

HEALTH COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE

Verbatim Transcript

A regular meeting of the Health 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 Thursday, March 14th, 2013 at 2:30 p.m.

Members Present:

Legislator William Spencer - Chair

Legislator Kate Browning - Vice-Chair

Legislator Rob Calarco

Legislator Ricardo Montano

Legislator John Kennedy

Also In Attendance:

P.O. Lindsay - District #8

D.P.O. Wayne Horsley - District #14

George Nolan - Counsel to the Legislature

Sarah Simpson - Counsel's Office/Suffolk County Legislature

Renee Ortiz - Chief Deputy Clerk/Suffolk County Legislature

Craig Freas - Budget Analyst/Legislative Budget Review Office

Lora Gellerstein - Aide to Legislator Spencer

Paul Perillie - Aide to Legislator Gregory

Michael Pitcher - Aide to Presiding Officer Lindsay

Ali Nazir - Aide to Legislator Kennedy

Leslie Kennedy - Aide to Legislator Kennedy

Bob Martinez - Aide to Legislator Montano

Tom Vaughn - County Executive Assistant

Katie Horst - County Executive Assistant

Dr. James Tomarken - Commissioner/SC Department of Health Services

Margaret Bermel - Director of Health Administration/DHS

Nancy Hemendinger - Director of School Programs/DHS

J. Ronald Gaudreault - Suffolk County Board of Health

Tracy Trypuc - Suffolk County Board of Health

Patricia Bishop-Kelly - *Former Employee*/SC Dept of Health Services

Div.of Preventive Medicine & Office of Health Education

Miriam Guggenheim - American Beverage Association

John White - American Beverage Association

Jim Coughlin - American Beverage Association

Nancy Marr - Suffolk County League of Women Voters

Matt Prawicka - Former Access Employee

Laura Jens-Smith - North Fork Alliance

Mary Finnin - Representing Public Health Nurses

Tor Vincent - Commercial Fisherman

David Abecassis - President/Biogard, Inc.

Bethany Reynolds - Biogard, Inc.

William Calvo - Stony Brook University

Chris Clapp - The Nature Conservancy

Erin Leigh Thoresen - Nomine/Food Policy Council of Suffolk County

Robert Schaefer - Nomine/Food Policy Council of Suffolk County

Kym Laube - HUGS-Executive Director/The Quality Consortium-President
All Other Interested Parties

Minutes Taken By:

Alison Mahoney - Court Reporter

(*The meeting was called to order at 2:42 P.M. *)

CHAIRMAN SPENCER:

Thank you very much for everyone who has come out today. I would like to ask if Legislators could come to the horseshoe and if we could stand for the Salute to the flag to be led by Legislator Kennedy.

Salutation

Could we please have a moment of silence for all those who are in service for this country and all those who have been affected by the disasters of super storms of Sandy and Nemo.

Moment of Silence Observed

You may be seated. Good afternoon and welcome to the Health Committee, and we're going to get right into the agenda. We have an extremely long agenda, a lot of interested speakers, so I have several cards.

So what we're going to do, for those who are joining us for the first time, you'll have a chance to come to the podium and you may address any topic that you would like for three minutes. After three minutes, I'll ask you to -- if you could wrap it up in order to give everyone equal opportunity.

The first card that I have is Mary Finnin, and Mary is addressing the issue of health services.

MS. FINNIN:

Good afternoon. My name is Mary Finnin, I'm a retired Public Health Nurse. I'm here today to speak about the proposal of getting out of health care which was proposed as a way to balance the budget by the County Exec.

I have legal and moral concerns over this proposal. The County Charter requires certain health services be provided. It's morally wrong to risk the health care of the public, especially our most vulnerable population. No core plan is being provided, no information provided showing a savings, no public hearings held.

RFP's were developed by and for HRH as a future provider. Community hospitals did not participate, yet they have been providing these services to our County for decades. Why not keep the business in Suffolk rather than selling or giving it away to out-of-County firms? Why not give or sell Article 28 license to our current hospital providers? What is the current revenue generated by health centers? What's the amount of uncollected revenue for services already provided? What are we going to lose from grants on infectious diseases, AIDS, drugs, drug treatment, TB, etcetera? What is the anticipated revenue from the sale of Amityville, Riverhead and Shirley health care buildings? What is the anticipated revenue for the sale of x-ray, mammography and other equipment that's lying stagnant right now in our centers?

I believe drug centers are funded at 90% by the State. Why sell this program? It's desperately needed. Capital projects for Wyandanch Health Care; why build a new health center to give it to an outside firm? This is what happened in Coram and we're still paying the mortgage for them and HRH gets a free ride. Does the County intend to continue to pay the mortgage or to subsidize Dolan and Coram? The contracts must be transparent, they must be made available to the public prior to any

deals. Suffolk's centers should be given the ability -- Suffolk centers should be given the ability to accept more options for insurance; this would increase our revenue and create a level playing field for all our health centers. Please consider all options. Have public hearings and maintain access for all residents in Suffolk County. Thank you.

CHAIRMAN SPENCER:

Thank you, Mary. Our next speaker is Matt Prawicka.

MR. PRAWICKA:

How are you?

CHAIRMAN SPENCER:

Good afternoon.

MR. PRAWICKA:

I wanted to talk to you guys about the heroin problem in Suffolk. I'm a social worker focusing on substance abuse, and in 2010 you guys had the heroin and opiate panel; there's a bunch of recommendations that were presented. So I guess what I'm trying to do is find the proper way to develop a good line of communication with the committee to maybe find some updates or things that I would be able to do to kind of get involved with it.

I'm in the process right now of creating a website that will be geared towards heroin addiction specifically on Long Island. So all the information is already out there, but if you're a parent and you're finding out that your son or daughter is addicted and you have no information or knowledge of this topic, it's very overwhelming for a parent to try to go through all the information and just get to the bottom of trying to get their kid help. So I'm trying to put all the information on one site, the in-patients, the detox facilities on the Island and just making it more accessible for the families when they're going through a difficult time. So whatever way, I don't know if it's through this committee but, you know, I'm trying to find a proper channel, I guess, to get updates about the recommendations and if there's any way that I could get involved or have people involved to follow through with some of them and help out, if possible.

CHAIRMAN SPENCER:

Thank you. That's extremely important, and we'll commit to helping you get as much information and guiding the process. Legislator Browning has a question for you.

