

COMMITTEE ON LEGISLATION
Meeting Jointly With
COMMITTEE ON GOVERNMENT OPERATIONS AND
COMMITTEE ON PUBLIC SAFETY
MINUTES MAY 18, 2009

LEGISLATION MEMBERS IN ATTENDANCE:	Chairman: Burton; Legislators: Nonna, Rogowsky, Abinanti, Bronz, Myers, Jenkins, Harckham and Maisano
GOVERNMENT OPERATIONS MEMBERS IN ATTENDANCE:	Chairman: Jenkins; Legislators: Bronz, Burton, Harckham, Myers, and Rogowsky
PUBLIC SAFETY MEMBERS IN ATTENDANCE:	Chairman: Pinto; Legislators: Burton, Harckham, Jenkins, Myers and Nonna
ALSO IN ATTENDANCE:	County Executive: A. Neuman, B. Randolph, County Attorney: S. Dolgin-Kmetz, E. Cipollo; M. Gleeson, M. Nicolas-Brewster, Board of Legislators Staff: C. Giliberti, T. Martin, J. Ghirdali, C. Zelicof, Others Present: Hon. L. Williams, J. Hanley, A. Ponzi, J. McKinstry, K. Finger, Esq., A. Gioffetelli, B. O'Grady, A. Annunziata, M. Schaeffling, D. Hanratti, J. Hodge-Watson

The Committees on Legislation, Government Operations and Public Safety, each meeting with a quorum present, were called to order by Chairman Burton of the Legislation Committee, Chairman Pinto of the Public Safety Committee and Ken Jenkins of the Government Operations Committee at 12:45 p.m.

DWI VEHICLE FORFEITURE LAW

The committees on Legislation and Public Safety met to discuss the text of revised draft legislation on DWI Vehicle Forfeiture. Mr. Gleeson from the Law Department informed the committee that there were 3 principal changes to the draft Committee Report: (1) addition of provisions related to convictions as a result of drag racing in violation of Vehicle and Traffic Law §1182; (2) deletion of certain data with respect to Nassau County

legislation that was no longer considered relevant; and (3) some additional language that had been requested by the committee.

The committees then discussed the revised draft legislation. Legislator Harckham indicated that he is requesting an addition to the legislation to require an annual report from the County Attorney's office that would describe the details on the actual implementation of the legislation, including the racial profile of the persons whose cars had been seized. This report is intended to track whether, after conviction and notwithstanding certain of the discretionary provisions of the legislation such as the hardship and other defenses, the vehicle forfeiture law does not have a disproportionate impact on some citizens over others. Mr. Gleeson indicated that because the driver and owner are not necessarily the same, there may be a few details to be worked out. Legislator Williams, attending as a guest of the committee, indicated that he has some concerns with respect to this issue.

The committee then discussed the possibility of adding provisions that would permit local municipalities to "opt-into" the county legislation. The concept would be to expand the scope of the legislation to allow a municipality to opt-into the county legislation so that arrests by local police officers rather than county police result in similar vehicle forfeiture without the municipality having to enact a separate law. It was also proposed that the local attorneys for the municipalities could handle those cases so as to lessen the impact on the County Attorney's Office. The representatives of the County Attorney's Office indicated that the defendant would have to look into the legality and feasibility of this proposal.

The committee then discussed the provisions that were added with respect to drag racing at the request of the Commissioner of Public Safety. Mr. Gleeson indicated that if the defendant were arrested and charged with an offense under Vehicle and Traffic Law §1182 for drag racing but the final disposition of the case was for a lesser included offense, the vehicle would still be subject to forfeiture so long as the arrest was under §1182 and it is shown that they were in violation of §1182.

The committee also discussed the provisions in the legislation under Section 699.1 (7) that provide for sharing of ½ of the proceeds of seized property to the municipal police departments. Mr. Gleeson indicated that this provision is contained in the existing statute with respect to seizures of controlled substances. It was agreed that the proposed amendment of this provision did not have any effect on the intention of the legislators to retain for the county then entire proceeds of the sale of forfeited vehicles.

The committee then discussed whether the County has the power to enact the penalties set forth in vehicle forfeiture law in light of the state Vehicle and Traffic law. Mr. Gleeson stated that this legislation is permitted because the penalties are under civil law not criminal law so that this legislation is not adding a traffic infraction to state law.

