

# Legislation Meeting Agenda



Committee Chair: Colin Smith

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

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**Monday, March 28, 2022**

**1:00 PM**

**Committee Room**

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## CALL TO ORDER

Joint with the Committee on Law and Major Contracts

## MINUTES APPROVAL

March 21, 2022 Minutes at 1:00 PM

## I. ITEMS FOR DISCUSSION

[2022-118](#)

**LEGISLATORS SMITH, BORGIA, PIERCE, GASHI, BOYKIN, BARR,  
PARKER, WILLIAMS JOHNSON, MAHER, CLEMENTS, SHIMSKY,  
WOODSON-SAMUELS, TUBIOLO, JOHNSON AND ALVARADO - PH  
- Salary Range Posting Requirement**

A RESOLUTION setting a Public Hearing on "A LOCAL LAW amending Chapter 700 of the Laws of Westchester County relating to prohibiting employers from posting job listings without minimum and maximum salary information." [Public Hearing set for \_\_\_\_\_, 2022 at \_\_\_\_\_ .m.] LOCAL LAW INTRO: 2022-119.

**COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION**

Guests: Helen Rosenthal - Frmr. NYC Council Member; Alisa Kesten, Colleen Braithwaite - Westchester Women's Agenda; Beverly Neufield -PowHer New York; Elizabeth Zimmerman - Westchester NOW; Cheryl Brannan - Sister to Sister International; Jane Pendergast - AAUW; County Attorney John Nonna, Jason Whitehead - Department of Law

[2022-119](#)

**LEGISLATORS SMITH, BORGIA, PIERCE, GASHI, BOYKIN, BARR,  
PARKER, WILLIAMS JOHNSON, MAHER, CLEMENTS, SHIMSKY,  
WOODSON-SAMUELS, TUBIOLO, JOHNSON AND ALVARADO - LL -  
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[2022-92](#)**PH - A Local Law to Clarify the Retention of Outside Counsel**

A Resolution to set a Public Hearing on "A LOCAL LAW amending Section 158.11 of the Laws of Westchester County to clarify the retention of outside counsel." [Public Hearing set for \_\_\_\_\_, 2022 at \_\_\_\_\_ .m.]. LL Intro - 2022-93.

**COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION AND LAW & MAJOR CONTRACTS**

Guests: County Attorney John Nonna, Deputy County Attorney Justin Adin - Department of Law

[2022-93](#)**LL - To Clarify the Retention of Outside Counsel**

A LOCAL LAW amending Section 158.11 of the Laws of Westchester County to clarify the retention of outside counsel.

**COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION AND LAW & MAJOR CONTRACTS**

Guests: County Attorney John Nonna, Deputy County Attorney Justin Adin - Department of Law

**II. OTHER BUSINESS****III. RECEIVE & FILE****ADJOURNMENT**

**Colin D. Smith**

Legislator, 1<sup>st</sup> District  
Chair, Committee on Legislation

**Committee Assignments:**

Budget & Appropriations  
Health  
Law & Major Contracts  
Public Safety

To: Sunday Vanderberg, Clerk of the Board of Legislators

FROM: Colin Smith, Legislator, District 1  
Catherine Borgia, Legislator, District 9

Date: March 2, 2022

RE: Salary Range Posting Requirement

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Please refer the attached Local Law, amending Chapter 700 of the Laws of Westchester County relating to prohibiting employers from posting job listings without minimum and maximum salary information, on the March 7, 2022 Westchester County Board of Legislators agenda to the appropriate committees.

TO: BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee recommends the adoption of “A LOCAL LAW amending Chapter 700 of the Laws of Westchester County relating to prohibiting employers from posting job listings without minimum and maximum salary information.”

Your Committee is advised that the Westchester County Human Rights Law (“Human Rights Law”) is intended to address and prevent discrimination, bigotry, prejudice, and intolerance in Westchester County because of a person’s actual or perceived membership in a protected class. Under the Human Rights Law, it is unlawful to discriminate in relation to employment, public accommodations, housing accommodation, commercial space and land transactions, and the issuance of credit.

Your Committee notes that, historically, a gender and racial wage gap has existed. Women earn on average less than their male counterparts do and people of color generally earn less than their White counterparts do. This disparity in pay can have a significant impact on the earnings of woman and people of color over the course of their careers. The Human Rights Law already bans employers from requesting, with few exceptions, the salary history of applicants to prevent employers from excluding people from the pool of applicants and using salary history to perpetuate gender and racial pay disparity.

