

Chapter 233 BOARD OF ACQUISITION AND CONTRACT¹

ARTICLE I. GENERAL POWERS

Sec. 233.01. General powers and obligations.

The Board of Acquisition and Contract shall have all the powers and duties and shall be subject to all the obligations and liabilities heretofore or hereafter lawfully granted or imposed by the County Charter, by local law, act or resolution of the County Board or by any lawfully imposed controlling provision of any act of the legislature.

(§ 91 of the Laws of 1948, Ch. 852)

Cross reference(s)—Board of Acquisition and Contract, Ch. 161; Bureau of Purchase and Supplies, § 119.51; Professional Prequalification Board and Professional Selection Board, Ch. 277, Art. V.

Sec. 233.02. The listing and posting of all County contracts.

A list of all contracts executed on behalf of Westchester County, including short form contracts, are to be included on the agendas of the Board of Acquisition and Contract for information purposes and said listing must be posted on Westchester County's website for the Board of Acquisition and Contract.

(L.L. No. 6-2012 (NY Law No. 4115-2011) , § 5, 12-22-2011)

ARTICLE II. ACQUISITION OF REAL PROPERTY

PART 1. ACQUISITION PROCEDURE: REAL PROPERTY

Sec. 233.11. Supplemental definitions.

Wherever used in this title, unless the context or subject matter otherwise requires:

1. The term "Board of Acquisition and Contract" means the Board of Acquisition and Contract of the county as created by the County Charter.
2. The term "Supreme Court" means a special term of Supreme Court held in and for the County of Westchester.
3. The term "proceeding" means any proceeding to acquire title to real property by condemnation pursuant to the provisions of this title.
4. The term "condemnation" means the exercise or assertion of the powers of eminent domain.

¹Cross reference(s)—Rules and regulations of various boards, Pt. XIV.

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5. The term "condemnor", "plaintiff" or "petitioner" means the County of Westchester exercising or asserting the power of eminent domain.
 6. The term "damage" or "damages" means the reasonable and adequate compensation to which an owner may be entitled as the equivalent for the actual loss sustained by him by the public taking of his property.
 7. The term "claim" or "claims" means such right or rights actual or alleged as any owner may have or make for damages.
 8. The term "claimant" or "owner" includes any person, corporation, joint-stock association, partnership or other association who or which has or may have any interest in the property affected by a proceeding pursuant to this article.
 9. The term "award" means the amount of compensation allowed as the equivalent for the actual loss sustained for the taking of real property or interest therein.
 10. The term "temporary easement" means any slope and/or fill easement or an easement for construction or reconstruction purposes in connection with any project or improvement.
 11. The term "park" includes all state or county parks, parkways, beaches, open spaces and boulevards; also approaches and entrances thereto, docks, piers and bridges in, leading to or intersecting such park or parks or parts thereof, and such other rights and appurtenances as are incidental thereto.
 12. The term "highway" includes a state highway, county road, town road, street, parkway or public place.
 13. The term "excess lands", "additional lands" or "additional real property" means any real property in addition to the property needed or required for a project.
 14. The term "acquisition" means the obtaining of fee title to, or any interest in, real property by the county by purchase, condemnation or otherwise.

(§ 101 of the Laws of 1948, Ch. 852)

Sec. 233.21. Authorization by County Board.

The County Board may, or shall, when required by law, authorize the acquisition by the county of title to, or any interest in, real property for any purpose, including air rights over real property adjacent to or surrounding the county airport, which air rights acquisition shall at all times be within the limits set by the proper state or federal authority; which title or interest when acquired by purchase, condemnation or otherwise shall vest in the county; and if by condemnation, the proceedings therefor insofar as the same relate to the ascertainment of compensation or damages to be made to the owner or owners of the property, or any interest therein, to be acquired, notwithstanding the provisions of any general, special or local law to the contrary, shall be conducted pursuant to the provisions of this title. Wherever and whenever in any general, special or local law it is provided that property may be acquired "by condemnation" or "by condemnation proceedings" or by similar methods, the county is hereby authorized and empowered to acquire title thereto under the provisions of this title.

(§ 102 of the Laws of 1948, Ch. 852)

Sec. 233.31. Institution of proceeding by Board of Acquisition and Contract.

1. Whenever the County Board has authorized such acquisition and has made an appropriation therefor, the Board of Acquisition and Contract may acquire the property by purchase, condemnation or otherwise, and if the property is to be acquired by condemnation, the compensation to be made to the owner or owners thereof shall be ascertained pursuant to the provisions of this title. Before a proceeding is commenced, the

Board of Acquisition and Contract shall cause a map of the real property to be acquired thereby to be prepared and filed in the office of the County Clerk. Such map shall be referred to condemnation proceeding, and a copy thereof shall be attached to the petition. The Board of Acquisition and Contract shall immediately after the filing of said map authorize the County Attorney to institute a proceeding by a petition in the name of the county to the Supreme Court to acquire such interest as said board deems necessary in or to such real property. Notice of the presentation of such petition to said court shall be given by the petitioner by publishing such notice in two newspapers published in the county once in each week for two weeks successfully preceding the day of such presentation and by posting a copy of said notice in not less than two public places in each town or village or city in which such real property to be acquired may be located, not less than 14 days prior to the day of such presentation, and by serving a copy of such notice and petition by mail at least 14 days preceding the day of such presentation upon each owner of the real property to be acquired; or, in lieu of such publication, posting and mailing, notice of the presentation of such petition may be given by service of a copy of the notice and petition personally upon each such owner at least ten days preceding the day of such presentation. Service by mail under this title shall be made by depositing the paper to be served properly inclosed in a sealed post-paid wrapper in a post office or in any post office box regularly maintained by the government of the United States anywhere within the county, directed to the person to be served at his place of residence or place of business, according to the best information which can conveniently be obtained. Proof of due and timely notice of the presentation of the petition shall be presented to the court before any proceedings upon the petition shall be had.

2. If the property or any interest therein to be acquired hereunder is owned or held and used for a public utility purpose by a public or private corporation, the county, at its own option, may (a) allow such corporation, in lieu of any and all damages, without expense, loss or damage, directly or indirectly to it, to continue the use of the same for such purpose, with, however, no rights in excess of those existing previous to such acquisition or inconsistent with the use for which the property or interest therein is being acquired, or (b) may allow such corporation, in lieu of any and all damages, the use of such other real estate owned by the county or to be acquired for the purposes of this title as will afford a practical route, location or use for such public utility purpose and is commensurate with and adapted to its needs, provided also that such corporation shall not directly or indirectly be subject to any expense, loss or damage by reason of such change in route or location, but such expense, loss or damage shall be borne in like manner as the expenses incurred for carrying out the provisions of this title, or (c) may direct that compensation or damages be ascertained and awarded to such corporation, in which case such corporation shall be governed by the provisions of section 233.81 of this article. The petition shall set forth, at the option of the county, the fact that the corporation may continue the use for its corporate purposes as aforesaid, or shall define the proposed new route or location which the corporation shall be entitled to use for such purpose, or that compensation shall be made to such corporation for the property or interest so taken.

