

#2024-6

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RESOLUTION NO. 7-2024

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. 7-2024 entitled "A LOCAL LAW amending certain provisions of Section 167.171 of the Laws of Westchester County and adding a new Section 233.03 to the Laws of Westchester County regarding emergency contracts." The public hearing will be held at 7:30 p.m. on the 29th day of April, 2024 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing, and the method for submitting comments, to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive recommending the enactment of a Local Law which, if adopted by your Honorable Board, would authorize the County of Westchester ("County") to amend certain provisions of Section 167.171 of the Laws of Westchester County ("LWC") and add a new Section 233.03, regarding emergency contracts. The current law allows the County Executive to execute emergency contracts without competitive bidding as long as a written declaration of the emergency has been provided to the Board of Acquisition and Contract. This law was intended to cover emergency situations in the area of public works contracts, whereas purchase contracts are subject to the provisions of LWC Chapter 836 and under the jurisdiction of the Purchasing Agent. Recently there has been some confusion with the interpretation of Section 167.171(2) because as currently written it applies to both public works contracts and purchase contracts. In order to address this unintended consequence, Section 167.171(2) needs to be corrected by changing the law cited in that section from Section 161.11 to Section 161.11(3).

Additionally, as you know, supply chain problems emerged during COVID-19 lockdowns due to for instance, shifts in demand, labor shortages and precautionary inventory buildup. These issues have not subsided. As a result, there have been a number of instances where an emergency contract was entered into and the one-year term permitted by LWC §167.171(4) was insufficient to complete the work. The reason most given for this timing issue is that there have been contract delays attributable to supply chain issues that are prevalent throughout the construction industry with the biggest impact on delivery times for equipment and supplies. In multiple instances contractors are finding that extended lead times are required for parts and equipment and that there are unprecedented backlogs. In addition, there have been a number of instances where an emergency contract required more than one year to complete because an approval from an outside agency was required that delayed completion of the project, or unanticipated additional work arose during the emergency work, which additional work was necessary to complete the emergency work and such work delayed the completion of the project.

Your Committee has been advised that there is no similar time restriction under New York State law for emergency contract awards.

Accordingly, the proposed Local Law will address this issue by adding that if additional time is necessary beyond the one-year term, as determined by the County Executive or duly authorized designee, an emergency contract may be extended for up to two additional one-year terms, provided that an extension may be up to one year and no longer, and each one-year extension shall be subject to the approval of the Board of Acquisition and Contract.

In addition, the proposed Local Law will add a new Section 233.03 to the LWC which will require that a report of all emergency contracts, executed on behalf of the County, pursuant to LWC Section 167.171(3), whose terms were active within the last year, shall be prepared by the Secretary of the Board of Acquisition and Contract and submitted to the Clerk of the County Board on an annual basis no later than September 15th. For each emergency contract, such report shall identify the name of the relevant county department(s), contractor(s), date of execution, purpose, term, project status updates, identify funding source, and, if applicable, why the emergency contract was extended and when such extension was executed.

The Department of Planning has advised that the proposed Local Law does not meet the definition of an “action” under the State Environmental Quality Review Act (“SEQRA”), and its implementing regulations, 6 NYCRR, Part 617. Please refer to the Memorandum from the Department of Planning dated January 8, 2024, which is on file with the clerk of your Honorable Board. As such, no environmental review is required. Your Committee concurs with this recommendation.

Your Committee has been advised that that the attached Local Law is subject to a permissive referendum pursuant to LWC Section 209.171(2), because it changes a provision of law relating to public bidding, purchases or contracts. Consequently, pursuant to LWC Section 209.181, the attached Local Law, if adopted, may not take effect until sixty (60) days after its adoption, assuming that within that time a petition protesting its adoption is not filed by the statutorily required number of qualified electors.

Your Committee is informed that an affirmative vote of the majority of the total voting power of your Honorable Board is required before the County may adopt the attached Local Law. In addition, also attached is a Resolution authorizing a Public Hearing as required by LWC Section 209.141(4).

