

Intro. Res. No. 1406-2011
Introduced by Presiding Officer Lindsay and Legislator Browning

Laid on Table 4/26/2011

**RESOLUTION NO. 426 -2011, ADOPTING LOCAL LAW
NO. 32 -2011, A CHARTER LAW TO WAIVE A CERTAIN
CHARTER PROVISION AND PROVIDE ADEQUATE FUNDING
FOR THE JOHN J. FOLEY SKILLED NURSING FACILITY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on April 26, 2011 a proposed local law entitled, "**A CHARTER LAW TO WAIVE A CERTAIN CHARTER PROVISION AND PROVIDE ADEQUATE FUNDING FOR THE JOHN J. FOLEY SKILLED NURSING FACILITY**"; now, therefore be it

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

LOCAL LAW NO. 32 -2011, SUFFOLK COUNTY, NEW YORK

**A CHARTER LAW TO WAIVE A CERTAIN CHARTER PROVISION
AND PROVIDE ADEQUATE FUNDING FOR THE JOHN J. FOLEY
SKILLED NURSING FACILITY**

**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 owns and operates the 264-bed John J. Foley Skilled Nursing Facility ("Foley Facility") in Yaphank.

This Legislature also finds that the County Executive has, for several years, tried to sell the Foley Facility to a private operator.

This Legislature determines that in 2010, following issuance of a Request for Proposals, the County Executive proposed a sale of the Foley Facility to Kenneth Rozenberg. However, the County Legislature rejected the resolution authorizing the sale in December, 2010.

This Legislature also determines that the County Executive, anticipating the lack of support for the Foley sale, failed to include discretionary appropriations in his proposed 2011 operating budget sufficient to operate the Foley Facility past the end of March, 2011. During the budget amending process, the Legislature failed to muster the two-thirds (2/3) vote necessary to restore full year funding for Foley.

This Legislature further finds that on March 8, 2011, the County Legislature passed a new resolution approving the sale of Foley to Kenneth Rozenberg, to avoid the consequences of closing the facility, including the displacement of hundreds of patients and the certain layoff of hundreds of employees.

This Legislature also finds and determines that subsequent to the Legislature's action approving the sale of the Foley Facility, Kenneth Rozenberg advised the County that he was cancelling the sale and demanded return of his down payment.

This Legislature finds and determines that with no willing purchaser and a restraining order in place barring the closure of the Foley Facility, the County of Suffolk has no choice but to amend the 2011 operating budget so that Foley's operations can be funded through the end of 2011.

This Legislature further determines that closing the Foley Facility is an unacceptable alternative as it will devalue the asset, uproot patients, and put several hundred employees on the unemployment roll.

This Legislature further finds that operating the Foley Facility through the end of 2011 will allow the County of Suffolk to explore other options for the facility, including a public-private partnership at Foley.

This Legislature further finds that while the County's 2011 operating budget is extremely tight, there is \$18 million of unexpended mandated appropriations in Foley's 632 Fund. This money was earmarked in the budget to pay off Foley's outstanding bonds in anticipation of a sale or closure. If Foley remains open, those appropriations can and should be used to fund Foley's operations for the rest of the year.

This Legislature also finds that in order to transfer the \$18 million to fund Foley, the County must waive a provision in the Charter that bars the transfer of appropriations from the mandated portion of the operating budget to the discretionary portion.

Therefore, the purpose of this law is to approve a one-time waiver of the Charter section that bars mandated-to-discretionary transfers so that the County of Suffolk can fund the operations of the John J. Foley Skilled Nursing Facility and adequately serve the patients in its care.

Section 2. Amendment.

Article 4 of the SUFFOLK COUNTY CHARTER is hereby amended as follows:

**ARTICLE IV,
County Budget and Capital Program**

* * * *

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

* * * *

K. The provisions of subsection (J), barring the transfer of appropriations and revenues from the mandated portion of the adopted operating budget to the non-mandated portion of the adopted operating budget during a fiscal year, shall not apply to the transfer of appropriations within Fund 632 from the mandated portion to the non-mandated portion of the adopted operating budget, in order to operate the John J. Foley Skilled Nursing Facility through the end of fiscal year 2011. Such a transfer may be approved during fiscal year 2011 by a simple majority vote of the County Legislature, subject to the veto and override provisions of § C2-14 of the SUFFOLK COUNTY CHARTER.

* * * *

Section 3. Applicability.

