* The time period to submit an application for assistance from the Fund was extended an additional fifteen (15) business days by the proposed amendments to the Law. The Legislative Operating Committee proposed this amendment to the Law based on the understanding that when a person is experiencing a catastrophic event, catastrophic illness or injury, or emergency event it may be more difficult for the person to collect the necessary supporting documentation and submit an application. The Legislative Operating Committee wanted to ensure that the Law provides grace and flexibility to an applicant as they navigate through the catastrophic event, catastrophic illness or injury, or emergency event.
- J. *Appeals.*** The proposed amendments to the Law adjust the appeal process to reflect the reorganization of the Governmental Services Division. The Law provides that a person may appeal the decision of the case manager to the director of the Fund Operator. [1 O.C. 125.9-2]. A person may then appeal the decision of the Fund Operator to the Governmental Services Division Director. [1 O.C. 125.9-3]. And a person then may further appeal the decision of the Governmental Services Division Director by filing a complaint with the Trial Court. [1 O.C. 125.9-4]. Previously, the Law provided that an appeal of the case manager's decision could be made to the Program Director, which is the same as the Director of the Fund Operator. An appeal of the Program Director's decision could then be made to the Area Manager. And then an appeal of the Area Manager's decision could be made to the Oneida Court of Appeals.
- *Effect.* The proposed amendments to the Law amend the appeal process in two (2) ways. First, an appeal of the Director of the Fund Operator's decision can now be made to the Governmental Services Division Director instead of the Area Manager as formally drafted because the Governmental Services Division has been reorganized since the onset of the COVID-19 pandemic

and no longer has Area Managers. Second, an appeal of the Governmental Services Division Director's decision can be made by filing a complaint with the Trial Court. Previously, appeals were made directly to the Oneida Court of Appeals. The Rules of Appellate Procedure provide that any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals. [8 O.C. 805.5-1]. An original hearing body is defined as the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act, or similar law, and from which appeal is permitted by law. [8 O.C. 805.3-1(s)]. Although the Law previously permitted appeals of the Area Manager to be made directly to the Court of Appeals, the Area Manager was not an administrative agency decision making panel which heard contested cases under the Administrative Procedures Act or similar law, and therefore it is more appropriate for the appeal to be filed as a complaint with the Trial Court instead of directly to the Court of Appeals.

K. Minor Drafting Changes. Minor drafting and formatting changes have been made throughout the law for clarity.

SECTION 6. EXISTING LEGISLATION

A. References to other Laws of the Nation. The following laws of the Nation are referenced in this Law:

- *Administrative Rulemaking law.* The Administrative Rulemaking law provides a process for the adoption and amendments of administrative rules. [1 O.C. 106.1-1].
 - This Law provides that the Fund Operator shall promulgate rules for the administration of the Fund which shall include the list of categories the Fund covers and a cap that sets the amount of assistance per event/per household, except for funeral expenses which shall be set per event/per person. [1 O.C. 125.4-1(a)(1)].
 - This Law provides that the rules promulgated by the Fund Operator may include additional items not listed in section 125.6 of the Law, as long as the rule does not conflict with any provision of the Law. [1 O.C. 125.4-1(a)(2)].

SECTION 7. OTHER CONSIDERATIONS

A. Community Support Fund Law Rule Handbook. The Law requires that the Fund Operator promulgate rules for the administration of the Fund which shall include the list of categories the Fund covers and a cap that sets the mount of assistance. [1 O.C. 125.4-1]. After amendments to the Law were adopted by the Oneida Business Committee through resolution BC-01-11-17-B, the Community Support Fund Law Rule Handbook was then adopted by the Oneida Business Committee on January 24, 2018. Upon the adoption of the proposed amendments to the Law the Economic Support Services Department will need to make amendments to the Community Support Fund Law Rule Handbook in accordance with the Administrative Rulemaking law. The amendments to the Community Support Fund Law Rule Handbook would make revisions necessary to comply with the Law and addresses additional revisions desired by the Economic Support Services Department.

- *Conclusion.* It would be best practice for the Legislative Operating Committee to communicate and work with the Economic Support Services Department to ensure the certification and adoption of the Community Support Fund Law Rule Handbook amendments can coincide as closely as possible with the adoption of the amendments to the Community Support Fund law.

B. Use of the Community Support Fund. In an effort to provide a better understanding on how the Community Support Fund is utilized by the membership, the following information was provided by the Economic Support Services Department which demonstrates how many times a year the category of the Fund was utilized, as well as the total benefit amount provided for each category of the Fund from January 1, 2020 until November 1, 2020.

Category of Assistance from Community Support Fund	Times Fund Utilized in 2018	Times Fund Utilized in 2019	Times Fund Utilized in 2020	Total Benefit Amount Provided
Appliance Repair/Replacement	6	9	11	\$37,851.63
Auto Repairs	30	8	14	\$23,285.29
Catastrophic Rent	210	88	133	\$194,499.62
COBRA Insurance Payments	0	0	1	\$391.38
Dental Expenses	7	3	6	\$6,965.00
Fire Recovery/Natural Disaster	5	6	0	\$1,811.64
Funeral Travel	30	6	11	\$15,254.49
Home Renovations	1	0	0	\$200.00
Inpatient Treatment	1	2	3	\$15,735.80
Medical Bill Payments	47	25	20	\$115,864.17
Medical Travel	155	68	18	\$19,046.61
Medical Related Equipment/Service	10	2	16	\$21,539.77
Optical Expenses	9	2	3	\$2,084.50
Prescriptions	5	2	0	\$1,375.60
Security Deposit	19	9	9	\$16,630.00
SSD Determination Rent	88	63	18	\$68,283.36
SSD Determination Utility	27	25	4	\$5,643.56
Utilities	82	31	18	\$21,434.57
FMLA Wage Replacement	21	15	5	\$14,700.00

**Data provided by the Economic Support Services Department on November 24, 2020.*

C. Fiscal Impact. A fiscal impact statement of the proposed amendments to the Law will have to be requested. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-10-28-20-A titled, “Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act,” provides further clarification on who the Legislative Operating Committee may direct complete a fiscal impact statement at various stages of the legislative process, as well as timeframes for completing the fiscal impact statement.

- **Conclusion.** The Legislative Operating Committee will have to determine which entity is best suited to complete a fiscal impact statement, and direct that a fiscal impact statement be completed.



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



AGENDA REQUEST FORM

- 1) Request Date: 11/13/20
- 2) Contact Person(s): Brandon Stevens
 Dept: OBC
 Phone Number: 6193177 Email: bstevens@oneidanation.org
- 3) Agenda Title: Nuisance Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
I would like a Nuisance Law to be enacted on an emergency basis, to
preserve the welfare of the community from homes that are suspected
drug houses. Currently Housing, Oneida Police Department has little
authority over some homes on the reservations (conveyed homes) and
Housing's zero tolerance policy adherence. Combine policies into one.

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

- 1) Draft Nuisance Law
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
Housing Policies, any neighborhood related law or policy
- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Police Department, Housing, DPW, Behavior Health, Indian Child Welfare
- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
Overdoes, Opiate related deaths and increase in drug traffic in our neighborhoods.

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

Chapter 30

Public Nuisances

30.1. Purpose and Policy
30.2. Adoption, Amendment, Conflicts
30.3. Definitions
30.4. Public Nuisances Prohibited

30.5. Public Nuisances, Generally
30.6. Abatement of Public Nuisances
30.7. Penalties and Appeals

30.1. Purpose and Policy

30.1-1. The purpose of this law is to regulate actions, conditions and use of property that are considered public nuisances.

30.1-2. It is the policy of the Tribe to establish standards to encourage all persons to be respectful in their actions and use of their property so that the Reservation is a safe and enjoyable place for all property owners and residents.

30.2. Adoption, Amendment, Conflicts

30.2-1. This law was adopted by the Oneida Business Committee Resolution _____.

30.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

30.2-3. 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.

30.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

30.2-5. This law is adopted under the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

30.3. Definitions

30.3-1. 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) "Enforcement action" means an arrest, issuance of a citation, or verbal or written warning.

(b) "Nuisance activity" means:

(1) any of the following activities, behaviors, or conduct, as defined by Wisconsin State Statute, occurring on a premises:

- (A) An act of harassment.
- (B) Disorderly conduct.
- (C) Battery, substantial battery, or aggravated battery.
- (D) Lewd and lascivious behavior.
- (E) Prostitution.
- (F) Theft.
- (G) Receiving stolen property.
- (H) Arson.
- (I) Gambling.
- (J) Trespassing.

- (K) Any conspiracy to commit, or attempt to commit, any of the activities, behaviors, or conduct enumerated in (A) through (J) above.
- (L) Obstructing or resisting an officer.
- (M) Possession, manufacture, or delivery of a controlled substance or related offenses.
- (N) Alcohol violations.
- (2) any of the following activities, behaviors, or conduct, as defined by the Oneida Code of Laws:
 - (A) Animal violations.
 - (B) Weapons violations.
 - (C) Noise violations.
 - (D) Littering.
 - (E) Violation of curfew.
 - (F) Loitering.
 - (G) Truancy.
 - (H) Alcohol violations.
- (3) The execution of arrest or search warrants at a particular location.
- (4) Inspection-related calls where the police department responds.
- (c) “Public nuisance” means a thing, act, occupation, condition or use of property which shall continue for such length of time as to:
 - (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
 - (2) In any way render the public insecure in life or in the use of property.
 - (3) Greatly offend the public morals or decency.
 - (4) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable waters or other public way, or the use of public property.

30.4. Public Nuisances Prohibited

30.4-1. No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Reservation on:

- (a) Tribal land held in trust or fee status;
- (b) fee status land under the control of an individual Oneida member or member of another tribe; or
- (c) an individual’s land held in trust.

30.4-2. *Statutory Nuisance.* Any thing, act, occupation, condition, or use of property which has been defined by the Wisconsin Statutes as a public nuisance is a public nuisance under this law.

30.4-3. *Continuing Ordinance Violation.* Any violation of the Oneida Code of Laws that is not corrected within a reasonable time after the responsible party receives notice is a public nuisance.

30.5. Public Nuisances, Generally

30.5-1. *Public Nuisances Affecting Health.* The following acts, omissions, places, conditions, and things are public nuisances affecting health, but such enumeration shall not be construed to exclude other public nuisances affecting health within the provisions of this law:

- (a) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public.
- (b) Carcasses of animals, birds or fowl not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death.
- (c) Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material in which flies, mosquitoes, disease carrying insects, rats or other vermin may breed.
- (d) All standing water, except water impounded on farm land for agricultural use.
- (e) Privy vaults and garbage containers which are not flytight.
- (f) All noxious weeds and other rank growth of vegetation.
- (g) All animals running at large.
- (h) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust, or other atmospheric pollutants in such quantities as to endanger the health of persons of ordinary sensitiveness or to threaten or cause substantial injury to property.
- (i) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, creamery or other substances.
- (j) Any use of property, substances or things emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, gases, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons.
- (k) Any use of property which causes any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk, or public place.
- (l) The construction and operation of a tank or tanks for the storage of tallow whereby nauseous, offensive, or unwholesome odors are allowed to be emitted.

30.5-2. *Public Nuisances Affecting Peace and Safety.* The following acts, omissions, places, conditions, and things are hereby declared to be public nuisances affecting peace and safety, but such enumeration shall not be construed to exclude other public nuisances affecting peace or safety within the provisions of this law.

- (a) All signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public so situated or constructed as to endanger the public safety.
- (b) All buildings erected, repaired or altered in violation of the provisions of any law relating to materials and manner of construction.
- (c) All unauthorized signs, signals, markings or devices placed or maintained upon or in view of any public highway or railway crossing which purport to be or may be mistaken as official traffic control devices or railroad signs or signal or which, because of their color, location, brilliance, or manner of operation, interfere with the effectiveness of any such device, sign, or signal.
- (d) All trees, hedges, billboards or other obstruction which prevent persons driving upon public streets, alleys or highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.
- (e) All illegal use or display of fireworks.
- (f) All buildings or structures so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human use.
- (g) All loud, discordant and unnecessary noises or vibrations of any kind.

(h) The obstructions of streets, alleys, sidewalks or crosswalks and all excavations in or under the same, except as permitted by law or which, although made in accordance with such law, are kept or maintained for an unreasonable or illegal length of time after the purpose thereof has been accomplished.

(i) All open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalk.

(j) Any unauthorized or unlawful use of property abutting on a public street, alley or sidewalk or of a public street, alley or sidewalk which causes large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks.

(k) All exhibitions of a motion picture, show, or other presentation at an outdoor drive-in theater which motion picture, show, or other presentation in whole or in part depicts nudity, sexual conduct or sado-masochistic abuse, as defined by Wisconsin State Statutes, in such a manner that the material is visible from any public street, sidewalk, thoroughfare, or other public place where it may be observed by minors or unconsenting adults and which, due to its content, creates traffic and parking problems on streets or creates violations of littering laws. For the purposes of this section, a motion picture rating "X" by the film industry shall be prima facie evidence that the film in whole or in part depicts nudity or sexual conduct and is, therefore, in violation of this law.

(l) All use or maintenance of building exteriors or surrounding premises which limits the use or enjoyment of neighboring property or which causes or tends to cause diminution of the value of the property of others in the neighborhood in which such premises is located by reason of:

(1) Exterior storage of scrap lumber, junk, trash, or other debris, including, without limitation of enumeration, discarded objects or equipment such as vehicles, furniture, appliances, farm or manufacturing equipment, building materials, or litter, as defined by the Oneida Code of Laws.

(2) Exterior patchwork, repair, or reconstruction that results in a multi-textured or multi-colored effect or appearance not consonant with the decor, architectural design, or aesthetics of the rest of such building.

(m) Any placement or diverting of any unreasonable amount of snow or ice onto the property of another which is so situated as to endanger the public health or safety or creates an unnecessary physical or financial burden.

(n) Graffiti, such as markings, drawings, etchings, or writings with paint, ink, or other substance, on the physical property of another without the other's consent.

30.6. Abatement of Public Nuisances

30.6-1. *Inspection of Premises.* Whenever the Tribe receives a complaint that a public nuisance exists, the Zoning Administrator shall promptly be notified. The Zoning Administrator shall immediately inspect or cause to be inspected the premises upon which the nuisance is said to exist and shall make a written report of such condition. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises and shall maintain a file containing such written report and photographs.