(§ 103 of the Laws of 1948, Ch. 852)

Cross reference(s)—Director of Real Estate, Ch. 170 and § 213.31.

State law reference(s)—Condemnation generally, Eminent Domain Procedure Law.

Sec. 233.41. Petition; contents.

1. A condemnation proceeding shall be subject to the provisions of this section and shall be commenced by the filing of a petition, as herein provided, which shall be in the usual form of a pleading signed and verified, in the name of the county, by the County Executive or by the chairman of the County Board, when designated for that purpose by resolution of the Board of Acquisition and Contract, and shall set forth the following facts:
 - a. That the county is proceeding under the provisions of this article;

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- b. A brief recital of any action taken by the petitioner preliminary to the commencement of the proceeding;
 - c. A description of the land and interest therein to be acquired with reference to the map or maps on which the same is shown, which shall be annexed to the petition;
 - d. The nature of the rights in the property sought to be taken or extinguished;
 - e. The assessed valuation of the property sought to be acquired; and if the property sought to be acquired is a part of that owned by any of the defendants, then a brief description of the entire parcel and its assessed valuation;
 - f. The public use for which the property is to be acquired with a brief statement of the facts showing the necessity of such acquisition;
 - g. The date when the county will require possession and occupation of any or all of the parcels described in the petition, or when the county is to become vested with all rights to be acquired in the parcels of real estate described in the petition, as the case may be;
 - h. If a public or private corporation maintains a public utility over, through or under the property sought to be acquired hereunder, what rights of such corporation are or may be taken or affected by the acquisition, and that it may continue its use thereof or that the proposed new route or location will be provided or that compensation will be made as in the preceding section set forth;
 - i. A demand for relief, that it may be adjudged that the public use requires the condemnation of the real property, or interest therein, described, and that the plaintiff is entitled to take and hold such property for the public use specified, and that the court ascertain the compensation to be made to the owner or owners for the property so taken, or the parties interested therein.
2. In addition to the above, a petition may contain allegations of such other facts as may be material or pertinent, including but not limited, to whether or not the petitioner intends to claim that the project when completed will benefit remaining property owned by any reputed owner. If no statement of the date when title is to vest be made, title shall vest as hereinafter provided. Failure to allege in the petition that petitioner intends to claim that the improvement will benefit remaining property shall preclude the petitioner from offering direct evidence on this subject.
 3. The petition shall be filed in the office of the County Clerk at least 14 days prior to the presentation thereof to the court.
 4. At the time of filing the said petition or at any time afterwards before final judgment, the County Attorney shall file in the office of the County Clerk a notice of the pendency of the proceeding, stating the names of the parties and the object of the proceeding and containing a brief description of the property affected thereby, which notice shall be recorded and indexed by said clerk in like manner as a notice of pendency in an action to foreclose a mortgage.

(§ 104 of the Laws of 1948, Ch. 852)

Sec. 233.51. Proceedings upon presentation of petition.

1. Proceedings pursuant to the provisions of this title are declared to be in rem. Any and all persons having or claiming an interest in the real property described in the petition or shown on the map or maps may answer the petition, but for the purpose of the petition and pleadings in the proceeding, the Board of Acquisition and Contract shall have full and final discretion to determine the nature, necessity and extent of the rights to be acquired or extinguished in any real property, subject to the limitation that real property can be taken

only for a public purpose. The answer shall be in the usual form of a pleading and shall contain the following facts:

- a. The legal status and address of such person;
 - b. The nature and extent of the right or interest of such person in the real property;
 - c. A concise description of the real property sufficient to identify it, or a reference to the condemnation map previously filed sufficient to identify the real property;
 - d. A concise statement of the basis for any claim made by the person answering with a brief recital of the facts which are claimed to be material;
 - e. A general or specific denial of each material allegation of the petition controverted by him, or a denial of any knowledge or information thereof sufficient to form a belief;
 - f. A statement of any new matter constituting a defense to the proceeding;
2. The court shall determine any issue raised by the petition and answer in such a manner as may be appropriate.
 3. Whenever an answer is interposed it must be filed in the office of the County Clerk and a copy thereof served upon the County Attorney at least three days before the return day of the petition, or such day as fixed by stipulation or order of the court. The petitioner may move for, or demand, as provided by the Civil Practice Act, a bill of particulars in respect to any answer or part thereof and this provision shall be liberally construed.

(§ 105 of the Laws of 1948, Ch. 852)

Sec. 233.61. Judgment of condemnation.

The court shall grant judgment of condemnation as soon after the return day of the petition as is practicable, granting such relief as prayed for therein if no answer be served, but if answer be served, then judgment shall be granted after the trial or other disposition of the issues raised by the pleadings, granting such relief as shall be appropriate in the premises.

(§ 106 of the Laws of 1948, Ch. 852)

Sec. 233.71. Vesting of title; interest.

1. The judgment of condemnation or the final decree, as the case may be, shall set forth the date or time when the county shall be and become vested with title to and entitled to the possession of, or to the exercise and enjoyment of the rights in, the real property described in the petition and shown on the map or maps as parcels wherein estates or rights are to be acquired in the proceeding, and shall contain a description of the land and a statement of what right, title or interest therein, and the nature and extent thereof, is acquired by the county. The county, or any person acting under its authority, may immediately or at any time or times after granting of judgment of condemnation take possession of the same or any part or parts thereof without any action or proceeding at law or otherwise for that purpose, except as provided in section 233.81 of this chapter.
2. Any award or awards shall bear lawful interest from the date the county enters into possession and occupation or from the date of vesting of title as aforesaid, whichever is sooner, to the date of payment, except as herein otherwise provided. Upon the entry of the final decree, the same shall be attached to the judgment roll in the proceedings and shall show the amount directed to be paid either as compensation to the owner or party in interest, or for costs and expenses of the said proceeding, as taxed by the clerk. In the

event that such amounts have not been paid upon the expiration of four months from the entry of said final decree, if no appeal has been taken therefrom, or if an appeal has been taken therefrom, then if such amounts have not been paid upon the expiration of four months after the entry of the final order or decree on appeal, any party entitled to payment in accordance with such final decree may docket as a judgment against the county the amounts due which shall have the same force and effect as a money judgment in an action in the Supreme Court; but the entry and docketing of such judgment as hereinabove provided shall under no circumstances constitute any lien or encumbrance whatsoever upon or against any property at any time owned by the county. The reversal on appeal of any final decree of the court or official referee shall not divest the county of title to the real property affected by the appeal.

