

Law & Major Contracts Meeting Agenda



Committee Chair: David Imamura

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

Monday, June 30, 2025

10:00 AM

Committee Room

Joint with B&A

CALL TO ORDER

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.

Legislator Emiljana Ulaj will be participating remotely from 520 White Plains Road, Tarrytown, NY 10591.

Legislator Colin Smith will be participating remotely from 1132 Main Street, Suite 1, Peekskill, NY 10566.

MINUTES APPROVAL

Monday, June 2, 2025 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

1. [2025-254](#) ACT - Save the Sound Lawsuit Settlement

AN ACT authorizing the County Attorney to settle the lawsuit of Save the Sound, et al. v. Westchester County.

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

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

2. [2025-258](#) ACT - Lawsuit of Colamonico v. Frascione

AN ACT authorizing the designation and retention of private counsel pursuant to the Laws of Westchester County relating to the lawsuit entitled Colamonico v. Frascione.

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

Guests: County Attorney John Nonna and Associate County Attorney Francesca Mountain

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT



Kenneth W. Jenkins
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

June 10, 2024

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

Re: Request for authorization to settle the lawsuit of *Save the Sound, et al. v. Westchester County, New York, et al.*, pending in the United States District Court for the Southern District of New York, Case No. 15-cv-06323

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if enacted by your Board, would authorize the settlement of the litigation between the Save the Sound and Atlantic Clam Farms of Connecticut ("Plaintiffs") and the County, as set forth below.

As you know, the County owns and operates various sewer districts, including four along the Long Island Sound—Blind Brook, Mamaroneck, Port Chester, and New Rochelle ("the Four Districts"). All county sewer districts are subject to permits issued by NYSDEC ("SPDES Permits"). For the Four Districts, as part of a consent order with NYSDEC relating to nitrogen removal in the Long Island Sound, the County conducted a flow monitoring study from 2009 to 2011, in order to determine which municipalities were exceeding the flow limits of the County Sewer Act, which imposes a daily limit on municipal discharges to 150 gallons of wastewater per capita ("the Flow Limit"). Every municipality in the Four Districts exceeded these flow limits for some period of time. Separately, the County was also subject to a consent order with NYSDEC to end the use of two Overflow Retention Facilities ("ORFs") that served the New Rochelle Sewer District ("NRSD").

Plaintiffs commenced this lawsuit back in 2015, alleging violations of, *inter alia*, the U.S. Clean Water Act—primarily focused on the County's purported violations of these two consent orders. The main thrust of Plaintiffs' argument was that the County was required to enforce the County Sewer Act, and particularly the Flow Limit, and failed to do so. The lawsuit was amended to name all of the individual municipalities in the Four Districts as well.

Before any party answered or otherwise responded to the complaint, the matter was stayed for settlement discussions. Over the last decade, each of the municipalities settled with Plaintiffs.¹ Some settlements have completed, some have been amended, and others remain open. In all but one of the settlements,² the municipality has been required to perform investigations and repairs to its sewer systems. Municipalities have also agreed to pay attorneys' fees and fund environmental benefit projects as part of settlements.

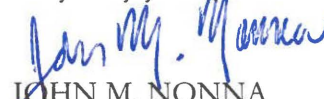
Plaintiffs and the County have also engaged in extensive settlement negotiations and reached a proposed resolution, which is primarily focused on the following:

- An agreement to take "reasonable measures" to enforce the County Sewer Act within the Four Districts;
- Conducting a round of flow monitoring no early than 2037,³ to determine compliance with the Flow Limit within the Four Districts;
- Payment of \$425,000 in already incurred attorneys' fees and costs, plus another \$25,000 to cover any future monitoring fees and costs; and
- Spending \$475,000 on future environmental benefit projects.