30.6-2. If the inspecting officer determines that a public nuisance exists, such officer may serve notice on the owner or, if the owner cannot be found, on the occupant or person causing or permitting or maintaining such nuisance and shall also post a copy of the notice on the premises. Such notice shall direct the owner, occupant or person causing, permitting or maintaining such

nuisance to abate or remove such nuisance and shall state that unless such nuisance is so abated, the Tribe will cause the nuisance to be abated and will charge the cost of abatement against the owner, occupant or person causing, permitting or maintaining the nuisance.

(a) If the public nuisance is causing an immediate danger to the public health, safety, peace, morals, or decency, the notice shall order abatement of the nuisance within a period of not less than twenty-four (24) hours, but not more than seven (7) calendar days.

(b) If the public nuisance is not causing an imminent danger to the public health, safety, peace, morals, or decency, the notice to abate the nuisance shall order abatement of the nuisance within a period of not less than fourteen (14) calendar days.

(c) If the public nuisance activity involves felony drug conduct, a notice to abate the nuisance shall be mandatory.

30.6-3. If the nuisance is not abated within the time provided by the notice, or if the owner, occupant or person causing the nuisance cannot be found, the Zoning Administrator shall cause the abatement or removal of such nuisance.

30.6-4. *Cost of Abatement.* Except as provided in (a), and in addition to any other penalty imposed by this law for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Tribe shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance.

(a) If the person who creates the nuisance is a minor child, the parent or parents with custody of the minor child are liable for the costs.

30.6-5. *Chronic Nuisances and Felony Drug Conduct.*

(a) In addition to the enforcement actions allowed under this law, the Zoning Administrator shall notify the premises owner in writing if:

(1) Three (3) or more nuisance activities resulting in enforcement action have occurred at a premise during a twelve (12) month period; or

(2) Felony drug conduct has occurred at the premises.

(b) Abatement Plan. Any owner receiving notice pursuant to this section shall meet with the Zoning Administrator, or his/her designee, within five (5) business days of receipt of such notice. The parties shall review the problems occurring at the property. Within ten (10) business days of this meeting, the owner shall submit an abatement plan to the Zoning Administrator to end the nuisance activity on the property. The plan shall also specify a name, address, and telephone number of a person living within sixty (60) miles of the property who can be contacted in the event of further police, fire, or inspection contact.

(b) Additional Nuisance Activity. Whenever the Zoning Administrator determines that additional nuisance activity has occurred at a premises for which notice has been issued pursuant to this section, that this nuisance activity has occurred not less than fourteen (14) calendar days after notice has been issued, and that reasonable efforts have not been made to abate the nuisance activity, the Zoning Administrator may calculate the cost of enforcement for this and any subsequent nuisance activities and cause such charges and administrative costs to be assessed against the owner of the premises.

30.7. Penalties and Appeals

30.7-1. *First Offense.* Any person who violates any provision of this law or any regulation, rule, or order made hereunder shall forfeit not less than one dollar (\$1.00) or more than one thousand dollars (\$1,000.00).

30.7-2. *Subsequent Offenses.* Any person who violates any provision of this law or any regulation, rule, or order made hereunder within twenty-four (24) months after committing a previous violation of this law shall forfeit not less than two hundred dollars (\$200.00) nor more than two thousand dollars (\$2,000.00).

30.7-3. *Appeals.* Appeals of a determination of the Zoning Administrator under this law, may be submitted to the Land Commission within ten (10) business days of notice of the Zoning Administrator's decision.



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



AGENDA REQUEST FORM

- 1) Request Date: November 10, 2020
- 2) Contact Person(s): Clorissa N. Santiago (On Behalf of OBC Directive)
 Dept: Legislative Reference Office
 Phone Number: (920) 869-4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Oneida Nation Gaming Ordinance Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
At the November 10, 2020, Oneida Business Committee meeting the
OBC adopted a motion to request Legislative Operating Committee to
place the Law Enforcement Ordinance and/or Oneida Nation Gaming
Ordinance on the Active Files List as a priority to address the placement
of Internal Security.

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

- 1) 11/11/20 OBC Minutes Excerpt
- 2) _____
- 3) _____
- 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Oneida Nation Gaming Ordinance, Law Enforcement Ordinance
- 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:
OBC requested this be a priority, but emergency amendments not requested.

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

DRAFT

3. **Accept the Retail General Manager FY-2020 4th quarter report (01:07:25)**

Sponsor: Eric McLester, Retail General Manager

Motion by David P. Jordan to approve the Retail General Manager FY-2020 4th quarter report, seconded by Marie Summers. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers
Not Present: Tehassi Hill, Tina Danforth, Jennifer Webster

4. **Accept the FY-2020 September Treasurer's report (01:07:40)**

Sponsor: Tina Danforth, Treasurer

Motion by Lisa Liggins to accept the FY-2020 September Treasurer's report, seconded by David P. Jordan. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers
Not Present: Tehassi Hill, Tina Danforth, Jennifer Webster

5. **Accept the Chief Counsel report (01:07:57)**

Sponsor: Jo Anne House, Chief Counsel

Motion by David P. Jordan to accept the Chief Counsel report, seconded by Marie Summers. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers
Not Present: Tehassi Hill, Tina Danforth, Jennifer Webster

Motion by Lisa Liggins to request Legislative Operating Committee to replace the Law Enforcement ordinance and/or ONGO [Oneida Nation Gaming Ordinance] on the active files list as a priority to address the placement of Internal Security, seconded by Daniel Guzman King. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers
Not Present: Tehassi Hill, Tina Danforth, Jennifer Webster

6. **Accept the General Manager report (01:08:42)**

Sponsor: Debbie Thundercloud, General Manager

Motion by Kirby Metoxen to accept the General Manager report, seconded by Marie Summers. Motion carried:

Ayes: Daniel Guzman King, David P. Jordan, Lisa Liggins, Kirby Metoxen, Marie Summers
Not Present: Tehassi Hill, Tina Danforth, Jennifer Webster

November 23, 2020, Legislative Operating Committee E-Poll Approval of the Pandemic Relief Assistance Law Emergency Adoption Packet



Mon 11/23/2020 12:47 PM

LOC

E-POLL REQUEST: Approval of the Pandemic Relief Assistance Law Emergency Adoption Packet

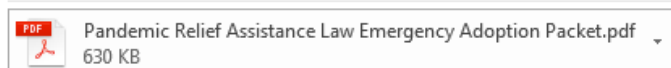
To Daniel P. Guzman; David P. Jordan; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen

Cc Rhiannon R. Metoxen; Kristal E. Hill; Clorissa N. Santiago



Vote by clicking Vote in the Respond group above.

This message was sent with High importance.



Good Afternoon Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Pandemic Relief Assistance law emergency adoption packet.

EXECUTIVE SUMMARY

Emergency adoption of the Pandemic Relief Assistance law ("the Law") are being sought to create the Pandemic Relief Assistance Program for the purpose of assisting eligible members with payments for limited and specific needs created by the COVID-19 Public Health Emergency. [10 O.C. 1004.1-1]. The Pandemic Relief Assistance law shall:

- Provide the guidelines and requirements for use of the Pandemic Relief Assistance Program [10 O.C. 1004.4];
- Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1004.5];
- Provide that the Nation allocate funds to the Pandemic Relief Assistance Program only from monies it received pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CARES Act CRF. [10 O.C. 1004.6].

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency amendments to a law of the Nation. [1 O.C. 109.9-5(a)].

The emergency adoption of the Law is necessary for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many members of the Nation have experienced shrinking wages, job losses, medical emergencies, shortages of household goods and food, and demand for greater access to telecommunications for work, education, and to remain in contact with socially distant family. Emergency adoption of the Law creates the Pandemic Relief Assistance Program which will assist eligible members of the Nation with payments for limited and specific needs created by the COVID-19 Public Health Emergency with funding from the CARES Act CRF in order to meet the needs of members of the Nation during the COVID-19 Public Health Emergency.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The deadline for expending CARES Act CRF is December 31, 2020, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Pandemic Relief Assistance Program can be created for use by eligible members prior to the expiration of the CARES Act CRF.

The emergency amendments to this Law will become effective immediately upon adoption by the Oneida Business Committee and will remain in effect for six (6) months. There will be one (1) opportunity to extend the emergency amendments to this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

An e-poll is necessary for this matter because on November 11, 2020, the Oneida Business Committee adopted a motion to *“approve the supplemental pandemic relief assistant payment plan and for the details, final changes, and documents to brought back to the November 24, 2020 regular Business Committee meeting”* and immediate action is required by Legislative Operating Committee to approve the materials for the emergency adoption of the Pandemic Relief Assistance law so that the emergency adoption of this law can be submitted to the Oneida Business Committee for consideration on November 24, 2020, as directed.

REQUESTED ACTION

- Add the Pandemic Relief Assistance law to the Active Files List; and
- Approve the Pandemic Relief Assistance law emergency adoption packet and forward to the Oneida Business Committee.

DEADLINE FOR RESPONSE

November 23, 2020 at 4:30 p.m.

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

E-POLL RESULTS:

The e-poll was approved by Kirby Metoxen, David P. Jordan, and Jennifer Webster. Daniel Guzman King and Marie Summers did not provide a response during the e-poll time frame.




Mon 11/23/2020 1:33 PM

Kirby W. Metoxen

Re: E-POLL REQUEST: Approval of the Pandemic Relief Assistance Law Emergency Adoption Packet

To LOC; Daniel P. Guzman; David P. Jordan; Ethel M. Summers; Jennifer A. Webster

Cc Rhiannon R. Metoxen; Kristal E. Hill; Clorissa N. Santiago

 If there are problems with how this message is displayed, click here to view it in a web browser.

Approve



Mon 11/23/2020 1:34 PM

David P. Jordan

RE: E-POLL REQUEST: Approval of the Pandemic Relief Assistance Law Emergency Adoption Packet

To LOC; Daniel P. Guzman; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan

Cc Rhiannon R. Metoxen; Kristal E. Hill; Clorissa N. Santiago

Approve



Mon 11/23/2020 1:39 PM

Jennifer A. Webster


RE: E-POLL REQUEST: Approval of the Pandemic Relief Assistance Law Emergency Adoption Packet

To LOC; Daniel P. Guzman; David P. Jordan; Ethel M. Summers; Kirby W. Metoxen

Cc Rhiannon R. Metoxen; Kristal E. Hill; Clorissa N. Santiago

Approve



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: November 24, 2020
RE: Emergency Adoption of the Pandemic Relief Assistance Law

Please find the following attached backup documentation for your consideration of the emergency adoption of the Pandemic Relief Assistance law:

1. Resolution: Emergency Adoption of the Pandemic Relief Assistance Law
2. Statement of Effect: Emergency Adoption of the Pandemic Relief Assistance Law
3. Pandemic Relief Assistance Law Legislative Analysis
4. Pandemic Relief Assistance Law

Overview

Emergency adoption of the Pandemic Relief Assistance law (the “Law”) is being sought to create the Pandemic Relief Assistance Program for the purpose of assisting eligible members with payments for limited and specific needs created by the COVID-19 Public Health Emergency. [10 O.C. 1004.1-1]. The Pandemic Relief Assistance law shall:

- Provide the guidelines and requirements for use of the Pandemic Relief Assistance Program [10 O.C. 1004.4];
- Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1004.5];
- Provide that the Nation allocate funds to the Pandemic Relief Assistance Program only from monies it received pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CARES Act CRF. [10 O.C. 1004.6].

In response to the outbreak of 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 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until December 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-AC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, and BC-11-10-20-A.

The Oneida Business Committee and the COVID-19 Team took various actions that protected the health and welfare of the Oneida Nation community and employees which included health related

restrictions such as closing programs, schools, offices and businesses; significantly reducing and restricting expenditures to protect the Nation's ability to provide needed health and safety services to members and the community during the pandemic; and, adopting actions which prohibited or limited public interactions, gatherings, and activities.

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The emergency adoption of the Law is necessary for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many members of the Nation have experienced shrinking wages, job losses, medical emergencies, shortages of household goods and food, and demand for greater access to telecommunications for work, education, and to remain in contact with socially distant family. Emergency adoption of the Law creates the Pandemic Relief Assistance Program which will assist eligible members of the Nation with payments for limited and specific needs created by the COVID-19 Public Health Emergency with funding from the CARES Act CRF in order to meet the needs of members of the Nation during the COVID-19 Public Health Emergency.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The deadline for expending CARES Act CRF is December 31, 2020, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Pandemic Relief Assistance Program can be created for use by eligible members prior to the expiration of the CARES Act CRF.

The Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency adoption of this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Emergency Adoption of the Pandemic Relief Assistance Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Emergency Adoption of the Pandemic Relief Assistance Law

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2 recognized by the laws of the United States of America; and
- 3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9 **WHEREAS,** the federal government has proclaimed a public health emergency related to the spread of
- 10 the COVID-19 virus and has identified that the spread of the virus has resulted in large
- 11 numbers of individuals becoming ill and high mortality rates, impacts to the stock markets,
- 12 and businesses; and
- 13
- 14 **WHEREAS,** state governors, including the State of Wisconsin, declared public health emergencies and
- 15 state public health officers issued orders, for example, closing public schools, limiting public
- 16 gatherings, and closing restaurants and bars except for take-out orders; and
- 17
- 18 **WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of*
- 19 *Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for
- 20 the Nation until April 12, 2020, and set into place the necessary authority for action to be
- 21 taken and allows the Nation to seek reimbursement of emergency management actions
- 22 that may result in unexpected expenses; and
- 23
- 24 **WHEREAS,** the Nation's Public Health State of Emergency has since been extended by the Oneida
- 25 Business Committee until December 13, 2020, through the adoption of resolutions BC-03-
- 26 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-
- 27 A, BC-10-08-20-A, and BC-11-10-20-A; and
- 28
- 29 **WHEREAS,** the Oneida Business Committee and the COVID-19 Core Decision Making Team took
- 30 action that protected the health and welfare of the Oneida Nation community and
- 31 employees which included health related restrictions such as closing programs, schools,
- 32 offices and businesses; significantly reducing and restricting expenditures to protect the
- 33 Nation's ability to provide needed health and safety services to members and the
- 34 community during the pandemic; and, adopting actions which prohibited or limited public
- 35 interactions, gatherings, and activities; and
- 36
- 37 **WHEREAS,** the Pandemic Relief Assistance law ("the Law") is being proposed for emergency adoption
- 38 to create the Pandemic Relief Assistance Program to assist eligible members of the Nation
- 39 with payments for limited and specific needs created by the COVID-19 Public Health
- 40 Emergency; and
- 41
- 42 **WHEREAS,** the Law provides guidelines and requirements for use of the Pandemic Relief Assistance
- 43 Program; and
- 44

WHEREAS, the Law describes the presumption of need and the General Test to be used to determine General Welfare Exclusion; and

WHEREAS, the Law provides that the Nation allocate funds to the Pandemic Relief Assistance Program only from monies it received pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CRF; and

WHEREAS, the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act; and

WHEREAS, emergency adoption of legislation set to be effective for a period of six (6) months, renewable by the Oneida Business Committee for an additional six (6) month term; and

WHEREAS, the emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population as the COVID-19 pandemic resulted in many members of the Nation experiencing shrinking wages, job losses, medical emergencies, shortages of household goods and food, and demand for greater access to telecommunications for work, education, and to remain in contact with socially distant family, therefore, emergency adoption of the Law creating the Pandemic Relief Assistance Program shall assist eligible members of the Nation with payments for limited and specific needs created by the COVID-19 Public Health Emergency with funding from the CARES Act CRF; and

WHEREAS, observance of the requirements under the Legislative Procedures Act for adoption of this Law would be contrary to public interest since the deadline for expending CARES Act CRF is December 31, 2020, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Pandemic Relief Assistance Program can be created for use by eligible members prior to the expiration of the CARES Act CRF; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and

NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee hereby adopts, on an emergency basis, the Pandemic Relief Assistance law effective immediately.

BE IT FINALLY RESOLVED, the Oneida Business Committee identifies that any adult member of the Nation who submitted an application for assistance from the Pandemic Relief Assistance Program from August 1, 2020 through September 30, 2020, shall be eligible to receive the December 2020 permitted distribution of funds from the Pandemic Relief Assistance Program.



Statement of Effect

Emergency Adoption of the Pandemic Relief Assistance Law

Summary

This resolution adopts the Pandemic Relief Assistance law on an emergency basis in order to create the Pandemic Relief Assistance Program to assist eligible members of the Nation with payments for limited and specific needs created by the COVID-19 Public Health Emergency.

Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office
Date: November 23, 2020

Analysis by the Legislative Reference Office

This resolution adopts the Pandemic Relief Assistance law (“the Law”) on an emergency basis. The purpose of the Law is to create the Pandemic Relief Assistance Program to assist eligible members with payments for limited and specific needs created by the COVID-19 Public Health Emergency. [10 O.C. 1004.1-1]. The Pandemic Relief Assistance law shall:

- Provide the guidelines and requirements for use of the Pandemic Relief Assistance Program [10 O.C. 1004.4];
- Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1004.5];
- Provide that the Nation allocate funds to the Pandemic Relief Assistance Program only from monies it received pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CARES Act CRF. [10 O.C. 1004.6].

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5]. A public meeting and fiscal impact statement are not required for emergency legislation. [1 O.C. 109.8-1(b) and 109.9-5(a)].

In response to the COVID-19 pandemic, on March 12, 2020, 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 December 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-AC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, and BC-11-10-20-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].

The Oneida Business Committee and the COVID-19 Team took various actions that protected the health and welfare of the Oneida Nation community and employees which included health related restrictions such as closing programs, schools, offices and businesses; significantly reducing and restricting expenditures to protect the Nation’s ability to provide needed health and safety services to members and the community during the pandemic; and, adopting actions which prohibited or limited public interactions, gatherings, and activities.

The resolution provides that the emergency adoption of this Law is necessary for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many members of the Nation have experienced shrinking wages, job losses, medical emergencies, shortages of household goods and food, and demand for greater access to telecommunications for work, education, and to remain in contact with socially distant family. Emergency adoption of the Law creates the Pandemic Relief Assistance Program which will assist eligible members of the Nation with payments for limited and specific needs created by the COVID-19 Public Health Emergency with funding from the CARES Act CRF in order to meet the needs of members of the Nation during the COVID-19 Public Health Emergency.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest. The deadline for expending CARES Act CRF is December 31, 2020, and the process and requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Pandemic Relief Assistance Program can be created for use by eligible members prior to the expiration of the CARES Act CRF.

The emergency adoption of this the Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency adoption of the Law will remain effective for six (6) months. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Additionally, this resolution provides that the Oneida Business Committee identifies that any adult member of the Nation who submitted an application for assistance from the Pandemic Relief Assistance Program from August 1, 2020 through September 30, 2020, shall be eligible to receive the December 2020 permitted distribution of funds from the Pandemic Relief Assistance Program. The Law requires that the Oneida Business Committee identify through resolution the time frame for which applications for the Pandemic Relief Assistance Program may be submitted for a permitted distribution. [10 O.C. 1004.4-2(d), 1004.4-4(b)].

Conclusion

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



EMERGENCY ADOPTION OF THE PANDEMIC RELIEF ASSISTANCE LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	<ul style="list-style-type: none"> Provide the guidelines and requirements for use of the Pandemic Relief Assistance Program [10 O.C. 1004.4]; Describe the presumption of need and the General Test to be used to determine General Welfare Exclusion [10 O.C. 1004.5]; Provide that the Nation shall allocate funds to the Pandemic Relief Assistance Program only from monies it received pursuant to the Coronavirus Relief Funds (CRF), and that this program is dependent on availability of funding from the CRF. [10 O.C. 1004.6].
Purpose	Create the Pandemic Relief Assistance Program to assist eligible members with payments for limited and specific needs created by the COVID-19 Public Health Emergency. [10 O.C. 1004.1-1].
Affected Entities	Oneida Business Committee, Oneida Central Accounting Department, Oneida Economic Support Services Department
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. Background. The Pandemic Relief Assistance law (“the Law”) will be a new law adopted by the Oneida Business Committee on an emergency basis for the purpose of creating the Pandemic Relief Assistance Program to assist eligible adult members with payments for limited and specific needs created by the COVID-19 Public Health Emergency. [10 O.C. 1004.1-1].

- On November 11, 2020, a meeting was held with the Legislative Reference Office, Oneida Law Office, Finance Administration, Oneida Central Accounting Department, Oneida Economic Support Services Department, and the Governmental Services Division to discuss the potential adoption of the Law on an emergency basis.
- The Legislative Operating Committee added the Law to its Active Files List on November 23, 2020.
- Emergency adoption of Law is being pursued to create the Pandemic Relief Assistance Program to assist eligible members of the Nation in addressing the needs created by the COVID-19 Public Health Emergency with funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF).

B. COVID-19 Pandemic. 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. The COVID-19 pandemic has resulted in

high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses.

▪ *Declaration of a Public Health State of Emergency.*

- On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared the Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.
- The Public Health State of Emergency has since been extended until December 13, 2020, by the Oneida Business Committee 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, BC-10-08-20-A, and BC-11-10-20-A.

▪ *Additional Action taken by the Nation in Response to COVID-19.*

- 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 April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, “*Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020*,” which required a great reduction in expenses as a result of zero gaming revenues supporting governmental functions and included initial and on-going layoffs.
- On August 12, 2020, the Oneida Business Committee adopted resolution BC-08-12-20-J titled, “*Continuing Resolution for Fiscal Year 2021*” which adopted a continuing budget resolution for FY21, directing that FY21 expenditures derive from each fund unit’s approved contingency plan (FY20 budget) as impacted by resolution BC-04-08-20-C, and that all expenditures shall be restricted to the greatest extent possible to allow the Nation to provide critical-essential services.

▪ *COVID-19 Team Declarations: Safer at Home.*

- On March 24, 2020, the Nation’s COVID-19 Team issued a “*Safer at Home*” declaration which prohibited all public gatherings of any number of people and ordered 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*” which directed that individuals within the Oneida Reservation should

continue to stay at home, businesses could re-open under certain safer business practices, and social distancing should be practiced by all persons.

- On June 10, 2020, the COVID-19 Team issued a “*Stay Safer at Home*” declaration which lessened the restrictions of the “*Safer at Home Declaration, Amendment, Open for Business*” while still providing guidance and some restrictions.
- On July 17, 2020, the COVID-19 Team issued a “*Safe Re-Opening Governmental Offices*” which sets minimum standards for the safe re-opening of a building or recall of employees to work.

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities participated in the development of this Law and legislative analysis:

- Oneida Law Office;
- Finance Administration;
- Oneida Economic Support Services Department;
- Oneida Central Accounting Department;
- MIS Department; and
- Governmental Services Division.

SECTION 4. PROCESS

B. The adoption of this Law is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].

- Emergency adoption of this Law is being pursued for the preservation of the general welfare of the Reservation population. Due to the COVID-19 pandemic many members of the Nation have experienced shrinking wages, job losses, medical emergencies, shortages of household goods and food, and demand for greater access to telecommunications for work, education, and to remain in contact with socially distant family. Emergency adoption of the Law creates a Pandemic Relief Assistance Program to assist eligible members of the Nation with payments for limited and specific needs created by the COVID-19 Public Health Emergency with funding from the CARES Act CRF.
- Observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest. The deadline for expending CARES Act CRF is December 31, 2020, and the requirements of the Legislative Procedures Act cannot be completed in time to ensure that the Pandemic Relief Assistance Program can be created for use by eligible members prior to the expiration of the CARES Act CRF.

C. Emergency legislation typically expires six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency legislation. [1 O.C. 109.9-5(b)].

D. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of this Law.

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

- November 11, 2020: Work meeting with Oneida Law Office, Finance Administration, Oneida Accounting Department, Oneida Economic Support Services Department, and the Governmental Services Division; and
- November 19, 2020. Phone Call with Oneida Law Office, Oneida Economic Support Services Department, and the Governmental Services Division.

SECTION 5. CONTENTS OF THE LEGISLATION

A. *Guidelines and Requirements.* The Pandemic Relief Assistance Program is being established to assist eligible members with payments for limited and specific needs created by the COVID-19 Public Health Emergency. [10 O.C. 1004.1-1]. The proposed Law provides various guidelines and requirements for use of the Pandemic Relief Assistance Program. [10 O.C. 1004.4]. The Pandemic Relief Assistance Program is available to an enrolled member of the Nation who is at least eighteen (18) years of age before the closure of the application process, who submits a completed application within the time frame determined by the Oneida Business Committee, and signs an attestation or affidavit identifying the impacts on the member from the Public Health Emergency. [10 O.C. 1004.4-1, 1004.4-2]. Once an application for assistance from the Pandemic Relief Assistance Program is processed, the funds will be deposited directly into a recipient's checking account or a check will be sent to the home address of the recipient. [10 O.C. 1004.4-4(c)]. The recipient may then use the funds for qualifying expenditures which includes mortgage and rental assistance, utility assistance, telecommunications or technology assistance, medical bills, food security, job seeking or job training assistance, childcare, and transportation costs associated with any of the mentioned expenditures. [10 O.C. 1004.4-5]. The Oneida Economic Support Services Department is responsible for overseeing the collection, review, and permitted distribution of the Pandemic Relief Assistance Program funds to the qualifying adult members. [10 O.C. 1004.4-6]. The Oneida Economic Support Services Department and the Oneida Accounting Department are responsible for maintaining the records for the Pandemic Relief Assistance Program. [10 O.C. 1004.4-7]. The member should retain receipts for the expenditure of the funds associated with the Pandemic Relief Assistance Program. *Id.*

- *Effect.* The proposed guidelines and requirements for use of the Pandemic Relief Assistance Program provided by the Law will ensure that the Pandemic Relief Assistance Program is utilized in a consistent and organized manner.

B. *Presumption of Need/General Test for General Welfare Exclusion.* The proposed Law provides that the Pandemic Relief Assistance Program meets the requirements of the General Test as defined in the Oneida General Welfare law, as well as criteria of the Internal Revenue Service Procedures, and the General Welfare Exclusion Act of 2014.[10 O.C. 1004.5-1].

- *Effect.* Meeting the criteria of the General Test of the Oneida General Welfare law means that the assistance provided through the Pandemic Relief Assistance Program to a recipient shall be treated as a General Welfare Exclusion and shall be non-taxable.

C. *Budget.* The proposed Law provides that the Nation shall allocate funds to the Pandemic Relief Assistance Program only from monies it received pursuant to the CARES Act CRF, and that this program is dependent on availability of funding from the CARES Act CRF. [10 O.C. 1004.6-1].

- *Effect.* The Pandemic Relief Assistance Program was created to assist eligible members of the Nation with payments for limited and specific needs created by the COVID-19 Public Health Emergency with funding from the CARES Act CRF in order to meet the needs of its members during the COVID-19 Public Health Emergency.

SECTION 6. EXISTING LEGISLATION

A. *Related Legislation.* The following laws of the Nation are related to this Law:

- *Oneida General Welfare Law.* The Oneida General Welfare law was adopted by the Oneida Business Committee on an emergency basis through resolution BC-08-12-20-D for the purpose of providing assistance, on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3]. The Oneida General Welfare law sets a framework and provides guidelines for the Nation to establish and operate approved programs which provide assistance to eligible Tribal members to promote the general welfare of the Nation, including programs designed to enhance the promotion of health, education, self-sufficiency, self-determination, and the maintenance of culture and tradition, entrepreneurship, and employment. [10 O.C. 1001.9-2].
 - The Oneida General Welfare law sets forth the framework and guidelines for the Pandemic Relief Assistance Program to be created and operated under.
 - The emergency adoption of this Law conforms with the requirements of the Oneida General Welfare law.
- *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal Council for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
 - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
 - The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].
 - Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
 - Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation

becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].

- Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Emergency adoption of this Law would conform with the requirements of the Legislative Procedures Act.

SECTION 7. OTHER CONSIDERATIONS

A. *Deadline for Permanent Adoption of Legislation.* The emergency adoption of this Law will expire six (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month period.

- *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of this Law on a permanent basis within the next six (6) to twelve (12) months.

