



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room - 2nd Floor Norbert Hill Center

December 1, 2021

9:00 a.m.

This Legislative Operating Committee meeting will be closed to the public in accordance with Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines During Public Health State of Emergency - COVID-19*.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. November 17, 2021 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Furlough Law Amendments (pg. 4)
2. Oneida General Welfare Law (pg. 52)

IV. New Submissions

1. Oneida Nation Arts Board Bylaws Amendments (pg. 78)

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
November 17, 2021
9:00 a.m.

Present: David P. Jordan, Daniel Guzman King, Kirby Metoxen, Marie Summers (Microsoft Teams)

Excused: Jennifer Webster

Others Present: Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Brooke Doxtator, Lawrence Barton, Kristal Hill (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Derrick King (Microsoft Teams)

I. Call to Order and Approval of the Agenda

David P. Jordan called the November 17, 2021, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Summers to adopt the agenda as is; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

1. November 3, 2021 LOC Meeting Minutes

Motion by Marie Summers to approve the November 3, 2021 LOC meeting minutes and forward to the Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

III. Current Business

1. Oneida Personnel Policies and Procedures Emergency Amendments

Motion by Kirby Metoxen to approve Oneida Personnel Policies and Procedures emergency amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

2. Furlough Law Amendments

Motion by Marie Summers to accept the public comment period review memorandum; seconded by Kirby Metoxen. Motion carried unanimously.

IV. New Submissions

1. Tribal Sovereignty in Data Research

Motion by Marie Summers to add the Tribal Sovereignty in Data Research law to the Active Files List with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

V. Additions

VI. Administrative Items



1. Legislative Operating Committee Fiscal Year 2021 Fourth Quarter Report

Motion by Kirby Metoxen to approve the LOC FY21 Fourth Quarter Report and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Daniel Guzman King to adjourn at 9:23 a.m.; seconded by Marie Summers. Motion carried unanimously.



Legislative Operating Committee December 1, 2021 Amendments to the Furlough Law

Submission Date: 10/7/2020	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 11/11/21.
LOC Sponsor: Marie Summers	Emergency Enacted: n/a Expires: n/a

Summary: *This item was added to the Active Files List on October 7, 2020 per the request of the Legislative Operating Committee to develop amendments to the Nation's Furlough law to incorporate Indian preference into the selection/recall process and to provide clarity regarding certain other furlough procedures that were flagged during the COVID-19 pandemic.*

10/7/20 LOC: Motion by Jennifer Webster to add the Furlough Law Amendments to the Active Files List with Marie Summers as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

10/22/20: *Work Meeting.* Present: Marie Summers and Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the basis for the Councilwoman's request to have amendments to the Furlough law added to the Active Files List. The next step is for the drafting attorney to schedule a meeting with the workgroup that was created during this meeting to discuss the Councilwoman's concerns, as well as any other concerns/suggestions that the workgroup may have.

11/13/20: *Work Meeting.* Present: Eric McLester, Barbara Kolitsch, Geraldine Danforth, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to have a general discussion on needed amendments/updates to the Furlough law. The drafting attorney went through the law line-by-line with the workgroup to flag where they believed changes were needed. The next step is for the drafting attorney to update the draft based on the discussion and schedule a follow-up work meeting with the workgroup for review and further discussion/revision.

1/26/21: *Work Meeting.* Present: Eric McLester, Barbara Kolitsch, Geraldine Danforth, Matt Denny, Wendy Alvarez, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to go through the updated draft of the Furlough law amendments to discuss any areas of concern or in need of further revision before bringing to the Legislative Operating Committee for review/consideration.

2/3/21: *Work Meeting.* Present: David Jordan, Marie Summers, Daniel Guzman-King, Jennifer Webster, Rhiannon Metoxen, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work

meeting held through Microsoft Teams. The purpose of the work meeting was to update the LOC on discussions had thus far with the workgroup regarding possible amendments to the Furlough law. The drafting attorney went through the draft line-by-line with the LOC to highlight where the workgroup was proposing amendments and to have the LOC flag additional changes it deems necessary. The next steps are for the drafting attorney to: (1) create a bullet-point of the initial policy decisions the LOC must make before detailed amendments can be developed in alignment therewith; and (2) schedule a follow-up meeting with the workgroup and LOC to afford the LOC an opportunity to hear from the workgroup before making said policy decisions.

2/17/21:

Work Meeting. Present: David Jordan, Jennifer Webster, Kirby Metoxen, Marie Summers, Rhiannon Metoxen, Kristal Hill, Kristen Hooker, Matthew Denny, Lucy Neville, Wendy Alvarez, Geraldine Danforth, Eric McLester (left early). This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to give LOC an opportunity to hear from the workgroup regarding amendments to the Furlough law. The goal of the meeting was to provide the LOC enough information to make certain policy decisions that are necessary to develop amendments to the law in alignment therewith. The next step is for the drafting attorney to compile the information/suggestions provided during the meeting and to present the compilation to the LOC at a future work meeting for further directive.

2/25/21:

Work Meeting. Present: Marie Summers, Kirby Metoxen, Daniel Guzman-King, Jennifer Webster, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. This work meeting was held in follow-up to the February 17, 2021 work meeting the LOC had with the Workgroup regarding possible amendments to the Furlough law. The purpose of this work meeting was to get directive from the LOC regarding the policy questions that were discussed on February 17th. The next step is for the drafting attorney to update the draft amendments to be consistent with the LOC's directive and to bring the updated draft back to a future LOC meeting for review and further revision.

4/9/21:

Work Meeting. Present: David Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman-King, Rhiannon Metoxen, Kristal Hill, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to start going through the updated draft amendments to the Furlough law with the LOC.

4/13/21:

Work Meeting. Present: David Jordan, Kirby Metoxen, Marie Summers, Jennifer Webster, Daniel Guzman-King, Rhiannon Metoxen, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this meeting was to finish going through the initial draft amendments to the Furlough law before updating the draft for the LOC's final review and consideration. The next step will be for the LRO attorney to update the draft based on the LOC's decisions/suggestions and to schedule a final meeting with the LOC to review the updated draft before sending it to a workgroup meeting for review and comment.

6/10/21:

Work Meeting. Present: Kirby Metoxen, Marie Summers, Daniel Guzman-King, Jennifer Webster, Rhiannon Metoxen, Kristal Hill, Clorissa Santiago, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to go through the updated draft amendments with the LOC before sending it to the workgroup for review and comment. The next step is for the LRO attorney to update the draft based on the comments and suggestions from the LOC and to then schedule a meeting with the workgroup to provide an opportunity for them to comment and make suggestions for the LOC to consider before approving the draft for the public comment portion of the legislative process.

- 7/8/21:** *Work Meeting.* Present: Barbara Kolitsch, Geraldine Danforth, Wendy Alvarez, Matthew Denny, James Petitjean (left early), Lucy Neville, Jessica Vandekamp, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to review the draft Furlough law amendments with the workgroup to see whether the members had any questions, concerns or suggested changes they wanted the LOC to consider. The next step is for the LRO attorney to update the draft with the workgroup's suggestions and bring it back to a LOC work meeting for consideration and possible approval to move forward with the public comment portion of the legislative process.
- 7/21/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Justin Nishimoto, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the final draft of the Furlough law amendments and have the LOC consider the comments/suggestions from the workgroup meeting of July 8, 2021. The next steps are for the drafting attorney to: (1) update the draft based on the LOC's decisions during the meeting; (2) draft a legislative analysis on the amendments to the Furlough law; (3) draft the materials for the public meeting notice packet for the LOC to review during its next work meeting; and (4) add the public notice packet for the Furlough law amendments to the next LOC agenda for consideration and possible approval.
- 8/4/21 LOC:** Motion by Marie Summers to approve the Furlough law amendments draft and direct that a legislative analysis be prepared for consideration at the next LOC meeting; seconded by Kirby Metoxen. Motion carried unanimously.
- 8/18/21 LOC:** Motion by Kirby Metoxen to approve the draft amendments to the Furlough law and legislative analysis and defer to a work meeting; Seconded by Daniel Guzman-King. Motion carried unanimously.
- 8/18/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Kirby Metoxen, Daniel Guzman-King, Kristen Hooker, Clorissa Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the legislative analysis with the LOC and to have the LOC make policy decisions regarding the items listed under the "Other Considerations" section of the analysis. This next step is to have the Legislative Reference Office attorney put together numerous diagrams to assist the LOC with making said policy decisions during a follow-up work meeting.
- 8/26/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Daniel Guzman-King, Kristen Hooker, Clorissa Santiago, Kristen Hooker, Carmen VanLanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to finish going through the legislative analysis with the LOC and to have them make certain policy decisions regarding portions of the section governing placement of employees in furlough status that were flagged in the "Consideration" section of the analysis. The next steps are for the drafting attorney to update the legislative analysis, along with the draft, to coincide with the LOC's decisions at the meeting and to prepare the public notice materials for approval of the LOC at an upcoming LOC meeting.
- 9/23/21:** *Work Meeting.* Present: David Jordan, Daniel Guzman-King, Jennifer Webster, Kirby Metoxen, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of the work meeting was to go through the changes that were made to the draft amendments following the LOC work session of August 26, 2021. The next step is for the drafting attorney to prepare the public meeting notice packet on the amendments to the Furlough law for inclusion on the next LOC meeting agenda.

10/6/21 LOC: Motion by Marie Summers to approve the Furlough law amendments public comment period notice and forward the Furlough law amendments to a public comment period to be held open until November 11, 2021; Seconded by Jennifer Webster. Motion carried unanimously.

11/11/21: *Public Comment Period Closes.* The public comment period for the permanent adoption of the amendments to the Furlough law closed on November 11, 2021. No written submissions of comments were received during this public comment period.

11/17/21 LOC: Motion by Marie Summers to accept the public comment period review memorandum; Seconded by Kirby Metoxen. Motion carried unanimously.

Next Steps:

- Approve the updated draft, legislative analysis, and the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by December 15, 2021.

Title 2. Employment – Chapter 205

[Oneida Language]

[Translation]

FURLOUGH ~~POLICY~~

205.1. Purpose and Policy
205.2. Adoption, Amendment, Repeal
205.3. Definitions
205.4. ~~Furlough Application~~
205.5. ~~Furlough Plans~~
205.6. ~~Supervisor Responsibilities~~
205.7. ~~Appeal~~

205.5. Furlough Implementation Plan
205.6. Furlough Implementation
205.7. Placing Employees in Furlough Status
205.8. Furloughed Employees
205.9. Recall of Furloughed Employees
205.10. Direct Report Level and Supervisor Responsibilities
205.11. Appeal

205.1. Purpose and Policy

205.1-1. Purpose. The purpose of this ~~Policy~~law is to ~~enable~~:

(a) Enable the ~~Tribe~~Nation to implement a furlough ~~as a tool~~program in response to
~~remedy an operating budget deficit.~~interruption of governmental revenues or operations,
insufficient treasury funds or other emergencies/ unplanned events as determined by the
Oneida Business Committee in accordance with this law;

~~205.1-2. Policy. This Policy shall apply to all employees of the Tribe. To utilize a furlough, a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave shall be identified.~~

(b) Establish a consistent and equitable process for implementation of a furlough program;
and

(c) Incorporate Indian preference into the furlough program and require that it be applied
in accordance with this law.

205.1-2. Policy. It is the policy of the Nation to have consistent and standard procedures to
address events and/or incidents that impact employees of the Nation. It is further the policy of the
Nation to incorporate and adhere to Indian preference in all aspects of employment within the
Oneida Nation.

205.2. Adoption, Amendment, Repeal

205.2-1. This ~~Policy~~law was adopted by the Oneida Business Committee by resolution BC-11-
10-15-B; and amended by resolution BC- - - -.

205.2-2. This ~~Policy~~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.

205.2-3. Should a provision of this ~~Policy~~law or the application thereof to any person or
circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~law
which are considered to have legal force without the invalid portions.

205.2-4. In the event of a conflict between a provision of this ~~Policy~~law and a provision of
another ~~policy~~law, the provisions of this ~~Policy~~law shall control.

205.2-5. This ~~Policy~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of~~
Indians of WisconsinNation.

205.3. Definitions

205.3-1. This section shall govern the definitions of words or phrases as used within this

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~~Policy~~law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) ~~“Direct report level”~~Acts of God means an event or effect that can be neither anticipated nor controlled, including both acts of nature, such as floods and hurricanes, and acts of people, such as riots, strikes, and wars.

(b) ~~“Additional duties”~~ means responsibilities of another position” ~~means~~ within the Nation that is not within an employee’s current scope of work.

(c) ~~“Authorized designee”~~ means an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual employed in the Direct Report Level position is unavailable or requests such assistance from that employee.

(d) ~~“Critical position”~~ means a position of employment within the Nation that is crucial to governmental functions, including, but not limited to, health, safety, regulatory compliance and/or revenue generation.

(e) ~~“Direct Report Level position”~~ means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee and who is responsible for a ~~Tribal Department~~department and/or ~~Division~~division of the Nation.

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

(eg) ~~“Furlough”~~ means a temporary, unpaid ~~leave from time off of~~ work for a specified period of time.

~~(d)~~ ~~(h)~~ “Indian” means any person, other than an Oneida citizen, who is a citizen of a federally recognized Indian tribe, other than the Oneida Nation.

(i) ~~“Indian preference”~~ means a preference ~~granted to retain an Oneida member employee over other non-member employees.~~ for Indian people, regardless of tribal affiliation, in all aspects of employment, with Oneida citizens being afforded the highest levels of preference for purposes of this law.

~~(e)-j)~~ “Nation” means the Oneida Nation.

(k) ~~“Oneida citizen”~~ means those persons who are enrolled members of the Nation, eligible for enrollment in the Nation or documented first generation Oneida descendants.

~~(l)~~ “Supervisor” means a ~~person~~an employee of the Nation who directly oversees the work and performance of an employee on a daily basis.

~~(f)~~ ~~“Tribe” or “Tribal”~~ ~~“Temporary employee”~~ means an employee hired by the Nation for a short-term assignment and consists of the following classifications:

(1) Emergency/Temporary;

(2) Limited Term;

(3) Seasonal;

(4) Substitute/Relief;

(5) Youth Worker; and

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(6) Student/Intern.

205.4. Application

205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

205.4-2. Indian Preference. It is the intent of this law, and the policy of the Nation, that no employee who is Indian shall be furloughed so long as an employee, within the same department/division and position, who is non-Indian is still employed.

(a) Title VII of the Civil Rights Act of 1964 allows private and government employers on or near a Federal Trust Indian Reservation to exercise Indian preference in employment.

(b) The Indian Self Determination and Education Act affirms that any tribal employment or contract preference laws adopted by such tribe shall govern.

(c) In accordance with this section and subject to any express exceptions set forth herein, a furlough program shall be administered in a manner that affords preferential treatment to Oneida Tribe of citizens and Indians of Wisconsin in the following order, starting with those employees to be given the highest level of preference when applying the provisions of this law:

(1) Enrolled members of the Oneida Nation;

(2) Oneida citizens eligible for enrollment in the Oneida Nation;

(3) Documented first generation Oneida descendants;

(4) Indians; and

(5) Non-Indians.

205.4-3.

205.4. Equal Opportunity Employer. Notwithstanding section 205.4-2, the Nation is an Equal Opportunity Employer that prohibits the application of this law and/or the implementation of a furlough program in a manner that discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information and/or any other basis protected by the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964.

205.4-4. Training on Indian Preference. The Human Resources Department shall be responsible for introducing new employees of the Nation to the concept of Indian preference, as well as how it applies to the furlough programs set forth herein, during employee orientation. Such introduction shall include, at a minimum, coverage of the following topics:

(a) The history behind Indian preference, including the role that the Bureau of Indian Affairs ("BIA") had in its development;

(b) The Indian Self-Determination and Education Assistance Act of 1975, as well as the exception to Title VII of the Civil Rights Act of 1964; and

(c) Examples of how Indian preference would apply in the event of a furlough program when deciding which employees of the Nation would be placed in furlough status, as well as the order in which they would be recalled, using methods to include, but not be limited to, hypotheticals and charting.

205.4-5. Prohibitions. Any furlough program of the Nation that is initiated in accordance with this law shall not:

(a) Be used as a means to resolve performance-related problems, grievance issues or to

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take the place of disciplinary actions;

(b) Be administered or implemented in violation of this law or any other applicable laws/policies of the Nation; and/or

(c) Be implemented in a manner that requires interdepartmental transfers when applying Indian preference to the processes set forth herein.

205.5. Furlough Implementation Plan

~~205.4-1.~~ 205.5-1. Implementation Plan. Within a reasonable time after this law goes into effect, all Direct Report Level positions, or their authorized designees, shall submit a furlough implementation plan to the Human Resources Department for approval.

(a) The Human Resources Department shall create a standard template that Direct Report Level positions and/or authorized designees must use when developing their furlough implementation plan hereunder.

(1) The intent of the standard template shall be to elicit, in advance, information that will allow the Nation to implement a furlough program in as efficient and consistent a manner as possible under the circumstances, the information of which shall include, but not be limited to:

(A) Which positions within their respective department or division may qualify as a critical position;

(B) Which employees within their respective department or division may qualify for Indian preference and the corresponding level of preference that would apply under section 205.4-2 of this law;

(C) Which positions and/or employees within their respective department or division may be exempt from the application of Indian preference and the basis for said exemption;

(D) Whether any employees within their respective department or division may be interested in volunteering to be placed in furlough status in the event a furlough program is implemented; and

(E) Whether any positions within their respective department or division are capable of being adjusted to promote Indian preference when deciding which employees to place in furlough status.

(2) The Human Resources Department shall submit its standard template to the Oneida Business Committee for approval by resolution prior to distributing it to the Direct Report Level positions and/or authorized designees for development in accordance herewith.

(b) The Human Resources Department shall create a Standard Operating Procedure which sets forth how a furlough implementation plan shall be processed under this law once the standard template is approved by the Oneida Business Committee, that shall, at a minimum, address the following:

(1) Distribution of the standard template to the Direct Report Level positions and/or their authorized designees;

(2) The process for Direct Report Level positions and/or authorized designees to follow upon receiving the standard template, including, but not limited to:

(A) How a furlough implementation plan shall be created using the standard

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template;

(B) How a furlough implementation plan shall be submitted to the Human Resources Department for approval; and

(C) The amount of time the Direct Report Level positions and/or their authorized designees have to submit their furlough implementation plans to the Human Resources Department upon receipt of the standard template.

(3) How the Human Resources Department will process furlough implementation plans for approval upon submission by the Direct Report Level positions and/or authorized designees; and

(4) How the Human Resources Department will notify the Direct Report Level positions and/or authorized designees of its decision to approve or reject their furlough implementation plan and, if rejected, the reason for the rejection and the process for resubmitting the furlough implementation plan for reconsideration.

(c) Copies of approved furlough implementation plans shall be retained by the Human Resources Department, as well as the Direct Report Level positions and/or authorized designees, consistent with governing law.

205.5-2. Furlough Implementation Plan Updates. The furlough implementation plan, as well as the standard template upon which it is developed, shall be updated as follows:

(a) *Standard Template.* Within two (2) years of its initial approval by resolution and then every two (2) years thereafter, the Human Resources Department shall review its standard template to assess whether it should be updated to better advance the underlying goals/policies of this section, as well as the law in general.

(1) Updates to the standard template must be approved by the Oneida Business Committee in accordance with section 205.5-1 of this law.

(b) *Implementation Plan.* Within two (2) years of initial approval by the Human Resources Department and then every (2) years thereafter, the Direct Report Level positions and/or authorized designees shall review their furlough implementation plan to assess whether it needs to be updated to account for any relevant changes within their department/division, including, but not limited to, changes in personnel, changes in positions and/or changes to any of the job descriptions attached to a position.

(1) Updates to a furlough implementation plan must be processed and approved in accordance with section 205.5-1 of this law, as well as the Standard Operating Procedure created by the Human Resources Department in accordance therewith.

(c) Nothing in this section shall be interpreted to prohibit an earlier review of the standard template or furlough implementation plan nor the number of times they are reviewed.

205.6. Furlough Implementation

205.6-1. Alternatives to Furlough. Prior to adopting a furlough resolution hereunder, the Oneida Business Committee shall consider whether any reasonable alternative options to implementation of a furlough program exist and, if so, exhaust the option or options in advance of implementation so long as the burden of doing so on the Nation as a whole does not outweigh the benefit to the employees who may be affected by the implementation of a furlough program.

205.6-2. Furlough Resolution. —If the Oneida Business Committee has identified the ~~necessity~~need for a furlough program, a directive by resolution shall be given to the appropriate

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Direct Report Level positions-, authorized designees, and any other individual or entity deemed necessary by the Oneida Business Committee.

(a) The resolution shall ~~direct~~include the following:

(1) The basis for implementing the furlough program;

(2) Whether it is being implemented as an administrative or emergency furlough program;

(3) If feasible under the circumstances and to the extent of such feasibility so long as not less than is required under this law for the particular furlough program being implemented, the beginning and ending dates of the furlough- program;

(4) If feasible under the circumstances and to the extent of such feasibility, which areas within the Nation will be subject to the furlough program and which positions, if any, are considered critical positions exempt from being placed in furlough status; and

(5) Whether an ad hoc committee will be established pursuant to this section to assist in the implementation of the furlough program.