(§ 107 of the Laws of 1948, Ch. 852)

Sec. 233.81. Parties in occupation.

1. Upon the entering into possession and occupation by the county of, or the vesting of title in the county to, any real property pursuant to this title, any and all leases, covenants, contracts or negotiations between landlords and tenants or any other contracting parties touching the same or any part thereof shall forthwith respectively cease and determine and be absolutely discharged.
2. Where a part only of any lot or parcel of real property so under lease or other contract or agreement shall be so taken, all contracts, agreements and engagements respecting the same shall thereupon cease and determine and be absolutely discharged as to the part thereof so taken, but shall remain valid and obligatory as to the residue thereof unless the lease provides otherwise; and the court or official referee before whom the proceeding was had, on the application of any party in interest to such lease, contract or agreement, and after a notice in writing of eight days to the other party or parties interested, and after hearing the parties, may determine the rents, payments and conditions which shall be thereafter paid and performed under such lease, contract or agreement in respect to the residue of such land; and such determination shall be binding and conclusive on all persons interested in such land.
3. All parties in occupation or possession of any such lands or any part or parts thereof or any interest therein, at the time of entering into possession and occupation thereof by the county, or the vesting of title in the county, shall be and become tenants at will of the county, unless within ten days thereafter they shall elect to vacate and give up their respective holdings.
4. In case any owner or occupant refuses to permit the county or any person acting under its authority so to enter, occupy and take possession of such real estate or any part or parts thereof, or any interest therein, the county shall be entitled to an order, upon not less than three days' notice served upon such owner or occupant personally or by mail, as hereinbefore provided for service of notice of presentation of petition in condemnation, or in a given case by order to show cause, permitting the county or any person acting under its authority to enter, occupy and take possession of said real property, and to the end that such possession may be delivered to the county, the county may call upon the assistance of the appropriate county or local peace officers to enforce the terms of such order.

(§ 108 of the Laws of 1948, Ch. 852)

Sec. 233.91. Trial of proceedings; evidence.

1. Upon the trial, evidence of the price and other terms upon any sale, or of the rest reserved and other terms upon any lease, relating to any of the property taken or to be taken or to any other property in the vicinity thereof, shall be relevant, material and competent, upon the issue of value or damage and shall be admissible on direct examination if the court or referee shall find the following:

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- a. That such sale or lease was made within a reasonable time prior to the vesting of title in the county.
 - b. That it was freely made in good faith in ordinary course of business.
 - c. In case such sale or lease relates to other than property taken, that it relates to property which is similar to the property taken or to be taken.
 2. No such evidence, however, shall be admissible as to any sale or lease, which shall not have been the subject of an examination before trial either at the instance of the county or of an owner, unless at least 20 days before the trial the attorney for the party proposing to offer such evidence shall have served a written notice in respect of such sale or lease, which notice shall specify the names and addresses of the parties to the sale or lease, the date of making the same, the location of the premises, the office, liber and page of the record of the same, if recorded, and the purchase price or rent reserved and other material terms, or unless, in the event that title has not vested in the county, such sale or lease shall have occurred within 20 days before the trial. Such notice by the County Attorney shall be served upon all owners of their attorneys who have appeared in the proceeding; or, if served on behalf of an owner, shall be served upon the County Attorney and upon all other owners or their attorneys who have appeared in the proceeding. The testimony of a witness as to his opinion or estimate of value or damage shall be incompetent, if it shall appear that such opinion or estimate is based upon a sale or lease of any of the property taken or to be taken or of any of the property in the vicinity thereof, which shall not have been the subject of an examination before trial, unless it shall have been specified in a notice served as aforesaid or shall have occurred within 20 days before the trial, where title has not vested in the county.
 3. Upon the trial, no map or plan of proposed streets, drains or sewers for the subdivision and improvement of any property, nor any drawing or other specification of excavation or filling or piling or of any proposed structure above or under ground deemed necessary or proper to provide a foundation for suitable or adequate improvement, or of any other structure or improvement not existing on the property on the date that title thereto may vest in the county, nor any oral or written estimate of cost or expense of constructing the streets, drains or sewers in conformity with such map or plan, nor any oral or written estimate of the cost of making such excavation or filling or piling or of constructing any such other proposed structure or improvement in conformity with such drawing or other specification thereof, nor any evidence of value of damage based upon any of the foregoing, shall be received in evidence, unless the party offering the same in evidence shall have served upon the adverse party, at least 30 days prior to the trial, a notice of intention to offer such evidence on the trial and of the particulars thereof, including a true copy of the map or plan or drawing and other specifications and estimate of cost or expense to be so offered in evidence; provided, however, that, when offered, such evidence shall be subject to objection upon any legal ground.
 4. Upon the trial, no evidence shall be admitted, as against an owner of real property being acquired, of an offer made by or on behalf of such owner for the sale of his property or any part thereof to the county, or for the sale or assignment of any right and title to the award or awards, or any part thereof, to be made for such property or any part thereof, in the proceeding; nor shall any evidence be received, as against the county, of any offer made to such owner, by or on its behalf, for the purchase of such property or any part thereof or for the purchase of the award or awards or any part thereof, to be made for such property, or any part thereof, in the proceeding.

(§ 109 of the Laws of 1948, Ch. 852)

Sec. 233.101. Hearing to determine compensation.

The County Attorney or any party to the proceeding may, at least ten days before the date upon which the proceeding is to be heard, serve upon all the other parties or their attorneys who have appeared in the proceeding a note of issue which shall briefly state the title of the proceeding, the date of the entry of the judgment of condemnation and the names of all the parties and attorneys who have appeared, and a copy thereof shall be filed

with the County Clerk, together with proof of such service. The clerk of the court shall thereupon enter the proceeding as a preferred cause upon the calendar of the court provided for the trial of actions without a jury, in the order of the date of the entry of the judgment of condemnation. When the note of issue has been filed, the proceeding must remain on the calendar until a final determination is had. The compensation to be made to the owner or owners of and the persons interested in the property to be acquired may be determined by the court, without a jury, or may be referred to an official referee duly designated by the court for such purpose to hear and determine. It shall be the duty of the court or such official referee hearing the proceedings to view the property to be acquired. The court, without a jury, or such official referee, shall hear all legal evidence offered by the county or any person interested in the property and, after viewing the property to be acquired, hearing such evidence and considering the proofs, shall determine the just compensation to be made to the owner or owners of and the persons interested in such property. The court or official referee shall make and file in the office of the County Clerk his decision, setting forth a description of the property to be acquired by reference to the map or maps annexed to the petition; the total amount of compensation to be made by the county for the acquisition thereof; a statement of the names and interest of the owners of and persons interested in each parcel, and the compensation to be made to the owners thereof and persons interested therein, if such ownership and interest be determined, or, if not, a statement that the names of the owners thereof and persons interested therein are unknown to the court, or to such official referee, as the case may be, and such other facts as the court or official referee may deem proper. The County Attorney shall cause a copy of the decision with notice of filing and entry thereof to be filed with the Board of Acquisition and Contract and served on each party or his attorney appearing in the proceeding. Any party to the proceeding may, within ten days after such service, file and serve exceptions to the decision, upon the other parties or their attorneys appearing in the proceeding. If no exceptions are filed to the decision or application made within the time hereinabove specified, then all exceptions to said decision shall be deemed waived.

