



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*
DATE: March 16, 2022
RE: Budget Management and Control Law Amendments: Public Comment Review
with Legislative Operating Committee Consideration

On December 15, 2021, the Legislative Operating Committee approved a public comment period for the proposed amendments to the Budget Management and Control law (“the Law”) to be held open until February 2, 2022. A public meeting for the repeal of the Law was not held due to the COVID-19 pandemic.

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, and set into place the necessary authority for action to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency has since been extended until March 24, 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, BC-11-24-21-F, and BC-01-12-22-B.

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 allowed 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.

On August 3, 2021, the Oneida Business Committee adopted resolution BC-12-08-21-B, *Updating Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, which prohibits indoor public gatherings when the following conditions cannot be met:

- When COVID-19 Case Activity rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Percent Positive rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Community Transmission Rates by ZIP Code Tabulation Area are at or below low in ZIP Codes 54155, 54301, 54302 and 54303, or the ZIP Code in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.

Due to the fact that the conditions for holding an indoor public meeting have not been met in the Nation, in accordance with resolution BC-12-08-21-B, a public meeting for the proposed amendments to the Law was not held, but a public comment period was still held open. Members of the community were provided an opportunity to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail until February 2, 2022.

The Legislative Operating Committee reviewed and considered the public comments received on February 16, 2022. This memorandum is submitted as a review of the written comments received within the public comment period.

Comment 1 – Definition of Executive Manager:

121.3. Definitions

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

(h) “Executive Manager” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee who is responsible for a department or division of the Nation, which includes, but is not limited to, the following positions within the Nation: General Manager, Gaming General Manager, Retail General Manager, Chief Legal Counsel, and Chief Financial Officer.

Lisa Liggins (written): Line 74 – the list of BC Direct Reports/Executive Managers has changed many times in the past seven (7) years. Understanding that is definition states “including, but not limited to”, I suggest, instead, the law should require a resolution to define this group of positions. This would be provide greater flexibility and clarity.

Response

The commenter suggests that in an effort to provide greater flexibility and clarity, that reference to a resolution of the Nation be included in the definition for executive manager which would define this group of positions.

Currently, resolution BC-09-23-20-A, *Setting Supervision and Management of Direct Reports to the Oneida Business Committee*, defines direct reports as the following positions: Chief Counsel, General Manager, Gaming General Manager, Retail General Manager, Business Compliance Analyst, Intergovernmental Affairs and Communications Director, Emergency Management Director, Human Resources Department Area Manager, Strategic Planner, Project Manager, Project Coordinator, Budget Analyst, Executive Assistant, and Employee Relations.

In an effort to provide better clarity as to the interpretation of this Law, the following revision is recommended:

121.3. Definitions

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

(h) “Executive Manager” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee who is responsible for a department or division of the Nation, as identified by the Oneida Business Committee through the adoption of a resolution~~which includes, but is not limited to, the following positions within the Nation: General Manager, Gaming General Manager, Retail General Manager, Chief Legal Counsel, and Chief Financial Officer.~~

Additionally, the Legislative Operating Committee may want to consider whether the term “executive manager” should be revised to the term “direct report” to be consistent with terminology used throughout the Nation in other capacities.

LOC Consideration

The Legislative Operating Committee determined that clarification on the interpretation of the term Executive Manager could be improved through the following revision to the Law:

121.3. Definitions

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

(h) “Executive Manager” means a position of employment within the Nation that is the highest level in the chain of command under the Oneida Business Committee who is responsible for a department or division of the Nation, as identified by the Oneida Business Committee through the adoption of a resolution.~~which includes, but is not limited to, the following positions within the Nation: General Manager, Gaming General Manager, Retail General Manager, Chief Legal Counsel, and Chief Financial Officer.~~

The Legislative Operating Committee also determined that a request should be made to the Oneida Business Committee to consider amending resolution BC-09-23-20-A, *Setting Supervision and Management of Direct Reports to the Oneida Business Committee*, to clarify which direct report positions are executive managers (Chief Counsel, General Manager, Gaming General Manager, Retail General Manager, Intergovernmental Affairs and Communications Director, Emergency Management Director, Human Resources Department Area Manager) and which direct report positions are professional support staff (Business Compliance Analyst, Strategic Planner, Project Manager, Project Coordinator, Budget Analyst, Executive Assistant, and Employee Relations).

Comment 2 – Definition of Finance Administration:

121.3. Definitions

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

(j) “Finance Administration” means the department of the Nation which consists of the Chief Financial Officer, Assistant Chief Financial Officer, the executive assistant to the Chief Financial Officer, and any other designated employee.

Lisa Liggins (written): Line 82 – we know from experience, especially over the last two years, that including specific positions in laws can be a hinderance when there are changes (layoffs,

budget cuts, reorganization, etc). I suggest making a more general statement about the department and its function. Or remove it entirely if my suggestion in line 189 is considered.

Response

The commenter suggests revising the definition for “Finance Administration” so that it more generally describes the function of the department instead of just the positions, since we know that positions may change, or remove the use of the term entirely.

