



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
December 21, 2022
9:00 a.m.

- I. Call to Order and Approval of the Agenda**

- II. Minutes to be Approved**
 - 1. December 7, 2022 LOC Meeting Minutes (pg. 2)

- III. Current Business**
 - 1. Drug and Alcohol Free Workplace Law Amendments (pg. 5)
 - 2. Election Law Emergency Amendments (pg. 21)

- IV. New Submissions**
 - 1. Two-Spirit Inclusion Law (pg. 61)

- 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
December 7, 2022
9:00 a.m.

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

Others Present: Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Brooke Doxtator, Rhiannon Metoxen (Microsoft Teams), Kristal Hill (Microsoft Teams), Kaylynn Gresham (Microsoft Teams), Rae Skenandore (Microsoft Teams), Eric Boulanger (Microsoft Teams), Matt Denny (Microsoft Teams), Barbara Webster (Microsoft Teams), Diane Wilson (Microsoft Teams), Jennifer Berg-Hargrove (Microsoft Teams), Jonas Hill (Microsoft Teams), Mark Powless (Microsoft Teams), Nicole Rommel (Microsoft Teams), Peggy Van Gheem (Microsoft Teams), Racquel Hill (Microsoft Teams), Joy Salzwedel (Microsoft Teams)

I. Call to Order and Approval of the Agenda

David P. Jordan called the December 7, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Cornelius to adopt the agenda as is; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be Approved

1. November 2, 2022 LOC Meeting Minutes

Motion by Marie Cornelius to approve the November 2, 2022, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Drug and Alcohol Free Workplace Law Amendments

Motion by Jennifer Webster to approve the draft of the Drug and Alcohol Free Workplace law amendments and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.

2. Oneida Personnel Policies and Procedures Amendments

Motion by Jennifer Webster to approve the draft of the Oneida Personnel Policies and Procedures amendments, the legislative analysis, and the public meeting notice with updated date, and forward the Oneida Personnel Policies and Procedures amendments to a



public meeting to be held on January 12, 2023; seconded by Daniel Guzman King. Motion carried unanimously.

IV. New Submissions

1. Emergency Gift Card Law

Motion by Jennifer Webster to add the Emergency Gift Card law to the Active Files List with Marie Cornelius as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

2. Audit Committee Bylaws Amendments

Motion by Kirby Metoxen to add the Audit Committee bylaws amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster to approve the Audit Committee bylaws amendments and legislative analysis and forward to the Audit Committee for approval; seconded by Kirby Metoxen. Motion carried unanimously.

3. Election Law Emergency Amendments

Motion by Jennifer Webster to add the Election law emergency amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

4. Amendments to Address the Dissolution of ERB and Transition of Responsibilities

Motion by Jennifer Webster to add the Cemetery law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the Domestic Animals law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the Tribal Environmental Response law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the Well Abandonment law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the All Terrain Vehicle law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the Tribal Environmental Quality Review law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the Hunting, Fishing, and Trapping law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the On-Site Waste Disposal law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the Water Resources law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

Motion by Jennifer Webster to add the Public Use of Tribal Land law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Marie Cornelius. Kirby Metoxen abstained. Motion carried.

5. Petition: M. Cornelius – Chief Financial Officer Position

Motion Marie Cornelius to add the Petition: M. Cornelius – Chief Financial Officer Position to the Active Files List with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

6. Petition: N. Barton – \$2,500 GWA Payment for Three (3) Years

Motion Marie Cornelius to add the Petition: N. Barton – \$2,500 GWA Payment for Three (3) Years to the Active Files List with Marie Cornelius as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

V. Additions

VI. Administrative Items

1. E-Poll Results: Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures

Motion by Marie Cornelius to enter into the record the results of the November 3, 2022, e-poll entitled, Extension of the Emergency Amendments to the Oneida Personnel Policies and Procedures; seconded by Jennifer Webster. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Daniel Guzman King to adjourn at 9:31 a.m.; seconded by Marie Cornelius. Motion carried unanimously.



Legislative Operating Committee
December 21, 2022

Drug and Alcohol Free Workplace Law Amendments

Submission Date: 9/7/22	Public Meeting: N/A
LOC Sponsor: Kirby Metoxen	Emergency Enacted: N/A

Summary: *On August 30, 2022, the Legislative Operating Committee received a request from the Human Resources Department to add the Drug and Alcohol Free Workplace law amendments to its Active Files List. It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. HRD indicated that with the Benton – Pre-Employment Drug Testing petition currently pending – which requests to remove or lower THC from the pre-employment drug testing requirements - they were directed by the Oneida Business Committee to work with the Oneida Law Office on potential proposed language to address this petition. HRD is requesting that the LOC now add this legislative item to the Active Files List so that the HRD can collaborate with the LOC on the consideration of potential amendments moving forward. The Legislative Operating Committee added this item to its Active Files List on September 7, 2022.*

9/7/22 LOC: Motion by Marie Summers to add the Drug and Alcohol Free Workplace law amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

10/31/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Carl Artman, Peggy Van Gheem, Todd Vandenheuvell, Matt Denny, Nic Reynolds, Josh Cottrell, Wendy Alvarez, Louise Cornelius, Lucy Neville, Brenda Mendolla-Buckley, Fawn Rasmussen, Kristal Hill, Rhiannon Metoxen. The purpose of this work meeting is to begin the consideration of potential amendments to the Drug and Alcohol Free Workplace law by reviewing and discussing the options for amendments provided by the Oneida Law Office.

11/15/22: *Work Meeting.* Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Carl Artman, Peggy Van Gheem, Todd Vandenheuvell, Matt Denny, Nic Reynolds, Josh Cottrell, Wendy Alvarez, Lucy Neville, Lorna Skenandore, Chad Fuss, Fawn Rasmussen, Mary Cornelissen, Kristal Hill. The purpose of this work meeting was to continue the consideration of potential amendments to the Drug and Alcohol Free Workplace law by deciding on an option for amendments provided by the Oneida Law Office.

12/1/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Cornelius, Daniel Guzman King, Clorissa N. Leeman, Grace Elliott, Carolyn Salutz, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the updated proposed language for the amendments, as well as the Waiver of Exemption of Positive THC Test Results for Pre-Employment Drug Testing resolution.

12/7/2 LOC: Motion by Jennifer Webster to approve the draft of the Drug and Alcohol Free Workplace law amendments and direct that a legislative analysis be completed; seconded by Daniel Guzman King. Motion carried unanimously.

Next Steps:

- Approve the legislative analysis of the Drug and Alcohol Free Workplace law amendments.



DRUG AND ALCOHOL FREE WORKPLACE LAW AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"> ▪ Provide that an external applicant’s confirmed positive THC test result shall be exempted from the requirement of a negative drug test result for pre-employment eligibility in certain circumstances. [2 O.C. 202.8-4(a)]. <ul style="list-style-type: none"> ▪ For Gaming positions, an external applicant receiving a confirmed positive test result for THC may qualify for employment if the position mandates a background check in accordance with 5 O.C. 501.10; the position mandates licensing in accordance with 5 O.C. 501.11; and the position does not require a commercial driver’s license or job-related driving. [2 O.C. 202.8-4(a)(1)]. ▪ For Non-Gaming positions, an external applicant receiving a confirmed positive test result for THC may qualify for employment if the position has not been identified as an employee position which waived the exemption for positive THC test results. [2 O.C. 202.8-4(a)(2)]. ▪ Require the Oneida Business Committee to adopt through resolution a list of all the non-gaming employment positions that waive the exemption for positive THC test results. [2 O.C. 202.8-4(a)(2)(A)].
Purpose	The purpose of this law is to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. [2 O.C. 202.1-2].
Affected Entities	Human Resources Department, Oneida Nation employees.
Public Meeting	A public meeting has not yet been held.
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A. Background.** The Drug and Alcohol Free Workplace law was adopted by the Oneida Business
- 3 Committee in 1994 through resolution BC-10-25-95-A and then amended through resolutions BC-10-
- 4 20-99-A, BC-12-05-07-B, BC-12-11-13-F, and BC-04-12-17-C. The purpose of the Drug and Alcohol
- 5 Free Workplace law is to establish a drug and alcohol-free workplace program that balances respect for
- 6 individuals with the need to maintain an alcohol and drug-free environment. [2 O.C. 202.1-2].
- 7 **B. Request for Amendments.** On August 30, 2022, the Legislative Operating Committee received a
- 8 request from the Human Resources Department to add the Drug and Alcohol Free Workplace law
- 9 amendments to its Active Files List. The Human Resources Department indicated that with the *Benton*
- 10 – *Pre-Employment Drug Testing* petition currently pending – which requests to remove THC from the
- 11 pre-employment drug testing requirements, they were directed by the Oneida Business Committee to
- 12 work with the Oneida Law Office on potential proposed language to address this petition. The
- 13 Legislative Operating Committee added this item to its Active Files List on September 7, 2022.
- 14

15 **SECTION 3. CONSULTATION AND OUTREACH**

- 16 A. Representatives from the following departments or entities participated in the development of the
17 amendments to the Law and this legislative analysis:
- 18 ▪ Oneida Law Office;
 - 19 ▪ Human Resources Department;
 - 20 ▪ Gaming; and
 - 21 ▪ Employee Health Nursing.
- 22 B. The following laws were reviewed in the drafting of this analysis:
- 23 ▪ Drug and Alcohol Free Workplace law;
 - 24 ▪ Oneida Personnel Policies and Procedures.
- 25

26 **SECTION 4. PROCESS**

- 27 A. The development of the proposed amendments to the Drug and Alcohol Free Workplace law complies
28 with the process set forth in the Legislative Procedures Act (LPA).
- 29 ▪ On September 7, 2022, the Legislative Operating Committee added the Law to its Active Files
30 List.
 - 31 ▪ On December 7, 2022, the Legislative Operating Committee approved the draft of the proposed
32 amendments to the Law and directed that a legislative analysis be developed.
- 33 B. At the time this legislative analysis was developed the following work meetings had been held
34 regarding the development of the amendments to this Law:
- 35 ▪ October 31, 2022: LOC work meeting with the Oneida Law Office, Human Resources
36 Department, and Gaming.
 - 37 ▪ November 15, 2022: LOC work meeting with the Oneida Law Office, Human Resources
38 Department, and Gaming.
 - 39 ▪ December 1, 2022: LOC work session.
- 40

41 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 42 A. *Pre-Employment Drug Testing.* Currently, the Law provides that each employee, as a condition of
43 employment, shall participate in pre-employment, reasonable suspicion, and follow-up testing upon the
44 request of an appropriate authority, and that a negative test result is required for employment eligibility.
45 The proposed amendments focus specifically on pre-employment drug testing and how positive THC
46 test results are address by the Nation. The proposed amendments to the Law require that all external
47 applicants participate in pre-employment drug testing, and that a negative drug test result shall be
48 required for employment eligibility. [2 O.C. 202.8-4]. The Law then further provides that an external
49 applicant’s confirmed positive THC test result shall be exempted from the requirement of a negative
50 drug test result for employment eligibility in certain circumstances. [2 O.C. 202.8-4(a)]. For Gaming
51 positions, an external applicant receiving a confirmed positive test result for THC may qualify for
52 employment if the position mandates a background check in accordance with 5 O.C. 501.10; the
53 position mandates licensing in accordance with 5 O.C. 501.11; and the position does not require a
54 commercial driver’s license or job-related driving. [2 O.C. 202.8-4(a)(1)]. For Non-Gaming positions,
55 an external applicant receiving a confirmed positive test result for THC may qualify for employment if
56 the position has not been identified as an employee position which waived the exemption for positive
57 THC test results. [2 O.C. 202.8-4(a)(2)]. The Law then requires the Oneida Business Committee to

58 adopt through resolution a list of all the non-gaming employment positions that waive the exemption
59 for positive THC test results. [2 O.C. 202.8-4(a)(2)(A)]. The Law then maintains the requirement that
60 each employee shall participate in reasonable suspicion and follow-up testing upon the request of an
61 appropriate authority, and that a negative test result is required for unimpeded employment eligibility.
62 [2 O.C. 202.8-5].

- 63 ■ *Effect.* The proposed amendments to the Law allow an individual who is seeking employment with
64 the Nation to still be eligible to be hired if the individual tests positive for THC in most situations,
65 unless the position the individual is seeking is in an area that has waived this exemption for positive
66 THC test results.

68 SECTION 6. EXISTING LEGISLATION

69 A. *Related Legislation.* The following laws of the Nation are related to the proposed amendments to the
70 Law:

- 71 ■ *Oneida Personnel Policies and Procedures.* The purpose of the Oneida Personnel Policies and
72 Procedures is to provide for the Nation’s employee related policies and procedures including
73 recruitment, selection, compensation and benefits, employee relations, safety and health, program
74 and enterprise rules and regulations, and record keeping.
 - 75 ■ Section V.D.3 of the Oneida Personnel Policies and Procedures provides that the Drug
76 and Alcohol Free Workplace Policy shall govern disciplinary actions warranting
77 termination for drug and alcohol related violations.

79 SECTION 7. OTHER CONSIDERATIONS

80 A. *Waiver of Exemption of Positive THC Test Results for Pre-Employment Drug Testing.* The proposed
81 amendments to the Law require the Oneida Business Committee to adopt through resolution a list of
82 all the non-gaming employment positions that waive the exemption for positive THC test results. [2
83 O.C. 202.8-4(a)(2)(A)]. The Legislative Operating Committee has begun collaborating on the
84 development of this resolution with the Human Resources Department and the Oneida Law Office.
85 Thus far, the language included in the proposed resolution provides that the following non-gaming
86 employment positions waive the exemption for positive THC test results: any position which requires
87 a commercial driver’s license or where driving is a primary function or responsibility of the employee
88 position; any position within Oneida Comprehensive Health Division; any position within the Oneida
89 Police Department; and any position which requires regular contact with or control over children. This
90 means that the above-mentioned positions do not allow a positive THC test result for pre-employment
91 eligibility.

- 92 ■ *Conclusion.* The Legislative Operating Committee will need to prepare this resolution to be
93 presented to the Oneida Business Committee for consideration of adoption when the proposed
94 amendments are presented to the Oneida Business Committee.