LEG. BROWNING:

Yeah, just quick. I mean, I know -- I've had quite a few constituents come in with children that are addicted to drugs, and generally I reach out to LICAD, to Jeff Reynolds, and I would think that maybe contacting him to work on it. I mean, again, there's times when I run into road blocks because the kids aren't high enough when they get to the hospital and the hospital says, "When you're not high enough, we can't keep you," which I think is absolutely bizarre. But I'd recommend reaching out to him, if you don't already have his information.

MR. PRAWICKA:

I spoke to Mr. Reynolds, but on top of that, he was very helpful. But I guess more specifically about, I guess, the recommendations and how far along they've come. You know, I know that there's a new 25-bed detox, I don't know if it's considered a grant but there's funding for it in Suffolk County that OASIS offered. So I think it had to be due several weeks ago, but that will be, you know, a nice addition to the problem, and then I believe St. Charles is also adding a detox facility as well. So just, you know, the information's there, but for me to kind of bring it all together for them and have just one area where they could go to. But I have been in contact with Dr. Reynolds, so.

LEG. BROWNING:

Okay. I guess our Commissioner is here, maybe he can respond to the OASIS grant. I'm really not very familiar with it, but we'll ask him. I know he's going to be coming up, we'll ask him about it.

MR. PRAWICKA:

Okay. Thank you.

CHAIRMAN SPENCER:

Thank you. Thanks for taking the time.

LEG. HAHN:

We also have our task force, the Opiate Heroin Advisory Committee, the recommendations, right? Is that what --

LEG. CALARCO:

That's what he was referencing.

LEG. HAHN:

Have you been attending the task force meetings?

MR. PRAWICKA:

No, I haven't.

LEG. HAHN:

Okay. So maybe we can tell him when they are.

MR. PRAWICKA:

Thank you.

CHAIRMAN SPENCER:

Thank you, Matt. Our next speaker is Laura Jens-Smith, North Fork Alliance.

MS. JENS-SMITH:

Hi. Good afternoon. My name is Laura Jens-Smith, I'm with the North Fork Alliance. We're a drug-free community coalition on the north fork of Long Island and I'm here to speak to Resolution 1085 about energy drinks.

A report published by Pediatrics, the official Journal of the American Academy of Pediatrics concludes that energy drinks have no therapeutic benefit and both known and unknown pharmacology of various ingredients combined with reports of toxicity suggest that these drinks may put some children at risk for severe and adverse health effects. Energy drink related visits have doubled from 10,000 in 2007 to 20,000 in 2011. Almost 150 adverse events have been reported to the FDA since 2010 concerning energy drinks. It is estimated that only one -- 10% of all adverse events linked to these substances are reported to the FDA. Energy drinks called nutritional supplements are also known and regulated by the FDA; under the FDA there are categories of dietary supplements. I'm sure that you have heard that these drinks are regulated by the FDA and that they're approved for use. While that may have been stated, they are really not being regulated by the FDA, they are being monitored by the FDA and they are not submitted to the same regulatory requirements as food and drugs.

Energy drinks contain high levels of caffeine, Taurine and Guarana which have supplement properties. But because these drinks are marketed as dietary supplements, this shields them from the caffeine limits imposed on sodas. The manufacturer of the dietary supplement, or an energy drink, is responsible for ensuring that the product is safe before it is marketed. The FDA does not

require the manufacturer to submit the product for approval or testing. FDA is only responsible for taking action against an unsafe dietary supplement or energy drink product after it has reached the market. Some standards have been set by the FDA such as good manufacturer practices of dietary supplements, of non-prescription drugs, consumer protection acts; these are supposed to help the consumers. However, in a report filed by the Director of the FDA's Dietary Supplements Program in April -- on April 25th of 2012, it has found that the level of noncompliance by these good manufacturing practices is astounding. Based on an audit completed by the FDA Compliance Division, in 2011 and 2012 it is estimated that 70% of dietary supplement manufacturers are currently noncompliant. It is also indicated that the FDA has concerns regarding the under reporting of the adverse events. The adverse events are reported by the -- only the manufacturer is required to report them.

Consumers really have no idea what they are consuming with the supplements, what's in them, even if they carefully read the labels. A Monster Energy Drink lists one ingredient as 2500 milligrams of an *energy blend*, and I find that very hard to figure out what that means. When the dietary substances -- supplements are tested, their unregulated labeling tends to be inaccurate. One study of 31 nutritional supplements found that nine had labels with accurate caffeine information; another five had varying caffeine contents that were either much lower or higher than the amount listed on the label; and the remaining six products did not have caffeine levels on their label at all but had very high amounts, according to the chemical analysis, sometimes two to three times the amount of a standard cup of coffee.

Generally, manufacturers do not need to register their product with the FDA or get FDA approval before producing or selling their dietary supplements. Many dietary supplements are labeled with a warning about the potential adverse effects associated with increased caffeine consumption. They also carry a statement, "*Do not use if you are over the age of 18*" and "*Do not use if you are pregnant or nursing*". The energy drinks currently list just children, not -- there is no age differentiation. And it makes it very difficult for parents to assess any of these adverse effects that caffeine can have with their children and there's no warning as well and it doesn't give parents the ability to judge these drinks before they give them to their children.

So in conclusion, there are just too many unanswered questions about the safety of these energy drinks on youth. Until these questions raised by concerned health care providers can be answered, I urge you to err on the side of caution and prevent largely unregulated products to be marketed to the youth of our County. Thank you.

CHAIRMAN SPENCER:

Thank you. I appreciate your remarks. Just -- I appreciate what you're saying with regards to the -- your presentation, but I just wanted to ask a question, if you realize that most of the industry is regulated as a food. They are foods and, in fact, I think the vast majority are considered by the FDA as foods. Do you have different information? That's my understanding.

MS. JENS-SMITH:

A lot of the energy drinks -- to the best of my ability, I'll answer. But from what I have found, a lot of these energy drinks are marketed as a dietary supplement and they fall outside of the regulations of food or drugs. So it's kind of a gap in the system, and the regulations mostly come from self-reporting of the manufacturers in a \$9 billion industry. So there is not a lot of impetus to find problems.

CHAIRMAN SPENCER:

Thank you for your testimony. I appreciate it. Thank you.

MS. JENS-SMITH:

Thank you.

CHAIRMAN SPENCER:

Our next speaker is J. Ron Gaudreault who is representing himself.

MR. GAUDREULT:

Thank you, Dr. Spencer and members of the committee. My name is Ron Gaudreault, I'm a health care consultant, a retired hospital administrator, and currently a member of the Board of Health.