The Finance Administration is currently defined in the proposed amendments to the Law as the department of the Nation which consists of the Chief Financial Officer (CFO), Assistant Chief Financial Officer, the executive assistant to the Chief Financial Officer, and any other designated employee. [1 O.C. 121.3-1(j)]. The Assistant Chief Financial Officer and the executive assistance to the Chief Financial Officer are both positions that are under the purview and supervision of the Chief Financial Officer. The term “CFO” is defined in the Law as the Nation’s Chief Financial Officer, or their designee at their discretion. [1 O.C. 121.3-1(e)]. Due to the fact that the term CFO already encompasses the use of a designee at the CFO’s discretion, it is recommended that the following revisions to the Law be made in order to simplify the terminology used throughout the Law:

121.3. Definitions

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

~~(j) “Finance Administration” means the department of the Nation which consists of the Chief Financial Officer, Assistant Chief Financial Officer, the executive assistant to the Chief Financial Officer, and any other designated employee.~~

121.5. Budget

121.5-4. *Budget Adoption Procedure.* The Nation shall develop and adopt its budget according to the following procedures:

- (a)(2) Each fund unit shall be responsible for complying with the budget schedule and guidelines to submit a proposed budget to the Treasurer. The ~~CFO Finance Administration~~ shall not submit any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee.

LOC Consideration

The Legislative Operating Committee determined that no revision to the Law is necessary based on this comment. The Legislative Operating Committee discussed and determined that the definition for Finance Administration is clear as to the key positions in that area, but also allows for flexibility by including “any other designated employee.”

Comment 3 – Definition for Fixed Charge Coverage Ratio:

121.3. Definitions

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

(l) “Fixed Charge Coverage Ratio” means a measurement of a creditors capacity of earnings level or ability to cover its fixed charges such as debt payments, interest expenses, and leases expenses. Financial institutions will evaluate this ratio for purposes of credit risk. The Fixed Charge Coverage Ratio is calculated by adding the earnings before interest and taxes (EBIT) to the interest expense, lease expense and other fixed charges, and then dividing that adjusted EBIT by the amount of fixed charges plus interest.

Lisa Liggins (written): Line 87 – In researching this term, there are a few variations of how this can be calculated. This appears to be a policy decision wrapped in the law. With a change in leadership or management, there could be a different approach. I suggest either a footnote or some other documentation as to how/why this particular version is being used. Or that it be removed from the law and defined by resolution so that it could be changed as needed.

Response

The commenter highlights potential issues that may arise with including the calculation for fixed charge coverage ratio in the definition for this term provided in the Law. In an effort to ensure that the Law remains flexible enough to adjust to changes in how different ratios are calculated, or changes in what is considered acceptable ranges for such ratios as determined by the Generally Accepted Accounting Principles, the following revisions to the Law are recommended:

121.3. Definitions

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

(g) “Debt Service Coverage Ratio” means a measurement of creditors available cash flow to pay debt obligations. This ratio evaluates if an entity has income capacity to service debts. ~~The Debt Service Coverage Ratio is calculated by dividing the net operating income by the total debt service costs.~~

~~(1) Net operating income is the income or cash flows that are left over after all of the operating expenses have been paid.~~

(l) “Fixed Charge Coverage Ratio” means a measurement of a creditors capacity of earnings level or ability to cover its fixed charges such as debt payments, interest expenses, and leases expenses. Financial institutions will evaluate this ratio for purposes of credit risk. ~~The Fixed Charge Coverage Ratio is calculated by adding the earnings before interest and taxes (EBIT) to the interest expense, lease expense and other fixed charges, and then dividing that adjusted EBIT by the amount of fixed charges plus interest.~~

121.8. Debts

121.8-4. *Credit Ratios.* Maintaining fiscally responsible prudent credit ratios is consistent with effective budget management and financial control.

(a) *Debt Service Coverage Ratio.* The Debt Service Coverage Ratio shall not exceed the acceptable range ~~of zero (0) to two (2)~~ as defined by Generally Accepted Accounting Principles.

(b) *Fixed Charge Coverage Ratio.* The Fixed Charge Coverage Ratio shall be maintained at a the acceptable range ~~of one and twenty five hundredths (1.25) or higher~~ as defined by Generally Accepted Accounting Principles.

(c) Calculation of Ratios and Ranges. The Treasurer, in consultation with the CFO, shall provide, and the Oneida Business Committee shall approve through the adoption of a resolution, the calculations for determining the debt service coverage ratio and the fixed charge coverage ratio for the Nation. This resolution shall also include the current acceptable range for both the debt service coverage ratio and the fixed charge coverage ratio as defined by the Generally Accepted Accounting Principles.

LOC Consideration

In an effort to ensure that the Law remains flexible enough to adjust to changes in how different ratios are calculated, or changes in what is considered acceptable ranges for such ratios as determined by the Generally Accepted Accounting Principles, the Legislative Operating Committee determined the following revisions to the Law should be made:

121.3. Definitions

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

(g) “Debt Service Coverage Ratio” means a measurement of creditors available cash flow to pay debt obligations. This ratio evaluates if an entity has income capacity to service debts. ~~The Debt Service Coverage Ratio is calculated by dividing the net operating income by the total debt service costs.~~

~~(1) Net operating income is the income or cash flows that are left over after all of the operating expenses have been paid.~~

(l) “Fixed Charge Coverage Ratio” means a measurement of a creditors capacity of earnings level or ability to cover its fixed charges such as debt payments, interest expenses, and leases expenses. Financial institutions will evaluate this ratio for purposes of credit risk. ~~The Fixed Charge Coverage Ratio is calculated by adding the earnings before interest and taxes (EBIT) to the interest expense, lease expense and other fixed charges, and then dividing that adjusted EBIT by the amount of fixed charges plus interest.~~

121.8. Debts

121.8-4. *Credit Ratios.* Maintaining fiscally responsible prudent credit ratios is consistent with effective budget management and financial control.