Your Committee is advised that the proposed amendment to the Human Rights Law will make it unlawful for employers to advertise a job, promotion, or transfer opportunity without also including the minimum or maximum salary for the job, promotion, or transfer, in the job posting or advertisement. In any advertisement for a job, promotion, or transfer opportunity, the employer must provide a range from the lowest to the highest salary the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion or transfer opportunity. This new requirement will help to bring about transparency around salary ranges and level the playing field for negotiating pay and ensuring that job applicants, particularly women and people of color, are paid a fair salary based upon what the job is worth. Moreover, it will help to close the gender and racial pay disparity by leveling the information playing field and helping to ensure that employees can receive equal pay for equal work, regardless of their group identity. Prospective applicants can better decide whether they want to devote their time to applying for a particular job or forego that particular opportunity if they know the salary range. On the other hand, prospective employers will not waste their time on applicants who are not interested in a particular job based upon the salary range. Colorado and New York City have recently enacted salary range disclosure laws.

Your Committee is advised that the proposed amendment will make it an unlawful discriminatory practice to advertise a job posting without disclosing the minimum and maximum salary of the position. The failure to comply with this amendment could result in a fine of up to \$125,000 pursuant to § 700.10(7) of the Human Rights Law.

Your Committee is informed that the proposed legislation 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 14, 2022, which is on file with the Clerk of the Board of Legislators. Your Committee concurs in this conclusion.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: \_\_\_\_\_, 2022  
White Plains, New York

COMMITTEE ON

JSW-2/28/2022

**RESOLUTION NO. \_\_\_\_ – 2022**

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. \_\_\_\_ - 2022, entitled “A LOCAL LAW amending Chapter 700 of the Laws of Westchester County relating to prohibiting employers from posting job listings without minimum and maximum salary information.” The public hearing will be held at \_\_.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 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 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 INTRO. NO. -2022**

A LOCAL LAW amending Chapter 700 of the Laws of Westchester County relating to prohibiting employers from posting job listings without minimum and maximum salary information.

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

Section 1. Subsection 9 of Section 700.03 of the Laws of Westchester County is hereby amended to read as follows:

**Section 700.03. – Unlawful discriminatory practices in employment.**

a. It shall be an unlawful discriminatory practice:

...

9. For an employer, labor organization, employment agency or licensing agency, or employee or agent to:

(i) Advertise a job, promotion, or transfer opportunity without stating the minimum and maximum salary for such position in such advertisement. In stating the minimum and maximum salary for a position, the range may extend from the lowest to the highest salary the employer in good faith believes at the time of the posting it would pay for the advertised job, promotion, or transfer opportunity. This subdivision does not apply to a job advertisement for temporary employment at a temporary help firm as such term is defined by



subdivision 5 of section 916 of article 31 of the New York State Labor Law.

- (ii) [(i)] Rely on the wage history of a prospective employee from any current or former employer of the individual in determining the wages for such individual; provided that an employer may rely on prior wage history when it is voluntarily provided by a prospective employee to support a wage higher than the wage offered by the employer;
- (iii) [(ii)] Orally, or in writing, request or require as a condition of being interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment, that a prospective employee disclose information about the employee's own wages from any current or former employer; and
- (iv) [(iii)] Orally, or in writing, seek from any current or former employer the previous wages of any prospective employee; provided, however, that an employer may seek to confirm prior wage information only after an offer of employment with compensation has been made to the prospective employee and the prospective employee responds to the offer by providing prior wage information to support a wage higher than offered by the

employer. Under these circumstances, the employer may only seek to confirm prior wages after obtaining written authorization by the prospective employee to do so.

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Section 2. This Local Law shall take effect 90 days after enactment.

George Latimer  
County Executive

Office of the County Attorney

John M. Nonna  
County Attorney

February 24, 2022

Westchester County Board of Legislators  
800 Michaelian Office Building  
148 Martine Avenue, 8<sup>th</sup> 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 to clarify the retention of outside counsel."

Section 158.11 of the Laws of Westchester County establishes the powers and duties of the County Attorney. Section 158.11(2) provides that the County Attorney:

shall be legal advisor to the County Board and to each and every board, body, commission or officer of the County of Westchester and to each and every employee of the County of Westchester as may be required by section 297.31 of the Westchester County Administrative Code. It shall be his duty to furnish to such county board, body, commission officer or employee all such advice and legal assistance as counsel and attorney in and out of court as may be required by them, or either of them. No such officer, employee, board, body, commission or department of the county shall have or employ any attorney or counsel at the expense of the county unless specifically authorized to do so by the County Board.