I and others sat through nearly -- oh, I guess it was over three hours of public testimony last week, some of which was listening to the paid representatives of the American Beverage Association. The rhetoric of these representatives is either misguided or an irresponsible attempt to subvert reasonable and prudent local regulations that are designed to protect the health and safety of our children. A couple of examples, as the previous speaker indicated, the regulatory framework for food supplements and conventional foods is really entirely different. However, at the testimony last week -- at the hearing, rather, last week in Riverhead, the representatives of the industry tried to make it sound like it was essentially the same, there really isn't much difference. And as the woman before me has very articulately pointed out, there are significant differences.

Another example of I think disingenuous or misrepresentation was the fact that caffeine content was listed on the containers, and I think it was stated that the total caffeine content, and that's not true from my reading of any of the literature. All of the other ingredients, some of which contain, naturally contain caffeine, is not part of the total that is listed on the container. So as has been, again, previously stated, you can't really go by what's written on the can.

To completely ignore the growing outcry of health care professionals and parents of children who have died from cardiac arrhythmias associated with drinking energy drinks, that is caffeine toxicity, and the alarming increase in the number of emergency department visits -- I think they've doubled in the last three years, according to some of the statistics, again, in the literature -- is really unthinkable.

As a committee concerned with public health, I strongly urge you to recommend the adoption of these two bills, IR 1085 and 1086 as submitted by Legislator Spencer. And I ask that you please consider that the American Academy of Pediatrics, that is a professional society of thousands of our nation's respected pediatricians that take care of our children and grandchildren, has issued a compelling statement, and I'd like to quote it for the record: *"Caffeine and other stimulant substances contained in energy drinks have no place in the diet of children and adolescents."*

I think the literature strongly supports the conclusion that the risks of these energy drinks far outweighs any possible benefits. So if we entrust our kids with our pediatricians, then I wonder why we should not accept their recommendation regarding these substances. Thank you very much.

CHAIRMAN SPENCER:

Thank you. Thank you for your time. The next speaker is Miriam Guggenheim who is with the American Beverage Association. Good afternoon, Miriam. Thank you.

MS. GUGGENHEIM:

Hi. I'll pass around my testimony. Hi. I'm Miriam Guggenheim, I am a partner in the Food & Drug Practice of Covington & Burling in Washington, DC, and the American Beverage Association asked me to speak with you about the Federal Regulatory System that governs the safety and labeling of energy drinks.

First, FDA does fully regulate energy drinks. FDA does regulate dietary supplements. But Dr. Spencer is absolutely correct, now all of the mainstream energy drinks are marketed as conventional beverages, or are being rolled out as conventional beverages and will be labeled as such within the next couple of months. So they are regulated exactly the same way as a can of

Coca Cola.

The FDA has been carefully reviewing energy drinks for more than four years. Though its review is ongoing, FDA stated recently in a letter to Senator Durbin, *"The available studies do not indicate any new previously unknown risks associated with caffeine consumption."*

And to clarify, when caffeine was listed on the label, and to the extent it's not currently, it will be within the next few months, it is caffeine from all sources, including Guarana and anything else that might contribute caffeine as well as anhydrous caffeine.

Like this Legislature, Senator Durbin had questions for FDA about potential interactions or cumulative effects of other ingredients in energy drinks. FDA said it searched the scientific literature and has not found any information that calls into question the safety of ingredients such as Taurine or Guarana as currently used in beverages.

Specifically regarding combinations of ingredients, FDA responded, quote, *"FDA has yet to identify any studies that call into question the safety of combinations of various ingredients added to energy drinks under intended conditions of use."* FDA committed that if it determines that any such combinations are of concern, it will consider regulatory actions as well as other options such as conducting any needed scientific studies. Thus, FDA, the agency with jurisdiction over and great expertise in food safety, has specifically examined the issues of concerns of this Legislature and has concluded that the scientific literature reveals no evidence for concern.

FDA also expressly debunked the myth that the American Academy of Pediatrics recommends a caffeine limit for children of adolescents of 100 milligrams per day. In its November, 2012, letter to Senator Durbin, the agency states, quote, *"FDA contacted the AAP and reviewed its website and was unable to verify an AAP policy statement for the cited value of 100 milligrams of caffeine per day as the upper limit of caffeine consumption for adolescents."* The reason for this myth is that the authors of an article published in the Journal of Pediatrics made this recommended limit, but this is not an AAP recommendation. Rather, it is a recommendation in an article whose lead author is not even a doctor and has only an undergraduate degree. That 100 milligram statement has no scientific basis, but was simply chosen by that author, as explained in detail in the response of Monster Beverage Corporations to Senator Durbin, which you now all have.

Notably, the key scientific articles in that submission are government studies by the NIH, the Institute of Medicine, the OECD, the European Food Safety Authority; these are not industry-sponsored studies. I'm happy to address any questions.

CHAIRMAN SPENCER:

Thank you, Miriam. I appreciate your time. Thank you. Nice to see you again.

MS. GUGGENHEIM:

Thank you. Good to see you again. Thank you for having me.

CHAIRMAN SPENCER:

Our next speaker is Tracy Trypuc and she's representing the Board of Health.

MS. TRYPUC:

Hello. My name is Tracy Trypuc, I'm a Registered Nurse and a member of the Board of Health. If you can just give me one moment here.

First, I'd like to remind everybody what we're here for today. I know my time is limited. I've been working on this issue for a couple of years now and since that time, I have come -- I have been communicating with Wendy Crosslin whose daughter, {Aneas Forneay} died at the age of 14 after consuming an energy drink; that was on the coroner's report. And she communicated with me this

week and she asked me if I would represent her, so I am going to read this letter on her behalf.

"My name is Wendy Crosslin. On December 17th, 2011, my 14-year old daughter {Aneas} went into cardiac arrest at home. I performed CPR until the EMT's arrived. We were airlifted to Johns Hopkins Hospital a few hours after getting to our local hospital. The doctors were baffled as to why this happened. I had found out that the night before, while with friends at the mall, she drank a 24-ounce can of energy drink. She had also consumed another 24-ounce can that evening. About three hours after the second can is when she arrested. After spending six days at her bedside, she was pronounced brain dead at 5:37 P.M., two days before Christmas. She never regained consciousness during these six to seven days. {Aneas'} death certificate lists the cause of death as cardiac arrhythmia due to caffeine toxicity."

"This has been a living hell for our family. Besides her parents, she is survived by Dorian, her twin brother, and Jade, her younger sister. Please do what is right and get these drinks away from our children. Thank you. Wendy."