(a) *Debt Service Coverage Ratio.* The Debt Service Coverage Ratio shall not exceed the acceptable range ~~of zero (0) to two (2)~~ as defined by Generally Accepted Accounting Principles.

(b) *Fixed Charge Coverage Ratio.* The Fixed Charge Coverage Ratio shall be maintained at a the acceptable range ~~of one and twenty five hundredths (1.25) or higher~~ as defined by Generally Accepted Accounting Principles.

(c) Calculation of Ratios and Ranges. The Treasurer, in consultation with the CFO, shall provide, and the Oneida Business Committee shall approve through the adoption of a resolution, the calculations for determining the debt service coverage ratio and the fixed charge coverage ratio for the Nation. This resolution shall also include the current acceptable range for both the debt service coverage ratio and the fixed charge coverage ratio as defined by the Generally Accepted Accounting Principles.

Comment 4 – Deletion of Deadline from Budget Schedule and Guidelines Requirement:

121.5. Budget

121.5-4. Budget Adoption Procedure. The Nation shall develop and adopt its budget according to the following procedures:

(a) **Budget Schedule and Guidelines.** The Treasurer shall develop the necessary guidelines, including specific timelines and deadlines, to be followed by the managers that have budget responsibility in preparing and submitting proposed budgets. The Treasurer shall submit the guidelines to the Oneida Business Committee for review and approval through the adoption of a resolution.

(3) The Oneida Business Committee shall set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval.

Lisa Liggins (written): Line 184 – I’m glad to see the deadline removed from this section; it was in draft 1 from October 2021. Thank you.

Response

The commenter expresses support for removing the deadline for when the Treasurer shall develop the necessary budget schedule and guidelines that was included in a prior draft of the proposed amendments to the Law. Instead, the Law now allows for more flexibility by providing that the Oneida Business Committee shall set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval. [1 O.C. 121.5-4(a)(3)].

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

LOC Consideration

The Legislative Operating Committee appreciates the show of support for the decision to allow for more flexibility by providing that the Oneida Business Committee shall set a deadline through the adoption of a resolution for when the Treasurer shall submit their budget guidelines to the Oneida Business Committee for review and approval. [1 O.C. 121.5-4(a)(3)].

Comment 5 – Submission of Budgets by the Finance Administration:

121.5. Budget

121.5-4. (a)(2) Each fund unit shall be responsible for complying with the budget schedule and guidelines to submit a proposed budget to the Treasurer. The Finance Administration shall not submit any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee.

Lisa Liggins (written): Line 189-190 – “The Finance Administration shall not submit any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee.” I don’t believe that Finance should be submit any budgets on behalf of any fund unit, regardless of express permission from the OBC. My understanding from the budget meetings I’ve attended over the past 7 years, is that Finance is available to assist anyone that has questions, that there are resources available to the fund units. Still, Finance continues to have to enter budgets. I understand this would be a change. I suggest this line be deleted in its entirety and that there be a provision in the adopting resolution that requires notice to those areas that haven’t been submitting on their own budgets and that appropriate training be offered by Finance.

Response

The commenter provides that the Law should not allow the Finance Administration to submit a budget on behalf of a fund unit if granted express permission from the Oneida Business Committee, and instead the adopting resolution should require the Finance Administration to provide appropriate training to any fund unit that has had the Finance Administration enter their budget in the past, so that the fund unit can move forward without having to rely on the Finance Administration to enter their budget in the future.

It is the responsibility of each fund unit to comply with the budget schedule and guidelines to submit a proposed budget to the Treasurer. [1 O.C. 121.5-4(a)(2)]. Although it is not the responsibility of the Finance Administration to submit a budget on behalf of a fund unit, this is a task that the Finance Administration regularly is required to undertake to ensure the budget moves forward in accordance with the schedule and guidelines. In an effort to curb a fund unit’s use of the Finance Administration to submit a budget on their behalf, the Law was revised to prohibit the Finance Administration from submitting any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee. [1 O.C. 121.5-4(a)(2)]. The Legislative Operating Committee made the determination to allow the Oneida Business Committee to grant permission to the Finance Administration to submit a budget on behalf of a fund unit in recognition that extenuating circumstances may arise where this is necessary.

Whether to prohibit the Finance Administration from submitting any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted, so that the Finance Administration is prohibited from submitting any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee.
2. The Law should be revised so that there is no exception to the prohibition of the Finance Administration from submitting a budget on behalf of a fund unit. If the Legislative

Operating Committee makes this determination, then the following revision to the Law is recommended:

121.5. Budget

121.5-4. (a)(2) Each fund unit shall be responsible for complying with the budget schedule and guidelines to submit a proposed budget to the Treasurer. The Finance Administration shall not submit any budget on behalf of a fund unit ~~unless granted express permission from the Oneida Business Committee.~~

LOC Consideration

The Legislative Operating Committee determined that the Law should remain as currently drafted, so that the Finance Administration is prohibited from submitting any budget on behalf of a fund unit unless granted express permission from the Oneida Business Committee. Although the Legislative Operating Committee understands the comment’s statement that allowing permission to be granted by the Oneida Business Committee should be eliminated from the Law to truly address the problem and ensure that fund units seek out the necessary training and knowledge to submit budgets on their own, the Legislative Operating Committee discussed that there are always extenuating circumstances – such as death, illness, or other emergency situation – that may arise and require the assistance by the Finance Administration in submitting a budget on behalf of a fund unit. The Legislative Operating Committee discussed that especially during the time of the COVID-19 pandemic, we have to recognize the reality of extenuating circumstances occurring and ensure that our laws are prepared to allow for flexibility. The Legislative Operating Committee also discussed that requiring that the Oneida Business Committee grants the permission for the Finance Administration to submit a budget on behalf of a fund unit will ensure that the Finance Administration is only used to submit budgets when extenuating circumstances actually exist, and that is not just a situation where a fund unit lacks knowledge or understanding on how to submit a budget.

