

CONSUMER PROTECTION COMMITTEE

of the

SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Consumer Protection Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on December 8, 2009.

MEMBERS PRESENT:

Leg. John M. Kennedy, Jr., Chairman
Leg. Ricardo Montano, Vice Chair
Leg. Brian Beedenbender
Leg. Lou D'Amaro
Leg. Edward P. Romaine

ALSO IN ATTENDANCE:

William J. Lindsay, Presiding Officer
George Nolan, Counsel to the Legislature
Sarah Simpson, Assistant Counsel
Steve Tricaraco, County Executive Aide
Renee Ortiz, Chief Deputy Clerk
Paul Perillie, Aide to Majority Leader
Linda Bay, Aide to Minority Leader
Denis McElligott, Commissioner of Consumer Affairs Department
Ali Nazir, Aide to Leg. Kennedy
Bob Martinez, Aide to Leg. Montano
Kaitlin Kelly, Aide to Leg. Beedenbender
Justin Littell, Aide to Leg. D'Amaro
Kevin MacLeod, Senior Legislative Policy Director NYSEIA/LISEIA
Dennis Brown, County Attorney's Office
And all other interested parties

MINUTES TAKEN BY:

Diana Flesher, Court Stenographer

THE MEETING WAS CALLED TO ORDER AT 1:16 PM

CHAIRMAN KENNEDY:

Let's convene the Committee. If you will rise; we'll be led in the Pledge of Allegiance by Legislator D'Amaro.

SALUTATION

Good afternoon everybody and welcome to the last Committee of the year for Consumer Protection. We have one speaker who would address us. Kevin. Kevin MacLeod, if you would, please, Kevin. You have three minutes. Thank you.

PUBLIC PORTION

MR. MAC LEOD:

It's pronounced MacLeod.

CHAIRMAN KENNEDY:

Okay, I'm giving you your Celtic heritage there.

MR. MAC LEOD:

Thank you. I wanted to come here. Actually my name is Kevin MacLeod for the record. And I'm the new Senior Legislative Policy Director for NYSEIA and LISEIA, which is the solar contractors' group.

Obviously environmental issues is our concern also. And I wanted to come here and give my support for your 1797 bottle bill legislation resolution, which is important to the people of Suffolk County. And, you know, we have the new bottle bill which includes the water bottles now. And, you know, it's -- nobody really at this point up in Albany has taken the initiative to look at what the problems are with the consumers when they were doing these bottles. To tell you the truth, I think that some of the powers to be up up in Albany are hoping we'd rather throw the bottles back in the garbage cans so that the State can make the money rather than actually redeem them into a recycling program.

So this is an excellent step. We support it. I heard that there might have been legal technicalities on this. I wanted to mention to you that in January Assemblyman Englebright, we've worked with him, is drafting language that would actually encompass some of these ideas into a state law. So I ask you, you know, whatever the case is, to reach out to him, Assemblyman Englebright, to see if everything can be worked within line.

There are some other ideas that we thought of, too, such as the -- either an EPF fund where the money goes from the bottles to make sure that they actually, you know, it's not raided by the State General Fund every so often. Also to ensure that the recycling centers stay open at the same times as the stores are open and to make sure that the machines are maintained correctly. I mean it's not made too easy for the average consumer to be able to take these bottles back and redeem them. And nobody seems to be taking the initiative at this point to doing that. And I applaud Legislator Kennedy for taking the initiative on a Suffolk level and I would hope that this piece of -- this resolution passes. Thank you.

CHAIRMAN KENNEDY:

Kevin, thank you very much. I appreciate it. Kevin, we have a quick question. Legislator Montano has a question.

LEG. MONTANO:

Yeah, Kevin. How are you? Kevin, not on this topic but I wanted to take you back to your presentation on the solar panels.

MR. MAC LEOD:

Okay.

LEG. MONTANO:

And I've been seeing some advertisements in the newspaper with respect to the tax rebate and, you know. Is that going to end this year, that tax rebate? Or is that going to continue -- roll over into next year?

MR. MAC LEOD:

Okay. What we have here is we have a reduction in the utility rebate program. LIPA is going to be reducing to \$2.75 a watt from the current \$3.50 a watt. And also they imposed last month a 50 percent cap on the overall cost. In other words your rebate from LIPA cannot be anymore than 50 percent of the overall costs for this. So there are changes coming.