(*Ms. Trypuc held up a picture of {Aneas Forneay}*)

{Aneas Forneay}, two months before she died. Of course, this is in litigation.

I was going to say some other things, but there's one of me and I've been working on this for a couple of years, and Ron Gaudreault from the Board of Health as well, and they have to send ten paid people to come here into our County and make claims. I have been reading all of this literature. And to say that the Academy of Pediatrics is now not correct; you read the Academy of Pediatrics article, I just find that very -- you know, I brought that up at the last meeting in Riverhead.

One thing I'd like to say. At the last meeting in Riverhead, one of their representatives brought up the fact that if you -- if you restrict energy drinks to children, the children would probably start using other drugs, like perhaps maybe Ridilin. So I went through, again, all of my research, and I would like to clarify that. Some of my research -- and again, this is going to be refuted by the next person that comes up behind me, but it has been shown there is an association between energy drink use and alcohol, and that there is a greater use of alcohol when teen-agers and adolescents use energy drinks. And that also creates a risk because now you have wide-awake drunks.

Studies also suggest that combined with energy drinks, that increased alcohol use leads to injury. Energy drinks also may serve as a gateway to other forms of drug use and may actually increase interest in illicit drugs. So this is contrary to what was said by one of their experts in Riverhead.

CHAIRMAN SPENCER:

Tracy, I've got to get you to wrap it up, in fairness to everyone.

MS. TRYPUC:

Okay. I hope you received the letter from Roberta Friedman from the Yale Rudd Center. There needs to be corporate responsibility, and that has been lacking. They put a warning on the label, it's buried on the back. We are trying to prevent the deaths of children. We do not need to have a Brian or an {Aneas} here in Suffolk County. You have this before you. If we have a child die in Suffolk County, can you look a parent in the eye and say you did nothing?

CHAIRMAN SPENCER:

Thank you, Tracy. I appreciate your passion, but I have to be fair to everyone. Thank you. Thank you for taking the time.

MS. TRYPUC:

Thank you.

CHAIRMAN SPENCER:

John White, American Beverage Association.

MR. WHITE:

Hello, Dr. Spencer and committee.

CHAIRMAN SPENCER:

Hi, John. How are you?

MR. WHITE:

I'm very good. My name is John White, I'm a Professor of Pharmacal Therapy and the Department Chair of Pharmacal Therapy at Washington State University, and my area of interest is Pharmacal Kinetics. And I'm going to focus on just a few comments about the metabolism -- Pharmacal Kinetics is just a \$10 word for the study of metabolism, and so I'm going to talk to you a little bit about the metabolism of caffeine and then caffeine in general.

It turns out that we know a great deal about the metabolism of caffeine in even premature babies, because we use caffeine to treat a condition called apnea of prematurity, and that's a condition where babies quit breathing. And we found that caffeine stimulates that respiratory drive, so most kids who are born premature receive caffeine. That has led to a whole host of studies, and what we know is that initially young neonates, when they are treated with caffeine, the time that it takes for them to eliminate caffeine is very long, it's about a hundred hours. By the time they get to six months of age, metabolically they're more or less mature. So children can metabolize caffeine. Now, I'm not suggesting that children take caffeine, and I'm speaking purely from a metabolic standpoint. By the time someone gets to about six months of age, and even adults, for the most part, we can metabolize caffeine and get about half of it out of our body in about five hours; and there's a range there, but that's essentially how long it takes. Caffeine is very well absorbed when you take it orally, about a hundred percent of it gets into your system, it's absorbed fairly rapidly, about 99% is absorbed in 45 minutes.

And then secondly, I want to talk about overdoses and fatal overdoses, and the unfortunate situation that can occur if someone does consume too much caffeine. If you look at the National Library of Medicines Toxicology Website, you'll find that the fatal dose of caffeine in an adult, or an adult-sized human, is between 10,000 and 20,000 milligrams, and that's a lot of caffeine. So if you look at Red Bull and Monster and Rock Star, the average concentration in those drinks is about a hundred milligrams for every eight-ounce serving. And what that means is that in order to get enough caffeine in the system to cause a fatality, it requires between a hundred and 200 cans of -- eight-ounce cans of those drinks, that's six to 12 gallons.

Ultimately, what that means is that it's really difficult to have a fatal overdose from caffeine alone, and that's from any sort of beverage, from colas or from coffees or from energy drinks. Most fatal overdoses that are known to be due to caffeine occur with medications containing caffeine, that have very high concentrations of caffeine.

(*Presiding Officer Lindsay entered the meeting at 3:13 P.M. *)

And then lastly, I just want to say, empirically caffeine is a very safe compound. It's used by 90% of North Americans on a daily basis. The Food & Drug Administration says that it's safe, the European Food Safety Authority says that it's safe. So just -- I believe, in closing, it doesn't make sense to single out one source of caffeine for restrictions, because there are a whole host of sources of caffeine and a whole source of -- a whole host of palatable sources such as caffeine containing

jelly beans as an example, sodas, coffees.

CHAIRMAN SPENCER:

I do have a question for you.

MR. WHITE:

Yes, sir.

CHAIRMAN SPENCER:

Legislator Kennedy has a question for you, Doctor.

MR. WHITE:

I'm finished. Thank you for your time.

LEG. KENNEDY:

Thank you, Doctor, for being here before us. And I will just say to you that this is a subject that's been before us for a good period of time. I think that the bills have some validity and some merit to them, but we are -- well, I shouldn't say we. I will tell you I am struggling to try to look at a broad balance associated with everything that we have in tact here. And one of the difficulties for me personally is I'm a lawyer, I'm a dirt lawyer. You know, I took some bio back in, you know, ancient history time, and since then I am trying very hard to parse the science and the regulatory aspect of this. So when a person like yourself comes to the podium, I almost view it as an opportunity. You are a scientist by trade then, if you will; correct?

MR. WHITE:

Yes, sir.

LEG. KENNEDY:

Okay. And you've qualified yourself as having spent a good part of your career in this category or area of metabolism; I can't remember what it was that you said.

MR. WHITE:

Yes, sir. Pharmacokinetics.

LEG. KENNEDY:

Pharmacokinetics, okay.

MR. WHITE:

Yes, sir. That's what I teach.

LEG. KENNEDY:

All right. So -- and you shared with us a little bit about caffeine and what the effects are on the newborn or, you know, as a child matures and develops, and you've said that, I guess, by the time an infant hits six months of age, they now have a capability to basically process caffeine as if they were a 56-year old man; it's basically the equivalent?