This law shall only apply to the transfer of appropriations in Fund 632 of the 2011 adopted operating budget, in order to operate the John J. Foley Skilled Nursing Facility in 2011.

Section 4. 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 5. 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 6. 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

APPROVED BY:

VETOED

County Executive of Suffolk County

Date: 6/27/2011

****VETO OVERRIDE ADOPTED ON AUGUST 2, 2011****

After a public hearing duly held on June 22, 2011
Filed with the Secretary of State on September 13, 2011

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

June 27, 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

2011 JUN 27 PM 4:24
SUFFOLK COUNTY EXECUTIVE
100 VETERANS MEMORIAL HIGHWAY
SMITHTOWN, NY 11787

RE: RESOLUTION NO. 426 – 2011, ADOPTING LOCAL LAW NO. -2011, A CHARTER LAW TO WAIVE A CERTAIN CHARTER PROVISION AND PROVIDE ADEQUATE FUNDING FOR THE JOHN J. FOLEY SKILLED NURSING FACILITY.

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein **RESOLUTION NO. 426 – 2011, ADOPTING LOCAL LAW NO. -2011, A CHARTER LAW TO WAIVE A CERTAIN CHARTER PROVISION AND PROVIDE ADEQUATE FUNDING FOR THE JOHN J. FOLEY SKILLED NURSING FACILITY**; vetoed in its entirety.

This resolution not only sets a dangerous precedent by granting a waiver, through simple majority vote, to allow the transfer of mandatory appropriations to non-mandatory appropriations but it is critically flawed in that the revenue for the appropriations the Legislature seeks to transfer simply is not there.

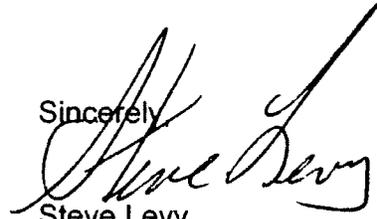
The money budgeted in Fund 632 of the 2011 adopted Operating Budget is contingent on full implementation of that adopted budget, which was to see the facility closed on April 1, 2011, and the building and assets sold. That revenue, from the sale, was to be the source of Fund 632 and used to retire the remaining debt on the facility.

Quite simply, without the closure and sale of the building and assets, the money the Legislature purports to move is a phantom transfer of non-existent funds, and will result in a real \$17-18 million hole in the operating budget. In essence, the Legislature is seeking to keep the facility open by deriving revenues from its closure and sale. A more contradictory and disingenuous bill is hard to fathom. This resolution does nothing to erase the \$17-18 million hole in the budget created by failure to close the facility and sell it off, as originally budgeted.

Furthermore, since the adoption of Resolution 426-2011, the court order against implementing closure has been lifted.

Given all of these considerations, closure of facility and sale of the assets may still be a necessary step to address our budget issues.

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
Eric Naughton, Deputy County Executive for Finance and Management
Ken Crannell, Deputy County Executive
Connie Corso, Budget Director
Eric Kopp, Assistant Deputy County Executive
Dan Aug, Director of Communications
Mark L. Smith, Deputy Director of Communications

Intro. Res. **1406**

Res. No. **426**

June 7, 2011

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

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

Second:
 Romaine, Schneiderman, Browning, Muratore, Anker
 Eddington, Montano, Cilmi, Lindsay, Vilorio-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		15	1	1	1	1

MOTION

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 FAILED ___
 No Motion ___ No Second ___

RESOLUTION DECLARED

ADOPTED
 ___ NOT ADOPTED

Tim Laube

Roll Call ___ Voice Vote

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 Aug 2, 2011 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.

1406

Res. No.

426

August 2, 2011

Motion:

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

Co-Sponsors:

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

Second:

Romaine, Schneiderman, Browning, Muratore, Anker
Eddington, Montano, Cilmi, Lindsay, Viloría-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	16	1			1

MOTION
<input type="checkbox"/> Approve
<input type="checkbox"/> Table: _____
<input type="checkbox"/> Send To Committee
<input type="checkbox"/> Table Subject To Call
<input type="checkbox"/> Lay On The Table
<input type="checkbox"/> Discharge
<input type="checkbox"/> Take Out of Order
<input type="checkbox"/> Reconsider
<input type="checkbox"/> Waive Rule _____
<input checked="" type="checkbox"/> Override Veto
<input type="checkbox"/> Close
<input type="checkbox"/> Recess
APPROVED <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

Tim Laube

Roll Call Voice Vote _____

Tim Laube, Clerk of the Legislature