

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

January 15, 2008

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 1353-07 [I.R. 1997-2007], ADOPTING LOCAL LAW NO. -
2007, A LOCAL LAW TO ESTABLISH A PROMPT PAYMENT POLICY

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein Resolution No. 1353-07 [I.R. 1997-2007]; "Adopting Local Law No. - 2007, A Local Law to Establish a Prompt Payment Policy" vetoed in its entirety. There is no valid reason for the Legislature to adopt this Local Law to deal with a perceived problem that does not exist.

First off, the entire premise of the resolution, i.e. that daycare providers are not being paid in a timely manner, is simply false and has no relevance to the real world. Legislators were jumping through hoops to see who could most pander to and placate the unreasonable demands made by the providers. Some of these providers were complaining that they were not getting paid for over 40 days from the submission of their vouchers. Notwithstanding the fact that this time period has been significantly reduced, a 40 to 45 day time period in which to get paid from a government agency is not at all unreasonable.

Ironically, Suffolk County government must wait months, sometimes years, to get paid from the state and federal governments for various programs that are placed in their budgets. Hospitals and private agencies can expect to wait anywhere from 60 to 180 days to get reimbursed from these higher levels of governments. Even reliable private sector insurance companies often take over 30 days to process payments.

While this small number of providers has been complaining in chorus with "outrage," Legislators, should take note that businessmen and women in the private sector often wait several months to be paid, and in many cases, never get paid at all from other private entities. One thing that is certain with Suffolk County – payment will be made.

Many of the providers testified how they had difficulty with cash flow and had to take out loans to make payments. This is par for the course with most businesses in the real world. If businesses are closing their doors because of the 45 day payment process, the problems with that business do not stem from the county, but rather from tangential management issues.

Third, while the Legislature is giving special treatment to this small group of providers, resources will now have to be diverted from the thousands of other contracts that are processed for other providers not fitting into the daycare category. It is simply wrong to have everyone else wait longer to receive payment because the daycare providers had more political clout with the Legislature.

Fourth, the Legislature has now established a precedent of requiring that taxpayers pay interest to these daycare providers if payments are made after the 30 day deadline instituted by the legislation. At a time when taxpayers are pleading with their elected officials to be more cost conscious and are concerned about the difficulty taxpayers are facing, it is incomprehensible why the Legislature would put pressure on the county to now raise taxes in order to meet the unreasonable demands of this small, yet politically powerful, group.

Fifth, the fact that the Legislature rushed through this resolution, despite the fact that the processing period was reduced as promised, lends credence to the thought that this resolution was politically motivated. Even the providers themselves conceded that the new computer system that the county implemented has helped reduce the time period to process these claims, in many cases from 40 days down to well under 30 days. Despite the statements from both the executive branch and the daycare providers themselves that the process has been improved, Legislators continued to spew misinformation that the process had not been shortened. It appeared that some Legislators were so motivated in pandering to this special interest group that they were not going to let the facts get in the way.

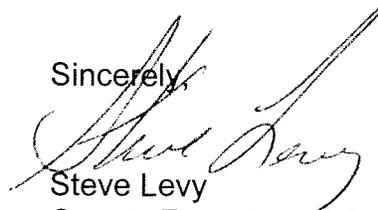
The executive branch had told the Legislature from the start that first and foremost, this was not an unreasonable delay, but in any event, the processing period would be reduced if the Legislature would just give the new computer system a chance to get up and running, as well as understanding that positions could not be filled while our sales tax resolution was being held hostage by the New York State Assembly. It was totally reasonable for the Legislature to allow for the sales tax resolution to first pass and for the computer system to be implemented before taking up this resolution again. Consequently, the Legislature sustained our last veto of this misplaced resolution. Remarkably, the Legislature has now seen that the computer system worked and yet it still moved forward with passing this resolution and is seeking to impose a tremendous burden on the taxpayers, despite the fact that any perceived problem had been cured.

Numerous private sector businessmen and women have expressed their disbelief that certain sponsoring legislators would become so obsessed with expediting payment for this small group of individuals when they themselves have to wait much longer to get

paid. They do not want their tax dollars raised simply so that some legislators can get political points with a vocal interest group.

I ask the Legislature to sustain my veto and send a message to the hardworking private sector companies that their taxes will not be raised to give special treatment to a group that already has it better than these struggling businesses that often wait months to get paid, if they get paid at all from their private contracts.

Sincerely,



Steve Levy

County Executive of Suffolk County

SL:

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
James A. Morgo, Chief Deputy County Executive
Frederick B. Pollert, Deputy County Executive for Finance and Management
Jeffrey W. Szabo, Deputy County Executive and Chief of Staff
Ben Zwirn, Deputy County Executive
Connie Corso, Budget Director
Dan Aug, Director of Communications
Mark Smith, Deputy Director of Communications

Intro. Res. No. 1997-2007

Laid on Table 10/16/2007

Introduced by Legislators Vioria-Fisher, Romaine, Schneiderman, Losquadro and Kennedy

**RESOLUTION NO. 1353 -2007, ADOPTING LOCAL LAW
NO. -2007, A LOCAL LAW TO ESTABLISH A PROMPT
PAYMENT POLICY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on October 16, 2007, a proposed local law entitled, "**A LOCAL LAW TO ESTABLISH A PROMPT PAYMENT POLICY**"; now, therefore be it

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

LOCAL LAW NO. -2007, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO ESTABLISH A PROMPT PAYMENT POLICY

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 extensive testimony at legislative hearings has established that many child care providers do not receive prompt payment from the County of Suffolk for services rendered and, in fact, often receive payment many months after they submit vouchers/invoices to the Department of Social Services.

This Legislature further finds that the County's failure to make timely payments to child care providers is particularly troubling, as it threatens the very existence of agencies that deliver a vital service to Suffolk County families.

This Legislature also determines that Suffolk County government, like any other person or entity, has an obligation to pay its debts in a reasonably timely manner and the failure to do so is morally indefensible.

This Legislature further finds and determines that pursuant to NEW YORK GENERAL MUNICIPAL LAW, all contracts made or awarded by state political subdivisions for public works projects must provide for prompt payment to contractors. This Legislature believes this policy should be extended to child care providers.

Therefore, the purpose of this law is to establish a policy to pay County child care providers in a prompt manner.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

CONTRACT – A written agreement entered into by the County of Suffolk with any person, corporation or other entity for the provision of child care services.

CHILD CARE – care for a child of six (6) weeks to twelve (12) years of age on a regular basis, provided away from the child’s residence. This term shall not be construed to include foster care services or institutional placements.

COUNTY – the County of Suffolk, any agency, office, department, division, bureau, board, commission or unit of Suffolk County government.

DEPARTMENT – the Suffolk County Department of Social Services.

LETTER OF APPROVAL – a written document issued by the Department, authorizing a child care provider to provide child care services for a specific child for a specified period of time.

PROPER INVOICE – a written request for payment that is submitted by a child care provider setting forth services delivered or rendered and the price for said services, in such form and supported by such other documentation as the County of Suffolk may require.

RECEIPT OF INVOICE – the date on which a proper invoice is actually received by the Department.

SET-OFF – a reduction by the County of payment due to a child care provider by an amount equal to the amount of an unpaid legally enforceable debt owed by the child care provider to the County.

Section 3. Prompt Payment Policy.

- A. Notwithstanding the provisions of any other law to the contrary, the County shall make payment for services rendered by a child care provider pursuant to a contract or letter of approval within thirty (30) days of the Department’s receipt of invoice. Should the County fail to make payment by the required payment date, the County shall make an interest payment to the affected child care provider on the amount of the payment due. Interest shall be computed at the rate equal to the overpayment rate set by the New York State Commissioner of Taxation and Finance pursuant to subsection (e) of section one thousand ninety-six of NEW YORK TAX LAW.
- B. The County shall not be required to make payment within thirty (30) days of receipt of invoice when:
 - 1. the necessary appropriation required to authorize payment has not been enacted;
 - 2. the County is entitled to a set-off against the invoice amount;
 - 3. statutory or contractual provisions, if any, make payment within 30 days impossible; or
 - 4. some or all of the invoice amount must be withheld to satisfy claims, liens or judgments against the child care provider; any remaining amount due the child care provide shall be paid within 30 days of receipt of invoice.
- C. The County may, within fifteen (15) days after receipt of invoice, notify a child care provider of defects in the delivered services; defects in the invoice; or other suspected

improprieties. The existence of such defects or improprieties shall toll the commencement of the time period specified in subsection (A) of this section. If the County fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which contract payment must be made in order for the County not to become liable for interest payments shall be calculated from the date of receipt of invoice.

Section 4. Applicability.

This law shall apply to 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 on the ninetieth (90th) day immediately subsequent to its filing in the Office of the Secretary of State.

DATED: December 18, 2007

APPROVED BY:

VETOED

County Executive of Suffolk County

Date: 1/15/08

Intro. Res. 1997 Res. No. 1353

December 18, 2007

Motion:

Romaine, Schneiderman, Browning, Caracappa, Losquadro
 Eddington, Montano, Alden, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Mystal, Stern, D'Amaro, Cooper

Co-Sponsors:

Romaine, Schneiderman, Browning, Caracappa, Losquadro
 Eddington, Montano, Alden, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Mystal, Stern, D'Amaro, Cooper

Second:

Romaine, Schneiderman, Browning, Caracappa, Losquadro
 Eddington, Montano, Alden, Lindsay, Vilorio-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Mystal, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE	/				
2	Jay H. SCHNEIDERMAN	/				
3	Kate M. BROWNING	/				
4	Joseph CARACAPPA	/				
6	Daniel P. LOSQUADRO (2)	/				
7	Jack EDDINGTON	/				
9	Ricardo MONTANO	/				
10	Cameron ALDEN	/				
11	Thomas F. BARRAGA	/				
12	John M. KENNEDY, JR.	/				
13	Lynne C. NOWICK	/				
14	Wayne R. HORSLEY	/				
15	Elie MYSTAL	/				
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 checked="" type="checkbox"/> 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 <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

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

276
 Tim Laube, Clerk of the Legislature

Roll Call Voice Vote _____