(b) *Ad Hoc Committee.* The Oneida Business Committee may, in its discretion, establish an ad hoc committee to assist in the implementation of a furlough program by, among other actions, helping to identify which areas of the Nation should be subject to the furlough program and which positions, if any, should be deemed critical, when directed to by the Oneida Business Committee.

(1) The ad hoc committee shall be made up of employees of the Nation, identified by the Oneida Business Committee within the furlough resolution or through a subsequent resolution or motion, who possess an expertise commensurate with the type and severity of the event giving rise to the need for the implementation of a furlough program.

(2) The ad hoc committee shall meet as necessary and at the request of the Oneida Business Committee to~~205.4-2. Implementation of Furlough Plans. Upon the passage of a resolution directing that a furlough be implemented, all Direct Report Level positions shall immediately carry out the furlough plans for his or her respective departments or agencies. An employee shall be furloughed on days that the employee is normally scheduled to work or on holidays recognized by the Tribe, whether the employee is normally scheduled to work or not.~~

carry out its responsibilities per the directive of the Oneida Business Committee and in a manner consistent with this law.

(3) The ad hoc committee shall not be subject to the Boards, Committees and Commissions law and employees shall not be entitled to stipends or any additional form of compensation for serving on an ad hoc committee established hereunder.

(4) The ad hoc committee shall dissolve upon conclusion of the furlough program for which it was established or on an early date as determined by the Oneida Business Committee, subject to the following:

(A) The ad hoc committee shall prepare, as well as present, a close-out report, in accordance with the Oneida Business Committee's directive; and

(B) The ad hoc committee shall forward all materials and records that were used and/or created to carry out its responsibilities hereunder to the Human Resources Department for storage/disposal in accordance with governing

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law.

205.6-3. Furlough Programs. A furlough program shall be characterized as either an emergency or an administrative program in the furlough resolution and then carried out in accordance with the portions of this section that apply to such characterization.

(a) In General. The following shall apply to all furlough programs implemented hereunder, regardless of their characterization.

~~(1) 205.4-3. Notice.~~ ~~A supervisor shall give an employee~~ of the implementation of a furlough program shall be provided to employees in writing and, along with information relevant to the furlough program being implemented, include the following:

(A) Fair warning regarding the employee's failure to respond to a notice of recall as set forth in section 205.9-2 of this law; and

(B) A directive that it is the responsibility of the employee to ensure that the Nation has his or her most current contact information.

(2) Written notice shall be sent to employees via the outlet(s) deemed most capable of reaching them in as efficient a manner as possible under the circumstances.

(A) In the event that the Nation develops a formal process to provide mass notifications to employees for events such as the implementation of a furlough program, such process shall be deemed the most capable outlet hereunder and used to provide written notice to employees for purposes hereof.

(b) Emergency Furlough Program. An emergency furlough program may be initiated by the Oneida Business Committee when in the best interest of the Nation due to Acts of God that require immediate curtailment of activities within the organization.

(1) Notice. Employees shall be notified of the Oneida Business Committee's decision to implement an emergency furlough program as far in advance of the program's implementation date as is reasonably possible under the circumstances.

(A) If circumstances do not allow for the Oneida Business Committee to set a specific date upon which the emergency furlough program will end within the furlough resolution, notice of the anticipated end date shall be provided as soon thereafter as is reasonably possible, consistent with section 205.6-3 of this law.

(2) Duration. No emergency furlough program implemented hereunder shall last for longer than twenty-six (26) weeks from the date of implementation, unless extended by the Oneida Business Committee through a subsequent resolution.

(c) Administrative Furlough Program. An administrative furlough program may be initiated by the Oneida Business Committee in response to a foreseeable event that is likely to result in a temporary reduction in revenue/funding or some other organizational issue when the intent is to recall employees back to work once the event has subsided.

(1) Notice. Employees shall be notified of the Oneida Business Committee's decision to implement an administrative furlough program at least five (5) business days prior to a furlough being implemented in advance of the program's implementation date.

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(2) *Duration.* The beginning and ending dates of the administrative furlough program shall be specified within the furlough resolution.

(A) An administrative furlough program shall end on the date specified within the furlough resolution, unless revised or extended by the Oneida Business Committee through a subsequent resolution.

(B) Notice of a revised or extended end date for an administrative furlough program shall be provided as soon as reasonably possible in advance of the original end date, consistent with section 205.6-3 of this law.

(3) If the intent to bring employees back is not present or is improbable at the time employee reductions are deemed necessary, employees shall be selected for layoff, as opposed to placement in furlough status, consistent with the laws and policies of the Nation governing employee layoffs.

205.7. Placing Employees in Furlough Status

205.7-1. This section shall govern the manner in which employees of the Nation are selected to be placed in furlough status following the adoption of a resolution triggering the implementation of a furlough program.

205.7-2. *Critical Positions.* Except as otherwise stated herein, employment positions identified as critical pursuant to this section of the law shall be exempt from placement into furlough status during the specific furlough program for which the position was deemed critical.

(a) Critical positions shall be identified by the Oneida Business Committee, or ad hoc committee upon the Oneida Business Committee's directive and subject to its approval, within the furlough resolution referenced in section 205.6-2 of this law or as soon thereafter as is reasonably possible under the circumstances in a subsequent resolution or motion.

(1) *Amendments.* The Oneida Business Committee, with assistance from the ad hoc committee if so requested, may amend the list of identified critical positions as it deems necessary under the circumstances.

(A) Direct Report Level positions or their authorized designees may submit requests for amendments to the list of identified critical positions under their direction to the Oneida Business Committee for consideration.

(b) *Exception.* The Oneida Business Committee may, when deemed necessary, direct that reductions be made to positions initially identified as critical under this section, through adoption of a subsequent resolution.

(1) Employees within the same critical position who become subject to a reduction hereunder, shall be placed in furlough status pursuant to the order of preference and priority established in section 205.7, and recalled back to work pursuant to the order of preference and priority established in section 205.9, of this law.

205.7-3. *Non-Critical Positions.* Directives from the Oneida Business Committee regarding employee furlough reductions, as set forth in the initial resolution or a subsequent resolution related thereto, shall be carried out by the Direct Reports Level position/authorized designee of the affected department/division in a manner that furthers the policy behind Indian preference to the greatest extent possible without rendering the affected department/division inoperable or unable to reasonably conduct business.

(a) *Placing Employees in Furlough Status.* Unless otherwise stated herein, the following

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order shall be adhered to when placing non-critical position employees within the same department or division in furlough status.

(1) *Temporary Employees.* Temporary employees within a department or division shall be the first category of employees to be placed in furlough status.

(2) *Volunteer Employees.* Following the placement of temporary employees in furlough status, eligible employees who volunteer for said placement shall be the next category of employees to be placed in furlough status, subject to the following:

(A) Employees who volunteer to be placed in furlough status must sign a form, created by the Human Resources Department, confirming that:

(i) They volunteered to be placed in furlough status notwithstanding any preference or eligibility for retention that they may have;

(ii) Their decision to volunteer was not coerced or based on any promises of compensation or other consideration; and

(iii) They understand that they are not guaranteed a recall back to work and, as a result, could be terminated from their employment with the Nation.

(B) Once signed, the employee shall be provided with a copy for his or her position records and the Human Resources Department shall retain the original copy in a manner consistent with the Nation's Open Records and Open Meetings law and/or any other applicable laws of the Nation.

205.4 4. *Continuous Service.* A (C) Employees who volunteer to be placed in furlough status shall retain the rights afforded under, as well as be subject to, the recall process set forth in section 205.9 of this law.

(3) *Indian Preference.* Absent an express exception and after application of sub-sections (1) and (2), above, when the remaining number of employees in the same position within a department or division exceeds the number of said employees to be placed in furlough status, the order of placement shall occur in the following order, beginning with the first category:

(A) Non-Indians;

(B) Indians;

(C) Documented first generation Oneida descendants;

(D) Oneida citizens eligible for enrollment in the Oneida Nation; and

(E) Enrolled members of the Oneida Nation.

(i) *Exceptions for Grant Positions.* Employment positions within the Nation that are funded, in whole or part, by appropriations from outside of the Nation, which prohibit, as a condition of receiving said funds, the application of Indian preference in employment practices, shall be exempt from the requirements of section 205.7-3 of this law.

(ii) *Other Exceptions.* Where it would violate an applicable federal law, including any regulations related thereto, or the terms of an applicable loan, memorandum of understanding, contract or other agreement for which the Nation is a party, the requirements of section 205.7-3 shall not constitute apply.

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(4) *Other Priorities.* If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to their retention in the following order, beginning with the first category:

(A) *Seniority.* Employees who have served the Nation as a regular status employee without a break in ~~continuous service~~ employment for the longest amount of time shall be afforded the highest level of retention priority.

(B) *Veteran Status.* If employees remain after applying the priority for seniority, employees with veteran status shall be afforded the next level of retention priority over the other employees who remain within the same preference category; and

(C) *Performance Evaluation.* If employees remain after applying the priority for veterans, employees with a more favorable performance evaluation shall be afforded retention priority over the employees with a less favorable performance evaluation who remain within the same preference category.

(i) The most current performance evaluation in existence on the date the Oneida Business Committee adopts the furlough resolution at issue shall be the evaluation that is used when assessing priority hereunder.

205.8. Furloughed Employees

205.8-1. Employees shall not perform any work for the ~~Tribes~~ while furloughed. ~~This includes~~ Nation when off of work due to being placed in furlough status, which includes, but is not limited to, responding to work-related e-mail and ~~voice mail~~ voicemail, as well as traveling on behalf of the ~~Tribes~~ Nation.

~~205.4-5.~~ (a) Employees within the Nation's Gaming Operations who are placed in furlough status, shall continue to adhere to the "Who May Not Play Policy" throughout the furlough period.

205.8-2. Continuous Employment. Being placed in furlough status shall not be considered a break in continuous service under the Nation's Personnel Policies and Procedures law or any other governing law of the Nation that contemplates continuous employment therein.

205.8-3. Unemployment. ~~Furloughed employees~~ Employees placed in furlough status shall be responsible for contacting the State of Wisconsin Department of Workforce Development to determine if they qualify for unemployment insurance benefits. ~~Eligibility for unemployment insurance benefits is determined by the State of Wisconsin.~~

(a) Eligibility for unemployment insurance benefits shall be determined by the State of Wisconsin.

~~205.8-4-6.~~ Benefits. Employees placed in furlough status shall not use or accrue personal or vacation time when on furlough. ~~Employees for the time that they are off of work as a result of said placement.~~

(a) To the extent feasible and subject to the policy of insurance or contractual agreement

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governing the specific benefit at issue, employees placed in furlough status shall continue to receive other benefits during a furlough for which they were entitled to before the implementation of the furlough program throughout the period of time in which the furlough program is in place.

~~205.4-7.8-5.~~ *Overtime and Additional Duty Pay.* ~~When a furlough~~ Unless otherwise approved by the Oneida Business Committee on a case-by-case basis, when a furlough program is implemented in a department or agency division, no employee in that department or agency division shall be eligible for:

(a) ~~overtime~~ Overtime during the same pay period that another employee from the same department or agency division is ~~enplaced in~~ placed in furlough status; or

(b) ~~additional~~ Additional duty pay for performing duties for other employees in his or her department or agency division who ~~are on~~ have been placed in furlough status.

~~205.4-8.~~ 6. Back Pay. ~~Employees on furlough~~ Except as provided for in section 205.11 of this law, employees placed in furlough status shall not be eligible for back pay awards upon their return to work.

205.5 Furlough Plans

~~205.5-1. Furlough Plans.~~ The 205.8-7. Outside Employment. Employees placed in furlough status shall be allowed to obtain outside employment while in furlough status but shall remain subject to the recall provisions of section 205.9 of this law.

(a) Employees who obtain outside employment shall continue to adhere to any existing policies of the Nation that govern their positions of employment with the Nation, including, but not limited to, employee confidentiality and social media use, while in furlough status.

205.9. Recall of Furloughed Employees

205.9-1. The following shall be adhered to when deciding the order in which employees placed in furlough status are recalled back to work at the end of a furlough program.

(a) Order for Employee Recall. If every employee placed in furlough status is unable to be recalled back to work at the same time, or at all, the order of employee recall shall be as follows:

(1) Indian Preference. Indian preference shall be applied to the recall process in the following order, with the first category of employees receiving the greatest level of preference:

(A) Enrolled members of the Oneida Nation;

(B) Oneida citizens eligible for enrollment in the Oneida Nation;

(C) Documented first generation Oneida descendants;

(D) Indians; and

(E) Non-Indians.

(2) Other Priorities. If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to the recall of those remaining employees in the following order, beginning with the first category:

(A) Seniority. Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time

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shall be given recall priority first;

(B) *Veteran Status*. If employees remain after applying the priority for seniority, the remaining employees with veteran status shall be given recall priority over those with a more favorable performance evaluation; and

(C) *Performance Evaluation*. If employees remain after applying the priority for veterans, the remaining employees with a more favorable performance evaluation shall be given recall priority over those with a less favorable performance evaluation.

(i) The most current performance evaluation in existence on the date the Oneida Business Committee adopts the furlough resolution at issue shall be the evaluation that is used when assigning priority hereunder.

(b) *Volunteers*. Except as stated herein, employees who qualify for Indian preference and volunteered to be placed in furlough status shall retain said preference rights during the recall process, regardless of volunteering, and be recalled consistent therewith.

(1) A volunteer employee in the same Indian preference category as an employee, who did not volunteer to be placed in furlough status and has no other priority over the volunteer employee, shall be recalled before the non-volunteer employee.

205.9-2. Notice of Recall and Responses.

(a) Employees shall be provided with written notice of their recall from placement in furlough status, using a method that can accurately determine the date of the employee's receipt of said notice.

(1) Along with information relevant to the employee's recall back to work, the written notice of recall shall include the language of subsection (b), below, in its entirety.

(b) *Failure to Respond*. A failure to respond to the notice of recall, in the manner indicated, within ten (10) business days of the employee's receipt thereof shall be interpreted to mean that the employee does not intend to return on the date of his or her recall and treated as a resignation of employment by that employee per the governing laws and policies of the Nation.

205.9-3. Separation in Lieu of Recall. Employees placed in furlough status who are not recalled at the end of the furlough program shall be terminated from their employment with the Nation in accordance with the governing laws/policies of the Nation.

205.10. Responsibilities of Direct Report Level ~~positions shall develop~~ furlough plans and Supervisor Positions

205.10-1. Generally. Persons employed in Direct Report Level and supervisory positions with the Nation, along with any of their authorized designees, shall be responsible for familiarizing themselves with this law, including any policies or procedures promulgated thereunder.

(a) Within a reasonable time after this law goes into effect, and then every two (2) years thereafter, the Direct Report Level and supervisory positions, along with any of their authorized designees, who would be subject to one (1) or more of the responsibilities set forth within this law in the event of a furlough program implementation, shall be required

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to attend training on the application of this law, as well as the programs to be implemented hereunder.

(1) The Human Resources Department shall be responsible for the creation and administration of the training required herein.

(b) Failure to adhere to the requirements or processes set forth within this law may result in disciplinary action or other consequences consistent with the Nation's employment laws.

205.10-2. Direct Report Level Positions. Upon the passage of a resolution directing a furlough be implemented, all Direct Report Level positions and/or authorized designees shall immediately carry out the directive consistent with the resolution; this law, including the Standard Operating Procedure created by the Human Resources Department in accordance therewith; and the furlough implementation plan that was approved for their respective departments and agencies, department or division.

~~205.5 2.~~ The furlough plans shall set forth how each department or agency intends to implement a furlough. The plan shall include, but not be limited to, the following:

~~(a) an explanation of how employees will be selected;~~

~~(1) Temporary employees shall be furloughed first, followed by employees who volunteer to be furloughed. All other employees shall then be eligible to be furloughed.~~

~~(b) a tentative schedule for a furlough;~~

~~(1) Furloughs shall be scheduled in a way that allows the departments to continue to provide a basic level of service.~~

~~(c) the estimated number of employees affected; and~~

~~(d) a summary of how the furlough will relieve budgetary shortfalls.~~

~~205.5 10-3. Disciplinary Furlough.~~ Furloughs shall not be used for disciplinary reasons.

~~205.5 4.~~ Indian Preference. Indian preference may not be used as a consideration in identifying employees to be furloughed.

~~205.5 5.~~ All furlough plans shall be kept on file with the Human Resources Department.

~~205.6~~ **Supervisor Responsibilities**

~~205.6 1.~~ Upon notification directive from the appropriate Direct Report Level position that furloughs are necessary, a supervisor shall:

~~(a) Identify positions and/or authorized designees, supervisors shall be responsible to provide notice to those employees who will be furloughed.~~

~~(b) Notify those employees that they will be furloughed and within their furlough dates; respective department or division as required under section 205.6-3 of this law and provide copies of such notice to the Human Resources Department to maintain in accordance with governing law.~~

~~(c) Notify the Human Resources Department of the chosen employees and their furlough dates.~~

~~(a) Supervisors shall ensure that job descriptions within their respective departments or divisions are accurately maintained and up-to-date.~~

~~205.7 11.~~ **Appeal**

~~205.7 11-1.~~ An employee who has been furloughed placed in furlough status under this Policy law

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may only appeal ~~a furlough that is said placement if~~ based on ~~disciplinary reasons~~ a claim that it occurred in violation of this law.

(a) A written appeal must be submitted to the Direct Report Level position and/or authorized designee within ten (10) business days ~~from of~~ the ~~notification~~ employees receipt of the ~~furlough notice under section 205.6 of this law.~~

(b) The burden for showing that the employee was placed in furlough status in violation of this law is ~~based on disciplinary reasons rests~~ on the employee. appealing the placement.

(c) The Direct Report Level position and/or authorized designee may make a decision based on the written appeal alone.

(1) The Direct Report Level position and/or authorized designee shall provide a written decision on the matter to the employee and the ~~supervisor~~ employee's supervisor within ten (10) business days of receiving the written appeal unless for good cause an extension is necessary.

(2) This decision is final and cannot be appealed.

205.711-2. An employee who has been ~~furloughed~~ placed in furlough status does not have any other right to appeal a furlough decision under any ~~Tribal~~ law, policy or the personnel grievance process of the Nation.

End.

Emergency Adoption – BC-10-15-13-A

Emergency Adoption Extension – BC-04-09-14-D

Adoption – BC-11-10-15-B

Adoption – BC- - - -

Title 2. Employment – Chapter 205
[Oneida Language]
[Translation]
FURLOUGH

205.1. Purpose and Policy
205.2. Adoption, Amendment, Repeal
205.3. Definitions
205.4. Application
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205.6. Furlough Implementation

205.7. Placing Employees in Furlough Status
205.8. Furloughed Employees
205.9. Recall of Furloughed Employees
205.10. Direct Report Level and Supervisor Responsibilities
205.11. Appeal

205.1. Purpose and Policy

205.1-1. *Purpose.* The purpose of this law is to:

- (a) Enable the Nation to implement a furlough program in response to an interruption of governmental revenues or operations, insufficient treasury funds or other emergencies/unplanned events as determined by the Oneida Business Committee in accordance with this law;
- (b) Establish a consistent and equitable process for implementation of a furlough program; and
- (c) Incorporate Indian preference into the furlough program and require that it be applied in accordance with this law.

205.1-2. *Policy.* It is the policy of the Nation to have consistent and standard procedures to address events and/or incidents that impact employees of the Nation. It is further the policy of the Nation to incorporate and adhere to Indian preference in all aspects of employment within the Oneida Nation.

205.2. Adoption, Amendment, Repeal

205.2-1. This law was adopted by the Oneida Business Committee by resolution BC-11-10-15-B and amended by resolution BC-__-__-__-__.

205.2-2. 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.

205.2-3. 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.

205.2-4. 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.

205.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

205.3. Definitions

205.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Acts of God” means an event or effect that can be neither anticipated nor controlled, including both acts of nature, such as floods and hurricanes, and acts of people, such as riots, strikes, and wars.
- (b) “Additional duties” means responsibilities of another position within the Nation that is not within an employee’s current scope of work.

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(c) “Authorized designee” means an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual employed in the Direct Report Level position is unavailable or requests such assistance from that employee.

(d) “Critical position” means a position of employment within the Nation that is crucial to governmental functions, including, but not limited to, health, safety, regulatory compliance and/or revenue generation.

(e) “Direct Report Level position” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee and is responsible for a department and/or division of the Nation.

(f) “Employee” means any individual employed by the Nation, including, but not limited to, employees of any program or enterprise of the Nation, political appointees, temporary employees, and employees on probationary status.

(g) “Furlough” means temporary, unpaid time off of work for a specified period of time.

(h) “Indian” means any person, other than an Oneida citizen, who is a citizen of a federally recognized Indian tribe, other than the Oneida Nation.

(i) “Indian preference” means preference for Indian people, regardless of tribal affiliation, in all aspects of employment, with Oneida citizens being afforded the highest levels of preference for purposes of this law.

(j) “Nation” means the Oneida Nation.

(k) “Oneida citizen” means those persons who are enrolled members of the Nation, eligible for enrollment in the Nation or documented first generation Oneida descendants.

(l) “Supervisor” means an employee of the Nation who directly oversees the work and performance of an employee on a daily basis.

(m) “Temporary employee” means an employee hired by the Nation for a short-term assignment and consists of the following classifications:

- (1) Emergency/Temporary;
- (2) Limited Term;
- (3) Seasonal;
- (4) Substitute/Relief;
- (5) Youth Worker; and
- (6) Student/Intern.

