

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

10:00 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations

With a quorum present, Chair Barr called the meeting to order at 10:12 a.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: Legislators: Catherine Borgia, Damon Maher; Legislators (Remote): Margaret Cunzio, Chris Johnson, Catherine Parker, Ruth Walter, Tyrae Woodson-Samuels; Caroline Stevens, Lisa Hochman, Jason Chervokas; Jill Axelrod; (Remote): Melanie Montalto, Alessandra Restiano BUDGET: Gideon Grande LAW: John Nonna, (Remote) Chris Inzero

Present: Legislator Barr, Legislator Boykin and Legislator Covill

Absent: Legislator Alvarado

Remote: Legislator Gashi, Legislator Shimsky and Legislator Smith

MINUTES APPROVAL

I. ITEMS FOR DISCUSSION

Guests: County Attorney John Nonna, Assistant County Attorney Chris Inzero

1. [ACT-2021-27](#) **ACT - Amendment to Retainer Agreement**

Mr. Nonna explained that the County seeks approval to extend its contract with the law firm of Sheppard, Mullin, which expired on January 10th of this year, until the end of the year. There is no additional not to exceed cost, and there is still \$122,000 left in the contract. The underlying litigation with Yonkers Contracting was commenced in 2015, and nothing had happened. When Mr. Nonna took over as County Attorney in 2018, he saw that this was a complex construction damages case, and would require outside legal counsel. The County hired Pepper Hamilton, specifically because Ira

Schulman, who had specialized knowledge in this area, was a partner in that firm. Last year, Pepper Hamilton merged with another law firm, which created conflicts for Mr. Schulman with some of his clients. He left the firm, and joined Sheppard, Mullin. Pepper Hamilton's contract with the County was then assigned to Sheppard, Mullin. Mr. Nonna noted that Legislator Maher had raised concerns about that, and Mr. Nonna said he has the retainer agreement and other documents available for Legislator Maher to review.

Since the litigation with Yonkers Contract is still ongoing, Mr. Nonna asked that the committee go into executive session to discuss litigation strategy. With a motion by Legislator Shimsky seconded by Chairman Boykin, the committee went into executive session at 11:08 a.m. With a motion by Legislator Shimsky, seconded by Chairman Boykin, the committee came out of executive session at 11:45 a.m.

On motion of Legislator Shimsky, seconded by Legislator Covill, the above item was signed by committee and sent to the Board of Legislators committee. The motion carried by the following vote:

Aye: Legislator Barr, Legislator Boykin, Legislator Covill, Legislator Gashi, Legislator Shimsky and Legislator Smith

Absent: Legislator Alvarado

2. [ACT-2021-28](#) **ACT - Lawsuit Settlement - County v. IFIC**

Mr. Nonna explained that this is a case against IFIC, a surety for R & S Waste Service, a solid waste hauler for the County. The County terminated its contract with R & S because of a \$4 million judgment against R & S for failure to pay into a pension fund, which was a breach of the contract which required them to comply with local, state and federal law, including labor laws. The County needed to find an emergency replacement waste hauler, and the cost of the emergency contract was greater than the original contract with R & S. The County sought recourse from IFIC as surety for R & S, and when IFIC denied coverage, the County brought a lawsuit against them. Since IFIC has an indemnity agreement with R & S, Mr. Spezio, and various members of the Spezio family for reimbursement, IFIC then impleaded them into the lawsuit. IFIC's case against R & S and the Spezios still exists. R & S then claimed against the County for breach of contract, and the County moved to dismiss that claim.

Mr. Inzero advised that the County's motion to dismiss was granted by Judge Jamieson in September 2020. R & S made a motion to reargue that matter, which is still pending. Mr. Inzero stated that the original claim for damages was for \$153,000, the difference between the original contract and the emergency contract. The proposed settlement with IFIC is for \$75,000. Mr. Nonna noted that the judge had requested that the County and IFIC go to mediation. They did that with a mediator, which was unsuccessful. The County then had negotiations directly with IFIC, and arrived at a settlement. In order to discuss the legal analysis that led to the settlement, Mr. Nonna requested that the committee go into executive session.

With a motion by Legislator Covill seconded by Chairman Boykin, the committee went into executive session at 10:23 a.m. With a motion by Legislator Covill, seconded by Chairman Boykin, the committee came out of executive session at 10:43 a.m.

On motion of the above item was signed by committee and sent to the Board of Legislators. The motion carried by the following vote:

Aye: Legislator Barr, Legislator Boykin, Legislator Covill, Legislator Gashi, Legislator Shimsky and Legislator Smith

Absent: Legislator Alvarado

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Shimsky, seconded by Legislator Smith, the Committee adjourned at 11:51 a.m.