B. *Fiscal Impact.* A fiscal impact statement is not required for emergency legislation.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

Title 10. General Welfare Exclusion - Chapter 1004
PANDEMIC RELIEF ASSISTANCE LAW

1004.1. Purpose and Policy
1004.2. Adoption, Amendment, Repeal
1004.3. Definitions
1004.4. Guidelines and Requirements

1004.5. Presumption of Need; General Test for General Welfare
Exclusion
1004.6. Budget

1004.1. Purpose and Policy

1004.1-1. *Purpose.* The purpose of this law is to create the Pandemic Relief Assistance Program to assist eligible members with payments for limited and specific needs created by the COVID-19 Public Health Emergency. The Pandemic Relief Assistance Program shall assist eligible members in addressing the needs created by the Public Health Emergency which caused shrinking wages, job losses, medical emergencies, shortages of household goods and food, and demand for greater access to telecommunications for work, education, and to remain in contact with socially distant family.

1004.1-2. *Policy.* It is the policy of the Nation to prioritize the welfare of its members. The Nation has provided assistance to its members during this pandemic through emergency food provisions, rent and mortgage relief, small business grants, and education assistance. The Nation seeks to provide additional assistance to its membership through a distribution of funds to those that have demonstrated a need for financial assistance in the wake of the Public Health Emergency.

1004.1-3. The Oneida Nation community has been severely impacted by the Public Health Emergency and has exhibited the need for assistance with housing, utilities, basic communication service, food relief, job seeking and job training, and medical bills.

1004.1-4. The Pandemic Relief Assistance Program shall be funded only through monies allocated to the Nation pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds (CRF), codified at Section 601(d) of the Social Security Act, for the purpose of addressing adult member needs created by the Public Health Emergency.

1004.1-5. The Oneida Business Committee intends for the Pandemic Relief Assistance Program to adhere to the mandates of the Oneida General Welfare Law, the Tribal General Welfare Exclusion Act codified at 26 U.S.C. §139E, and I.R.S Rev. Proc. 2014-35.

1004.2. Adoption, Amendment, Repeal

1004.2-1. This law was adopted by the Oneida Business Committee on an emergency basis by resolution BC-__-__-__.

1004.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

1004.2-3. 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.

1004.2-4. 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.

1004.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

1004.3. Definitions

1004.3-1. 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) "Adult" means a member who is at least eighteen (18) years of age on or before the

closure of the application process for a Pandemic Relief Assistance Program distribution.
 (b) "General Test" means the criteria used to determine if any assistance or benefits provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. The criteria of the General Test include the following:

- (1) Paid on behalf of the Nation;
- (2) Pursuant to an approved program;
- (3) Does not discriminate in favor of members of the governing body of the Nation;
- (4) Are available to any Tribal member who meets the guidelines of the approved program;
- (5) Are for the promotion of general welfare;
- (6) Are not lavish or extravagant;
- (7) Are not compensation for services; and
- (8) Are not per capita payments.

(c) "Member" means an individual who is an enrolled member of the Oneida Nation.

(d) "Nation" means the Oneida Nation.

(e) "Pandemic Relief Assistance Program" or means the program developed by the Nation for the purpose of providing emergency financial assistance to members economically impacted by the Public Health Emergency for expenses that may be deemed a qualifying expenditure of the CRF by the Nation.

(f) "Permitted distribution" means a disbursement of CRF funds through the Pandemic Relief Assistance Program approved by the Oneida Business Committee through a resolution that specifies the timeline for adult members to apply for the qualified expenditure and the amount of the distribution.

(g) "Public Health Emergency" means the economic, governmental, and medical crises caused by the COVID-19 and the novel coronavirus pandemic.

(h) "Qualifying expenditure" means good or services that fits within the categories listed herein for which funds distributed to the members pursuant to the Pandemic Relief Assistance Program may be used to pay for the goods or services:

- (1) mortgage and rental assistance;
- (2) utility payment assistance;
- (3) telecommunications and technology costs related to education, health care, or employment;
- (4) medical bills;
- (5) food security;
- (6) job seeking and job training assistance,
- (7) child care costs; and
- (8) transportation costs associated with the above items.

1004.4. Guidelines and Requirements

1004.4-1. The Pandemic Relief Assistance Program is established to meet the needs of members during the Public Health Emergency. The Pandemic Relief Assistance Program shall provide assistance to adult members who have exhibited a need for specific qualifying expenditures.

1004.4-2. *Eligibility.* The Pandemic Relief Assistance Program shall be open to a limited group of people that meet the following criteria:

- (a) Adult member;
- (b) Submitted a completed application described in section 1004.4-4 below;

(c) Signed an attestation or affidavit identifying the impacts on the member from the Public Health Emergency, and

(d) Has applied within the time frame determined by the Oneida Business Committee through resolution.

1004.4-3. *Pandemic Relief Assistance Program Funds.* The Pandemic Relief Assistance Program shall be funded only through monies allocated to the Nation pursuant to the CARES Act CRF.

(a) The Oneida Business Committee shall set a cap on the amount of funds available from the Pandemic Relief Assistance Program per applicant for any permitted distribution.

1004.4-4. *Application for Pandemic Relief Assistance Program Funds.*

(a) An adult member of the Nation may apply for Pandemic Relief Assistance Program funds for specific and identified qualified expenditures.

(b) Pandemic Relief Assistance Program applications may be submitted within the time frame determined by the Oneida Business Committee through the resolution for the permitted distribution.

(c) The Nation shall process the applications expeditiously and deposit the funds directly to a recipient's checking account or a check shall be sent to the home address of the recipient as provided by the member in the application.

(d) The application shall require the following information from the adult member:

(1) First and last name;

(2) Date of birth;

(3) Street address, city, state, zip code;

(4) Phone number;

(5) Social Security number;

(6) Enrollment Number

(7) Attestation paragraph that reads as follows: "By signing this document, I attest/swear that I /my household have been affected by COVID-19 in the following way(s). I further attest/swear to the fact that I am accepting Oneida Nation COVID-19 Relief Funding to assist with my needs."

(8) List of qualifying expenditures that may be selected by the applicant shall follow the aforementioned attestation; and

(9) Spaces allocated for printed name, signature, and date.

1004.4-5. *Qualifying Expenditures.* The following types of expenses shall be considered qualifying expenditures:

(a) mortgage and rental assistance;

(b) utility assistance;

(c) telecommunications or technology assistance;

(d) medical bills;

(e) food security;

(f) job seeking or job training assistance;

(g) childcare; and

(h) transportation costs associated with the above items.

1004.4-6. *Oversight.* The Oneida Economic Support Services Department shall oversee the collection, review, and permitted distribution of the Pandemic Relief Assistance Program funds to the qualifying adult members.

1004.4-7. *Records Maintenance.* The Oneida Economic Support Services Department and the Oneida Central Accounting Department shall be responsible for maintenance of records for the

Pandemic Relief Assistance Program. The member should retain receipts for the expenditure of the funds associated with the Pandemic Relief Assistance Program.

1004.5. Presumption of Need; General Test for General Welfare Exclusion

1004.5-1. The Pandemic Relief Assistance Program meets the requirements of the General Test as defined in the Oneida General Welfare Law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5.01(1); and the requirements of the Tribal General Welfare Exclusion Act of 2014, 26 U.S.C. §139E(b).

(a) The Pandemic Relief Assistance Program permitted distributions are provided to the members pursuant to this law, as approved by the Oneida Business Committee, and in accordance with Oneida General Welfare law.

(b) The Pandemic Relief Assistance Program has guidelines specifying how adult members qualify for the benefits herein in this law.

(c) The program is available to any adult member that attests to specific need(s) in the application as defined and regulated in this law.

(d) The distribution of benefits does not discriminate in favor of members of the governing body of the Nation, are not compensation, and are not lavish or extravagant under the facts and circumstances of the Public Health Emergency.

1004.6. Budget

1004.6-1. The Nation shall allocate funds to the Pandemic Relief Assistance Program only from monies it received pursuant to the CARES Act CRF. This program is dependent on availability of funding from the CARES Act CRF.

End.

Emergency Adopted - BC-__-__-__-__

November 24, 2020, Legislative Operating Committee E-Poll Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet




Tue 11/24/2020 11:32 AM

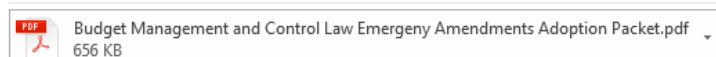
LOC

E-POLL REQUEST: Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet

To Daniel P. Guzman; David P. Jordan; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen

Cc Kristal E. Hill; Rhannon R. Metoxen; Clorissa N. Santiago

 Vote by clicking Vote in the Respond group above.
This message was sent with High importance.



Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for the approval of the Budget Management and Control Law emergency amendments adoption packet.

EXECUTIVE SUMMARY

Emergency adoption of amendments to the Budget Management and Control law ("the Law") is being sought provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-9(a)].

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the amendment of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency amendments to a law of the Nation. [1 O.C. 109.9-5(a)].

The adoption of emergency amendments to this Law is necessary for the for the preservation of the public health, safety, and general welfare of the Reservation population. Due to the COVID-19 pandemic, holding a General Tribal Council meeting to adopt the budget would place members in significant jeopardy of contact with the virus and cause the virus to spread throughout the community, which would unduly jeopardize the health and safety of elders, children and adults. Emergency adoption of the Law allows the Oneida Business Committee to adopt the Nation's budget when an emergency has been proclaimed in accordance with the Emergency Management and Homeland Security law which prevents the presentation to and adoption of the budget by the General Tribal Council. Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency amendments to this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is not scheduled until December 2, 2020, and immediate action is required by Legislative Operating Committee to approve the materials for the Budget Management and Control law emergency amendments adoption packet so that the adoption of the emergency amendments to this law can be submitted to the Oneida Business Committee for consideration on November 24, 2020, as directed.

REQUESTED ACTION

Approve the Budget Management and Control law emergency amendments adoption packet and forward to the Oneida Business Committee.

DEADLINE FOR RESPONSE

November 24, 2020 at 1:30 p.m.

All supporting documentation has been attached to this email for your convenience.



A good mind. A good heart. A strong fire.

E-POLL RESULTS:

The e-poll was approved by Jennifer Webster, David P. Jordan, and Marie Summers, and Kirby Metoxen. Daniel Guzman King did not provide a response during the e-poll time frame.



Tue 11/24/2020 11:34 AM

Jennifer A. Webster

RE: E-POLL REQUEST: Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet

To LOC; Daniel P. Guzman; David P. Jordan; Ethel M. Summers; Kirby W. Metoxen

Cc Kristal E. Hill; Rhiannon R. Metoxen; Clorissa N. Santiago

Approve



Tue 11/24/2020 11:46 AM

Ethel M. Summers

RE: E-POLL REQUEST: Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet

To LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen

Cc Kristal E. Hill; Rhiannon R. Metoxen; Clorissa N. Santiago

Support.

Yaw'ko,
Marie Summers
Councilwoman
Oneida Business Committee



Tue 11/24/2020 11:37 AM

David P. Jordan

RE: E-POLL REQUEST: Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet

To LOC; Daniel P. Guzman; Ethel M. Summers; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan

Cc Kristal E. Hill; Rhiannon R. Metoxen; Clorissa N. Santiago

Approve

Tue 11/24/2020 12:02 PM


Kirby W. Metoxen

Approve: E-POLL REQUEST: Approval of the Budget Management and Control Law Emergency Amendments Adoption Packet

To LOC

 The sender responded: Approve.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: November 24, 2020
RE: Emergency Amendments to the Budget Management and Control Law

Please find the following attached backup documentation for your consideration of the emergency amendments to the Budget Management and Control law:

1. Resolution: Emergency Amendments to the Budget Management and Control Law
2. Statement of Effect: Emergency Amendments to the Budget Management and Control Law
3. Budget Management and Control Law Emergency Amendments Legislative Analysis
4. Budget Management and Control Law Emergency Amendments (Redline to Current)
5. Budget Management and Control Law Emergency Amendments (Clean)

Overview

This resolution adopts emergency amendments to the Budget Management and Control law (“the Law”). The purpose of the Law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation’s budget. [1 O.C. 121.1-1]. The emergency amendments to the Law shall:

- Provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation’s budget. [1 O.C. 121.5-9(a)].

In response to the outbreak of 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 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and provided the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. [3 O.C. 302.8-1]. This declaration of a Public Health State of Emergency was extended by the Oneida Business Committee until December 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-AC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, and BC-11-10-20-A.

The Oneida Business Committee and the COVID-19 Team took various actions that protected the health and welfare of the Oneida Nation community and employees which included health related restrictions such as closing programs, schools, offices and businesses; significantly reducing and restricting expenditures to protect the Nation’s ability to provide needed health and safety services

to members and the community during the pandemic; and, adopting actions which prohibited or limited public interactions, gatherings, and activities. The COVID-19 Team's "*Stay Safer at Home*" declaration currently prohibits all public and private gatherings of more than twenty (20) people that are not part of a single household or living unit.

The Oneida Business Committee is delegated the authority to temporarily enact emergency legislation when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act. [1 O.C. 109.9-5]. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5(a)].

