

**COMMITTEE ON LEGISLATION  
Meeting Jointly With  
COMMITTEE ON GOVERNMENT OPERATIONS AND  
MINUTES JUNE 15, 2009**

<b>LEGISLATION MEMBERS IN ATTENDANCE:</b>	<b>Chairman:</b> Burton; <b>Legislators:</b> Nonna, Rogowsky, Abinanti, Bronz, Myers, Jenkins, Harckham and Oros
<b>GOVERNMENT OPERATIONS MEMBERS IN ATTENDANCE:</b>	<b>Chairman:</b> Jenkins; <b>Legislators:</b> Bronz, Burton, Harckham, Myers, Rogowsky, Pinto and Burrows
<b>ALSO IN ATTENDANCE:</b>	<b>County Attorney:</b> S. Dolgin-Kmetz, E. Cipollo; M. Gleeson, M. Nicolas-Brewster, <b>Board of Legislators Staff:</b> L. Goldstein, M. McGovern, T. Grodin, K. Delgado, B. DeSoye <b>Others Present:</b> D. Finger, J. Cohen, L. Brick, E. Songer McCarthy, A. Seligsohn, J. Lord, D. Hanratty, A. Annunziata, A. Guffetelli, M. Tanzman

The Committees on Legislation and Government Operations, each meeting with a quorum present, were called to order by Chairman Burton of the Legislation Committee and Ken Jenkins of the Government Operations Committee at 1:45 p.m.

**APPOINTMENTS:**

Legislator Bronz recommended on behalf of the Subcommittee the reappointment of Gary Schnoor as a member of the Westchester County Airport Advisory Board and Edward Plotkin as a member of the Westchester County Professional PreQualification Board.

Legislator Bronz moved, seconded by Legislator Jenkins to approve the reappointment and appointment. Motion approved 8-0.

**MINUTES:**

Legislator Jenkins moved, seconded by Legislator Harckham to approve the minutes of the meeting of June 8, 2009. Motion approved 8-0.

**COUNTY CLERK-RECORDING AND ENDORSEMENT PAGE:**

Chairman Burton asked County Clerk Tim Idoni and Assistant to County Clerk Eileen McCarthy to discuss the proposed legislation with respect to a change in the procedure in which documents are recorded in the County Clerk's office. The change would make mandatory the completion by private parties, generally title companies, of certain forms that would expedite the recording of documents in the Clerk's office. The change would save \$750,000 in payroll dollars from decreased positions that would no longer be needed. It is already done in the City of New York on a regular basis. Chairman Jenkins noted that the Government Operations had already heard a presentation on this procedure and strongly supported the legislation. Mr. Idoni confirmed that the system has been made user friendly so that non-professionals would be able to operate it without problem.

A motion was made for the Legislation Committee by Legislator Jenkins and seconded by Legislator Bronz to vote the legislation for all purposes. Motion passed 9-0.

**SOURCE OF INCOME:**

Chairman Jenkins then invited Ms. Dolgin-Kmetz and Ms. Brewster of the County Attorney's office to discuss the proposed amendment to paragraph 4 of Section 3(V) of the proposed source of income modification to the Fair Housing Law. The amendment moved the concept of business judgment, which had already been set forth in the committee report, into the text of the legislation itself. It is the only change that has been made with respect to the legislation from the text previously discussed.

A paragraph was added to add an affirmative defense to an allegation of discrimination based on source of income that the owner/landlord exercised their reasonable business judgment. The concept derives from business commercial law. In the area of coop law, the courts defer to a decision made by a coop board when it makes a decision for the benefit of the entire membership and view this as a business judgment standard. The intent was to mirror that language in the legislation.

A distinction was made with respect to paragraph 2 because that paragraph only deals with inquiries, which not themselves an unlawful practice. In contrast, in paragraph 4 a decision has been made, which could be an unlawful practice, but gives the landlord the right to assert that the decision was made on the basis of reasonable business judgment.

None of the other source of income laws in other states includes an exemption for business judgment. However, some other laws do include items that are not strictly government programs, such as alimony. No courts have interpreted a business judgment except in the context of coop board cases.

Legislator Nonna cited two examples of business judgment, such as consideration of the amount of repairs that might be required after an inspection or the delays if a cash paying tenant applied before the Section 8 formalities were completed. However he thought that the business judgment defense would not protect against blanket rejections of Section 8 applicants. Legislator Harckham noted for the record that the Section 8 representatives had indicated that their procedures did not take 2-3 months to complete.

There was some further discussion about the language in the legislation that protected the recipient of an inheritance from discrimination and whether other states also included such language and it was noted that the District of Columbia protected beneficiaries of bequests and annuities.

Chairman Burton requested that the discussion focus on (1) the impact on coops, (2) the effect of EPTA laws and (3) the issue of the burden of proof.

It was noted that Section 8 does not apply to either purchases of coops or to sublets of coops but would only apply if a coop owner became unable, through a loss of a job for example, to continue to pay his maintenance. A Section 8 voucher would be available to such an owner to pay for maintenance and a coop board would continue to be able to exercise its business judgment in the context of all factors to make its decision whether to accept it.

It was noted that currently the courts defer to the business judgment exercised by coop boards but the latter did not have to raise business judgment as an affirmative defense. The proposed language would change that. Ms. Brewster indicated that it was not the intent to change current practice.

As to ETPA law, there was some discussion as to whether renewals of leases to Section 8 tenants would have to be continued on the same terms and conditions as existing leases.

The members discussed the fact that couching the business judgment concept as an affirmative defense would shift the burden of proof to the coop boards in a manner not currently required. Legislator Nonna

suggested that the language be revised to provide that there would be no violation if the landlord/coop board exercises its reasonable business judgment.

There was also some discussion as to whether coops should be entirely excluded from the legislation. Ms. Brewster indicated that the current categories of discrimination already contained in the Fair Housing Law do apply to coops. There was some discussion as to whether the proposed additional categories would prove more difficult to administer than the existing categories. On the other hand, it was also noted that the need for this further protection was necessary because Federal money that could be used to benefit those that the County is otherwise supporting in homeless shelters is being lost because of rejections of their vouchers. In addition, it was noted that other federal laws, such as the Fair Credit Act also extended beyond the constitutionally protected classes to source of income.

The committee then voted, on a motion by Legislator Nonna, seconded by Legislator Harckham, to revise the language to provide that exercise of business judgment would not constitute an unlawful discriminatory practice. Motion carried 9-0 by Legislation and 8-0 by Government Operations.

The committees then moved, on a motion by Legislator Bronz, seconded by Legislator Harckham, to set the legislation, as revised, for a public hearing. Motion carried 6-1 in the Legislation Committee with Legislator Oros opposing and Legislator Myers voting without prejudice and 6-0 in the Government Operations Committee with Legislator Myers voting without prejudice.

Legislator Harckham made a motion to adjourn the Legislation Committee, seconded by Legislator Jenkins. Legislator Bronz moved, seconded by Legislator Burton, to adjourn the Government Operations Committee. Motion approved 9-0. The Legislation Committee and the Government Operations Committees adjourned at 3:30 pm.

**AUDIO RECORDING ON FILE FOR REVIEW UPON REQUEST**