After review and careful consideration, your Committee recommends favorable action upon the proposed Local Law.

Dated: **April 3**, 2024
White Plains, New York

David J. Tubito
Jy. [Signature]

Benjamin [Signature]
[Signature]

Legislation

Joseph [Signature]
[Signature]
David J. Tubito
Jy. [Signature]
[Signature]

Budget & Appropriations

COMMITTEE ON

Dated: April 3, 2024
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.

Margaret A. Cunzio

Colin J. [Signature]

David [Signature]

Emiljana Ulag

Colin J. [Signature]

COMMITTEES ON

Legislation

Budget & Appropriations

FISCAL IMPACT STATEMENT

SUBJECT: Amend LWC Section 167.171

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 _____

Describe: Amend certain provisions of Section 167.171 of the Laws of Westchester
County regarding emergency contracts

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

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

Current Year: _____

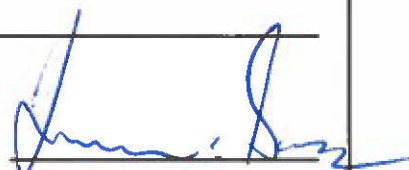
Next Four Years: _____

Prepared by: Mark Medwid

Title: Associate Budget Director

Department: Budget

Date: January 5, 2024

Reviewed By: 

Budget Director

Date: 1/5/24

LOCAL LAW INTRO. NO. – 2024

A LOCAL LAW amending certain provisions of Section 167.171 of the Laws of Westchester County and adding a new Section 233.03 to the Laws of Westchester County regarding emergency contracts.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Section 167.171 of Chapter 167 of the Laws of Westchester County is hereby amended as follows:

Sec. 167.171. - Emergency appropriations and contracts.

1. The County Board, during a fiscal year, may make additional appropriations or increase existing appropriations to meet emergencies or unforeseen circumstances requiring action to protect the interests of the county and its citizens, the funds therefor to be provided from unappropriated revenues, if any, or made available pursuant to the Local Finance Law.
2. Notwithstanding the provisions of section 161.11(3) of this act, in an emergency the County Executive, or duly authorized designee, with the approval of the Board of Acquisition and Contract, may execute a contract or contracts without receiving bids therefor.
3. No Resolution for the approval of an emergency contract may be voted upon unless and until the County Executive, or his duly authorized designee, submits a written declaration of the emergency to the members of the Board of Acquisition and Contract and the Clerk of the County Board.
4. No emergency contract shall have a term in excess of one-year, however, if additional time is necessary, as determined by the County Executive, or duly authorized designee, an emergency contract may be extended for up to two additional one-year terms, provided that an extension may be up to one year and no longer, and each one-year extension shall be subject to the approval of the Board of Acquisition and Contract.
5. For the purposes of this section, the term "emergency" shall mean a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of the County of Westchester, which would require immediate action which cannot await competitive bidding.

§2. A new Section 233.03 is hereby added to the Laws of Westchester County to read as follows:

Sec. 233.03. - Yearly Report to the County Board.

A report of all emergency contracts, executed on behalf of the County, pursuant to Section 167.171(3), whose terms were active within the last year, shall be prepared by the Secretary of the Board of Acquisition and Contract and submitted to the Clerk of the County Board on an annual basis no later than September 15th. For each emergency contract, such report shall identify the name of the relevant county department(s), contractor(s), date of execution, purpose, term, project status updates, identify funding source, and, if applicable, why the emergency contract was extended and when such extension was executed.

§3. The Clerk of the Board shall cause a notice of this Local Law to be published at least once a week for two successive weeks, the first publication of which shall be had within ten days after such local law is adopted, in the official newspapers published in the County of Westchester, said notice to contain the number, date of adoption and a true copy of the Local Law, and a statement that this Local Law changes a provision of law relating to the sale, exchange or leasing of County property and is therefore subject to the provisions of Section 209.171(7) of the Laws of Westchester County providing for a permissive referendum.

§4. This local law shall take effect sixty (60) days after its adoption subject to the provisions of Section 209.181 of the Laws of Westchester County.