

WITHDRAWN AS OF 7/22/2010
AMENDED COPY AS OF 2/17/2010

Intro. Res. No. 1176-2010

Laid on Table 2/2/2010

Introduced by Legislators Romaine, Cilmi and Muratore

RESOLUTION NO. -2010, ADOPTING LOCAL LAW
NO. -2010, A CHARTER LAW TO REPEAL THE SUFFOLK
COUNTY ENERGY TAX VIA PUBLIC REFERENDUM

WHEREAS, there was duly presented and introduced to this County Legislature at a regular meeting held on February 2, 2010 a proposed local law entitled, "**A CHARTER LAW TO REPEAL THE SUFFOLK COUNTY ENERGY TAX VIA PUBLIC REFERENDUM**"; and said local law in final form is the same as when presented and introduced; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2010, SUFFOLK COUNTY, NEW YORK

A CHARTER LAW TO REPEAL THE SUFFOLK COUNTY ENERGY
TAX VIA PUBLIC REFERENDUM

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the current recession has caused enormous economic dislocation in Suffolk County as people have lost jobs, savings have been lost; foreclosures have risen to record levels, land values have plummeted, and lending has dried up.

This Legislature further finds and determines that the New York Tax Law authorizes counties to reduce the sales and compensating use tax rate on residential energy sources and services.

This Legislature further finds and determines that this tax is one of the most regressive taxes imposed on its residents because it bears no correlation to ability to pay since it relates to a necessity of life.

This Legislature further finds and determines that by repealing the unfair sales and use taxes on residential energy sources and services, at a time when the cost of fuel oil and gasoline has skyrocketed all across Long Island, that such a tax cut will ensure affordable residential energy sources and services.

This Legislature further finds and determines that, since the loss of revenue from such a repeal may not be fully offset by the revenues generated by such a tax cut, thereby requiring other budget actions to be taken to accommodate such a tax repeal, a fiscal policy decision of this magnitude should be made by the public after a robust, rigorous, and informed debate via public referendum.

This Legislature further determines that approval by the electorate of this law at public referendum will form a public mandate to balance Suffolk County budgets without resort to any tax on residential energy sources and services.

Therefore, the purpose of this law is to completely eliminate the 2.5% sales and use tax on residential energy sources and services subject to the approval of the electorate.

Section 2. Energy Tax Repeal.

A.) Section 2-A of Resolution No. 745-1968, as amended by Resolution Nos. 813-1980, 1025-2001, and 1034-2005, is hereby repealed.

B.) Section 6 of Resolution No. 745-1968, as amended by Resolution No. 973-1999, is hereby amended by adding a new subdivision (i) to read as follows:

(i)(1) Receipts from the retail sale or use of fuel oil and coal used for residential purposes, the retail sale or use of wood used for residential heating purposes, and the sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services used for residential purposes and the use of gas or electricity used for residential purposes shall be exempt from the taxes imposed by this Resolution. The provisions of this paragraph shall not apply to a sale or use of (i) diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and (ii) enhanced diesel motor fuel except in the case of a sale or use of such enhanced diesel motor fuel used exclusively for residential purposes which is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, provided that each delivery of such fuel of over four thousand five hundred (4,500) gallons shall be evidenced by a certificate signed by the purchaser stating that the product will be used exclusively for residential purposes.

(2) The exemption set forth in this subdivision shall apply to receipts from all retail sales and uses described in paragraph (1) of this subdivision made, rendered or arising therefrom on or after March 1, 2012, although made on or rendered under a prior contract, if delivery or transfer of possession of such property or services is made after such date. Where such property or service is sold on a monthly, quarterly, or other term basis, and the bills for such property or service are based on meter readings, the amount received on each bill for such property or service for a month, quarter or other term shall be exempt, but such exemption shall be applicable to all bills based on meters read on or after March 1, 2012, only where more than one-half of the number of days included in the month or other period billed are days subsequent to February 29, 2012.

- (3) Where a residence is part of a multiple dwelling or other premises consisting of residential and nonresidential units, or where a portion of a residence is used for nondwelling purposes, including the conduct of a trade or business, the same rules and regulations shall be applicable that have been established by the Commissioner of Taxation and Finance in order to allocate to such residence the portion of the sale of energy sources or services attributable to the residential portion.
- (4) If the Commissioner of Taxation and Finance has prescribed a certificate to be taken by the vendor of the energy sources or services specified in paragraph (1) of this subdivision from the purchaser of such energy sources or services, such certificate shall be applicable for the purposes of this section. Where a certificate is required, unless such vendor shall have received such certificate in such form as the Commissioner may prescribe, signed by the purchaser and setting forth the purchaser's name and address, together with such other information as the Commissioner August require, stating that the premises, for which such energy sources or services are purchased, are used solely as a residence or identifying the residential portion of premises, for which such energy sources or services are purchased including instances where a multiple dwelling unit or other premises consists of residential and nonresidential units or where a portion of a residence is used for nondwelling purposes, such as the conduct of a trade or business, the provisions of this subdivision shall not apply and the tax shall be imposed at the rate provided for in Sections 2 and 4 of this Resolution. No further certificate need be furnished for any subsequent purchase for such premises if the information set forth in the certificate last furnished the vendor has not materially changed, except that in the case of exempt purchases of enhanced diesel motor fuel in amounts of over forty-five hundred (4,500) gallons, a separate certificate must be furnished for each purchase.

Section 3. County Implementation of Energy Tax Repeal.

I.) Section C4-6 of the SUFFOLK COUNTY CHARTER is hereby amended to read as follows:

§ C4-6. Submission of proposed county budget by County Executive.

