Intro. Res. No. 1972-2010
Introduced by Presiding Officer Lindsay

Laid on Table 9/16/2010

RESOLUTION NO. 978 -2010 AUTHORIZING TRANSFER OF FUNDS FROM THE TAX STABILIZATION RESERVE FUND TO THE RETIREMENT CONTRIBUTION RESERVE FUND

WHEREAS, the Office of the State Comptroller has notified Suffolk County that the 2011 cost for retirement for the Employee Retirement System will be over $78 million; and

WHEREAS, according to the Office of the State Comptroller the average employer contribution rate for the Employees Retirement System will increase from 7.4% in 2010 to 16.3% in 2012 which represents a 116% increase in 2012 over 2010 costs; and

WHEREAS, the State Comptroller has lowered the retirement fund's assumed return on investments from 8% to 7.5% thus requiring more taxpayer funds and employee contributions in the funding mix allocated for approximately $7.7 billion in annual pension payments statewide; and

WHEREAS, Section 6-r(3) of the General Municipal Law provides that moneys in a tax stabilization reserve fund may be transferred to a retirement reserve fund and expended for the retirement contribution; and

WHEREAS, it is necessary to transfer funds from the Tax Stabilization Reserve Fund to the Retirement Contribution Reserve Fund to offset the loss of sales and real estate related revenues and to mitigate the rising pension costs; and

WHEREAS, Resolution No. 742-2010 authorized a public hearing upon the issue of transferring $30 Million from the County's Tax Stabilization Reserve Fund (403) to the County's Retirement Reserve Fund (420) and said public hearing was conducted on August 17, 2010; and

WHEREAS, Procedural Motion No. 23-2010 authorized a public hearing upon the issue of transferring an additional $20 million from the Tax Stabilization Reserve Fund to the Retirement Reserve Fund and said hearing was conducted on October 12, 2010; and, now therefore be it

1st **RESOLVED**, the County Treasurer and the County Comptroller are hereby authorized, directed and empowered to transfer $50,000,000 from the Tax Stabilization Reserve Fund to the Retirement Contribution Reserve Fund, in accordance with the provisions of Section 6-r of the General Municipal Law; and be it further

2nd **RESOLVED**, that the County Comptroller and the County Treasurer be and they are hereby authorized to transfer $50 million from the Tax Stabilization Reserve Fund to the Retirement Contribution Reserve Fund as shown below:

EXPENSE:

403	IFT	E420	TRANSFER TO RETIREMENT CONTRIBUTION RESERVE	$50,000,000

REVENUE:

420	IFT	R403	TRANSFER FROM TAX STABILIZATION RESERVE	$50,000,000

and be it further

3rd **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this resolution 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 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 resolution.

DATED: October 15, 2010

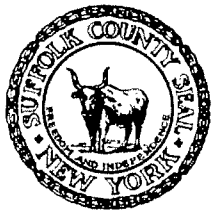
APPROVED BY: VETOED

County Executive of Suffolk County

Date: 10-25-10

VETO OVERRIDE NOT ADOPTED ON NOVEMBER 3, 2010

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

October 25, 2010

Presiding Officer William J. Lindsay and
Members of the Suffolk County Legislature
William H. Rogers Legislative Building
725 Veterans Memorial Highway
Smithtown, New York 11787

RE: RESOLUTION NO. 978-2010 AUTHORIZING TRANSFER OF FUNDS FROM THE TAX STABILIZATION RESERVE FUND TO THE RETIREMENT CONTRIBUTION RESERVE FUND

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein **Resolution No. 978-2010; "Authorizing Transfer of Funds from the Tax Stabilization Reserve Fund to the Retirement Contribution Reserve Fund"** vetoed in its entirety, as it is illegal, unnecessary, bad public policy and potentially harmful to the taxpayers we serve through increased borrowing costs.

Illegal Procedure
The County's Tax Stabilization Reserve Fund is established by New York State General Municipal Law section 6-e. The County's Retirement Contribution Reserve Fund is established by General Municipal Law section 6-r.

Section 6-e establishes very strict and limited ways by which the Tax Stabilization Fund can be accessed:

- to mitigate a tax increase of 2 ½% or more;
- to offset unanticipated revenue losses;
- to pay unanticipated expenses.

More importantly, Section 6-e states that the use of Tax Stabilization Funds can only be accessed through a recommendation by the County Executive and upon a 2/3rd majority vote of the Legislature. Resolution 978 was not recommended by the Executive branch and was not passed by a 2/3rd majority vote of the Legislature.