205.4. Application

205.4-1. Unless otherwise stated herein, this law shall apply to all employees of the Nation and all employment decisions of the Nation that are governed, whether in whole or in part, by this law.

205.4-2. *Indian Preference.* It is the intent of this law, and the policy of the Nation, that no employee who is Indian shall be furloughed so long as an employee, within the same department/division and position, who is non-Indian is still employed.

(a) Title VII of the Civil Rights Act of 1964 allows private and government employers on or near a Federal Trust Indian Reservation to exercise Indian preference in employment.

(b) The Indian Self Determination and Education Act affirms that any tribal employment or contract preference laws adopted by such tribe shall govern.

(c) In accordance with this section and subject to any express exceptions set forth herein,

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a furlough program shall be administered in a manner that affords preferential treatment to Oneida citizens and Indians in the following order, starting with those employees to be given the highest level of preference when applying the provisions of this law:

- (1) Enrolled members of the Oneida Nation;
- (2) Oneida citizens eligible for enrollment in the Oneida Nation;
- (3) Documented first generation Oneida descendants;
- (4) Indians; and
- (5) Non-Indians.

205.4-3. *Equal Opportunity Employer.* Notwithstanding section 205.4-2, the Nation is an Equal Opportunity Employer that prohibits the application of this law and/or the implementation of a furlough program in a manner that discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information and/or any other basis protected by the anti-discrimination provisions of Title VII of the Civil Rights Act of 1964.

205.4-4. *Training on Indian Preference.* The Human Resources Department shall be responsible for introducing new employees of the Nation to the concept of Indian preference, as well as how it applies to the furlough programs set forth herein, during employee orientation. Such introduction shall include, at a minimum, coverage of the following topics:

- (a) The history behind Indian preference, including the role that the Bureau of Indian Affairs ("BIA") had in its development;
- (b) The Indian Self-Determination and Education Assistance Act of 1975, as well as the exception to Title VII of the Civil Rights Act of 1964; and
- (c) Examples of how Indian preference would apply in the event of a furlough program when deciding which employees of the Nation would be placed in furlough status, as well as the order in which they would be recalled, using methods to include, but not be limited to, hypotheticals and charting.

205.4-5. *Prohibitions.* Any furlough program of the Nation that is initiated in accordance with this law shall not:

- (a) Be used as a means to resolve performance-related problems, grievance issues or to take the place of disciplinary actions;
- (b) Be administered or implemented in violation of this law or any other applicable laws/policies of the Nation; and/or
- (c) Be implemented in a manner that requires interdepartmental transfers when applying Indian preference to the processes set forth herein.

205.5. Furlough Implementation Plan

205.5-1. *Implementation Plan.* Within a reasonable time after this law goes into effect, all Direct Report Level positions, or their authorized designees, shall submit a furlough implementation plan to the Human Resources Department for approval.

- (a) The Human Resources Department shall create a standard template that Direct Report Level positions and/or authorized designees must use when developing their furlough implementation plan hereunder.

- (1) The intent of the standard template shall be to elicit, in advance, information that will allow the Nation to implement a furlough program in as efficient and

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consistent a manner as possible under the circumstances, the information of which shall include, but not be limited to:

(A) Which positions within their respective department or division may qualify as a critical position;

(B) Which employees within their respective department or division may qualify for Indian preference and the corresponding level of preference that would apply under section 205.4-2 of this law;

(C) Which positions and/or employees within their respective department or division may be exempt from the application of Indian preference and the basis for said exemption;

(D) Whether any employees within their respective department or division may be interested in volunteering to be placed in furlough status in the event a furlough program is implemented; and

(E) Whether any positions within their respective department or division are capable of being adjusted to promote Indian preference when deciding which employees to place in furlough status.

(2) The Human Resources Department shall submit its standard template to the Oneida Business Committee for approval by resolution prior to distributing it to the Direct Report Level positions and/or authorized designees for development in accordance herewith.

(b) The Human Resources Department shall create a Standard Operating Procedure which sets forth how a furlough implementation plan shall be processed under this law once the standard template is approved by the Oneida Business Committee, that shall, at a minimum, address the following:

(1) Distribution of the standard template to the Direct Report Level positions and/or their authorized designees;

(2) The process for Direct Report Level positions and/or authorized designees to follow upon receiving the standard template, including, but not limited to:

(A) How a furlough implementation plan shall be created using the standard template;

(B) How a furlough implementation plan shall be submitted to the Human Resources Department for approval; and

(C) The amount of time the Direct Report Level positions and/or their authorized designees have to submit their furlough implementation plans to the Human Resources Department upon receipt of the standard template.

(3) How the Human Resources Department will process furlough implementation plans for approval upon submission by the Direct Report Level positions and/or authorized designees; and

(4) How the Human Resources Department will notify the Direct Report Level positions and/or authorized designees of its decision to approve or reject their furlough implementation plan and, if rejected, the reason for the rejection and the process for resubmitting the furlough implementation plan for reconsideration.

(c) Copies of approved furlough implementation plans shall be retained by the Human Resources Department, as well as the Direct Report Level positions and/or authorized

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designees, consistent with governing law.

205.5-2. *Furlough Implementation Plan Updates.* The furlough implementation plan, as well as the standard template upon which it is developed, shall be updated as follows:

(a) *Standard Template.* Within two (2) years of its initial approval by resolution and then every two (2) years thereafter, the Human Resources Department shall review its standard template to assess whether it should be updated to better advance the underlying goals/policies of this section, as well as the law in general.

(1) Updates to the standard template must be approved by the Oneida Business Committee in accordance with section 205.5-1 of this law.

(b) *Implementation Plan.* Within two (2) years of initial approval by the Human Resources Department and then every (2) years thereafter, the Direct Report Level positions and/or authorized designees shall review their furlough implementation plan to assess whether it needs to be updated to account for any relevant changes within their department/division, including, but not limited to, changes in personnel, changes in positions and/or changes to any of the job descriptions attached to a position.

(1) Updates to a furlough implementation plan must be processed and approved in accordance with section 205.5-1 of this law, as well as the Standard Operating Procedure created by the Human Resources Department in accordance therewith.

(c) Nothing in this section shall be interpreted to prohibit an earlier review of the standard template or furlough implementation plan nor the number of times they are reviewed.

205.6. Furlough Implementation

205.6-1. *Alternatives to Furlough.* Prior to adopting a furlough resolution hereunder, the Oneida Business Committee shall consider whether any reasonable alternative options to implementation of a furlough program exist and, if so, exhaust the option or options in advance of implementation so long as the burden of doing so on the Nation as a whole does not outweigh the benefit to the employees who may be affected by the implementation of a furlough program.

205.6-2. *Furlough Resolution.* If the Oneida Business Committee has identified the need for a furlough program, a directive by resolution shall be given to the appropriate Direct Report Level positions, authorized designees, and any other individual or entity deemed necessary by the Oneida Business Committee.

(a) The resolution shall include the following:

(1) The basis for implementing the furlough program;

(2) Whether it is being implemented as an administrative or emergency furlough program;

(3) If feasible under the circumstances and to the extent of such feasibility so long as not less than is required under this law for the particular furlough program being implemented, the beginning and ending dates of the furlough program;

(4) If feasible under the circumstances and to the extent of such feasibility, which areas within the Nation will be subject to the furlough program and which positions, if any, are considered critical positions exempt from being placed in furlough status; and

(5) Whether an ad hoc committee will be established pursuant to this section to assist in the implementation of the furlough program.

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(b) *Ad Hoc Committee.* The Oneida Business Committee may, in its discretion, establish an ad hoc committee to assist in the implementation of a furlough program by, among other actions, helping to identify which areas of the Nation should be subject to the furlough program and which positions, if any, should be deemed critical, when directed to by the Oneida Business Committee.

(1) The ad hoc committee shall be made up of employees of the Nation, identified by the Oneida Business Committee within the furlough resolution or through a subsequent resolution or motion, who possess an expertise commensurate with the type and severity of the event giving rise to the need for the implementation of a furlough program.

(2) The ad hoc committee shall meet as necessary and at the request of the Oneida Business Committee to carry out its responsibilities per the directive of the Oneida Business Committee and in a manner consistent with this law.

(3) The ad hoc committee shall not be subject to the Boards, Committees and Commissions law and employees shall not be entitled to stipends or any additional form of compensation for serving on an ad hoc committee established hereunder.

(4) The ad hoc committee shall dissolve upon conclusion of the furlough program for which it was established or on an early date as determined by the Oneida Business Committee, subject to the following:

(A) The ad hoc committee shall prepare, as well as present, a close-out report, in accordance with the Oneida Business Committee's directive; and

(B) The ad hoc committee shall forward all materials and records that were used and/or created to carry out its responsibilities hereunder to the Human Resources Department for storage/disposal in accordance with governing law.

205.6-3. *Furlough Programs.* A furlough program shall be characterized as either an emergency or an administrative program in the furlough resolution and then carried out in accordance with the portions of this section that apply to such characterization.

(a) *In General.* The following shall apply to all furlough programs implemented hereunder, regardless of their characterization.

(1) Notice of the implementation of a furlough program shall be provided to employees in writing and, along with information relevant to the furlough program being implemented, include the following:

(A) Fair warning regarding the employee's failure to respond to a notice of recall as set forth in section 205.9-2 of this law; and

(B) A directive that it is the responsibility of the employee to ensure that the Nation has his or her most current contact information.

(2) Written notice shall be sent to employees via the outlet(s) deemed most capable of reaching them in as efficient a manner as possible under the circumstances.

(A) In the event that the Nation develops a formal process to provide mass notifications to employees for events such as the implementation of a furlough program, such process shall be deemed the most capable outlet hereunder and used to provide written notice to employees for purposes hereof.

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(b) *Emergency Furlough Program.* An emergency furlough program may be initiated by the Oneida Business Committee when in the best interest of the Nation due to Acts of God that require immediate curtailment of activities within the organization.

(1) *Notice.* Employees shall be notified of the Oneida Business Committee's decision to implement an emergency furlough program as far in advance of the program's implementation date as is reasonably possible under the circumstances.

(A) If circumstances do not allow for the Oneida Business Committee to set a specific date upon which the emergency furlough program will end within the furlough resolution, notice of the anticipated end date shall be provided as soon thereafter as is reasonably possible, consistent with section 205.6-3 of this law.

(2) *Duration.* No emergency furlough program implemented hereunder shall last for longer than twenty-six (26) weeks from the date of implementation, unless extended by the Oneida Business Committee through a subsequent resolution.

(c) *Administrative Furlough Program.* An administrative furlough program may be initiated by the Oneida Business Committee in response to a foreseeable event that is likely to result in a temporary reduction in revenue/funding or some other organizational issue when the intent is to recall employees back to work once the event has subsided.

(1) *Notice.* Employees shall be notified of the Oneida Business Committee's decision to implement an administrative furlough program at least five (5) business days in advance of the program's implementation date.

(2) *Duration.* The beginning and ending dates of the administrative furlough program shall be specified within the furlough resolution.

(A) An administrative furlough program shall end on the date specified within the furlough resolution, unless revised or extended by the Oneida Business Committee through a subsequent resolution.

(B) Notice of a revised or extended end date for an administrative furlough program shall be provided as soon as reasonably possible in advance of the original end date, consistent with section 205.6-3 of this law.

(3) If the intent to bring employees back is not present or is improbable at the time employee reductions are deemed necessary, employees shall be selected for layoff, as opposed to placement in furlough status, consistent with the laws and policies of the Nation governing employee layoffs.

205.7. Placing Employees in Furlough Status

205.7-1. This section shall govern the manner in which employees of the Nation are selected to be placed in furlough status following the adoption of a resolution triggering the implementation of a furlough program.

205.7-2. *Critical Positions.* Except as otherwise stated herein, employment positions identified as critical pursuant to this section of the law shall be exempt from placement into furlough status during the specific furlough program for which the position was deemed critical.

(a) Critical positions shall be identified by the Oneida Business Committee, or ad hoc committee upon the Oneida Business Committee's directive and subject to its approval, within the furlough resolution referenced in section 205.6-2 of this law or as soon thereafter

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as is reasonably possible under the circumstances in a subsequent resolution or motion.

(1) *Amendments.* The Oneida Business Committee, with assistance from the ad hoc committee if so requested, may amend the list of identified critical positions as it deems necessary under the circumstances.

(A) Direct Report Level positions or their authorized designees may submit requests for amendments to the list of identified critical positions under their direction to the Oneida Business Committee for consideration.

(b) *Exception.* The Oneida Business Committee may, when deemed necessary, direct that reductions be made to positions initially identified as critical under this section, through adoption of a subsequent resolution.

(1) Employees within the same critical position who become subject to a reduction hereunder, shall be placed in furlough status pursuant to the order of preference and priority established in section 205.7, and recalled back to work pursuant to the order of preference and priority established in section 205.9, of this law.

205.7-3. *Non-Critical Positions.* Directives from the Oneida Business Committee regarding employee furlough reductions, as set forth in the initial resolution or a subsequent resolution related thereto, shall be carried out by the Direct Reports Level position/authorized designee of the affected department/division in a manner that furthers the policy behind Indian preference to the greatest extent possible without rendering the affected department/division inoperable or unable to reasonably conduct business.

(a) *Placing Employees in Furlough Status.* Unless otherwise stated herein, the following order shall be adhered to when placing non-critical position employees within the same department or division in furlough status.

(1) *Temporary Employees.* Temporary employees within a department or division shall be the first category of employees to be placed in furlough status.

(2) *Volunteer Employees.* Following the placement of temporary employees in furlough status, eligible employees who volunteer for said placement shall be the next category of employees to be placed in furlough status, subject to the following:

(A) Employees who volunteer to be placed in furlough status must sign a form, created by the Human Resources Department, confirming that:

(i) They volunteered to be placed in furlough status notwithstanding any preference or eligibility for retention that they may have;

(ii) Their decision to volunteer was not coerced or based on any promises of compensation or other consideration; and

(iii) They understand that they are not guaranteed a recall back to work and, as a result, could be terminated from their employment with the Nation.

(B) Once signed, the employee shall be provided with a copy for his or her records and the Human Resources Department shall retain the original copy in a manner consistent with the Nation's Open Records and Open Meetings law and/or any other applicable laws of the Nation.

(C) Employees who volunteer to be placed in furlough status shall retain the rights afforded under, as well as be subject to, the recall process set forth in section 205.9 of this law.

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(3) *Indian Preference.* Absent an express exception and after application of sub-sections (1) and (2), above, when the remaining number of employees in the same position within a department or division exceeds the number of said employees to be placed in furlough status, the order of placement shall occur in the following order, beginning with the first category:

- (A) Non-Indians;
- (B) Indians;
- (C) Documented first generation Oneida descendants;
- (D) Oneida citizens eligible for enrollment in the Oneida Nation; and
- (E) Enrolled members of the Oneida Nation.

(i) *Exceptions for Grant Positions.* Employment positions within the Nation that are funded, in whole or part, by appropriations from outside of the Nation, which prohibit, as a condition of receiving said funds, the application of Indian preference in employment practices, shall be exempt from the requirements of section 205.7-3 of this law.

(ii) *Other Exceptions.* Where it would violate an applicable federal law, including any regulations related thereto, or the terms of an applicable loan, memorandum of understanding, contract or other agreement for which the Nation is a party, the requirements of section 205.7-3 shall not apply.

(4) *Other Priorities.* If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to their retention in the following order, beginning with the first category:

(A) *Seniority.* Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be afforded the highest level of retention priority.

(B) *Veteran Status.* If employees remain after applying the priority for seniority, employees with veteran status shall be afforded the next level of retention priority over the other employees who remain within the same preference category; and

(C) *Performance Evaluation.* If employees remain after applying the priority for veterans, employees with a more favorable performance evaluation shall be afforded retention priority over the employees with a less favorable performance evaluation who remain within the same preference category.

(i) The most current performance evaluation in existence on the date the Oneida Business Committee adopts the furlough resolution at issue shall be the evaluation that is used when assessing priority hereunder.

205.8. Furloughed Employees

205.8-1. Employees shall not perform any work for the Nation when off of work due to being

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placed in furlough status, which includes, but is not limited to, responding to work-related e-mail and voicemail, as well as traveling on behalf of the Nation.

(a) Employees within the Nation's Gaming Operations who are placed in furlough status, shall continue to adhere to the "*Who May Not Play Policy*" throughout the furlough period.

205.8-2. *Continuous Employment.* Being placed in furlough status shall not be considered a break in continuous service under the Nation's Personnel Policies and Procedures law or any other governing law of the Nation that contemplates continuous employment therein.

205.8-3. *Unemployment.* Employees placed in furlough status shall be responsible for contacting the State of Wisconsin Department of Workforce Development to determine if they qualify for unemployment insurance benefits.

(a) Eligibility for unemployment insurance benefits shall be determined by the State of Wisconsin.

205.8-4. *Benefits.* Employees placed in furlough status shall not use or accrue personal or vacation time for the time that they are off of work as a result of said placement.

(a) To the extent feasible and subject to the policy of insurance or contractual agreement governing the specific benefit at issue, employees placed in furlough status shall continue to receive other benefits for which they were entitled to before the implementation of the furlough program throughout the period of time in which the furlough program is in place.

205.8-5. *Overtime and Additional Duty Pay.* Unless otherwise approved by the Oneida Business Committee on a case-by-case basis, when a furlough program is implemented in a department or division, no employee in that department or division shall be eligible for:

(a) Overtime during the same pay period that another employee from the same department or division is placed in furlough status; or

(b) Additional duty pay for performing duties for other employees in his or her department or division who have been placed in furlough status.

205.8-6. *Back Pay.* Except as provided for in section 205.11 of this law, employees placed in furlough status shall not be eligible for back pay upon their return to work.

205.8-7. *Outside Employment.* Employees placed in furlough status shall be allowed to obtain outside employment while in furlough status but shall remain subject to the recall provisions of section 205.9 of this law.

(a) Employees who obtain outside employment shall continue to adhere to any existing policies of the Nation that govern their positions of employment with the Nation, including, but not limited to, employee confidentiality and social media use, while in furlough status.

205.9. Recall of Furloughed Employees

205.9-1. The following shall be adhered to when deciding the order in which employees placed in furlough status are recalled back to work at the end of a furlough program.

(a) *Order for Employee Recall.* If every employee placed in furlough status is unable to be recalled back to work at the same time, or at all, the order of employee recall shall be as follows:

(1) *Indian Preference.* Indian preference shall be applied to the recall process in the following order, with the first category of employees receiving the greatest level of preference:

(A) Enrolled members of the Oneida Nation;

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- (B) Oneida citizens eligible for enrollment in the Oneida Nation;
- (C) Documented first generation Oneida descendants;
- (D) Indians; and
- (E) Non-Indians.

(2) *Other Priorities.* If, following application of Indian preference, employees subject to placement in furlough status within the same preference category still remain, priority shall be given to the recall of those remaining employees in the following order, beginning with the first category:

(A) *Seniority.* Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be given recall priority first;

(B) *Veteran Status.* If employees remain after applying the priority for seniority, the remaining employees with veteran status shall be given recall priority over those with a more favorable performance evaluation; and

(C) *Performance Evaluation.* If employees remain after applying the priority for veterans, the remaining employees with a more favorable performance evaluation shall be given recall priority over those with a less favorable performance evaluation.

- (i) The most current performance evaluation in existence on the date the Oneida Business Committee adopts the furlough resolution at issue shall be the evaluation that is used when assigning priority hereunder.

(b) *Volunteers.* Except as stated herein, employees who qualify for Indian preference and volunteered to be placed in furlough status shall retain said preference rights during the recall process, regardless of volunteering, and be recalled consistent therewith.

- (1) A volunteer employee in the same Indian preference category as an employee, who did not volunteer to be placed in furlough status and has no other priority over the volunteer employee, shall be recalled before the non-volunteer employee.

205.9-2. *Notice of Recall and Responses.*

(a) Employees shall be provided with written notice of their recall from placement in furlough status, using a method that can accurately determine the date of the employee's receipt of said notice.

- (1) Along with information relevant to the employee's recall back to work, the written notice of recall shall include the language of subsection (b), below, in its entirety.

(b) *Failure to Respond.* A failure to respond to the notice of recall, in the manner indicated, within ten (10) business days of the employee's receipt thereof shall be interpreted to mean that the employee does not intend to return on the date of his or her recall and treated as a resignation of employment by that employee per the governing laws and policies of the Nation.

205.9-3. *Separation in Lieu of Recall.* Employees placed in furlough status who are not recalled at the end of the furlough program shall be terminated from their employment with the Nation in accordance with the governing laws/policies of the Nation.

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205.10. Responsibilities of Direct Report Level and Supervisor Positions

205.10-1. *Generally.* Persons employed in Direct Report Level and supervisory positions with the Nation, along with any of their authorized designees, shall be responsible for familiarizing themselves with this law, including any policies or procedures promulgated thereunder.

(a) Within a reasonable time after this law goes into effect, and then every two (2) years thereafter, the Direct Report Level and supervisory positions, along with any of their authorized designees, who would be subject to one (1) or more of the responsibilities set forth within this law in the event of a furlough program implementation, shall be required to attend training on the application of this law, as well as the programs to be implemented hereunder.

(1) The Human Resources Department shall be responsible for the creation and administration of the training required herein.

(b) Failure to adhere to the requirements or processes set forth within this law may result in disciplinary action or other consequences consistent with the Nation's employment laws.