This would be in the form of a stipulation of settlement (as opposed to a judicially ordered consent decree), and is contingent on: (1) this Honorable Board's approval; (2) no objection from the United States Department of Justice (as required by the Clean Water Act); and (3) the District Court agreeing to retain jurisdiction over any future dispute that may arise under the settlement.

I believe the proposed settlement is fair and reasonable, and I therefore recommend adoption of the enclosed Act.

Very truly yours,



JOHN M. NONNA
Westchester County Attorney

JMN/jra

¹ The four municipalities located in the NRSD eventually proceeded to litigation, before ultimately reaching a settlement. None of the other municipalities litigated against Plaintiffs.

² The NRSD municipalities, who were all performing remediation work as part of an IMA with the County, did not agree to complete any work as part of their settlement with Plaintiffs.

³ This date is subject to further delay if municipalities are delayed in completing repairs.

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the settlement of the litigation between the Save the Sound and Atlantic Clam Farms of Connecticut (“Plaintiffs”) and the County, as set forth below, as set forth below.

Your Committee notes that the County owns and operates various sewer districts, including four along the Long Island Sound—Blind Brook, Mamaroneck, Port Chester, and New Rochelle (“the Four Districts”). All county sewer districts are subject to permits issued by NYSDEC (“SPDES Permits”). For the Four Districts, as part of a consent order with NYSDEC relating to nitrogen removal in the Long Island Sound, the County conducted a flow monitoring study from 2009 to 2011, in order to determine which municipalities were exceeding the flow limits of the County Sewer Act, which imposes a daily limit on municipal discharges to 150 gallons of wastewater per capita (“the Flow Limit”). Every municipality in the Four Districts exceeded these flow limits for some period of time. Separately, the County was also subject to a consent order with NYSDEC to end the use of two Overflow Retention Facilities (“ORFs”) that served the New Rochelle Sewer District (“NRSD”).

Your Committee is informed that Plaintiffs commenced this lawsuit back in 2015, alleging violations of, *inter alia*, the U.S. Clean Water Act—primarily focused on the County’s purported violations of these two consent orders. The main thrust of Plaintiffs’ argument was that the County was required to enforce the County Sewer Act, and particularly the Flow Limit, and failed to do so. The lawsuit was amended to name all of the individual municipalities in the Four Districts as well.

Your Committee is further informed that, before any party answered or otherwise responded to the complaint, the matter was stayed for settlement discussions. Over the last decade, each of the municipalities settled with Plaintiffs.⁴ Some settlements have completed, some have been amended, and others remain open. In all but one of the settlements,⁵ the municipality has been required to perform investigations and repairs to its sewer systems. Municipalities have also agreed to pay attorneys' fees and fund environmental benefit projects as part of settlements.

The County Attorney has informed your Committee that Plaintiffs and the County have also engaged in extensive settlement negotiations and reached a proposed resolution, which is primarily focused on the following:

- An agreement to take “reasonable measures” to enforce the County Sewer Act within the Four Districts;
- Conducting a round of flow monitoring no early than 2037,⁶ to determine compliance with the Flow Limit within the Four Districts;
- Payment of \$425,000 in already incurred attorneys' fees and costs, plus another \$25,000 to cover any future monitoring fees and costs; and
- Spending \$475,000 on future environmental benefit projects.

⁴ The four municipalities located in the NRSD eventually proceeded to litigation, before ultimately reaching a settlement. None of the other municipalities litigated against Plaintiffs.

⁵ The NRSD municipalities, who were all performing remediation work as part of an IMA with the County, did not agree to complete any work as part of their settlement with Plaintiffs.

⁶ This date is subject to further delay if municipalities are delayed in completing repairs.

The County Attorney has recommended approval of the settlement. Your Committee concurs with this recommendation and recommends that this Honorable Board adopt the proposed Act.

