

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of "A LOCAL LAW amending Section 158.11 of the Laws of Westchester County with respect to instituting actions and settlement authority."

Your Committee is advised that Section 158.11 of the Laws of Westchester County establishes the powers and duties of the County Attorney and addresses the authority of that Office to institute actions and settle actions. Subsection 3 provides that the County Attorney has the authority to commence a proceeding to collect money judgments only where the amount of the judgment does not exceed \$10,000, exclusive of costs. This proposed Local Law would increase that amount to \$25,000, and exclude interest from that amount in addition to costs. Your Committee recognizes that a number of County departments, boards, and commissions have the authority to impose fines in various amounts, including the Department of Environmental Facilities that can impose fines of up to \$25,000 per day for violations of certain sections of law. By increasing the "not to exceed" amount in Section 158.11(3), it would allow the County Attorney to commence collection actions better in line with the authority of various County bodies to impose fines. The attached law also clarifies that, where there are multiple judgments against a single party, the County Attorney can collect all of them in a single action, where the aggregate exceeds the "not to exceed" so long as the individual judgments do not exceed the threshold.

Your Committee is further informed that Subsection 5 provides the authority of the County Attorney to settle actions against the County, either unilaterally or with the approval of the Board of Acquisition and Contract ("A&C"). Currently, the County Attorney may unilaterally settle actions for an amount not to exceed \$10,000; A&C can authorize settlements for personal injury or property

damage in an amount not to exceed \$75,000. These amounts were placed into the law in 1983 and have not been increased since. The proposed legislation would increase them to \$25,000 and \$150,000, respectively, which is less than the increase from inflation in the 40 years since their enactment. Consistent with this revision, the proposed local law also amends Section 297.31, which relates to settlements due to the County indemnifying an employee, referring back to the approval requirements in Section 158.11(5), so that approvals are consistent and uniform. Your Committee would note that Section 297.31 has not been amended since 1979, and making this amendment would allow for any future adjustments to be made once in Section 158.11, instead of in multiple locations throughout the County's laws.

Your Committee notes that the proposed Local Law would also modify what cases A&C can settle. Your Committee is informed that, in 1983, when this Honorable Board gave A&C settlement authority, the County had outside insurance. As a result of a change in the structure of that insurance, this Honorable Board gave settlement authority to A&C because there would be “potentially hundreds of general liability and worker’s compensation settlements” that would need approval. COMMITTEE REPORT IN SUPPORT OF LOCAL LAW 16-1983, *Proceedings of the County Board of Legislators (1983)*, p. 723. Providing A&C with the ability to authorize settlements of up to \$75,000 served to “relieve the County Board of this burden while maintaining appropriate fiscal and policy controls.” *Id.*

Your Committee recognizes that the County subsequently became self-insured for most items. Most of that self-insurance (as is relevant to this Local Law) is through the County’s 6-n fund. The proposed Local Law would modify 158.11(5) to provide that A&C’s authority applies to any action that is covered through the County’s 6-n fund or other insurance program. The vast majority of these actions already involve some form of personal injury or property damage. However, by extending the authority to all insurable actions, it would: (1) remove any confusion over whether or not a given claim

constitutes personal injury or property damage; and (2) maintain the original intent of granting A&C settlement authority in eliminating the need of your Honorable Board to deal with smaller settlements that are covered by the County's self-insurance (or other insurance policies) while still requiring your consent for larger settlements.

The final change would be to allow A&C to approve reductions in Workers' Compensation liens. These reductions, which are currently presented to your Honorable Board, are not subject to negotiation, and are calculated by a formula derived from statutory factors and long-standing decisional case law. Given that these reductions are formulaic, giving A&C the authority to approve them would alleviate your Honorable Board from needing to approve legislation that does not touch on policy considerations.

Additionally, and as you know, your Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). The proposed project does not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 12, 2023, which is on file with the Clerk of the Board of Legislators

The Committee, after careful consideration, recommends the adoption of this local law.

Dated: October 16, 2023
White Plains, New York

Margaret A. Cigno

Dr. M.

Maryann Barr

Colin O'Hara

David Ann

Vedat Fathi

Bernard Boylston

Catharine Bry

Wendell M.