(§ 110 of the Laws of 1948, Ch. 852)

Sec. 233.111. Application for final decree.

Within 30 days after the filing and entry of the decision or the determination of the application as aforesaid, the Board of Acquisition and Contract shall by resolution direct the County Attorney to apply to the Supreme Court or, if the proceeding has been referred to an official referee, then to such official referee for final decree, or for the discontinuance or abandonment of the proceeding, or any part or parts thereof, or for a final decree upon so much of said decision as relates to the real property actually needed for the project, or for such other relief as such party may seek.

(§ 111 of the Laws of 1948, Ch. 852)

Sec. 233.121. Final decree.

The final decree shall recite the proceeding and describe the land to be taken and the date of vesting title or taking possession and the time from which interest is to be computed. The final decree shall be conclusive upon the county and upon the owners and all persons interested in the proceeding to whom notice of the presentation of the petition was duly given and shall be filed and entered in the office of the County Clerk. Such record or a copy thereof certified by the Clerk shall be evidence of the facts therein contained.

(§ 112 of the Laws of 1948, Ch. 852)

Sec. 233.131. Costs and allowances.

1. The final decree shall direct what sum shall be paid to the general or special guardian or committee or trustee of an infant, idiot, lunatic or habitual drunkard, or to an attorney appointed by the court to attend to the interests of any defendant upon whom other than personal service of the petition and notice of application may have been made and who has not appeared. All costs of proceedings shall be taxed by the Clerk at the same rate as is allowed of course to the defendant when he is the prevailing party in an action in the Supreme Court, including allowances for proceedings before and after trial.
2. In those cases where claimants may be entitled, pursuant to the provisions of any general, special or local law, to any special allowance in addition to the awards, and in no others, the court or official referee may grant an additional allowance of costs not exceeding five percentum upon the amount awarded but in no event in excess of \$2,000.00.
3. Only one bill of costs shall be allowed where there is a diversity of interest as to any parcel or parcels in one ownership.

(§ 113 of the Laws of 1948, Ch. 852)

Sec. 233.141. Clerk's roll.

The Clerk of the court shall make up a roll of such proceeding, by attaching all the papers therein filed in his office, including all orders made therein by the court or official referee.

(§ 114 of the Laws of 1948, Ch. 852)

Sec. 233.151. Appeals.

1. Any and all appeals taken in any proceedings under this title shall be taken to the Appellate Division, Second Judicial Department and the Court of Appeals as provided in the Civil Practice Act. The Appellate Division shall review the law and the facts. The weight and sufficiency of the evidence must be reviewed on appeal where either the appellant or the respondent has taken specific exception at the special term, or before the official referee, to the weight and sufficiency, or either, of any particular or general evidence, but not otherwise.
2. The taking of any appeal shall not stay the proceedings except upon order of the court or referee; and, in case a stay is obtained against the petitioner, the party obtaining it must furnish such security as the public interest may require, the amount to be determined by the court or referee. Upon appeal, the Appellate Division may reverse or affirm the order, judgment or decree appealed from or may modify such order, judgment or decree upon such conditions as justice may require. Unless the parties otherwise stipulate, the record on appeal shall contain only such testimony, exhibits, orders, findings and conclusions as directly relate to the particular claim or claims which may be the subject of such appeal.
3. In the event that an appeal is taken by any claimant, the county may thereafter pay into court the amount of the award with interest thereon to the date of such payment, together with the costs and allowances, if any, and thereupon the county shall, in the event that the order, judgment or decree so appealed from is affirmed, or the appeal is discontinued, dismissed or withdrawn, stand discharged from any and all further liability to any such claimant or appellant on account of such award, interest, costs and allowances and shall be entitled upon the withdrawal of the money from court to be paid its costs and disbursements, if any. Any appeal taken but not prosecuted within six months after the filing of the notice of appeal, unless the time within which to prosecute the same shall have been extended by order of the court, shall be deemed to be

abandoned, and no agreement between the parties to the appeal extending the time to prosecute the same shall vary the provisions hereof.

(§ 115 of the Laws of 1948, Ch. 852)

Sec. 233.161. Awards: Payment of; effect.

Except as hereinafter otherwise provided, any payment made by the county pursuant to an order, decree or judgment of the court or official referee or the deposit of the money in court or to the credit of, or payable to the order of, the owner or party interested, or his legally designated assignee or pledgee pursuant to the direction of the court, shall be deemed payment within the provisions of this title and shall forever discharge the county of and from any and all liability to any and all persons on account of such payment. Payment pursuant to the terms of a final decree, judgment or award shall forever bar any action or claim thereon or on account thereof, except upon the showing that such payment was procured by corruption or fraud of the county, its responsible agents and employees of any of such, or upon the showing that such payment was procured by the corruption or fraud of any party or parties or their agents and employees.

(§ 116 of the Laws of 1948, Ch. 852)

Sec. 233.171. Payment of taxes by county.

All taxes and assessments which may be lawfully levied or assessed against any property taken shall be apportioned on the basis of the fiscal year of any tax district levying such a tax or assessment as of the date the county enters into possession and occupation of the said property or the title to the same is vested in the county.

(§ 117 of the Laws of 1948, Ch. 852)

Sec. 233.181. Discontinuance or abandonment of proceeding.

Upon authorization by the County Board, and with the approval of the Board of Acquisition and Contract, the County Attorney may at any time prior to the county entering into possession and occupation, or the vesting of title in the county, apply to the Supreme Court or the official referee to whom the proceeding has been referred upon eight days' notice to such of the defendants or their attorneys who have appeared in the proceeding, or upon an order to show cause, for discontinuance or abandonment of the proceeding insofar as it relates to any or all of the property or any interest therein affected thereby, and the court or official referee may in his discretion and for good cause shown make an order granting such discontinuance or abandonment of the proceeding or any part thereof, which order shall set forth the parcels affected thereby as the same are described in the petition. The filing and entry of such order in the office of the County Clerk shall not, however, be a bar to any subsequent or new proceeding which may be instituted against the same property. The court or official referee shall ascertain and determine the damages, if any, sustained by any owner by reason of the institution and maintenance of the proceeding as against his property and by reason of the entry upon and use or occupation by the county pursuant to this title of the property in respect to which the proceeding is to be discontinued or abandoned and the actual, reasonable and necessary expenses and disbursements incurred in good faith by each person who has appeared in the proceeding, either personally or by attorney, in connection with the proceeding as a whole, if it is discontinued as a whole, or in connection with a part thereof, if the proceeding is discontinued or abandoned only as to such part, and the amount of such damages, costs and expenses shall be paid to such person by the county. The amount so fixed and determined shall not, under any circumstances, constitute any lien or encumbrance whatsoever upon or against any property at any time owned by the county.