Resolution 978 cites General Municipal Law Section 6-r to allow the transfer from the tax stabilization reserve into the pension reserve. The Legislature has interpreted this

LOCATION:
H. LEE DENNISON BUILDING, 12th FLOOR
100 VETERANS MEMORIAL HIGHWAY

MAILING ADDRESS:
P.O. BOX 6100
HAUPPAUGE, NY 11788-0099

OFFICE (631) 853-4000
FAX (631) 853-4818

section as allowing a transfer from the Tax Stabilization fund that would not otherwise be allowed under Section 6-e (which is more restrictive on why and how transfers can be made).

However, it is counterintuitive to believe that one section of General Municipal Law that establishes strict criteria for use of Tax Stabilization funds can be rendered meaningless by a separate section of the same law.

Therefore, the phrase "notwithstanding any law to the contrary" in Section 6-r cannot logically be interpreted as allowing a transfer out of the Tax Stabilization Fund without County Executive recommendation and a 2/3rd vote of the Legislature.

Please be advised that I am prepared to go to court to uphold the interpretation of this law on behalf of the Suffolk County taxpayers if this veto is overridden.

Unnecessary Borrowing under Questionable Motives

In its Legislative Intent, the resolution purports to be transferring an additional $20 million from the Tax Stabilization Fund *"...to mitigate the rising pension costs."*

As the Executive Branch has made you aware, **we have fully provided for the state-mandated increase in pension costs in 2011**, through a $30 million transfer and through amortization of the balance, as allowed by state law.

All three bond rating agencies were made aware of my plans to address pension costs in my 2011 proposed budget – and all three bond rating agencies within the last two weeks have affirmed their historic high ratings for Suffolk County.

Resolution 978 does not specify anywhere what the Legislature's intended use of the $20 million would be; and I will not and cannot in good conscience allow the Legislature to raid our Reserve Fund to the tune of $20 million just so that it can hold that money aside while it considers budget amendments.

> Newsday, October 5: *Lindsay declined to detail how the money will be used until the budget committee decides how to amend Levy's budget. "Moving $20 million to the reserve fund gives us options," Lindsay said. "If we don't, the only one who can access the money is him [Levy]."*

Any legislator who argued for the transfer of this $20 million under the specific guise that the money will be used to avoid amortization of the balance of pension costs should, in good conscience, vote to sustain this veto as there are no apparent plans by the Legislature to use this money in that fashion.

<u>Backdoor Bailout of Nursing Home</u>

Moreover, the many public comments of the Presiding Officer have given a strong indication of what the intent of this raid on the stabilization fund is all about.

> Newsday, October 5: *"But we have almost $60 million in the bank and I can't see laying off people and eliminating services if there's money in the account."*

Newsday, October 14: *Presiding Officer William Lindsay (D-Holbrook) said it is too early to say whether he would use the $20 million to save the home, though he would if he had to. He said he wants to avoid laying off some 250 workers there.*

This unnecessary transfer of $20 million is nothing more than a backdoor bailout of the nursing home – preventing the closure, avoiding the sale, and continuing the status quo that results in an annual average taxpayer subsidy of the operations of $8 million. (And it is important to note that while the projected subsidy might be $4 million in a year when we get a double hit of state aid, it increases to $12 million the following year when no state aid arrives.)

The fact that my proposed 2011 budget includes closure of the facility is the direct result of the many stall tactics utilized by the Presiding Officer in refusing to act in a timely manner on the sale of the Skilled Nursing Facility that I first presented in April.

Bad Public Policy

The Presiding Officer and legislators have used the analogy of the Taxpayer Stabilization Fund being a "Rainy Day Fund." Well, when it is raining, you use Rainy Day Funds to build a new roof, not to buy an umbrella.

The only thing Resolution 978 accomplishes is to buy an expensive umbrella to avoid the prudent and logical decision I have been presenting to this body since April of this year: the $36 million sale of the Skilled Nursing Facility to a qualified, private sector operator.

This $20 million transfer will allow you to sit in your house with a leaky roof in 2011 and stay dry because you are under your umbrella. However in 2012, and 2013 and years thereafter, the roof will still be leaking, you will have no money for an umbrella and you will find that borrowing to fix the roof will be more expensive.

The Tax Stabilization Fund exists as a reserve to address dramatic unanticipated expenses. **The fact that our Skilled Nursing Facility requires an annual operating subsidy from the taxpayers should not be unanticipated by anyone in county government.**

The Fund also exists as a reserve to address dramatic and unanticipated revenue losses. **The only revenue "loss" that can be associated with the nursing home is the fact that a private sector operator is willing to pay Suffolk County a fair market $36 million for the facility – and the Legislature has not accepted that offer.**

It is unfair to penalize all Suffolk taxpayers for the Legislature's unwillingness to act on the disposition of the nursing home.

Impact on Taxpayers through Higher Borrowing Costs

As I previously stated, all three bond rating agencies have affirmed our historic high bond ratings, with full knowledge of our prudent $30 million transfer into the Pension

Reserve Fund. In their affirmations of the last two weeks, all three agencies have also indicated that they will be watching, with some concern, the future levels of our reserve funds.