Catharine Park

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COMMITTEES ON

Legislation

Budget & Appropriations

Law & Major Contracts

Dated: October 16, 2023
White Plains, New York

The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Sydney D. Brandon

Sydney D. Brandon

COMMITTEES ON

Legislation

Budget & Appropriations

Law & Major Contracts

FISCAL IMPACT STATEMENT

SUBJECT: Amendment of Section 158.11

☒ NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

☐ GENERAL FUND

☐ AIRPORT FUND

☐ SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): ☐ Current Appropriations ☐ Transfer of Existing Appropriations

☐ Additional Appropriations

☐ Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses:

Annual Amount N/A

Describe: A local law amending Section 158.11 of the Laws of Westchester County with respect to instituting actions and settlement authority.

Potential Related Operating Budget Revenues:

Annual Amount N/A

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

Next Four Years: N/A

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: October 4, 2023

Reviewed By: PH

Budget Director

Date: 8/4/23

LOCAL LAW NO. ____ - 2023

A LOCAL LAW amending Section 158.11 of the Laws of Westchester County with respect to instituting actions and settlement authority.

Be it enacted by the Board of Legislators of the County of Westchester, as follows:

SECTION 1.

Subdivision 3 of Section 158.11 of the Laws of Westchester County is hereby amended to read as follows:

(3) The County Attorney shall not have the power to institute any proceedings on behalf of the county, or any of its officers, unless directed to do so by the County Board or an officer, board, commission or body having power or authority under statute to direct the starting of any such action or proceeding, except a proceeding for a money judgment only where the amount involved does not exceed [ten thousand dollars (\$10,000.00)] twenty-five thousand dollars (\$25,000.00) exclusive of interest and costs, or except as provided in subsection 4. hereof. Where a money judgment is comprised of multiple fines, penalties, or other judgments, the County Attorney is authorized to commence an action to collect such judgment where the aggregate judgment exceeds twenty-five thousand dollars, so long as no individual component judgment exceeds twenty-five thousand dollars.

SECTION 2.

Subdivision 5 of Section 158.11 of the Laws of Westchester County is hereby amended to read as follows:

Except as otherwise provided in this subdivision, the county attorney shall not be empowered to compromise, settle or adjust any rights, claims, demands or causes of action in favor of or against the County of Westchester without the previous authority of the county board or of the board, body, commission or office authorized or empowered by statute to direct or consent to such compromise, settlement or adjustment. He shall not permit, offer or confess judgment against the county or accept any offer or judgment in favor of the county for less than the amount claimed by the county, unless previously duly authorized to do so by the County Board. Notwithstanding the foregoing, the County Attorney shall be empowered to compromise, settle, or adjust rights, claims, demands or causes of action against the county for an amount not to exceed [ten thousand dollars (\$10,000.00)] twenty-five

thousand dollars (\$25,000.00) exclusive of interest and costs without the need for authorization from the County Board or of any other board, body, commission or office. In addition, the County Attorney with the approval of the County Board of Acquisition and Contract may compromise, settle or adjust rights, claims, demands or causes of action against the county [for personal injury or property damage] for which the County is authorized to make payment out of its self-insurance reserve fund pursuant to New York State General Municipal Law § 6-n or any other insurance program of the County's, for an amount not to exceed [seventy-five thousand dollars (\$75,000.00)] one hundred-and-fifty thousand dollars (\$150,000.00) exclusive of interests and costs. In addition, the County Attorney, with the approval of the County Board of Acquisition and Contract, may compromise, settle, or adjust liens in favor of the County under Section 29 of the New York State Workers' Compensation Law. In no event shall any inhibition contained in this section operate to limit or abridge the discretion of the County Attorney in regard to the proper conduct of the trial or appeal of any proceedings or action at law, or to deprive said County Attorney of the powers or privileges ordinarily exercised in the course of litigation by attorneys at law when acting for private clients.

SECTION 3.

Subdivision 3(c) of Section 297.31 of the Laws of Westchester County is hereby repealed and replaced with a new subdivision 3(c) to read as follows:

c. Where an employee is represented by the County Attorney, any proposed settlement which may be subject to indemnification by the county shall be subject to the requirements for approval contained in Section 158.11(5) of the Laws of Westchester County.

SECTION 4. Effective date.

This Local Law shall take effect in 60 days.