Comment 6 – Notification of Budget Decrease:

121.5. Budget

121.5-4. (b)(1) *Notification of Budget Increases.* The Treasurer shall identify in the budget guidelines a percentage of an increase in a fund unit’s budget from the prior year budget that is required to be noticed to the Oneida Business Committee. The Treasurer shall notify the Oneida Business Committee of any fund units whose proposed budget increased by this percentage.

Lisa Liggins (written): Line 200 – Should there be a notice of decrease (i.e. program ended)?

Response

The commenter questions whether the Law should require notice to the Oneida Business Committee of a decrease in a fund unit’s budget from the prior year budget of a certain percentage, since the proposed amendments to the Law will require than an increase of an identified percentage be noticed to the Oneida Business Committee.



The requirement of notification to the Oneida Business Committee of any fund units whose proposed budget increased by an identified percentage was included in the Law to ensure that the Oneida Business Committee is aware of and monitoring any fund unit's budget which increased beyond what the Treasurer had deemed a normal percentage increase for that year, which could have potential negative impacts on producing a balanced budget. This notification increases transparency between the fund units, and also provides an increase in accountability by the fund units, since they would know their increase in budget will be notified to the Oneida Business Committee.

Whether to also include the requirement that a decrease in a fund unit's budget of a specified percentage be required to be notified to the Oneida Business Committee is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted, and it is not necessary that decrease in a fund unit's budget of a specified percentage be required to be notified to the Oneida Business Committee.
2. The Law should be revised so that decrease in a fund unit's budget of a specified percentage be required to be notified to the Oneida Business Committee. If the Legislative Operating Committee makes this determination, then the following revision to the Law is recommended:

121.5-4. (b)(1) *Notification of Budget Increases or Decrease.* The Treasurer shall identify in the budget guidelines a percentage of an increase or decrease in a fund unit's budget from the prior year budget that is required to be noticed to the Oneida Business Committee. The Treasurer shall notify the Oneida Business Committee of any fund units whose proposed budget increased or decreased by this percentage.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised so that decrease in a fund unit's budget of a specified percentage be required to be notified to the Oneida Business Committee, and that the following revision to the Law should be made:

121.5-4. (b)(1) *Notification of Budget Increases or Decrease.* The Treasurer shall identify in the budget guidelines a percentage of an increase or decrease in a fund unit's budget from the prior year budget that is required to be noticed to the Oneida Business Committee. The Treasurer shall notify the Oneida Business Committee of any fund units whose proposed budget increased or decreased by this percentage.

Comment 7 – Adoption of Budget when Lacking Quorum of General Tribal Council:

121.5. Budget

121.5-4. (e) *Budget Adoption.* The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. The General Tribal Council shall be responsible for adopting the Nation's budget.

(1) Continuing Budget Resolution. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution(s) until such time as a budget is adopted by the General Tribal Council.

Lisa Liggins (written): Line 213 – There was a time, not to long ago, when we couldn't get quorum for GTC meetings. I don't see a provision for what happens if that occurs.

Response

The commenter questions what would happen if the General Tribal Council was unable to get a quorum for a meeting to adopt the Nation's budget. The General Tribal Council is responsible for adopting the Nation's budget by September 30th of each year. [1 O.C. 121.5-4(e)]. If the General Tribal Council is unable to adopt the Nation's budget by September 30th of each year - whether that is due to a lack of quorum of members of the General Tribal Council, inclement weather that results in the cancelation of a General Tribal Council meeting, lack of available meeting space, or failure by the General Tribal Council to take action on the budget during a meeting – then the Law allows the Oneida Business Committee to adopt a continuing budget resolution until such time as a budget is adopted by the General Tribal Council. [1 O.C. 121.5-4(e)(1)]. Therefore, if a lack of quorum prevents the General Tribal Council from adopting a budget by September 30th of each year, then the Oneida Business Committee may adopt a continuing budget resolution until the General Tribal Council can secure a quorum to adopt the budget.

Section 121.5-4(e)(1) of the Law adequately addresses a situation where a lack of quorum of the General Tribal Council prevents the budget from being adopted by September 30th of each year. Whether it is necessary for this Law to address the potential for a lack of quorum to disrupt the ability of the General Tribal Council to hold meetings on a long-term basis, or how long a continuing budget resolution should remain in effect is up to the discretion of the Legislative Operating Committee.

LOC Consideration

The Legislative Operating Committee determined that the Law should provide greater clarification on the use of continuing budget resolutions. The Legislative Operating Committee greatly discussed that allowing the Nation to operate under a continuing budget resolution with no restrictions on how long that continuing budget resolution can remain in effect before the budget is actually adopted is a potential audit issue that needs to be addressed. The Legislative Operating Committee determined that a continuing budget resolution should only be allowed to remain in effect for a three (3) month period, and if the General Tribal Council is unable to adopt the budget by the end of the first quarter - whether that is due to a lack of quorum of members of the General Tribal Council, inclement weather that results in the cancelation of a General Tribal Council meeting, lack of available meeting space, or failure by the General Tribal Council to take action on the budget during a meeting – then, the Oneida Business Committee should be granted the authority to adopt the Nation's budget. The Legislative Operating Committee directed that the following revision to the Law be made:

121.5. Budget

121.5-4. (e) *Budget Adoption*. The Oneida Business Committee shall present the budget to the General Tribal Council with a request for adoption by resolution no later than September 30th of each year. The General Tribal Council shall be responsible for adopting the Nation's budget.