The imprudent and unnecessary use of Reserve Funds, in order to meet annual expenses for the nursing home as seems to be the intent with this resolution, is almost certain to result in a downgrading of our bond rating in 2012 and beyond.

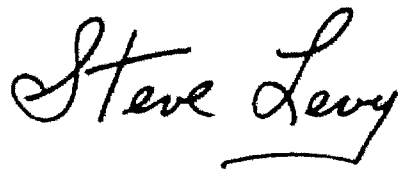
Such a downgrade would have a direct impact on the taxpayers we serve for decades to come, in the form of higher interest rates. In the upcoming traditional fall borrowing of $111 million, had our bond ratings not been affirmed and were lowered, the additional annual cost to taxpayers would be nearly $500,000. If the county were to receive a full downgrade, both short-term and long-term borrowing costs would increase approximately $2 million annually – and that is at present, low-interest market rates.

That represents $2 million of taxpayer money annually which would not be available for public safety, public health or other vital services we provide – all because of the irresponsible raid on the Stabilization Fund.

Some legislators have argued against amortization of a portion of the state-mandated pension increases, stating we would be paying interest on that small amortization over the next five years; yet at the same time seem to be willing to saddle taxpayers with much higher interest costs over the next 20 to 30 years by threatening our bond rating.

For these reasons, I strongly urge the Legislature to sustain my veto of this resolution.

Sincerely,



Steve Levy
County Executive of Suffolk County

cc: All Suffolk County Legislators
Tim Laube, Clerk of the Legislature
Christine Malafi, Esq., Suffolk County Attorney
Lynne A. Bizzarro, Esq., Chief Deputy County Attorney
Christopher Kent, Chief Deputy County Executive
Edward Dumas, Chief Deputy County Executive
Connie Corso, Deputy County Executive for Finance and Management
Ken Crannell, Deputy County Executive
Ben Zwirn, County Executive Assistant

Eric Naughton, Budget Director
Dan Aug, Director of Communications
Mark L. Smith, Deputy Director of Communications

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY

This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on October 15, 2010 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res. 1972 Res. No. 978 October 15, 2010

Motion:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE	/				
2	Jay H. SCHNEIDERMAN	/				
3	Kate M. BROWNING	/				
4	Thomas MURATORE			/		
6	Daniel P. LOSQUADRO		/			
7	Jack EDDINGTON	/				
9	Ricardo MONTANO	/				
10	Thomas CILMI		/			
11	Thomas F. BARRAGA		/			
12	John M. KENNEDY, JR.	/				
13	Lynne C. NOWICK				/	
14	Wayne R. HORSLEY	/				
15	DuWayne GREGORY	/				
16	Steven H. STERN		/			
17	Lou D'AMARO		/			
18	Jon COOPER	/				
5	Vivian VILORIA-FISHER, D.P.O.	/				
8	William J. LINDSAY, P.O.	/				
	Totals	11	5	1	1	–

MOTION

X Approve
___ Table: _____
___ Send To Committee
___ Table Subject To Call
___ Lay On The Table
___ Discharge
___ Take Out of Order
___ Reconsider
___ Waive Rule ___
___ Override Veto
___ Close
___ Recess

APPROVED X FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED

X ADOPTED
___ NOT ADOPTED

Roll Call X Voice Vote ___

Tim Laube
Tim Laube, Clerk of the Legislature

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY

This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on November 3, 2010 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res. 1972 Res. No. 978 November 3, 2010

Motion:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE		/			
2	Jay H. SCHNEIDERMAN	/				
3	Kate M. BROWNING	/				
4	Thomas MURATORE		/			
6	Daniel P. LOSQUADRO		/			
7	Jack EDDINGTON	/				
9	Ricardo MONTANO	/				
10	Thomas CILMI		/			
11	Thomas F. BARRAGA		/			
12	John M. KENNEDY, JR.	/				
13	Lynne C. NOWICK		/			
14	Wayne R. HORSLEY	/				
15	DuWayne GREGORY	/				
16	Steven H. STERN		/			
17	Lou D'AMARO		/			
18	Jon COOPER	/				
5	Vivian VILORIA-FISHER, D.P.O.	/				
8	William J. LINDSAY, P.O.	/				
	Totals	10	8	—	—	—

MOTION

____Approve
____Table:_____
____Send To Committee
____Table Subject To Call
____Lay On The Table
____Discharge
____Take Out of Order
____Reconsider
____Waive Rule ____
X Override Veto
____Close
____Recess

APPROVED___ FAILED X
No Motion___ No Second___

RESOLUTION DECLARED

____ADOPTED
X NOT ADOPTED

Roll Call X Voice Vote___

Tim Laube

Tim Laube, Clerk of the Legislature