As far as taxes are concerned, the tax -- the federal, state -- federal tax credit ITC is still in place until 2016.

LEG. MONTANO:

Okay.

MR. MAC LEOD:

That's 30 percent of your net cost after the LIPA rebates. And you still have the state tax credit which is \$5,000 -- capped at \$5,000.

LEG. MONTANO:

So it's the LIPA -- it's the rebates that are going to run out?

MR. MAC LEOD:

Not run out. Reduce.

LEG. MONTANO:

All right, reduce. That's what I meant. So the numbers you gave us last time and the example, I think, we started it with a \$70,000 job. And by the time we were done, we were out of pocket about 10,000; am I correct in that?

MR. MAC LEOD:

That's right. That's going to change January 1st. It's going to increase slightly.

LEG. MONTANO:

Now, if you go into contract before January 1st but you don't get the work completed, is the rebate applicable, or must be done on completion or date of contract?

MR. MAC LEOD:

Okay. So what we have here is, most of the contractors, they file their applications for the rebate electronically as long as you have a read receipt that's postmarked or mailed, whatever postmark, prior to the end of December 31st, 2009, you're good at the \$3.50 rebate level.

LEG. MONTANO:

I see. And just very quickly, the \$70,000 scenario that you gave us last time with the presentation, if I recall correctly, out of pocket in the final analysis was 10,000. Now that same job under the change in LIPA rebate, do you have -- I'm not asking you to go through your whole presentation, just off the top of your head, do you know what the out of pocket's going to be using that same square footage, same scenario, etcetera, etcetera?

MR. MAC LEOD:

All right. There's obviously -- you wouldn't believe in such a short time, there's been a lot of changes in the industry, that \$70,000 job now is probably \$62,000. That's how quick our industry is changing with the competition. The scenario based on the new 2.75 rebate will probably be 16, \$17,000 out of the consumer's pocket.

LEG. MONTANO:

There's an additional 50 percent there.

MR. MAC LEOD:

Yes. It's obviously partially because of the lowering rebate because if you want to consider it, LIPA was paying \$35,000 --

LEG. MONTANO:

All right.

MR. MAC LEOD:

For a 10 k job. And now they're going to be paying 27,500. But you also have to calculate in now you have an additional -- a little bit more in the federal ITC which is 30 percent of the cost. So you make some of it back there, too.

LEG. MONTANO:

Right. Just specifically, have you seen, there's an ad that runs constantly in Newsday from Island Recreational. Why are you smiling? You knew I was going there, right?

MR. MAC LEOD:

Yes.

LEG. MONTANO:

I read it like three times. And I'm just curious, what is your -- I've looked at those numbers and they're down to, I guess, out of pocket by the time they give you all of the, you know, the rebates and the credits and all, you're down to 4995. I know it's advertising so -- the question -- and I don't want you to slam Island Recreation, I'm just curious though, do those numbers jibe with the numbers that you had given us?

MR. MAC LEOD:

When Island Rec first started doing the ad, obviously -- Denis McElligott --

LEG. MONTANO:

I've seen it for about a month now to be honest with you.

MR. MAC LEOD:

Yeah, about a month. The prices were really out of line with what the industry was actually -- you know, the average cost.

LEG. MONTANO:

Out of line up or out of line down?

MR. MAC LEOD:

Way down, way down. I mean -- and it was not -- it was not realistic. Nobody could figure out how they could do a job at that price and actually make a dollar, you know. And there was some --

LEG. MONTANO:

Improprieties?

MR. MAC LEOD:

-- improprieties within the ad, which I -- maybe Mr. McElligott would like to talk about a little bit.

LEG. MONTANO:

Was he planning to?

MR. MAC LEOD:

But if you look at the current ad now of 4999, if you take a microscope and you look really -- quick look at it, it says 4,000 watt system, 4 k so --

LEG. MONTANO:

Right. I was aware of that. I don't know what 4,000 watts buys you. I think your system or your program was what, 7,000 wattage or 7,000 square foot?

MR. MAC LEOD:

Yeah, it was based on \$7 a watt. And I think the Island Rec ad originally came out at about \$4.20 a watt. It was considerably lower. It really got a lot of the contractors up in arms about it, you know, so. But now the new -- the current pricing program they have is a little bit more within line of the industry.