MR. WHITE:

Metabolically, but still they're very small, so that would be on a milligram per kilo basis.

LEG. KENNEDY:

Okay. Agreed.

MR. WHITE:

If you gave a child 400 milligrams --

LEG. KENNEDY:

Right, right.

MR. WHITE:

-- you know, that would be not a good situation.

LEG. KENNEDY:

Okay. But you're talking about, I guess, the maturation of the organs themselves and how they can function.

MR. WHITE:

Yes, sir, and the enzyme pathways that metabolize caffeine.

LEG. KENNEDY:

And then a proportionate to the size.

You also talked a little bit about caffeine and caffeine being present in many different forms. I mean, you know, I'm from the old school, I drink a cup of coffee. I'll tell you, if I could get Starbucks, I'd give my eye teeth for it. But, you know, and also in the spirit of full disclosure, I've never had an energy drink and I'm never ever going to have one. Just don't like it, don't have any affinity to it, don't see the need for it. But I am a little confused when I listen to the multiple components, the stimulants, if you will, that are contained in an energy drink. So there's caffeine, but then there's also gua --

MR. WHITE:

Guarana.

LEG. KENNEDY:

Guarana, yes. Tell me about the nexus or the effect with the two of them.

MR. WHITE:

That's a really good question. Guarana is sort of like a coffee bean, it's just another source of caffeine. And my understanding -- so it is something that needs to be considered and put into the equation. My understanding is that when they list caffeine content, it includes the caffeine coming from Guarana. There are, to my knowledge, no other stimulant compounds in energy drinks except for caffeine. Although, granted, there are a host of other compounds.

LEG. KENNEDY:

Okay, but let's just stay on that for one second, particularly with you in the area of metabolism. Does the one have an enhancing or boosting effect on the other? Is there a synergy or is it just merely that you have two items that sit by side by side cumulatively?

MR. WHITE:

Yes, sir. That is -- it is an additive concentration or an additive dose or amount of caffeine.

LEG. KENNEDY:

It does nothing to speed up or enhance the way the body processes the broad concept of caffeine?

MR. WHITE:

No, sir, not to my knowledge. It's very -- I mean, a good analogy -- not analogy. A good example would be you could have a pot of Guarana and you could have a bowl of coffee beans and you could have a bowl of tea, and they're all -- they all contain some caffeine and you can mix them together, but the amount of caffeine that's in that mixture is the dose of caffeine that you would get. There wouldn't be any synergistic effect awarded to, or a person wouldn't be receiving a synergistic effect

from taking those compounds together. They would receive an additive amount of caffeine.

LEG. KENNEDY:

Okay. Just one other aspect I'm going to ask you. And I appreciate you indulging me in my questions.

MR. WHITE:

I appreciate them.

LEG. KENNEDY:

I think it's probably, you know, self-evident, but I'll ask anyhow.

So a 56-year old man, and my physiological ability to go ahead and synthesize caffeine, compared and contrast, if you will, a 12 or a 14-year old as far as -- we don't have youth-sized drinks vended. My -- when I walk into a 7-Eleven or someplace else, I see whatever they come in, 16-ounce, 24-ounce or what have you. We don't have, you know, an old-man sized and a kid-sized. What's the effect?

MR. WHITE:

Well -- and that's a really great question. Just generally speaking, the effect, the physiologic effect of caffeine is going to be related to, one, has the person -- do they consume caffeine routinely; and secondly, how large are they? So a 12-year old that is 150 pounds who drinks who 200 milligrams of caffeine is going to have a lesser impact than a 70-pound 10-year old. And it's really -- for the most part, there are nuances and there are genetic differences in metabolism. For the most part, the impact's going to be based on the weight of the person.

LEG. KENNEDY:

Okay. All right. Let me not continue to, you know, monopolize it.

MR. WHITE:

And I'm sorry, did I not answer that?

LEG. KENNEDY:

No, no. As a matter of fact, look, as I said, I appreciate any kind of, you know, generic info I can get. Thank you. And I appreciate you being here. I'll yield, Doctor.

CHAIRMAN SPENCER:

Thank you, Legislator Kennedy. I appreciate it. Thank you, Doctor. I appreciate your time.

MR. WHITE:

Thank you, Dr. Spencer.

CHAIRMAN SPENCER:

Our next speaker is Pat Bishop-Kelly.

MS. BISHOP-KELLY:

Thank you for the opportunity to address this committee. My name is Pat Bishop-Kelly, I'm a resident of Suffolk County and I recently retired from the Suffolk County Department of Health Services, Division of Preventive Medicine and Office of Health Education. I'm here today in support of proposed legislation 1085, 1920, a Local Law to protect minors from direct mail stimulant drink advertising and samples.

By now you've heard a good deal of testimony that what is or is not contained in these questionable stimulant drinks, how safe or toxic they may be and what this legislation proposes to achieve. This is very reasonable and sensible. The proposal is very reasonable and it provides necessary education about a potentially harmful product and to restrict the access to minors is specifically designed -- targeted, if you will -- for the most vulnerable of our population, our children. A good thing, we say, to educate our children. A good thing, we say, to protect our kids from potential harm. Currently marketing and advertising of these stimulant drinks replicate the same intent and the impact of the marketing put forth by the big tobacco companies only a few short years ago. Getting kids to use their products on a regular basis, slick advertisements promising membership in the universe of super cool, physically fit, attractive and popular surrogates is the manner in which these products are presented to our children. These products are glamorized and normalized. Everybody is doing it.

There are, however, some serious consequences to the consistent use of these products by our teenage and young adult population. While lured into using them for the promise of enhanced physical performance, increased stamina and outstanding success in sports, the exact opposite is in reality. First of all, those who use mega doses of caffeine and stimulant drinks to enhance their alertness and physical stamina will suffer a crash once the stimulants have worn off, thus causing the need to redose with the same substance to maintain the same level of alertness and performance. A vicious cycle of repetitive use of a questionable product.

In addition, the NCAA, the National Collegiate Athletic Association, has banned all stimulant drinks for their student athletes. When you read through the NCAA guidelines and the list of banned drugs, stimulants is number one on their list, as well as caffeine. I have printed out a list, a copy of the NCAA guidelines and each one of you has that copy. The NCAA has determined that these substances can cause heat illness and cardiac arrests. Heat injuries are stroke, heat stroke or heat exhaustion.