95 B. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all
96 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-
97 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*
98 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete
99 a fiscal impact statement at various stages of the legislative process, as well as timeframes for
100 completing the fiscal impact statement.

- 101 ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact
102 statement be completed.
103

Title 2. Employment – Chapter 202
DRUG AND ALCOHOL FREE WORKPLACE

202.1. Purpose and Policy
202.2. Adoption, Amendment, Repeal
202.3. Definitions
202.4. Application
202.5. Shared Responsibility
202.6. Prohibited Behavior
202.7. Reasonable Suspicion
202.8. Drug and Alcohol Testing

202.9. Refusal to Test
202.10. Reasonable Suspicion Testing Waiting Period
202.11. Consequences for Prohibited Behavior
202.12. Re-hire
202.13. Other Potential Consequences
202.14. Confidentiality
202.15. Communication

202.1. Purpose and Policy

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

202.2. Adoption, Amendment, Repeal

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by resolutions BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F-~~and~~, BC-04-12-17-C, and BC- - - - -.

202.2-2. 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.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

202.3. Definitions

202.3-1. 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) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(c) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

- 38 (d) “EHN” means the Oneida Employee Health Nursing Department.
- 39 (e) “Employee” means any individual who is employed by the Nation and is subject to the
- 40 direction and control of the Nation with respect to the material details of the work performed,
- 41 or who has the status of an employee under the usual common law rules applicable to
- 42 determining the employer-employee relationship. “Employee” includes, but is not limited
- 43 to; an individual employed by any program or enterprise of the Nation, but does not include
- 44 elected or appointed officials, or individuals employed by a Tribally Chartered Corporation.
- 45 For purposes of this law, individuals employed under an employment contract as a limited
- 46 term employee are employees of the Nation, not consultants.
- 47 (f) “External applicant” means a person who is applying for a position and not currently
- 48 employed by the Nation.
- 49 (g) “HRD” means the Human Resources Department and/or representatives performing
- 50 Human Resources functions applicable to this law.
- 51 (h) “Internal applicant” means a person who is applying for a position who is currently
- 52 employed by the Nation, this includes those employed under a temporary status.
- 53 (i) “MRO” means Medical Review Officer who is a licensed physician who is responsible
- 54 for receiving and reviewing laboratory test results generated by an employer’s drug testing
- 55 program and evaluating medical explanations for certain drug test results.
- 56 (j) “Nation” means the Oneida Nation.
- 57 (k) “NHTSA” means the National Highway Traffic Safety Administration.
- 58 (l) “ONEAP” means the Oneida Nation Employee Assistance Program which is a
- 59 professional counseling program staffed by clinical social workers licensed by the State of
- 60 Wisconsin which offers services to the Nation’s employees and family members.
- 61 (m) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine
- 62 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance
- 63 included in Schedules I through V, as defined by Section 812 of Title 21 of the United States
- 64 Code. This also includes prescription medication or over-the-counter medicine used in an
- 65 unauthorized or unlawful manner.
- 66 (n) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor
- 67 and signed by the employee and the ONEAP counselor, and the referring supervisor, which
- 68 sets out the actions the employee needs to complete in order to return to work and remain
- 69 employed.
- 70 (o) “SAMHSA” means the United States Department of Health and Human Services,
- 71 Substance Abuse and Mental Health Services Administration.
- 72 (p) “Supervisor” means the immediate supervisor, or person who has taken on the role of
- 73 supervisor due to an absence that is responsible for performance review, corrective action,
- 74 and day-to-day assignments of duties.
- 75 (q) “Work-related accident” means an unexpected event involving an employee that occurs
- 76 in the employee’s working environment or during an activity related to work, that:
- 77 (1) results in an injury to the employee or another person that may require medical
- 78 intervention by a police officer or emergency medical technician, or treatment at a
- 79 medical facility,
- 80 (2) results in death of the employee or another person, or
- 81 (3) involves any property damage.
- 82

202.4. Application

202.4-1. This law applies to all applicants for employment, whether external or internal, and all employees during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-3. An employee is prohibited from the use of intoxicants while on official business travel while the conference or meeting is in session.

202.4-4. An employee is not exempted from this law if they travel to another state, territory or country where the use of certain drugs is legal.

94

202.5. Shared Responsibility

202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and an employee.

202.5-2. *Employee*. It is the employee's responsibility to:

(a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.

(b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.

(c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.

(d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.

(e) Cooperate with the requests made by EHN and the MRO. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. An employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.

(f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate authority.

(g) Provide the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN.

202.5-3. *Supervisor*. It is the supervisor's responsibility to:

(a) Be familiar with this law and any related policies and procedures.

(b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.

(c) Promptly intervene with an employee who is believed to be under the influence of prohibited drugs and/or alcohol.

(d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.

(e) Send the employee through the contracted transportation service for reasonable suspicion drug and alcohol testing.

127

- 128 (f) Take appropriate action as outlined by this law.
129 (g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor
130 that was developed by ONEAP.
131 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
132 employee to EHN.

133 202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the
134 responsibilities of the supervisor or employee under this law may be subject to disciplinary action
135 or other consequences as explained in section 202.13.

136 202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or alcohol
137 may result in continued impairment during on-duty hours, which shall then constitute a violation of
138 this law. It is the employee's responsibility to understand the consequences of off-duty use, and take
139 steps to avoid the possibility of on-duty impairment. An employee who is called in for emergency
140 or unplanned work, excluding those on-call, and has been using prohibited drugs or drinking
141 alcoholic beverages prior to such a call, shall inform the employee's supervisor they cannot report,
142 and shall continue to decline to report until the effects of the prohibited drugs or alcohol have left
143 the employee's system. Such refusal to report shall not be viewed as improper, and disciplinary
144 action shall not arise from such refusal.

145 202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee who
146 is taking or is under the influence of any controlled substances during working hours, including
147 prescription medication or over the counter medication, which may affect the employee's job
148 performance or safety of the employee, fellow employees, public, or assets of the Nation have the
149 following obligations:

- 150 (a) The employee shall notify the employee's immediate supervisor about the use of the
151 substance and possible work-related effects prior to commencing work.
152 (b) Upon request, the employee may be required to obtain a written statement of any work
153 restrictions or impact on performance or safety relating to the legal substances from the
154 employee's physician or pharmacist.
155 (c) An employee shall not sell or share his or her prescribed medications with any other
156 person, and shall not take medications that are prescribed to another person.
157 (d) It may be necessary for the employee's supervisor, area manager or EHN to consult with
158 the employee's personal physician, pharmacist or an MRO, with the employee's approval
159 or written authorization, to determine if the medication might impact the employee's
160 ability to perform the employee's job, or pose a hazard to other employees or to the
161 general public.
162 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
163 days. Any modification of duties shall result in the appropriate modification of pay as
164 established by the Human Resources Department.
165

166 **202.6. Prohibited Behavior**

167 202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

- 168 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
169 drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is
170 caught using, possessing or selling prohibited drugs shall be immediately terminated from
171 employment with the Nation.

172 (b) Fails to inform his or her supervisor of being under the influence of prescription
173 medication and/or over-the-counter medication(s) which may affect the employee's job
174 performance or safety of the employee, fellow employees, public, or assets of the Nation.

175 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses prescription
176 medications.

177 (d) Refuses to test.

178 (e) Has a confirmed positive test result after completing a drug and/or alcohol test through
179 EHN or a medical facility, or has a confirmatory test come back as positive.

180 181 **202.7. Reasonable Suspicion**

182 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
183 personal observation and/or secondary reported observation that an employee may be under the
184 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
185 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
186 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
187 evaluate the following:

188 (a) Specific observations concerning appearance, behavior, speech, or body odors of the
189 employee consistent with possible drug use or alcohol misuse.

190 (b) The observations may include indications of the chronic and withdrawal effects of
191 prohibited drugs or alcohol.

192 202.7-2. The supervisor shall document his or her observations and discuss the matter with the
193 employee. During this discussion, the supervisor may ask the employee for proof of a prescription.
194 The employee shall comply with this request. If after a discussion with the employee, the supervisor
195 continues to suspect the employee may currently still be under the influence or reasonable suspicion
196 is otherwise established, the supervisor shall refer the employee for reasonable suspicion drug and
197 alcohol testing.

198 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol testing
199 of an employee is final. An employee shall not appeal or challenge a supervisor's determination for
200 reasonable suspicion drug and alcohol testing.

201 202 **202.8. Drug and Alcohol Testing**

203 202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize
204 conditions of employment as described in this law. To ensure the accuracy and fairness of this law,
205 all drug and alcohol testing shall be conducted according to SAMHSA guidelines for Federal
206 Workplace Drug Testing Programs.

207 202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and
208 NHTSA certified evidential breath testing devices or NHTSA certified saliva-screening devices,
209 operated by technicians whose training terminology, procedures, methods, equipment, forms, and
210 quality assurance comply with best practices.

211 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
212 which is certified by the U.S. Department of Health and Human Services using its
213 confirmation methods and established cut-off levels. Laboratory-confirmed results shall
214 undergo the verification process by a MRO.

215 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
216 evidential breath testing device.

217 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
218 certified saliva test.

219 202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform
220 his or her supervisor of the accident.

221 202.8-4. ~~Each employee, as a condition of employment,~~ All external applicants shall participate in
222 pre-employment, ~~reasonable suspicion, and follow-up drug testing upon the request of an appropriate~~
223 ~~authority.~~ A negative drug test result shall be required for employment eligibility.

224 (a) Exemption for Positive THC Test Result. An external applicant's confirmed positive THC
225 test result shall be exempted from the requirement of a negative drug test result for
226 employment eligibility in the following circumstances:

227 (1) External Applicants for Gaming Positions. An external applicant receiving a
228 confirmed positive test result for THC may qualify for employment if:

229 (A) the position mandates a background check in accordance with 5 O.C.
230 501.10;

231 (B) the position mandates licensing in accordance with 5 O.C. 501.11; and

232 (C) the position does not require a commercial driver's license or job-related
233 driving.

234 (2) External Applicants for Non-Gaming Positions. An external applicant receiving
235 a confirmed positive test result for THC may qualify for employment if the position
236 has not been identified as an employee position which waived the exemption for
237 positive THC test results.

238 (A) The Oneida Business Committee shall adopt through resolution a list of
239 all the non-gaming employment positions that waive the exemption for
240 positive THC test results.

241 202.8-5. Each employee shall participate in reasonable suspicion and follow-up testing upon the
242 request of an appropriate authority. A negative test result is required for unimpeded employment
243 eligibility.

244 202.8-6. *Dilution of Test Results.* In cases where a drug test result is diluted, a positive dilute of the
245 test result requires that the applicant or employee shall be given a confirmed positive test result,
246 while a negative dilute of the test result requires retesting. EHN shall notify the applicant or
247 employee of the required retesting.

248 (a) If the re-test results in a negative-dilute, the applicant or employee shall be given a
249 negative test result.

250 (b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a
251 positive test result.

252

253 **202.9. Refusal to Test**

254 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries
255 the same consequences as a confirmed positive test result. Examples of refusal to test include, but
256 are not limited to:

257 (a) Substituting, adulterating (falsifying), or diluting the specimen.

258 (b) Refusal to sign the required forms.

259 (c) Refusal to cooperate in the testing process in such a way that prevents completion of
260 accurate testing and as directed by the collector.

261 (d) Failing to remain at the testing site until the testing process is complete.

- 262 (e) Providing an insufficient sample of urine or breath.
263 (f) Failing to test or to re-test.
264 (g) Failing to appear within two (2) hours after an order or request is made for testing or re-
265 testing.
266 (h) Behaving in a confrontational or discourteous manner that disrupts the collection process.
267

268 **202.10. Reasonable Suspicion Testing Waiting Period**

269 202.10-1. This section applies only to current employees who meet the reasonable suspicion
270 standard. It does not apply to applicants of the Nation.

271 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be
272 immediately removed from duty without pay at the time of initiation of the reasonable suspicion
273 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative
274 results on both the drug and alcohol tests, or MRO-verified negative test results.

275 202.10-3. When confirmation of test results are made available to the employer, the supervisor shall
276 notify the employee by telephone and by certified mail using the contact information provided by
277 the employee. The notice to the employee shall identify a reinstatement date if the test was
278 confirmed negative, or applicable consequences if the test was confirmed positive. If the employee
279 is reinstated, back pay shall be provided in accordance with the Back Pay law. However, if the
280 employee fails to return to work on the assigned reinstatement date as instructed in the notice from
281 the supervisor, the supervisor shall discipline the employee in accordance with the Nation's laws,
282 rules and policies governing employment, unless an extension is granted in writing by the supervisor
283 along with the reason for the extension. An employee who is ultimately terminated for failure to
284 return to work on his or her assigned reinstatement date shall not be eligible for employment for one
285 (1) year after the date of termination.
286

287 **202.11. Consequences for Prohibited Behavior**

288 202.11-1. Either an internal applicant or an external applicant may decline the position at any time
289 before being directed to EHN or other designated testing site for the applicant's drug and alcohol
290 testing.

291 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the
292 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
293 section 202.6 that has been documented, the employment offer shall be withdrawn. An external
294 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
295 date of the urine drug screening test.

296 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the time
297 allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at section
298 202.6, the employment offer shall be withdrawn. The applicant shall be removed from duty and
299 subject to respective consequences of this law. The applicant shall not be eligible for hiring
300 consideration in a different position for one hundred eighty (180) days from the date of the urine
301 drug screening test.

302 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section 202.6-
303 1, and/or fails to cooperate by not responding to contact from the MRO within ten (10) business days
304 (which shall be deemed thereafter as a definite positive test), the employee shall be removed from
305 duty and subject to the respective consequences of this law.

