

PROCEDURAL RESOLUTION NO. 3 -2011, AUTHORIZING INTERVENTION IN LAWSUIT TO PREVENT UNLAWFUL CLOSURE OF FOLEY SKILLED NURSING FACILITY

WHEREAS, the Suffolk County Executive proposed a local law in 2010 to authorize the sale of the John J. Foley Skilled Nursing Facility ("Foley Facility") to Kenneth Rozenberg; and

WHEREAS, to effectuate the sale of the Foley Facility, the County Executive and his administration attempted to comply with the procedural requirements of the "Mary Hibberd Law" (Hibberd Law"), codified at Section A9-6 of the SUFFOLK COUNTY ADMINISTRATIVE CODE; and

WHEREAS, pursuant to the Hibberd Law, the proposed sale of the Foley Facility required the approval of the Suffolk County Legislature by a duly enacted resolution; and

WHEREAS, the Suffolk County Legislature rejected the sale of the Foley Facility with only five legislators supporting the sale; and

WHEREAS, having failed to earn legislative support of the sale of the Foley Facility, the County Executive proposed closing Foley by defunding the Facility's operations in the 2011 Operating Budget; and

WHEREAS, the Counsel to this Legislature opined in 2008 that the closure of the Foley Facility was subject to the requirements of the Hibberd Law; and

WHEREAS, the County Executive's closure plan failed to comply with any of the procedural requirements of the Hibberd Law; and

WHEREAS, the Hibberd Law specifically prohibits the inclusion of a privatization plan in any operating budget in the absence of an authorizing resolution of the County Legislature; and

WHEREAS, the County Executive's actions relative to Foley are violative of the Marry Hibberd Law and usurp the County Legislature's charter granted policy-making authority; and

WHEREAS, three residents and one employee of the Foley Facility have initiated an action in New York State Supreme Court, seeking a declaratory judgment that the County Executive did not have the authority to propose, as part of his recommended 2011 operating budget, closing the Foley Facility; and

WHEREAS, this Legislature believes it is imperative to intervene in this pending action to prevent the unlawful and unauthorized closure of the Foley Facility; now, therefore be it

1st RESOLVED, that the Presiding Officer of this Legislature is hereby authorized, empowered and directed to take all actions necessary to intervene on behalf of this Legislature, as a party plaintiff, in the matter entitled "*Nilsa Perez, Kathleen Reeves, Jeanne Melnick and*

Macherie Goady against Steve Levy, Suffolk County Executive, The Suffolk County Department of Health Services and the County of Suffolk"; and be it further

2nd **RESOLVED**, that George Nolan, the Counsel to this Legislature, is hereby authorized and empowered to represent the County Legislature and the Presiding Officer in such matter, and to take all actions necessary and appropriate to carry out such representation; expenses incurred during such representation shall be paid from County Legislature funds (001-1010-3500, Other: Unclassified).

DATED: February 1, 2011