I'd like to read just an excerpt from the NCAA guidelines so we are cleared. *"If not injured by these drinks, students can and will lose their place on sports teams and scholarships if found to be testing positive with one of these banned substances."* The banned drug list from the NCAA guidelines goes as thus: *"The NCAA Bans the Following Classes of Drugs: number one, stimulants, anabolic agents, alcohol, diuretics, street drugs, peptides, anti-estrogens and Beta-2-Agonists. Drugs and Procedures Subject to Restrictions: Blood doping, local anesthetics, manipulation of urine samples, beta-2-agonists, and caffeine in concentrations in urine which exceed 15 micrograms. NCAA Dietary Supplements Warning: Dietary supplements are not well regulated and may cause a positive drug test result. Student athletes have tested positive and lost their eligibility using dietary supplements."*

CHAIRMAN SPENCER:

Pat, I need you to wrap it up.

MS. BISHOP-KELLY:

Wrap it up?

CHAIRMAN SPENCER:

Yes. Thank you.

MS. BISHOP-KELLY:

Okay. Well, you each have a copy of this.

The other thing is that the NCAA also includes energy drinks in their warning to students. They said, *"Many of these contain large amounts of either caffeine or other stimulants, both of which can result in a positive drug test. Students athletes should be weary of drinks that promise an energy boost"*

because they may contain banned stimulants in addition to the use of stimulants, while exercising can increase the risk of heat illness."

So, if the NCAA is telling our kids that it's not okay to use these stimulant drinks, we should also be telling them the truth about them so they don't find out the hard way through serious illness or losing a scholarship or a place on a beloved team. We have an opportunity to make a choice between -- a choice between corporate profits and our children's health. We must make the right choice, because when we fail to act we all pay the price.

CHAIRMAN SPENCER:

Thank you, Pat. Thank you so much for taking the time and coming out. We appreciate it. Our next speaker is Jim Coughlin.

MR. COUGHLIN:

It's Coughlin.

CHAIRMAN SPENCER:

Coughlin? Okay. Hi, Jim. How are you? Welcome.

MR. COUGHLIN:

Nice to see you, Dr. Spencer. And it's Coughlin like the coach.

I'm Dr. James R. Coughlin, I'm an independent consultant in toxicology, living and working in southern California. I've got almost 40 years experience in the field of food chemistry, food safety, nutrition and toxicology. I did my training at the University of California Davis Master's, PhD in Post Doc in these same subjects.

Specifically to what we're talking about today, you might not believe it, but there are people who do a lot of focus on something like caffeine. I've got over 30 years experience dealing with the health and safety issues surrounding coffee, caffeine and other caffeine-containing beverages, and what I'd like to do is to briefly go through some key points.

I believe your resolution to regulate energy drinks is actually unwarranted and really not based upon sound principles of good science. First of all, the health outcomes of caffeine have been thoroughly studied for decades, and I've been involved with it for 30 years, over 30 years. And the best available clinical and epidemiologic evidence does not support the idea, the concept that caffeine, whether whatever form it might be in, whatever source it may be, should be prohibited. It's been well established for decades as safe.

As you certainly have heard from others, the caffeine content in mainstream energy drinks is either equivalent to what you brew at home in our filtered coffee, or sometimes probably half of what you get at a local coffee shop. Coffee, tea and soda are the primary sources of caffeine, even in the diets of children and teens. It's not energy drinks. And that was -- I'm sure you've all heard about the FDA study that was published in August, 2010.

Let me address just a couple of health outcomes of caffeine. It's been -- as you've heard from Dr. White, it's been consumed from Malenia safely and widely consumed in the world. The best available combination of clinical, scientific and epidemiologic evidence has not shown adverse health effects from caffeine-containing beverages and for the past ten years it's actually the opposite; there's been many benefits shown to caffeine and other caffeine-containing beverages.

In your resolution, there's two end points, hypertension and arrhythmias that are addressed. My first year dealing with caffeine was back in 1981, I was at General Foods Headquarters in White Plains, Maxwell House and Sanka, you've certainly heard of them. Dr. Dave Robertson, an M.D. at Vanderbilt, published a study in 1981 where he actually gave very high doses of caffeine to

hypertensive men and he did not show that it increased their blood pressure. That was well over 30 years ago and there's been hundreds of studies published since showing no link between caffeine consumption and increasing hypertension.

Including recent reviews that were published in 2011, two major analysis and reviews, overall, the moderate, we call moderate caffeine intake anything in the neighborhood of, say, three to 400 milligrams per day, has not been shown to have an adverse effect on cardiovascular health, including arrhythmias. Dr. Bernie Lown, we had contact with Dr. Bernie Lown, he's a very famous physician at Harvard. He actually invented the D.C. defibrillator, and when you say the word Bernie Lown you say arrhythmia. He has published a study in 1989, he took men and women who were arrhythmogenic and showed that they -- under test conditions with caffeine, they did not increase any type of ventricular arrhythmias in that study. My time is over. Thank you.

CHAIRMAN SPENCER:

I actually gave you a little extra time by accident. It seemed like you came a long way. I forgot to start the clock there, so. Thank you.

MR. COUGHLIN:

Thank you.

CHAIRMAN SPENCER:

Thanks for your testimony. Nancy Hemendinger, Office of Health Education. Hi, Nancy.

MS. HEMENDINGER:

Good afternoon. My name is Nancy Hemendinger and I oversee the School Health Education Program for the Suffolk County Department of Health Services, Office of Health Education. I'm here to speak in favor of IR 1085 which protects minors from direct mail stimulant drink advertising and samples.

You have heard testimony from public health advocates and beverage industry representatives about stimulant drinks. In many instances, the information presented has been completely contradictory. It's up to you to decide which side has the health of the children as its priority.

Recently this Legislature allocated \$75,000 for the Office of Health Education to purchase Health Smart curriculum for the continued training of teachers and community-based professionals who work to establish healthy norms with Suffolk County children. Health Smart is a comprehensive K through 12 health education program. Students learn to incorporate healthy behaviors into their lifestyles. The curriculum follows the Centers for Disease Control and Prevention recommendations on risky behaviors that need to be modified. It addresses tobacco use, poor nutrition, lack of physical activity and other behaviors that lead to mortality and morbidity in children and adolescents.

In the nutrition component, children learn the importance of drinking water, low-fat milk, and avoiding sugary, sweetened beverages that do not fuel the body but rather contain empty calories and lead to weight gain. Through the Health Smart curriculum, children learn that healthy dietary and exercise patterns and getting enough sleep fuels and strengthens their bodies. The Health Smart curriculum is one tool in helping children and adolescents combat the ongoing barrage of unhealthy media and cultural messages which promote unhealthy ways to look better and gain artificial energy through stimulant and sugary drinks. Children do not need artificial stimulants to help keep them -- help them perform complex tasks or increase stamina. They need, again, proper nutrition, they need to be physically active and they need a good night's sleep.