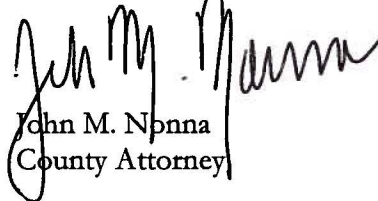
Historically, this Office has interpreted this section to mean that no board, body, commission, officer, or employee could have representation in its official capacity other than the County Attorney's Office, unless outside counsel was retained by Act of the Board of Legislators.

In conducting a recent analysis of this section, a question has arisen as to the meaning of the phrase "at the expense of the county." It is possible to interpret this phrase to mean that county officers or employees could obtain *pro bono* legal services without seeking approval from the County Board. This would then conflict with the first sentence of the provision, which provides that the County Attorney *shall* be the legal advisor for the County.

Because of this potential conflict, I recommend amending this section to remove the phrase "at the expense of the county" so as to ensure a consistent interpretation of this section. Without making such a change, situations could arise where persons or bodies obtain outside legal opinions, without the knowledge of this Office, act on those opinions, and expose the County to potential

liability as a result. This could also result in situations where persons or bodies act against the advice of the County Attorney based on a separate opinion by an outside attorney, create legal liability for the County, and a conflict with this Office which necessitates the hiring of outside counsel. In order to reduce these risks, I recommend the amendment so that all requests for outside legal assistance come through this Board, except where otherwise provided by law.

Respectfully submitted,



John M. Npna  
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 to clarify the retention of outside counsel.”

Your Committee is advised that Section 158.11 of the Laws of Westchester County establishes the powers and duties of the County Attorney. Section 158.11(2) provides that the County Attorney:

shall be legal advisor to the County Board and to each and every board, body, commission or officer of the County of Westchester and to each and every employee of the County of Westchester as may be required by section 297.31 of the Westchester County Administrative Code. It shall be his duty to furnish to such county board, body, commission officer or employee all such advice and legal assistance as counsel and attorney in and out of court as may be required by them, or either of them. No such officer, employee, board, body, commission or department of the county shall have or employ any attorney or counsel at the expense of the county unless specifically authorized to do so by the County Board.

Historically, the County Attorney has interpreted this section to mean that no board, body, commission, officer, or employee could have representation in its official capacity other than the County Attorney’s Office, unless outside counsel was retained by Act of the Board of Legislators.

Your Committee is informed that, in recent analysis, a question has arisen as to the meaning of the phrase “at the expense of the county” in this section. It is possible to interpret this phrase to mean that county officers or employees could obtain *pro bono* legal services without seeking approval from the County Board. This would then conflict with the first sentence of the provision, which provides that the County Attorney *shall* be the legal advisor for the County.

Your Committee is further informed that the County Attorney recommends amending this section to remove the phrase “at the expense of the county” so as to ensure a consistent interpretation

of this section. The County Attorney further advises that, without making such a change, situations could arise where persons or bodies obtain outside legal opinions, without the knowledge of the County Attorney, act on those opinions, and expose the County to potential liability as a result. This could also result in situations where persons or bodies act against the advice of the County Attorney based on a separate opinion by an outside attorney, create legal liability for the County, and a conflict with the County Attorney's Office which necessitates the hiring of outside counsel. In order to reduce these risks, the County Attorney recommends the amendment so that all requests for outside legal assistance come through this Board.

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 14, 2022, 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: 2022  
White Plains, New York

COMMITTEE ON

RESOLUTION NO. - 2022

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. - 2022 entitled "A LOCAL LAW amending Section 158.11 of the Laws of Westchester County to clarify the retention of outside counsel." The public hearing will be held at \_\_ .m. on the day of \_\_\_\_\_, 2022 in the Chambers of the Board of Legislators, 8<sup>th</sup> 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. \_\_\_\_ - 2022

A LOCAL LAW amending Section 158.11 of the Laws of Westchester County to clarify the retention of outside counsel.

Be it enacted by the Board of Legislators of the County of Westchester, as follows:

SECTION 1.

Subdivision 2 of Section 158.11 of the Laws of Westchester County is hereby amended to read as follows:

He shall be legal advisor to the County Board and to each and every board, body, commission or officer of the County of Westchester and to each and every employee of the County of Westchester as may be required by section 297.31 of the Westchester County Administrative Code. It shall be his duty to furnish to such county board, body, commission, officer, or employee all such advice and legal assistance as counsel and attorney in and out of court as may be required by them, or either of them. No such officer, employee, board, body, commission or department of the county shall have or employ any attorney or counsel [at the expense of the county] unless specifically authorized to do so by the County Board.

SECTION 2. Effective date.

This Local Law shall take effect immediately.