(§ 118 of the Laws of 1948, Ch. 852)

Sec. 233.191. Protection of infants, idiots, lunatics or habitual drunkards.

If a claimant is an infant, idiot, lunatic or habitual drunkard, it shall be the duty of his general guardian, committee or trustee, if one exists, to appear for such person in the proceedings and attend to and protect his interests. In case such claimant has no general guardian, committee or trustee, or in case of the neglect or refusal of such guardian, committee or trustee to act, the court shall appoint a special guardian for such person whose duty it shall be to appear for such person and protect and attend to his interests in the proceeding. The court or official referee may require any general guardian, committee or trustee or a special guardian to give security in such sum and with such sureties as he may approve. Application for the appointment of a special guardian in the absence of application by any other authorized person, prior to the return day of the petition for condemnation, may be made ex parte by the petitioner.

(§ 119 of the Laws of 1948, Ch. 852)

Sec. 233.201. Awards: infants, idiots, lunatics or habitual drunkards; conflicts claims; unknown claimants.

Whenever a claimant is an infant, idiot, lunatic or habitual drunkard, the court, or official referee, may order the payment of any award into court and upon such terms and conditions as justice may require and payment by the county of any award pursuant to such order shall forever discharge the county from any and all liability thereunder or any responsibility therefor. Awards in any such case shall be made in the first instance to such infant, idiot, lunatic or habitual drunkard. Similar orders shall be made with the same effect whenever conflicting or adverse claims exist with reference to any award or where the name or names or whereabouts of the rightful claimant or claimants cannot be ascertained with reasonable diligence. Awards in any such cases shall be made in the first instance to the credit of a particular parcel or to the credit of an unknown owner or unknown claimants as the case may require. The court shall have the power to ascertain who is entitled to any such award, or to any and to what part of it, and to order its payment accordingly. This section shall be construed liberally to the end that the county shall not be involved in litigation as to the ownership of, or right to, any award.

(§ 120 of the Laws of 1948, Ch. 852)

Sec. 233.211. Procedure.

When the mode or manner of conducting all or any part of the proceeding is not expressly provided for by this title, the court or official referee before whom the proceeding may be pending shall have the power to make all necessary orders and give all proper directions to carry into effect the object and intent of this title, the practice in such cases to conform, as nearly as may be, to the ordinary practice in such court.

(§ 121 of the Laws of 1948, Ch. 852)

Sec. 233.221. Separability of provisions.

If any of the provisions of this title or the application thereof to any person or circumstances be held invalid, such invalidity shall not affect any other provisions or application of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are declared separable.

(s; 122 of the Laws of 1948, Ch. 852)

Sec. 233.231. Construction.

The provisions of this title shall be construed to the end that condemnation proceedings shall be conducted expeditiously and economically and so that claimants shall be promptly and fairly compensated.

(§ 123 of the Laws of 1948, Ch. 852)

Sec. 233.241. Amendment of defects.

The court or official referee may at any time correct any defect or informality in any notice, petition, pleading, order, judgment, report, decision or decree in any proceeding authorized by this title or cause the real property affected by said defect, informality or lack of jurisdiction to be excluded therefrom or other real property affected by such defect, informality or lack of jurisdiction to be included therein by amendment upon notice given as provided by this title for the institution of the proceeding.

(§ 124 of the Laws of 1948, Ch. 852)

PART 2. ACQUISITION PROCEDURE: EXCESS LANDS

Sec. 233.251. Supplemental definitions.

The term "project" when used in Part 2 of this article shall mean park, public place, highway or street.

(§ 125 of the Laws of 1948, Ch. 852)

Sec. 233.261. Acquisition of excess lands.

The provisions of this part of this article as to the acquisition of excess lands shall be construed as supplementing and extending the effect of Part 1 of this article so as to provide for the acquisition of title to additional lands in connection with a project as defined in section 233.251.

(§ 126 of the Laws of 1948, Ch. 852)

Sec. 233.271. Power to acquire excess lands.

Except as hereinafter expressly set forth the provisions of Part 1 hereof, not inconsistent herewith, shall apply to the acquisition of excess lands under this article. The county in acquiring real property for any project may acquire more real property than is needed for the actual construction of such project. The County Board may authorize the Board of Acquisition and Contract to acquire additional real property in connection with any project and direct that the same be acquired with the real property to be required for such project. Such additional real property, however, shall not be more than sufficient to form suitable building sites abutting the project. The title which the county shall acquire to additional real property shall in every case be in fee simple absolute. Additional real property shall be acquired by the county in connection with a highway project only when the title acquired for such project shall be in fee. When the County Board shall have authorized the acquisition of title to additional real property in connection with a project, title to such additional real property shall be acquired by the county in the manner and according to the procedure, except in such respects as in this part set forth, provided for the acquisition of title to the real property required for the project and in the same proceeding in which title to the real property required for the project shall be acquired.

(§ 127 of the Laws of 1948, Ch. 852)

Sec. 233.281. Amendment of petition to include or exclude excess lands.

After the institution of a proceeding for a project, the Board of Acquisition and Contract with the approval of the County Board may, upon order of the court and on notice to all interested parties, amend such petition by authorizing the acquisition of lands additional to those required for the project, provided that title shall not have vested in the county to any parcel of real property being acquired. The Board of Acquisition and Contract with the approval of the County Board may, upon order of the court and on notice to all interested parties, also amend the petition so as to exclude any or all additional lands being acquired therein, provided title to such additional lands shall not have vested in the county, or the county shall not have entered into possession thereof. Thereafter such proceeding shall be conducted in the same manner as if the additional lands included or excluded by the amendment had been included, or had not been included, in the acquisition at the time of the institution thereof.

(§ 128 of the Laws of 1948, Ch. 852)

Sec. 233.291. Acquisition maps to be prepared.

When the County Board shall authorize the acquisition of additional real property in connection with any project, it shall cause to be prepared and filed a map or maps showing the real property to be acquired for the project and such additional real property in connection with the real property required for the project, in the same manner as an acquisition map or maps is or are caused to be prepared and filed in a proceeding in which no additional lands are being acquired.