The adoption of emergency amendments to this Law is necessary for the for the preservation of the public health, safety, and general welfare of the Reservation population. Due to the COVID-19 pandemic, holding a General Tribal Council meeting to adopt the budget would place members in significant jeopardy of contact with the virus and cause the virus to spread throughout the community, which would unduly jeopardize the health and safety of elders, children and adults. Emergency adoption of the Law allows the Oneida Business Committee to adopt the Nation's budget when an emergency has been proclaimed in accordance with the Emergency Management and Homeland Security law which prevents the presentation to and adoption of the budget by the General Tribal Council.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee and will remain effective for six (6) months. There will be one (1) opportunity to extend the emergency amendments to this Law for an additional six (6) month period. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Emergency Amendments to the Budget Management and Control Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Emergency Amendments to the Budget Management and Control Law

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
- 2 recognized by the laws of the United States of America; and
- 3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- 5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
- 7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- 8
- 9 **WHEREAS,** the federal government has proclaimed a public health emergency related to the spread of
- 10 the COVID-19 virus and has identified that the spread of the virus has resulted in large
- 11 numbers of individuals becoming ill and high mortality rates, impacts to the stock markets,
- 12 and businesses; and
- 13
- 14 **WHEREAS,** state governors, including the State of Wisconsin, declared public health emergencies and
- 15 state public health officers issued orders, for example, closing public schools, limiting public
- 16 gatherings, and closing restaurants and bars except for take-out orders; and
- 17
- 18 **WHEREAS,** on March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of*
- 19 *Emergency*" regarding COVID-19 which declared a Public Health State of Emergency for
- 20 the Nation until April 12, 2020, and set into place the necessary authority for action to be
- 21 taken and allows the Nation to seek reimbursement of emergency management actions
- 22 that may result in unexpected expenses; and
- 23
- 24 **WHEREAS,** the Nation's Public Health State of Emergency has since been extended by the Oneida
- 25 Business Committee until December 13, 2020, through the adoption of resolutions BC-03-
- 26 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-
- 27 A, BC-10-08-20-A, and BC-11-10-20-A; and
- 28
- 29 **WHEREAS,** the Oneida Business Committee and the COVID-19 Core Decision Making Team took
- 30 action that protected the health and welfare of the Oneida Nation community and
- 31 employees which included health related restrictions such as closing programs, schools,
- 32 offices and businesses; significantly reducing and restricting expenditures to protect the
- 33 Nation's ability to provide needed health and safety services to members and the
- 34 community during the pandemic; and, adopting actions which prohibited or limited public
- 35 interactions, gatherings, and activities; and
- 36
- 37 **WHEREAS,** the Budget Management and Control law ("the Law") was adopted by the Oneida Business
- 38 Committee through resolution BC-02-08-17-C; and
- 39
- 40 **WHEREAS,** the Law sets forth the requirements to be followed by the Oneida Business Committee and
- 41 Oneida fund units when preparing the budget to be presented to the General Tribal Council
- 42 for approval and to establish a triennial strategy planning process for the Nation's budget;
- 43 and
- 44

WHEREAS, emergency amendments to the Law are being sought to address the adoption of the Nation's budget during the COVID-19 Public Health State of Emergency; and

WHEREAS, the emergency amendment to the Law provides that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget; and

WHEREAS, the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis when legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population, and the adoption of the legislation is required sooner than would be possible under the Legislative Procedures Act; and

WHEREAS, adoption of emergency amendments to legislation set to be effective for a period of six (6) months, renewable by the Oneida Business Committee for an additional six (6) month term; and

WHEREAS, the adoption of emergency amendments to this Law is necessary for the preservation of the public health, safety, and general welfare of the Reservation population since holding a General Tribal Council meeting to adopt the budget would place members in significant jeopardy of contact with the virus and cause the virus to spread throughout the community, which would unduly jeopardize the health and safety of elders, children and adults; and

WHEREAS, observance of the requirements under the Legislative Procedures Act for adoption of the emergency amendments to this Law would be contrary to public interest; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; and

NOW THEREFORE BE IT RESOLVED, the Oneida Business Committee hereby adopts the emergency amendments to the Budget Management and Control law effective immediately.



Statement of Effect

Emergency Amendments to the Budget Management and Control Law

Summary

This resolution adopts emergency amendments to the Budget Management and Control law which provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget.

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

Date: November 24, 2020

Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Budget Management and Control law ("the Law"). The purpose of the Law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget. [1 O.C. 121.1-1]. The emergency amendments to the Law shall:

- Provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-9(a)].

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The LPA allows the Oneida Business Committee to take emergency action where it is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and when enactment or amendment of legislation is required sooner than would be possible under the LPA. [1 O.C. 109.9-5]. A public meeting and fiscal impact statement are not required for emergency legislation. [1 O.C. 109.8-1(b) and 109.9-5(a)].

In response to the COVID-19 pandemic, on March 12, 2020, 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 December 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-AC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, and BC-11-10-20-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].

The Oneida Business Committee and the COVID-19 Team took various actions that protected the health and welfare of the Oneida Nation community and employees which included health related restrictions such as closing programs, schools, offices and businesses; significantly reducing and restricting expenditures to protect the Nation’s ability to provide needed health and safety services to members and the community during the pandemic; and, adopting actions which prohibited or limited public interactions, gatherings, and activities. The COVID-19 Team’s “*Stay Safer at Home*” declaration currently prohibits all public and private gatherings of more than twenty (20) people that are not part of a single household or living unit.

The resolution provides that the adoption of emergency amendments to this Law is necessary for the preservation of the public health, safety, and general welfare of the Reservation population. Due to the COVID-19 pandemic, holding a General Tribal Council meeting to adopt the budget would place members in significant jeopardy of contact with the virus and cause the virus to spread throughout the community, which would unduly jeopardize the health and safety of elders, children and adults. Emergency adoption of the Law allows the Oneida Business Committee to adopt the Nation’s budget when an emergency has been proclaimed in accordance with the Emergency Management and Homeland Security law which prevents the presentation to and adoption of the budget by the General Tribal Council.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of this law would be contrary to public interest.

The adoption of emergency amendments to this Law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments to the Law will remain effective for six (6) months. The LPA provides the possibility to extend the emergency amendments for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

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



EMERGENCY AMENDMENTS TO THE BUDGET MANAGEMENT AND CONTROL LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	▪ Provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-9(a)].
Purpose	Set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget. [1 O.C. 121.1-1].
Affected Entities	Oneida Business Committee
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. Background. Emergency amendments to the Budget Management and Control law ("the Law") are being sought to address the adoption of the Nation's budget during the COVID-19 Public Health State of Emergency. The proposed emergency amendment to the Law shall provide that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-9(a)].

B. COVID-19 Pandemic. 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. The COVID-19 pandemic has resulted in high rates of infection and mortality, as well as vast economic impacts including effects on the stock market and the closing of all non-essential businesses.

▪ *Declaration of a Public Health State of Emergency.*

▪ On March 12, 2020, Chairman Tehassi Hill signed a "Declaration of Public Health State of Emergency" regarding COVID-19 which declared the Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority should action need to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

▪ The Public Health State of Emergency has since been extended until December 13, 2020, by the Oneida Business Committee 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, BC-10-08-20-A, and BC-11-10-20-A.

▪ *Additional Action taken by the Nation in Response to COVID-19.*

- 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 April 8, 2020, the Oneida Business Committee adopted resolution BC-04-08-20-C titled, “Tier V Budget Contingency Declared for Remainder of Fiscal Year 2020,” which required a great reduction in expenses as a result of zero gaming revenues supporting governmental functions and included initial and on-going layoffs.
 - On August 12, 2020, the Oneida Business Committee adopted resolution BC-08-12-20-J titled, “Continuing Resolution for Fiscal Year 2021” which adopted a continuing budget resolution for FY21, directing that FY21 expenditures derive from each fund unit’s approved contingency plan (FY20 budget) as impacted by resolution BC-04-08-20-C, and that all expenditures shall be restricted to the greatest extent possible to allow the Nation to provide critical-essential services.
- *COVID-19 Team Declarations: Safer at Home.*
- On March 24, 2020, the Nation’s COVID-19 Team issued a “Safer at Home” declaration which prohibited all public gatherings of any number of people and ordered 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” which directed that individuals within the Oneida Reservation should continue to stay at home, businesses could re-open under certain safer business practices, and social distancing should be practiced by all persons.
 - On June 10, 2020, the COVID-19 Team issued a “Stay Safer at Home” declaration which lessened the restrictions of the “Safer at Home Declaration, Amendment, Open for Business” while still providing guidance and some restrictions. This declaration prohibits all public and private gatherings of more than twenty (20) people that are not part of a single household or living unit.
 - On July 17, 2020, the COVID-19 Team issued a “Safe Re-Opening Governmental Offices” which sets minimum standards for the safe re-opening of a building or recall of employees to work.

SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
- Oneida Law Office.

SECTION 4. PROCESS

- B. The adoption of amendments to this Law is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the Reservation population and enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
- Emergency adoption of amendments to this Law is being pursued for the preservation of the public health, safety, and general welfare of the Reservation population. Due to the COVID-19 pandemic, holding a General Tribal Council meeting to adopt the budget would place members in significant jeopardy of contact with the virus and cause the virus to spread throughout the community, which would unduly jeopardize the health and safety of elders, children and adults. Emergency adoption of the Law allows the Oneida Business Committee to adopt the Nation's budget when an emergency has been proclaimed in accordance with the Emergency Management and Homeland Security law which prevents the presentation to and adoption of the budget by the General Tribal Council.
 - Observance of the requirements under the Legislative Procedures Act for the adoption of this Law would be contrary to public interest.
- C. Emergency legislation typically expires six (6) months after adoption, with one (1) opportunity for a six (6) month extension of the emergency legislation. [1 O.C. 109.9-5(b)].
- D. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact statement will eventually be required when considering permanent adoption of this Law.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Emergency Budget Adoption.** The proposed emergency amendment to the Law provides that in the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget. [1 O.C. 121.5-9(a)]. Previously, the Law required that Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year and did not contain a provision that addressed how the budget would be adopted when an emergency was proclaimed by the Nation. [1 O.C. 121.5-9].
- **Effect.** The proposed emergency amendment to the Law allows the Oneida Business Committee to adopt the Nation's budget since the Nation has proclaimed a Public Health State of Emergency, in accordance with the Emergency Management and Homeland Security law, which has prevented the presentation to and adoption of the budget by the General Tribal Council. The COVID-19 Core Decision Making Team's "Stay Safer at Home" declaration prohibits all public and private gatherings of more than twenty (20) people that are not part of a single household or living unit.

SECTION 6. EXISTING LEGISLATION

A. *Related Legislation.* The following laws of the Nation are related to this Law:

- *Emergency Management and Homeland Security law.* The Emergency Management and Homeland Security law provides for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster; and provides for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations; and establishes the use of the National Incident Management System; and designates authority and responsibilities for public health preparedness. [3 O.C. 302.1-1].
 - The Emergency Management and Homeland Security law provides that the Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency. [3 O.C. 302.8-1]. A public health emergency is defined as the occurrence or imminent threat of an illness or health condition which:
 - (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
 - (2) poses a high probability of any of the following:
 - (A) a large number of deaths or serious or long-term disability among humans; or
 - (B) widespread exposure to a biological, chemical, or radiological agent that creates a significant risk of substantial future harm to a large number of people.
 - Chairman Tehassi Hill's March 12, 2020, "*Declaration of Public Health State of Emergency*" and the subsequent extensions conform with the requirements of the Emergency Management and Homeland Security law.
- *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal Council for the purpose of providing a standard process for the adoption of laws of the Nation which includes taking into account comments from members of the Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
 - The Legislative Procedures Act provides a process for the adoption of emergency legislation when the legislation is necessary for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-5].
 - The Legislative Operating Committee is responsible for first reviewing the emergency legislation and for forwarding the legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - The proposed emergency legislation is required to have a legislative analysis completed and attached prior to being sent to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)].
 - a. A legislative analysis is a plain language analysis describing the important features of the legislation being considered and factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. A legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any

conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy considerations. [1 O.C. 109.3-1(g)].

- Emergency legislation does not require a fiscal impact statement to be completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
 - Upon the determination that an emergency exists the Oneida Business Committee can adopt emergency legislation. The emergency legislation becomes effective immediately upon its approval by the Oneida Business Committee. [1 O.C. 109.9-5(b)].
 - Emergency legislation remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency law extension of up to six (6) months. [1 O.C. 109.9-5(b)].
- Adoption of the emergency amendments to this Law would conform with the requirements of the Legislative Procedures Act.

SECTION 7. OTHER CONSIDERATIONS

A. *Deadline for Permanent Adoption of Legislation.* The adoption of emergency amendments to this Law will expire six (6) months after adoption. The emergency legislation may be renewed for an additional six (6) month period.

- *Conclusion:* The Legislative Operating Committee will need to consider whether the permanent adoption of these emergency amendments to the Law is necessary within the next six (6) to twelve (12) months.

B. *Fiscal Impact.* A fiscal impact statement is not required for emergency legislation.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

Title 1. Government and Finances – Chapter 121

~~**BUDGET MANAGEMENT AND CONTROL**~~

~~**Twahwistatye>n\$ha>**~~

We have a certain amount of money

BUDGET MANAGEMENT AND CONTROL

121.1.	Purpose and Policy	121.7.	Appropriation of the Nation's Funds
121.2.	Adoption, Amendment, Repeal	121.8.	Budget Authority
121.3.	Definitions	121.9.	Budget Transfers; Amendments
121.4.	Strategic Planning	121.10.	Reporting
121.5.	Budget Process	121.11.	Authorizations and Signatures
121.6.	Capital Improvements	121.12.	Enforcement and Penalties

121.1. Purpose and Policy

121.1-1. *Purpose.* The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget.

121.1-2. *Policy.* It is the policy of the Nation to rely on value-based budgeting strategies, identifying proper authorities and ensuring compliance and enforcement.

121.2. Adoption, Amendment, Repeal

121.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-08-17-C, ~~and emergency amended by resolution BC-~~ - - - - .

121.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

121.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

121.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law amends or repeals the requirements of resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*.

121.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

121.3. Definitions

121.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Appropriation" means the legislative act of designating funds for a specific purpose in accordance with the provisions contained in this law.

(b) "Capital expenditure" means any non-recurring and non-physical improvement as follows:

(1) Any item with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more; or

(2) Items purchased together where none of the items individually costs more than two thousand dollars (\$2,000.00), but the total purchase price for all of the items is ten thousand dollars (\$10,000.00) or more.