306 202.11-5. *Consequences.*

- 307 (a) *First Violation.*
308 (1) Any employee who engages in prohibited behavior as defined in section 202.6
309 for the first time shall be removed from duty without pay and shall receive a
310 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine
311 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up
312 testing is required, the testing shall be at the employee's expense.
313 (2) The employee shall sign a Return-to-Work Agreement and submit the agreement
314 to his or her supervisor within ten (10) days or the employee shall be terminated and
315 ineligible for re-hire for one (1) year.
316 (A) When the supervisor signs the Return-to-Work Agreement the employee
317 shall be placed back on the work schedule by the next regularly scheduled
318 workday.
319 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the
320 employee being terminated and ineligible for re-hire for one (1) year.
- 321 (b) *Second Violation.*
322 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
323 second time within his or her lifetime of employment with the Nation shall be
324 removed from duty without pay and shall receive a mandatory referral to ONEAP for
325 an assessment.
326 (2) The employee shall sign a Return-to-Work Agreement and submit it to the
327 employee's supervisor for signature within ten (10) days or the employee shall be
328 terminated and ineligible for re-hire for one (1) year. After a second violation the
329 employee shall not be placed back on the work schedule until:
330 (A) The employee receives approval from the ONEAP that they have
331 demonstrated sufficient progress in a treatment program that would indicate
332 the employee is drug and alcohol free within thirty (30) days of the employee
333 being removed from duty; and
334 (B) The employee completes a return-to-duty drug screening and alcohol test
335 at a SAMHSA-certified facility at their own expense, which shall be negative
336 within thirty (30) days of the employee being removed from duty;
337 (C) The ONEAP notifies the supervisor of the employee's eligibility to return
338 to work.
339 (3) As a condition of continuing employment, the employee shall participate in
340 follow-up testing with continued negative results as directed by the ONEAP and
341 listed in the Return-to-Work Agreement. All follow-up testing shall be at the
342 employee's expense.
343 (4) Failure to comply with the Return-to-Work agreement or follow up testing shall
344 result in the employee being terminated and ineligible for re-hire for one (1) year.
- 345 (c) *Third Violation.*
346 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
347 third time in his or her lifetime of employment with the Nation shall be terminated.
348 The employee shall not be eligible for employment unless he or she receives a
349 forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives
350 forgiveness shall not be eligible for re-hire for one (1) year after the date of
351 termination.

352
353 **202.12. Re-hire**
354 202.12-1. A former employee that was terminated due to violations of this law shall provide, along
355 with the former employee’s application for employment, the following:
356 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and
357 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
358 within the last thirty (30) days. This drug screening and alcohol test shall be done at the
359 former employee’s own expense.

360
361 **202.13. Other Potential Consequences**
362 202.13-1. The violation of this law may result in consequences to the employee beyond any
363 discipline or corrective action that may be taken. Other potential consequences include the
364 following:
365 (a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result
366 of a violation of this law may be ineligible for unemployment benefits.
367 (b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a
368 work-related accident that occurred while engaged in a violation of this law may have any
369 workers compensation benefits reduced.
370 (c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws
371 may be referred to appropriate law enforcement for criminal prosecution.
372 (d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an
373 accident may be held personally responsible for losses associated with the accident, and the
374 employee may be required to pay for those losses.

375
376 **202.14. Confidentiality**
377 202.14-1. Information related to the application of this law is confidential. Access to this
378 information is limited to those who have a legitimate “need to know” in compliance with relevant
379 laws and personnel policies and procedures.
380 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
381 records which are separate from the employee’s clinical and personnel files. The employee may
382 request a copy of the employee’s records. The records may be requested by a third party in
383 accordance with the Oneida Nation’s laws, rules and policies governing employment.

384
385 **202.15. Communication**
386 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
387 their role in supporting this law:
388 (a) All employees shall be given information on how to access this law.
389 (b) This law shall be reviewed in new employee orientation and other means, as deemed
390 appropriate by HRD.
391 (c) All employees shall sign an acknowledgment form stating they have received a copy of
392 this law, have read and understand it, and agree to follow this law.

393
394 *End.*

395
396 See GTC-01-31-94-B
397 Adopted – BC-08-17-94

- 398 Emergency Amended - BC-04-20-95-C
- 399 Adopted - BC-10-25-95-A (repealed previous versions)
- 400 Amended - BC-10-20-99-A
- 401 Amended - BC-12-05-07-B
- 402 Amended - BC-12-11-13-F
- 403 Emergency Amended - BC-10-26-16-D
- 404 Amended - BC-04-12-17-C
- 405 ~~Amended - BC- - - -~~
- 406



Legislative Operating Committee
December 21, 2022

Election Law Emergency Amendments

Submission Date: 12/7/22	Public Meeting: N/A
LOC Sponsor: Kirby Metoxen	Emergency Enacted: N/A

Summary: *On November 30, 2022, during the presentation of the Oneida Election Board's quarterly report, the Oneida Business Committee adopted a motion to request the LOC to take emergency action on the Election law to address concerns identified in the event the 2023 Annual GTC meeting is not held. Section 102.9-1 of the Election law requires that the GTC select the date of the general election at the annual meeting in January, or the first meeting held that year. The Oneida Election Board expressed concern that there is the possibility that the GTC will not be able to meet in January, or soon after, to select the 2023 general election date, and asked for emergency amendments to be made to the Election law to provide guidance on how this concern should be handled.*

11/30/22 OBC: Motion by Jennifer Webster to request Legislative Operating Committee to take emergency action on the Election Law to address the concern identified in the event the 2023 annual General Tribal Council meeting is not held, seconded by Lisa Liggins. Motion carried.

12/7/22 LOC: Motion by Jennifer Webster to add the Election law emergency amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

12/13/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Clorissa N. Leeman, Carolyn Salutz, Grace Elliott, Rhiannon Metoxen, Kristal Hill, Rae Skenandore. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the proposed emergency amendment to the Election law.


Next Steps:

- Approve the Election law emergency amendments adoption packet and forward to the Oneida Business Committee for consideration.



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



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: December 28, 2022
RE: Adoption of an Emergency Amendment to the Election Law

Please find the following attached backup documentation for your consideration of an emergency amendment to the Election law:

1. Resolution: Emergency Amendment to the Election law
2. Statement of Effect: Emergency Amendment to the Election law
3. Election law Emergency Amendment Legislative Analysis
4. Election law Emergency Amendment Draft (Redline)
5. Election law Emergency Amendment (Clean)

Overview

An emergency amendment to the Election law is being sought. On November 30, 2022, during the presentation of the Oneida Election Board's quarterly report, the Oneida Business Committee adopted a motion to request the Legislative Operating Committee to take emergency action on the Election law to address concerns identified in the event the 2023 Annual General Tribal Council meeting is not held. Section 102.9-1 of the Election law requires that the General Tribal Council select the date of the general election at the annual meeting in January, or the first meeting held that year. The Oneida Election Board expressed concern that there is the possibility that the General Tribal Council will not be able to meet in January, or soon after, to select the 2023 General Election date, and asked for emergency amendments to be made to the Election law to provide guidance on how this concern should be handled. The Legislative Operating Committee determined these amendments should be pursued on an emergency basis for the immediate preservation of the general welfare of the Reservation population.

The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]. The emergency amendment to the Election law will allow the Oneida Business Committee to select the election date if the General Tribal Council is unable to meet to select the election date by February 1st of a year. [1 O.C. 102.9-1].

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

The emergency amendment to the Election law is necessary for the preservation of the general welfare of the Reservation population to ensure that the 2023 General Election can occur in accordance with the requirements of the Election law.

Additionally, observance of the requirements under the Legislative Procedures Act for the adoption of the amendment to the Election law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow a date to be selected for the 2023 General Election that provides the Oneida Election Board enough time to properly plan and prepare for the Nation to hold the 2023 General Election in July 2023.

The adoption of the emergency amendment to the Election law will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendment to the Election law will remain effective for six (6) months. The Legislative Procedures Act provides the possibility to extend the emergency amendment for an additional six (6) months, or until the emergency amendment expires or is permanently adopted. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Emergency Amendment to the Election Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # Emergency Amendment to the Election Law

- 1 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
2 recognized by the laws of the United States of America; and
3
- 4 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
5
- 6 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
7 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
8
- 9 **WHEREAS,** the Election law (“the Law”) was adopted by the General Tribal Council on June 19, 1993
10 for the purpose of governing the procedures for the conduct of orderly elections of the
11 Nation, and was most recently amended by the General Tribal Council through resolution
12 GTC-04-23-17-A; and
13
- 14 **WHEREAS,** the Oneida Election Board has requested emergency amendments to the Election law to
15 address the selection of the 2023 General Election date; and
16
- 17 **WHEREAS,** section 102.9-1 of the Election law requires that the General Tribal Council select the date
18 of the general election at the annual meeting in January, or the first meeting held that year;
19 and
20
- 21 **WHEREAS,** the Oneida Election Board provided expressed concern that there is the possibility that the
22 General Tribal Council will not be able to meet in January, or soon after, to select the 2023
23 General Election date; and
24
- 25 **WHEREAS,** the proposed emergency amendment to the Law allows the Oneida Business Committee
26 to select the election date if the General Tribal Council is unable to meet to select the
27 election date by February 1st of a year; and
28
- 29 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact
30 legislation on an emergency basis, to be in effect for a period of six (6) months, renewable
31 for an additional six (6) months; and
32
- 33 **WHEREAS,** emergency adoption of legislation is allowed when legislation is necessary for the
34 immediate preservation of the public health, safety, or general welfare of the Reservation
35 population, and the amendment of the legislation is required sooner than would be possible
36 under the Legislative Procedures Act; and
37
- 38 **WHEREAS,** the emergency adoption of the amendments to the Law are necessary for the preservation
39 of the general welfare of the Reservation population to ensure that the 2023 General
40 Election can occur in accordance with the requirements of the Election law; and
41
- 42 **WHEREAS,** observance of the requirements under the Legislative Procedures Act for adoption of these
43 amendments would be contrary to public interest and the process and requirements of the
44 Legislative Procedures Act cannot be completed in time to allow a date to be selected for

45 the 2023 General Election that provides the Oneida Election Board enough time to properly
46 plan and prepare for the Nation to hold the 2023 General Election in July 2023; and
47

48 **WHEREAS,** the Legislative Procedures Act does not require a public meeting or fiscal impact statement
49 when considering emergency legislation; and
50

51 **NOW THEREFORE BE IT RESOLVED,** the Oneida Business Committee hereby adopts the emergency
52 amendment to the Election Law effective immediately.



Statement of Effect
Emergency Amendment to the Election law

Summary

This resolution adopts an emergency amendment to the Election law to allow the Oneida Business Committee to select the election date if the General Tribal Council is unable to meet to select the election date by February 1st of a year. [1 O.C. 102.10-2].

Submitted by: Clorissa N. Leeman, Senior Staff Attorney, Legislative Reference Office
Date: December 14, 2022

Analysis by the Legislative Reference Office

This resolution adopts an emergency amendment to the Election law. The Election law governs the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]. The emergency amendment to the Election law will allow the Oneida Business Committee to select the election date if the General Tribal Council is unable to meet to select the election date by February 1st of a year. [1 O.C. 102.10-2].

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

Section 102.9-1 of the Election law requires that the General Tribal Council select the date of the general election at the annual meeting in January, or the first meeting held that year. The Oneida Election Board expressed concern that there is the possibility that the General Tribal Council will not be able to meet in January, or soon after, to select the 2023 General Election date, and asked for emergency amendments to be made to the Election law to provide guidance on how this concern should be handled.

The resolution provides that the emergency amendment to the Election law is necessary for the preservation of the general welfare of the Reservation population to ensure that the 2023 General Election can occur in accordance with the requirements of the Election law.

Additionally, observance of the requirements under the LPA for the adoption of the amendment to the Election law would be contrary to public interest and the process and requirements of the Legislative Procedures Act cannot be completed in time to allow a date to be selected for the 2023 General Election that provides the Oneida Election Board enough time to properly plan and prepare for the Nation to hold the 2023 General Election in July 2023.

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

Conclusion

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



ELECTION LAW EMERGENCY AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	Allow the Oneida Business Committee to select the election date if the General Tribal Council is unable to meet to select the election date by February 1 st of a year. [1 O.C. 102.9-1].
Purpose	To govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. [1 O.C. 102.1-1]
Affected Entities	Oneida Nation Election Board, General Tribal Council, Oneida Business Committee.
Public Meeting	A public meeting is not required for emergency legislation [1 O.C. 109.8-1(b) and 109.9-5(a)].
Fiscal Impact	A fiscal impact statement is not required for emergency legislation [1 O.C. 109.9-5(a)].
Expiration of Emergency Legislation	Emergency legislation expires six (6) months after adoption and may be renewed for an additional six (6) month period.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. Background. The Election law was first adopted on June 19, 1993, and most recently amended by the General Tribal Council on April 23, 2017. The Law governs the procedures for the conduct of orderly elections of the Nation. [1 O.C. 102.1-1].

B. Request for Emergency Amendments. On November 30, 2022, during the presentation of the Oneida Election Board’s quarterly report, the Oneida Business Committee adopted a motion to request the Legislative Operating Committee to take emergency action on the Election law to address concerns identified in the event the 2023 Annual General Tribal Council meeting is not held. Section 102.9-1 of the Election law requires that the General Tribal Council select the date of the general election at the annual meeting in January, or the first meeting held that year. The Oneida Election Board expressed concern that there is the possibility that the General Tribal Council will not be able to meet in January, or soon after, to select the 2023 general election date, and asked for emergency amendments to be made to the Election law to provide guidance on how this concern should be handled. The Legislative Operating Committee determined these amendments should be pursued on an emergency basis for the immediate preservation of the general welfare of the Reservation population.

SECTION 3. CONSULTATION AND OUTREACH

- Representatives from the following departments or entities participated in the development of this Law and legislative analysis:
 - Oneida Election Board.
- The Legislative Operating Committee has held the following work meetings specific to the proposed emergency amendments to this Law:

- 23 ▪ December 13, 2022: LOC work meeting.