The ultimate goal of the Health Smart curriculum is to make healthy behavioral norms. Healthy norms are established by first having accurate information, then stating intentions to make healthy choices, and then actually implementing those choices into their lives. To increase health behaviors, the environment needs to support those healthy choices. I'm almost done.

Direct marketing of these products to our children sends mixed messages. This Legislature has very wisely supported the Office of Health Education's continued training of teachers, parents and community members in providing health education to our children.

By passing IR 1085, you are creating healthy norms that will stop the direct marketing of stimulant products to our children, a practice which completely undermines Health Smart lessons and is contradictory to the recent support of prevention in health education for our Suffolk County children. Thank you.

CHAIRMAN SPENCER:

Thank you, Nancy. I appreciate, again, your testimony. Thank you for being here.

Nancy Marr is our next speaker, and she is with the League of Women Voters.

MS. MARR:

Correct.

CHAIRMAN SPENCER:

Hi, Nancy.

MS. MARR:

Hi. I want to talk about the need for transparency and accountability in the County Executive's health care privatization plan. The League of Women Voters of Suffolk County is aware of the financial crisis affecting our County revenues, and we acknowledge the pressing need for expense reduction to close the budget gap, as required by the New York State Comptroller's Office. However, as reported in Newsday on March 12th, County Executive Bellone's administration is pressing ahead with ambitious efforts to shift direct care to third party providers to cut labor costs, gain higher aid reimbursements and jettison malpractice expenses. Bellone aides say the changes will enhance, not diminish, services, and if we can find a way to save without impacting services, it's a no-brainer. The league begs to differ.

We are particularly concerned about the County Executive's use of a waiver to avoid the normal Request For Proposal process to rush through the process. The decision to privatize a public service should be made after an informed, transparent planning process and a thorough analysis of the implications to ensure preservation of the common good. The County Executive and the Legislature should be coordinating an immediate and focused study regarding which options and operator proposals would have the least impact on our most vulnerable neighbors, as well as submitting a proposal request which includes more details.

We also need a thorough analysis of the Hudson River Health Care's performance and services at the Coram Health Center. Suffolk County government is accountable to all its citizens. Bypassing an established transparent process that could dramatically affect many of our residents at some time in their lives is a dangerous precedent for the County Executive to set. The County Executive clearly intends to move rapidly to privatize all current County health services and has filed closure plans with United -- with the New York State for the John J. Foley Skilled Nursing Facility, leaving no local option in place for the current residents of that facility. It also appears that the thousands of County residents who need the current County health care centers may soon be without a comparable alternative for their needs. Thank you.

CHAIRMAN SPENCER:

Thank you. Our next speaker is Kym Laube. Is it Laub or Laube?

MS. LAUBE:

Laube. We answer to all. Good afternoon. My name Kym Laube and I am the Executive Director of HUGS and I'm also the President of The Quality Consortium of Suffolk County which represents the 20 alcohol and drug prevention treatment and recovery agencies, and the over 70,000 constituents of Suffolk County.

I'd like to express our support for Resolutions No. IR 1920, 85, 86. Each of these resolutions works to educate and protect our youth from stimulant substances. In 2012, the energy drink sales totaled near \$7 billion, which is a 19.4% increase from 2011. This figure is astounding and it should be noted energy drinks now outsell bottled water in the United States. Energy shots made up almost a billion dollars in sales themselves with some seeing triple digit growth last year alone. These energy shots are small and easily hidden and quick and easy to consume. One can clearly understand why there's so much resistance from the industry to limit the sales on any level. Caffeine is one of the world's most largely used drugs that comparatively one could argue is minimally safe -- argue is safe with minimal side effects. Yet to a young, developing body, high doses of caffeine alone with other chemicals can negatively affect all major organs creating health risks including dehydration, rapid heartbeat, spikes insulin and even, at times, death.

We're not talking about your regular soft drink or your general cup of coffee which, for the most part, have regulations and protections on it. We're talking about stimulant drinks that often times are marketed at -- are listed as dietary supplements, products that have no limit that have additional chemicals added to it such as Taurine and Guarana. It should be noted that the Guarana plant itself spits off little seeds and that's -- they do that to kill their pray, that's how toxic that is. Although the manufacturers would tell you they market to 18 and 30-year old crowd, we know it's middle school and high school youth that are targets. Most extreme sporting events such as X-Games are sponsored in part or by whole by energy drink companies. Many websites popular with their youth include a plethora of advertising. Product placement in stores is often at counter level for quick pick up at check out or between the soft drinks and alcohol products, placed strategically for our youth to see.

Recently, we've all received education about the dangers of mixing alcohol and stimulant drinks; this is a deadly combination and emergency room workers have shared their stories about the outcome they have seen as a result.

Unlike many others who testify, I work with youth on a daily basis. Young people report to me many stim -- they drink many stimulant drinks in a row just to get the buzz, and often you will find young people wearing necklaces that have colorful, aluminum tabs as a badge of honor. We have an epidemic with addiction happening in our County and at some point we need to stop treating the symptom and look at early onset and early predictors. Getting a buzz on stimulants early on is high risk behavior and should be not minimized nor ignored. We must step in where others don't and stand for our young people. Our youth are not protected by the FDA nor the beverage industry and, therefore, must be protected by Suffolk County Legislature.

CHAIRMAN SPENCER:

Thank you. Good timing. You finished perfectly.

MS. LAUBE:

I left the last paragraph out.

CHAIRMAN SPENCER:

Thanks for your testimony.

Okay. That's all the speakers that I have. We do have a presentation, Commissioner Tomarken. Commissioner? Commissioner of the Department of Health, James Tomarken, needs no introduction.

COMMISSIONER TOMARKEN:

I just wanted to make a couple of comments about the energy drink issue. Just to put it in a different perspective, I look at it from a public health perspective. Three points.

Number one, there have been issues about the safety raised by medical -- the medical community, including the Substance Abuse and Mental Health Services Administration, the American Academy of Pediatrics, and so they've raised these questions as to its safety and appropriateness.

Number two, the American Academy of Pediatrics has said that there is no nutritional value in these substances. And they have said in the Journal of the American Medical Association on January 16th, 2013, in a -- in their journal -- and this is what they call a patient page, a physician would give to a patient -- it says, "*The American Academy of Pediatrics recommends that young children should not consume energy drinks. Caffeine may be especially harmful for children,*" and then it goes on to talk about adolescents, etcetera.