205.10-2. *Direct Report Level Positions.* Upon the passage of a resolution directing a furlough be implemented, all Direct Report Level positions and/or authorized designees shall immediately carry out the directive consistent with the resolution; this law, including the Standard Operating Procedure created by the Human Resources Department in accordance therewith; and the furlough implementation plan that was approved for their respective department or division.

205.10-3. *Supervisor Responsibilities.* Upon directive from the appropriate Direct Report Level positions and/or authorized designees, supervisors shall be responsible to provide notice to those employees within their respective department or division as required under section 205.6-3 of this law and provide copies of such notice to the Human Resources Department to maintain in accordance with governing law.

(a) Supervisors shall ensure that job descriptions within their respective departments or divisions are accurately maintained and up-to-date.

205.11. Appeal

205.11-1. An employee who has been placed in furlough status under this law may only appeal said placement if based on a claim that it occurred in violation of this law.

(a) A written appeal must be submitted to the Direct Report Level position and/or authorized designee within ten (10) business days of the employees receipt of the notice under section 205.6 of this law.

(b) The burden for showing that the employee was placed in furlough status in violation of this law is on the employee appealing the placement.

(c) The Direct Report Level position and/or authorized designee may make a decision based on the written appeal alone.

(1) The Direct Report Level position and/or authorized designee shall provide a written decision on the matter to the employee and the employee's supervisor within ten (10) business days of receiving the written appeal unless for good cause an extension is necessary.

(2) This decision is final and cannot be appealed.

205.11-2. An employee who has been placed in furlough status does not have any other right to appeal a furlough decision under any law, policy or the personnel grievance process of the Nation.

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523 *End.*

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525 Emergency Adoption – BC-10-15-13-A

526 Emergency Adoption Extension – BC-04-09-14-D

527 Adoption – BC-11-10-15-B

528 Adoption – BC-__-__-__-__



FURLOUGH LAW AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Amendments	<ul style="list-style-type: none"> ▪ To incorporate Indian preference into the Furlough law (“Law”) and require that it be applied to the Nation’s furlough process in accordance therewith; ▪ To add priority levels to govern the order for placing in furlough status and recalling back to work those employees who remain after the application of Indian preference; ▪ To clarify the process for preparing, initiating and implementing a furlough program, by: <ul style="list-style-type: none"> • Setting conditions and clear procedures, as well as express prohibitions, for when and how a furlough program may be initiated by the Oneida Business Committee (“OBC”); • Setting conditions and clear procedures for how a furlough program will be implemented by the Nation, once initiated; and • Assigning responsibilities to specific persons/entities for carrying out certain activities in accordance with the Law. ▪ To require a furlough be initiated as either an emergency or administrative program and then implemented in accordance therewith; ▪ To allow the OBC to establish an ad hoc committee, made up of employees of the Nation, to assist in the implementation of furlough programs; ▪ To add more due process to the Law by: <ul style="list-style-type: none"> • Specifying how notice must be provided to employees of the Nation who are subject to a furlough program; • Requiring the Human Resources Department to add training on Indian preference to its employee orientation that includes, at a minimum: <ul style="list-style-type: none"> ○ The history behind Indian preference, including the role the Bureau of Indian Affairs (“BIA”) had in its development; ○ The Indian Self-Determination and Education Assistance Act of 1975, as well as the exception to Title VII of the Civil Rights Act of 1964 for Indian preference; and ○ Examples of how Indian preference would apply to a furlough program using methods such as hypotheticals and charting. • Requiring Direct Report Level positions/supervisors, who are responsible for implementing a furlough program, to undergo training on the application of the Law every two (2) years; and • Broadening the scope of claims that an employee placed in furlough status can bring on an appeal under the Law.
Purpose	To enable the Nation to implement a furlough as a tool to remedy an operating budget deficit when a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave is identified. [2 O.C. 205.1-1 and 205.1-2].
Affected Entities and Individuals	Employees of the Oneida Nation; Human Resources Department; the Oneida Business Committee; Oneida Nation employees in Direct Report Level and supervisory positions, along with their authorized designees.
Related Legislation	Legislative Procedures Act; Layoff Policy; Open Records and Open Meetings law; Budget Management and Control law; Boards, Committees and Commissions law; Personnel Policies and Procedures law.

Public Meeting	A public comment period was held open until November 11, 2021. A public meeting was not held in accordance with the Nation’s COVID-19 Core Decision Making Team’s declaration titled, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> .
Fiscal Impact	A fiscal impact statement will be requested from the Finance Department on December 1, 2021.

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Furlough Policy, which will be referred to as the Furlough law upon adoption of the proposed amendments, was first adopted by OBC on November 10, 2015, through resolution BC-11-10-15-B. [2 O.C. 205.2-1]. The Law was established to enable the Nation to implement a furlough as a tool to remedy an operating budget deficit when a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave is identified. [2 O.C. 205.1-1; 2 O.C. 205.1-2].
- B. On October 7, 2020, the Legislative Operating Committee (“LOC”) added this item to the Active Files List to incorporate Indian preference into the Law, as well as to provide clarity regarding certain other processes within the Law that were flagged for review following the recent furlough program that was implemented in response to the COVID-19 pandemic.
- C. This will be the first time that the Law has been amended since its adoption in 2015; thus, along with the substantive amendments that resulted from the collaboration referenced further herein, the Law was updated to reflect the Nation’s current legislative practices/customs that are less substantive in nature (e.g., replacing the word “Tribe” with “Nation” and re-formatting per the Legislative Procedures Act).

SECTION 3. CONSULTATION AND OUTREACH

- A. **Departments.** Representatives from the following departments participated in the development of the amendments to this Law and the legislative analysis:
 - Human Resources Department
 - General Manager - Retail
 - Employee Relations Department
 - Gaming Employee Services
- B. **Laws of the Nation.** The drafting of this legislative analysis included a review of the following laws of the Nation: Boards, Committees and Commissions law [1 O.C. 105]; Open Records and Open Meetings law [1 O.C. 107]; Legislative Procedures Act [1 O.C. 109]; Budget Management and Control law [1 O.C. 121]; Layoff Policy [2 O.C. 207]; Conflict of Interest law [2 O.C. 217]; Emergency Management law [3 O.C. 302]; Oneida Nation Gaming Ordinance [5 O.C. 501]; Indian Preference in Contracting law [5 O.C. 502]; and Personnel Policies and Procedures law.
- C. **Area and Tribal Laws.** The following federal, state and tribal laws were also reviewed in the development of this legislative analysis:
 - Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e;
 - The Indian Self Determination and Education Assistance Act of 1975, 25 U.S.C. § 450(c);
 - Federal and state laws related to labor and employment standards for exempt and non-exempt employees;
 - Unemployment insurance benefits laws of the State of Wisconsin;
 - Stockbridge-Munsee Tribal Law, Chapter 54 – Employee Preference Policy Ordinance;
 - Coquille Indian Tribal Code, Chapter 188, Part 1 – General Governmental Affairs – Tribal and Indian Preference in Employment; and
 - Nez Perce Tribe’s Human Resources Manual.

SECTION 4. PROCESS

- A. Thus far, the amendments to this Law have followed the process set forth in the Legislative Procedures Act (“LPA”).
 - On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files List.

- On August 4, 2021, the Legislative Operating Committee approved the draft amendments to the Law and directed that a legislative analysis be prepared for consideration at the next LOC meeting.
 - On August 18, 2021, the Legislative Operating Committee approved the draft amendments to the Law, along with the legislative analysis.
 - On October 6, 2021, the Legislative Operating Committee approved the Furlough law amendments public comment period notice and forwarded the Furlough law amendments to a public comment period to be held open until November 11, 2021.
 - On November 11, 2021, the public comment period closed. No written submissions of comments were received during this public comment period.
 - On November 17, 2021, the Legislative Operating Committee accepted the public comment period review memorandum recognizing no comments were received.
 - On December 1, 2021, the Legislative Operating Committee will consider approving the final draft and legislative analysis of the amendments to the Furlough law, and directing the Finance Department to complete a fiscal impact statement by December 15, 2021.
- B. The following work meetings were held by the Legislative Reference Office in the development of the amendments to this Law:
- October 22, 2020, a meeting was held with Councilwoman, Marie Summers, to briefly discuss her basis for requesting that the Furlough law be added to the Active Files List.
 - November 13, 2020, a work meeting was held with representatives from the Human Resources Department (“HRD”) and Retail.
 - January 26, 2021, a work meeting was held with representatives from the HRD and Retail.
 - February 3, 2021, a work meeting was held with the LOC.
 - February 17, 2021, a work meeting was held between the LOC and representatives from the HRD, Gaming Employee Services and Retail.
 - February 25, 2021, a work meeting was held with the LOC.
 - April 9, 2021, a work meeting was held with the LOC.
 - April 13, 2021, a work meeting was held with the LOC.
 - June 10, 2021, a work meeting was held with the LOC.
 - July 8, 2021, a work meeting was held with representatives from the HRD, Gaming Employee Services and Retail.
 - July 21, 2021, a work meeting was held with the LOC.
 - August 18, 2021, a work meeting was held with the LOC.
 - August 26, 2021, a work meeting was held with the LOC.
 - September 23, 2021, a work meeting was held with the LOC.
- C. **COVID-19 Pandemic’s Effect on the Legislative Process.** The world is currently facing a pandemic of 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. A public meeting for the proposed amendments to the Law was not held due to the COVID-19 pandemic, but a public comment period for the submission of written comments was held open.
- *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 the COVID-19 pandemic which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows 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 November 25, 2021, 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, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A,

BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N
and BC-09-22-21-A.

- *COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act.*
 - On March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings Under the Legislative Procedures Act*” declaration which suspended the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- *Oneida Business Committee Resolution BC-08-03-21-A, Setting Public Gathering Guidelines during Public Health State of Emergency – COVID-19.*
 - On August 3, 2021, the Oneida Business Committee adopted resolution BC-08-03-21-A titled, “*Setting Public Gathering Guidelines during Public Health State of Emergency – COVID-19*,” which provides that indoor and outdoor events shall be canceled when the infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. Both Brown and Outagamie Counties are experiencing “High” COVID-19 infection rates.
- *Conclusion.*
 - Although a public meeting was not held on the proposed amendments to the Law, a public comment period was still held open until November 11, 2021, in accordance with resolution BC-08-03-21-A and 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. No public comments were received during this public comment period.

SECTION 5. CONTENTS OF THE LEGISLATION

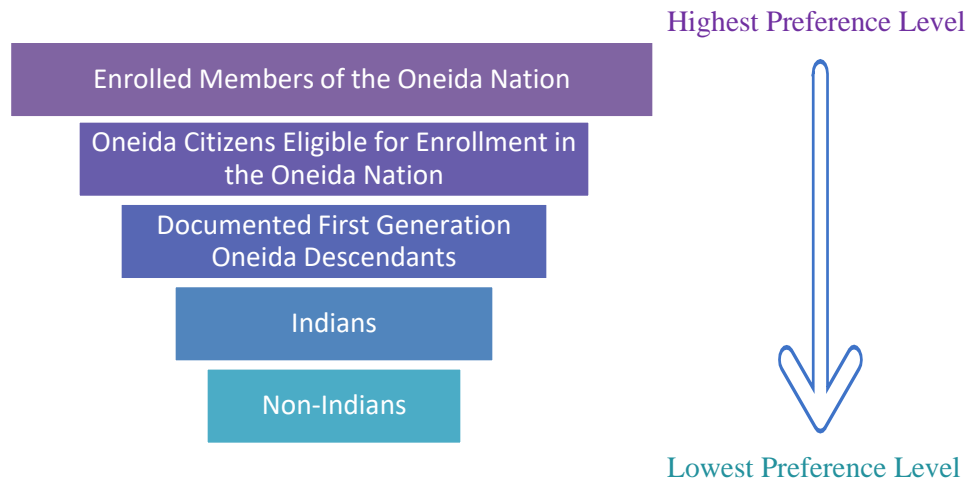
A. Indian Preference. Currently, the Law does not allow Indian preference to be used as a consideration in identifying which employees of the Nation to place in furlough status upon the implementation of a furlough program. [2 O.C. 205.5-4]. The proposed amendments will incorporate Indian preference into the Nation’s furlough programs and require that it be applied when deciding the order in which employees of the Nation are placed in furlough status, upon initiation of a furlough program, as well as recalled back to work when the program ends. [2 O.C. 205.1-1(c); 2 O.C. 205.4-2].

- **Basis for Preference.** Federal laws have been adopted by the United States Congress to combat employment and economic discrimination that remains from the forcible removal of Indigenous people from their homelands.
 - Indian Self-Determination and Education Assistance Act of 1975. Through the Indian Self-Determination and Education Assistance Act of 1975 (“ISDEAA”), tribes are authorized to provide their own services created by the federal trust responsibility. ISDEAA allows tribes to assume administrative responsibility for federally funded programs designed for their benefit, primarily services which are administered by the BIA and the Indian Health Service. [25 U.S.C. § 5130].
 - Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits preferential employment practices that are based on race, religion, color, sex or national origin. However, Title VII contains an exception for Indian preference that reads: “nothing contained in this title shall apply to any business or enterprise on or near an Indian Reservation with regard to any *publicly* announced employment practice of such business or enterprise under which preferential treatment is given to an individual because he or she is Indian.” [42 U.S.C. § 2000e-2(i)(emphasis added.)].

By adding Indian preference to the Law, the Nation is exercising its sovereign power to help protect the gainful employment of its members and eradicate discrimination against Indian people in the

workforce. Also, it is fulfilling the prerequisite to Title VII's exception by publicly announcing that the Nation intends to afford preferential treatment to its citizens and citizens of other federally recognized Indian tribes when implementing a furlough program under the Law.

- **Applying Preference Levels.** Under section 205.4-2 of the proposed amendments and subject to any exceptions set forth within the Law, the Nation's furlough programs will now be administered in a manner that affords preferential treatment to Indian people in the following order, starting with the category of employees to be given the highest level of preference:



[2 O.C. 205.4-2(c)].

- **Definitions.** To ensure consistency in the application of Indian preference to the Nation's furlough programs, the following definitions were added to the Law to help clarify where employees of the Nation fall within the preference spectrum:

- Indian preference – means preference for Indian people, regardless of tribal affiliation, in all aspects of employment, with Oneida citizens being afforded the highest levels of preference for purposes of this law. [2 O.C. 205.3-1(h)];
- Indian – means any person, other than an Oneida citizen, who is a citizen of a federally-recognized Indian tribe, other than the Oneida Nation. [2 O.C. 205.3-1(g)]; and
- Oneida citizen – means those persons who are enrolled members of the Nation, eligible for enrollment in the Nation or documented first generation Oneida descendants. [2 O.C. 205.3-1(j)].

- **Effect.** By adding Indian preference into the Law and, absent an exception, requiring that it be applied to give preference according to the above diagram, with the highest level of preference being afforded to the top category of employees, no employee of the Nation who is an Oneida citizen or an Indian person, as defined within the Law, shall be placed in furlough status so long as an employee, within the same department or division and position, who is non-Indian remains employed. [2 O.C. 205.4-2].

- B. **Application [2 O.C. 205.4].** Section 205.4 of the proposed amendments titled, *Application*, replaces section 205.4 of the current Law titled, *Furlough*. This section was added, not only to publicly declare the incorporation of Indian preference into the Nation's furlough programs (as discussed above), but to clarify and/or mandate the following with respect to the application of this Law:

- That, unless otherwise stated, the Law applies to all employees, as well as employment decisions, of the Nation that are governed, whether in whole or part, thereby [2 O.C. 205.4-1];
- That, but for Indian preference, the Nation is an Equal Opportunity Employer that prohibits the application of this Law and/or the implementation of a furlough program to occur in a manner that

discriminates based on race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information and/or any other basis protected by the anti-discrimination provisions of Title VII [2 O.C. 205.4-3];

- That, the HRD will be responsible for introducing new employees of the Nation to the concept of Indian preference, as well as how it applies to the Nation's furlough programs, during its employee orientation training [2 O.C. 205.4-4]; and
 - Goal for Orientation. During the development of these amendments, the LOC wanted to ensure that new employees of the Nation were familiar with the concept of Indian preference, as well as the history behind it, and how it would be applied to one or more departments/divisions of the Nation during a furlough program before it happened, as opposed to first learning about the process during an actual program implementation.
- That, furlough programs shall not be:
 - Used to resolve performance-related issues, grievances or to take the place of disciplinary actions [2 O.C. 205.4-5(a)];
 - Administered or implemented in violation of the Law or any other applicable laws/policies of the Nation [2 O.C. 205.4-5(b)]; and
 - Implemented in a manner that requires interdepartmental transfers when applying Indian preference to the processes set forth within the Law [2 O.C. 205.4-5(c)].
- Effect. When adding Indian preference into the Law, a discussion took place on whether to require interdepartmental transfers of employees when deciding the order for placement into furlough status, as well as for recall back to work. Work-group members, specifically those from the Nation's revenue generating areas, raised concerns over how disruptive it could be to have to train an employee from another department to replace an existing, already trained, employee just to adhere to the requirements of Indian preference. Section 205.4-5(c) was added to clarify that interdepartmental transfers are not required when applying Indian preference during a furlough program.

C. *Furlough Implementation Plan* [2 O.C. 205.5]. The current section 205.5 of the Law, titled, *Furlough Plans*, was retitled, *Furlough Implementation Plan*, and revised to include certain steps that now must be taken before a furlough program is even implemented, the goal being for the implementation process to unfold in a more efficient, organized and consistent manner upon initiation by the OBC. [2 O.C. 205.5-1(a)(1)]. These pre-implementation activities include:

- That, within a reasonable time after the amendments to the Law are adopted, all Direct Report Level positions, or their authorized designees, are required to submit a furlough implementation plan to the HRD for approval. [2 O.C. 205.5-1].
 - "Authorized designee" is defined in the Law as "an employee identified by a Direct Report Level position to develop or assist in developing a furlough implementation plan when the individual employed in the Direct Report Level position is unavailable or requests such assistance from that employee." [2 O.C. 205.3-1(b)].
 - Effect. By allowing authorized designees to act in the place of a Direct Report Level position, the Law now addresses situations where a Direct Report Level position is vacant or subject to placement in furlough status at the time of program implementation.
- That, the HRD shall be required to create the standard template, subject to approval by the OBC, for the Direct Report Level positions/authorized designees to use when creating their department's or division's furlough implementation plan for approval, the goal of the template being to elicit, at a minimum, the following information from Direct Report Level positions/authorized designees:
 - Which positions within their respective department or division may qualify as a critical position [2 O.C. 205.5-1(a)(1)(A)];
 - "Critical position" is now defined in the Law as "a position of employment within the Nation that is crucial to governmental functions, including, but not limited to, health, safety, regulatory compliance and/or revenue generation." [2 O.C. 205.3-1

- (c)]. How critical positions are determined and treated during a furlough program is discussed further below in this analysis.
- Which employees within their respective department or division may qualify for Indian preference and the corresponding level of preference that would apply under section 205.4 of the Law [2 O.C. 205.5-1(a)(1)(B)];
 - Which positions and/or employees within their respective department or division may be exempt from the application of Indian preference and the basis for said exemption [2 O.C. 205.5-1(a)(1)(C)];
 - Whether any employees within their respective department or division may be interested in volunteering to be placed in furlough status if a furlough program were implemented [2 O.C. 205.5-1(a)(1)(D)]; and
 - Whether any positions within their respective department or division are capable of being adjusted to promote Indian preference when deciding which employees to place in furlough status [2 O.C. 205.5-1(a)(1)(E)].
 - Point of Clarification. The purpose of section 205.5-1(a)(1)(E) is to have Direct Report Level positions/authorized designees explore whether a position or position description, *within their department/division*, can be adjusted to better advance the goal of Indian preference – not to require Direct Report Level positions/authorized designees to consider the transfer of employees from one department/division to another since, as indicated above, section 205.4-5(c) prohibits the application of Indian preference to occur in such manner.
- That, the HRD shall create a Standard Operating Procedure (“SOP”) setting forth how a furlough implementation plan shall be processed under the Law once the standard template is approved by the OBC, which must, at a minimum, address:
- How the standard template will be distributed to the Direct Report Level positions or their authorized designees [2 O.C. 205.5-1(b)(1)];
 - The process for Direct Report Level positions and/or authorized designees to follow upon receiving the standard template, including:
 - How to create a furlough implementation plan using the standard template [2 O.C. 205.5-1(b)(2)(A)]; and
 - How to submit a furlough implementation plan to the HRD for approval and how long the Direct Report Level positions/authorized designees have to submit their plans to the HRD after receiving the standard template [2 O.C. 205.5-1(b)(2)(B) and 205.5-1(b)(2)(C)].
 - How the HRD will process furlough implementation plans for approval upon submission by the Direct Report Level positions/authorized designees [2 O.C. 205.5-1(b)(3)]; and
 - How the HRD will notify the Direct Report Level positions/authorized designees of its decision to approve or reject their furlough implementation plan and, if rejected, the reason for the rejection and the process for resubmitting the furlough implementation plan for reconsideration [2 O.C. 205.5-1(b)(4)].
- And that, both the HRD and Direct Report Level positions/authorized designees shall review their standard template and furlough implementation plan, respectively, every two (2) years to assess whether they need to be updated to better advance the underlying goals/policies of the Law or account for any relevant changes within departments/divisions or the organization in general. [2 O.C. 205.5-2].
- Any changes to either the standard template or furlough implementation plan must go through the same approval process as the original versions. [2 O.C. 205.5-2(a) & (b)].
- D. Furlough Implementation [2 O.C. 205.6].** This section was added to govern the implementation of a furlough program, starting with its inception, causing the current section 205.6 titled, *Supervisor Responsibilities*, to be moved to a later section within the Law. Under the proposed amendments, a furlough program must still be initiated through a directive by resolution of the OBC, as is currently

required. [2 O.C. 205.4-1; Proposed Law 2 O.C. 205.6-2]. However, the following provisions were added for purposes of clarity, due process and consistency:

- ***Alternatives to Furlough.*** Prior to initiating a furlough program through adoption of a resolution, the OBC will now be required to consider whether any reasonable alternative(s) to a furlough exist and, if so, must exhaust said alternative(s) before initiating the furlough, so long as the burden of doing so on the Nation as a whole does not outweigh the benefit to the employees who may be affected by the furlough program at issue. [2 O.C. 205.6-1].
- ***Contents of the Furlough Resolution.*** In addition to the directive and the furlough dates that are already required in the current Law [2 O.C. 205.4-1], under the proposed amendments, the furlough resolution will also have to include the following:
 - The OBC's basis for implementing the furlough program at issue [2 O.C. 205.6-2(a)(1)];
 - Whether the furlough is being implemented as an administrative or emergency program [2 O.C. 205.6-2(a)(2)];
 - ***Program Distinctions.*** In the proposed Law, a furlough must be characterized as either an emergency or administrative program and then carried out in accordance with said characterization. [2 O.C. 205.6-3]. The basis for adding this distinction and its impact upon implementation are discussed further below.
 - If feasible under the circumstances and then to the extent thereof, the beginning and ending dates of the furlough program [2 O.C. 205.6-2(a)(3)];
 - If feasible under the circumstances and then to the extent thereof, which areas within the Nation will be subject to the furlough program and which positions, if any, are considered critical positions exempt from placement in furlough status [2 O.C. 205.6-2(a)(4)]; and
 - Whether an ad hoc committee will be established to assist in the implementation of the furlough program [2 O.C. 205.6-2(a)(5)].
- ***Ad Hoc Committee.*** Under the proposed Law, the OBC may, in its discretion, establish an ad hoc committee to assist with the implementation of a furlough program by, including, but not limited to, helping the OBC identify which areas of the Nation should be subject to the furlough program, as well as which positions, if any, should be deemed critical, and thus, exempt from placement in furlough status. [2 O.C. 205.6-2(b)]. If established, the ad hoc committee:
 - Must be made up of employees of the Nation, identified by the OBC within the furlough resolution or through a subsequent resolution/motion, who possess an expertise relative to the type and severity of the event giving rise to the furlough at issue [2 O.C. 205.6-2(b)(1)];
 - ***Note.*** Although the proposed Law requires the OBC to state whether it intends to establish an ad hoc committee in the furlough resolution, it gives the OBC a little more flexibility with respect to identifying committee members by allowing the identification to occur within the furlough resolution or a subsequent resolution/motion.
 - Must meet as necessary and at the request of the OBC to carry out the OBC's directives consistent with the Law [2 O.C. 205.6-2(b)(2)];
 - Is not subject to the Boards, Committees and Commissions law and members of the ad hoc committee are not entitled to receive stipends or any other form of compensation, other than their employee pay, for serving on the committee [2 O.C. 205.6-2(b)(3)]; and
 - Will dissolve upon conclusion of the furlough program for which it was established or on an early date determined by the OBC [2 O.C. 205.6-2(b)(4)].
- ***Furlough Programs.*** Under the proposed amendments, a furlough must be implemented as either an administrative or emergency program upon initiation and then carried out in accordance with the portions of section 205.6 that apply to such characterization. [2 O.C. 205.6-3].
 - ***Applicable to Both Programs.*** In addition to the provisions that will govern the specific furlough program being initiated, the following will apply to either program, regardless of characterization during the implementation phase:
 - That, employees must receive notice of the implementation of a furlough in writing and the notice must contain, at a minimum:

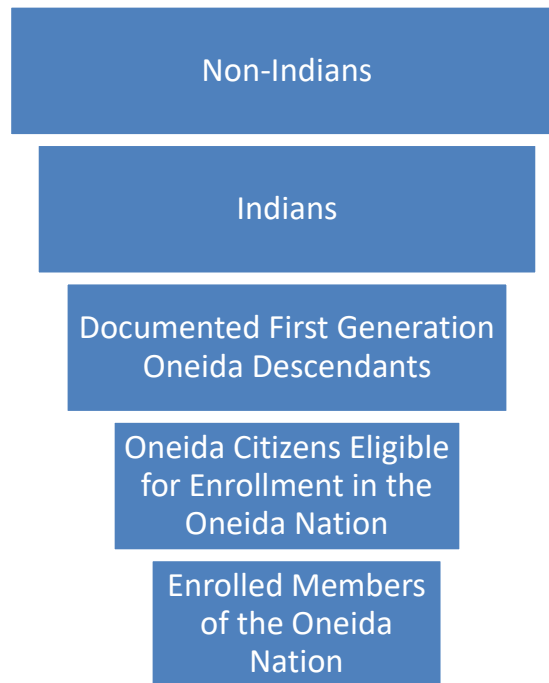
- Advanced warning that, if recalled back to work, the failure to respond to the recall within ten (10) business days of receiving the written notice of recall will be treated as a resignation of employment by that employee per the governing laws of the Nation [2 O.C. 205.6-3(a)(1)(A)]; and
- A directive that it is the employee's responsibility to ensure that the Nation has his or her most up-to-date contact information throughout the furlough period [2 O.C. 205.6-3(a)(1)(B)].
- That, the written notice shall be sent to employees using the outlet or outlets deemed most capable of reaching them in as efficient a manner as possible under the circumstances. [2 O.C. 205.6-3(a)(2)].
- Emergency Furlough Programs. Under the proposed amendments, the OBC may initiate a furlough program on an emergency basis when in the best interest of the Nation due to Acts of God that require an immediate curtailment of activities within the organization. [2 O.C. 205.6-3(b)].
 - A definition for "Acts of God" was added to the Law to mean "an event or effect that can be neither anticipated nor controlled, including both acts of nature, such as floods and hurricanes, and acts of people, such as riots, strikes, and wars." [2 O.C. 205.3-1(a)].
 - Effect. More flexibility is given to the Nation when initiating an emergency versus an administrative furlough program since, by its very title/definition, the event giving rise to the need for an emergency furlough program will be unexpected and/or unpredictable. As such, if the OBC cannot accurately determine the start or end date of the emergency furlough program being implemented, the Law allows for it to provide said dates with as much advanced notice as is reasonably possible under the circumstances. [2 O.C. 205.6-3(b)(1)].
 - Although the LOC wanted to offer some flexibility when it comes to emergency furlough programs, it also wanted to ensure that employees affected by the implementation of an emergency furlough program were not in a state of limbo for an indeterminate amount of time. Thus, the LOC added a provision stating: "No emergency furlough program implemented hereunder shall last for longer than twenty-six (26) weeks from the date of implementation unless extended by the OBC through a subsequent resolution." [2 O.C. 205.6-3(b)(2)].
- Administrative Furlough Programs. Unlike emergency furlough programs, administrative furlough programs would be initiated by the OBC in response to a foreseeable event that is likely to result in a temporary reduction in revenue/funding or some other organizational issue where the intent is to recall employees back to work once the event has subsided. [2 O.C. 205.6-3(c)]. With administrative furloughs, a minimum of five (5) business days of advance notice to employees is required, as well as specific dates in which the program will begin and end. [2 O.C. 205.6-3(c)(1) & 2].
 - Effect. The basis for including the language "where the intent is to recall employees back to work once the event has subsided" is to create a definitive line for when a furlough may be used in place of a layoff. For example, if the event is likely to result in a reduction of revenue, but is not temporary in nature, the requirement that there be intent to recall employees back to work would be missing, and thus, a layoff of the employees affected would be the more appropriate and equitable avenue. [See 2 O.C. 205.6-3(c)(3) ("If the intent to bring employees back is not present or is improbable at the time employee reductions are deemed necessary, employees shall be selected for layoff, as opposed to placement in furlough status, consistent with the laws and policies of the Nation governing employee layoffs. ")].

E. Placing Employees in Furlough Status [2 O.C. 205.7]. This section was added to the Law to provide more direction on how employees of the Nation are to be selected for placement in furlough status upon

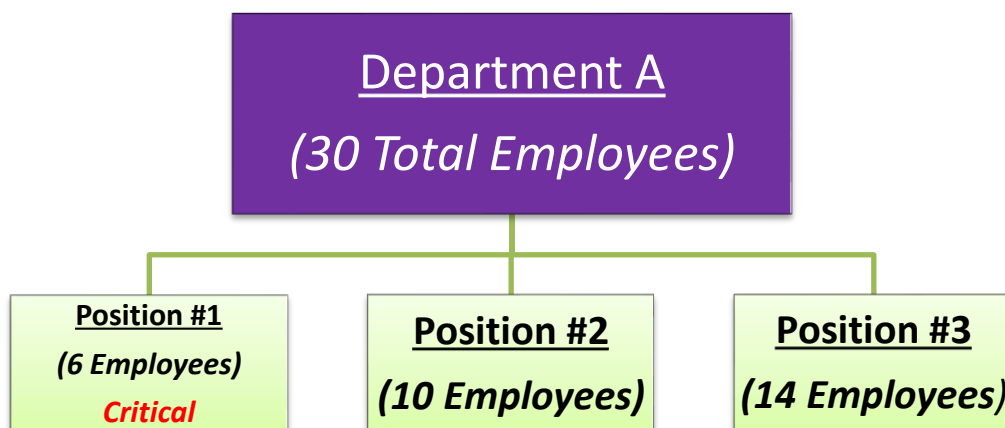
the implementation of a program to ensure more consistency, regardless of department/division, in the application of this Law. [2 O.C. 205.7-1]. According to this section, once a furlough program is initiated and the appropriate Direct Report Level positions/authorized designees are notified of the same, employees within a department/division impacted by the program will be retained and placed in furlough status as follows:

- **Critical Positions.** If the OBC, or the ad hoc committee per the OBC's request and subject to its approval, has identified critical positions within an affected department/division, those positions would be exempt from placement into furlough status during the specific furlough program for which the position was deemed critical. [2 O.C. 205.7-2].
 - Exception. If, after the initial identification of critical positions occurs, the OBC determines that it is necessary to cut some or all of a position within a department/division that is deemed critical, it may do so through adoption of a subsequent resolution. [2 O.C. 205.7-2(b)]. Employees within the same critical position that are later subject to reduction per this exception shall be placed in furlough status pursuant to the order of preference and priority established in section 205.7 and recalled back to work pursuant to the order of preference and priority established in section 205.9 of the Law. [2 O.C. 205.7-2(b)(1)].
- **Non-Critical Positions.** When deciding the order for placing non-critical positions in furlough status, the proposed Law states, generally, that "[d]irectives from the Oneida Business Committee regarding employee furlough reductions ... shall be carried out by the Direct Reports Level position /authorized designee of the affected department/division in a manner that furthers the policy behind Indian preference to the greatest extent possible without rendering the affected department/division inoperable or unable to reasonably conduct business." [2 O.C. 205.7-3]. And specifically, it dictates that, absent an exception, the following order shall be adhered to when placing non-critical position employees within the same department or division in furlough status:
 - Temporary Employees. Temporary employees within a department or division that is affected by a furlough program implementation shall be the first category of employees to be placed in furlough status. [2 O.C. 205.7-3(a)].
 - A temporary employee is defined as an employee hired by the Nation for a short-term assignment and consists of the following classifications: (1) Emergency/Temporary; Limited Term; Seasonal; Substitute/Relief; Youth Worker and Student /Intern. [2 O.C. 205.3-1(a)(l)].
 - Volunteer Employees. Following the placement of temporary employees in furlough status, eligible employees who volunteer for said placement shall be the next category of employees to be placed in furlough status. [2 O.C. 205.7-3(b)].
 - In order to ensure that any employee who volunteers for placement in furlough status does so of his or her own free will, the following was added to the Law to govern this category of employees:
 - That, employees who volunteer to be placed in furlough status must sign a form, created by the HRD, confirming as follows:
 1. They volunteered to be placed in furlough status notwithstanding any preference or eligibility for retention that they may have;
 2. Their decision to volunteer was not coerced or based on any promises of compensation or other consideration; and
 3. They understand that they are not guaranteed a recall back to work and, as a result, could be terminated from their employment with the Nation. [2 O.C. 205.7-3(a)(2)(A)(i)-(iii)].
 - Indian Preference. Absent an express exception and following placement of the first two categories, when the remaining number of employees in the same position within a department or division exceeds the number of said employees to be placed in furlough status, the order of placement shall occur in the following order, beginning with the first category:

455 1 Order for Placement in Furlough Status (First to Last)



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457 ***Illustrative Hypothetical:*** Following a tornado, a portion of Department A's building suffers structural
458 damage that makes it impossible for all its employees to conduct business therein. The damage will
459 take approximately six (6) weeks to repair. In response, the OBC implements an administrative furlough
460 program, through adoption of a resolution that instructs the Direct Report Level position for Department
461 A to place half of its non-critical employees in furlough status until the repairs are done. Department A
462 has thirty (30) employees who incumbent (3) positions as follows:
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466 ***Scenario Based on Hypothetical:*** Position #1 is deemed critical, and thus, exempt from placement
467 in furlough status. [2 O.C. 205.7-2]. This leaves Positions #2 and #3 subject to placement in
468 furlough status per the OBC's directive. In accordance with the general requirement that placement
469 in furlough status occur in a manner that adheres to Indian preference to the greatest extent without
470 rendering Department A inoperable or unable to reasonably conduct business, the Direct Reports
471 Level position decides to cut five (5) employees from Position #2 and seven (7) employees from
472 Position #3.

473 ***Position #2:*** Of the ten (10) employees in Position #2, three (3) of the employees are Non-
474 Indian, two (2) of the employees are Indian, and the remaining five (5) employees are a

combination of Nation Members or Documented First Generation Descendants of the Nation. **Result** – The three (3) Non-Indian employees and two (2) Indian employees will be placed in furlough status, while the remaining five (5) employees, who are either Members of the Nation or Documented First Generation Descendants, will remain working.

Position #3: Of the fourteen (14) employees in Position #3, four (4) of the employees are Non-Indian and the remaining ten (10) employees are Members of the Nation. **Result** – The four (4) Non-Indian employees will be placed in furlough status, leaving three (3) of the remaining ten (10) employees in the same preference category – i.e., Members of the Nation – subject to placement in furlough status. In order to decide which three (3) of the ten (10) Members to place in furlough status, the Direct Reports Level position would have to look to section 205.7-3(a)(4) of the Law, which lays out how to prioritize the retention of employees who remain in the same preference category, following application of Indian preference. Section 205.7-3(a)(4) provides as follows:

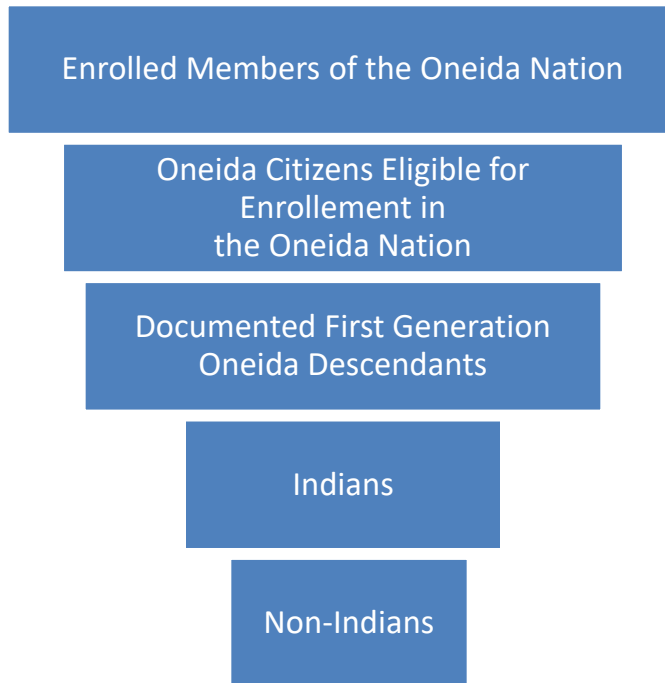
1. *Seniority.* Employees who have served the Nation as a regular status employee without a break in employment for the longest amount of time shall be afforded the highest level of retention priority;
2. *Veteran Status.* If employees remain after applying the priority for seniority, employees with veteran status shall be afforded the next level of retention priority over the other employees who remain within the same preference category; and
3. *Performance Evaluation.* If employees remain after applying the priority for veterans, employees with a more favorable performance evaluation shall be afforded retention priority over the employees with a less favorable performance evaluation who remain within the same preference category.
 - ❖ Note: The Law requires that the most current performance evaluation in existence on the date the OBC adopts the furlough resolution at issue shall be the evaluation that is used when assessing priority under this last category. [2 O.C. 205.7-3(a)(4)(C)(i)].

G. Furloughed Employees [2 O.C. 205.8]. This section of the Law was amended to allow for the OBC to continue providing certain benefits to employees placed in furlough status on a case-by-case basis, subject to budgetary constraints, as well as any governing policies or agreements underlying said benefits. In addition, overtime and additional duty pay may be offered on a case-by-case basis, subject to approval by the OBC. [2 O.C. 205.8-4; 2 O.C. 205.8-5].

- Effect. Under the current law, employees placed in furlough status were not entitled to benefits, such as medical insurance. Under the proposed amendments, if the Nation is able, both financially and contractually, employees will continue to receive benefits while in furlough status. And, if the employees who remain working are accruing a significant amount of overtime or taking on a substantial number of additional duties, the OBC now has the authority to approve overtime and extra duty pay on a case-by-case basis.

H. Recall of Furloughed Employees [2 O.C. 205.9]. This section of the Law provides more guidance on the process for recalling back to work those employees who were placed in furlough status. With respect to the order for recalling back to work, Indian preference is applied in the reverse order as set forth in section 205.7 of the Law and contains the same priority requirements to be applied when the number of employees who remain in the same preference category exceeds the number to be recalled upon the close of the furlough program at issue.

528 2 Order for Recall Back from Placement in Furlough Status (First to Last)



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This section of the Law was further amended to provide additional direction regarding the following:

- Volunteers. With respect to those employees who volunteered for placement in furlough status, the proposed Law makes clear that those employees who qualify for the preference and priority as set forth within this section will retain such preference/priority regardless of volunteering and will be given additional priority over others within the same preference and priority category who did not volunteer. [2 O.C. 205.9-1(b)].
- Notice of Recall and Responses. With respect to what is expected of employees placed in furlough status who are recalled back to work, the proposed Law now states:
 - A failure to respond to the notice of recall within ten (10) business days of the employee's receipt thereof shall be interpreted to mean that the employee does not intend to return on the date of his or her recall and treated as a resignation of employment by that employee per the governing laws and policies of the Nation. [2 O.C. 205.9-2(b)].

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I. Responsibilities of Direct Report Level and Supervisor Positions [2 O.C. 205.10]. This section of the Law was amended to include a requirement that persons employed in Direct Reports Level and supervisory positions with the Nation, along with any of their authorized designees, shall be responsible for undergoing training, provided by the HRD, on the application of the Law, as well as the programs to be implemented thereunder. [2 O.C. 205.10-1(a)].

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J. Appeal [2 O.C. 205.11]. The proposed amendments to the Law expand the basis upon which an employee can file an appeal from claims that a placement in furlough status was based on a disciplinary reason to claims that a placement in furlough status occurred in violation of the Law. [2 O.C. 205.11-1].

553 SECTION 6. RELATED LEGISLATION

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- A. Reference to Other Laws.** The following laws of the Nation are referenced in the proposed Law, and thus, are required to be followed absent a legislative exception, or were contemplated during the development of the proposed amendments or this legislative analysis.
- Open Records and Open Meetings [1 O.C. Chapter 107]. This law sets the requirements for how meetings of the Nation's governmental bodies shall be conducted, as well as how materials from

that meeting shall be maintained and made available to the public. [1 O.C. 107.1 & 107.12]. Section 107.9 of the Open Records and Open Meetings law governs the retention of records that are produced in the course of governmental business. [1 O.C. 107.9-1]. It provides, in pertinent part, that “[u]nless an alternate retention period is approved by the Oneida Business Committee for specific records and except as otherwise provided by law, all records shall be retained at least seven (7) years before destruction.” [1 O.C. 107.9-4]. The proposed amendments do not conflict with the portion of the Open Records and Open Meetings law that governs the release and retention of records.