25 **SECTION 4. PROCESS**

- 26 A. These amendments are being considered on an emergency basis. The Oneida Business Committee may
27 temporarily enact an emergency legislation where legislation is necessary for the immediate
28 preservation of public health, safety, or general welfare of the Reservation population and enactment
29 or amendment of legislation is required sooner than would be possible under this law. [1 O.C. 109.9-
30 5].
- 31 ▪ The emergency adoption of amendments to this Law are necessary for the preservation of the
32 general welfare of the Reservation population in order to ensure that the 2023 General Election can
33 occur in accordance with the requirements of the Election law.
 - 34 ▪ Observance of the requirements under the Legislative Procedures Act for adoption of the
35 emergency amendments to this Law would be contrary to public interest and the process and
36 requirements of the Legislative Procedures Act cannot be completed in time to allow a date to be
37 selected for the 2023 General Election that provides the Oneida Election Board enough time to
38 properly plan and prepare for the Nation to hold the 2023 General Election in July 2023.
- 39 B. The emergency amendments will expire six (6) months after adoption, with one (1) opportunity for a
40 six (6) month extension of the emergency amendments. [1 O.C. 109.9-5(b)].
- 41 C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when
42 considering emergency legislation. [1 O.C. 109.9-5(a)]. However, a public meeting and fiscal impact
43 statement will eventually be required when considering permanent adoption of this Law.
- 44 D. The Legislative Operating Committee added these emergency amendments to the Active Files List on
45 December 7, 2022.

47 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 48 D. *Selection of the Election Date.* The Election law requires that the General Tribal Council shall set the
49 election date at the January annual meeting, or at the first GTC meeting held during a given year. [1
50 O.C. 102.9-1]. The proposed amendments add a provision to the Law which provides that if the General
51 Tribal Council is unable to meet to select the election date by February 1st, then the Oneida Business
52 Committee shall select the election date. [1 O.C. 102.9-1].

54 **SECTION 6. EXISTING LEGISLATION**

- 55 A. *Related Legislation.* The following laws of the Nation are related to the emergency amendments to this
56 Law:
- 57 ▪ *Legislative Procedures Act.* The Legislative Procedures Act was adopted by the General Tribal
58 Council on January 7, 2013, for the purpose of providing a standard process for the adoption
59 of laws of the Nation which includes taking into account comments from members of the
60 Nation and input from agencies of the Nation. [1 O.C. 109.1-1, 109.1-2].
 - 61 ▪ The Legislative Procedures Act provides a process for the adoption of emergency
62 legislation when the legislation is necessary for the immediate preservation of the
63 public health, safety, or general welfare of the Reservation population and the
64 enactment or amendment of legislation is required sooner than would be possible under
65 this law. [1 O.C. 109.9-5].

- 66 ▪ The Legislative Operating Committee is responsible for first reviewing the
67 emergency legislation and for forwarding the legislation to the Oneida
68 Business Committee for consideration. [1 O.C. 109.9-5(a)].
- 69 ▪ The proposed emergency legislation is required to have a legislative analysis
70 completed and attached prior to being sent to the Oneida Business Committee
71 for consideration. [1 O.C. 109.9-5(a)].
 - 72 a. A legislative analysis is a plain language analysis describing the
73 important features of the legislation being considered and factual
74 information to enable the Legislative Operating Committee to make
75 informed decisions regarding legislation. A legislative analysis
76 includes a statement of the legislation’s terms and substance; intent of
77 the legislation; a description of the subject(s) involved, including any
78 conflicts with Oneida or other law, key issues, potential impacts of the
79 legislation and policy considerations. [1 O.C. 109.3-1(g)].
- 80 ▪ Emergency legislation does not require a fiscal impact statement to be
81 completed or a public comment period to be held. [1 O.C. 109.9-5(a)].
- 82 ▪ Upon the determination that an emergency exists the Oneida Business
83 Committee can adopt emergency legislation. The emergency legislation
84 becomes effective immediately upon its approval by the Oneida Business
85 Committee. [1 O.C. 109.9-5(b)].
- 86 ▪ Emergency legislation remains in effect for a period of up to six (6) months,
87 with an opportunity for a one-time emergency law extension of up to six (6)
88 months. [1 O.C. 109.9-5(b)].
- 89 ▪ Adoption of these proposed emergency amendments would conform with the
90 requirements of the Legislative Procedures Act.
- 91

92 **SECTION 7. OTHER CONSIDERATIONS**

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

- 96 ▪ *Conclusion:* The Legislative Operating Committee will need to determine if the adoption of these
97 amendments is necessary on a permanent basis, and if so, develop the permanent amendments to
98 this Law within the next six (6) to twelve (12) months.

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

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

102

Title 1. Government and Finances - Chapter 102

ELECTION

Onayote'a'ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsla

People of the Standing Stone how it is we will appoint them the kind of laws we have

102.1. Purpose and Policy	102.8. Registration of Voters
102.2. Adoption, Amendment, Repeal	102.9. Election Process
102.3. Definitions	102.10. Tabulating and Securing Ballots
102.4. Election Board	102.11. Election Outcome and Ties
102.5. Candidate Eligibility	102.12. Elections
102.6. Selection of Candidates	102.13. Oneida Nation Constitution and By-law Amendments
102.7. Notice of Polling Places	

102.1. Purpose and Policy

102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

102.2. Adoption, Amendment, Repeal

102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A ~~and~~, amended by resolutions GTC-01-04-10-A, BC-02-25-15-C and GTC-04-23-17-A, ~~and~~ amended on an emergency basis by resolution BC- - - -.

102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

102.2-3. 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.

102.2-4. 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.

102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

102.3. Definitions

102.3-1. 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.

102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

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38 102.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is
39 placed on the ballot by the Election Board after successful application.

40 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
41 of determining voter eligibility.

42 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

43 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
44 or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
45 member of any board, committee or commission, or their immediate relatives, friends or
46 associates, or any other person with whom they have contact, that conflicts with any right of the
47 Nation to property, information, or any other right to own and operate its enterprises, free from
48 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
49 any law or policy of the Nation.

50 102.3-10. "Election" shall mean every primary and election.

51 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
52 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
53 Business Committee and may include contests for elected boards, committees and commissions
54 positions.

55 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
56 discrepancies, complaints and controversy regarding voter eligibility.

57 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
58 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
59 the Nation.

60 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
61 winner of an elected position, in the case of a tie between two (2) or more candidates.

62 102.3-15. "Nation" means the Oneida Nation.

63 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
64 the Nation for the benefit of transmitting news to members of the Nation, which is designated by
65 the Election Board as a source for election related news.

66 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
67 police officer on any police force.

68 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
69 dwelling or a privately owned business within the boundaries of the Reservation.

70 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
71 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
72 Community Health Center, the SEOTS building and all One-Stop locations.

73 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
74 years of age or older.

75 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
76 machine.

77 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
78 and is not tabulated.

79 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

80

81

82 **102.4. Election Board**

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83 *Section A. Establishment, Composition and Election*

84 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
85 law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.

86 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
87 elected to terms of three (3) years, not to exceed two (2) consecutive terms.

88 102.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an
89 Election Board member in any pre-election, election day, or post-election activities while he or
90 she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.

91 102.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member
92 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
93 years from the time he or she is removed from the Election Board.

94 102.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the
95 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
96 to correspond with the pre-election activities and the needs of the Election Board.

97 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

98 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
99 the Election Board, as recommended by the Election Board, to assist with election day and pre-
100 election activities.

101 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
102 the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
103 out at the first meeting of the Election Board following an election. The Chairperson shall then
104 ask the Election Board to select a Vice-Chairperson and Secretary.

105
106 *Section B. Duties of the Election Board*

107 102.4-9. The Election Board shall have the following duties, along with other responsibilities listed
108 throughout this law.

- 109 (a) The Election Board shall be in charge of all registration and election procedures; and
110 (b) Upon completion of an election, the Election Board shall make a final report on the
111 election results as set out in this law.

112
113 *Section C. Specific Duties of Officers and Election Board Members*

114 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to
115 being present at all Election Board meetings and assisting the handicapped through the voting
116 process, are as set out herein:

117 (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing
118 body for applicants found to be ineligible in accordance with 102.5-6 in the event of an
119 appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust
120 Enrollment Department personnel when their election day duties are complete; and shall
121 post and report election results.

122 (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.

123 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's
124 Secretary, other Election Board members and the public as required in the Open Records
125 and Open Meetings Law.

126 (d) Clerks: Shall implement the requirements of identifying and registering all voters and
127 determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

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128 Department personnel in the registration process, and assist the Chairperson as directed in
 129 conducting the election. Clerks cannot be currently employed by the Trust Enrollment
 130 Department.

131 (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as
 132 determined by this law. Shall assist the Chairperson in conducting the election.

133 (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted
 134 under this law. In case of disputes among Election Board members, or between members
 135 of the Nation and Election Board members, or any controversy regarding voter eligibility,
 136 the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall
 137 also ensure that all ballots of voters whose eligibility may be in question, remain
 138 confidential.

139
 140 *Section D. Compensation Rates*

141 102.4-11. Election Board members are to be compensated at an hourly rate when conducting
 142 elections as provided for in the Election Board's bylaws as approved by the Business Committee.
 143 The Election Board shall have a budget, approved through the Nation's budgeting process.

144 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be
 145 compensated at their regular rate of pay out of their respective budgets.

146
 147 **102.5. Candidate Eligibility**

148 *Section A. Requirements*
 149 102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-
 150 laws or other documents, all applicants shall meet the minimum requirements set out in this section
 151 in order to become a candidate.

152 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

153 (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.

154 (b) be a qualified voter on the day of the election.

155 (c) provide proof of physical residency as required for the position for which they have
 156 been nominated or for which they have petitioned. Proof of residency may be through one

157 (1) or more of the following:

158 (1) a valid Wisconsin driver's license;

159 (2) a bill or pay check stub showing name and physical address of the candidate
 160 from the prior or current month;

161 (3) another form of proof that identifies the candidate and that the candidate has
 162 physically resided at the address and identifies that address as the primary
 163 residence.

164 102.5-3. No applicant may have a conflict of interest with the position for which they are being
 165 considered, provided that any conflict of interest which may be eliminated within thirty (30)
 166 calendar days of being elected shall not be considered as a bar to nomination or election.

167 102.5-4. Applications and petitions where the applicant was not nominated during caucus shall be
 168 filed by presenting the information to the Nation's Secretary, or designated agent, during normal
 169 business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus.
 170 No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

171 102.5-5. The names of the candidates and the positions sought shall be a public record and made
 172 available to the public upon the determination of eligibility by the Election Board or the Board's

173 designated agent.

174

175 *Section B. Eligibility Review*

176 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
177 At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
178 select the hearing body. The hearing shall be held within two (2) business days of receipt of the
179 appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
180 of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
181 of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
182 Judiciary on an accelerated schedule.

183 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to
184 verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position
185 shall be notified by certified mail return receipt requested. The notice shall provide the following
186 information:

187 (a) Position for which they were considered

188 (b) Qualification of the position and citation of the source. (Copies of source may be
189 attached.)

190 (c) A brief summary explaining why the applicant was found to be ineligible.

191 (d) That the applicant has two (2) business days from notification to make an appeal.
192 Appeals must be filed at the location designated on the notice by hand delivery. The
193 location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or
194 other delivery method will be accepted.

195

196 *Section C. Campaign Financing*

197 102.5-8. Contributions:

198 (a) Solicitation of Contributions by Candidates.

199 (1) Candidates shall only accept contributions from individuals who are members
200 of the Nation or individuals related by blood or marriage to the candidate.
201 Candidates may not accept contributions from any business, whether sole
202 proprietorship, partnership, corporation, or other business entity.

203 (2) Candidates shall not solicit or accept contributions in any office or
204 business/facility of the Nation.

205 (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the
206 Election Board in an amount specified in a resolution adopted by the Business Committee.

207 102.5-9. Campaign Signs and Campaigning:

208 (a) Placement of campaign signs:

209 (1) Campaign signs shall not be posted or erected on any property of the Nation
210 except for private property with the owner/tenant's permission.

211 (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum
212 of seven (7) such signs may be placed on a building or on a lot.

213 (3) No campaign sign shall project beyond the property line into the public right
214 of way.

215 (b) Removal of campaign signs. All campaign signs shall be removed within five (5)
216 business days after an election.

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217 (c) Employees of the Nation shall not engage in campaigning for offices of the Nation
 218 during work hours. The Nation's employees shall be subject to disciplinary action under
 219 the personnel policies and procedures for political campaigning during work hours.

220 (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign
 221 signs that are not in compliance with this law, in accordance with the Zoning and Shoreland
 222 Protection Law.

223 (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the
 224 Election Board in an amount specified in a resolution adopted by the Business Committee.
 225

226 *Section D. Candidate Withdrawal*

227 102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by
 228 the candidate prior to submission of the ballot for printing to any Election Board member,
 229 excluding alternates.

230 102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the
 231 election by submitting in writing a statement indicating they are withdrawing from the election
 232 prior to the opening of the polls to any Election Board member, excluding alternates. This
 233 statement shall be posted alongside any sample ballot printed prior to the election in the newspaper
 234 or any posting at the polling places.

235 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the
 236 Election Board members in charge of the polling place, to be removed from the ballot. The written
 237 statement shall be posted next to any posted sample ballot.

238 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from
 239 which they have withdrawn regardless of the number of votes cast for that candidate. A written
 240 statement shall be considered the only necessary evidence of withdrawal and acceptance of denial
 241 of any position withdrawn from.

242 102.5-14. *Candidate Withdrawal After Winning an Election.*

243 (a) In the event a candidate declines an office after winning an election, the Election Board
 244 shall declare the next highest vote recipient the winner. This procedure shall be repeated
 245 as necessary until a winner is declared.

246 (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a
 247 Special Election shall be held.
 248

249 **2.6. Selection of Candidates**

250 *Section A. Setting of Caucus*

251 102.6-1. The Election Board shall be responsible for calling a caucus before any election is held.
 252 The caucus for the general election shall be held at least ninety (90) calendar days prior to the
 253 election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior
 254 to the election date. In a general election year, caucuses shall be combined so that candidates for
 255 the Business Committee and elected boards, committees and commissions are nominated at the
 256 same caucus.

257 102.6-2. The procedures for the caucus shall be as follows:

258 (a) Candidates shall be nominated from the floor.

259 (b) Candidates present at the caucus will accept/decline their nomination at the caucus.
 260 Candidates nominated at the caucus, but not present to accept the nomination, shall be
 261 required to follow the petition process.

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(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Petition

102.6-3. Any eligible member of the Nation may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

(1) printed name and address;

(2) date of birth;

(3) Oneida Nation Enrollment Number; and

(4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

102.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

102.7. Notice of Polling Places

102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

102.7-4. Notice of the election shall be placed in the Nation's newspaper.