(§ 129 of the Laws of 1948, Ch. 852)

Sec. 233.301. Petition and notice.

When the County Board shall have authorized the acquisition of additional real property in connection with any project, such additional real property shall be separately described in the notice of application to condemn and in the petition presented on any such application, and shall be separately shown on the map or maps attached to the petition and on the acquisition map or maps in the proceeding. Such notice and petition shall state what part of the real property to be condemned is required for the project, and what part thereof is to be acquired as additional real property.

(§ 130 of the Laws of 1948, Ch. 852)

Sec. 233.311. Ascertainment of damages where part of parcel is taken for a project and part as excess lands.

1. Where part of a parcel of real property shall be acquired for a project, and the remainder or a portion of the remainder of such parcel in the same ownership shall be acquired in the same proceeding as excess lands, the portion of the damages due to the acquisition of the real property required for the project shall be determined and stated separately from the entire damage due to each such owner. In determining the damages due to the acquisition of so much of such parcel as may be required for the project, the same rule shall be applied as would govern the determination of damages for the taking of the real property required for such project in case no excess lands were acquired. Where part of a parcel of real property shall be acquired for the project, and the remainder or a portion of the remainder thereof in the same ownership shall be acquired in the same proceeding as excess lands, the damages due to the acquisition of title to the

real property required for the project shall, in every case, equal the amount which would be awarded to such owner in case only that part of his real property, which shall be required for the project, were acquired.

2. Nothing in this section contained shall be construed to authorize an award to an owner, part of whose real property is taken for the project, and the remainder or a portion of the remainder of whose property is taken as additional lands, of any greater amount of compensation than such owner shall be entitled to by reason of the taking of his real property for the project and as additional lands considered together as one parcel.

(§ 131 of the Laws of 1948, Ch. 852)

Sec. 233.321. Sale and lease of acquired excess lands.

After title to the real property required for the project, and to the additional lands, shall have vested in the county, the additional lands may be either held and used by the county or sold or leased, or the county may apply such real property to a county use other than that for which it was acquired. The County Board may provide that such additional lands shall be sold or leased subject to such restrictions, covenants or conditions as to location of buildings with reference to the real property acquired for the project, or the height of buildings or structures, or the character of construction and architecture thereof, or such other covenants, conditions or restrictions as it may deem proper. Such additional lands may be sold or leased subject to such restrictions, covenants and conditions, if any, as the County Board may have prescribed, which shall be set forth in the instrument of conveyance or lease. Upon any such sale the County Board may authorize the taking, in the name of the county, of a purchase money bond and mortgage or bonds and mortgages as a part of the consideration therefor, in an amount or amounts not to exceed sixty percentum of the sale price, and upon such terms and conditions as may be authorized and fixed by act of the County Board, and in enforcing the lien of any such mortgage the county shall have and be entitled to all the same rights and remedies as an individual or private corporation under the provisions of the Real Property Law and the Civil Practice Act and rules of civil practice of the State of New York.

(§ 132 of the Laws of 1948, Ch. 852)

PART 3. ACQUISITION PROCEDURE: GENERAL

Sec. 233.331. Consent of municipalities.

Any municipality owning or having jurisdiction or control of any real estate or interest therein may and it hereby is authorized upon an affirmative vote of the members of its governing body, constituting a quorum, for a nominal consideration to convey such lands or interest therein, or a part or parts thereof, to the county, or in any condemnation thereof consent to a nominal award.

(§ 133 of the Laws of 1948, Ch. 852)

Sec. 233.341. Conveyance or session of real property to county.

1. An owner of any real property or interest therein which the county is authorized to acquire may convey or cede the same to the county on such terms and conditions as the Board of Acquisition and Contract may prescribe, provided that such property is free from encumbrances inconsistent with the title to be acquired by the county.
2. When the conveyance of such property shall have been properly approved and accepted, the county shall thereupon become vested with title to the property so conveyed.

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3. In any acquisition the County Attorney may make settlements of compensation to be paid to the owner or owners on such terms and conditions, as shall be authorized by the Board of Acquisition and Contract.

(§ 134 of the Laws of 1948, Ch. 852)

Sec. 233.351. Offer to purchase.

In all cases where the owner is not under legal disability to convey title to real property, the County Executive, when authorized by resolution of the Board of Acquisition and Contract, may make a written offer to purchase the property at a specified price, which offer must be served on such owner either personally or by mailing the same to him at his office or residence, and within ten days thereafter be filed in the office of the County Clerk, and the owner may within ten days after such filing file in the office of the County Clerk and serve upon the County Attorney an acceptance in writing of the county's offer, and thereupon the county may, upon filing proof of the making of the offer and its acceptance, enter an order that, upon payment of the compensation agreed upon and the execution and delivery of good and sufficient deed of conveyance, the county may take and hold the real property for the public use. In the event that the offer to purchase is not accepted, it cannot be given in evidence before the court or official referee or considered by them.

(§ 135 of the Laws of 1948, Ch. 852)

Sec. 233.361. Purchase of real property.

1. The Board of Acquisition and Contract may agree with the owner thereof as to the purchase price of any real property, or part thereof, authorized to be acquired in a proceeding, and may purchase the same for and on behalf of the county.
2. Any option agreement acquired by an official, authority or commission of the county shall be submitted to the Board of Acquisition and Contract for its approval, and if so approved the County Executive shall be and he hereby is authorized to accept such option on behalf of the county.

(§ 136 of the Laws of 1948, Ch. 852)

Sec. 233.371. Grants to owners abutting certain slope protection easements.

The Board of Acquisition and Contract may agree with owners respecting the extent and use of easements for slope or fill protection and may grant to owners of land abutting upon lands acquired rights-of-way over and access to lands so acquired upon such terms and conditions and for such considerations as to the said board may seem reasonable and proper.

(§ 137 of the Laws of 1948, Ch. 852)

Sec. 233.381. Pending proceedings.

1. If at the time this title takes effect, a proceeding instituted by or on behalf of the county, or any department, board, commission or authority thereof, for the acquisition of real property shall be pending, the same shall be completed under the law and procedure under which such proceeding was instituted and notwithstanding any provision of this title.
2. The provisions of this title relating to the showing and setting forth in petitions or upon maps of assessed valuation of real property to be acquired shall apply only to acquisitions authorized by the County Board after the date this title takes effect.

(§ 138 of the Laws of 1948, Ch. 852)

Sec. 233.391. Declaration of public and county purpose.

All acquisition under this title is hereby declared to be for a public and county purpose, subject only to such preexisting rights as are not inconsistent with the provisions of this title.

(§ 139 of the Laws of 1948, Ch. 852)

ARTICLE III. WESTCHESTER COUNTY LIVING WAGE INCENTIVE

Sec. 233.401. Definitions.

