Intro. Res. No.1256-2011 Laid on Table 3/22/2011
Introduced by Presiding Officer Lindsay

RESOLUTION NO. 471 -2011, ADOPTING LOCAL LAW NO. 29 -2012, A LOCAL LAW EXPANDING LEGAL REPRESENTATION OF COUNTY EMPLOYEES

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on March 22, 2011, a proposed local law entitled, "**A LOCAL LAW EXPANDING LEGAL REPRESENTATION OF COUNTY EMPLOYEES**;" now, therefore be it

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

LOCAL LAW NO. 29 -2012, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW EXPANDING LEGAL REPRESENTATION OF COUNTY EMPLOYEES

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 County of Suffolk represents and indemnifies County employees against judgments that arise from acts or omissions while acting within the scope of their public employment.

This Legislature also finds and determines that the Suffolk County Code makes no provision for the County providing representation to County employees who are called as witnesses in civil or criminal proceedings.

This Legislature further finds and determines that the County Attorney recently testified before a legislative committee that her office provides representation to elected officials and other County employees who are subpoenaed to testify in both civil and criminal proceedings and, in most instances, moves to quash subpoenas that lack merit.

This Legislature finds that the County Attorney should have the express authority to represent County employees when they are called to testify in a criminal or civil proceeding, as long as the employee is not charged with any criminal conduct or the subject of a criminal investigation, and his or her testimony is related to his or her public employment.

Therefore, the purpose of this law is to authorize the County Attorney to represent elected officials and County employees as witnesses in civil or criminal proceedings.

Section 2. Definitions.

As used in this law, the following term shall have the meaning indicated:

"EMPLOYEE" -- Any person holding a position by election, appointment or employment in the service of the County of Suffolk, including but not limited to volunteers, any person not compensated for his or her services and any member of any board or agency appointed by the

County Executive and/or the Legislature, including the Suffolk County Soil and Water Conservation District, in those instances in which the employee of the district is not provided indemnification under § 17, Subdivision 1(k), of the New York Public Officers Law, but shall not include an independent contractor.

Section 3. Amendments.

Chapter 35 of the SUFFOLK COUNTY CODE is hereby amended by the addition of a new Article V to read as follows:

Chapter 35, DEFENSE AND INDEMNIFICATION

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ARTICLE V, Limited Representation of County Employees When Called as Witnesses in Civil or Criminal Proceedings

§ 35-34. Limited Representation of County Employees.

The County Attorney shall represent any employee who is served with a subpoena to produce documents and/or testify in any civil or criminal proceeding when the County Attorney determines, in his or her discretion, that the employee is being called to testify because of that employee's relationship, employment or position with the County and, in the case of a criminal proceeding, the County Attorney determines that the employee is not charged with any criminal conduct or the subject of an investigation related to the criminal proceeding in which the subpoena has been served. Such legal representation by the County Attorney shall terminate when the subpoena has been quashed or withdrawn or when the employee has completed his testimony and fully complied with the subpoena.

Section 4. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 5. 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 6. 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 7. Effective Date.

This law shall take effect immediately upon filing in the Office of the Secretary of State.

___ Underlining denotes addition of new language

DATED: June 7, 2011

EFFECTIVE PURSUANT TO SECTION 2-15(D) OF THE SUFFOLK COUNTY CHARTER, RETURNED BY THE COUNTY EXECUTIVE UNSIGNED JULY 7, 2011

After a public hearing duly held on June 22, 2011
Filed with the Secretary of State on June 5, 2012

Intro. Res. 1256 Res. No. 471 June 7, 2011

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

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

Second:
Romaine, Schneiderman, Browning, Muratore, Anker
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	Sarah S. ANKER	✓				
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	17	–		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 ___ Voice Vote X

Tim Laube

Tim Laube, Clerk of the Legislature

COUNTY OF SUFFOLK

OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

July 7, 2011

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 471-2011

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning Resolution #471 - 2011 **adopting local law #2011, a legal law expanding legal representation of county employees**, neither signed or vetoed. The bill is redundant in that it seeks to codify that which is already in the Suffolk County Charter. The introductory clauses to the resolution inaccurately state that there are no provisions in the charter that authorize the county attorney to defend county employees in civil or criminal actions.

The county attorney has been representing county employees in matters both civil and criminal for decades. It is common place in all levels of government throughout the nation that a government employee will be represented by his employer when he is brought into a court action related to government activity. If any employee or elected official is sued for allegedly violating rules or laws during the course of his or her employment or official duties, the county attorney will defend him or her. If a legislator is sued on the grounds that he or she voted on a measure in an allegedly criminal matter, the county attorney will defend that person. Where Social Service employees, Police Officers, Consumer Affairs officers, and all other county employees are subpoenaed to appear in court on criminal matters in their official county capacities, the county attorney has traditionally intervened on behalf of that employee to quash the subpoena. County attorneys have even moved to quash subpoenas that were served upon legislators, the county executive, and the district attorney in criminal cases.

The county attorney was subjected to unfair newspaper articles suggesting that her representation of county employees in these criminal matters was either unprecedented or, worse yet, improper.

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

Neither is accurate. The county attorney has always had the authorization to represent employees in civil and criminal matters and exercised this authority in a consistent manner.

Vetoing this legislation could give the impression that I am opposed to the county attorney having this authority. Signing this legislation would give credence to the mistaken assumption within the bill that there is a need to create this authority when it already exists. There is no harm in codifying what is already in statute. I shall therefore be returning this resolution neither vetoed nor signed.

Sincerely,

Steve Levy
County Executive of Suffolk County