

Oneida Nation

Legislative Reference Office

P.O. Box 365
 Oneida, WI 54155
 (920) 869-4376
 (800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members

Brandon Stevens, Chairperson
 Tehassi Hill, Vice Chairperson
 Fawn Billie, Councilmember
 David P. Jordan, Councilmember
 Jennifer Webster, Councilmember

Memorandum

TO: Oneida Business Committee
FROM: Brandon Stevens *BS*
DATE: August 12, 2015
RE: Tribal Hearing Bodies/Administrative Court Action Plan

With adoption of the Judiciary Law, it has been recommended that some Oneida boards, committees and commissions should have their hearing authority transferred to an administrative court that would be created under the Judiciary. At a previous request of the Oneida Business Committee (OBC), the Legislative Operating Committee (LOC) completed research regarding current Oneida boards, committees and commissions and their hearing authority. On June 10, 2015, that research was sent to the OBC through a memorandum from LOC Chair Brandon Stevens. There are currently eleven (11) boards, committees and commissions that have some level of hearing authority:

- | | |
|---|--|
| <input type="checkbox"/> Oneida Child Protective Board | <input type="checkbox"/> Oneida Personnel Commission |
| <input type="checkbox"/> Oneida Election Board | <input type="checkbox"/> Oneida Police Commission |
| <input type="checkbox"/> Oneida Environmental Resource Board | <input type="checkbox"/> Oneida Nation School Board |
| <input type="checkbox"/> Oneida Gaming Commission | <input type="checkbox"/> Oneida License Commission |
| <input type="checkbox"/> Oneida Land Commission | <input type="checkbox"/> Oneida Trust/Enrollment Committee |
| <input type="checkbox"/> Pardon and Forgiveness Screening Committee | |

The OBC requested that an action plan be developed and brought back to the OBC. On July 27, 2015, a work meeting was held to develop this action plan:

Timeline

Taking in to consideration the number of boards, committees and commissions involved, the number of laws that will need to be changed, the likely high public comment and drafting to establish an administrative court, the following timeline is provided as an estimate of the earliest time that the hearing authority could be officially transferred if there are no significant hurdles:

Activity	Timeline
OBC determines which Board, Committee and Commissions should not have hearing authority	July to August 2015
LRO drafts, holds a work meeting with OBC/Board, Committee and Commissions/Court/other interested parties	August to November 2015
Send out finished draft for Fiscal Impact Statement/Legislative analysis	December 2015
Public Comment Period (LOC approves taking to Public Meeting, giving notice, holding public meeting, end of the comment period)	January 2016
LRO review PM comments, edits to draft, send to LOC for comments LOC review PM comments, recommend changes	February 2016
Sent to LOC for referral to OBC; Sent to OBC for adoption/referral	March 2016

Transfer of Hearing Authority

The difficulty of transferring each of the boards, committees and commissions was assessed at the work meeting. It was determined that it would be difficult to transfer four (4) of the entities hearing body authority to an administrative court:

- **Oneida Gaming Commission:** Under the Indian Gaming Regulatory Act, any changes to ONGO require the approval from the Chairperson of the National Indian Gaming Commission. There is the possibility of issues with compliance with Federal laws if the hearing authority was transferred.
- **Pardon and Forgiveness Screening Committee:** The Committee operates as a fact finding body for the OBC gathering the necessary information, including testimony at a hearing, which is forwarded with the Committee's recommendation to the OBC for a final non-appealable determination.
- **Oneida Police Commission:** The Police Commission primarily handles appeals of disciplinary action of the Police Chief. Given the nature of the relationship between the Police Department and the Commission it would be difficult to transfer to an administrative court.
- **Oneida Nation School Board:** The Oneida Nation School handles hearing appeals of disciplinary action and termination. Given the nature of the relationship between the School Board and the School it would be difficult to transfer to an administrative court. Additionally, for transfer of hearing body authority, the MOA would need to be changed through GTC action.

For the remaining seven (7), the **Oneida Child Protective Board**, the **Oneida Election Board**, the **Oneida Environmental Resource Board**, the **Oneida Land Commission**, the **Oneida Personnel Commission**, the **Oneida License Commission** and the **Oneida Trust/Enrollment Committee**, transfer of hearing body authority would be practicable and should be explored.

These boards, committees and commissions are not regulated by an outside entity that would prevent transfer, are not dealing with internal disciplinary actions of a single specialized group, and the hearing body authority could easily be transferred over to an administrative court. Additionally, it is believed that any added cost of an administrative court would be less than the current stipends, training costs and other expenses needed for the boards, committees and commissions.

To accomplish the transfer of authority, several laws would need to be amended or repealed. The attached chart lays out the entity, the legislation that would need to be changed and the body with authority to make those changes for the entities.

Replacement for the Administrative Procedures Act

As it is likely that not all boards, committees and commissions will have their hearing body authority transferred, legislation for a hearing process for those entities needs to be passed. Currently, there is emergency legislation in place with an expiration date of September 1, 2015. This will likely be a one-time extension of this emergency legislation for an addition six (6) months. By that expiration date of March 1, 2016 new legislation will need to be in place.

Requested Action

- Accept the action plan for the Tribal Hearing Bodies/Administrative Court; and
- Direct the Oneida Child Protective Board, the Oneida Election Board, the Oneida Environmental Resource Board, the Oneida Land Commission, the Oneida Personnel Commission, the Oneida License Commission and the Oneida Trust/Enrollment Committee to retrieve their financial expenses for the last three (3) years (including, but not limited to, the amount of stipends received, training costs and other expenses) and turn the information over to OBC to help in evaluating which entities should retain their hearing body authority.