

Law & Major Contracts Meeting Agenda



Committee Chair: Damon Maher

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

Monday, October 16, 2023

1:00 PM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations and Legislation committees.

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website: <https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

MINUTES APPROVAL

Wednesday, September 27, 2023 at 10:00 a.m.

Wednesday, October 11, 2022 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

1. [2023-399](#) PH - Instituting Actions and Settlement Authority

A RESOLUTION to set a Public Hearing on "A LOCAL LAW amending Section 158.11 of the Laws of Westchester County with respect to instituting actions and settlement authority."

[Public Hearing set for _____, 2023 at _____ .m.]. LOCAL LAW
INTRO: 2023-400.

**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS,
LEGISLATION AND LAW & MAJOR CONTRACTS**

Guests: Law Dept.: County Attorney John Nonna and Deputy County Attorney Justin Adin.

2. [2023-400](#) LL - Instituting Actions and Settlement Authority

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

**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS,
LEGISLATION AND LAW & MAJOR CONTRACTS**

Guests: Law Dept.: County Attorney John Nonna and Deputy County Attorney Justin Adin.

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

September 12, 2023

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, New York 10601

Dear Honorable Members of the Board:

I respectfully request that your Honorable Board adopt the attached Local Law entitled “A LOCAL LAW amending Section 158.11 of the Laws of Westchester County with respect to instituting actions and settlement authority.”

Section 158.11 of the Laws of Westchester County establishes the powers and duties of the County Attorney and addresses the authority of the County Attorney to institute actions and settle actions. Subsection 3 provides that this Office 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. 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 this Office 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, this Office 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.

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, this Office 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. I 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.

Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601

Telephone: (914)995-2660 Website: westchestergov.com

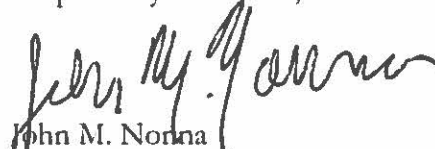
The proposed Local Law would also modify what cases A&C can settle. In 1983, when your Honorable Board gave A&C settlement authority, the County had outside insurance. As a result of a change in the structure of that insurance, your Honorable Board gave settlement authority to A&C because there would 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.*

Subsequent thereto, the County 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.

I believe that these amendments would help promote the efficient operation of the County and its litigation, while continuing to leave to your Honorable Board “appropriate fiscal and policy controls.” As such, I respectfully request your Honorable Board enact the enclosed Local Law.

Respectfully submitted,


John M. Norina
County Attorney

Enclos.

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: 2023

White Plains, New York

COMMITTEE ON

RESOLUTION NO. - 2023

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. – 2023 entitled “A LOCAL LAW amending Section 158.11 of the Laws of Westchester County with respect to instituting actions and settlement authority.” The public hearing will be held at __ .m. on the day of _____, 2023 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, N.Y. The Clerk of the Board shall cause notice of the time and date of such hearing 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.

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.