102.8. Registration of Voters*Section A. Requirements*

102.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years

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307 of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the
 308 Oneida Nation Constitution.

309

310 *Section B. Identification of Voters*

311 102.8-2. All voters must present one of the following picture identifications in order to be able to
 312 vote:

313 (a) Oneida Nation I.D.

314 (b) Drivers License.

315 (c) Other I.D. with name and photo.

316

317 *Section C. Registration Procedures*

318 102.8-3. Voters shall physically register, on the day of the election, at the polls.

319 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment
 320 with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
 321 Officials during the voting period.

322 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
 323 Form containing the voter's following information:

324 (a) name and maiden name (if any);

325 (b) current address;

326 (c) date of birth; and

327 (d) enrollment number.

328

329 *Section D. Qualification/Verification of Voter Eligibility*

330 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
 331 the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
 332 the Trust Enrollment Department personnel who are registering voters, to decide the voting
 333 member's eligibility currently being questioned and shall make such decisions from the facts
 334 available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
 335 Constitution, Article III Section 2, to vote in the Nation's elections.

336 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be
 337 placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of
 338 the voter shall be written next to a numbered list which corresponds to the numbered and sealed
 339 envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
 340 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
 341 desire to challenge the decision made by the Election Officials. The Election Board shall make a
 342 final decision, within five (5) business days of receiving the appeal and shall report this decision
 343 in the final report sent to the Oneida Business Committee.

344

345 **102.9. Election Process**346 *Section A. Polling Places and Times*

347 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections
 348 shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
 349 Council shall set the election date at the January annual meeting, or at the first GTC meeting held
 §50 during a given year. If the General Tribal Council is unable to meet to select the election date by

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§ 51 February 1st, then the Oneida Business Committee shall select the election date. Special Elections
 352 shall be set in accordance with 102.12-6.

353 102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election
 354 Board.

355 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line
 356 to vote at 7:00 p.m. shall be allowed to vote.

357 (a) If a ballot counting machine is used, the ballot counting machine shall be prepared
 358 prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
 359 (4) members of the Nation verify, through signature on the tape, the ballot box is empty
 360 and the ballot counting machine printer tape has a zero (0) total count.

361 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open,
 362 and until the counting of ballots is completed, and tentative results posted.

363 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such
 364 that there is an area with at least two sides and a back enclosure.

365 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of
 366 the voting area, excluding private property.

367 102.9-7. No one causing a disturbance shall be allowed in the voting area.

368 102.9-8. Election Board members may restrict the voting area to qualified voters only. This
 369 restriction is in the interest of maintaining security of the ballots and voting process.

370

371 *Section B. Ballot Box*

372 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and
 373 shall be locked until counting at the close of polls. Provided that, with electronic ballot counting,
 374 the ballots may be placed within the ballot counting machine as they are received.

375

376 *Section C. Spoiled Ballots*

377 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

378 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials
 379 and placed in an envelope marked as "Spoiled Ballots."

380 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15)
 381 calendar days following finalization of any challenge of the election, at the Records Management
 382 Department.

383

384 *Section D. Rejected Ballots*

385 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

386 (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the
 387 authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final
 388 computer total, provided that, a new ballot was not received as set out in sections 102.9-10
 389 through 102.9-12.

390 (b) Ballots rejected, either during the computer process or during a manual counting, shall
 391 be reviewed by the Election Officials to verify that they are authentic. If the Election
 392 Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the
 393 ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

394

395 **102.10. Tabulating and Securing Ballots**

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396 *Section A. Machine Counted Ballots*397 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate
398 from the ballot counting machine copies of the election totals from the votes cast.399 102.10-2. At least six (6) Election Board members shall sign the election totals, which shall
400 include the tape signed by the members of the Nation before the polls were opened per section
401 102.9-3(a).

402

403 *Section B. Manually Counted Ballots*404 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the
405 ballot box and remove the ballots.406 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall
407 be secured in a sealed container for transportation to the ballot counting location. The sealed
408 ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election
409 Officials for counting/tallying of ballots.410 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and
411 witnessed/monitored by an Oneida Police Officer.412 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are
413 equal in back to back counting. Final tallies shall be verified by the Election Judges.

414

415 *Section C. Securing Ballots*416 102.10-7. The Judges shall place together all ballots counted and secure them together so that they
417 cannot be untied or tampered with without breaking the seal. The secured ballots, and the election
418 totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container
419 in such a manner that the container cannot be opened without breaking the seals or locks, or
420 destroying the container. The Oneida Police Officer shall then deliver, on the day of the election,
421 the sealed container to the Records Management Department for retaining.

422

423 **102.11. Election Outcome and Ties**424 *Section A. Election Results Announcement*425 102.11-1. The tentative results of an election shall be announced and posted by the Election Board
426 within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
427 the following statement:428 *"The election results posted here are tentative results. Final election results are forwarded*
429 *by the Oneida Election Board to the Oneida Business Committee via a Final Report after*
430 *time has lapsed for recount requests, or challenges or after all recounts or challenges*
431 *have been completed, whichever is longer"*432 102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's
433 newspaper, the tentative results of an election.

434

435 *Section B. Tie*436 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to
437 determine the outcome of an election, the Election Board shall conduct an automatic recount of
438 the votes for each candidate receiving the same number of votes. Any recount conducted shall be
439 the only recount allowed for the tied candidates.

440 102.11-4. For Business Committee positions, a run-off election between the candidates with the

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441 same number of votes shall be held if there remains a tie after the recount. Said run-off election
 442 shall be held within twenty one (21) calendar days after the recount. For all other positions, if
 443 there remains a tie after the recount, the Election Board shall decide the winner of the tied positions
 444 at least two (2) business days after, but no more than five (5) business days after the recount
 445 through a lot drawing, which shall be open to the public.

446 (a) The Election Board shall notify each of the tied candidates and the public of the date,
 447 time, and place of the drawing at least one (1) business day before the drawing. Notice to
 448 the tied candidates shall be in writing. Notice to the public shall be posted by the Election
 449 Board in the prominent locations.

450 (b) On the date and at the time and place the drawing was noticed, the Election Board
 451 Chairperson shall clearly write the name of each tied candidate on separate pieces of paper
 452 in front of any witnesses present. The pieces of paper shall be the same, or approximately
 453 the same, color, size, and type. The papers shall be folded in half and placed in a container
 454 selected by the Election Board Chairperson.

455 (c) The Election Board Chairperson shall designate an uninterested party to draw a name
 456 from the container. The candidate whose name is drawn from the container first shall be
 457 declared the winner. An Election Board member other than the Chairperson shall remove
 458 the remaining pieces of paper from the container and show them to the witnesses present.
 459

460 *Section C. Recount Procedures*

461 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin
 462 between the requesting candidate's vote total and vote total for the unofficial winner was within
 463 two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is
 464 greater. A candidate requests a recount by hand delivering a written request to the office of the
 465 Nation's Secretary, or noticed designated agent, within five (5) business days after the election.
 466 Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact
 467 the Election Board Chairperson by the next business day after the request for recounts.

468 102.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the
 469 request regarding the results of the recount. Provided that, no recount request need be honored
 470 where there have been two (2) recounts completed as a result of a request either as a recount of the
 471 whole election results, or of that sub-section.

472 102.11-7. All recounts shall be conducted manually with, if possible, the original Election
 473 Officials and Oneida Police Officer present, regardless of the original type of counting process.
 474 Manual recounts may, at the discretion of the Election Officials, be of the total election results, or
 475 of the challenged sub-section of the election results.

476 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
 477 container with the ballots from the Records Management Department and transporting it to the
 478 ballot recounting location.

479 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
 480 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
 481 Board Chairperson and an Oneida Police Officer shall witness the recount.

482 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be
 483 counted until two (2) final tallies are equal in back to back counting and the total count of ballots
 484 reconciles with the total count from the ballot counting machine. Sub-sections of candidates may
 485 be recounted in lieu of a full recount.

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486 (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be
487 counted twice by different persons and certified by the Judges.

488 (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior
489 to using an electronic ballot counting device, it shall be certified as correct either by the
490 maker, lessor of the machine, or Election Board.

491
492 *Section D. Challenges and Declaration of Results*

493 102.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a
494 complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall
495 hear and decide a challenge to any election within two (2) business days after the challenge is filed.
496 Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after
497 the issuance of the lower body's decision and decided within two (2) business days after the appeal
498 is filed.

499 (a) The person challenging the election results shall prove by clear and convincing
500 evidence that the Election Law was violated or an unfair election was conducted, and that
501 the outcome of the election would have been different but for the violation.

502 (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by
503 the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon
504 as the Election Law allows for a Special Election.

505 102.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's
506 Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges
507 have been completed, whichever is longer. The Final Report shall consist of the following
508 information:

509 (a) Total number of persons voting.

510 (b) Total votes cast for each candidate by subsection of the ballot.

511 (c) List of any ties and final results of those ties, including the method of resolution.

512 (d) List of candidates elected and position elected to.

513 (e) Number of spoiled ballots.

514 (f) Cost of the election, including the compensation paid to each Election Board member.

515 102.11-13. *Declaration of Results.* The Business Committee shall declare the official results of
516 the election and send notices regarding when the swearing in of newly elected officials shall take
517 place within ten (10) business days after receipt of the Final Report.

518 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position
519 effective prior to taking a Business Committee oath of office

520 102.11-15. Except in the event of an emergency, as determined by the Business Committee,
521 newly elected officials shall be sworn into office no later than thirty (30) calendar days after the
522 official results of an election are declared by the Business Committee.

523 (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall
524 be considered vacant and the Election Board shall declare the next highest vote recipient
525 the winner. This procedure shall be repeated as necessary until a winner is declared.

526 (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a
527 Special Election shall be held.

528 102.11-16. The Election Board shall send notice to the Records Management Department to
529 destroy the ballots thirty (30) calendar days after the election or after the final declaration of official
530 election results occurs, whichever is longer.

- 531
532 **102.12. Elections**
533 *Section A. Primary Elections; Business Committee*
534 102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty
535 (60) calendar days prior to the election.
536 102.12-2. There shall be a primary election for Business Committee positions whenever there are
537 three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-
538 large council member positions.
539 (a) The two (2) candidates receiving the highest number of votes cast for each officer
540 position shall be placed on the ballot.
541 (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large
542 council member positions shall be placed on the ballot.
543 (c) Any position where a tie exists to determine the candidates to be placed on the ballot
544 shall include all candidates where the tie exists.
545 102.12-3. The Election Board shall cancel the primary election if the Business Committee
546 positions did not draw the requisite number of candidates for a primary by the petitioning deadline
547 set for the primary.
548 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a
549 winner in the primary, the Election Board shall declare the next highest primary vote recipient the
550 primary winner. This procedure shall be repeated as necessary until the ballot is full or until there
551 are no available candidates. If the ballot has already been printed, the procedures for notifying the
552 Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to
553 print a notice in the Nation's newspaper if time lines allow.
554
555 *Section B. Special Elections*
556 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as
557 defined in this law, may be placed on the same ballot as the subject matter of an election.
558 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business
559 Committee as recommended by the Election Board or as ordered by the Judiciary in connection
560 with an election challenge.
561 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
562 locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the
563 Special Election.
564 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided
565 that no less than twenty-four (24) hours notice of the rescheduled election date is given to the
566 voters, by posting notices in the prominent locations.
567
568 *Section C. Referendums*
569 102.12-9. Registered voters may indicate opinions on any development, law or resolution,
570 proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special
571 referendum election.
572 (a) Referendum elections in which a majority of the qualified voters who cast votes shall
573 be binding on the Business Committee to present the issue for action/decision at General
574 Tribal Council.
575 (b) Referendum requests may appear on the next called for election.

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576 (c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the
 577 caucus prior to election, regarding issues directly affecting the Nation or general
 578 membership.
 579

580 *Section D. Initiation of Special Elections*

581 102.12-10. Special Elections may be initiated by a request or directive of the General Tribal
 582 Council or the Oneida Business Committee.

583 102.12-11. Special Election may be requested by a member of the Nation to the Business
 584 Committee or General Tribal Council.

585 102.12-12. All Special Elections shall follow rules established for all other elections. This includes
 586 positions for all Boards, Committees and Commissions.
 587

588 **102.13. Oneida Nation Constitution and By-law Amendments**

589 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida
 590 Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition
 591 of qualified voters. The requirements for the Oneida Business Committee's initiation of
 592 Constitutional amendments are as provided in the Constitution and as further detailed in the
 593 supporting standard operating procedures which the Oneida Business Committee shall adopt.
 594 Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting
 595 a petition to the Office of the Nation's Secretary which includes the full text of the proposed
 596 amendments and signatures that are equal in number to at least ten percent (10%) of all members
 597 qualified to vote.

598 (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

599 (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall
 600 direct the Trust Enrollment Department to calculate the number of signatures currently
 601 required for a petition submittal, which shall be ten percent (10%) of all members qualified
 602 to vote on the date the petition form is requested from the Office of the Nation's Secretary.
 603 When the Nation's Secretary receives the calculation from the Trust Enrollment
 604 Department, the Nation's Secretary shall provide the requester with the petition form and
 605 the number of signatures that are currently required.

606 (c) Such petitions shall be circulated with all supporting materials and submitted a
 607 minimum of ninety (90) days prior to the election at which the proposed amendment is to
 608 be voted upon. If a petition includes supporting materials in addition to the petition form,
 609 each qualified voter signing the petition shall also acknowledge that the supporting
 610 materials were available for review at the time he or she signed the petition by initialing
 611 where required on the petition form.

612 (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment
 613 Department for verification of signatures and to the Election Board to provide notice that
 614 the petition may need to be placed on an upcoming ballot.

615 (e) If the petition is verified by the Trust Enrollment Department to contain signatures from
 616 at least ten percent (10%) of all qualified voters, the Election Board shall make an official
 617 announcement of the proposed amendments to the Oneida Nation Constitution at least sixty
 618 (60) days prior to the election at which the proposed amendments are to be voted on.

619 102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation
 620 Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general

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621 election. Provided that, the Oneida Business Committee or General Tribal Council may order a
 622 special election be held to consider the proposed amendments. In such circumstances, the Election
 623 Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the
 624 next special election.