(1) *Continuing Budget Resolution*. In the event that the General Tribal Council does not adopt a budget by September 30th, the Oneida Business Committee may adopt a continuing budget resolution **for a period of time not to exceed three (3) months,~~(s)~~** until such time as a budget is adopted by the General Tribal Council. **If the General Tribal Council does not adopt a budget within three (3) months of the adoption of the continuing budget resolution, then the Oneida Business Committee shall adopt the Nation's budget.**

Comment 8 – Procurement Manual:

121.6. Expenditures and Assets

121.6-1. *Authority to Expend Funds*. The Oneida Business Committee shall have the authority to expend appropriated funds in accordance with the Nation's adopted budget pursuant to the Procurement Manual developed by the Purchasing Department. The authority to expend funds is then necessarily delegated to other managers, including Executive Managers of the Nation who manage budgets pursuant to their job descriptions based on the Procurement Manual.

121.6-2. *Procurement Manual*. The Purchasing Department shall develop a Procurement Manual which provides the sign-off process and authorities required to expend funds on behalf of the Nation. The Procurement Manual, and any amendments thereto, shall be approved by the Oneida Business Committee through adoption of a resolution.

Lisa Liggins (written): Line 235-243 – Per the Administrative Rulemaking law, a Rule is defined as “a set of requirements enacted by an authorized agency in order to implement, interpret and/or enforce a law of the Nation...” Based on how the Procurement Manual is used now and how it's being referenced here, it is still a rule and should be treated as a such. Section 106.1-2. Of the Administrative Rulemaking law states “It is the policy of the Nation to ensure there is an efficient, effective and democratic process for enacting and revising administrative rules, and that authorized agencies act in a responsible and consistent manner when enacting and revising administrative rules.” Removing the rulemaking process, limits transparency, I wholly disagree with the change and believe this change is contrary to BC Resolution # 09-25-19-D Guidance to Implement Good Governance Principles for Conducting Public Affairs and Managing Public Resources.

Response

The commenter disagrees with the Legislative Operating Committee's decision to remove the requirement that the Purchasing Department development Procurement Manual rules in accordance with the Administrative Rulemaking law, and instead allow the Procurement Manual to be developed by the Purchasing Department and approved by the Oneida Business Committee through the adoption of a resolution.

The Budget Management and Control law was originally adopted by the Oneida Business Committee on February 8, 2017, through the adoption of resolution BC-02-08-17-C. Resolution BC-02-08-17-C also contained the directive that any rules required to be developed pursuant to the Budget Management and Control Law shall be in effect no later than October 1, 2017 – when the Budget Management and Control law was set to become effective. The Law adopted in 2017 contained two (2) delegations of rulemaking authority:

- The Community Development Planning Committee and the Development Division were delegated joint rulemaking authority to develop capital improvement rules [BC-02-08-17-C – 121.6-2]; and
- The Purchasing Department was delegated rulemaking authority to develop procurement manual rules [BC-02-08-17-C – 121.8-1].

Although it has been more than five (5) years since the Law was adopted, resolution BC-02-08-17-C’s directive that any administrative rules required by the Law be in effect no later than October 1, 2017, was never complied with. To this date, the Purchasing Department has never brought forward the Procurement Manual as rules to be adopted by the Oneida Business Committee, and the Community Development Planning Committee and the Development Division have never developed capital improvement rules to be adopted by the Oneida Business Committee.

During the development of these proposed amendments to the Law, the Legislative Operating Committee had great discussion on the use of administrative rules for the Procurement Manual, and the issue of non-compliance in regard to the development of those administrative rules up to this point in time. The Legislative Operating Committee agrees that there is great value in the administrative rulemaking process. The process contained within the Administrative Rulemaking law is very similar to the legislative process contained in the Legislative Procedures Act the Legislative Operating Committee uses to develop new laws and amendments to the laws. The Administrative Rulemaking law provides an efficient, effective, and democratic process for enacting and revising administrative rules which ensures that the authorized agencies act in a responsible and consistent manner when developing those rules. [1 O.C. 106.1-2]. The process under the Administrative Rulemaking law not only requires that the authorized agency holds a public meeting and holds open a public comment period to collect input on proposed rules, but also requires that the authorized agency fully consider all comments received during the public comment period and during any public meeting held, and then draft a memorandum containing all public comments received and the authorized agency’s response to each comment. [1 O.C. 106.6]. The administrative rulemaking process also requires that the authorized agency provide a financial analysis of the proposed rules. Although there are many benefits to the administrative rulemaking process, there are also some drawbacks. Compliance with developing rules in accordance with the Administrative Rulemaking law has been an ongoing issue. The process and requirements contained in the Administrative Rulemaking law can be cumbersome and difficult to understand for departments. Many departments also struggle with the actual drafting of their administrative rules – although they are the subject matter experts, it proves difficult for departments to transfer their knowledge and policies onto paper. Much like the legislative process, the administrative rulemaking process is rigid and time consuming, and does not allow much flexibility in changing policies efficiently absent the existence of emergency conditions.

