

**COMMITTEE ON LEGISLATION
MINUTES JULY 20, 2009**

LEGISLATION MEMBERS IN ATTENDANCE:	Chairman: Burton; Legislators: Nonna, Abinanti, Bronz, Jenkins, Harckham,
ALSO IN ATTENDANCE:	Department of Consumer Protection: J. Gaccione, T. Kramer, G. Brown Board of Legislators Staff: J. Sold, T. Logan, T. Toscano, S. Kirkpatrick Others Present: J. McKinstry, B. Randolph, C. Hyde

The Committee on Legislation, meeting with a quorum present, was called to order by Chairman Burton at 1:41 p.m.

OVERSIGHT OF CONSUMER PROTECTION DEPARTMENT:

Chairman Burton opened the meeting to discuss the legislation that is currently enforced by the Department of Consumer Protection and asked that Gary Brown, Director, provide an overview of the Department's activities. Mr. Brown introduced John Gaccione, the County Sealer and Tom Kramer, Deputy Sealer, to the committee.

Mr. Brown opened his remarks by complementing the Board on the pro-consumer legislation that had been enacted over the last ten years that has made a real difference to consumers. Significantly, Westchester County Board of Legislators has acted in several cases in advance of their federal and state counterparts, who have copied in several cases the legislation already enacted by the Board.

From a fiscal point of view, Mr. Brown pointed out that the revenue for the past three years totaled between \$1.6 million to \$1.74 million per year and their expenses \$1.7-1.86 million. The tax levy allocated to the Department has been for those three years \$131,000, 134,000 and 121,000. Significantly, the amount of restitution that the Department has been able to deliver to consumers has amounted to \$712,000, 951,000 and 833,000 per year, which amounts to 7 times the amount of the allocable tax levy. These figures show that the Department's work has been very valuable to the County's consumers.

These amounts are separate from the revenues, which are based on license fees for home improvement contractors and other registration fees and fines. The revenues have remained steady in recent years due to the increased numbers of licensed contractors (7,500). This increase is due to the Department's enforcement work with respect to licensing and very helpful legislation passed by the Board. The Department conducts random sweeps to identify unlicensed contractors. Such sweeps have shown that 90% of the contractors randomly stopped are licensed now due to the legislation and enforcement efforts. The Department focuses on this area because important because consumers' primary complaint has been with respect to unlicensed contractors.

The Board has been helpful to the Department by increasing the amount of fines for violations and repeat violations and most importantly, the recently enacted seizure law, which allows seizure of vehicles and tools, which has really worked (and is being copied by Rockland County). Also, the publicity about seizures has had a huge deterrent effect.

In addition, the Department makes sure that the contractors are maintaining proper insurance and have started to require a written exam to make sure that they are aware of the laws of Westchester County. Licensed contractors as of July 1, 2008 were grandfathered and did not need to take the exam. The exam makes sure that the contractors know about written contracts, that down payments have to be in escrow and that they need to display their license numbers. This test was developed in-house and was modeled on an exam conducted by Suffolk County.

The new leaf blower law requires lower emissions which they are enforcing. The new fertilizer law will require contractors to take a turf management course to make sure that landscapers know the law. The Department has developed a live presentation and an online course to make sure that the course is available. There will also be a public education program to reach the public- online on the Department website and a printed brochure. The Department will also make the retailers aware of the new law because retailers will have to display a sign that explains the regulations and in 2011 they will have to remove the displays altogether and only make fertilizer with phosphorous available on request. The committee commented that public education is particularly important where consumers can easily purchase materials outside the county.

The committee inquired whether, given the success with restitution, the Department could generate even more restitution with their current staff levels. Mr. Brown responded that if more consumers brought complaints, the Department would be able to increase the amount of the restitution through their mediation process. So they would like to

increase consumer awareness so that the Department could take even more action on behalf of consumers. In addition, the Department uses their resources flexibly to meet needs, for example, shifting personnel from gas pump inspections to home improvements complaints. They have a total of 16 inspectors.

The Department has conducted a monthly gas price survey and publishes it online. They also do a home heating oil survey. This helps consumer to at least know the average price in the County when they make purchases. They restarted in the spring a market basket price survey that is published online, which shows both the individual prices per item and the total for each store for 45 items. They will continue this on a quarterly basis.

State law requires the Department to inspect meters on trucks, scales at the airport and pumps at gas stations although they get only a minimal amount of state aid to enforce the state law.

One of the things that the Department has done differently that has made a positive difference is that they do their outdated food inspections in a concentrated manner and go to 45 supermarkets in a short period of time. Then when they announce a 4 week survey of county supermarkets, the media covers it and the public attention changes retailer behavior. The number of outdated items has been much reduced by reason of this effort. They also check the accuracy and availability of items against the advertisements as well as scanner accuracy.

Over the last ten years, much of the legislation that this Board has passed became the model for state and federal legislation. The Ephedra legislation was on our books before federal and state legislation superseded it. The same was true for the Wi-Fi security legislation. The NY State legislation passed this year on Wi-Fi was modeled on our legislation but did not include the business component thus making Westchester the only locality in the world with this feature. The taxpayer bill of rights law also was adopted by the state this year. Unfortunately, the state also preempted our law so the County has lost the opportunity to enforce the law (although an exemption was made for New York City). The committee discussed whether the state delegation should be asked to add a similar exemption for Westchester County.