- Social Media Policy [2 O.C. Chapter 218]. This law regulates social media accounts, including how content is managed and published on behalf of the Nation. [2 O.C. 218.1-1]. Employees who obtain outside employment while in furlough status under a program governed by the proposed Law will be required to still adhere to the social media requirements that apply to employees of the Nation pending their recall back to work. There are no conflicts between the proposed amendments and the Nation’s Social Media Policy.
- Computer Resources Ordinance [2 O.C. Chapter 215]. This law regulates the use of computer resources that are owned and operated by the Nation and, among other individuals, applies to employees of the Nation. [2 O.C. 215.1-1 & 215.3-1]. Employees who obtain outside employment while in furlough status under a program governed by the proposed Law will be required to still adhere to the provisions of this law that apply to employees of the Nation pending their recall back to work. There are no conflicts between the proposed amendments and the Nation’s Computer Resources Ordinance.
- Conflict of Interest [2 O.C. Chapter 217]. This law establishes specific limitations on the handling, as well as sharing, of information/materials that are confidential in nature or could be used by the Nation’s competitors and providers during negotiations to the Nation’s detriment. [2 O.C. 217.1-1]. It applies to the Nation’s employees, contractors, elected officials, officers, political appointees and appointed/elected members of the Nation’s boards, committees and commissions. [2 O.C. 217.1-1]. Employees who obtain outside employment while in furlough status under a program governed by the proposed Law will be required to still adhere to the provisions of this law that apply to employees of the Nation pending their recall back to work. There are no conflicts between the proposed amendments and the Nation’s Conflict of Interest law.
- Layoff Policy [2 O.C. Chapter 207]. This law establishes a fair, respectful policy for employee layoff and recall which enables Oneida Nation programs and enterprises to operate effectively and efficiently in varying economic conditions within the parameters of Oneida Nation Seventh Generation Mission, Priorities and Objectives. [2 O.C. 207.1-1]. There are no conflicts between the proposed amendments and the Nation’s Conflict of Interest law.
 - It is worth noting that the Layoff Policy is on the LOC’s Active Files List for amendment this term. Any gaps in the law or provisions that could be interpreted to conflict with the proposed amendments to this Law will be amended accordingly and consistently with the LOC’s policy/basis for placing both the Layoff Policy and Furlough Policy on the Active Files List for amendment.
- Personnel Policies and Procedures. The Personnel Policies and Procedures law provides employees with a ready source of information about employee related Oneida Nation policies and procedures that apply to all employees. [PPP, Section 1]. There are no conflicts between the proposed amendments and the Nation’s Personnel Policies and Procedures law.

SECTION 7. OTHER CONSIDERATIONS

A. Added Points of Clarification/Processes.

- The LOC may want to consider adding a provision within the law that addresses what happens to the Nation’s temporary employees once placed in furlough status (e.g., is there a possibility for recall or are they just termed earlier than anticipated in accordance with the governing process).
- Section 205.11 of the proposed Law provides, without exception, that the decision of the Direct Report Level position/authorized designee on appeal is final, and thus, not subject to further

review by the Judiciary or any other agency. The LOC may want to consider whether any exception to this provision should be added when, for example, the decision of the Direct Report Level position/authorized designee is egregious or in contradiction of governing law.

B. *Fiscal Impact.*

- 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.* On December 1, 2021, the Legislative Operating Committee will consider directing that a fiscal impact statement be completed for the proposed amendments to the Law.



TO: Christina Danforth, Treasurer
Lawrence E. Barton, Chief Financial Officer
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer
FROM: David P. Jordan, Legislative Operating Committee Chairman
DATE: December 1, 2021
RE: Furlough Law Amendments Fiscal Impact Statement

The Legislative Operating Committee (“LOC”) is currently developing amendments to the Nation’s Furlough law for permanent adoption. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that upon final approval of draft legislation by the LOC, the LOC may direct the Finance Department to provide a neutral and unbiased fiscal impact statement to the LOC within ten (10) business days for inclusion in adoption materials.

On December 1, 2021, the Legislative Operating Committee approved the final draft of the amendments to the Furlough law. Therefore, the LOC is directing the Finance Department to provide a fiscal impact statement on the proposed law by December 15, 2021.

A copy of the proposed amendments to the Furlough law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement on the proposed amendments to the Furlough law by December 15, 2021.



Legislative Operating Committee
December 1, 2021

Oneida General Welfare Law

Submission Date: 12/18/18	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 10/13/21.
LOC Sponsor: Jennifer Webster	Emergency Enacted: 8/12/20, 2/10/21

Summary: *This item was carried over from last term. The Oneida Business Committee directed IGAC, Self-Governance and the Law Office to develop a plan of action to create rules for exempting income per the Tribal General Welfare Exclusion Act. At the December 18, 2018 Business Committee Work Meeting, the Oneida Business Committee requested that the General Welfare Exclusions Act – Income Exemptions item be sent over to the LOC for consideration to develop a law/code/ordinance that would define the income exemptions under the General Welfare Exclusion Act. As a result of the COVID-19 pandemic, emergency adoption of an Oneida General Welfare law was sought to create a law that provides a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The purpose of this Law is to provide assistance, on a non-taxable basis, to eligible Tribal members through approved programs that promote the general welfare of the Nation. The 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. The Oneida Business Committee adopted the Oneida General Welfare law on an emergency basis through the adoption of resolution BC-08-12-20-D. The emergency adoption of the Law will expire on February 12, 2021. The Oneida Business Committee then adopted emergency amendments to the Oneida General Welfare law on February 10, 2021, through resolution BC-02-10-21-B for the purpose of addressing the means in which the Oneida Business Committee may adopt an approved program – the emergency amendment would allow the Oneida Business Committee to adopt an approved program through resolution in addition to through the adoption of a law. The emergency adoption of the Law was set to expire on August 10, 2021. The Oneida Business Committee extended the emergency amendments to the Oneida General Welfare law on July 28, 2021, through the adoption of resolution BC-07-28-21-M. The emergency amendments to the Oneida General Welfare law will expire on February 10, 2022.*

10/7/20 LOC: Motion by Kirby Metoxen to add the Oneida General Welfare Law to the Active Files List with Jennifer Webster as the sponsor; seconded by Marie Summers. Motion carried unanimously.

1/14/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Lawrence Barton, Rae Skenandore, Carl Artman, Susan House, Kristal Hill, James Petitjean. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the Oneida General Welfare law, the Oneida Higher Education Pandemic Relief Fund law, the Pandemic Relief Assistance law,

and the FY21 Budget Directive found in resolution BC-11-24-20-F and determine a plan for meeting these directives and addressing these items on a permanent basis.

1/28/21: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the proposed emergency amendments to the Law and emergency adoption packet materials.

2/3/21 LOC: Motion by Jennifer Webster to approve the Oneida General Welfare law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Marie Summers. Motion carried unanimously.

2/9/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carl Artman, JoAnne House, Lawrence Barton, Ralinda Ninham-Lamberies, Rae Skenandore, Keith Doxtator, Susan House, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to touch base and discuss the progress that was being made in bringing forward emergency amendments to the Oneida General Welfare law and developing the approved programs – through adoption of a resolution – to meet the FY21 budget directive in resolution BC-11-24-20-F.

2/10/21 OBC: Motion by Lisa Liggins to adopt resolution 02-10-21-B Emergency Amendments to the Oneida General Welfare Law with two (2) changes [1) in line 16, correct date to March 13, 2021; and 2) in line 18, insert the appropriate resolution number], seconded by Jennifer Webster. Motion carried.

Motion by Lisa Liggins to request the Legislative Operating Committee and Legislative Reference Office to bring forward a BC SOP to an upcoming BC Work Session regarding how laws and resolutions are submitted to the Business Committee in accordance with this resolution, seconded by Jennifer Webster. Motion carried.

4/14/21 OBC: Motion by Lisa Liggins to defer this item [*Oneida Nation Assistance Fund Resolution*] until after executive session noting the resolution will be brought back with three (3) additional considerations, [1) the correction to line 45 [change from, "...between 18 to 61 years of...", change to, "...age 18 or older..."]; 2) noting the LOC's considerations for possible garnishments moving forward; 3) CFO's comments regarding Treasury guidance for the 65 and over payment.], seconded by Marie Summers. Motion carried.

Motion by Lisa Liggins to adopt the Oneida Business Committee standard operating procedure entitled Oneida General Welfare Law - Adoption of an Approved Program and direct the Secretary to finalize the SOP and publish, seconded by David P. Jordan. Motion carried.

4/21/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristen Hooker, Kristal Hill, Rhiannon Metoxen. The purpose of this work meeting was to discuss a plan for how to address the Oneida Business Committee directive contained in resolution BC-04-14-21-D that the LOC consider how garnishments will be handled for general welfare exclusion payments moving forward.

4/29/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. The purpose of this work meeting was to review and discuss the public comment period notice for the question of "Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?"

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

- 5/5/21 LOC:** Motion by Jennifer Webster to approve the Oneida General Welfare law amendments public comment period notice for the question, “*Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?*” and forward this question to a public comment period to be held open until June 9, 2021; seconded by Marie Summers. Motion carried unanimously.
- 6/9/21:** *Public Comment Period Closed.* Six (6) individuals submitted written comments during this public comment period.
- 6/24/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Kristal Hill, Kristen Hooker. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the public comments that were received regarding the question, “*Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?*”
- 7/7/21 LOC:** Motion by Marie Summers to accept public comments that were received for the Oneida General Welfare law amendments question, “*Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?*”; seconded by Daniel Guzman King. Motion carried unanimously.
- 7/21/21 LOC:** Motion by Marie Summers to approve the Oneida General Welfare law emergency amendments extension packet and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.
- 7/28/21 OBC:** Motion by David P. Jordan to adopt resolution 07-28-21-M Extension of the Emergency Amendments to the Oneida General Welfare Law, seconded by Jennifer Webster. Motion carried.
- 8/26/21:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss the draft of amendments to the Oneida General Welfare law to move forward for permanent adoption.
- 9/1/21 LOC:** Motion by Jennifer Webster to approve the draft of the Oneida General Welfare law and direct that a legislative analysis be completed; seconded by Marie Summers. Motion carried unanimously.
- 9/15/21 LOC:** Motion by Kirby Metoxen to approve the legislative analysis for the Oneida General Welfare law; seconded by Jennifer Webster. Motion carried unanimously.
- Motion by Marie Summers to approve the approve the Oneida General Welfare law public comment period notice and forward the Oneida General Welfare law to a public comment period to be held open until October 13, 2021; seconded by Jennifer Webster. Motion carried unanimously.
- 10/13/21:** *Public Comment Period Closes.* The public comment period for the permanent adoption of the Oneida General Welfare law closed on October 13, 2021. No written submissions of comments were received during this public comment period.

10/20/21 LOC: Motion by Jennifer Webster to accept the public comment period review memorandum; seconded by Daniel Guzman King. Motion carried unanimously.

11/3/21 LOC: Motion by Jennifer Webster to approve the updated draft, legislative analysis, and the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by November 18, 2021; seconded by Kirby Metoxen. Motion carried unanimously.

11/12/21: *Fiscal Impact Statement.* The fiscal impact statement was received from the Finance Administration and had an indeterminate result.

Next Steps:

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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: December 8, 2021
RE: Adoption of the Oneida General Welfare Law

Please find the following attached backup documentation for your consideration of the adoption of the Oneida General Welfare law:

1. Resolution: Adoption of the Oneida General Welfare Law
2. Statement of Effect: Adoption of the Oneida General Welfare Law
3. Oneida General Welfare Law Legislative Analysis
4. Oneida General Welfare Law
5. Oneida General Welfare Law Fiscal Impact Statement

Overview

On October 7, 2020, the Legislative Operating Committee added the Oneida General Welfare law (“the Law”) to its Active Files List. The Law had been carried over from the last Legislative Operating Committee terms with it originally added to the Active Files List in December 2018.

On August 12, 2020, the 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 members of the Nation through approved programs that promote the general welfare of the Nation. [10 O.C. 1001.1-1, 1001.1-3]. Emergency adoption of the Law was pursued to provide a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The Law set forth a framework and provided guidelines for the Nation to establish and operate approved programs which provide assistance to eligible 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 emergency adoption of the Law was set to expire on February 12, 2021.

In February 2021, emergency amendments to the Law were then adopted by the Oneida Business Committee through resolution BC-02-10-21-B for the purpose of addressing how an approved program would be adopted by the Oneida Business Committee in an effort to allow for more flexibility and efficiency in addressing the needs of the Nation. The emergency amendment to the Law revises the definition of approved program to allow an approved program to be adopted by the Oneida Business Committee through resolution or law of the Nation. [10 O.C. 1001.3-1(a)]. Previously, an approved program could only be adopted by the Oneida Business Committee through a law of the Nation. These emergency amendments to the Law were set to expire on August 10, 2021.

On July 28, 2021, the Oneida Business Committee extended the emergency amendments for an additional six (6) month period through the adoption of resolution BC-07-28-21-M. The emergency amendments to this Law will now expire on February 10, 2022.

The Legislation Operating Committee is now seeking the permanent adoption of this Law. The purpose of the Law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion. [10 O.C. 1001.1-1]. This resolution adopts the Law which will provides a framework for the Nation to develop approved programs to provide assistance to members on a non-taxable basis in an effort to promote the general welfare while ensuring compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35, and that all assistance provided under this law:

- is available to any recipients who satisfy the program policies, subject to budgetary restraints;
- is made under an approved program that does not discriminate in favor of members of the Nation's governing body;
- is not provided as compensation for goods and/or services; and
- is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.

The Legislative Operating Committee developed the Oneida General Welfare law through collaboration with representatives from the Oneida Law Office, Finance Administration, and Governmental Services Division. The Legislative Operating Committee held seven (7) work meetings on the development of this law.

A public meeting, in accordance with the Legislative Procedures Act, was not held for the Law due to the COVID-19 pandemic. On March 12, 2020, Chairman Tehassi Hill signed a "*Declaration of Public Health State of Emergency*" regarding the COVID-19 pandemic which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows 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 November 25, 2021, 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, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, and BC-09-22-21-A.

Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, prohibits indoor and outdoor public gatherings when the COVID-19 infection rates within Brown or Outagamie Counties exceed "Low" as identified by the Wisconsin Department of Health Services. During the time of the development of this Law the infection rates within Brown and Outagamie Counties exceeded "Low." The Nation's COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration titled "*Suspension of Public Meetings under the Legislative Procedures Act*". This declaration suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but

allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although no public meeting for the proposed Law was held in person, the public comment period was still held open until October 13, 2021, for the submission of written comments. No written comments were received during the public comment period.

Requested Action

Adopt the Resolution: Adoption of the Oneida General Welfare Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Adoption of the Oneida General Welfare Law

- 1
2
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
4 recognized by the laws of the United States of America; and
5
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
10
11 **WHEREAS,** the purpose of the Oneida General Welfare law ("the Law") is to govern how the Nation
12 provides assistance to eligible members on a non-taxable basis, pursuant to the principles
13 of the General Welfare Exclusion; and
14
15 **WHEREAS,** in August 2020, the Law was first adopted by the Oneida Business Committee on an
16 emergency basis through resolution BC-08-12-20-D to provide a mechanism to address
17 the economic needs of members of the Nation during the COVID-19 pandemic by providing
18 a framework and guidelines for the Nation to establish and operate approved programs
19 which provide assistance to eligible members to promote the general welfare of the Nation,
20 including programs designed to enhance the promotion of health, education, self-
21 sufficiency, self-determination, and the maintenance of culture and tradition,
22 entrepreneurship, and employment; and
23
24 **WHEREAS,** in February 2021, emergency amendments to the Law were then adopted by the Oneida
25 Business Committee through resolution BC-02-10-21-B for the purpose of addressing how
26 an approved program would be adopted by the Oneida Business Committee in an effort to
27 allow for more flexibility and efficiency in addressing the needs of the Nation; and
28
29 **WHEREAS,** on July 28, 2021, the Oneida Business Committee extended the emergency amendments
30 to this Law for an additional six (6) month period through the adoption of resolution BC-07-
31 28-21-M; and
32
33 **WHEREAS,** the Law is now ready for permanent adoption by the Oneida Business Committee; and
34
35 **WHEREAS,** the Law provides a framework for the Nation to develop approved programs to provide
36 assistance to members on a non-taxable basis in an effort to promote the general welfare
37 while ensuring compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and
38 applicable Internal Revenue Service regulations or revenue procedures including I.R.S.
39 Rev. Proc. 2014-35, and that all assistance provided under this Law:
40
 - is available to any recipients who satisfy the program policies, subject to budgetary
 - 41 restraints;
 - 42 ▪ is made under an approved program that does not discriminate in favor of members of
 - 43 the Nation's governing body;

- is not provided as compensation for goods and/or services; and
- is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee; and

WHEREAS, in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact statement were developed for this Law; and

WHEREAS, a public meeting on this proposed Law was not held in accordance with the Legislative Procedures Act due to the COVID-19 pandemic; and

WHEREAS, on March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, which was then subsequently extended through January 23, 2022, 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, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A and BC-11-24-21-F; and

WHEREAS, Oneida Business Committee resolution BC-08-03-21-A, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, prohibits indoor and outdoor public gatherings when the COVID-19 infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services; and

WHEREAS, on March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which suspended the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period for the duration of the Public Health State of Emergency, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period; and

WHEREAS, although a public meeting was not held for this proposed Law, the public comment period for this Law was held open until October 13, 2021, and no individuals submitted written comments during the public comment period; and

NOW THEREFORE BE IT RESOLVED, that the Oneida General Welfare law is hereby adopted and shall become effective on December 22, 2021.



Statement of Effect
Adoption of the Oneida General Welfare Law

Summary

This resolution adopts the Oneida General Welfare law on a permanent basis.

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

Date: November 24, 2021

Analysis by the Legislative Reference Office

This resolution adopts the Oneida General Welfare law on a permanent basis. The purpose of the Oneida General Welfare law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion. [10 O.C. 1001.1-1]. The Oneida General Welfare law will provide a framework for the Nation to develop approved programs to provide assistance to members on a non-taxable basis in an effort to promote the general welfare while ensuring compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35, and that all assistance provided under this law:

- is available to any recipients who satisfy the program policies, subject to budgetary restraints;
- is made under an approved program that does not discriminate in favor of members of the Nation's governing body;
- is not provided as compensation for goods and/or services; and
- is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.

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 requires that for all proposed legislation both a legislative and fiscal analysis be developed. [1 O.C. 109.6 and 109.7]. The Oneida General Welfare law complies with these requirements.

The LPA also requires that there be an opportunity for public review during a public meeting and public comment period. [1 O.C. 109.8]. A public meeting for the Oneida General Welfare law was not held due to the COVID-19 pandemic. 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 January 23, 2022, 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, BC-11-10-20-A, BC-12-

09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, and BC-11-24-21-F.

Oneida Business Committee resolution BC-08-03-21-A, Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19, prohibits indoor and outdoor public gatherings when the COVID-19 infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. During the time of the development of this Law the infection rates within Brown and Outagamie Counties exceeded “Low.” The Nation’s COVID-19 Core Decision Making Team addressed the issue of not being able to safely hold public meetings through its March 27, 2020, declaration titled “Suspension of Public Meetings under the Legislative Procedures Act”. This declaration suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

Although a public meeting for the Oneida General Welfare law was not held, the public comment period was still held open until October 13, 2021. The Legislative Operating Committee did not receive any written submissions of comments during the public comment period.

Adoption of this resolution complies with the process and procedures of the LPA as it has been modified by the COVID-19 Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.

This resolution provides that the Oneida General Welfare law would become effective on December 22, 2021, in accordance with the LPA. [1 O.C. 109.9-3].

Conclusion

Adoption of this resolution would not conflict with any of the Nation’s laws, as it complies with the Legislative Procedures Act as it has been modified by the COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.



ONEIDA GENERAL WELFARE LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	Provides a framework for the Nation to develop approved programs to provide assistance to members on a non-taxable basis in an effort to promote the general welfare while ensuring compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35, and that all assistance provided under this law: <ul style="list-style-type: none"> is available to any recipients who satisfy the program policies, subject to budgetary restraints; is made under an approved program that does not discriminate in favor of members of the Nation's governing body; is not provided as compensation for goods and/or services; and is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.
Purpose	The purpose of this law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion. <i>[10 O.C. 1001.1-1]</i> .
Affected Entities	Oneida Business Committee, Entities developing approved programs
Public Meeting	A public comment period was held open until October 13, 2021. A public meeting was not held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, <i>Suspension of Public Meetings under the Legislative Procedures Act</i> .
Fiscal Impact	A fiscal impact statement was received from the Finance Department on November 12, 2021.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. Background. On August 12, 2020, the Oneida General Welfare law ("the 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 members of the Nation through approved programs that promote the general welfare of the Nation. *[10 O.C. 1001.1-1, 1001.1-3]*. Emergency adoption of the Law was pursued to provide a mechanism to address the economic needs of members of the Nation during the COVID-19 pandemic. The Law set forth a framework and provided guidelines for the Nation to establish and operate approved programs which provide assistance to eligible 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 emergency adoption of the Law was set to expire on February 12, 2021. In February 2021, emergency amendments to the Law were then adopted by the Oneida Business Committee through resolution BC-02-10-21-B for the purpose of addressing how an approved program would be adopted by the Oneida Business Committee in an effort to allow for more flexibility and efficiency in addressing the needs of the Nation. The emergency

amendment to the Law revises the definition of approved program to allow an approved program to be adopted by the Oneida Business Committee through resolution or law of the Nation. [10 O.C. 1001.3-1(a)]. Previously, an approved program could only be adopted by the Oneida Business Committee through a law of the Nation. These emergency amendments to the Law were set to expire on August 10, 2021. On July 28, 2021, the Oneida Business Committee extended the emergency amendments for an additional six (6) month period through the adoption of resolution BC-07-28-21-M. The emergency amendments to this Law will now expire on February 10, 2022.

B. The Legislative Operating Committee is now seeking the permanent adoption of this Law.

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; and
- Governmental Services Division.

B. The following laws were reviewed in the drafting of this analysis:

- Legislative Procedures Act;
- Garnishment Law; and
- Per Capita law.