The Legislative Operating Committee weighed the pros and cons of utilizing the administrative rulemaking process - a consistent system that ensures a greater opportunity for community input, with the necessity of allowing for policies to be flexible and change moving forward in a more efficient manner. The Legislative Operating Committee also discussed this issue with the Finance Administration during work meetings on the development of the amendments to this Law. The Finance Administration shared that currently the Procurement Manual more closely resembles a collection of standard operating procedures and contains references to outside sources such as requirements of federal law and standards from the Generally Accepted Accounting Principles (GAAP) established by the Financial Accounting Standards Board, and the Governmental Accounting Standards Board (GASB). The Finance Administration provided that due to the fact that the Procurement Manual is more technical and relies on standards and requirements from outside sources, a great period for public comment may not be an effective utilization of time or resources. The Finance Administration recommended that the Procurement Manual remain as it has been treated historically and not be required to be developed as a rule under the Administrative Rulemaking law. The Legislative Operating Committee, still wanting some opportunity for public review and discussion, as well as oversight, determined that the Procurement Manual should be a manual that is approved by the Oneida Business Committee through adoption of a resolution.

The commenter expresses concern that decision to remove the requirement that the Purchasing Department development Procurement Manual rules in accordance with the Administrative Rulemaking law may be contrary to Oneida Business Committee resolution BC-09-25-19-D, *Guidance to Implement Good Governance Principles for Conducting Public Affairs and Managing Public Resources*. Through resolution BC-09-25-19-D the Oneida Business Committee adopts the following Good Governance principles and definitions:

- **Rule of Law:** Ensuring the rules are known and applied equally to all with clear appeal (if needed) and are enforced by an impartial regulatory body, for the full protection of Oneida Nation stakeholders.
- **Transparency:** Open communication about actions taken and decisions made ensuring access to information is clear.
- **Responsiveness:** Availability to the public and timeous reaction to the needs and opinions of the public.
- **Consensus Oriented:** Consultation is required to understand diverse interests (Membership, Employee, Community) in order to reach a broad consensus of what is in the best interest of the Nation and how this can be achieved in a sustainable and prudent manner.
- **Equity and Inclusiveness:** Providing the opportunity for the Nation's stakeholders to maintain, enhance, or generally improve their well-being which provides the most compelling message regarding its reason for existence and value to the Nation.
- **Effectiveness and Efficiency:** Processes implemented by the Nation producing favorable results which meets the needs of Membership, Employees, Community, while making the best use of resources – human, technological, financial, natural and environmental.
- **Accountability:** The acknowledgement and assumption of responsibility for decisions and actions as well as the applicable rules of law.
- **Participation:** Fostering a system in which the public feels that they are part of decision-making processes, including freedom of expression and assiduous concern for the best interests of the Tribe and community in general.

The approval of the Procurement Manual through the adoption of a resolution by the Oneida Business Committee still encompasses many of the Good Governance principles. The Oneida Business Committee agenda and meeting materials are typically made available on the Nation's website for review at least three (3) business days prior to the Oneida Business Committee meeting. This provides notice that the topic will be discussed at the Oneida Business Committee meeting, and also supports transparency since there is open communication regarding the requested action to be taken and the materials to be considered. Participation by other employees or members of the community at Oneida Business Committee meetings is allowed. Members of the community may ask questions, provide input, or request considerations be made on a particular agenda topic. Responsiveness is also maintained, as departments have the opportunity to consider the input or questions that are received during the Oneida Business Committee meeting and provide responses directly back during the meeting. That being said, arguably, the process contained within the Administrative Rulemaking law does provide greater transparency, participation, and responsiveness due to the public meeting and public comment review memorandum requirement. Therefore, it may not be accurate to say the approval of the Procurement Manual through the adoption of a resolution *violates* the Good Governance principles provided in resolution BC-09-25-19-D, but instead, it may be more accurate to say the approval of the Procurement Manual through the adoption of a resolution may not be as effective at promoting the Good Governance principles provided in resolution BC-09-25-19-D as adoption of the Procurement Manual as a rule under the Administrative Rulemaking law. But again, the effectiveness of promoting the Good Governance principles of transparency, participation, and responsiveness, needs to be weighed against the necessity of promoting the Good Governance principle of effectiveness and efficiency-which may be better supported by the adoption of the Procurement Manual through a resolution.

Ultimately, whether to require the Procurement Manual to be adopted as a rule developed in accordance with the Administrative Rulemaking law, or as a manual that is approved through the adoption of a resolution is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted, so that the Purchasing Department develops a Procurement Manual which provides the sign-off process and authorities required to expend funds on behalf of the Nation, that is approved by the Oneida Business Committee through adoption of a resolution.
2. The Law should be revised so that the Purchasing Department develops a Procurement Manual which provides the sign-off process and authorities required to expend funds on behalf of the Nation, that is developed as a rule in accordance with the Administrative Rulemaking law. If the Legislative Operating Committee makes this determination, then the following revision to the Law is recommended:

121.6. Expenditures and Assets

121.6-1. *Authority to Expend Funds.* The Oneida Business Committee shall have the authority to expend appropriated funds in accordance with the Nation's adopted budget pursuant to the Procurement [Manual Rule Handbook](#) developed by the Purchasing Department. The authority to expend funds is then necessarily delegated to other managers, including Executive Managers of the Nation who manage budgets pursuant to their job descriptions based on the Procurement [Manual Rule Handbook](#) .