The Department also partners with other agencies and encourages voluntary actions by retailers. For example, the toy jewelry inspections reduced the jewelry available to children with lead paint. Here, as with the non-UL approved electric cords, the Department partnered with the Attorney General's office to enforce the law. On the other hand the Department requested supermarkets to voluntarily post signs about the

mercury in fish to educate the consumer. With the addition of media publicity, additional retailers joined this disclosure, raising the voluntary compliance from 70% to 89%.

The committee also discussed the effect of having laws on the books when subsequent state or federal laws have preempted the County law. The County could retain the laws where there are sunset provisions but repeal those that have permanently preempted local law. The Department was requested to provide a list to the committee staff of statutes that have been preempted.

Mr. Brown then discussed another Westchester law which requires that companies that buy gold jewelry must keep a record of the purchase and to have the seller personally appear and produce photo ID. The companies also must notify the Department each day by means of a written ledger book. The committee then discussed the merits of changing the law to permit electronic notice of the sale but retaining the requirement of personal appearance and photo ID, both of which tend to discourage selling stolen jewelry.

Mr. Brown noted that registration of non-bank ATMs have declined as most ATMs are now operated by banks. This statute was originally passed to protect against identity theft. Mr. Gaccione also mentioned that we are ahead of NYC on this issue by noting that a NYC councilman complained just yesterday about not having any legislation in NYC to deal with the non-bank ATMs.

On item pricing, the Department is still waiting for a decision on the appellate division case that is pending on the fines of \$1.5 million imposed on K-Mart that has been pending about six months. They have resumed enforcing the county's item pricing laws.

The Department has investigated and sent to the Attorney General's office the names of retailers that have falsely claimed they were selling Lance Armstrong bracelets and sending a \$1 to the relevant charity without actually sending the money to the charity. They have also surveyed the cost of gift cards and tried to raise public awareness on the risks involved in purchasing gift cards.

The Department has also enforced the laws that require retailers to limit sales of certain cold medications. They have also conducted outreach to consumers with respect to pay day loans. They are also following up with respect to an inquiry with respect to the difference in costs between men's and women's dry cleaning prices. They also conduct outreach with respect to credit card fees by publishing a brochure that relies heavily on the lists created by the Consumer Federation of America.

Identity theft is the subject of many of the Department's outreach programs. Their two most popular brochures and is the most important topic in their senior crime buster presentations.

The new DXM law, which prohibits the sale of certain cough medicine to minors, poses an enforcement problem for the Department because they do not have minors on their payroll who could serve as testers. They do not have funding to hire testers and do not want to use volunteers both for supervisory and liability issues. On the other hand, most of the national retail chains have moved the items behind the counter and require identification to make a purchase.

Likewise, the recently proposed BPA law could have posed an enforcement issue because they do not have the means to test the items for BPA and there is no requirement for labeling. An educational effort would be easier for the Department to handle.

The Department feels comfortable that they have been able to manage their workload despite increases in legislation because they have worked efficiently and used new technology. They are wary about laws that might require them to take new actions that they do not currently have the expertise or funding to enforce.

The committee then discussed the requirement for written exams for home improvement contractors. The Department believes that the provision that allows them to adopt rules and regulations ancillary to enforcing the law permits them to do this. Mr. Brown said that the test has not excluded people who have a problem with English because they provide translators. Also the test is not a practical, hands-on test, but rather a test on the knowledge of the legal requirements such as the need for written agreements, 3-day right of rescission and escrow of deposits.

Mr. Brown also said, in response to an inquiry, that the Department's long range goals include modifying the home improvement licensing regulations to eliminate inconsistencies and also updating the database of contractors so it can be searchable by business type and location.

MINUTES:

Legislator Nonna requested that the minutes of the June 22, 2009 meeting be revised to reflect that the committee considered the existing relevant federal animal welfare legislation.

APPOINTMENTS:

Legislator Bronz recommended, on behalf of the Subcommittee on Appointments, the appointment of: Maria Valentin as a member of the Westchester County Hispanic Advisory Board; Douglas Hocking as a member of the Westchester County Planning Board; Geri Krauss as a At-Large member of the Westchester County Women's Advisory Board; Reina Schiffrin as a member of the Westchester County Women's Advisory Board; Mitchell Tarnopal of the Westchester County Traffic Safety Board; Lottie Harris as an At-Large member of the Westchester County Women's Advisory Board; and the reappointment of Marilyn Price as a member of the Westchester County African American Advisory Board, DaMia Harris as a member of the Westchester County African American Advisory Board and Julian Keiser as a member of the Westchester County Fire Advisory Board.

Legislator Jenkins moved, seconded by Legislator Abinanti to approve the reappointment and appointments. Motion approved 6-0.

Legislator Abinanti made a motion to adjourn the Legislation Committee, seconded by Legislator Nonna. Motion approved 6-0. The Legislation Committee adjourned at 3:15 pm.

AUDIO RECORDING ON FILE FOR REVIEW UPON REQUEST