LEG. MONTANO:

You mean Island Recreational?

MR. MAC LEOD:

Yes, yes, yes.

LEG. MONTANO:

Okay. I'll take a look at the ad. So if you go into contract before the end of the year and it gets filed, then you would -- you would benefit from whatever this year's programs are across the board. And if you don't, then you lose the LIPA -- the LILPA's rebate's going to change but the tax credits will remain the same; that's what you're saying?

MR. MAC LEOD:

Or a little higher because obviously you have less of a LIPA rebate and your tax credits will be higher on January 1st.

LEG. MONTANO:

Okay.

MR. MAC LEOD:

You know, so -- but, yes, you have the 35,000. But keep in mind if the costs of your system is 62,000 that 50 percent cap that's in place now will only allow you to get a rebate of \$31,000, not the full \$35,000 because the cost of the system is down. LIPA never intended their rebate to be more than 50 percent of the costs.

LEG. MONTANO:

50 percent, right, so. All right. Thank you. I appreciate it.

MR. MAC LEOD:

I'll make sure I get you a breakdown.

LEG. MONTANO:

Would you? Yeah, you know, I have -- I have your pamphlet actually on my table. I've just been too busy to really go through it. I've been, you know, collecting some stuff it. If you can get me the information, I'd appreciate it.

MR. MAC LEOD:

Yeah, definitely. Thank you.

CHAIRMAN KENNEDY:

Okay, thank you, Kevin. I appreciate it. And have good holidays.

Madam Clerk, let the record show that we're joined by Legislator Beedenbender and Presiding Officer Lindsay.

And being no other cards, nobody else who's requested addressing the Committee, let's move to the agenda then.

TABLED RESOLUTIONS

Tabled resolutions. Our first resolution **IR 1633, adopting Local Law No. -2009, A Local Law to standardize the dating and labeling of milk in Suffolk County. (Alden)**

LEG. BEEDENBENDER:

Motion table.

LEG. D'AMARO;

Second.

CHAIRMAN KENNEDY:

Motion to table by Legislator Beedenbender, seconded by Legislator D'Amaro. All those in favor? Opposed? Resolution stands tabled. **(VOTE: 5-0)**

Next we have **IR 1797, adopting Local Law No. -2009, A Local Law to enforce the New York State Returnable Deposit Container Law. (Kennedy)** I'm going to make a motion to table.

LEG. BEEDENBENDER:

Second.

CHAIRMAN KENNEDY:

Seconded by Legislator Beedenbender. All those in favor? Opposed? Resolution will stand tabled. **(VOTE: 5-0)** And I'm going to ask Counsel to re-file this resolution. I'm going to seek some direction directly from Commissioner Graham on it so we can get some clarification.

Finally, **IR 1894, adopting Local Law No. -2009, A Local Law to ensure the integrity of prescription labels in Suffolk County (Cooper)** I am going to offer a motion to discharge without recommendation. I've had some discussion with the sponsor. My office has also had some discussion with representatives from the grocery agencies, but nevertheless I do not want to see this held up. This is our last cycle for the year. If I have any additional information that I can bring forward between now and Tuesday I'll do so.

LEG. MONTANO:

Can I have an explanation on the bill?

LEG. D'AMARO:

I'll second.

CHAIRMAN KENNEDY:

Thank you.

MR. NOLAN:

The bill would require pharmacies to cover -- on the prescriptions, the labels, that they be covered with a transparent water resistant material that would protect the label from damage and keep the words written on it legible.

P.O. LINDSAY:

I have a question, too.

CHAIRMAN KENNEDY:

Sure, certainly, Mr. Chair.

P.O. LINDSAY:

Why is the problem with it? I mean they just want to make sure that the information doesn't fade, right?

CHAIRMAN KENNEDY:

In speaking with Legislator Cooper, as a matter of fact, he explained that in his case he had obtained a prescription, I believe, and due to whatever, the print content or ink content was for that particular pharmacy, the prescription label actually was illegible, within, I think, it was 30 or 45 days. I can show you a CVS prescription label that -- I think this is subjective amongst the various pharmacies, Mr. Chair. And so I don't know if it's necessarily an industry issue or if it may just be an individual, you know, merchant's issue. And that's part of the reason that we're trying to get some of the existing standards.

