

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

#10913
Unfinished
Business #1
(AS Amended)

Your Committee has reviewed “A LOCAL LAW amending Chapter 700 of the Laws of Westchester County in relation to prohibiting discrimination based on one’s arrest record or criminal conviction.”

Seventy-five per cent (75%) of people living in the United States reside in a municipality which has passed “Fair Chance to Work” policies. Your Committee notes that both Republican and Democratic executives and legislative bodies have passed similar laws regarding this issue as noted in a 2016 report of the National Employment Law Project. These include 33 states, such as Kentucky, Kansas and Wisconsin, Connecticut and Hawaii as well as the large, metropolitan cities of New York and San Francisco.

Your Committee is aware that the intention of this legislation is to put Westchester residents back to work, give people a fair chance to become gainfully employed, improve public safety by reducing recidivism, and stimulate the economy by instituting this proven good business practice. Too often, job application questions provide a barrier in the hiring process which negatively impacts Westchester’s economy and raises significant fairness and public safety concerns. Initial questions on job applications requesting disclosure of an individual’s record of conviction are often used to disqualify a capable worker from consideration for a position of employment. This proposed law, known as the “Fair Chance to Work” law will ensure all qualified job applicants are first evaluated on their merits. A 2017 report from the Society for Human Resource Management notes that most laws like

this one “typically encourage employers to conduct an interview or go further in the application process before requesting criminal background information”.

Your Committee is aware that individuals with a criminal record face significant barriers to employment. These individuals may be fully qualified for the job for which they are applying, but their disclosure of an arrest or conviction on an initial application may be relied upon by an employer to automatically disqualify them from consideration for the job. This barrier may exist even though the conviction is for a minor offense, occurred many years in the past, has no relationship to the duties and responsibilities of the job, and/or may exist despite any appropriate qualifications an applicant may possess. By not asking about a person’s record on the initial application form, the prospective employee will be able to get a foot in the door and have a better opportunity to present their qualifications and personal history. An employer may still ask, in the job interview, about criminal history in order to consider a more complete picture of the applicant’s credentials and ability to perform the job.

Your Committee believes that a “Fair Chance to Work” law makes sense from a business perspective. Companies including, Pepsico, Home Depot, Target, Starbucks, Walmart, CVS and Microsoft eliminated the question regarding any convictions from their job applications. In 2015 The Koch Brothers Network instituted a “Fair Chance to Work” policy and asked their businesses to do the same. Additionally, a representative of Koch Industries stated that this leads to “the hiring of individuals who are hungry, productive

and dedicated employees.” This representative further urged local lawmakers to pass similar legislation “without delay.”

Your Committee notes that putting people back to work will benefit the economy by increasing income tax contributions, consumer activity and boosting sales tax revenues. A study conducted in 2011 by the Economy League of Greater Philadelphia indicated that by guaranteeing employment to 100 formerly incarcerated persons, nearly \$1.9 million in additional income tax would be generated throughout their working career, boost sales tax revenue by nearly \$770,000 and save more than \$2 million on criminal justice services.

Additional studies found that employing formerly incarcerated persons halved the potential for re-offense. These studies note that employment, and the stability it can provide, may be the single most important factor in reducing recidivism rates.

The employers of police officers, peace officers, School District employees and other employers who may be legally barred by statute or regulation from hiring applicants with convictions of specific crimes would be exempt from this Local Law. Further, this law would not prohibit employers from conducting background checks or fingerprinting after receipt of an employment application.

As this Local Law amends the Westchester County Human Rights Law, it falls squarely within the jurisdiction of the Westchester County Human Rights Commission (“WCHRC”) for public education and outreach as well as enforcement. Your Committee

urges the WCHRC to utilize, first and foremost, its statutory powers to “develop and recommend such informational programs and materials” and “to conduct such informational programs, and distribute such informational materials” to inform perspective employers and employees (including in particular, formerly incarcerated individuals as well as those soon to be released from prison) about the requirements of the Fair Chance to Work law.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act (“SEQRA”). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law is not an action under SEQRA and therefore does not require an environmental review. Your Committee concurs with that conclusion.