AN ACT authorizing the County Attorney to settle the lawsuit of *Save the Sound, et al. v. Westchester County, New York, et al.*, pending in the United States District Court for the Southern District of New York, Case No. 15-cv-06323

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

Section 1. The County Attorney is hereby authorized to settle the proceeding entitled *Save the Sound v. Westchester County, New York, et al.*, pending in the United States District Court for the Southern District of New York, Docket No. 15-cv-06323, in accordance with the proposed settlement terms presented by the County Attorney, including:

- A) The County will conduct a round of flow monitoring, for a minimum of twelve weeks, in or around 2037, to determine the flows entering the County trunk sewers from those municipalities in the Blind Brook, Mamaroneck, Port Chester, and New Rochelle Sewer Districts;
- B) Payment of \$425,000 in already incurred attorneys' fees and costs, plus another \$25,000 to cover any future monitoring fees and costs; and
- C) Spending \$475,000 on future environmental benefit projects.

Section 2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purposes hereof.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Save the Sound Settlement

☐ 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 \$ 450,000

Total Current Year Revenue _____

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

☐ Additional Appropriations

☐ Other (Revenue)

Identify Accounts: 223-60-0310-4990; 227-60-0710-4990; 228-60-0810-4990; 237-601710-4990

Potential Related Operating Budget Expenses: Annual Amount \$ 450,000

Describe: Save the Sound lawsuit settlement which will be broken down to:

Fund 223 Blind Brook - \$104,611.57; Fund 227 Mamaroneck - \$206,955.31

Fund 228 New Rochelle - \$111,766.27; Fund 237 Port Chester - \$26,666.85

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

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

Current Year: _____

Next Four Years: The county will have 2 years to apportion \$475,000 on approved storm-water projects
which may result in future debt service TBD. In addition, there will be a flow monitoring starting
2037, the cost is TBD.

Prepared by: William Olli

Title: Assistant Budget Director

Department: Budget

Date: June 9, 2025

Reviewed By: 

Budget Director

Date: 6/9/25



Kenneth W. Jenkins
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

June 12, 2025

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

Re: *Colamonico, et al. v. Frascone, et al.*
Supreme Court, Westchester County Index No.: 71494/2024

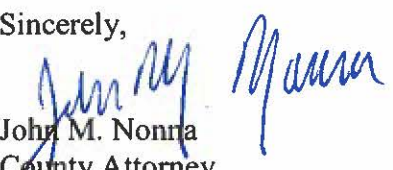
Dear Honorable Members of the Board:

With respect to the above-referenced matter, which was returnable in the Westchester County Supreme Court on October 7, 2024, communications were received from Commissioner Douglas A. Colety and Commissioner Tajian M. Nelson together with a copy of the Order to Show Cause and Petition. Prior to an initial appearance before Judge Janet C. Malone in Supreme Court, Westchester County on October 7, 2024, the Commissioners advised that they were not in agreement regarding a position to take in the case and requested separate counsel to represent each of them in this matter.

Based upon my review of the facts and circumstances of this case, and after this office having consulted with the Commissioners, I determined pursuant to the Laws of Westchester County § 297.31(2)(b)(i), that representation by the County Attorney would not be appropriate due to a conflict of positions taken by the Commissioner of the Board of Elections and certified that Commissioner Douglas A. Colety and Commissioner Tajian M. Nelson were each entitled to representation by separate private counsel in accordance with the provisions of said section 297.31(2)(b).

I am in receipt of the legal bills for services rendered in the above-referenced matter to Commissioner Douglas A. Colety and Commissioner Tajian M. Nelson and attach them here for your review and consideration. Accordingly, I respectfully request that this Honorable Board adopt the attached Act.

Sincerely,


John M. Nonna
County Attorney

Enclosure

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

Telephone: (914) 995-2600

Website: westchestercountyny.gov

HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed the proposed Act which, if adopted, would authorize the designation and retention of separate private counsel to represent Republican Election Commissioner Douglas A. Colety and Democratic Election Commissioner Tajian M. Nelson, respectively, and to take such other legal action as may be deemed necessary with respect to the lawsuit entitled *Colamonico, et al. v. Frascone, et al.*, under Index No: 71494/2024.