1. *County assistance* shall mean any tax abatement, grant, loan, bond financing or other economic incentive of at least one hundred thousand dollars (\$100,000.00) realized over a twelve (12) month period that is awarded directly by the county to a non-governmental entity for purposes related to economic or business development. County assistance shall not include assistance awarded by the Westchester County Industrial Development Agency or any other entities in which the county lacks the legal authority to impose eligibility conditions beyond those enumerated in state law, nor shall it include any other categories of assistance where state or federal law prohibits the county from making such assistance subject to the requirements of this section. In addition, county assistance shall not include assistance awarded to a not-for-profit organization the mission of which is to provide cultural, educational or social services.
2. *County lease* shall mean any agreement where the county leases or rents a commercial building, office space or facility from a non-governmental entity and where the county is the primary tenant and receives building services. For purposes of this section, the county is a primary tenant where it occupies fifty (50) percent or more of the entire commercial building, office space or facility. County lease shall also include lease agreements between the county and any tenant or concessionaire, not including a tenant or concessionaire that utilizes the county property primarily for storage or maintenance of equipment, that occupies county-owned property or facility and provides or receives building services and the total value of such agreement is in excess of fifty thousand dollars (\$50,000.00) over any twelve-month period.
3. *Covered employee* shall mean a person who performs home care or building services in connection with a service contract, county assistance, or a county lease. Employees shall not be considered covered employees if they are either (1) under eighteen (18) years of age; (2) work in a government sponsored training program; (3) are volunteers; and/or (4) are employed as part of a county or private youth employment program.
4. *Covered employer* shall mean any person that (1) is a party to a service contract; or (2) provides building services in connection with a county lease or county assistance, provided that the covered employer employs at least fifteen (15) full-time equivalent employees regardless of whether those employees are covered employees or not.
5. *Full-time equivalent* shall mean any combination of hours worked by one or more covered employees that generates between thirty-five (35) and forty (40) hours of work per week.
6. *"Health Insurance Benefits"* shall consist of the payment by the Covered Employer to its Covered Employees or on their behalf of an amount no less than \$1.50 per hour worked towards the provision of health insurance benefits for employees and/or their dependents. A Covered Employer is not required to provide health insurance benefits to a Covered Employee that works less than seventeen and one half (17 1/2) hours per week, but if the Covered Employer elects not to provide health insurance benefits, it must pay its Covered Employees the higher Living Wage Incentive Rate specified in § 233.402(2) for employers that elect

not to provide health insurance benefits. Provided, however, that where a Covered Employer makes contributions pursuant to a collective bargaining agreement to an employee health care fund for all hours worked by all full-time and part-time Covered Employees, then such contribution shall constitute provision of Health insurance Benefits for purposes of this Article, regardless of whether the amount of the contribution is greater or less than \$1.50 per hour worked.

7. *Person* shall mean any natural person, firm, association, partnership, corporation, association, business or organization of any kind.
8. *Qualified retention employee* shall mean a covered employee who performed building services for a covered employer for at least three (3) months when a covered employer sells, transfers, assigns or otherwise conveys the duties of a contract to perform building services to another person.
9. *Service contract* means any duly executed contract between the county and a person or his or her subcontractor whereby the county is committed to expend funds for services enumerated below and which are provided to or on behalf of the county, and which involves an expenditure of fifty thousand dollars (\$50,000.00) or more in any twelve-month period. The term service contract shall not include contracts for the purchase or lease of goods, products, equipment, supplies, services incidental to the delivery of services or other property. Service Contracts shall be limited to the following categories:
 - a. *Building services* shall mean any custodial, janitorial or security guard services; and
 - b. *Home care services* shall mean personal care services provided by the Westchester County Department of Social Services under the county's Medicaid Personal Care/Home Attendant programs and in accordance with the applicable provisions of Federal and New York State law, rules and regulations.
10. *Service contractor* shall mean any person that enters into a service contract with the county.
11. *Subcontractor* shall mean any person, other than an employee, that enters into a service contract with a service contractor to assist the primary service contractor in performing a service contract.

(L.L. No. 3-2002; amended by L.L. No. 11-2005)

Sec. 233.402. Living wage incentive rate established.

1. *Applicability.* Covered employers shall pay no less than the living wage incentive rate to their covered employees who actually perform work or render services in connection with a project, matter, contract or subcontract for which the covered employer (1) has received a service contract or county assistance; or (2) provides building services rendered in connection with a county lease as all such terms are defined in section 233.401. Except as provided for in sections 233.402(5) or 233.409 herein, covered employers shall pay the greater of (1) the living wage incentive pursuant to this law; (2) terms of collective bargaining agreement between the covered employer and his or her covered employees; or (3) the applicable prevailing wage.
2. *Amount of Living Wage Incentive Rate.* The living wage incentive shall be calculated on an hourly basis as follows:
 - a. Commencing January 1, 2004:
 - \$10.00 per hour plus health insurance benefits; or
 - \$11.50 without health insurance benefits
 - b. Commencing January 1, 2005:
 - \$10.75 per hour plus health insurance benefits; or
 - \$12.25 without health insurance benefits;

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- c. Commencing January 1, 2006:
- \$11.50 per hour plus health insurance benefits; or
- \$13.00 without health insurance benefits.
3. *Compensated leave.* Covered employers shall provide at least twelve (12) compensated days leave per year to covered employees working full-time for sick leave, vacation, or personal necessity at the covered employee's request. Paid holidays, consistent with established employer policy, may be counted toward the required twelve (12) compensated days off. Part-time covered employees shall be entitled to a pro-rata equivalent of the compensated days provided to covered employees working full-time. A covered employee shall be eligible to use accrued days off after the first six months of employment with the covered employer as a covered employee or in accordance with the policies of the covered employer, whichever occurs first. A covered employee shall accrue one day of compensated leave per month of fulltime equivalent employment.
4. All county service contracts, county assistance agreements, county leases and requests for proposals for county service contracts which are subject to the requirements of this article shall contain the following language or substantially equivalent language:
- a. This contract, lease or agreement is subject to the Westchester County Living Wage Incentive as set forth in Article III of Chapter 233 of the Laws of Westchester County ("Article III"). Article III requires that all covered employers shall provide payment of the living wage incentive as set forth in § 233.402 of the Laws of Westchester County.
- b. Pursuant to the provisions of Article III, the county shall have the authority, under the appropriate circumstances, to terminate this contract and seek other remedies as set forth therein, for violations of this article.
- c. The covered employer agrees to uphold the worker retention policy for certain covered employees as set forth in § 233.403, where such provision is applicable.
- d. The covered employer agrees to require any subcontractor or other employer that will provide home care services or building services in connection with this contract, lease or agreement, to pay the living wage incentive rate and comply with all other requirements of Article III, including the worker retention policy for certain covered employees, where such provision is applicable.
5. No reduction in collective bargaining or prevailing wage rates. Nothing in this article shall be construed or interpreted to require or authorize any covered employer to reduce wages set by a collective bargaining agreement or required under any prevailing wage in order to comply with the living wage incentive rate as set forth in § 233.402.