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

Dated: Oct 29, 2018
White Plains, New York

COMMITTEE ON

10/26/2018

Benjamin Boytune
John D. [unclear] W.O.P.
Catherine [unclear]
Alfreda Williams
Mary Jane [unclear]
K. O. [unclear]

Legislation

Benjamin Boytune
D.D.M.
Catherine [unclear]
Margaret A. Cyto (W.O.P.)
Call Park
Alfreda Williams
Call [unclear]

Labor & Housing

FISCAL IMPACT STATEMENT

SUBJECT: Fair Chance to work Act

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A) GENERAL FUND AIRPORT SPECIAL REVENUE FUND (Districts)

B) EXPENSES AND REVENUES

Total Current Year Cost \$ 0

Total Current Year Revenue \$ _____

Source of Funds (check one): Current Appropriations

Transfer of Existing Appropriations Additional Appropriations Other (explain)

Identify Accounts: N/A

Potential Related Operating Budget Expenses: Annual Amount \$ _____

Describe: Act will reduce recidivism rate and save taxpayers dollars on the criminal justice system.

Potential Related Revenues: Annual Amount \$ _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four years: _____

Prepared by: Carl Maniscalco

Title: Sr. Budget Analyst


Department: Budget

Reviewed By: _____

Budget Director

If you need more space, please attach additional sheets.

TO: Linda Trentacoste
Deputy County Attorney

FROM: David S. Kvinge, AICP, RLA, CFM 
Director of Environmental Planning

DATE: October 5, 2018

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR
FAIR CHANCE TO WORK LAW**

Pursuant to your request for an environmental review of the above referenced action, the Planning Department has determined that no environmental review is necessary.

The action involves a local law that would amend Chapter 700 of the Laws of Westchester County to regulate employee hiring practices within Westchester County in order to prevent employers from discriminating against applicants based upon arrest record or criminal convictions, unless specifically required to or permitted by another law.

Since the proposed law does not "change the use, appearance or condition of any natural resource or structure," or otherwise affect the environment, with respect to the State Environmental Quality Review (SEQR) Act, this does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. As such, no environmental review is required.

Please contact me if you need any additional information on this matter.

cc: Melanie Montalto, Legislative Director
Steven Bass, Assistant to the County Executive
Stacey Dolgin-Kmetz, Chief Deputy County Attorney
Norma Drummond, Commissioner
Claudia Maxwell, Associate Environmental Planner

LOCAL LAW INTRO. NO. -2018

A LOCAL LAW amending Chapter 700 of the Laws of Westchester County in relation to prohibiting discrimination based on one's arrest record or criminal conviction.

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

Section 1. Subdivision "a" of Section 700.03 of the Laws of Westchester County is hereby amended by the addition of a new paragraph "10" to read as follows:

10. (a) Unless specifically required or permitted by any other law, an employer shall not:

(1) Make a preliminary or initial inquiry or statement related to a criminal conviction or arrest record of any person in an application for employment. For purposes of this paragraph, "any inquiry" means any question communicated to an applicant in writing or otherwise. For purposes of this paragraph, "any statement" means a statement communicated in writing or otherwise to the applicant for purposes of obtaining an applicant's criminal background information regarding: (i) an arrest record; or (ii) a conviction record; or

(2) Declare, print or circulate or cause to be declared, printed or circulated any solicitation, advertisement or publication which expresses, directly or indirectly any limitation, or specification in employment based on a person's arrest record or criminal conviction.

(b) After submission of an application for employment, an employer may inquire about the applicant's arrest or conviction record in accordance with New York State Executive Law section 296(16).

(c) Before taking any adverse employment action based on such inquiry, the employer shall perform an analysis of the applicant's criminal record and other factors under Article 23-A of the New York State Correction Law as required, and the analysis may be requested by the applicant, and if requested, the employer must provide a written statement setting forth the reasons for such denial, pursuant to New York State Correction Law Article 23-A, Section 754.

(d) An applicant shall not be required to respond to any inquiry or statement that violates subparagraph (a) of this paragraph and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective employment.

(e) Nothing in this paragraph 10 shall prevent an employer from taking adverse action against any employee or denying employment to any applicant for reasons other than such employee's or applicant's arrest or criminal conviction record.

(f) This paragraph shall not apply to any actions taken by an employer pursuant to any state, federal or County law that requires criminal background checks for employment purposes or bars employment based on criminal history.

(g) This paragraph shall not apply to any actions taken by an employer with regard to an applicant for employment as a police officer or peace officer, as those terms are defined in subdivisions "33" and "34" of section 1.20 of the Criminal Procedure Law, respectively, or at a law enforcement agency as that term is used in Article 23-A of the New York State Correction Law.

(h) This paragraph shall be enforced pursuant to Section 700.11 of this Chapter and through the Commission's rules and procedures.

§2. This Local Law shall take effect ninety (90) days after it shall have become
law.

11-14-2018