- 37 (c) “Capital improvement” means non-recurring expenditure for physical improvements,
38 including costs for: acquisition of existing buildings, land, or interests in land; construction
39 of new buildings or other structures, including additions and major alterations; acquisition
40 of fixed equipment; landscaping; physical infrastructure; and similar expenditures with a
41 cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or
42 more.¹
- 43 (d) “CFO” means the Nation’s Chief Financial Officer.
- 44 (e) “Debt” means the secured or unsecured obligations owed by the Nation.
- 45 (f) “Economic life” means the length of time an asset is expected to be useful.
- 46 (g) “Executive manager” means any one of the following positions within the Nation:
47 Chief Executive Officer/General Manager, Gaming General Manager, Chief Legal
48 Counsel and/or Chief Financial Officer.
- 49 (h) “Expenditure report” means a financial report which includes, but is not limited to, a
50 statement of cash flows, revenues, costs and expenses, assets, liabilities and a statement of
51 financial position.
- 52 (i) “Fiscal year” means the one (1) year period each year from October 1st to September
53 30th.
- 54 (j) “Fund unit” means any board, committee, commission, service, program, enterprise,
55 department, office, or any other division or non-division of the Nation which receives an
56 appropriation approved by the Nation.
- 57 (k) “General reserve fund” means the Nation’s main operating fund which is used to
58 account for all financial resources not accounted for in other funds.
- 59 (l) “GTC allocations” means expenditures directed by the General Tribal Council as
60 required payments and/or benefits to the Nation’s membership and are supported by either
61 a General Tribal Council or Oneida Business Committee resolution.
- 62 (m) “Line item” means the specific account within a fund unit’s budget or category that
63 expenditures are charged to.
- 64 (n) “Manager” means the person in charge of directing, controlling and administering the
65 activities of a fund unit.
- 66 (o) “Nation” means the Oneida Nation.
- 67 (p) “Rule” means a set of requirements, including citation fees and penalty schedules,
68 enacted in accordance with the Administrative Rulemaking law based on authority
69 delegated in this law in order to implement, interpret and enforce this law.
- 70 (q) “Treasurer” means the elected Oneida Nation Treasurer or his or her designee.
- 71

¹ Acquisition of existing buildings and land completed by the Oneida Land Commission are not included in the definition of “Capital Improvement.”

121.4. Strategic Planning

121.4-1. *Triennial Strategic Plan.* Prior to December 1st of each year, the Oneida Business Committee, in consultation with the Executive Managers, shall develop a triennial strategic plan which includes, but is not limited to:

- (a) Major policy and budgetary goals for the Nation, both long and short term;
- (b) Specific strategies and planned actions for achieving each goal; and
- (c) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:
 - (1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and
 - (2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-2. *Fund Units' Contributions to the Triennial Strategic Plan.* Managers shall annually develop, submit and maintain a triennial strategic plan for the fund unit's operations which aligns with the triennial strategic plan established by the Oneida Business Committee pursuant to 121.4-1. Managers shall submit the fund unit's triennial strategic plan to the CFO when the fund unit's budget is due and, at a minimum, shall include the following in the plan:

- (a) A statement of the fund unit's mission;
- (b) Specific goals including a description of the fund unit's strategies as part of its service group provided in 121.5-3(c) which aligns with the goals established in the Nation's triennial strategic plan;
- (c) Specific strategies for achieving each of the fund unit's goals; and
- (d) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:
 - (1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and
 - (2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-3. *Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO, executive managers and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation. The Oneida Business Committee shall approve, by resolution, the budget contingency plan and any amendments thereto. The Oneida Business Committee is responsible for the implementation of the budget contingency plan, provided that such implementation is predicated on the Oneida Business Committee's determination that the Nation is under extreme financial distress. For the purposes of this section, extreme financial distress includes, but is not limited to, natural or human-made disasters, United States Government shutdown, Tribal shutdown (which occurs when the General Tribal Council has not approved a budget for the Nation prior to the beginning of a new fiscal year) and economic downturns.

(a) *Cost Savings Tools.* As part of the budget contingency plan, the Oneida Business Committee may require stabilization funds, reductions of expenditures, furloughs and other cost saving tools provided that such tools are in compliance with the Nation's laws, specifically the Nation's employment laws, rules and policies.

(b) *Business Continuity Fund.* The Oneida Business Committee shall maintain a Permanent Executive Contingency account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial

distress. The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of business continuity funds required in the Permanent Executive Contingency account. The Treasurer shall set aside business continuity funds in the Permanent Executive Contingency account until the established level has been achieved. Funds in the Permanent Executive Contingency may only be used for the following purposes and only to the extent that alternative funding sources are unavailable:

- (1) Payments to notes payable to debt service, both principal and interest, and applicable service fees;
- (2) Employee payroll, including all applicable taxes;
- (3) Payments to vendors for gaming and retail;
- (4) Payments to vendors for governmental operations;
- (5) Payments to any other debt; and
- (6) To sustain any of the Nation's other operations during implementation of the budget contingency plan.

(c) *Grant Funds.* Grant funds are exempt from requirements of the budget contingency plan and any cost containment initiatives as such funding is not reliant on Tribal contributions. Grant funds shall be spent according to any non-negotiable grant requirements and guidelines of the granting agency to include purchases, travel, training, hiring grant required positions and any other requirements attached to the funds as a condition of the Nation's acceptance of the grant funds.

121.5. Budget Process

121.5-1. *General.* All revenues and expenditures of the Nation shall be in accordance with the annual budget adopted by the General Tribal Council. In creating the budget to present to the General Tribal Council for consideration, the Oneida Business Committee, executive managers and managers shall follow the processes provided in this law. The Oneida Business Committee may alter the deadlines provided in this law only upon a showing of good cause, provided that, the Oneida Business Committee shall approve any such alterations by resolution.

121.5-2. *Community Input Budget Meeting(s).* The Treasurer's office shall schedule, at a minimum, one (1) community input budget meeting(s) prior to December 1st of each year. At the community input budget meeting(s), the Treasurer shall afford community members an opportunity to provide input as to what should be included in the upcoming fiscal year budget. Any fund units that plan to request forecast variations for the upcoming budget shall present the need and anticipated dollar amount of the requested forecast variation. For the purposes of this section, a forecast variation is a fund unit's requested deviation from the performance targets the fund unit submitted pursuant to 121.4-2(d)(2).

- (a) The Treasurer shall ensure the community budget input meeting(s) are voice recorded and transcribed.
- (b) The CFO shall provide recommendations as to any forecast variations requested by fund units.
- (c) The CFO and any relevant managers shall provide responses and/or recommendations to all comments and considerations presented by community members.
- (d) The Treasurer shall work with the CFO to place a community budget input meeting packet on the Oneida Business Committee agenda no later than the last Oneida Business Committee Meeting in January. At a minimum, the packet is required to include:

- (1) The community input budget meeting(s) transcript(s);
- (2) Any applicable fund unit's requested forecast variations; and
- (3) Responses and/or recommendations by the CFO and any relevant managers regarding requests for forecast variations and community members' comments and considerations related to forecast variations.

121.5-3. *Priority List Established by the Oneida Business Committee.* The Oneida Business Committee shall review the community input budget meeting packet and shall hold work meetings to create a priority list.

(a) The Oneida Business Committee shall establish the priority list by placing the following services provided by the Nation in chronological order with the lowest number having the highest priority. The order of the following service groups provided below has no relation to the service groups' anticipated and/or required placement within the Oneida Business Committee's priority list; the Oneida Business Committee's priority list may vary from year to year based on the needs of the Nation.

- (1) Protection and Preservation of Natural Resources
- (2) Protection and Preservation of Oneida Culture and Language
- (3) Education and Literacy
- (4) Health Care
- (5) Economic Enterprises
- (6) Building and Property Maintenance
- (7) Human Services
- (8) Public Safety
- (9) Housing
- (10) Utilities, Wells, Wastewater and Septic
- (11) Planning, Zoning and Development
- (12) Membership Administration
- (13) Government Administration

(b) The Oneida Business Committee shall approve the priority list by resolution no later than the last meeting in February.

(c) The CFO shall maintain a list which places each fund unit into a corresponding service group.

121.5-4. *Annual Proposed Budgets.* The CFO shall develop the necessary guidelines, including specific deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. Upon review of the Nation's economic state, the CFO shall include in the guidelines the exact amount that each service group's cumulative budget is required to be increased/decreased in accordance with its placement on the priority list. The CFO shall submit the guidelines, as approved by the Treasurer, to the Oneida Business Committee for review in accordance with the deadline as set by the Oneida Business Committee. The Oneida Business Committee may revise the guidelines as it deems necessary and shall approve a set of budgetary guidelines within thirty (30) calendar days of the date the budgetary guidelines proposed by the CFO were received.

(a) In accordance with the approved budgetary guidelines, fund units offering like services shall meet together to review each fund unit's budget and discuss strategies for attaining compliance with the approved budgetary guidelines. Each service group shall submit one (1) draft budget which contains each fund unit's individual proposed budget and demonstrates cumulative compliance with the approved budgetary guidelines.

(b) The CFO shall receive, review and compile the proposed budgets into the Nation's draft budget which the CFO shall present to the Oneida Business Committee no later than the last Oneida Business Committee meeting in May. The CFO may not alter any proposed budgets until such budgets have been reviewed by the Oneida Business Committee.

(1) The CFO shall return any service group's draft budget that is in non-compliance with the approved budgetary guidelines within ten (10) business days of the date the budget was submitted to the CFO.

(2) Upon return, the CFO shall notice the service group of the amount of its non-compliance and provide the service group with a deadline for a compliant resubmission.

(3) Any service group's budget that remains in non-compliance upon the expiration of the deadline provided by the CFO shall be included in the draft budget submitted to the Oneida Business Committee noting the dollar amount of the service group's non-compliance. A service group's continued non-compliance may result in employee discipline according to the Nation's laws, rules and policies governing employment.

121.5-5. *Content of Budget.* The CFO shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's spending priorities and budget strategy. The Nation's draft budget shall include, but is not limited to:

(a) Estimated revenues to be received from all sources for the year which the budget covers;

(b) The individual budgets of each fund unit;

(c) A description of each line item within each fund unit's budget;

(d) The estimated expenditures by each fund unit; and

(e) Each fund unit's strategic plan showing alignment with the Nation's goals.

121.5-6. *Review of Draft Budget.* In the month of May, the CFO shall meet with the Oneida Business Committee to review the draft budget and provide any recommendations for modifications.

(a) Following the Oneida Business Committee's review of the draft budget with the CFO, the Oneida Business Committee shall schedule meetings with managers of each fund unit for which the Oneida Business Committee is considering altering the fund unit's proposed budget.

(b) The Oneida Business Committee shall complete all meetings with fund unit managers required by this section by the end of June each year.

121.5-7. *Final Draft Budget.* The Oneida Business Committee shall work with fund unit managers and the CFO to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council by the end of July each year.

121.5-8. *Community Meetings.* Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

121.5-9. *Budget Adoption.* The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted.

(a) *Emergency Budget Adoption.* In the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget.

121.6. Capital Improvements

121.6-1. *Capital Improvement Plan for Government Services.* The Oneida Business Committee shall develop and the General Tribal Council shall approve a capital improvement plan for government services and shall reassess the plan once every five (5) years. The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed or that have been modified at the time of the reassessment.

121.6-2. *Capital Improvement Plan for Enterprises.* Capital improvement plans for enterprises may be brought forward as needed in accordance with the capital improvement rules which the Community Development Planning Committee and the Development Division shall jointly create, provided that the rules shall include a provision that the Oneida Business Committee shall approve all capital improvement plans.

121.6-3. *Capital Improvement Plan Implementation.* Capital Improvement plans shall be implemented, contingent on available funding capacity, using the capital improvement rules.

121.7. Appropriation of the Nation's Funds

121.7-1. *Unexpended Capital Improvement Funds.* Unless the fund unit qualifies for an exception as provided in the capital improvement rules, unexpended capital improvement funds carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted until the project is complete. Once a capital improvement project is complete, any remaining unexpended funds shall be returned to the general fund to be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.

121.7-2. *Unexpended Capital Expenditure Funds.* The CFO shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.

121.8. Budget Authority

121.8-1. *Authority to Expend Funds.* The Treasurer's authority to expend appropriated funds is delegated to the CFO, who shall make such expenditures in accordance with the adopted budget. This authority is necessarily delegated to other managers, including executive managers, of the Nation who manage the budgets, pursuant to their job descriptions based on the procurement manual rules developed by the Purchasing Department.

121.8-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as applicable to a function for which the Nation's funds have also been appropriated, those grant funds shall be used before appropriating the Nation's funds unless the Nation's funds are needed to make up an otherwise shortfall in the overall fund unit budget or there is a restriction on the grant funds that provide otherwise.

121.8-3. In addition to the authority and responsibilities provided elsewhere in this law, the following positions and fund units shall have the authority and responsibilities as outlined below:

(a) *Oneida Business Committee*. Once the Nation's annual budget is adopted by the General Tribal Council, the authority of the Oneida Business Committee is limited to budget oversight except as otherwise provided in this law. However, these limitations do not prevent the Oneida Business Committee, with input from the CFO, from taking necessary action, on an emergency basis and within the scope of its authority, to protect and safeguard the resources and general welfare of the Nation and ensure compliance with applicable laws, regulations and requirements. The OBC shall ensure that the CFO performs the duties and responsibilities as assigned under this law.

(b) *Treasurer*. In addition to the Treasurer's Constitutional responsibilities, the Nation's Treasurer shall:

(1) Submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee and/or the General Tribal Council at:

(A) The annual General Tribal Council meeting;

(B) The semi-annual General Tribal Council meeting; and

(C) Other such times as may be directed by the Oneida Business Committee and/or the General Tribal Council.

(2) Present the proposed draft budget to the General Tribal Council at the annual budget meeting as required by section 121.5-9.

(c) *Chief Financial Officer*. Once the Nation's budget is properly adopted, the CFO shall ensure that it is properly implemented. The CFO shall:

(1) Provide managers with monthly revenue and expense reports in order for the managers to track their expenditures;

(2) Submit, to the Oneida Business Committee, a written report of any monthly variances that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Conduct financial condition meetings with the Nation's management on a quarterly basis.

(d) *Managers*. Managers of each business unit shall:

(1) Ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant this law;

(2) Report to the CFO explanations and corrective actions for any monthly variance that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month.

121.9. Budget Transfers; Amendments

121.9-1. *Budget Transfers*. After the budget is adopted, transfer of funds within the budget is not permitted except as provided in section 121.8-3(a) and to allow the CFO to adjust the approved budget as required to accurately reflect the amount of grant funding actually received.

121.9-2. *Budget Amendments*. After the budget is adopted, amendments of the budget are not permitted except as provided in section 121.8-3(a).

121.10. Reporting

121.10-1. *Monthly Reporting.* The CFO shall provide copies of the monthly Treasurer's reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee Meeting held for the acceptance of such reports.

121.10-2. *Audits.* The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Audit Law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected fund units or of fund units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each fund unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

121.11. Authorizations and Signatures

121.11-1. *General.* The procurement manual rules developed by the Purchasing Department shall provide the sign-off process and authorities required to expend funds on behalf of the Nation.