625 102.13-3. The Election Board shall publish any proposed amendments by publishing a sample
 626 ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust
 627 Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty
 628 (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently
 629 posted in each polling place and at administrative offices of the Nation and shall also be published
 630 in official Oneida media outlets, which the Oneida Business Committee shall identify by
 631 resolution. For the purposes of this section, Oneida administrative offices means the location
 632 where the Oneida Business Committee conducts business.

633 102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of
 634 the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall
 635 ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a
 636 true and impartial statement and is written in such a manner that does not create prejudice for or
 637 against the proposed amendment.

638 102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed
 639 amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that
 640 amendment shall become part of the Constitution and By-laws, and shall abrogate or amend
 641 existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission
 642 of the final election report.

643 102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the
 644 amendment receiving the highest affirmation vote prevails.

645
 646 *End.*

~~647~~

649 Adopted - June 19, 1993

650 Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

651 Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

652 Amended- October 11, 2008 (General Tribal Council Meeting)

653 Amended-GTC-01-04-10-A

654 Amended – BC-02-25-15-C

655 Amended – GTC-04-23-17-A

656 Emergency Amended – BC-03-17-20-B

657 Emergency Amended – BC-05-13-20-H

658 Emergency Amended – BC-06-24-20-B (Expired at Conclusion of 2020 General Election)

659 Emergency Amended – BC-04-28-21-B (Expired)

660 Emergency Amended – BC-07-13-22-E

661 Emergency Amended – BC- - - -

Title 1. Government and Finances - Chapter 102

ELECTION

Onayote'a'ká· Tho Ni· Yót Tsi? Ayethiyataláko Tsi? Kayanl'hsla

People of the Standing Stone how it is we will appoint them the kind of laws we have

102.1. Purpose and Policy

102.2. Adoption, Amendment, Repeal

102.3. Definitions

102.4. Election Board

102.5. Candidate Eligibility

102.6. Selection of Candidates

102.7. Notice of Polling Places

102.8. Registration of Voters

102.9. Election Process

102.10. Tabulating and Securing Ballots

102.11. Election Outcome and Ties

102.12. Elections

102.13. Oneida Nation Constitution and By-law Amendments

102.1. Purpose and Policy

102.1-1. It is the policy of the Nation that this law shall govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations. Because of the desire for orderly and easily understood elections, there has not been an allowance made for write-in candidates on ballots.

102.1-2. This law defines the duties and responsibilities of the Election Board members and other persons employed by the Oneida Nation in the conduct of elections. It is intended to govern all procedures used in the election process.

102.2. Adoption, Amendment, Repeal

102.2-1. This law was adopted by the Oneida General Tribal Council by resolution GTC 07-06-98-A, amended by resolutions GTC-01-04-10-A, BC-02-25-15-C and GTC-04-23-17-A, and amended on an emergency basis by resolution BC-__-__-__.

102.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act. Actions of the Election Board regarding amendments to this law and policies adopted regarding implementation of this law are to be presented to the Business Committee who shall then adopt or forward action(s) to the General Tribal Council for adoption.

102.2-3. 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.

102.2-4. 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.

102.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

102.3. Definitions

102.3-1. 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.

102.3-2. "Alternate" shall mean an individual appointed by the Business Committee to serve on the Election Board during an election and until election results have been certified.

102.3-3. "Applicant" shall mean a potential candidate who has not yet been officially approved for acceptance on a ballot.

102.3-4. "Business day" shall mean Monday through Friday, 8:00 a.m. – 4:30 p.m., excluding holidays of the Nation.

102.3-5. "Campaigning" shall mean all efforts designed to influence members of the Nation to support or reject a particular candidate of the Nation including, without limitation, advertising, rallying, public speaking, or other communications with members of the Nation.

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38 102.3-6. "Candidate" shall mean a petitioner or nominee for an elected position whose name is
39 placed on the ballot by the Election Board after successful application.

40 102.3-7. "Clerk" shall mean the election official who identifies proper registration for the purpose
41 of determining voter eligibility.

42 102.3-8. "Close of business" shall mean 4:30 p.m. Monday through Friday.

43 102.3-9. "Conflict of Interest" shall mean any interest, whether it be personal, financial, political
44 or otherwise, in which a Nation elected official, employee, consultant, appointed or elected,
45 member of any board, committee or commission, or their immediate relatives, friends or
46 associates, or any other person with whom they have contact, that conflicts with any right of the
47 Nation to property, information, or any other right to own and operate its enterprises, free from
48 undisclosed competition or other violation of such rights of the Oneida Nation, or as defined in
49 any law or policy of the Nation.

50 102.3-10. "Election" shall mean every primary and election.

51 102.3-11. "General election" shall mean the election held every three (3) years in July to elect the
52 Chairperson, Vice-Chairperson, Secretary, Treasurer, and the five Council Members of the
53 Business Committee and may include contests for elected boards, committees and commissions
54 positions.

55 102.3-12. "Judge" shall mean the election official who informs and advises the Chairperson of
56 discrepancies, complaints and controversy regarding voter eligibility.

57 102.3-13. "Judiciary" means the judicial system that was established by Oneida General Tribal
58 Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of
59 the Nation.

60 102.3-14. "Lot drawing" shall mean the equal chance method used to select a candidate as the
61 winner of an elected position, in the case of a tie between two (2) or more candidates.

62 102.3-15. "Nation" means the Oneida Nation.

63 102.3-16. "Nation's newspaper" shall mean the Kalihwisaks, or any other newspaper operated by
64 the Nation for the benefit of transmitting news to members of the Nation, which is designated by
65 the Election Board as a source for election related news.

66 102.3-17. "Oneida Police Officer" shall mean an enrolled member of the Oneida Nation who is a
67 police officer on any police force.

68 102.3-18. "Private property" shall mean any lot of land not owned by the Nation, a residential
69 dwelling or a privately owned business within the boundaries of the Reservation.

70 102.3-19. "Prominent locations" shall mean the polling places, main doors of the Norbert Hill
71 Center, main doors of the Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida
72 Community Health Center, the SEOTS building and all One-Stop locations.

73 102.3-20. "Qualified voter" shall mean an enrolled member of the Nation who is eighteen (18)
74 years of age or older.

75 102.3-21. "Rejected Ballots" shall mean those ballots which are rejected by the vote tabulating
76 machine.

77 102.3-22. "Spoiled Ballot" shall mean a ballot which contains a voter error or is otherwise marred
78 and is not tabulated.

79 102.3-23. "Teller" shall mean the election official in charge of collecting and storing of all ballots.

80

81

82 **102.4. Election Board**

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83 *Section A. Establishment, Composition and Election*84 102.4-1. An Election Board is hereby created for the purpose of carrying out the provisions of this
85 law and Article III, Sections 2 and 3 of the Oneida Nation Constitution.86 102.4-2. The Election Board shall consist of nine (9) elected members. All members shall be
87 elected to terms of three (3) years, not to exceed two (2) consecutive terms.88 102.4-3. *Recusal.* An Election Board member shall recuse himself/herself from participating as an
89 Election Board member in any pre-election, election day, or post-election activities while he or
90 she is a petitioner, applicant or candidate in any election or there is otherwise a conflict of interest.91 102.4-4. *Removal.* Removal of members shall be pursuant to the Oneida Removal Law. A member
92 who is removed from the Election Board shall be ineligible to serve on the Board for three (3)
93 years from the time he or she is removed from the Election Board.94 102.4-5. *Vacancies.* Any vacancy in an unexpired term shall be filled by appointment by the
95 Business Committee for the balance of the unexpired term. The filling of a vacancy may be timed
96 to correspond with the pre-election activities and the needs of the Election Board.

97 102.4-6. The Election Board shall identify tellers, judges and clerks in advance of an election.

98 102.4-7 The Business Committee may appoint or reappoint a sufficient number of alternates to
99 the Election Board, as recommended by the Election Board, to assist with election day and pre-
100 election activities.101 102.4-8. The Election Board shall choose a Chairperson from amongst themselves as set out in
102 the By-laws of the Election Board, to preside over the meetings. This selection shall be carried
103 out at the first meeting of the Election Board following an election. The Chairperson shall then
104 ask the Election Board to select a Vice-Chairperson and Secretary.105
106 *Section B. Duties of the Election Board*107 102.4-9. The Election Board shall have the following duties, along with other responsibilities listed
108 throughout this law.

- 109 (a) The Election Board shall be in charge of all registration and election procedures; and
-
- 110 (b) Upon completion of an election, the Election Board shall make a final report on the
-
- 111 election results as set out in this law.

112
113 *Section C. Specific Duties of Officers and Election Board Members*114 102.4-10. Specific duties of the Chairperson and other Election Board members, in addition to
115 being present at all Election Board meetings and assisting the handicapped through the voting
116 process, are as set out herein:117 (a) Chairperson: Shall preside over meetings of the Election Board; shall select the hearing
118 body for applicants found to be ineligible in accordance with 102.5-6 in the event of an
119 appeal; shall oversee the conduct of the election; shall dismiss the alternates and Trust
120 Enrollment Department personnel when their election day duties are complete; and shall
121 post and report election results.

122 (b) Vice-Chairperson: Shall preside over all meetings in the absence of the Chairperson.

123 (c) Secretary: Shall keep a record of the meetings and make them available to the Nation's
124 Secretary, other Election Board members and the public as required in the Open Records
125 and Open Meetings Law.126 (d) Clerks: Shall implement the requirements of identifying and registering all voters and
127 determining voter eligibility. Clerks shall work in conjunction with the Trust Enrollment

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128 Department personnel in the registration process, and assist the Chairperson as directed in
 129 conducting the election. Clerks cannot be currently employed by the Trust Enrollment
 130 Department.

131 (e) Tellers: Shall collect and keep safe all ballots, until the election is complete, as
 132 determined by this law. Shall assist the Chairperson in conducting the election.

133 (f) Judges: Shall inform and advise the Chairperson of all aspects of the election conducted
 134 under this law. In case of disputes among Election Board members, or between members
 135 of the Nation and Election Board members, or any controversy regarding voter eligibility,
 136 the Judge(s) shall assist the Chairperson in making a determination. The Judge(s) shall
 137 also ensure that all ballots of voters whose eligibility may be in question, remain
 138 confidential.
 139

140 *Section D. Compensation Rates*

141 102.4-11. Election Board members are to be compensated at an hourly rate when conducting
 142 elections as provided for in the Election Board's bylaws as approved by the Business Committee.
 143 The Election Board shall have a budget, approved through the Nation's budgeting process.

144 102.4-12. The Trust Enrollment Department personnel and Oneida Police Officer(s) shall be
 145 compensated at their regular rate of pay out of their respective budgets.
 146

147 **102.5. Candidate Eligibility**

148 *Section A. Requirements*

149 102.5-1. In addition to any specific requirements and/or exceptions set out in duly adopted by-
 150 laws or other documents, all applicants shall meet the minimum requirements set out in this section
 151 in order to become a candidate.

152 102.5-2. Minimum Requirements. In order to be eligible to be a candidate, applicants shall:

153 (a) be an enrolled member of the Nation, as verified by membership rolls of the Nation.

154 (b) be a qualified voter on the day of the election.

155 (c) provide proof of physical residency as required for the position for which they have
 156 been nominated or for which they have petitioned. Proof of residency may be through one

157 (1) or more of the following:

158 (1) a valid Wisconsin driver's license;

159 (2) a bill or pay check stub showing name and physical address of the candidate
 160 from the prior or current month;

161 (3) another form of proof that identifies the candidate and that the candidate has
 162 physically resided at the address and identifies that address as the primary
 163 residence.

164 102.5-3. No applicant may have a conflict of interest with the position for which they are being
 165 considered, provided that any conflict of interest which may be eliminated within thirty (30)
 166 calendar days of being elected shall not be considered as a bar to nomination or election.

167 102.5-4. Applications and petitions where the applicant was not nominated during caucus shall be
 168 filed by presenting the information to the Nation's Secretary, or designated agent, during normal
 169 business hours, 8:00 to 4:30 Monday through Friday, within five (5) business days after the caucus.
 170 No mailed, internal Nation mail delivery, faxed or other delivery method shall be accepted.

171 102.5-5. The names of the candidates and the positions sought shall be a public record and made
 172 available to the public upon the determination of eligibility by the Election Board or the Board's

173 designated agent.

174

175 *Section B. Eligibility Review*

176 102.5-6. Applicants found to be ineligible shall have two (2) business days to request an appeal.
177 At least four (4) Election Board members shall constitute a hearing body. The Chairperson shall
178 select the hearing body. The hearing shall be held within two (2) business days of receipt of the
179 appeal. The applicant shall be notified by phone of time and place of the hearing. The decision
180 of the hearing body shall be sent via certified mail or hand delivery within two (2) business days
181 of the hearing. Any appeal from a decision of the Election Board hearing body shall be to the
182 Judiciary on an accelerated schedule.

183 102.5-7. The Election Board shall be responsible for reviewing the qualifications of applicants to
184 verify eligibility. Any applicant found to be ineligible for a nominated or petitioned for position
185 shall be notified by certified mail return receipt requested. The notice shall provide the following
186 information:

187 (a) Position for which they were considered

188 (b) Qualification of the position and citation of the source. (Copies of source may be
189 attached.)

190 (c) A brief summary explaining why the applicant was found to be ineligible.

191 (d) That the applicant has two (2) business days from notification to make an appeal.
192 Appeals must be filed at the location designated on the notice by hand delivery. The
193 location designated shall be on the Reservation. No mailed, internal Nation mail, faxed or
194 other delivery method will be accepted.

195

196 *Section C. Campaign Financing*

197 102.5-8. Contributions:

198 (a) Solicitation of Contributions by Candidates.

199 (1) Candidates shall only accept contributions from individuals who are members
200 of the Nation or individuals related by blood or marriage to the candidate.
201 Candidates may not accept contributions from any business, whether sole
202 proprietorship, partnership, corporation, or other business entity.

203 (2) Candidates shall not solicit or accept contributions in any office or
204 business/facility of the Nation.

205 (b) Fines. Violation of the contribution restrictions shall result in a fine imposed by the
206 Election Board in an amount specified in a resolution adopted by the Business Committee.