Your Committee noted that the County Attorney determined, based upon a review of the facts and circumstances of this matter, that representation by the County Attorney's Office would not be appropriate due to a conflict of positions taken by the Commissioner of the Board of Elections. The County Attorney has certified to the County Board that therefore each Commissioner is entitled to separate private counsel in accordance with the Laws of Westchester County § 297.31(2)(b).

In light of the aforementioned, your Committee believes it is necessary and appropriate for the County Board of Legislators to authorize the retention of Timothy Hill, Esq. of Perillo Hill LLP to represent Commissioner Douglas A. Colety in the aforesaid proceeding at a cost not to exceed \$6,281.50 for legal services rendered and expenses; and the retention of Abrams Fensterman LLP to represent Commissioner Tajian M. Nelson in the aforesaid proceeding at a cost not to exceed \$5,760.00 for legal services rendered and expenses. The proposed Act shall authorize the actions of outside counsel in defending the action.

Your Committee recommends approval of the attached Act. An affirmative vote of a majority of the Board is required to pass this Act.

Dated: _____, 2025

White Plains, New York

FISCAL IMPACT STATEMENT

SUBJECT: Lawsuit Settlement: Colamonico, et al ☐ 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 \$ 12,042

Total Current Year Revenue \$ -

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

☐ Additional Appropriations ☐ Other (explain)

Identify Accounts: 101 14 1000 1000 4380 AMDS

Potential Related Operating Budget Expenses: Annual Amount N/A

Describe: Colamonico, et al. v. Frascione, et al.

\$6,281.50 legal services (Perillo Hill) to represent Comm Colety

\$5,760.00 legal services (Abrams Fensterman LLP) to represent Comm Nelson

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: _____

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

Current Year: N/A

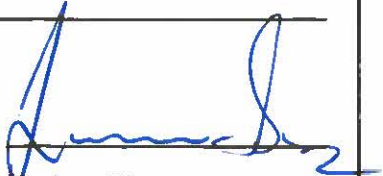
Next Four Years: N/A

Prepared by: Francesca Mountain

Title: Associate County Attorney

Department: Law

Date: June 10, 2025

Reviewed By: 
Budget Director

Date: 6/11/25

AN ACT authorizing the designation and retention of private counsel pursuant to the Laws of Westchester County §297.31(2)(b) relating to the lawsuit entitled *Colamonico, et al. v. Frascone, et al.*, Supreme Court, Westchester County Index No: 71494/2024.

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

§ 1. Based upon the determination of the Westchester County Attorney pursuant to the Laws of Westchester County § 297.31(2)(b)(i) that representation by the County Attorney would not be appropriate due to a conflict of positions taken by the Commissioners of the Board of Elections in the lawsuit entitled *Colamonico, et al. v. Frascone, et al.*, Supreme Court, Westchester County Index No: 71494/2024, and certification that therefore Tajian M. Nelson and Douglas A. Colety are entitled to representation by separate private counsel in accordance with the provisions of the Laws of Westchester County §297.31(2)(b), the County Board of Legislators hereby authorizes the retention of Timothy Hill, Esq. of Perillo Hill LLP to represent Commissioner Douglas A. Colety in the aforesaid proceeding at a cost not to exceed \$6,281.50 for legal services rendered and expenses; and the retention of Abrams Fensterman LLP to represent Commissioner Tajian M. Nelson in the aforesaid proceeding at a cost not to exceed \$5,760.00 for legal services rendered and expenses. Said attorneys actions in defending this matter are hereby authorized. The Commissioner of Finance is directed to pay an amount not to exceed the aforesaid amounts for said legal services.

§ 2. The County Attorney or his designee be and hereby is authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary and desirable to accomplish the purposes hereof.

§ 3. This Act shall take effect immediately.