

Law & Major Contracts

BOL Meeting Minutes - Final



Committee Chair: Nancy Barr

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Monday, February 22, 2021

1:00 PM

Committee Room

CALL TO ORDER

Joint with Legislation committee

With a quorum present, Chair Barr called the meeting to order at 1:07 p.m.

Pursuant to Governor Andrew Cuomo's Executive Order No. 202.1, "Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency," which temporarily suspends portions of the New York State Open Meetings Law.

A section of the order, "Suspension of law allowing the attendance of meetings telephonically or other similar services," provides for the suspension of "Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed."

Others in attendance: BOL: (Remote) Legislator Ruth Walter LAW: John Nonna, Stacey Dolgin-Kmetz, and Justin Adin GUESTS: Steve Leventhal

Present: Legislator Barr, Legislator Boykin and Legislator Covill

Absent: Legislator Alvarado

Remote: Legislator Gashi, Legislator Shimsky and Legislator Smith

MINUTES APPROVAL

February 17, 2021 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

Guests: County Attorney John Nonna, Deputy County Attorney Justin Adin, and Steve Leventhal, Esq.

[2021-35](#)

Code of Ethics Legislation

Legislator Covill discussed the changes to the legislation. She stated that we went back to the old gift provisions due to confusion regarding the new provisions. She said that it was decided that the Board of Ethics, who is trained and focused on ethics, will make the recommendation for a waiver. Then, if the Board of Legislators (BOL) wants to take up that recommendation, they can. Legislator Borgia noted that she would support this, assuming that the BOL must take action, even if just to receive and file the recommendation, so there is transparency.

Legislator Covill said the other big piece is the makeup of Board of Ethics

(BOE). There will be seven members; the BOL appoints two members and the County Executive appoints five members, which is a change from the way it was originally written. She noted that we are keeping the provision that one county official will be on the BOE, and that appointment will be made by the County Executive.

Mr. Leventhal explained that the members appointed by the County Executive have five-year staggered terms and the members appointed by the legislature have two-year staggered terms is because that way, every year, the legislature gets one appointment and County Executive gets one. The committee also discussed the time frame and mechanism for the BOE to give notice of its recommendation on a waiver application to the BOL. Mr. Leventhal suggested that the applicant should file his or her application in duplicate at the same time with both the BOE and BOL, and the BOE can issues its determination to the BOL and the applicant simultaneously.

Mr. Adin stated that based on case law, changing the law to allow the BOL to appoint two of the members would subject the law to a mandatory referendum. The BOE performs an administrative function by enforcing the law, which is an executory power; therefore, taking the power to appoint any of the members away from the County Executive subjects it to a mandatory referendum under Section 23(2)(f) of the Municipal Home Rule Law. Ms. Dolgin-Kmetz said there is a general provision in the laws of Westchester that gives the County Executive appointment authority of all commissioners and members of boards and commissions. Mr. Adin will provide the relevant provision from the County Charter, Section 110.21.

Legislative Director Melanie Montalto asked whether having the BOL recommend the appointments to the County Executive would still trigger a mandatory referendum. Mr. Adin said it might, but he'd have to look into it. Since the BOL does have approval authority, there may be a distinction. Mr. Adin discussed Section 883.208, which states that a violation is cause for termination of an independent contractor's contract with the County and debarment for a period not to exceed three years. He said that we cannot automatically do that because the General Municipal Law requires due process. We can change the language to "a violation may be considered grounds to deem a contractor non-responsible within the meaning of the General Municipal Law.

This LOCAL LAW was tabled

[RES-2021-47](#) **PH - Code of Ethics Legislation**

This RESOLUTION - Public Hearing was tabled

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Covill, seconded by Legislator Shimsky, the Committee adjourned at 2:12 p.m.