207 102.5-9. Campaign Signs and Campaigning:

208 (a) Placement of campaign signs:

209 (1) Campaign signs shall not be posted or erected on any property of the Nation
210 except for private property with the owner/tenant's permission.

211 (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum
212 of seven (7) such signs may be placed on a building or on a lot.

213 (3) No campaign sign shall project beyond the property line into the public right
214 of way.

215 (b) Removal of campaign signs. All campaign signs shall be removed within five (5)
216 business days after an election.

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217 (c) Employees of the Nation shall not engage in campaigning for offices of the Nation
 218 during work hours. The Nation's employees shall be subject to disciplinary action under
 219 the personnel policies and procedures for political campaigning during work hours.

220 (d) Enforcement. The Zoning Administrator shall cause to be removed any campaign
 221 signs that are not in compliance with this law, in accordance with the Zoning and Shoreland
 222 Protection Law.

223 (e) Fines. Violation of the campaign sign restrictions shall result in a fine imposed by the
 224 Election Board in an amount specified in a resolution adopted by the Business Committee.
 225

226 *Section D. Candidate Withdrawal*

227 102.5-10 Any candidate may withdraw his or her name from a ballot if submitted in writing by
 228 the candidate prior to submission of the ballot for printing to any Election Board member,
 229 excluding alternates.

230 102.5-11 After printing of the ballot, any candidate may withdraw his or her name from the
 231 election by submitting in writing a statement indicating they are withdrawing from the election
 232 prior to the opening of the polls to any Election Board member, excluding alternates. This
 233 statement shall be posted alongside any sample ballot printed prior to the election in the newspaper
 234 or any posting at the polling places.

235 102.5-12. Candidates withdrawing after opening of the polls shall request, in writing to the
 236 Election Board members in charge of the polling place, to be removed from the ballot. The written
 237 statement shall be posted next to any posted sample ballot.

238 102.5-13. Candidates withdrawing by any method listed herein shall be denied any position from
 239 which they have withdrawn regardless of the number of votes cast for that candidate. A written
 240 statement shall be considered the only necessary evidence of withdrawal and acceptance of denial
 241 of any position withdrawn from.

242 102.5-14. *Candidate Withdrawal After Winning an Election.*

243 (a) In the event a candidate declines an office after winning an election, the Election Board
 244 shall declare the next highest vote recipient the winner. This procedure shall be repeated
 245 as necessary until a winner is declared.

246 (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a
 247 Special Election shall be held.
 248

249 **2.6. Selection of Candidates**

250 *Section A. Setting of Caucus*

251 102.6-1. The Election Board shall be responsible for calling a caucus before any election is held.
 252 The caucus for the general election shall be held at least ninety (90) calendar days prior to the
 253 election date. Caucuses for other elections shall be held at least forty-five (45) calendar days prior
 254 to the election date. In a general election year, caucuses shall be combined so that candidates for
 255 the Business Committee and elected boards, committees and commissions are nominated at the
 256 same caucus.

257 102.6-2. The procedures for the caucus shall be as follows:

258 (a) Candidates shall be nominated from the floor.

259 (b) Candidates present at the caucus will accept/decline their nomination at the caucus.
 260 Candidates nominated at the caucus, but not present to accept the nomination, shall be
 261 required to follow the petition process.

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(c) Nominations shall consist of the following positions: Chairperson, Vice-Chairperson, Treasurer, Secretary, Council Member and other elected positions as required by by-laws or creating documents of a board, committee, or commission.

Section B. Petition

102.6-3. Any eligible member of the Nation may petition to be placed on a ballot according to the following procedures:

(a) Each petitioner, not nominated at caucus, shall file a petition containing endorsee's original signatures; photocopies shall not be accepted.

(b) Petitioners shall use an official petition form as designated by this law which may be obtained in the Office of the Nation's Secretary or from the mailing for that caucus.

(c) The petition form shall consist of each endorsee's:

(1) printed name and address;

(2) date of birth;

(3) Oneida Nation Enrollment Number; and

(4) signature.

(d) Petitioners shall obtain not less than ten (10) signatures of qualified voters as defined under this law.

(e) Petitions shall be presented to the Nation's Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, but no later than prior to close of business five (5) business days after the caucus. The location to drop-off petitions shall be identified in the mailing identifying the caucus date.

(f) The Nation's Secretary shall forward all petitions to the Election Board Chairperson the next business day following the close of petition submissions.

(g) The Election Board shall have the Trust Enrollment Department verify all signatures contained on the petition.

102.6-4. A person who runs for a position on the Oneida Business Committee, or a position on a judicial court or commission, shall not run for more than one (1) elective office or seat per election.

102.7. Notice of Polling Places

102.7-1. The Election Board shall post a notice in the prominent locations, stating the location of the polling places and the time the polls will be open. This notice shall also be posted in an easily visible position, close to the entrance of the Nation's businesses/facilities.

102.7-2. Polling information shall be posted no less than ten (10) calendar days prior to the election, and shall remain posted until the poll closes on the day of the election.

102.7-3. Except for a Special Election, notice for the election shall be mailed to all Nation members, stating the time and place of the election and a sample of the ballot, no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty (20) calendar days prior to the requested mailing.

102.7-4. Notice of the election shall be placed in the Nation's newspaper.

102.8. Registration of Voters*Section A. Requirements*

102.8-1. *Registration of Voters.* All enrolled members of the Nation, who are eighteen (18) years

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307 of age or over, are qualified voters of such election(s) as defined in Article III, Section 2 of the
308 Oneida Nation Constitution.

309

310 *Section B. Identification of Voters*

311 102.8-2. All voters must present one of the following picture identifications in order to be able to
312 vote:

313 (a) Oneida Nation I.D.

314 (b) Drivers License.

315 (c) Other I.D. with name and photo.

316

317 *Section C. Registration Procedures*

318 102.8-3. Voters shall physically register, on the day of the election, at the polls.

319 102.8-4. Trust Enrollment Department personnel shall be responsible for verifying enrollment
320 with the Nation. Conduct of Trust Enrollment Department personnel is governed by the Election
321 Officials during the voting period.

322 102.8-5. Every person who intends to vote must sign his/her name on an official Voter Registration
323 Form containing the voter's following information:

324 (a) name and maiden name (if any);

325 (b) current address;

326 (c) date of birth; and

327 (d) enrollment number.

328

329 *Section D. Qualification/Verification of Voter Eligibility*

330 102.8-6. Should a question or dispute arise as to the eligibility of a voter being qualified to vote,
331 the Judges of the Election Officials appointed by the Election Board Chairperson shall meet with
332 the Trust Enrollment Department personnel who are registering voters, to decide the voting
333 member's eligibility currently being questioned and shall make such decisions from the facts
334 available, whether the applicant is, in fact, qualified/verifiable under the Oneida Nation
335 Constitution, Article III Section 2, to vote in the Nation's elections.

336 102.8-7. Any voter denied eligibility shall be allowed to vote, provided that the ballot shall be
337 placed in an envelope, initialed by two (2) Election Officials, sealed and numbered. The name of
338 the voter shall be written next to a numbered list which corresponds to the numbered and sealed
339 envelope. The voter shall be required to mail a written appeal to the Election Board at P.O. Box
340 413, Oneida, Wisconsin, 54155, postmarked within two (2) business days of the election if they
341 desire to challenge the decision made by the Election Officials. The Election Board shall make a
342 final decision, within five (5) business days of receiving the appeal and shall report this decision
343 in the final report sent to the Oneida Business Committee.

344

345 **102.9. Election Process**

346 *Section A. Polling Places and Times*

347 102.9-1. In accordance with Article III, Section 5 of the Oneida Nation Constitution, elections
348 shall be held in the month of July on a date set by the General Tribal Council. The General Tribal
349 Council shall set the election date at the January annual meeting, or at the first GTC meeting held
350 during a given year. If the General Tribal Council is unable to meet to select the election date by

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351 February 1st, then the Oneida Business Committee shall select the election date. Special Elections
352 shall be set in accordance with 102.12-6.

353 102.9-2. Elections shall be held in an Oneida Nation facility(s) as determined by the Election
354 Board.

355 102.9-3. Voting for elections shall begin at 7:00 a.m. and shall end at 7:00 p.m. All voters in line
356 to vote at 7:00 p.m. shall be allowed to vote.

357 (a) If a ballot counting machine is used, the ballot counting machine shall be prepared
358 prior to 7:00 a.m. on the day of the election. The Judges shall open the polls only after four
359 (4) members of the Nation verify, through signature on the tape, the ballot box is empty
360 and the ballot counting machine printer tape has a zero (0) total count.

361 102.9-4. At least one (1) Oneida Police Officer shall be present during the time the polls are open,
362 and until the counting of ballots is completed, and tentative results posted.

363 102.9-5. The Election Board shall provide a voting area sufficiently isolated for each voter such
364 that there is an area with at least two sides and a back enclosure.

365 102.9-6. No campaigning of any type shall be conducted within two hundred eighty (280) feet of
366 the voting area, excluding private property.

367 102.9-7. No one causing a disturbance shall be allowed in the voting area.

368 102.9-8. Election Board members may restrict the voting area to qualified voters only. This
369 restriction is in the interest of maintaining security of the ballots and voting process.

370

371 *Section B. Ballot Box*

372 102.9-9. All ballots being votes, shall be placed in a receptacle clearly marked "Ballot Box" and
373 shall be locked until counting at the close of polls. Provided that, with electronic ballot counting,
374 the ballots may be placed within the ballot counting machine as they are received.

375

376 *Section C. Spoiled Ballots*

377 102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

378 102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials
379 and placed in an envelope marked as "Spoiled Ballots."

380 102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15)
381 calendar days following finalization of any challenge of the election, at the Records Management
382 Department.

383

384 *Section D. Rejected Ballots*

385 102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

386 (a) Computer rejected ballots shall be reviewed by the Election Officials to verify the
387 authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final
388 computer total, provided that, a new ballot was not received as set out in sections 102.9-10
389 through 102.9-12.

390 (b) Ballots rejected, either during the computer process or during a manual counting, shall
391 be reviewed by the Election Officials to verify that they are authentic. If the Election
392 Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the
393 ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

394

395 **102.10. Tabulating and Securing Ballots**

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396 *Section A. Machine Counted Ballots*397 102.10-1. When ballots are counted by machine, at the close of polls the Judges shall generate
398 from the ballot counting machine copies of the election totals from the votes cast.399 102.10-2. At least six (6) Election Board members shall sign the election totals, which shall
400 include the tape signed by the members of the Nation before the polls were opened per section
401 102.9-3(a).

402

403 *Section B. Manually Counted Ballots*404 102.10-3. When ballots are manually counted, at the close of polls the Judges shall unlock the
405 ballot box and remove the ballots.406 102.10-4. If the ballots need to be counted at a location other than the polling site, the ballots shall
407 be secured in a sealed container for transportation to the ballot counting location. The sealed
408 ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election
409 Officials for counting/tallying of ballots.410 102.10-5. The sealed ballots shall be opened at the time of counting by the Election Officials and
411 witnessed/monitored by an Oneida Police Officer.412 102.10-6. Ballots must be counted by two different Election Officials until two final tallies are
413 equal in back to back counting. Final tallies shall be verified by the Election Judges.

414

415 *Section C. Securing Ballots*416 102.10-7. The Judges shall place together all ballots counted and secure them together so that they
417 cannot be untied or tampered with without breaking the seal. The secured ballots, and the election
418 totals with the signed tape, if applicable, shall then be secured by the Judges in a sealed container
419 in such a manner that the container cannot be opened without breaking the seals or locks, or
420 destroying the container. The Oneida Police Officer shall then deliver, on the day of the election,
421 the sealed container to the Records Management Department for retaining.

422

423 **102.11. Election Outcome and Ties**424 *Section A. Election Results Announcement*425 102.11-1. The tentative results of an election shall be announced and posted by the Election Board
426 within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain
427 the following statement:428 *"The election results posted here are tentative results. Final election results are forwarded*
429 *by the Oneida Election Board to the Oneida Business Committee via a Final Report after*
430 *time has lapsed for recount requests, or challenges or after all recounts or challenges*
431 *have been completed, whichever is longer"*432 102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's
433 newspaper, the tentative results of an election.

434

435 *Section B. Tie*436 102.11-3. In the event of a tie for any office, and where the breaking of a tie is necessary to
437 determine the outcome of an election, the Election Board shall conduct an automatic recount of
438 the votes for each candidate receiving the same number of votes. Any recount conducted shall be
439 the only recount allowed for the tied candidates.

440 102.11-4. For Business Committee positions, a run-off election between the candidates with the

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441 same number of votes shall be held if there remains a tie after the recount. Said run-off election
442 shall be held within twenty one (21) calendar days after the recount. For all other positions, if
443 there remains a tie after the recount, the Election Board shall decide the winner of the tied positions
444 at least two (2) business days after, but no more than five (5) business days after the recount
445 through a lot drawing, which shall be open to the public.

446 (a) The Election Board shall notify each of the tied candidates and the public of the date,
447 time, and place of the drawing at least one (1) business day before the drawing. Notice to
448 the tied candidates shall be in writing. Notice to the public shall be posted by the Election
449 Board in the prominent locations.

450 (b) On the date and at the time and place the drawing was noticed, the Election Board
451 Chairperson shall clearly write the name of each tied candidate on separate pieces of paper
452 in front of any witnesses present. The pieces of paper shall be the same, or approximately
453 the same, color, size, and type. The papers shall be folded in half and placed in a container
454 selected by the Election Board Chairperson.

455 (c) The Election Board Chairperson shall designate an uninterested party to draw a name
456 from the container. The candidate whose name is drawn from the container first shall be
457 declared the winner. An Election Board member other than the Chairperson shall remove
458 the remaining pieces of paper from the container and show them to the witnesses present.
459

460 *Section C. Recount Procedures*

461 102.11-5. A candidate may request the Election Board to complete a recount, provided the margin
462 between the requesting candidate's vote total and vote total for the unofficial winner was within
463 two percent (2%) of the total votes for the office being sought or twenty (20) votes, whichever is
464 greater. A candidate requests a recount by hand delivering a written request to the office of the
465 Nation's Secretary, or noticed designated agent, within five (5) business days after the election.
466 Requests shall be limited to one (1) request per candidate. The Nation's Secretary shall contact
467 the Election Board Chairperson by the next business day after the request for recounts.

