

**COMMITTEE ON LEGISLATION  
MINUTES MARCH 16, 2009**

<b>LEGISLATION MEMBERS IN ATTENDANCE:</b>	<b>Chair:</b> Burton; <b>Legislators:</b> Myers, Jenkins, Nonna, Harckham, Rogowsky, Bronz, Maisano and Abinanti
<b>ALSO IN ATTENDANCE:</b>	<b>County Executive:</b> A. Neuman, B. Randolph; <b>County Attorney:</b> E. Cipollo; J. Cascione; <b>Board of Legislators Staff:</b> D. Pine, M. Montalto, S. Swift, R. Pezzullo; J. Sold, K. Delgado, M. Amodio, <b>Consumer Affairs:</b> G. Brown, J. Gaccione, <b>Guests:</b> M. Klein, P. Brodhagen, T. Restaino, J. Caruana, T. Grosselfinger, R. Durso, J. Fix

With a quorum present, the Committee on Legislation was called to order at 1:50 p.m.

**MINUTES**

Legislator Jenkins made a motion, seconded by Legislator Nonna, to approve the minutes of September 15, 2008 and March 3, 2009. Motion approved 7-0.

**BOARDS AND COMMISSION**

Legislator Bronz made a motion, seconded by Legislator Jenkins, to approve the appointments of Patricia Monahan to the Westchester County Council for Seniors; Susan Tolchin to the Westchester County Industrial Development Agency; Peter Sciliano to the Westchester County Refuse Disposal District No. 1 Advisory Board; Keith W. Bininger to the Westchester County Traffic Safety Board; Claudett J. Stothart to the Westchester County African American Advisory Board; The Honorable Vincent A. DeLorio to the Westchester County Board of Ethics; William Magwood to the Westchester County Community Services Board; Sr. Geraldine Kennedy and Gloria Swanson to the Westchester County Council for Seniors; Marjorie Leffler to the Westchester Domestic Violence Council; Chief John Kapica to the Westchester County Emergency Medical Services Board; Susan Carpenter and Elizabeth Paul to the Westchester County Soil and Water Conservation District Board;

and Blanche Kruk and Janet Walker to the Westchester County Women's Advisory Board.

Legislator Bronz gave a report from the Sub Committee on appointments recommending these individuals. Motion approved 7-0.

**ITEM PRICING WAIVER LAW**

Andrew Neuman of the County Executive's Office and Director Gary Brown and Deputy Director John Gaccione of the Westchester County Office of Consumer Affairs discussed two proposed changes to the legislation following the Committee's meeting on February 23, 2009. These were (1) to permit retail stores with less than 1500 sq ft to have no additional scanners on the retail floor so long as scanning was available upon customer request and (2) to delete previously proposed language providing for a revocation of the waiver in the event of "any deceptive trade practice." The latter was considered to be too vague and overly broad.

As to the requested reduction in the fee requested by the Food Industry Alliance (a copy of which memorandum is filed with the Committee), Mr. Neuman stated that the industry had requested the change in order to be consistent with the requirements of similar legislation in Nassau and Suffolk counties. However, he also noted that proposed Westchester legislation, in contrast to the other counties, would determine the square footage based on the actual retail space (exclusive of backroom, storage, etc.), rather than the entire footprint of the store.

Mr. Neuman was asked whether consumer groups would support the legislation. He then circulated a copy of a letter written by Dan Franklin, Chairman of Westchester Citizens Consumer Advisory Council in support of the legislation. A copy of the letter is on file with the Committee.

The status of the litigation with K-Mart was discussed. The fine imposed by an administrative law judge has been challenged both as to constitutionality and the penalty amount. It could be several months before the case is finally decided. The County Executive believes that rather rely solely on enforcement and expensive litigation with respect to the existing unit pricing requirements, the technology has evolved to a point where consumers would be protected by a combination of accurate shelf labels together with available scanners and that the DPC would be vigilant on behalf on consumers to enforce the required testing.

The Members noted that a retailer would not merely be paying a fee to avoid compliance with unit pricing, but were actually paying for costs of initial inspection, follow ups and administrative expenses in connection

with the process of compliance with the shelf labeling/scanning and testing provisions.

The Committee also heard from Terry Grosselfinger, the Director of the Consumer Protection Agency of Rockland County, who submitted a copy of a letter reflecting Rockland County's experience with similar provisions. A copy of the letter is on file with the Committee. Rockland has had a very positive experience, with minimum consumer complaints and strong industry support. A few retailers, particularly those selling clothing, have decided not to pursue the waivers because their merchandise arrives pre-tagged.

The Committee also heard from John Fix, owner of a True Value Hardware and a member of the Consumer Advisory Council of Eastchester who supports the legislation. He believes that the legislation will help consumers because products can be priced and repriced more efficiently without unit pricing - merchandise can then be available for sale more quickly and personnel will be freed to service customers. He believes that the overall efficiency of the new system more than justified his initial one-time investment in additional scanners for the retail floor. He also thought that this would also create a more level playing field for the smaller stores.

The Committee also heard from Pat Brodhagen of the Food Industry Alliance, Mitch Klein of Krasdale Food, John Caruana of A&P and Tom Restaino of Waldbaums/A&P who all supported the legislation. Ms. Brodhagen had previously submitted to the Committee a memorandum in support of the reduction of the fee, which is on file with the Committee. They proposed a lower fee for the 30,001-90,000 sq ft level which would be more in line with the fees in effect in Nassau and Suffolk counties. They also stated that other NY counties' fees are even lower.

The Committee then discussed the proposed reduction in the fee schedule. Andrew Neuman indicated that, while the County Executive initially supported the higher fee, an argument for the lower fee would be that stores could be deterred from applying for the waiver if the fee is too high. The Members also discussed the possibility of setting the fees based on a price per foot. However, Garry Brown of the DPC felt that this form of measurement could be more difficult to enforce- the DPC would have to monitor a more specific footage (i.e., 40,151 sq ft) which would result in even more borderline cases than the broad ranges already proposed. It would also make the County's legislation radically different from that of other counties. After further discussion, including discussing whether to add another range of 60,0001-90,000 sq ft, several Members stated that the fee reduction appeared to be warranted based on (1) the cost of compliance and administration (2) the application of the

legislation only to the actual retail space and (3) to encourage retailers to make use of the waiver vehicle.

Legislator Abinanti requested that a definition of retail space be added to the legislation. The Members then discussed the sufficiency of the minimum number of scanners on the retail floor. The County Executive reported that the proposed legislation would be the first of this type to set any requirements for a minimum number of scanners. Mr. Restaino said that they do not receive complaints from consumers about the location or number of scanners in their A&P/Pathmark stores. The Members agreed that a new definition of Retail Space should be added to amend Section 1, as a new subdivision 14 to Section 863.11, which definition would be provided by the Law Department.

Legislator Nonna made a motion, seconded by Legislator Bronz, to pass the proposed legislation out of committee for all purposes, including the following amendments (1) a modification of proposed Section 863.72 (7)(a) to permit stores with less than 1500 sq ft to not have a scanner if scanning is available upon request; (2) to delete proposed subdivision (d) from Section 863.72(8); (3) to modify Section 863.72(1) to lower to \$5000 the fee with respect to stores with retail square footage of 30,0001-90,000; and (4) to add a new subdivision 14 to Section 863.11 to add a definition of “retail space.” Motion approved 8-0, with Legislators Harckham and Maisano voting without prejudice.

Legislator Myers made a motion to adjourn, seconded by Legislator Bronz. Motion approved 8-0. The Committee adjourned at 3:05 pm.

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