COUNTY OF SUFFOLK

OFFICE OF THE COUNTY EXECUTIVE

STEVE LEVY
COUNTY EXECUTIVE

September 2, 2010

RECEIVED
2010 SEP - 2 P 3: 15
COUNTY LEGISLATURE
SUFFOLK COUNTY, N.Y.

Mr. Timothy Laube
Clerk of the Legislature
Suffolk County Legislature
Veterans Memorial Highway
Hauppauge, New York 11788

RE: - August 3, 2010 – Legislative General Meeting

Vetoed 2010 Resolution: #707

Dear Mr. Laube:

Attached please find the above resolutions, which have been acted upon as indicated.

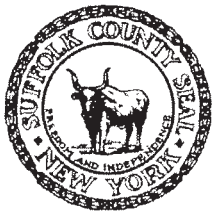
Very truly yours,

Brendan Chamberlain
Intergovernmental Relations Director

Received by A. Howard Date 9/2/10 Time 3:15P.

BC:gg
Enclosure

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

September 1, 2010

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. 707 – 2010, ADOPTING LOCAL LAW NO. -2010, A CHARTER LAW TO CLARIFY PROCEDURE FOR REMOVAL OF CERTAIN APPOINTED DEPARTMENT HEADS AND BOARD MEMBERS

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein **Resolution No. 707 – 2010; Adopting Local Law No. -2010, A Charter Law to Clarify Procedure for Removal of Certain Appointed Department Heads and Board Members;** vetoed in its entirety.

In 1969, the voters of Suffolk County supported and passed a referendum that was recommended by the Suffolk County Charter Revision Commission and emphasized the separation of powers between the County Executive and County Legislature. The referendum amended the County Charter in a comprehensive fashion regarding the County Executive's role, the Legislature's role and the separation of their powers. This referendum provided the County Executive with the power to appoint department heads with the approval of the Legislature. No additional power over the department heads was given to the Legislature under this referendum.

This resolution undermines the separation of powers that was clearly established by the voters in 1969 and seeks to undo the recommendation of the Suffolk County Charter Revision Commission that felt it was in the best interest of the government of Suffolk County that the County Executive have the ability to appoint department heads.

This resolution is also inconsistent with current Charter provisions that allow the County Executive to appoint commissioners and department heads to serve at his pleasure to maximize accountability. Those appointments will no longer be serving at the County Executive's pleasure if the Legislature can remove them as proposed by this resolution.

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

Moreover, department heads should not be subjected to serving two masters which is, in essence, what this resolution provides. That will never work and this is why the Charter Revision Commission back in 1969 recommended that Suffolk County government requires an effective County Executive to be the one to appoint department heads with the approval of an independent Legislature. Once a department head is approved, he or she is to serve directly for only one official – the County Executive.

In addition, this resolution states that a department head can be removed for cause, but the legislation fails to include a definition of "for cause." I believe this to be an important issue because it deals with someone's livelihood; leaving the term "for cause" open to interpretation will create problems for future County Executives and appointed department heads. Who is to say a department head ignoring a suggestion made by a legislator is not cause for removal? Accordingly, there needs to be a clear definition of this term.

Being removed from a position is never a pleasant experience for anyone, but to conduct personnel decisions in a political arena open to all of the public is in poor taste at best. If this veto were to be overridden, it will turn the process into a media circus.

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
Ken Crannell, Deputy County Executive
Ben Zwirn County Executive Assistant
Eric Naughton, Budget Director
Dan Aug, Director of Communications
Mark Smith, Deputy Director of Communications

Intro. Res. No. 1556-2010 Laid on Table 5/11/2010
Introduced by Legislator Cooper

RESOLUTION NO. 707 -2010, ADOPTING LOCAL LAW NO. -2010, A CHARTER LAW TO CLARIFY PROCEDURE FOR REMOVAL OF CERTAIN APPOINTED DEPARTMENT HEADS AND BOARD MEMBERS

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on May 11, 2010 a proposed local law entitled, "**A CHARTER LAW TO CLARIFY PROCEDURE FOR REMOVAL OF CERTAIN APPOINTED DEPARTMENT HEADS AND BOARD MEMBERS**"; 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 CLARIFY PROCEDURE FOR REMOVAL OF CERTAIN APPOINTED DEPARTMENT HEADS AND BOARD MEMBERS

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 Section C23-9 of the SUFFOLK COUNTY CHARTER authorizes the County Legislature to remove any appointed officer.

This Legislature also finds that this removal provision is not in harmony with other sections of the Charter which state that various department heads serve at the pleasure of the County Executive after they are appointed and confirmed.

This Legislature determines that is necessary and prudent to amend the Charter to clarify the Legislature's authority in this area.

This Legislature further finds that while the County Legislature should retain the authority to remove appointed officers, that power should be restricted to department heads and members of county boards, commissions and agencies.

This Legislature also finds that department heads and board members should only be removed for cause and these appointees should be afforded an opportunity to answer written charges before the Legislature acts to remove them from office.

Therefore, the purpose of this law is to confirm the Legislature's authority to remove certain appointed officers for cause, subject to notice and hearing requirements.

Section 2. Definitions.

"Board Member" – shall mean a member of any County board, commission or agency appointed for a fixed term, whose appointment is made by the County Legislature or is subject to legislative approval.

"Department Head" – shall mean any appointed commissioner or department head whose appointment is subject to legislative approval, whether appointed for a fixed term of office or to serve at the pleasure of the County Executive.

Section 3. Amendments.

Section C23-9 of the SUFFOLK COUNTY CHARTER is hereby amended to read as follows:

§ C23-9. Removal of appointed department heads and board members.

A. The County Legislature may remove any department head for cause, upon written charges, giving the department head reasonable notice thereof and an opportunity to be heard. Removal of a department head by the County Legislature shall be effectuated by a duly adopted resolution subject to the veto and override provisions of Article II of this Charter. This section shall not be construed to limit the County Executive's authority to remove department heads serving at his or her pleasure.

B. The County Legislature may remove any board member for cause, upon written charges, giving the board member reasonable notice thereof and an opportunity to be heard. Removal of a board member shall be effectuated by a duly adopted resolution subject to the veto and override provisions of Article II of this Charter, except that in the case of board members appointed by the County Legislature such removal resolution shall not be subject to County Executive approval. This section shall not be construed to limit the authority of the County Executive or the County Legislature to remove board members that serve at their pleasure.

Section 4. Applicability.

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

B. This law shall not be interpreted or construed as to limit the application of any state or local law, including NEW YORK PUBLIC OFFICER'S LAW §30 and SUFFOLK COUNTY CODE §C23-3 that set forth conditions or events that create vacancies in public offices.

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.

DATED: AUG 03 2010

APPROVED BY: VETOED

County Executive of Suffolk County

Date: 9-1-10

Intro. Res. 1556 Res. No. 707 August 3, 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	11	6	—	—	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 X Voice Vote

Tim Laube
Tim Laube, Clerk of the Legislature