468 102.11-6. The Election Board shall respond by the close of business on the fifth (5th) day after the
469 request regarding the results of the recount. Provided that, no recount request need be honored
470 where there have been two (2) recounts completed as a result of a request either as a recount of the
471 whole election results, or of that sub-section.

472 102.11-7. All recounts shall be conducted manually with, if possible, the original Election
473 Officials and Oneida Police Officer present, regardless of the original type of counting process.
474 Manual recounts may, at the discretion of the Election Officials, be of the total election results, or
475 of the challenged sub-section of the election results.

476 102.11-8. The Oneida Police Officer shall be responsible for picking up the locked, sealed
477 container with the ballots from the Records Management Department and transporting it to the
478 ballot recounting location.

479 102.11-9. A recount shall be conducted by a quorum of the Election Board, including at least three
480 (3) of the original Election Officials. The locked, sealed ballots shall be opened by the Election
481 Board Chairperson and an Oneida Police Officer shall witness the recount.

482 102.11-10. Recounting of ballots may be performed manually or by computer. All ballots shall be
483 counted until two (2) final tallies are equal in back to back counting and the total count of ballots
484 reconciles with the total count from the ballot counting machine. Sub-sections of candidates may
485 be recounted in lieu of a full recount.

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486 (a) Manually counted ballots shall be recounted by the Election Board. Ballots shall be
487 counted twice by different persons and certified by the Judges.

488 (b) Computer counted ballots shall be recounted twice and certified by the Judges. Prior
489 to using an electronic ballot counting device, it shall be certified as correct either by the
490 maker, lessor of the machine, or Election Board.

491
492 *Section D. Challenges and Declaration of Results*

493 102.11-11. *Challenges.* Any qualified voter may challenge the results of an election by filing a
494 complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall
495 hear and decide a challenge to any election within two (2) business days after the challenge is filed.
496 Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after
497 the issuance of the lower body's decision and decided within two (2) business days after the appeal
498 is filed.

499 (a) The person challenging the election results shall prove by clear and convincing
500 evidence that the Election Law was violated or an unfair election was conducted, and that
501 the outcome of the election would have been different but for the violation.

502 (b) If the Judiciary invalidates the election results, a Special Election shall be ordered by
503 the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon
504 as the Election Law allows for a Special Election.

505 102.11-12. *The Final Report.* The Election Board shall forward a Final Report to the Nation's
506 Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges
507 have been completed, whichever is longer. The Final Report shall consist of the following
508 information:

509 (a) Total number of persons voting.

510 (b) Total votes cast for each candidate by subsection of the ballot.

511 (c) List of any ties and final results of those ties, including the method of resolution.

512 (d) List of candidates elected and position elected to.

513 (e) Number of spoiled ballots.

514 (f) Cost of the election, including the compensation paid to each Election Board member.

515 102.11-13. *Declaration of Results.* The Business Committee shall declare the official results of
516 the election and send notices regarding when the swearing in of newly elected officials shall take
517 place within ten (10) business days after receipt of the Final Report.

518 102.11-14. Candidates elected to the Business Committee shall resign from any salaried position
519 effective prior to taking a Business Committee oath of office

520 102.11-15. Except in the event of an emergency, as determined by the Business Committee,
521 newly elected officials shall be sworn into office no later than thirty (30) calendar days after the
522 official results of an election are declared by the Business Committee.

523 (a) If a newly elected official is not sworn in within thirty (30) calendar days, the seat shall
524 be considered vacant and the Election Board shall declare the next highest vote recipient
525 the winner. This procedure shall be repeated as necessary until a winner is declared.

526 (b) If all vote recipients decline or are otherwise unable to be declared the winner, then a
527 Special Election shall be held.

528 102.11-16. The Election Board shall send notice to the Records Management Department to
529 destroy the ballots thirty (30) calendar days after the election or after the final declaration of official
530 election results occurs, whichever is longer.

- 531
532 **102.12. Elections**
533 *Section A. Primary Elections; Business Committee*
534 102.12-1. When a primary is required under 102.12-2, it shall be held on a Saturday at least sixty
535 (60) calendar days prior to the election.
536 102.12-2. There shall be a primary election for Business Committee positions whenever there are
537 three (3) or more candidates for any officer positions or sixteen (16) or more candidates for the at-
538 large council member positions.
539 (a) The two (2) candidates receiving the highest number of votes cast for each officer
540 position shall be placed on the ballot.
541 (b) The fifteen (15) candidates receiving the highest number of votes cast for the at-large
542 council member positions shall be placed on the ballot.
543 (c) Any position where a tie exists to determine the candidates to be placed on the ballot
544 shall include all candidates where the tie exists.
545 102.12-3. The Election Board shall cancel the primary election if the Business Committee
546 positions did not draw the requisite number of candidates for a primary by the petitioning deadline
547 set for the primary.
548 102.12-4. In the event a candidate withdraws or is unable to run for office after being declared a
549 winner in the primary, the Election Board shall declare the next highest primary vote recipient the
550 primary winner. This procedure shall be repeated as necessary until the ballot is full or until there
551 are no available candidates. If the ballot has already been printed, the procedures for notifying the
552 Oneida public in section 102.5-11 and 102.5-12 shall be followed, including the requirement to
553 print a notice in the Nation's newspaper if time lines allow.
554
555 *Section B. Special Elections*
556 102.12-5. Matters subject to a Special Election, i.e., referendum, vacancies, petitions, etc., as
557 defined in this law, may be placed on the same ballot as the subject matter of an election.
558 102.12-6. Dates of all Special Elections shall be set, as provided for in this law, by the Business
559 Committee as recommended by the Election Board or as ordered by the Judiciary in connection
560 with an election challenge.
561 102.12-7. Notice of said Special Election shall be posted by the Election Board in the prominent
562 locations, and placed in the Nation's newspaper not less than ten (10) calendar days prior to the
563 Special Election.
564 102.12-8. In the event of an emergency, the Election Board may reschedule the election, provided
565 that no less than twenty-four (24) hours notice of the rescheduled election date is given to the
566 voters, by posting notices in the prominent locations.
567
568 *Section C. Referendums*
569 102.12-9. Registered voters may indicate opinions on any development, law or resolution,
570 proposed, enacted, or directed by the Business Committee, or General Tribal Council, in a special
571 referendum election.
572 (a) Referendum elections in which a majority of the qualified voters who cast votes shall
573 be binding on the Business Committee to present the issue for action/decision at General
574 Tribal Council.
575 (b) Referendum requests may appear on the next called for election.

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576 (c) Referendum questions are to be presented to the Nation's Secretary, in writing, at the
 577 caucus prior to election, regarding issues directly affecting the Nation or general
 578 membership.
 579

580 *Section D. Initiation of Special Elections*

581 102.12-10. Special Elections may be initiated by a request or directive of the General Tribal
 582 Council or the Oneida Business Committee.

583 102.12-11. Special Election may be requested by a member of the Nation to the Business
 584 Committee or General Tribal Council.

585 102.12-12. All Special Elections shall follow rules established for all other elections. This includes
 586 positions for all Boards, Committees and Commissions.
 587

588 **102.13. Oneida Nation Constitution and By-law Amendments**

589 102.13-1. Pursuant to Article VI of the Oneida Nation Constitution, amendments to the Oneida
 590 Nation Constitution and By-laws may be initiated by the Oneida Business Committee or a petition
 591 of qualified voters. The requirements for the Oneida Business Committee's initiation of
 592 Constitutional amendments are as provided in the Constitution and as further detailed in the
 593 supporting standard operating procedures which the Oneida Business Committee shall adopt.
 594 Qualified voters may petition to amend the Oneida Nation Constitution and By-laws by submitting
 595 a petition to the Office of the Nation's Secretary which includes the full text of the proposed
 596 amendments and signatures that are equal in number to at least ten percent (10%) of all members
 597 qualified to vote.

598 (a) Qualified voters may request a petition form from the Office of the Nation's Secretary.

599 (b) When a petition form is requested, the Nation's Secretary, or his or her designee, shall
 600 direct the Trust Enrollment Department to calculate the number of signatures currently
 601 required for a petition submittal, which shall be ten percent (10%) of all members qualified
 602 to vote on the date the petition form is requested from the Office of the Nation's Secretary.
 603 When the Nation's Secretary receives the calculation from the Trust Enrollment
 604 Department, the Nation's Secretary shall provide the requester with the petition form and
 605 the number of signatures that are currently required.

606 (c) Such petitions shall be circulated with all supporting materials and submitted a
 607 minimum of ninety (90) days prior to the election at which the proposed amendment is to
 608 be voted upon. If a petition includes supporting materials in addition to the petition form,
 609 each qualified voter signing the petition shall also acknowledge that the supporting
 610 materials were available for review at the time he or she signed the petition by initialing
 611 where required on the petition form.

612 (d) The Nation's Secretary shall forward submitted petitions to the Trust Enrollment
 613 Department for verification of signatures and to the Election Board to provide notice that
 614 the petition may need to be placed on an upcoming ballot.

615 (e) If the petition is verified by the Trust Enrollment Department to contain signatures from
 616 at least ten percent (10%) of all qualified voters, the Election Board shall make an official
 617 announcement of the proposed amendments to the Oneida Nation Constitution at least sixty
 618 (60) days prior to the election at which the proposed amendments are to be voted on.

619 102.13-2. The Election Board shall place any proposed amendments to the Oneida Nation
 620 Constitution that meet the requirements contained in 102.13-1 on the ballot at the next general

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621 election. Provided that, the Oneida Business Committee or General Tribal Council may order a
 622 special election be held to consider the proposed amendments. In such circumstances, the Election
 623 Board shall place any proposed amendments to the Oneida Nation Constitution on the ballot at the
 624 next special election.

625 102.13-3. The Election Board shall publish any proposed amendments by publishing a sample
 626 ballot no less than ten (10) calendar days prior to the election, through a mass mailing. The Trust
 627 Enrollment Department shall be notified, by the Election Board Chairperson, no less than twenty
 628 (20) calendar days prior to the requested mailing. Copies of such publications shall be prominently
 629 posted in each polling place and at administrative offices of the Nation and shall also be published
 630 in official Oneida media outlets, which the Oneida Business Committee shall identify by
 631 resolution. For the purposes of this section, Oneida administrative offices means the location
 632 where the Oneida Business Committee conducts business.

633 102.13-4. The Election Board shall ensure that the ballot contains a statement of the purpose of
 634 the proposed amendments prepared by the Oneida Law Office. The Oneida Law Office shall
 635 ensure that the statement of purpose is one hundred (100) words or less exclusive of caption, is a
 636 true and impartial statement and is written in such a manner that does not create prejudice for or
 637 against the proposed amendment.

638 102.13-5. Pursuant to Article VI, Section 3 of the Oneida Nation Constitution, proposed
 639 amendments that are approved by sixty-five percent (65%) of the qualified voters that vote on that
 640 amendment shall become part of the Constitution and By-laws, and shall abrogate or amend
 641 existing provisions of the Constitution and By-laws at the end of thirty (30) days after submission
 642 of the final election report.

643 102.13-6. If two (2) or more amendments approved by the voters at the same election conflict, the
 644 amendment receiving the highest affirmation vote prevails.

645
 646 *End.*

~~647~~

649 Adopted - June 19, 1993

650 Amended - June 28, 1995 (Adopted by BC on Behalf of GTC, Completion of Agenda)

651 Presented for Adoption of 1997 Revisions - GTC-7-6-98-A

652 Amended- October 11, 2008 (General Tribal Council Meeting)

653 Amended-GTC-01-04-10-A

654 Amended – BC-02-25-15-C

655 Amended – GTC-04-23-17-A

656 Emergency Amended – BC-03-17-20-B

657 Emergency Amended – BC-05-13-20-H

658 Emergency Amended – BC-06-24-20-B (Expired at Conclusion of 2020 General Election)

659 Emergency Amended – BC-04-28-21-B (Expired)

660 Emergency Amended – BC-07-13-22-E

661 Emergency Amended – BC-__-__-__-__



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



AGENDA REQUEST FORM

- 1) Request Date: December 21, 2022
- 2) Contact Person(s): Clorissa N. Leeman
Dept: Legislative Reference Office
Phone Number: (920) 869-4417 Email: cleeman@oneidanation.org
- 3) Agenda Title: Two-Spirit Inclusion Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Two-spirit, or transgender, individuals constitute one of the most
marginalized communities in the world. The purpose of this law would be
to provide protections against discrimination and promote inclusion of all
two-spirited people.

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

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

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

- 6) Please list all other departments or person(s) you have brought your concern to:
Request came from discussion with the Budget Analyst regarding her work with the North American Indigenous Games.
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:

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

Signature of Requester:

Please send this form and all supporting materials to:

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

December 2022

December 2022

January 2023

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
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29	30	31				

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Nov 27	28	29	30	Dec 1 10:00am LOC Work Session (Microsoft Teams) 1:00pm Layoff Policy amendments work meeting	2	3
4	5 9:00am LRO Staff Meeting (Legislative Reference) 1:00pm Rule Making Authority 3rd Meeting	6	7 8:30am LOC Prep (Microsoft Teams Meeting); 9:00am LOC Meeting (BC_Conf_Room);	8	9 9:00am Probate Law work meeting (Microsoft Teams Meeting) - Carolyn A. Salutz	10
11	12 10:00am Business Code (BC_Exec_Conf_Room) - Grace L. Elliott	13 10:00am LOC Work Session (Microsoft Teams) 12:15pm PUBLIC MEETING: Back Pay Law Amendments	14 8:30am Oneida Business Committee Meeting	15	16	17
18	19 10:30am Investigative Leave (Microsoft Teams Meeting) - Grace L. Elliott	20	21 8:30am LOC Prep (Microsoft Teams Meeting); 9:00am LOC Meeting (BC_Conf_Room) - LOC	22	23 12:00pm Holiday - Christmas Eve (Observed 1/2 Day)	24
25	26 8:00am Holiday - Christmas (Observed Holiday)	27	28 8:30am Oneida Business Committee Meeting	29 10:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Leeman	30	31