(L.L. No. 23-2002; amended by L.L. No. 11-2005)

Sec. 233.403. Worker retention policy for certain covered employees.

In the event that a covered employer who provides buildings services pursuant to a service contract sells, transfers or assigns or otherwise conveys the duties of a service contract to another person, all qualified retention employees shall be retained for a period of not less the Editor's Note: So in original. Should be "than." ninety (90) days. A covered employer may not discharge qualified retention employees without cause during that ninety (90) day period.

(L.L. 23-2002)

Sec. 233.404. Retaliation and discrimination barred.

It shall be unlawful for any person to retaliate or discriminate against an individual for making known a violation of this article, for seeking or communicating information to others regarding rights conferred by this article, for exercising any other right protected under this article or for participating in any proceeding relating to this article. The protection shall also apply to any individual who mistakenly, but in good faith, alleges a violation of this article, or who seeks or communicates information regarding rights conferred by this article in circumstances where he or she mistakenly, but in good faith, believes this law is applicable.

(L.L. 23-2002)

Sec. 233.405. Reporting requirements.

1. Notice of application for service contracts, county lease or county assistance. No service contract, county lease or county assistance shall be duly executed, unless, the covered employer files with the County of Westchester, a written certification which shall include the following:
 - a. The name, address and telephone number of both the prospective covered employer, and of any subcontractor or other employer that will employ building services or home care services employee in connection with the service contract, county lease or for which county assistance is awarded;
 - b. A description of the service to be provided under the service contract, county lease or for which county assistance is awarded;
 - c. A statement of the projected number of covered employees, by job title and wage levels, that will be employed under the prospective service contract, county lease or county assistance or that will be employed by any subcontractor or other employer that will employ building services or home care service employees in connection with the service contract, county lease or for which county assistance is awarded;
 - d. A written commitment to pay all covered employees a living wage incentive as defined under this article.
2. Notice of new subcontractor. During the term of a service contract, county lease or project for which county assistance is awarded, if a new subcontractor or other employer begins providing building services or home care services in connection with the service contract, county lease or project for which county assistance is awarded, the covered employer shall promptly provide written notification to the county of the name, address and telephone number of the new covered employer.
3. Payroll record keeping and reporting. Each covered employer shall maintain payrolls records, including any supplementary documentation relating to hours worked, withholdings and/or contributions for all covered employees and shall preserve same for a period of not less than three (3) years from the date of termination of the applicable service contract, county lease or county assistance program pursuant to which the living wage incentive is paid. Upon written request by the county, a covered employer shall produce for inspection and copying said payroll records for all of its covered employees.

(L.L. 23-2002)

Sec. 233.406. Posting and notification.

1. Every covered employer shall conspicuously post on its premises, in an area where notices to employees and applications for employment are regularly posted or in an area that is accessible to all covered employees on a daily basis, two (2) copies of this law informing employees of their rights under this article. The covered

employer shall also provide to each covered employee, in person or by mail, a copy of a written notice informing the covered employees of their rights under this article.

2. The covered employer shall notify covered employees of the eligibility requirements with Federal Earned Income Tax Credit under Section 32 of the Internal Revenue Code of 1954 and for the New York State Earned Income Tax Credit ("EIC"). The covered employer shall make available forms to secure the EIC credits, upon request of the covered employee.

[L.L. 23-2002]

Sec. 233.407. Compliance, enforcement and sanctions.

1. Grievance procedure. Any covered employee who believes that any covered employer is in violation of the requirements of this article has the right to file a sworn complaint with the county department or agency that monitors or oversees the service contract, county lease or county assistance with supporting documentation, which complaint shall contain a detailed outline of the alleged violation. In filing a grievance and upon the request of the complaining covered employee, said covered employee's identity shall be kept confidential.
2. A covered employer may dispute allegations of the complaint with the appropriate evidence. The county shall make a final determination on the question of compliance.
3. Where a finding of non-compliance with this article has been determined by the county, the covered employer will be given a written notice by the county. The covered employer shall be given the right to cure the violation within thirty (30) days from the date of the notice. Should the covered employer fail to cure the violation within such time, the county shall impose sanctions including, but not limited to, one (1) or more of the following:
 - a. Suspending and/or terminating the service contract, county lease or county assistance agreement for cause;
 - b. Requiring the covered employer to refund the county an amount relative to the particular county contract, county lease or county assistance involved and the extent of the violation;
 - c. Deeming the covered employer ineligible for future county service contracts, county leases or county assistance unless and until all penalties and restitution have been paid in full, and until the county determines in its sole discretion to restore eligibility;
 - d. Imposing a fine payable to Westchester County in the sum of five hundred dollars (\$500.00) per week for each covered employee who was not paid in accordance with this article;
 - e. Requiring the covered employer to: (1) reinstate the affected covered employee, (2) make restitution of wages to the covered employee; and (3) grant to the covered employee any additional relief deemed appropriate by the county to make whole the covered employee.

(L.L. 23-2002)

Sec. 233.408. Child care living wage task force.

There shall be a Child Care Living Wage Task Force that will research and develop a proposal by August 1, 2003, to establish a Child Care Living Wage Incentive Program for child care workers employed at child care agencies that contract with the Westchester County Department of Social Services to serve significant numbers of low-income Westchester families. This membership of this task force shall consist of a total of ten (10) members: five (5) members appointed by the County Executive; two (2) members appointed by the County Board of

Legislators; two (2) members of the Westchester County Living Wage Coalition; and one (1) member from the Child Care Council of Westchester. This task force shall develop a proposal by (1) surveying best practices developed in other localities for securing living wages for child care workers; (2) consulting with program administrators and policy experts with experience; (3) considering the development, programming, and operations of the child care industry to evaluate and improve the delivery of services, worker retention policies, and training programs through the use of child care living wage incentive programs.

(L.L. 23-2002)

Sec. 233.409. No impairment clause.

Nothing herein shall cause any person to impair an existing service contract, county lease, county assistance, collective bargaining agreement or contravene any applicable provision of law.

(L.L. 23-2002)

Sec. 233.410. No private right of action against the county.

No person shall have the authority to maintain a private right of action against Westchester County or any of its officers or employees relating to either the enforcement or implementation of this article.

(L.L. 23-2002)

Sec. 233.411. Severability.

If any section of this article or the application thereof to any individual, partnership, or circumstance shall be adjudged invalid or unconstitutional by any court of competent jurisdiction, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the controversy in which such order or judgment was rendered.

[L.L. 23-2002]