SECTION 4. PROCESS

A. This Law has followed the process set forth in the Legislative Procedures Act (LPA).

- On August 12, 2020, the Law was adopted by the Oneida Business Committee on an emergency basis through resolution BC-08-12-20-D.
- On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files List.
- On February 10, 2021, the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-02-10-21-B.
- On April 14, 2021, the Oneida Business Committee adopted resolution BC-04-14-21-D titled, *Oneida Nation Assistance Fund*, which directed that the Legislative Operating Committee hold a community input session on the public policy of “funds paid to members pursuant general welfare programs are not subject to garnishment, attachment, seizure, or execution of levy of any kind, including the administrative enforcement actions listed in 7 O.C. Chapter 704 (Child Support), and any attempt to cause any payments to be so subjected shall not be recognized by the Nation” and whether such policy should be a general policy or be addressed specifically in regards to each general welfare program under Title 1000 and Chapter 1001.
- On May 5, 2021, the Legislative Operating Committee approved the Oneida General Welfare law amendments public comment period notice for the question, *Should assistance provided by an approved program under the Oneida General Welfare law be subject to attachment or garnishment?* and forward this question to a public comment period to be held open until June 9, 2021.
- On June 9, 2021, the public comment period for the question above closed. The Legislative Operating Committee received written submissions of comments from six (6) individuals.

- On July 7, 2021, the Legislative Operating Committee accepted the public comments that were received.
- On July 21, 2021, the Legislative Operating Committee approved the Oneida General Welfare law emergency amendments extension packet and forwarded the extension to the Oneida Business Committee for consideration.
- On July 28, 2021, the Oneida Business Committee extended the emergency amendments to the Law through the adoption of resolution BC-07-28-21-M.
- On September 1, 2021, the Legislative Operating Committee approved the draft of the Law and directed that a legislative analysis be completed.
- On September 15, 2021, the Legislative Operating Committee approved the legislative analysis and public comment period notice, and forwarded the Oneida General Welfare law to a public comment period to be held open until October 13, 2021.
- On October 13, 2021, the public comment period closed. No written submissions of comments were received during this public comment period.
- On October 20, 2021, the Legislative Operating Committee accepted the public comment period review memorandum recognizing no comments were received.
- On November 3, 2021, the Legislative Operating Committee approved the final draft and legislative analysis of the Oneida General Welfare law, and directed the Finance Department to complete a fiscal analysis by November 18, 2021.
- The fiscal impact statement was received from the Finance Department on November 12, 2021.
- On December 1, 2021, the Legislative Operating Committee will consider the approval of the Oneida General Welfare law adoption packet, and forward these items on to the Oneida Business Committee for consideration of adoption.

B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of this Law:

- January 14, 2021: LOC work meeting with the Oneida Law Office, Finance Administration, Strategic Planner, and Susan House.
- January 28, 2021: LOC work meeting.
- February 9, 2021: LOC work meeting with the Oneida Law Office, Finance Administration, Trust Enrollments Director, Susan House.
- April 21, 2021: LOC work meeting.
- April 29, 2021: LOC work meeting.
- June 24, 2021: LOC work meeting.
- August 26, 2021: LOC work meeting.

C. *COVID-19 Pandemic's Effect on the Legislative Process.* The world is currently facing a pandemic of 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. A public meeting for this proposed Law will not be held due to the COVID-19 pandemic, but a public comment period for the submission of written comments will be held open.

■ *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 the COVID-19 pandemic which declared a Public Health State

of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows 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 January 23, 2022, 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, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, and BC-11-24-21-F.

- *COVID-19 Core Decision Making Team Declaration: Suspension of Public Meetings under the Legislative Procedures Act.*

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

- *Oneida Business Committee Resolution BC-08-03-21-A, Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19.*

- On August 3, 2021, the Oneida Business Committee adopted resolution BC-08-03-21-A entitled, *Setting Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, which provides that indoor and outdoor events shall be canceled when the infection rates within Brown or Outagamie Counties exceed “Low” as identified by the Wisconsin Department of Health Services. Both Brown and Outagamie Counties are experiencing “High” COVID-19 infection rates.

- *Conclusion.*

- Although a public meeting was not held on the proposed Law, a public comment period was still held open until October 13, 2021, in accordance with resolution BC-08-03-21-A and 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. No public comments were received during this public comment period.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Purpose and Policy.** The purpose of this Law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion. [10 O.C. 1001.1-1]. The federal government through the Tribal General Welfare Exclusion Act of 2014, codified at 26 U.S.C §139E and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its members under certain circumstances on a non-taxable basis. [10 O.C. 1001.1-1(a)]. It is the policy of the Nation to provide assistance to members through approved programs that promote the general welfare of the Nation which is available to any recipient who satisfies the program policies, subject to budgetary restraints; is made under an approved program that does not discriminate in favor of members of the Nation’s governing body; is not provided

as compensation for goods or services; and is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee. [10 O.C. 1001.1-2].

- **Effect.** The overall purpose of this Law is to codify the Nation's sovereign right to provide assistance to its members on a non-taxable basis, and to provide a framework for the Nation to create approved programs to do so.

B. General Welfare Assistance. The Nation has an inherent sovereign right to provide assistance to its eligible members on a non-taxable basis pursuant to the principles of General Welfare Exclusion. [10 O.C. 1001.4-1]. General Welfare Exclusion provides that any assistance shall be treated as non-taxable under federal law so long as it: satisfies the requirements for exclusion under 26 U.S.C. §139E, is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations, or meets the criteria of the General Test under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1). *Id.* The General Test provides criteria used to determine if any assistance provided through an approved program to a recipient shall be treated as a General Welfare Exclusion. [10 O.C. 1001.4-2]. The criteria of the General Test include the following: the assistance is paid on behalf of the Nation, the assistance was provided pursuant to an approved program, the assistance does not discriminate in favor of members of the governing body of the Nation, the assistance is available to any member who meets the guidelines of the approved program, the assistance is provided for the promotion of general welfare, the assistance is not lavish or extravagant, the assistance is not compensation for services, and the assistance is not a per capita payment. [10 O.C. 1001.4-2(a)-(h)]. Any assistance provided by the Nation under the General Welfare Exclusion shall occur through an approved program and qualify as non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law. [10 O.C. 1001.4-3]. Approved programs shall be established and operated 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. 1001.4-3(a)]. Furthermore, this Law shall not be construed as creating new general welfare assistance rights which are an inherent right of Nation. [10 O.C. 1001.4-4]. Rather, this Law is intended to codify existing procedures used by the Nation to administer its general welfare assistance and any assistance provided prior to the enactment of this Law is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal sovereignty. *Id.*

- **Effect.** The Law provides details on how assistance provided through approved programs will meet the principles of General Welfare Exclusion so that assistance may be non-taxable.

C. Approved Program Guidelines. This section of the Law sets forth the guidelines that approved programs of the Nation will be created under. The Law requires that an approved program be adopted by the Oneida Business Committee through either a resolution or law of the Nation. [10 O.C. 1001.5-1]. An approved program may be adopted through a resolution if the approved program will function for a limited term – a limited term means there is a defined start and end date, or the program utilizes third-party funding and is not intended to be permanent. [10 O.C. 1001.3-1(d), 1001.5-1(b)]. If the purpose of the approved program will function on a permanent basis, then the approved program is required to be adopted through a law of the Nation. [10 O.C. 1001.5-1(a)]. The Law provides what information an approved program is required to include in its adopting document, which includes: name of the approved program, purpose of the approved program, eligibility rules and limitations for the program, funding source, how the program qualifies for General Welfare Exclusion, and the start and

end date of the approved program, if applicable. [10 O.C. 1001.5-1(c)]. Any assistance intended to qualify under the General Welfare Exclusion is limited to members of the Nation only. [10 O.C. 1001.5-2]. Regarding the funding of approved programs, any assistance provided is limited to funds appropriated, at the discretion of the Oneida Business Committee and no matter the source of the funds. [10 O.C. 1001.5-3]. All amounts budgeted by the Nation for assistance shall remain general assets of the Nation until payments are disbursed. *Id.* The Oneida Business Committee is responsible for designating approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this Law. *Id.* Approved programs may also be funded through third-party funding if available. *Id.* All assistance that is provided to a recipient is required to be used for the purpose stated in the approved program description. [10 O.C. 1001.5-4]. If a recipient uses assistance in a manner that is inconsistent with the purpose of the approved program, then the payment is considered forfeited, and the Nation may secure repayment from the recipient. *Id.* The Law then clarifies that any benefit a member of the Nation receives is not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the member. [10 O.C. 1001.5-5].

- **Effect.** This section of the Law provides details on the framework for how approved programs under the Law are developed and handled.

D. Non-Recourse Designation. The Nation does not guarantee any benefits to a recipient under this Law. [10 O.C. 1001.6-1]. The Law clarifies that benefits shall not be treated as a resource or asset of a recipient for any purpose; and that no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid. *Id.* The Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit. [10 O.C. 1001.6-2]. The approved programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” and/or “economic benefit.” [10 O.C. 1001.6-3].

- **Effect.** This section clarifies that recipient is not guaranteed benefits under the Law, and that a recipient should not treat the potential benefit as a resource or an asset until that asset is actually paid out to the recipient.

E. Governing Law; Sovereignty. The Law confirms the Nation’s sovereign status by providing that the rights and liabilities associated with the enactment of this Law, or any assistance made as a result, shall be construed and enforced according to the Nation’s laws and applicable federal law. [10 O.C. 1001.7-1]. The Law, or any related laws, policies, or procedures adopted for its implementation shall not be construed to make applicable to the Nation any laws or regulations which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption because of its sovereign status. *Id.*

- **Effect.** The Nation is considered sovereign, meaning it has the authority to govern itself. This section of the Law confirms that the Nation maintains that sovereign status through the adoption of this Law, and the Nation is not subject to any laws or regulations which are otherwise inapplicable to the Nation.

F. Federal Trust Obligations. The Law provides that the Nation has the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. [10 O.C. 1001.8-1]. This does not mean that the Nation’s adoption of its approved programs is intended to relieve or diminish the federal government of its funding and trust responsibilities. *Id.*

- **Effect.** This section provides that although the Nation may provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants,

this does not negate the federal government's trust responsibilities to fund this program. This also does not affect the Nation's right to seek funding, or the right to engage in government-to-government consultations and coordination regarding these rights.

SECTION 6. EXISTING LEGISLATION

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

- *Garnishment Law.* The Garnishment law allows the Nation to exercise its authority to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt. [2 O.C. 204.1-1]. Garnishment of an individual's income to collect debt owed to an entity of the Nation is allowed under the Garnishment law. [2 O.C. 204.6].
 - Assistance provided to a member through an approved program is not subject to garnishment under the Garnishment law. [10 O.C. 1001.5-5].
- *Per Capita Law.* The Per Capita law specifies the procedure to be followed in the event that per capita payments are distributed by the Nation and states the responsibilities of the various Oneida entities in the distribution or maintenance of any such per capita payments. [1 O.C. 123.1-1]. The Per Capita law allows per capita payments to be subject to attachment prior to distribution for debt owed to an Oneida entity. [1 O.C. 123.4-9, 123.4-9(a)(2)].
 - Assistance provided through an approved program is not a per capita payment. Assistance provided to a member through an approved program is not subject to attachment under the Per Capita law. [10 O.C. 1001.5-5].

SECTION 7. OTHER CONSIDERATIONS

A. **Deadline for Permanent Adoption of Legislation.** The emergency amendments to this Law will expire on February 10, 2022. The emergency amendments to this Law were already extended for an additional six (6) month period through the adoption of resolution of BC-07-28-21-M so there is no more opportunity to extend these emergency amendments.

- *Conclusion:* The Legislative Operating Committee will need to consider the development and adoption of this Law on a permanent basis prior to February 10, 2022.

B. **Fiscal Impact.** 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.* On November 12, 2021, the Legislative Operating Committee received a fiscal impact statement for this Law from the Finance Department.

Title 10. General Welfare Exclusion - Chapter 1001
ONEIDA GENERAL WELFARE

1001.1. Purpose and Policy
1001.2. Adoption, Amendment, Repeal
1001.3. Definitions
1001.4. General Welfare Assistance
1001.5. Approved Program Guidelines

1001.6. Non-Recourse Designation
1001.7. Governing Law; Sovereignty
1001.8. Federal Trust Obligations

1001.1. Purpose and Policy

1001.1-1. *Purpose.* The purpose of this law is to govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion.

(a) The federal government through the Tribal General Welfare Exclusion Act of 2014, codified at 26 U.S.C §139E and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its members under certain circumstances on a non-taxable basis.

1001.1-2. *Policy.* It is the policy of the Nation to provide assistance to members through approved programs that promote the general welfare of the Nation. This law provides a framework for approved programs to follow to ensure compliance with the General Welfare Exclusion, 26 U.S.C. §139E, and applicable Internal Revenue Service regulations or revenue procedures including I.R.S. Rev. Proc. 2014-35. Further, it is the intent of the Oneida Business Committee that all assistance provided under this law:

- (a) is available to any recipients who satisfy the program policies, subject to budgetary restraints;
- (b) is made under an approved program that does not discriminate in favor of members of the Nation's governing body;
- (c) is not provided as compensation for goods or services; and
- (d) is not lavish or extravagant under the facts and circumstances, as determined by the Oneida Business Committee.

1001.2. Adoption, Amendment, Repeal

1001.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.

1001.2-2. 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.

1001.2-3. 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.

1001.2-4. 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.

1001.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

1001.3. Definitions

1001.3-1. 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) "Approved program" means any program(s) to provide general welfare assistance that is intended to qualify as non-taxable as a General Welfare Exclusion, administered under specific guidelines, and is adopted by the Oneida Business Committee through resolution

or law of the Nation.

(b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law. Assistance provided under an approved program shall not be considered income of the recipient.

(c) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.

(d) "Limited term" means a defined start and end date, or utilizes third-party funding and is not intended to be permanent.

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

(f) "Nation" means the Oneida Nation.

(g) "Recipient" means any member entitled to receive assistance in accordance with approved program requirements.

1001.4. General Welfare Assistance

1001.4-1. *General.* The Nation may provide general welfare assistance to eligible members on a non-taxable basis pursuant to the principles of General Welfare Exclusion. The federal government recognizes that benefits to recipients under an approved program for the promotion of the general welfare of the Nation is excludable from the gross income of those recipients. General Welfare Exclusion provides that any assistance shall be treated as non-taxable under federal law so long as it:

(a) satisfies the requirements for exclusion under 26 U.S.C. §139E;

(b) is provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations; or

(c) meets the criteria of the General Test under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1).

1001.4-2. *General Test.* The General Test provides criteria used to determine if any assistance 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:

(a) The assistance is paid on behalf of the Nation;

(b) The assistance was provided pursuant to an approved program;

(c) The assistance does not discriminate in favor of members of the governing body of the Nation;

(d) The assistance is available to any member who meets the guidelines of the approved program;

(e) The assistance is provided for the promotion of general welfare;

(f) The assistance is not lavish or extravagant;

(g) The assistance is not compensation for services; and

(h) The assistance is not a per capita payment.

1001.4-3. *Approved Programs.* Any assistance provided by the Nation under the General Welfare Exclusion shall occur through an approved program and qualify as non-taxable under the principles of the General Welfare Exclusion to the fullest extent permitted at law.

(a) An approved program shall be established and operated 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.

(b) Each approved program shall be limited to purposes consistent with treatment under the General Welfare Exclusion as to purpose, eligibility, and funding.

(d) An approved program shall meet all criteria of the General Test.

(d) Assistance provided through an approved program is not subject to information reporting by the Nation to the Internal Revenue Service.

1001.4-4. *Ratification of Prior Acts.* This law shall not be construed as creating new general welfare assistance rights which are an inherent right of Nation. Rather, this law is intended to codify existing procedures used by the Nation to administer its general welfare assistance. Assistance provided prior to the enactment of this law is hereby ratified and confirmed as general welfare assistance provided pursuant to the exercise by the Nation of its inherent tribal sovereignty.

1001.5. Approved Program Guidelines

1001.5-1. *Creation of an Approved Program.* An approved program shall be adopted by the Oneida Business Committee through a resolution or law of the Nation. Approved programs adopted by the Oneida Business Committee are considered in force and effect and in accordance with this law

(a) *Law.* An approved program shall be adopted by the Oneida Business Committee through a law if the approved program will function on a permanent basis.

(1) Adoption of an approved program by the Oneida Business Committee through a law of the Nation shall comply with the process and procedures of the Legislative Procedures Act.

(b) *Resolution.* An approved program shall be adopted by the Oneida Business Committee through a resolution if the approved program will function for a limited term.

(1) An approved program to be considered for adoption through resolution by the Oneida Business Committee shall be accompanied by a statement of effect and submitted in accordance with the Oneida Business Committee's submission procedure and deadlines.

(c) *Contents of Proposed Approved Programs.* The law or resolution establishing an approved program shall contain the following information:

(1) Name of the approved program;

(2) Purpose of the approved program;

(3) Eligibility rules and limitations for approved program;

(4) Funding source for approved program;

(5) How the approved program qualifies for General Welfare Exclusion; and

(6) Start and end date of approved program, if applicable.

1001.5-2. *Eligibility.* Assistance provided by an approved program shall be limited to members of the Nation. Each approved program shall set forth any specific eligibility rules and limitations applied to that program.

1001.5-3. *Funding of Approved Programs.* Assistance authorized by this law shall be limited to funds appropriated, at the discretion of the Oneida Business Committee and no matter the source of the funds. All amounts budgeted by the Nation for assistance shall remain general assets of the Nation until payments are disbursed. The Oneida Business Committee shall designate approved programs for which funds shall be budgeted each fiscal year, consistent with the purposes of this

law. Approved programs may also be funded through third-party funding if available.

1001.5-4. *Use of Assistance*. All assistance provided through an approved program shall be used for the purpose stated in the approved program description. If assistance is used or pledged for a purpose inconsistent with the purpose set forth in an approved program the payment shall be deemed forfeited. The Nation may secure repayment from any recipient who forfeited their assistance.

1001.5-5. *Anti-Alienation*. Assistance provided to a member through an approved program shall not be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the member.

1001.6. Non-Recourse Designation

1001.6-1. The Nation does not guarantee assistance under this law. Assistance shall not be treated as a resource or asset of a recipient for any purpose; and no recipient shall have an interest in or right to any funds budgeted for, or set aside for, approved programs until paid.

1001.6-2. The Oneida Business Committee reserves the right to cancel, adjust, modify or revoke any benefit.

1001.6-3. Approved programs shall be administered at all times to avoid triggering of the doctrines of “constructive receipt” or “economic benefit.”

1001.7. Governing Law; Sovereignty

1001.7-1. All the rights and liabilities associated with the enactment of this law, or the assistance made hereunder, shall be construed and enforced according to the Nation’s laws and applicable federal law. Nothing in this law or the related laws, policies, or procedures adopted for its implementation, if any, shall be construed to make applicable to the Nation any laws or regulations which are otherwise inapplicable to the Nation, or from which the Nation is entitled to exemption because of its sovereign status.

1001.8. Federal Trust Obligations

1001.8-1. The Nation reserves the right to provide assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation’s adoption of its approved programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation’s right to seek funding shortfalls or to enforce the trust rights of the Nation and its members. The Nation shall be entitled to government-to-government consultation and coordination with the federal government regarding these obligations.

End.

Emergency Adopted – BC-08-12-20-D

Emergency Amended – BC-02-10-21-B

Emergency Extended – BC-07-28-21-M

Adopted – BC-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: November 12, 2021

RE: **Fiscal Impact of the Oneida General Welfare Exclusion**

I. Estimated Fiscal Impact Summary

Law: Curfew Law		
Implementing Agency	Oneida Law Office Finance Administration Government Services Division	
Estimated time to comply	10 days, in compliance with the Legislative Procedures Act	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	Indeterminate	Indeterminate

II. Background

A. Legislative History

This law was adopted by the Oneida Business Committee on an emergency basis by resolution BC-08-12-20-D.

B. Summary of Content

The amendment corrects a reference to the Nation's territorial jurisdiction and deletes reference to the Nation's personal jurisdiction.

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. Executive Summary of Findings

- The Law will govern how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion Act of 2014.
- The Law will codify the Nation's sovereign right to provide assistance to its members on a non-taxable basis and to provide a framework for the Nation to create approved programs.
- Assistance shall be treated as non-taxable under federal law if it satisfies the requirements provided under a Safe Harbor Program listed and detailed in I.R.S. Rev. Proc. 2014-35 or subsequent Internal Revenue Service procedures or regulations, or meets the criteria of the General Test under the I.R.S. General Criteria of General Welfare exclusion listed in I.R.S. Rev. Proc. 2014-35, section 5.02(1).
- The criteria of the General Test include the following: the assistance is paid on behalf of the Nation, the assistance was provided pursuant to an approved program, the assistance does not discriminate in favor of members of the governing body of the Nation, the assistance is available to any member who meets the guidelines of the approved program, the assistance is provided for the promotion of general welfare, the assistance is not lavish or extravagant, the assistance is not compensation for services and the assistance is not a per capita payment.
- The Law requires that an approved program be adopted by the Oneida Business Committee through either a resolution or law of the Nation.
- Assistance provided is limited to the funds appropriated, at the discretion of the Oneida Business Committee.
- The Law is not a guarantee of any benefits.

V. Agency

There are no startup, personnel, office or documentation costs associated with this legislation. The amendments will become effective 10 days from adoption.