- A. On or before the third Friday of September in each year, the County Executive shall submit to the County Legislature a proposed budget, consisting of a proposed expense budget and proposed capital budget for the ensuing year. The expense budget shall consist of two separate documents, as follows:
- (1) A budget document outlining and identifying all of the expenditures or outlays by the County of Suffolk for goods, programs or services that are statutorily required by the state or federal government, or for the repayment of all debt principal and interest thereon (mandated portion).

- (2) A budget document outlining and identifying all of the goods, programs and services to be provided by the County of Suffolk that are not statutorily required by the state or federal government (nonmandated portion also known as "expense budget").
- (3) The proposed expense budget for any fiscal year shall also be submitted by the Executive to the County Legislature in such a form as to not contain any revenues requiring the imposition of any sales and compensating use tax, or successor tax thereto, on residential energy sources or services within the geographical boundaries of the County of Suffolk.

* * * *

- F. The proposed expense budget for any fiscal year shall include a detailed statement as to each line, item, program, expenditure, revenue, appropriation, existing or proposed positions of employment, object or sub-object requested for the executive portion of the expense budget, together with a statement of justification for all lines, items, programs, expenditures, revenues, appropriations, existing or proposed positions of employment, objects or sub-objects requested for said office including, but not limited to, factors such as legal mandates for appropriations, revenue production and cost benefit analysis. When the County expense budget shall have been finally adopted, the County Legislature and the County Executive shall not include any revenues derived from the imposition of any sales and compensating use tax, or successor tax thereto, on residential energy sources or services with the geographical boundaries of the County of Suffolk.

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II.) Section C4-10 of the SUFFOLK COUNTY CHARTER is hereby amended to read as follows:

Section C4-10. Action by County Legislature on proposed budget.

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- C. If the County Legislature amends the proposed county budget, either the mandated or nonmandated portion, or both, in any respect, it shall make any other amendments that may be required to provide that total estimated non-tax revenues, together with estimated tax revenues, shall equal total estimated expenditures. The amount estimated for any object or purpose for which an appropriation is required to be made by law shall not be reduced below the minimum so required. When all such amendments have been finally acted upon by the County Legislature, the adopted County expense budget shall not include any revenues derived from the imposition of any sales and compensating use tax, or successor

tax thereto, on residential energy sources or services within the geographical boundaries of the County of Suffolk.

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III.) Section C4-11 of the SUFFOLK COUNTY CHARTER is hereby amended to read as follows:

§ C4-11. Approval of budget by County Executive.

* * * *

D. Any action taken by the County Executive under this section shall be subject to and in conformity with the limitations contained in § C4-6 (A) and D, and § C4-10 (C), (E), (F), and (G) of this Article.

IV.) Article IV of the SUFFOLK COUNTY CHARTER is hereby amended by the addition of a new Section C4-38 to read as follows:

Section C4-38. Energy Tax Budgeting.

- A.) The County Executive, the County Legislature, the County Treasurer, and the County Comptroller shall take all such actions as shall be necessary to ensure that no revenues requiring the imposition of any sales and compensating use tax, or successor tax thereto, on residential energy sources or services within the geographical boundaries of the County of Suffolk, are made part of or used in violation of the provisions of Sections C4-6 (A) or C4-10 (C) of this Article.

- B.) In the event that legislation is introduced to reinstate any tax, in any manner or form, on the purchase and/or sale of residential energy sources or services of any kind, type, or nature whatsoever, such legislation shall require an affirmative vote of at least three-fourths (3/4) of the entire membership of the County Legislature. If any such legislation is vetoed by the County Executive, the approval of a motion to override such veto shall require the affirmative vote of at least three-fourths (3/4) of the entire membership of the County Legislature voting in favor of such motion.

- C.) When the County expense budget shall have been finally adopted, the County Legislature shall not include any revenues derived from the imposition of any sales and compensating use tax, or successor tax thereto, on residential energy sources or services within the geographical boundaries of the County of Suffolk

Section 4. Applicability.

This law shall apply to all County expense budgets submitted on or after the effective date of this law.

Section 5. Procedural Actions.

The Clerk of this County Legislature is hereby directed to file a certified copy of this law within five (5) days after this law takes effect with the Commissioner of Taxation and Finance at the Commissioner's office in Albany (via certified mail return receipt requested), the Suffolk County Clerk, the New York State Secretary of State, and the New York State Comptroller.

Section 6. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 7. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 8. Form of Proposition.

The question to be submitted to the electorate pursuant to Section 9 of this law shall read as follows:

Shall Resolution No. -2010, Adopting A Charter Law, To Repeal the 2.5% Tax on Residential Energy Sources and Services, Be Approved?

Section 9. Effective Date.

This law shall not take effect until the first day of the first fiscal year after its approval by the affirmative vote of a majority of the qualified electors of the County of Suffolk voting upon a proposition for its approval in conformity with the provisions of Section 34 of the NEW YORK MUNICIPAL HOME RULE LAW, except that all administrative procedures necessary to implement this Resolution shall commence immediately upon approval by the electorate and Section 2 shall take effect on March 1, 2012. After approval by the electorate, this law, as well as any other law converted into a mandatory referendum pursuant to Section 34(4) of the NEW YORK MUNICIPAL HOME RULE LAW, by a vote of the County Legislature,

may only be amended, modified, repealed, or altered by enactment of an appropriate Charter law subject to mandatory referendum in accordance with prevailing law.

[] Brackets denote deletion of existing language.
___ Underlining denotes addition of new language.

DATED:

APPROVED BY:

County Executive of Suffolk County

Date: