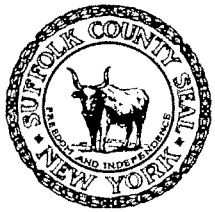
COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

January 21, 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 NO. 1171-2010 A CHARTER LAW TO REQUIRE THE APPROPRIATE USE OF TAXPAYER MONIES FOR FUNDED POSITIONS

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein **Resolution No. 1171-2010; "A Charter Law to Require the Appropriate Use of Taxpayer Monies for Funded Positions"** vetoed in its entirety.

One Chief Budget Officer
As established via referendum in 1958, the Suffolk County Charter designated the County Executive as not just the chief executive officer of county government, but as its chief budget officer as well.

The framers of the charter, and the electorate, in their wisdom recognized that the chief budget officer must have the ability to control costs and manage cash flow throughout the year, and the document approved by voters designated the authority to fill positions to that one chief budget officer – the person most accountable to the electorate, the County Executive.

Resolution 1171-2010 would establish six chief budget officers, by giving the ability to fill positions to the five other countywide elected officials, without regard to budget implications. While supporters of the measure have argued that the positions are budgeted and funded, one cannot make this argument in a vacuum.

The budget is a fluid document and requires cash flow management from the first day of the year through the last. Position control is one of the most useful tools that county executives have employed dating back to the creation of the office. In fact, four former County Executives from both sides of the aisle – John V.N. Klein (1971-79), Michael LoGrande (1986-87), Patrick Halpin (1988-91) and Robert Gaffney (1992-2003) – joined with me in a published OpEd to outline the fiscal dangers of this measure. And I would

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venture a guess that any future County Executive sitting in this office would come to rue the day that his or her position control abilities were handcuffed in this manner.

As the former County Executives wrote:

> Requiring (the executive) to maintain a balanced budget throughout the year without the ability to control positions in five large county agencies is akin to asking someone to drive a truck without brakes.
>
> The legendary sign on President Harry Truman's desk said it best: The Buck Stops Here.

History has shown that when the tool is removed from the executive office, personnel costs can spiral upward.

The change contemplated by Resolution 1171-2010 was implemented in Albany County in 1995, which moved the authority to fill positions from the County Executive to other countywide elected officials in that county – and the result was a 37-percent increase in the number of positions in those departments.

Locally, the Board of Elections, which does not require Executive authority to fill positions, regularly exceeds its budgeted amounts for personnel (by more than $800,000 in 2010). And despite its claims at legislative meetings to the contrary, the Vanderbilt Museum in December, while in the midst of a financial crisis, requested through the Legislature an additional $400,000 to cover its budgetary shortfalls which included salaries.

In no way should this veto be interpreted as casting aspersions on the ability and concern of our other countywide elected officials. Nonetheless, giving the unhampered ability to fill positions within one department without concern to the county's overall financial picture is bound to increase taxes year after year.

Mandatory Referendum

Resolution 1171-2010 does not include provisions for a mandatory public referendum. As the powers the bill seeks to remove from the Executive branch were given via the charter which was approved by referendum, I strongly believe as a basic tenant that in a representative democracy if the people grant an office a power, only the people should be able to take that away.

In an age when citizens are disenchanted with the size and cost of government, a bill to scatter and diffuse accountability is taking a step in the wrong direction.

Furthermore, two lawsuits initiated right here in Suffolk County (including Caputo, Romaine and Catterson v. Halpin) have strongly upheld the Executive's sole responsibility as chief budget officer.

This Legislature should recognize that the framers of the Charter, the electorate and the judicial branch have all acknowledged the importance of maintaining budgetary accountability with a single chief budget officer in a single office, and should not seek to thwart the will of the people and the spirit of the Charter without mandatory referendum.

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

Intro. Res. No. 2055-2010 Laid on Table 11/3/2010
Introduced by Legislators Viloria-Fisher, Kennedy, Horsley, Lindsay, Gregory and Cooper

RESOLUTION NO. 1171 -2010, ADOPTING LOCAL LAW NO. -2010, A CHARTER LAW TO REQUIRE THE APPROPRIATE USE OF TAXPAYER MONIES FOR FUNDED POSITIONS

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on November 3, 2010 a proposed local law entitled, "**A CHARTER LAW TO REQUIRE THE APPROPRIATE USE OF TAXPAYER MONIES FOR FUNDED POSITIONS**"; now, therefore be it

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

LOCAL LAW NO. -2010, SUFFOLK COUNTY, NEW YORK

A CHARTER LAW TO REQUIRE THE APPROPRIATE USE OF TAXPAYER MONIES FOR FUNDED POSITIONS

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, under Section 2-1 the Suffolk County Charter, the County Legislature "shall determine County policies" and, under Section 2-8 of the Suffolk County Charter, the County Legislature makes appropriations and levies taxes.

This Legislature also finds and determines that, under Sections 3-2 and 3-3 of the Suffolk Charter, the County Executive is the administrative head of County Government who has general supervision over all administrative units of the County, is charged with the obligation and responsibility to execute the policies and mandates of the County Legislature as duly promulgated and enacted by it, and is limited in the discharge of his or her responsibilities in County budgeting, as Chief Budget Officer, to the powers granted in Article IV of the Suffolk County Charter.

This Legislature further finds and determines that, under normal circumstances, the checks and balances between the policy-making legislative branch of government and the management and execution of those policies by the executive branch of government serve the public well by reflecting the collective will of the electorate and avoiding concentrations of power in any one individual or group of individuals.

This Legislature finds that the Office of the County Executive has engaged in administrative action preventing an appointing authority from filling vacant budgeted positions in County Government without the written approval of the County Executive, which action has routinely been exercised by the Office of the County Executive in good and difficult fiscal times.

This Legislature determines that the continuous and routine exercise of this unilateral administrative action by the Office of the County Executive undermines and is detrimental to the checks and balances of County Government.

This Legislature further determines that such action is inimical and contrary to the County Charter which delegates the power to set policy to the County Legislature by legislative enactment and enables the County Executive, acting unilaterally, to frustrate, impair or nullify such duly enacted legislation and the underlying policies which such enacted legislation was intended to establish, promote and protect.

This Legislature finds that the longstanding practice of the Office of the County Executive to take unilateral administrative action in the arena of budgeting for the personnel who deliver the public services demanded and expected by the electorate is a matter of great concern to the Legislature and to the electorate residing within this County.

This Legislature also determines that this frustration, impairment and nullification of County policy by the unilateral administrative action of the Office of the County Executive results in questionable and uncertain County budgeting whereby positions of employment are created in the annual County Operating Budget to carry out and implement legislatively enacted policies but, in practice, are rarely filled or are filled at levels below what is budgeted for the implementation of those specific County policies.

This Legislature also finds that such unilateral administrative action by the Office of the County Executive results in disruption and the inefficient and avoidable expenditure of taxpayer funds by the appointing authority who may be required to reassign personnel or incur overtime due to the aforesaid exercise of County Executive unilateral action.

This Legislature also finds that the budgeting of such policies creates a public expectation that what is provided for in the Adopted Annual County Operating Budget will actually occur, the failure of which such occurrence unfairly causes the public to believe it was mislead and deceived by the actions of its policy makers, thereby eroding public confidence in County institutions and its elected officials due to the County Executive's practice of creating illusory payrolls that are often never used and for which policy-making County Legislators are unfairly blamed.

This Legislature, being aware of the New York State Court of Appeals holding in a case entitled Caputo, Romaine, and Catterson v. Halpin., 78 N.Y.2d 117, which determined, among other things, that the Suffolk County Charter and Administrative Code established and conferred implied powers to the County Executive to unilaterally approve or disapprove the filling of vacant positions, adopts this law amending the County Charter with the express and explicit intention and purpose of eliminating, removing and abolishing any implied power that the Court believed may have existed under the current County Charter with respect to the budgeting of certain positions of employment in the Adopted County Operating Budget.

This Legislature declares that, by the enactment of this charter amendment, it shall be the policy of the County that the County Executive does not have any implied power to take any unilateral administrative action that prevents the filling of certain budgeted positions of employment in the Adopted County Operating Budget.

This Legislature finds that decisions regarding the filling of budgeted positions shall be made by the County of Suffolk acting through its co-equal branches of government via duly enacted resolution of the County of Suffolk.

This Legislature also finds that the aforesaid unilateral practice by the Office of the County Executive to nullify the filling of budgeted County positions of employment is particularly and unacceptably disruptive and detrimental to the mission and the day-to-day operations of offices supervised and managed by the County-wide elected officials.

Therefore, the purpose of this law is to preclude the practice of creating illusory County payrolls; to reaffirm the supremacy of the County Legislature as the policy-making body of County Government; to more precisely and clearly state those budgetary powers granted to each of the two co-equal branches of County Government by the County Charter with respect to appropriations, revenues, and personnel; to extinguish any implied power by the County Executive to take unilateral administrative action that prevents an appointing authority from filling certain budgeted positions of employment or which freezes the hiring of personnel to occupy certain budgeted positions of employment contained in the Adopted County Operating Budget all without increasing any expenditure of County funds beyond what was approved in the pertinent County Operating Budget.

Section 2. Definitions.

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

A) "ADEQUATE APPROPRIATIONS" shall mean the amount of appropriations certified by the Legislative Office of Budget Review as sufficient to compensate the person being contemplated to fill a budgeted position for that person's services, including any and all fringe benefits, for a stated or defined period of time, calculated as of the effective date of the Adopted County Operating Budget.

B) "APPOINTING AUTHORITY" shall mean the County-wide elected official possessing the legal authority and power to appoint subordinate positions in his or her department under New York State and Suffolk County Law.

C) "ADOPTED COUNTY OPERATING BUDGET" shall mean all of the appropriations and all of the revenues contained in the Suffolk County Expense Budget in effect on January 1st of the pertinent fiscal year.

D) "DEPARTMENT" shall mean any unit, office or agency of County Government created by the SUFFOLK COUNTY CHARTER or by Suffolk County Local Law, the head of which is elected by the voters of Suffolk County on a County-wide basis, other than the Office of the County Executive.

E) "POSITION" shall mean any title, office, or employment involving an aggregation of duties to be performed and responsibilities to be exercised by one person authorized in a department's portion of the Adopted County Operating Budget, the incumbent of which is to be chosen in accordance with the New York Civil Service Law and Suffolk County Civil Service Rules for the competitive jurisdictional class or any title, office or employment involving an aggregation of duties to be performed and responsibilities to be exercised by one person authorized in a department's portion of the Adopted County Operating Budget, the incumbent of which is to be chosen for the competitive jurisdictional class but who has not yet received permanent competitive status by Suffolk County or who is to be chosen for the non-competitive, exempt, or unclassified jurisdictional classes, other than elected officials or department heads, all in accordance with the New York Civil Service Law and Suffolk County Civil Services Rules.

F) "PUBLIC EMERGENCY" shall mean a declaration issued by the County Executive to the County Legislature, in writing, identifying an event that has arisen out of or been caused by a sudden unforeseen occurrence or disaster such as a hurricane, fire, tornado, flood, blizzard, explosion, airplane crash, earthquake, nuclear war, radiological emergency, war, terrorist act, civil unrest or disobedience, act of God, or comparable event.

Section 3. Amendments.

I) Section C4-2 of the SUFFOLK COUNTY CHARTER is hereby amended to read as follows:

§ C4-2. Chief budget officer designated.

The County Executive shall be the Chief Budget Officer of Suffolk County**[.]**, whose powers with respect to the filling of positions of employment contained in the Adopted County Operating Budget, in those departments headed by a County-wide elected official, other than in the Office of County Executive, shall be ministerial in nature, anything in Article IV or other relevant section of the SUFFOLK COUNTY ADMINISTRATIVE CODE or state law to the contrary notwithstanding.

II) A new Section C4-33 of the SUFFOLK COUNTY CHARTER is hereby added to read as follows:

§ C4-33. Filling budgeted departmental positions of employment.

A) Any filled position in any department which may become vacant or any position in any department created by resolution, budget amendment, local law or charter law enacted into law by the County of Suffolk, the adequate appropriations for which are contained in the Adopted County Operating Budget, may be filled by the pertinent appointing authority, at their sole discretion, at the budgeted grade and requested step set forth in the pertinent collective bargaining agreement or salary plan, as the case may be, within ninety days after adequate appropriations are available for the filling of such position or after the occurrence of a vacancy for which adequate appropriations are available, as the case may be, any administrative action taken or to be taken by the Office of the County Executive to the contrary notwithstanding, unless the County Executive issues a declaration, with requisite findings, to the County Legislature and the pertinent appointing authority that such position should not be filled based upon one of the following:

1) An order of the New York State Civil Service Department or New York State Civil Service Commission prohibits the filling of such a position;

2) An order of a court of competent jurisdiction prohibits the filling of such a position;

3) A department or agency of the federal government having jurisdiction over the matter has stated in writing that the appointing authority is prohibited from filling such position;

4) A budget deficiency exists under Section C4-27 of the SUFFOLK COUNTY CHARTER;

5) A public emergency exists;

6) A suspension, freeze, transfer or reduction of any funds in the Adopted County Operating Budget has been proposed or has been implemented by the County Executive on or after the effective date of the pertinent Adopted County Operating Budget pursuant to any provision set forth in Article IV of the SUFFOLK COUNTY CHARTER; pursuant to Article IV of the SUFFOLK COUNTY ADMINISTRATIVE CODE; or pursuant to any other provision of federal, state or County law relating to or bearing upon the fiscal, budgetary or personnel and staffing affairs of Suffolk County.

The aforesaid declaration with the requisite findings shall be in writing and filed with the Clerk of the County Legislature.

B) In the event that the County Executive files a written declaration with the requisite findings pursuant to paragraph (A) of this section, then the Legislature, on its own motion, may reject the declaration, via enactment of a resolution directed solely and exclusively to such purpose. Such a resolution shall be subject to the veto and override provisions set forth in Article II of this Charter. After enactment of such resolution, the pertinent appointing authority shall fill such position in accordance with the New York Civil Service Law and Suffolk County Civil Service Rules within thirty days of the effective date of the resolution, any administrative action to the contrary notwithstanding.

C) In the event that the County Executive or pertinent appointing authority does not comply with any action taken by the County Legislature under paragraph (B) of this section or, in the event that the County Executive and the pertinent appointing authority have jointly failed to comply with paragraph (A) of this section, then any County Legislator may introduce a resolution directing the pertinent appointing authority to fill the position in question via an appointment of the appropriate individual who qualifies under and pursuant to the pertinent New York State Civil Service Law and Suffolk County Civil Service Rules, which appointment shall require the approval of at least three-fourths of the entire membership of the County Legislature, which resolution shall not be subject to the approval or veto of the County Executive.

D) Nothing in Sections 4-6 through 4-9 of the SUFFOLK COUNTY ADMINISTRATIVE CODE is intended or shall be construed to diminish or restrict the powers granted to the County Legislature or any appointing authority under this section of the SUFFOLK COUNTY CHARTER. Any administrative action promulgated or undertaken by the County Executive which has the effect of preventing or delaying the filling of any vacant positions heretofore issued or created, and in effect on the effective date of this law, is hereby nullified and superseded by this law.

III) Section C4-29 of the SUFFOLK COUNTY CHARTER is hereby amended to read as follows:

§ C4-29. Allotment system.

There shall be a system for the allotment of funds by the County Executive to department heads from appropriations authorized for the agency involved. No appropriation authorized for any department shall be available for expenditure unless the

County Executive approves an allotment of funds to the department or a requested allotment becomes effective pursuant to § A4-7 of the Administrative Code**[.]**, except as to appropriations for the filling of positions of County employment contained in the Adopted County Operating Budget for the County Legislature, Sheriff's Office, District Attorney's Office, County Clerk's Office, Department of Audit and Control, and Department of Taxation and Finance, the allotment for which shall be deemed approved and effective as of the first day of the fiscal year for which such appropriation has been made or as otherwise prescribed by the Adopted County Operating Budget, anything in Article IV or other relevant section of the SUFFOLK COUNTY ADMINISTRATIVE CODE to the contrary notwithstanding.

Section 4. Applicability.

A. In the event that there is a conflict with, or inconsistency between, any of the provisions of this law and any provisions of any other section of the Suffolk County Charter or the Suffolk County Administrative Code with respect to the filling of position by the Appointing Authority of a Department, then the provisions of this law shall govern and control in each such case.

B. This law shall apply to any actions occurring on or after the effective date of this law with respect to any Adopted County Operating Budget in effect 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 not take effect until at least sixty (60) days after its adoption, nor until approved by the affirmative vote of a majority of the qualified electors of the County of Suffolk voting on a proposition for its approval if within sixty (60) days after its adoption there is

filed with the Clerk of the County Legislature a petition protesting against this law in conformity with the provisions of Section 34(4) of the NEW YORK MUNICIPAL HOME RULE LAW and upon filing in the Office of the Secretary of State.

[ ] Brackets denote deletion of existing language.
___ Underlining denotes addition of new language.

DATED: December 21, 2010

APPROVED BY: VETOED

County Executive of Suffolk County

Date: 1-21-11

Intro. Res. 2055 Res. No. 1171 December 21, 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	16	2	—	—	—

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