P.O. LINDSAY:

My question is why would the state object to this? You've mentioned the State Health Commissioner or --

CHAIRMAN KENNEDY:

No, not the State Health Commissioner. I believe that there is a -- my aide had a conversation earlier today. And there is some type of a state regulatory entity that goes through what the content and the composition of prescription labels are for medications. Nevertheless, I don't have much more than that. I don't want to make any -- I certainly don't want to hold the legislation more than a cycle. If I have anything more dispositive, I'll bring it forward. If not, we'll have an opportunity to vote on it Tuesday.

P.O. LINDSAY:

I mean I don't object to going, you know, to the full body. I just -- I'm just surprised. We're not altering the label. We're just making so it doesn't fade. We're just putting a film over it, you know.

CHAIRMAN KENNEDY:

You're right, Mr. Chair. I guess on its surface, absolutely. Once again it seems like one of those self-evident types of things in order to protect consumers. Nevertheless, if some vendors or merchants have actually accommodated their label content so it's got an ink, I guess, that's more affixed or it's got a surface that's more standardized, then they obviate the need to actually go ahead and go for an external protected cover. That's all.

LEG. MONTANO:

Legislator Kennedy.

CHAIRMAN KENNEDY:

Certainly, Legislator Montano.

LEG. MONTANO:

Yeah, question. I see here in the penalty's provision, it says any operator, pharmacy who intentionally violates any provision shall be subject to a civil fine of 250 for the first offense, 500 for a second and 750 for a subsequent. The way I understand pharmacies work, they use the same label.

CHAIRMAN KENNEDY:

Yes.

LEG. MONTANO:

On every item. So if on a given day they label one prescription, they probably label thousands of prescriptions with the same label.

CHAIRMAN KENNEDY:

Absolutely.

LEG. MONTANO:

So, what are we -- you know, I mean I don't know enough about the industry, what kind of problem is presented here, can somebody address that? Or maybe tell me what we're looking to resolve in terms of this and what the real problem is and have we heard from the industry itself in terms of does this radically change the course of filling a prescription or is this something that's simply, you know, buying a different label. I'm not sure I'm getting this.

CHAIRMAN KENNEDY:

My understanding at this point, Legislator Montano, is, and again I can only relate what the content of my conversation was with the sponsor, nevertheless, the resolution did have a public hearing. To the best of my knowledge, there were no speakers at the public hearing. And I'm not aware that we've had any kind of input from the industry at this point.

LEG. MONTANO:

Right, but just because no one showed up at the public hearing is probably that they're not even aware that this is on. I mean that's a common issue here in the Legislature. I just don't think -- I mean, I understand it's the last meeting. But I would probably prefer to see this just reintroduced at the first organizational meeting so that we can go through the process and learn more about it. I don't want to rush from it now til Tuesday without having any input from, you know, from the industry. And I'm not sure what problem we're solving. I'm not even sure how these civil fines would be resolved.

In the scenario that I gave, Mr. Nolan, what would the fine be? Would it be a \$250 fine for the day, would it be per prescription? I mean what are we dealing with here? And how are we going to enforce this? And are we going to pay for people to go around and enforce this particular bill?

MR. NOLAN:

Well, we're going to have to have people go around and enforce the law. I believe they probably would cite them once if the law's being violated, not for all the tickets or prescriptions that were written in a particular day. And if it wasn't corrected the second time they went back, they'd probably get hit with another fine and like that.

LEG. MONTANO:

But that's not really clear in the bill.

MR. NOLAN:

It doesn't state that unequivocally, no.

LEG. MONTANO:

Okay. All right. Whatever your pleasure is. I'll make a motion to table it.

LEG. ROMAINE:

Second.

CHAIRMAN KENNEDY:

Okay. The motion to table takes precedent. All right. I do think that we're kind of looking at a matter that requires vetting across the board. It is critical for us to go ahead and protect consumers as that is the mission of the Committee. I don't want to work a hardship on the industry.

LEG. MONTANO:

Can we ask the Commissioner's opinion.

CHAIRMAN KENNEDY:

Perhaps he has something to share with us. Commissioner McElligott, would you like to step forward? Is there anything that can share in the discussion at this point?