121.11-2. *Fees and Charges.* Managers of programs and services requiring Tribal contribution that desire to charge fees for their services shall determine the full cost of providing the program and/or service and, only then, may charge fees to cover operational costs. The full cost of providing a program and/or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation. Fees and charges may cover the full cost of service and/or goods whenever such fee or charge would not present an undue financial burden to recipient. Programs and services charging fees may offer fee waivers, provided that the program/service has developed rules outlining the fee waiver eligibility and requirements.

121.12. Enforcement

121.12-1. *Compliance and Enforcement.* All employees and officials of the Nation shall comply with and enforce this law to the greatest extent possible.

121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws, policies and rules, including but not limited to, those related to employment with the Nation, conflicts of interest, ethics and removal from an elected position.

121.12-3. *Civil and/or Criminal Charges.* This law shall not be construed to preclude the Nation from pursuing civil and/or criminal charges under applicable law. Violations of applicable federal or state civil and/or criminal laws may be pursued in a court having jurisdiction over any such matter.

End.

Adopted-BC-02-08-17-C

Emergency Amended – BC- - - -

Title 1. Government and Finances – Chapter 121
Twahwistatye>n\$ha>

We have a certain amount of money

BUDGET MANAGEMENT AND CONTROL

121.1.	Purpose and Policy	121.7.	Appropriation of the Nation's Funds
121.2.	Adoption, Amendment, Repeal	121.8.	Budget Authority
121.3.	Definitions	121.9.	Budget Transfers; Amendments
121.4.	Strategic Planning	121.10.	Reporting
121.5.	Budget Process	121.11.	Authorizations and Signatures
121.6.	Capital Improvements	121.12.	Enforcement and Penalties

121.1. Purpose and Policy

121.1-1. *Purpose.* The purpose of this law is to set forth the requirements to be followed by the Oneida Business Committee and Oneida fund units when preparing the budget to be presented to the General Tribal Council for approval and to establish a triennial strategy planning process for the Nation's budget.

121.1-2. *Policy.* It is the policy of the Nation to rely on value-based budgeting strategies, identifying proper authorities and ensuring compliance and enforcement.

121.2. Adoption, Amendment, Repeal

121.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-08-17-C, and emergency amended by resolution BC-__-__-__.

121.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

121.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

121.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law amends or repeals the requirements of resolution BC-10-08-08-A, *Adopting Expenditure Authorization and Reporting Requirements*.

121.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

121.3. Definitions

121.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Appropriation" means the legislative act of designating funds for a specific purpose in accordance with the provisions contained in this law.

(b) "Capital expenditure" means any non-recurring and non-physical improvement as follows:

(1) Any item with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more; or

(2) Items purchased together where none of the items individually costs more than two thousand dollars (\$2,000.00), but the total purchase price for all of the items is ten thousand dollars (\$10,000.00) or more.

(c) "Capital improvement" means non-recurring expenditure for physical improvements,

including costs for: acquisition of existing buildings, land, or interests in land; construction of new buildings or other structures, including additions and major alterations; acquisition of fixed equipment; landscaping; physical infrastructure; and similar expenditures with a cost of five thousand dollars (\$5,000.00) or more and an estimated life of one (1) year or more.¹

(d) “CFO” means the Nation’s Chief Financial Officer.

(e) “Debt” means the secured or unsecured obligations owed by the Nation.

(f) “Economic life” means the length of time an asset is expected to be useful.

(g) “Executive manager” means any one of the following positions within the Nation: Chief Executive Officer/General Manager, Gaming General Manager, Chief Legal Counsel and/or Chief Financial Officer.

(h) “Expenditure report” means a financial report which includes, but is not limited to, a statement of cash flows, revenues, costs and expenses, assets, liabilities and a statement of financial position.

(i) “Fiscal year” means the one (1) year period each year from October 1st to September 30th.

(j) “Fund unit” means any board, committee, commission, service, program, enterprise, department, office, or any other division or non-division of the Nation which receives an appropriation approved by the Nation.

(k) “General reserve fund” means the Nation’s main operating fund which is used to account for all financial resources not accounted for in other funds.

(l) “GTC allocations” means expenditures directed by the General Tribal Council as required payments and/or benefits to the Nation’s membership and are supported by either a General Tribal Council or Oneida Business Committee resolution.

(m) “Line item” means the specific account within a fund unit’s budget or category that expenditures are charged to.

(n) “Manager” means the person in charge of directing, controlling and administering the activities of a fund unit.

(o) “Nation” means the Oneida Nation.

(p) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and enforce this law.

(q) “Treasurer” means the elected Oneida Nation Treasurer or his or her designee.

121.4. Strategic Planning

121.4-1. *Triennial Strategic Plan.* Prior to December 1st of each year, the Oneida Business Committee, in consultation with the Executive Managers, shall develop a triennial strategic plan which includes, but is not limited to:

¹ Acquisition of existing buildings and land completed by the Oneida Land Commission are not included in the definition of “Capital Improvement.”

- (a) Major policy and budgetary goals for the Nation, both long and short term;
- (b) Specific strategies and planned actions for achieving each goal; and
- (c) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

- (1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and
- (2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-2. *Fund Units' Contributions to the Triennial Strategic Plan.* Managers shall annually develop, submit and maintain a triennial strategic plan for the fund unit's operations which aligns with the triennial strategic plan established by the Oneida Business Committee pursuant to 121.4-1. Managers shall submit the fund unit's triennial strategic plan to the CFO when the fund unit's budget is due and, at a minimum, shall include the following in the plan:

- (a) A statement of the fund unit's mission;
- (b) Specific goals including a description of the fund unit's strategies as part of its service group provided in 121.5-3(c) which aligns with the goals established in the Nation's triennial strategic plan;
- (c) Specific strategies for achieving each of the fund unit's goals; and
- (d) Performance targets and indicators to track progress which, to the extent available, includes, but is not limited to:

- (1) Statistics and trending data for, at a minimum, the last three (3) complete fiscal years; and
- (2) Performance targets for, at a minimum, the next three (3) complete fiscal years moving forward.

121.4-3. *Budget Contingency Plan.* The Oneida Business Committee shall work with the CFO, executive managers and managers to create a budget contingency plan which provides a strategy for the Nation to respond to extreme financial distress that could negatively impact the Nation. The Oneida Business Committee shall approve, by resolution, the budget contingency plan and any amendments thereto. The Oneida Business Committee is responsible for the implementation of the budget contingency plan, provided that such implementation is predicated on the Oneida Business Committee's determination that the Nation is under extreme financial distress. For the purposes of this section, extreme financial distress includes, but is not limited to, natural or human-made disasters, United States Government shutdown, Tribal shutdown (which occurs when the General Tribal Council has not approved a budget for the Nation prior to the beginning of a new fiscal year) and economic downturns.

(a) *Cost Savings Tools.* As part of the budget contingency plan, the Oneida Business Committee may require stabilization funds, reductions of expenditures, furloughs and other cost saving tools provided that such tools are in compliance with the Nation's laws, specifically the Nation's employment laws, rules and policies.

(b) *Business Continuity Fund.* The Oneida Business Committee shall maintain a Permanent Executive Contingency account within the ownership investment report to be used to prevent default on debt and to sustain operations during times of extreme financial distress. The Treasurer, in consultation with the CFO, shall establish, and the Oneida Business Committee shall approve, the level of business continuity funds required in the Permanent Executive Contingency account. The Treasurer shall set aside business continuity funds in the Permanent Executive Contingency account until the established

level has been achieved. Funds in the Permanent Executive Contingency may only be used for the following purposes and only to the extent that alternative funding sources are unavailable:

- (1) Payments to notes payable to debt service, both principal and interest, and applicable service fees;
- (2) Employee payroll, including all applicable taxes;
- (3) Payments to vendors for gaming and retail;
- (4) Payments to vendors for governmental operations;
- (5) Payments to any other debt; and
- (6) To sustain any of the Nation's other operations during implementation of the budget contingency plan.

(c) *Grant Funds.* Grant funds are exempt from requirements of the budget contingency plan and any cost containment initiatives as such funding is not reliant on Tribal contributions. Grant funds shall be spent according to any non-negotiable grant requirements and guidelines of the granting agency to include purchases, travel, training, hiring grant required positions and any other requirements attached to the funds as a condition of the Nation's acceptance of the grant funds.

121.5. Budget Process

121.5-1. *General.* All revenues and expenditures of the Nation shall be in accordance with the annual budget adopted by the General Tribal Council. In creating the budget to present to the General Tribal Council for consideration, the Oneida Business Committee, executive managers and managers shall follow the processes provided in this law. The Oneida Business Committee may alter the deadlines provided in this law only upon a showing of good cause, provided that, the Oneida Business Committee shall approve any such alterations by resolution.

121.5-2. *Community Input Budget Meeting(s).* The Treasurer's office shall schedule, at a minimum, one (1) community input budget meeting(s) prior to December 1st of each year. At the community input budget meeting(s), the Treasurer shall afford community members an opportunity to provide input as to what should be included in the upcoming fiscal year budget. Any fund units that plan to request forecast variations for the upcoming budget shall present the need and anticipated dollar amount of the requested forecast variation. For the purposes of this section, a forecast variation is a fund unit's requested deviation from the performance targets the fund unit submitted pursuant to 121.4-2(d)(2).

(a) The Treasurer shall ensure the community budget input meeting(s) are voice recorded and transcribed.

(b) The CFO shall provide recommendations as to any forecast variations requested by fund units.

(c) The CFO and any relevant managers shall provide responses and/or recommendations to all comments and considerations presented by community members.

(d) The Treasurer shall work with the CFO to place a community budget input meeting packet on the Oneida Business Committee agenda no later than the last Oneida Business Committee Meeting in January. At a minimum, the packet is required to include:

- (1) The community input budget meeting(s) transcript(s);
- (2) Any applicable fund unit's requested forecast variations; and
- (3) Responses and/or recommendations by the CFO and any relevant managers regarding requests for forecast variations and community members' comments and

168 considerations related to forecast variations.
169 121.5-3. *Priority List Established by the Oneida Business Committee.* The Oneida Business
170 Committee shall review the community input budget meeting packet and shall hold work meetings
171 to create a priority list.

172 (a) The Oneida Business Committee shall establish the priority list by placing the
173 following services provided by the Nation in chronological order with the lowest number
174 having the highest priority. The order of the following service groups provided below has
175 no relation to the service groups' anticipated and/or required placement within the Oneida
176 Business Committee's priority list; the Oneida Business Committee's priority list may vary
177 from year to year based on the needs of the Nation.

- 178 (1) Protection and Preservation of Natural Resources
- 179 (2) Protection and Preservation of Oneida Culture and Language
- 180 (3) Education and Literacy
- 181 (4) Health Care
- 182 (5) Economic Enterprises
- 183 (6) Building and Property Maintenance
- 184 (7) Human Services
- 185 (8) Public Safety
- 186 (9) Housing
- 187 (10) Utilities, Wells, Wastewater and Septic
- 188 (11) Planning, Zoning and Development
- 189 (12) Membership Administration
- 190 (13) Government Administration

191 (b) The Oneida Business Committee shall approve the priority list by resolution no later
192 than the last meeting in February.

193 (c) The CFO shall maintain a list which places each fund unit into a corresponding service
194 group.

195 121.5-4. *Annual Proposed Budgets.* The CFO shall develop the necessary guidelines, including
196 specific deadlines, to be followed by the managers that have budget responsibility in preparing and
197 submitting proposed budgets. Upon review of the Nation's economic state, the CFO shall include
198 in the guidelines the exact amount that each service group's cumulative budget is required to be
199 increased/decreased in accordance with its placement on the priority list. The CFO shall submit
200 the guidelines, as approved by the Treasurer, to the Oneida Business Committee for review in
201 accordance with the deadline as set by the Oneida Business Committee. The Oneida Business
202 Committee may revise the guidelines as it deems necessary and shall approve a set of budgetary
203 guidelines within thirty (30) calendar days of the date the budgetary guidelines proposed by the
204 CFO were received.

205 (a) In accordance with the approved budgetary guidelines, fund units offering like services
206 shall meet together to review each fund unit's budget and discuss strategies for attaining
207 compliance with the approved budgetary guidelines. Each service group shall submit one
208 (1) draft budget which contains each fund unit's individual proposed budget and
209 demonstrates cumulative compliance with the approved budgetary guidelines.

210 (b) The CFO shall receive, review and compile the proposed budgets into the Nation's draft
211 budget which the CFO shall present to the Oneida Business Committee no later than the
212 last Oneida Business Committee meeting in May. The CFO may not alter any proposed
213 budgets until such budgets have been reviewed by the Oneida Business Committee.

(1) The CFO shall return any service group's draft budget that is in non-compliance with the approved budgetary guidelines within ten (10) business days of the date the budget was submitted to the CFO.

(2) Upon return, the CFO shall notice the service group of the amount of its non-compliance and provide the service group with a deadline for a compliant resubmission.

(3) Any service group's budget that remains in non-compliance upon the expiration of the deadline provided by the CFO shall be included in the draft budget submitted to the Oneida Business Committee noting the dollar amount of the service group's non-compliance. A service group's continued non-compliance may result in employee discipline according to the Nation's laws, rules and policies governing employment.

121.5-5. *Content of Budget.* The CFO shall present the Nation's draft budget to the Oneida Business Committee for review each year to ensure that it is consistent with the Nation's spending priorities and budget strategy. The Nation's draft budget shall include, but is not limited to:

- (a) Estimated revenues to be received from all sources for the year which the budget covers;
- (b) The individual budgets of each fund unit;
- (c) A description of each line item within each fund unit's budget;
- (d) The estimated expenditures by each fund unit; and
- (e) Each fund unit's strategic plan showing alignment with the Nation's goals.

121.5-6. *Review of Draft Budget.* In the month of May, the CFO shall meet with the Oneida Business Committee to review the draft budget and provide any recommendations for modifications.

(a) Following the Oneida Business Committee's review of the draft budget with the CFO, the Oneida Business Committee shall schedule meetings with managers of each fund unit for which the Oneida Business Committee is considering altering the fund unit's proposed budget.

(b) The Oneida Business Committee shall complete all meetings with fund unit managers required by this section by the end of June each year.