Legislator Williams asked, with respect to the notice provisions, whether the defendant will be notified at the time of his plea that his action may result in forfeiture of the vehicle. Mr. Gleeson indicated that Section 699.3 provides that the defendants will be informed at the time of arrest. Legislator Harckham further pointed out that the County Attorney's Office also would be required to give notice within 30 days of arrest. Legislator Williams indicated that he had some concern for those defendants that are not represented by attorneys and who may not remember, at the time of pleading, the notice given at the time of arrest. The County Attorney indicated that they would not be present at the criminal proceeding so they would not be in a position to give them notice at that point in time. However, it was also noted that under current law a defendant is given certain notices at the time of arrest and this would be only one more additional piece of information at that time.

Legislator Nonna specifically proposed a change to Section 699.3 to change the text from "shall" to "may" be subject to civil forfeiture proceedings on conviction. It was agreed that this change should be made. In addition, he proposed that 699.5(B) (1) and (2) could be combined because they are similar. Mr. Gleeson explained that the separate sections were required because the coverage with respect to drag racing is broader.

Legislator Rogowsky questioned whether the statute sufficiently addressed the question of ownership of a vehicle by a corporation or a LLC and whether that form of ownership might represent a gap in the coverage of the legislation. Legislator Harckham said that Nassau County already had experience with similar provisions and he would check with his contact there and their experience with this issue.

Legislator Harckham summarized some of the open points: (1) research on the availability of the opt-in structure for municipalities; (2) contacting Nassau County with respect to the concept of ownership by corporation; (3) the notice at the time of pleading issue and (4) the issue of checkpoints and the alternating arrests by county and municipal policy officers.

Mr. Newman also requested that the committee address the question of notice to the County Attorney's office with respect to convictions. It was

discussed whether the 30 day window is sufficient or whether the period should be extended to 45 days. It was decided that the Nassau County experience would be reviewed at a separate meeting. It was also reiterated that the notice by the County Attorney to the defendant should come before pleading.

Chairman Burton indicated that after Legislator Harckham had pursued these issues and discussed them with the members who raised them, he would set the DWI Forfeiture Legislation on the calendar for another meeting.

At 1:45 Chairman Pinto entertained a motion from Legislator Nonna, seconded by Legislator Burton to close the Committee on Public Safety meeting. Motion passed 6-0.

APPOINTMENTS:

Legislator Bronz recommended the reappointment of Maurio Sax as a member of the Westchester County Human Rights Commission.

Legislator Rogowsky moved, seconded by Legislators Jenkins and Myers to approve the reappointment. Motion approved 9-0.

SOURCE OF INCOME:

Chairman Jenkins invited Ms. Brewster to join the discussion of the source of income legislation. He mentioned that a discussion took place with representatives of the Section 8 officials in the County and Deputy Commissioner Norma Drummond where they explained the process with which they implemented the federal Section 8 housing program. The Section 8 officials indicated that they implement a minimum housing standard for inspections called the HQS, a copy of which has been provided to the members. He said that the Section 8 officials explained that they do not use the building inspectors anymore because the building inspectors go beyond the federal standards. . Chairman Jenkins also commented that the there is nothing in the legislation that requires the landlords to comply with the inspectors' requests to make repairs. Chairman Jenkins also reported that the Section 8 officials said that they try to avoid timing problems for landlord by permitting mid-month leases. He also reported that the Section 8 officials stated that they do a lot of pre-screening of tenants before admitting them to the program

Legislator Rogowsky stated that there may be minimum HUD standards but that various communities have different standards and he expressed concern that HUD does not try to impose any uniformity. On the other

hand, Legislator Harckham repeated that the Section 8 officials have stopped allowing the building inspectors to inspect for Section 8 because the building inspectors were too strict compared to the HUD standards. Legislator Rogowsky continued to express concerns about the timing for the landlords with respect to the consequences of inspections and reinspections although it was also stated that the delay could be caused by the landlord and that the Section 8 officials made every effort to expedite the process.