MR. NOLAN:

While the Commissioner's coming up, I should point out that I think there's an oversight on our part. The Department of Health Services is going to enforce this law so it probably should have been assigned to that Committee. I don't know if that's going to affect what the Commissioner has to say.

COMMISSIONER McELLI GOTT:

That's take away half of what I was going to say.

LEG. MONTANO:

So you're going to give us the other half, Denis.

COMMISSIONER McELLI GOTT:

And the other half is, as far as I can tell, this has not been a problem or an issue that has been brought to my attention during the last 11 and a half months. But, again, Counselor, it is something that is assigned to the Department of Health. And they may be better prepared to talk to the Legislature about this.

LEG. MONTANO:

Let me ask you this, Denis. In terms of the cost, first of all I got to -- I must take about 10, 11 pills a day. And I've never had an issue with this. And I get my prescriptions from CVS. So I'm trying to figure out what problem are we solving and how much does this have a financial -- is there a financial impact with this? I actually thought it was going to be tabled, so.

MR. PERILLIE:

Four cents a label they estimate for cost.

LEG. MONTANO:

Excuse me. Four cents per label?

MR. PERILLIE:

Yes.

LEG. MONTANO:

Per store? That was what was communicated to you?

MR. NAZIR:

Yes.

LEG. MONTANO:

Well, how many companies are not doing this right now? And who's going to pay that four cents? Is that going off to the consumer or is that going off to the insurance company? Is that going off to the taxpayer? And how many labels are we talking about?

COMMISSIONER McELLI GOTT:

I assume that that will eventually be passed along to the consumer. But on the -- like -- you're going to have to talk to the -- you're going to have to talk to your sponsor, the sponsor of the legislation.

LEG. MONTANO:

He's not here.

COMMISSIONER McELLI GOTT:

This was not something that was discussed with my department beforehand or before today. All I can telling you is, is that it has not been a problem. It has not been something we've received complaints about --

LEG. MONTANO:

Right, I understand that.

COMMISSIONER McELLI GOTT:

-- over the last eleven and a half months.

LEG. MONTANO:

Okay. We have a motion to table on the floor.

CHAIRMAN KENNEDY:

Thank you, Commissioner McElligott. Mr. Chair.

P.O. LINDSAY:

You know, I'll be honest with you, I don't think I've had a similar problem. But I don't think it would do any harm to discharge it to the full body when the sponsoring Legislator's here to try and answer some of the questions and defend the legislation.

CHAIRMAN KENNEDY:

I agree with you, Mr. Chair. As a matter of fact I did have a conversation with him. And I indicated to him that unless I had something that came forward, you know, I would not try to sit it here in the Committee. My colleagues bring up excellent points. I'm inclined to want to still support the discharge, but I'm also going to suggest, Mr. Chair, I think I'm going to contact our acting Health Commissioner Doctor Graham directly, because I would say to you that we're not -- now we're not only talking about something that may be not fully developed in front of us, but if we have a resolution that more properly should have been over at Health and Human Services, they would not have had an opportunity to have input from the Committee. Let's go through our roll process, though.

LEG. D'AMARO;

I'm going to support the discharge.

LEG. BEEDENBENDER:

I'll support the discharge.

LEG. MONTANO:

I withdraw the table.

LEG. ROMAINE:

I withdraw my second.

CHAIRMAN KENNEDY:

Okay, so the tabling motion is withdrawn. We have before us a discharge without recommendation. I made the motion. It's been supported by Legislator D'Amaro. On the motion, I've done so based on the fact that I think we ought to have the opportunity to have Consumer Protection utmost, as all of the members of this Committee have -- nevertheless, I will be contacting the Health Commissioner and ask them for review and to put this forward. And also quite candidly to find out who's going to bear the costs per prescription going forward.

That being said, all those in favor? Opposed? Okay, the motion stands discharged without recommendation. **(VOTE: 5-0)**

We have no other business before us. I make a motion to adjourn.

LEG. MONTANO:

Second.

CHAIRMAN KENNEDY:

Second by Legislator Montano. Have a great set of holidays, folks.

**THE MEETING CONCLUDED AT 1:39 PM
{ } DENOTES SPELLED PHONETICALLY**