121.6-2. *Procurement ~~Manual~~ Rule Handbook*. The Purchasing Department ~~shall~~ is delegated rulemaking authority to in accordance with the Administrative Rulemaking law to develop a Procurement ~~Manual~~ Rule Handbook which provides the sign-off process and authorities required to expend funds on behalf of the Nation. ~~The Procurement, and any amendments thereto, shall be approved by the Oneida Business Committee through adoption of a resolution.~~

LOC Consideration

The Legislative Operating Committee once again held great discussion on whether to require the Procurement Manual to be adopted as a rule developed in accordance with the Administrative Rulemaking law, or as a manual that is approved through the adoption of a resolution. The effectiveness of promoting the Good Governance principles of transparency, participation, and responsiveness, was weighed against the necessity of promoting the Good Governance principle of effectiveness and efficiency. Ultimately, the Legislative Operating Committee determined that the proposed amendments to the Law should be revised – so that remains as currently effective and once again requires that the Purchasing Department develops a Procurement Manual which provides the sign-off process and authorities required to expend funds on behalf of the Nation, that is developed as a rule in accordance with the Administrative Rulemaking law. The Legislative Operating Committee directed that the following revision to the Law be made:

121.6. Expenditures and Assets

121.6-1. *Authority to Expend Funds*. The Oneida Business Committee shall have the authority to expend appropriated funds in accordance with the Nation’s adopted budget pursuant to the Procurement ~~Manual~~ Rule Handbook developed by the Purchasing Department. The authority to expend funds is then necessarily delegated to other managers, including Executive Managers of the Nation who manage budgets pursuant to their job descriptions based on the Procurement ~~Manual~~ Rule Handbook .

121.6-2. *Procurement ~~Manual~~ Rule Handbook*. The Purchasing Department ~~shall~~ is delegated rulemaking authority in accordance with the Administrative Rulemaking law to develop a Procurement ~~Manual~~ Rule Handbook which provides the sign-off process and authorities required to expend funds on behalf of the Nation. ~~The Procurement, and any amendments thereto, shall be approved by the Oneida Business Committee through adoption of a resolution.~~

Comment 9 – Fees and Charges:

121.6. Expenditures and Assets

121.6-3. *Fees and Charges*. A program or service of the Nation funded through Tribal contribution may charge fees for their services to cover operational costs.

(a) Before charging fees for services, a program or service shall first determine the full cost of providing the program or service. The full cost of providing a program or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation.

(b) Fees and charges may cover the full cost of service or goods whenever such fee or charge would not present an undue financial burden to the recipient.

(c) Programs and services charging fees may offer fee waivers, provided that the program or service has developed a standard operating procedure which outlines fee waiver eligibility and requirements.

Lisa Liggins (written): Line 244 – This section could be interpreted that it’s an “all or nothing” approach to fees and charges. Either charge the “full cost” as defined in the is section, or offer fee waivers – no middle ground.

Response

The commenter provides that the way the section on fees and charges is drafted could lead to the interpretation that a program or service is only allowed to charge either the full cost of providing the service or program, or no cost by providing fee waivers.

To eliminate any potential confusion in the interpretation of this section of the Law the following revision is recommended:

121.6. Expenditures and Assets

121.6-3. *Fees and Charges.* A program or service of the Nation funded through Tribal contribution may charge fees for their services to cover operational costs.

(a) Before charging fees for services, a program or service shall first determine the full cost of providing the program or service. The full cost of providing a program or service includes all costs including operation costs, overhead such as direct and indirect costs, and depreciation.

(b) Fees and charges may **be issued to** cover **up to** the full cost of service or goods whenever such fee or charge would not present an undue financial burden to the recipient.

(c) Programs and services charging fees may offer fee waivers, provided that the program or service has developed a standard operating procedure which outlines fee waiver eligibility and requirements.

LOC Consideration

The Legislative Operating Committee disagreed that this section of the Law needed clarification and determined that no revision to the Law is necessary based on this comment.

Comment 10 – Obligated Future Expenditures:

121.6. Expenditures and Assets

121.6-5. *Obligated Future Expenditures.* No fund unit shall obligate the Nation to make any future expenditures beyond the current budget year unless the fund unit identifies, and the Oneida Business Committee approves through the adoption of a resolution, the source and extent of any future funds that are recommended to be held in reserve to meet that future obligation.

Lisa Liggins (written): Line 267 – As written, it appears that an entity, such as the DTS, can’t enter into a long-term contract for technical support because they would be obligating future

expenditures. I don't think this is the intent, but if so, who will be responsible to keep track and list all those contracts in the resolution? I assume this isn't the intent and suggest it be clarified.

Response

The commenter questions the clarity of the intent of section 121.6-5 of the Law regarding obligated future expenditures. This provision of the Law provides that no fund unit shall obligate the Nation to make any future expenditures beyond the current budget year unless the fund unit identifies, and the Oneida Business Committee approves through the adoption of a resolution, the source and extent of any future funds that are recommended to be held in reserve to meet that future obligation. [1 O.C. 121.6-5].

When developing this provision of the Law, the Legislative Operating Committee collaborated with the Finance Administration and focused much of its discussion on large obligated future expenditures such as multi-year land acquisitions. The intent of this provision of the Law could be clarified. It is recommended that the Legislative Operating Committee work with the Finance Administration to clarify this provision of the Law so that its intent and applicability will be clear to the reader.