VI. Financial Impact

The Law has no fiscal impact. Creation of the programs under the Law will have a fiscal impact, however, until the programs have been created or identified, the fiscal impact is indeterminate. Implementation of the General Welfare Exclusion Law on an emergency resulted in approximately **\$1,707,593** being retained for tax withholdings by Oneida Nation members in Fiscal Year 2021. Ten-year fiscal impact to the Oneida Nation membership of extending the General Welfare Exclusion law on a permanent basis would result in members retaining **\$17,075,930** in tax withholdings.

VII. Recommendation

Finance Department does not make a recommendation in regard to 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
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: November 18, 2021
- 2) Contact Person(s): Shannon Davis
 Dept: GAO (BC Support Office)
 Phone Number: 920-869-4324 Email: sdavis@oneidanation.org
- 3) Agenda Title: Oneida Nation Arts Board By-law Updates
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Changes being requested are to the meeting frequency from
monthly to quarterly, adding an optional stipend payment, and
updating the order of business to which their agenda appears.

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

- 1) Redline version of by-laws
- 2) _____
- 3) _____
- 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:

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

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

If yes, please indicate why:

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

Signature of Requester:

Shannon C. Davis

Please send this form and all supporting materials to:

LOC@oneidanation.org

or

Legislative Operating Committee (LOC)

P.O. Box 365

Oneida, WI 54155

Phone 920-869-4376

ONEIDA NATION ARTS BOARD BYLAWS

Article I. Authority

- 1-1. *Name.* The name of this entity shall be the Oneida Nation Arts Board and may hereinafter be referred to as the Board.
- 1-2. *Establishment.* The Oneida Nation Arts Board was established by the Oneida Business Committee through adoption of resolution BC-8-4-93-A and expanded upon by the Oneida Nation Arts Program – Dollars for Art Project Policies law (“DAP Law”), adopted under resolution BC-09-13-00-C, as the entity delegated authority to oversee and administer the Oneida Nation Arts Program - Dollars for Arts Project.
- 1-3. *Authority.*
- (a) ~~———~~ *Purpose.* The Board was established to assist in the promotion of a ~~———~~ community that embraces art as a pathway to sovereignty, where traditional ~~———~~ and contemporary arts are woven into the fabric of everyday life and ~~———~~ embolden a sense of belonging. The Board was further established to provide advisory guidance and support to the Oneida Nation Arts Program (“ONAP”), and to oversee the Dollars for Arts Project (“DAP”) in accordance with the DAP Law, and Wisconsin Regranting Program guidelines.
 - (b) *Powers and Duties.* The powers and duties that have been delegated to the Board include, but are not limited to, the following:
 - (1) *Advisory.*
 - (A) Advise and guide an impactful Oneida Nation Arts Program; and
 - (B) Serve as a sounding board and feedback loop to the ONAP Director for matters related to the arts in the Oneida Nation.
 - (2) *Advocacy.*
 - (A) Participate in the arts through teaching, learning, sharing and outreach;
 - (B) Support artists in the community through support of and participation in programs, events, arts groups and activities; and
 - (C) Report ONAP/DAP/Board activities and impact to the Oneida Business Committee.
 - (3) *Evaluation.*
 - (A) Evaluate the ONAP by request of the ONAP Director; and
 - (B) Provide support for determining impactful measures of ONAP/DAP success.
 - (4) *Fiscal.*
 - (A) Approve policies and procedures for the overall coordination and administration of ~~regranting~~ Wisconsin Regranting Program;
 - (B) Review and evaluate regranting annually;

- (C) Allocate DAP funds annually; and
- (D) Approve Fiscal Sponsorships.
- (5) Carry out all additional powers/duties delegated to the Board through the DAP Law; Boards, Committees and Commissions law; and any other governing laws, policies, rules and/or resolutions of the Nation.

1-4. *Office.* The official mailing address of the Board shall be:
 Oneida Nation Arts Board
 P.O. Box 365
 Oneida, WI 54155

1-5. *Membership.* The members of the Board shall be its Directors and there are no members who are not directors.

- (a) *Number of Members.* The Board shall consist of seven (7) members.
- (b) *Appointed Members.* Members of the Board shall be appointed by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law for three (3) year terms.
 - (1) *Term Limits.* Members of the Board shall serve no more than three (3) consecutive three (3) year terms.
 - (2) Board members shall remain in office until:
 - (A) *End of Term.* A vacancy is effective as of 4:30 p.m. on the last day of the month in which a member's term ends.
 - (i) Although a member's term has expired, he or she shall remain in office until a successor has been sworn in by the Oneida Business Committee.
 - (B) *Resignation.* A member may resign at any time verbally during a Board meeting or by delivering written notice to the Oneida Business Committee Support Office and the Board Chairperson or Chairperson's designee. The resignation is deemed effective upon:
 - (i) Deliverance of the written notice to the Oneida Business Committee Support Office and to the Board Chairperson or Chairperson's designee; or
 - (ii) Acceptance by Board motion of the member's verbal resignation.
 - (C) *Termination.* Termination of a member's appointment shall be in accordance with the Boards, Committees and Commissions law.
- (c) *Vacancies.* Vacancies for any reason on the Board shall be filled for the remainder of the term through appointment by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law.
 - (1) The Board Chairperson shall provide the Oneida Business Committee with recommendations, by majority vote of the members in attendance at a Board meeting of an established quorum, on

applicants for appointment by the executive session in which the appointment is intended to be made.

- (d) *Qualifications.* Board members shall meet the following qualifications:
 - (1) A majority shall be enrolled members of the Oneida Nation;
 - (2) Be at least eighteen (18) years of age;
 - (3) Have an interest and/or experience in the arts, marketing, business, government or nonprofit management; and
 - (4) Shall not be an employee of the ONAP as of the date of application for Board membership.

1-6. *Termination.* Termination of a member's appointment shall be carried out by the Oneida Business Committee in accordance with the Boards, Committees and Commissions law or any other law of the Nation governing the termination of appointed officials.

- (a) The Board may make a recommendation to the Oneida Business Committee for the termination of a member's appointment based on the following:
 - (1) The member accrues three (3) unexcused absences from Board meetings within a one (1) year period; and/or
 - (A) A Board member shall be deemed unexcused if he or she fails to provide written notice of the absence to a Board Officer at least thirty (30) minutes before the start of the missed meeting.
 - (2) The member violates any section of these bylaws and/or any governing laws of the Nation.
- (b) Recommendations to the Oneida Business Committee for termination of a member's appointment shall be determined by a majority vote of the members in attendance at a Board meeting of an established quorum.

1-7. *Trainings and Conferences.* Members of the Board shall participate in mandatory Board Orientation training where they will become knowledgeable in the process of consensus decision-making and other subjects relevant to their positions.

Article II. Officers

2-1. *Officers.* The Board shall have three (3) Officers: Chairperson, Vice-Chairperson and Secretary.

2-2. *Responsibilities of the Chairperson.* The responsibilities, duties and limitations of the Chairperson shall be as follows:

- (a) With the Secretary's assistance, call meetings; develop meeting agendas; and provide notice of meeting agendas, minutes, and documents in accordance with the DAP Law, these bylaws, and the Open Records and Open Meetings law.
- (b) Preside at all meetings of the Board and facilitate orderly discussions.
- (c) Receive, review and monitor all correspondence from the Board, present to the Board and sign all correspondence approved by the Board.

- (d) Submit approved Board meeting minutes, with assistance from the Board Secretary, to the Oneida Business Committee Support Office in accordance with these bylaws and the Boards, Committees and Commissions law.
- (e) With the Secretary's assistance, submit quarterly reports to the Oneida Business Committee, as well as annual and semi-annual reports to the Oneida General Tribal Council, pursuant to the Boards, Committees and Commissions law, and submit any other reports that are required or requested by the DAP Law, Oneida Business Committee or Oneida General Tribal Council.
- (f) Attend, or designate a Board member to attend, the Oneida Business Committee meeting where the Board's quarterly report appears on the agenda.
- (g) Appoint an appeals committee to review requests for reconsideration of funding decisions in accordance with the DAP Law.
- (h) Perform any other duties assigned by a majority vote of the members in attendance at a Board meeting of an established quorum.

2-3. *Responsibilities of the Vice-Chairperson.* The responsibilities, duties and limitations of the Vice-Chairperson of the Board shall be as follows:

- (a) Except for subsection (g), perform the Chairperson's duties under section 2-2 of these bylaws in the absence of the Chairperson.
- (b) Work with the Chairperson in all matters that concern the Board.
- (c) Oversee Board recruitment, Board development and membership terms consistent with the Boards, Committees and Commissions law and the DAP Law.
- (d) Notify the Oneida Business Committee Support Office of Board vacancies in accordance with the Boards, Committees and Commissions law.
- (e) Perform other duties as assigned by a majority vote of the members in attendance at a Board meeting of an established quorum.

2-4. *Responsibilities of the Secretary.* The responsibilities, duties and limitations of the Secretary of the Board shall be as follows:

- (a) Assist the Chairperson with calling meetings (regular and emergency); developing meeting agendas; and providing notice of meeting agendas, documentation and minutes, all in accordance with the DAP Law, these bylaws, and the Open Records and Open Meetings law.
- (b) Maintain the minutes, reports and correspondence of the Board, abiding by/ to the decisions of the Board and the Boards, Committees and Commissions law.
- (c) Except for subsection (g), perform the Chairperson's duties under section 2-2 of these bylaws in the absence of the Chairperson and Vice-Chairperson.
 - (1) The Secretary's authority to call and/or preside over meetings of the Board shall be limited as follows:
 - (A) In the event that both the Chairperson and Vice-Chairperson positions become vacant before the end of their terms, the Secretary shall be allowed to call Board meetings to fill the

vacancies and preside over those meetings for the sole purpose of appointing new Officers, at which point the Chairperson, or Vice-Chairperson in the absence of the Chairperson, shall preside.

- (d) In accordance with section 2-2 of these bylaws, assist the Chairperson with submitting quarterly reports to the Oneida Business Committee; annual and semi-annual reports to the General Tribal Council; and any other reports required/requested by the DAP Law, Oneida Business Committee or Oneida General Tribal Council.
- (e) Ensure the Board meeting minutes are recorded in the proper format and approved by the Board before submitting to the Oneida Business Committee Support Office.
- (f) Assist the Chairperson with the submission of approved Board meeting minutes to the Oneida Business Committee Support Office in accordance with these bylaws and the Boards, Committees and Commissions law.
- (g) Perform other duties as assigned by majority vote of the members in attendance at a Board meeting of an established quorum.

2-5. *Selection of Officers.* The Officers shall serve terms of one (1) year and shall be nominated and appointed by majority vote of the members in attendance at a Board meeting of an established quorum that takes place prior to the beginning of the new fiscal year.

- (a) Terms of office shall run from the beginning of October through September of that same year.
- (b) No Officer shall serve for more than three (3) consecutive terms or hold more than one (1) Officer position per Officer term.
- (c) Board members may be dismissed from their Officer positions by majority vote of the members in attendance at a Board meeting of an established quorum.
- (d) In the event of a vacancy in an Officer position, a successor shall be appointed by majority vote of the members in attendance at a regular or emergency Board meeting of an established quorum for the duration of the unexpired term.

2-6. *Subcommittees & Ad Hoc Committees.* Subcommittees and/or ad hoc committees may be created or dissolved at any time by majority vote of the members in attendance at a Board meeting of an established quorum, so long as created/dissolved in accordance with the Boards, Committees and Commissions law.

- (a) Members of subcommittees and ad hoc committees shall not be eligible for stipends unless authorized by the Board and a specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

2-7. *Budgetary Sign-Off Authority and Travel.* The Board shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

- (a) Levels of budgetary sign-off authority for the Board shall be as set forth in the manual titled, *Oneida Tribe of Indians of Wisconsin Purchasing Policies and Procedures*, for Area Directors/Enterprise Directors.
 - (1) All Board Officers have sign-off authority and two (2) Officers shall be required to sign-off on all budgetary requests, except as follows:
 - (A) The Oneida Business Committee Support Office shall have sign-off authority over requests for stipends, travel per diem and business expense reimbursement.
- (b) The Board shall approve a member's request to travel on its behalf by majority vote of the members present at a regular or emergency Board meeting of an established quorum.

- 2-8. *Personnel.* The Board shall not have the authority to hire personnel for its benefit.
- (a) *Staff Designee.* The Director of the ONAP shall be the Board's Staff Designee.
 - (1) In the absence of all Board Officers, the Staff Designee shall assume the responsibilities set forth in Article II of these bylaws that relate to documenting, recording and reporting on behalf of the Board.
 - (2) ONAP staff may be used to provide administrative support, consistent with the Boards, Committees and Commissions law, to the Board when needed.

Article III. Meetings

- 3-1. *Regular Meetings.* The regular meetings of the Board shall be held ~~every second Tuesday of the month~~quarterly at the ~~Community Education Center~~Oneida Nation Arts Program Office located ~~on at 1270 Packerland~~Drive in Green Bay, WI, or via Teleconference commencing at 5:~~30-00~~ p.m.

- (a) The meeting date, time and location may be reviewed by the Board and changed from time-to-time as deemed necessary by majority vote of the members in attendance at a Board meeting of an established quorum so long as notice is provided to all members in writing and, along with the public, in accordance with the Open Records and Open Meetings law, prior to the implementation of a new date, time and/or location.
 - ~~(1) Regular meetings of the Board may not be held in June, July and December to allow for those months to be dedicated to the Board's volunteer work.~~
- (b) Prior to a scheduled meeting, notice of the meeting location, agenda, and documents shall be forwarded by the Chairperson, with the assistance of the Secretary, in accordance with the DAP Law, these bylaws, and the Open Records and Open Meetings law.
 - (1) All Board members shall be provided email notification of meeting agendas via the official Oneida Nation email address that was provided to each member to conduct business electronically on behalf of the Board ("Official Email").
 - (2) Meeting minutes shall be approved by majority vote of the members in attendance at a Board meeting of an established quorum and then

sent to all Board members, via their Official Email addresses, as well as to the Oneida Business Committee Support Office in accordance with these bylaws.

- 3-2. *Emergency Meetings.* An emergency meeting may be called to address urgent concerns that affect the existence of the Board and require action that cannot wait until the Board's next scheduled meeting.
- (a) The Board shall attempt to use other means for urgent deadline-oriented approvals, including e-polls, before calling an emergency meeting.
 - (b) An emergency meeting may be called by the Chairperson upon at least twenty-four (24) hours' advance notice to all members of the Board.
 - (1) Notice of emergency meetings shall be provided to all Board members by telephone call and via email communication sent to their Official Email address.
 - (2) Notice of emergency meetings shall further be provided to all Board members, as well as the public, in accordance with the Open Records and Open Meetings law.
 - (c) Within seventy-two (72) hours of an emergency meeting, the Board shall provide the Nation's Secretary with notice of the emergency meeting, the reason for the meeting, and an explanation as to why the matter could not wait until the next regular meeting.
- 3-3. *Joint Meetings.* There shall be no joint meetings held between the Board and the Oneida Business Committee.
- 3-4. *Quorum.* A quorum shall consist of no less than three (3) Board members, one (1) of which shall be the Chairperson, Vice-Chairperson or Secretary; provided, the Secretary is presiding over the meeting in accordance with section 2-4 (c) of these bylaws.
- 3-5. *Order of Business.* The order of business, as far as applicable, is:
- ~~(a) _____~~ ~~(a) Call to Order/Roll Call~~
 - ~~(b) _____~~ Welcome
 - ~~(c) _____~~ Approval of Agenda
 - ~~(d) _____~~ Minutes (Review & Approve)
 - (b) Old Business
 - (c) New Business
 - (d) ~~Action~~
 - ~~(e) _____~~ ~~Minutes (Review & Approve)~~
 - (f) Adjourn/Roll Call
- 3-6. *Voting.* Decisions of the Board shall be based on a majority vote of its members in attendance at a Board meeting of an established quorum.
- (a) The Chairperson shall be permitted to participate and vote in the same manner as any other member of the Board.

- (b) E-polls are permissible so long as conducted in accordance with the Boards, Committees and Commissions law.
 - (1) The Vice-Chairperson shall serve as the Chairperson's designee, responsible for conducting e-polls in the Chairperson's absence or discretion.

Article IV. Expectations

4-1. *Behavior of Members.* Members of the Board are expected to adhere to all governing laws, resolutions and policies of the Nation, including, but not limited to, the DAP Law; the Boards, Committees and Commissions law; these bylaws and as follows:

- (a) That, members of the Board are expected to agree to a Commitment to Serve and annually re-commit to their responsibilities on the Board and to the community.
- (b) That, Board members who find themselves unable to carry out the duties and responsibilities of their role and abide by expected behaviors, agree to resign their Board position to avoid enforcement under subsection (1) of this section 4-1.
 - (1) *Enforcement.* Any Board member found in violation of this section who refuses to voluntarily resign may be subject to the following if agreed upon by majority vote of the members in attendance at a Board meeting of an established quorum:
 - (A) Board recommendation to the Oneida Business Committee for termination of the member's appointment in accordance with the Boards, Committees and Commissions law or any other law of the Nation governing the termination of appointed officials.
 - (B) Disciplinary action in accordance with any law of the Nation governing sanctions and penalties for appointed officials.

4-2. *Prohibition of Violence.* Board members are prohibited from engaging in or committing any violent intentional act that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property.

4-3. *Drug and Alcohol Use.* The use and/or consumption of alcohol or prohibited drugs by Board members when acting in their official capacity is strictly forbidden.

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

- 4-4. *Social Media.* Members of the Board shall comply with the Nation's Social Media Policy and their oath of office when using social media on behalf of or as a representative of the Board.
- 4-5. *Conflict of Interest.* All members of the Board are required to adhere to the Nation's laws and policies governing conflicts of interest.
- (a) No member shall apply or accept a position of employment for the Oneida Nation Arts Program while serving as a member of the Board.

Article V. Stipends and Compensation

5-1. *Stipends.*

~~Board members are eligible for the following OPTIONAL stipends as set forth in and subject to these bylaws, the Boards, Committees and Commissions law, and resolution BC-05-08-19-B titled, Amending Resolution BC-09-26-18-D Boards, Committees and Commissions Law Stipends, as may be further amended from time-to-time hereafter:~~

~~(a) One (1) quarterly optional meeting stipend. Members of the Board serve voluntarily; thus, even if eligible, shall not be allowed to receive stipends under the Boards, Committees and Commissions law or resolution BC-05-08-19-B titled, Amending Resolution BC-09-26-18-D Boards, Committees and Commissions Law Stipends, as may be further amended from time to time hereafter.~~

- 5-2. *Compensation.* Besides the travel, per diem and business expense reimbursement authorized by the Boards, Committees and Commissions law, there are no other forms of compensation that members are eligible to receive for the duties/activities they perform on behalf of the Board.

Article VI. Records and Reporting

- 6-1. *Agenda Items.* Agenda items shall be consistently maintained in the format identified under Article III, section 3-5, of these bylaws as the *Order of Business*.

- 6-2. *Minutes.* The Board's meeting minutes shall be typed and in a consistent format created by the Oneida Business Committee Support Office to generate the most informative record, to include, but not be limited to, a summary of the action requested/taken by the Board.

- (b) Meeting minutes shall be reviewed for accuracy and then approved at the end of each meeting by a majority vote of the members present; provided, a quorum is still in existence.

- (1) The minutes shall be submitted to the Oneida Business Committee Support Office within seven (7) days of their approval.

- 6-3. *Attachments.* Handouts, reports, memoranda, and the like shall be attached to their corresponding minutes and agenda, maintained as a Board packet and filed

with the Oneida Business Committee Support Office to maintain in accordance with the Open Records and Open Meetings law.

- 6-4. *Oneida Business Committee Liaison.* The Board shall regularly communicate with the member of the Oneida Business Committee who is its designated liaison.
- (a) All official correspondence of the Board, whether produced via email or in writing (i.e. agendas, minutes, recordings, submissions, reports), shall be copied to the liaison, as well as the liaison's administrative support contact.
 - (b) The Board and liaison shall further communicate when needed, the frequency and method of which shall be as agreed upon by the Board and the liaison, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or the Oneida General Tribal Council.
- 6-5. *Audio Recordings.* All meetings of the Board shall be audio recorded using an available device, supplied by the Oneida Business Committee Support Office or the Board, that can be uploaded to digital file storage.
- (a) Audio recordings shall be submitted to the Oneida Business Committee Support Office to be maintained alongside the Board's meeting minutes in accordance with the Open Records and Open Meetings law.
 - (1) *Exception.* Audio recordings of executive session portions of a Board meeting shall not be required.

Article VII. Amendments

- 7-1. *Amendments.* Amendments to these bylaws shall be made by a majority vote of the members in attendance at a regular or emergency Board meeting of an established quorum; provided, proper notice of the proposed amendments was furnished in accordance with these bylaws at a prior regular meeting.
- (a) Any amendments to these bylaws shall conform to the requirements of the Boards, Committees and Commissions law and any other policy of the Nation.
 - (b) Amendments to these bylaws shall be approved by the Oneida Business Committee before implementation.
 - (c) These bylaws shall be reviewed no less than on an annual basis.

These By-laws, as amended and revised, are hereby approved by the Oneida Business Committee at a duly called meeting held on Month Day, Year, by the Secretary of the Oneida Business Committee's signature.

Lisa Liggins, Secretary
Oneida Business Committee

December 2021

December 2021						
Su	Mo	Tu	We	Th	Fr	Sa
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January 2022						
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30	31					

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