121.5-7. *Final Draft Budget.* The Oneida Business Committee shall work with fund unit managers and the CFO to compile a final draft budget to be presented to the General Tribal Council. The Oneida Business Committee shall approve, by resolution, the final draft budget to be presented to the General Tribal Council by the end of July each year.

121.5-8. *Community Meetings.* Once the Oneida Business Committee has approved the final draft budget, the Treasurer shall hold, at a minimum, two (2) community informational meetings to present the contents of the final draft budget that will be presented to the General Tribal Council.

121.5-9. *Budget Adoption.* The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted.

(a) *Emergency Budget Adoption.* In the event that the Nation proclaims an emergency, in accordance with the Emergency Management and Homeland Security law, which prevents presentation and adoption of the budget by the General Tribal Council, the Oneida Business Committee shall adopt the Nation's budget.

121.6. Capital Improvements

121.6-1. *Capital Improvement Plan for Government Services.* The Oneida Business Committee shall develop and the General Tribal Council shall approve a capital improvement plan for government services and shall reassess the plan once every five (5) years. The capital improvement plan for government services shall cover a period of five (5) to ten (10) years and shall include any risks and liabilities. The Oneida Business Committee shall provide a status report and recommendation for any improvements that have not been completed or that have been modified at the time of the reassessment.

121.6-2. *Capital Improvement Plan for Enterprises.* Capital improvement plans for enterprises may be brought forward as needed in accordance with the capital improvement rules which the Community Development Planning Committee and the Development Division shall jointly create, provided that the rules shall include a provision that the Oneida Business Committee shall approve all capital improvement plans.

121.6-3. *Capital Improvement Plan Implementation.* Capital Improvement plans shall be implemented, contingent on available funding capacity, using the capital improvement rules.

121.7. Appropriation of the Nation's Funds

121.7-1. *Unexpended Capital Improvement Funds.* Unless the fund unit qualifies for an exception as provided in the capital improvement rules, unexpended capital improvement funds carry over to the next fiscal year's budget, provided that such funds are required to remain appropriated for the same purpose as originally budgeted until the project is complete. Once a capital improvement project is complete, any remaining unexpended funds shall be returned to the general fund to be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.

121.7-2. *Unexpended Capital Expenditure Funds.* The CFO shall ensure that all unexpended capital expenditure funds are reallocated to the fiscal year budget two (2) years out from the fiscal year in which the funds were unexpended. Such unexpended funds shall be re-allocated in accordance with the Oneida Business Committee's priority list under 121.5-3 using the regular budget process under 121.5.

121.8. Budget Authority

121.8-1. *Authority to Expend Funds.* The Treasurer's authority to expend appropriated funds is delegated to the CFO, who shall make such expenditures in accordance with the adopted budget. This authority is necessarily delegated to other managers, including executive managers, of the Nation who manage the budgets, pursuant to their job descriptions based on the procurement manual rules developed by the Purchasing Department.

121.8-2. *Exhaustion of Non-Tribal Funds.* When grant funds provide for forward funding as applicable to a function for which the Nation's funds have also been appropriated, those grant funds shall be used before appropriating the Nation's funds unless the Nation's funds are needed to make up an otherwise shortfall in the overall fund unit budget or there is a restriction on the grant funds that provide otherwise.

121.8-3. In addition to the authority and responsibilities provided elsewhere in this law, the following positions and fund units shall have the authority and responsibilities as outlined below:

- (a) *Oneida Business Committee.* Once the Nation's annual budget is adopted by the General Tribal Council, the authority of the Oneida Business Committee is limited to budget oversight except as otherwise provided in this law. However, these limitations do

not prevent the Oneida Business Committee, with input from the CFO, from taking necessary action, on an emergency basis and within the scope of its authority, to protect and safeguard the resources and general welfare of the Nation and ensure compliance with applicable laws, regulations and requirements. The OBC shall ensure that the CFO performs the duties and responsibilities as assigned under this law.

(b) *Treasurer*. In addition to the Treasurer's Constitutional responsibilities, the Nation's Treasurer shall:

(1) Submit expenditure reports and other financial reports as deemed necessary by the Oneida Business Committee and/or the General Tribal Council at:

(A) The annual General Tribal Council meeting;

(B) The semi-annual General Tribal Council meeting; and

(C) Other such times as may be directed by the Oneida Business Committee and/or the General Tribal Council.

(2) Present the proposed draft budget to the General Tribal Council at the annual budget meeting as required by section 121.5-9.

(c) *Chief Financial Officer*. Once the Nation's budget is properly adopted, the CFO shall ensure that it is properly implemented. The CFO shall:

(1) Provide managers with monthly revenue and expense reports in order for the managers to track their expenditures;

(2) Submit, to the Oneida Business Committee, a written report of any monthly variances that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Conduct financial condition meetings with the Nation's management on a quarterly basis.

(d) *Managers*. Managers of each business unit shall:

(1) Ensure that their business units operate, on a day-to-day basis, in compliance with the budget adopted pursuant this law;

(2) Report to the CFO explanations and corrective actions for any monthly variance that are either a difference of three percent (3%) or more from the adopted annual budget or \$50,000 or more in total; and

(3) Submit budget review reports to the CFO on a reasonable and timely basis not to exceed thirty (30) calendar days from the end of the month.

121.9. Budget Transfers; Amendments

121.9-1. *Budget Transfers*. After the budget is adopted, transfer of funds within the budget is not permitted except as provided in section 121.8-3(a) and to allow the CFO to adjust the approved budget as required to accurately reflect the amount of grant funding actually received.

121.9-2. *Budget Amendments*. After the budget is adopted, amendments of the budget are not permitted except as provided in section 121.8-3(a).

121.10. Reporting

121.10-1. *Monthly Reporting*. The CFO shall provide copies of the monthly Treasurer's reports and quarterly operational reports from direct reports to the Oneida Business Committee in accordance with Secretary's Oneida Business Committee packet schedule for the Oneida Business Committee Meeting held for the acceptance of such reports.

121.10-2. *Audits.* The Internal Audit Department, annually, shall conduct independent comprehensive performance audits, in accordance with the Audit Law, the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), of randomly selected fund units or of fund units deemed necessary by the Oneida Business Committee or Internal Audit Department. Each fund unit shall offer its complete cooperation to the Internal Audit Department. The Oneida Business Committee may, as it deems necessary, contract with an independent audit firm to conduct such audits.

121.11. Authorizations and Signatures

121.11-1. *General.* The procurement manual rules developed by the Purchasing Department shall provide the sign-off process and authorities required to expend funds on behalf of the Nation.

121.11-2. *Fees and Charges.* Managers of programs and services requiring Tribal contribution that desire to charge fees for their services shall determine the full cost of providing the program and/or service and, only then, may charge fees to cover operational costs. The full cost of providing a program and/or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation. Fees and charges may cover the full cost of service and/or goods whenever such fee or charge would not present an undue financial burden to recipient. Programs and services charging fees may offer fee waivers, provided that the program/service has developed rules outlining the fee waiver eligibility and requirements.

121.12. Enforcement

121.12-1. *Compliance and Enforcement.* All employees and officials of the Nation shall comply with and enforce this law to the greatest extent possible.

121.12-2. *Violations.* Violations of this law shall be addressed using the applicable enforcement tools provided by the Nation's laws, policies and rules, including but not limited to, those related to employment with the Nation, conflicts of interest, ethics and removal from an elected position.

121.12-3. *Civil and/or Criminal Charges.* This law shall not be construed to preclude the Nation from pursuing civil and/or criminal charges under applicable law. Violations of applicable federal or state civil and/or criminal laws may be pursued in a court having jurisdiction over any such matter.

End.

Adopted-BC-02-08-17-C

Emergency Amended – BC-__-__-__-__



TO: Legislative Operating Committee
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney
DATE: December 2, 2020
RE: Active Files List Sixty (60) Day Review

The “Legislative Operating Committee Meetings” standard operating procedure requires that within sixty (60) days after an item is added to the Active Files List, the Legislative Reference Office shall place the item on a Legislative Operating Committee meeting agenda for an update. The Legislative Operating Committee is then required to adopt a motion to either continue developing the proposal or discontinue developing the proposal.

Below is an update on the items that were added to the Active Files List since October 7, 2020 and have been actively worked on:

- ***Budget Management and Control Law Amendments.***
 - The Legislative Operating Committee held one (1) work meeting for the proposed amendments to this law. Representatives from the following areas and positions participated in this work meeting with the Legislative Operating Committee: Oneida Business Committee, Finance Administration, Budget Analyst, and the Strategic Planner.
 - On November 24, 2020, the Oneida Business Committee adopted emergency amendments to the Budget Management and Control law through resolution BC-11-24-20-E to address the adoption of the Nation’s budget during the COVID-19 Public Health State of Emergency.
 - Work meetings are ongoing. A draft of proposed permanent amendments to this law is still under development.
- ***Community Support Fund Law Amendments.***
 - The Legislative Operating Committee held three (3) work meetings on the proposed amendments to this law. Representatives from the Oneida Economic Support Services Department participated in the work meetings with the Legislative Operating Committee.
 - A draft of the proposed amendments and a legislative analysis has been completed.
- ***Emergency Management and Homeland Security Law Amendments.***
 - The Legislative Operating Committee has held one (1) work meeting on the proposed amendments to this law. Representatives from the following areas and positions participated in this work meeting with the Legislative Operating Committee: Oneida Business Committee, General Manager, Comprehensive Health Division, Oneida Law Office, Emergency Management Department, Risk Management Department, Intergovernmental Affairs, and the Strategic Planner.
 - Work meetings are ongoing. A draft of proposed amendments to this law is still under development.
- ***Furlough Law Amendments.***

- The Legislative Operating Committee has held two (2) work meetings on the proposed amendments to this law. Representatives from the following areas and positions participated in this work meeting with the Legislative Operating Committee: Human Resources Department, and Retail Administration.
- Work meetings are ongoing. A draft of proposed amendments to this law is still under development.
- ***General Tribal Council Meeting Stipend Payment Policy Amendments.***
 - On September 23, 2020, the Oneida Business Committee extended the emergency amendments to the General Tribal Council Meeting Stipend Payment Policy for an addition six (6) months through resolution BC-09-23-20-B.
 - The emergency amendments to this law will expire on April 8, 2021.
- ***Industrial Hemp Law.***
 - The Legislative Operating Committee has held three (3) work meetings on the proposed law. Representatives from the following areas and positions participated in this work meeting with the Legislative Operating Committee: Environmental, Health, Safety, and Land Division and the Strategic Planner.
 - A draft of the proposed law as well as all other accompanying adoption materials have been completed and are ready for approval by the Legislative Operating Committee and adoption by the Oneida Business Committee.
- ***Layoff Policy Amendments.***
 - The Legislative Operating Committee has held two (2) work meetings on the proposed amendments to this law. Representatives from the following areas and positions participated in this work meeting with the Legislative Operating Committee: Human Resources Department, and Retail Administration.
 - Work meetings are ongoing. A draft of proposed amendments to this law is still under development.
- ***Pandemic Relief Assistance Law.***
 - On November 24, 2020, the Oneida Business Committee adopted the Pandemic Relief Assistance Law on an emergency basis through resolution BC-11-24-20-D.
- ***Real Property Law Amendments.***
 - The Legislative Operating Committee has held one (1) work meeting on the proposed amendments to this law.
 - The Legislative Operating Committee determined the emergency amendments to the Real Property law would be allowed to expire on January 22, 2021.
- ***Wellness Court Law.***
 - The Legislative Operating Committee participated in Tribal Healing to Wellness Court Planning Initiative (THWCPI) Training presented by the National Association of Drug Court Professionals (NADCP) from November 18, 2020, through November 20, 2020.
 - Representatives from the following areas and positions participated in THWCPI Training with the Legislative Operating Committee: NADCP, Tribal Law and Policy Institute (TLPI), Wisconsin Department of Corrections, Wisconsin Statewide Treatment Court, General Manager, Oneida Behavioral Health, Oneida Elder Services, Oneida Tribal Court, Oneida Police Department, Oneida Wellness Court Coordinator, and the Legal Resource Center.
 - Work meetings are ongoing. A draft of the proposed law is still under development.

- ***Petition: M. Debraska – Increase General Tribal Council Stipend.***
 - The statement of effect for the Petition: M. Debraska – Increase General Tribal Council Stipends was submitted to the Oneida Business Committee on October 14, 2020.
 - The Legislative Operating Committee’s work on this item is now complete.

Below is a list of items that were added to the Active Files List since October 7, 2020, but have not yet been actively worked on:

- Business Corporations Law;
- Children’s Code Amendments;
- Code of Ethics Law Amendments;
- Drug and Alcohol-Free Law for Elected and Appointed Officials;
- Credit Collections Law;
- Endowments Law Amendments;
- Environmental Review Law;
- Guardianship Law;
- Investigative Leave Policy Amendments;
- Law Enforcement Ordinance Amendments;
- Medical Marijuana Law;
- Misappropriation of Funds Law;
- Oneida General Welfare Law;
- Oneida Higher Education Pandemic Relief Fund Law;
- Oneida Land Trust Law;
- Oneida Nation Emergency Planning Committee Bylaws Amendments;
- Oneida Personnel Policies and Procedures Amendments;
- Oneida Trust Enrollment Committee Bylaws Amendments;
- Public Peace Law;
- Recycling and Solid Waste Disposal Law Amendments;
- Sanctions and Penalties Law;
- Taxation Law;
- Traffic Law; and
- Workplace Violence Law Amendments.

The Legislative Operating Committee has not proposed discontinuing the development of any items currently on the Active Files List.

Requested Action

The Legislative Operating Committee is requested to adopt a motion to continue the development of the thirty-four (34) legislative items currently on the Active Files List identified in this memo.

December 2020

December 2020						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

January 2021						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Nov 29	30	Dec 1	2 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - LOC	3	4	5
6	7	8	9	10 1:30pm LOC Work Session (BC_Conf_Room) - Clorissa N. Santiago	11	12
13	14	15	16 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - Clorissa	17	18	19
20	21	22	23	24 12:00pm Holiday Half Day - Christmas Eve	25 8:00am Holiday Off - Christmas	26
27	28	29	30	31	Jan 1, 21	2