Chairman Jenkins maintained that there is no requirement that the landlord hold the apartment, pending the inspection if another suitable tenant arrived in the interim which gives added incentive to the Section 8 representatives to expedite the process. There was further discussion on whether the landlord would face a discrimination claim if the landlord determines not to make the repairs required by the inspection. In addition, there was discussion regarding whether a landlord may choose tenant paying cash over a tenant for whom an inspection is pending. Ms. Nicolas-Brewster stated that the Human Rights office, as may conduct an investigation if a complaint is filed.

The committee discussed the process for obtaining an apartment with respect to a Section 8 tenant. It was stated that the process begins with a "Request for Tenancy Approval" form and then there is an inspection. The lease is not executed until after the inspection is concluded and the apartment is approved by the Section 8 officials. Chairman Jenkins said that the legislation would not permit the landlord to reject filling out this form but that the landlord could still accept a cash paying tenant if one materialized before the inspection.

The committee then discussed the relative availability of apartments in the County. Chairman Jenkins indicated that the Section 8 representatives stated in their meeting that they did not have a ceiling on the dollar amount of rent; rather the standard is one of rent reasonableness. Chairman Jenkins said that there are apartments available outside the current areas of concentration. The committee further discussed the process of handling complaints for discrimination under the current law and potential impact of the new law.

The committee also discussed the fact that the proposed legislation specifically does not prohibit consideration of level of income. It was stated that discrimination occurs if the landlord turns down a tenant based on the Section 8 voucher alone, because it is a verifiable source of income.

In addition, the committee debated whether an individual coop owner and/or the coop as a whole would be covered by the law. It was posited

that the management company for a coop would not be able to turn down an applicant based on the source of income for the rent. It was maintained that a coop board would still be permitted to reject a sublease based on matters unrelated to source of income. It was also discussed the extent to which a minimum level of income could be set by a landlord and whether the Section 8 tenant's subsidy would be considered as part of their level of income.

The question about the effect on affordable housing was discussed. Some members were concerned whether housing would be withdrawn from the market. Other members maintained that there is no evidence that either housing would be withdrawn from the market or that the human rights commission would be deluged with complaints. Some members wondered if some alternate method of dealing with the federal programs could be implemented without using the fair housing law.

The impact of the EPTA law and other laws and the ability to evict tenants in the landlord/tenant courts were discussed. Chairman Jenkins stated that the Section 8 officials represented that if a landlord increased the rent pursuant to EPTA, Section 8 does not prohibit the increase. Rather, pursuant to the rent reasonableness standard, the rent could be increased by the Section 8 officials. As to evictions, it was stated that the lease addendum provides that a tenant may be removed for a variety of listed reasons which are very restrictive on tenants and which therefore strengthen the landlord's right to evict. It was debated whether it would be helpful to have Section 8 officials provide further information on the interrelationship with EPTA and on their procedures and the impact on landlords.

Legislator Bronz stated that she has been attempting to address this concern for many years and has looked at legislation from other states and listened to landlord and tenant representatives. She maintained that she believes that the legislation really addresses discrimination in another area and that it was appropriate that the legislation be part of the fair housing law. She does not believe that the legislation will reduce affordable housing and would like to see the dialog move to a level and breadth to find the best solution to the problem.

Legislator Harckham felt that the Section 8 coordinators indicated that they thought it was in their best interest to make the program as painless and customer friendly to the landlords as possible. His past experience with homeless persons led him to believe that no one in Northern Westchester would rent to them because they had a Section 8 voucher even though they were working people. This legislation would assist getting people out of shelters.

Some members indicated that they need to better understand the impact on condos and coops as well as other concerns that were raised during the meeting. There was further discussion of the number of available rentals and the total number of vouchers currently used by the Section 8 officials.

MINUTES

Legislator Nonna moved, seconded by Legislator Bronz to accept the minutes of May 4th of the Legislation Committee. Motion approved 9-0.

Legislator Maisano made a motion to adjourn the Legislation Committee, seconded by Legislator Abinanti. Legislator Myers moved, seconded by Legislator Maisano to adjourn the Government Operations Committee. Motion approved 8-0. The Legislation Committee and the Government Operations Committees adjourned at 3:15 pm.

AUDIO RECORDING ON FILE FOR REVIEW UPON REQUEST