LOC Consideration

The Legislative Operating Committee agreed that this provision of the Law needed needs clarification, and directed the drafting attorney to meet with the Finance Administration to address this issue.

Comment 11 – Definition for Government Services and Enterprises:

121.6. Expenditures and Assets

121.6-9. Capital Improvements.

(a) Capital Improvement Plan for Government Services. The Oneida Business Committee shall develop, and the General Tribal Council shall approve, a capital improvement plan for government services.

(b) Capital Improvement Plan for Enterprises. Capital improvement plans for enterprises may be brought forward as needed, provided that the Oneida Business Committee shall approve all capital improvement plans for enterprises.

Lisa Liggins (written): Line 288 and 297 – “government services” and “enterprises” should be defined.

Response

The commenter requests that a definition for both “government services” and “enterprises” be included in the Law.

It is recommended that the Law be revised to include the following definitions:

121.3. Definitions

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

(h) "Enterprise" means any area or activity of the Nation that is engaged in for the business of profit.

(o) "Government service" means any area or activity of the Nation that is not expected to create revenue for the Nation and not expected to make a profit at any time.

LOC Consideration

The Legislative Operating Committee determined that in an effort to provide greater clarification the Law should be revised to include the following definitions:

121.3. Definitions

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

(h) "Enterprise" means any area or activity of the Nation that is engaged in for the business of profit.

(o) "Government service" means any area or activity of the Nation that is not expected to create revenue for the Nation and not expected to make a profit at any time.

Comment 12 – Unbudgeted Positions:

121.9. Employment and Labor Allocations

121.9-3. *Unbudgeted Positions.* Any position which has not been specifically budgeted for and included in the labor allocation list shall be prohibited. Budgeted labor dollars and approved positions shall not be transferrable in any form.

(a) *Exception.* The Oneida Business Committee may authorize an unbudgeted position for a fund unit.

Lisa Liggins (written): Line 390 – not clear if a new fully grant funded position would be allowable. It should be?

Response

The commenter questions whether the prohibition of unbudgeted positions that have not been provided for in the labor allocations list provided for in section 121.9-3 of the Law applies to fully grant funded positions, and states that it should not apply to fully grant funded positions.

As written, any position, including a fully grant funded position, which has not been specifically budgeted for and included in the Nation's labor allocation list shall be prohibited. [1 O.C. 121.9-3]. The Law does provide an exception to this prohibition. The Law allows the Oneida Business Committee to authorize an unbudgeted position which has not been identified in the Nation's labor allocation list for a fund unit. Therefore, a fund unit may seek authorization from the Oneida Business Committee for an unbudgeted fully granted funded position.

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

LOC Consideration

The Legislative Operating Committee agrees that the Law would allow the Oneida Business Committee to authorize an unbudgeted position which has not been identified in the Nation's labor allocation list for a fund unit, so a fund unit may seek authorization from the Oneida Business Committee for an unbudgeted fully granted funded position. Therefore, no revision to the Law is necessary based on this comment.

Comment 13 – Notification of Law of Compliance to the General Tribal Council:

121.12. Enforcement

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

(a) The Executive Managers shall notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines. A list of all fund units which did not comply with the budget schedule or guidelines shall be included in the annual report to the General Tribal Council.

Lisa Liggins (written): Line 468 – reporting this list doesn't have anything to do with enforcement and it should be deleted. This should be a personnel issue for the Executive Managers to handle. If the concern is that someone dropped the ball and a service wasn't included that should have been, then reporting the offender to GTC doesn't correct the situation. Another action may be needed here to get to the correction desired.

Response

The commenter requests that the provision requiring the executive managers to notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines, so that a list of those fund units can be included in the annual report to the General Tribal Council be removed from the Law as this does not enhance enforcement of the Law and should be a personnel issue handled by the executive managers.

The Legislative Operating Committee included the provision which requires the executive managers to notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines so that a list of those fund units can be included in the annual report to the General Tribal Council in an effort to increase accountability – not only accountability for compliance by the fund units, but also accountability by the executive managers to ensure they are properly enforcing the Law.

Whether to also include the requirement that the executive managers to notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines so that a list of those fund units can be included in the annual report to the General Tribal Council is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted, and it be required that the executive managers notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines so that a list of those fund units can be included in the annual report to the General Tribal Council
2. The Law should be revised so that the provision requiring the executive managers to notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines so that a list of those fund units can be included in the annual report to the General Tribal Council is removed from the Law. If the Legislative Operating Committee makes this determination, then the following revision to the Law is recommended:

121.12. Enforcement

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

- (a) The Executive Managers shall notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines. ~~A list of all fund units which did not comply with the budget schedule or guidelines shall be included in the annual report to the General Tribal Council.~~

LOC Consideration

The Legislative Operating Committee determined that greater clarification needed to be added to the compliance and enforcement section of the Law. The Legislative Operating Committee determined that the provision which requires the executive managers to notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines should remain in the Law, but that it needs to be clarified that only a list of those fund units of an elected entity should be included in the annual report to the General Tribal Council. The Legislative Operating Committee determined that only a list of non-compliant fund units of elected entities needs to be shared with the General Tribal Council because ultimately it is the General Tribal Council that elects those entities.

121.12. Enforcement

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

- (a) The Executive Managers shall notify the Oneida Business Committee of any fund unit which does not comply with the budget schedule or guidelines. A list of ~~all~~ **any** fund units **of an elected entity** which did not comply with the budget schedule or guidelines shall be included in the annual report to the General Tribal Council.