And the third point I'd like to make is that from our public health and nutrition point of view, and this point was made by Nancy earlier, this is a very bad message to give to our children. That when they're tired, when they need energy they should take an external substance rather than getting proper sleep, eating a proper diet and curtailing their behaviors and activities in a way that's healthy and not reaching for an external substance that they have no need for. Thank you.

CHAIRMAN SPENCER:

Thank you, Commissioner. That's the recommendations from the Board of Health, is that correct? You're representing the Board of Health.

COMMISSIONER TOMARKEN:

(Nodded head yes).

CHAIRMAN SPENCER:

Thank you.

With that, we have a presentation today from Biogard from David Abecassis. But before David comes forward, and you're going to be next, we have a lot of people who have traveled and been here for a long time with regards to, again, a very charged issue, the energy drink issue. And I definitely understand that there's a lot of information that's out there and there's a lot that we don't know, there are opposing views. And there is a just a substantial amount of debate around this issue, and I do appreciate that. And it's not an issue -- I know there's been a lot of concern, especially with back and forth with letters and e-mails and meetings, and this is an issue the Board of Health has been addressing for three years and it's also an issue that I've been involved in for the last nine months. I have made a lot of concessions in terms of where I personally feel in terms of looking at some of the science and some of the other issues that are relating to this issue.

But with that being said, out of respect for our audience, I'm going to make a request that we take IR 1085 out of order, that's a Local Law to protect minors from direct mail stimulant drink advertising and samples. And I'm going to make a motion to take it out of order.

LEG. CALARCO:

Second.

CHAIRMAN SPENCER:

On the motion, all those in favor? Opposed? Abstentions to take it out of order? The motion is before us.

IR 1085-13 - Adopting Local Law No.-2013, A Local Law to protect minors from direct mail stimulant drink advertising and samples (Spencer). I would like to make a motion to approve. Is there a second on the motion?

P.O. LINDSAY:

I'll second it.

CHAIRMAN SPENCER:

Second by Presiding Officer Lindsay. Any discussion on the motion?

LEG. BROWNING:

I've got a question.

CHAIRMAN SPENCER:

Legislator Browning.

LEG. BROWNING:

This is pertaining to the advertising. I'm sorry, I was talking to Greg.

You know, I'm just curious, though. I certainly agree with the fact that we should not be marketing to children. However, my question is if a child is -- receives a mailing, obviously, do the marketing companies always know it's a child that they're marketing to? Where are they getting the lists from? And what if it comes from outside of New York? Say it came from -- the mail list came -- you know, the marketing was mailed from New Jersey or California or even Nassau County; how does that work?

CHAIRMAN SPENCER:

Well, I'm going to defer to Legislative Counsel.

MR. NOLAN:

Definitely if the mailing comes from outside the County it's going to be a problem enforcement-wise to get jurisdiction over those people. So from an enforcement point of view, the mailing of samples and the mailing of coupons may be difficult for the department to enforce, no doubt.

LEG. BROWNING:

Okay. You know, I did speak with, you know, one of my local sports clubs, because I know that that was an issue that came up here amongst the Legislators about somebody's child getting a mailing. It's my understanding that it was actually one of their own members that took the list. And I spoke to one of my local sports clubs and I said, "Do you use your list or do you ever sell your lists," because I know money's an issue, and they said they don't because it's children.

(*Legislator Montano entered the meeting at 3:46 P.M. *)

So, you know, again, I'm not opposed to this. I know we'll have further discussion on the energy drink issue, but, you know, I guess we'll enforce it to the best of our ability, but it has to be within Suffolk, I guess.

CHAIRMAN SPENCER:

And again, with regards to this legislation, I acknowledge that the majority of the players that are out there, what the associations do, try to act responsibly. And I've been impressed by really just

looking at some of the safeguards and things that they do. We have a difference of opinion in some areas, but still, there's no way for there to be control of the outliers. And so the way that we see it, if there is compliance already and children aren't being targeted, then this won't have any impact.

LEG. BROWNING:

I know we all want to get out of here, but I just want to let you know. One thing that I tried to get information on, and obviously I'll bring it up again, I looked at food stamps, what you can and cannot buy with food stamps, and it talks about energy drinks. It says, *"When considering the eligibility of energy drinks and other brand of products, the primary determinant is the type of product label chosen by the manufacturer to conform to Food & Drug Administration guidelines."* And it says with food stamps, you can buy an energy drink that has nutrition fact labels, but it says, *"Energy drinks that have a supplement facts label are classified by the FDA as supplements and are, therefore, not eligible."* So it depends on what the label is on the energy drink, whether you can buy it. I thought it was pretty surprising. I heard you can actually buy -- oh, you know those mixers you get, like for margaritas or pina coladas? You can actually buy that with food stamps (*laughter*).

So, you know, I just thought it was interesting where people can buy an energy drink with food stamps if it has a nutrition facts label on it.

P.O. LINDSAY:

Let me just jump in.

CHAIRMAN SPENCER:

Absolutely; Presiding Officer Lindsay.

P.O. LINDSAY:

I think that to a certain extent, a lot of the legislation we're talking about, it isn't the substance of the legislation as much as it is the statement of this County, that this is a product that we have grave concerns over. And that -- and I think that message to our populus, it could be helpful, and I'm sure the industry recognizes that, otherwise they wouldn't spend as much money as they are, you know, trying to fight these bills. You know?

CHAIRMAN SPENCER:

Thanks, Presiding Officer. Okay. We have -- Legislator Kennedy.

LEG. KENNEDY:

Yes. Just one other question. And I'm looking at the bill, I was going to ask George to give us what the changes are, I don't have to go to that. But I do want to hear from Dr. Tomarken that we do have some sense to be able to enforce if we have a violation. It seems to me the Health Department is the enforcing entity?

CHAIRMAN SPENCER:

Yes, and they have a hearing process that's already set up through the Sanitary Code and Dr. Tomarken --

LEG. KENNEDY:

Can he just speak to us for one second about that?

CHAIRMAN SPENCER:

Dr. Tomarken, if you would please come forward.

COMMISSIONER TOMARKEN:

It would be enforcement by complaint.

LEG. KENNEDY:

Okay.

COMMISSIONER TOMARKEN:

And it would be very similar to what we do with people who violate restaurant inspections or water inspections and things like that. So they would have a hearing, the evidence would be presented, the fine as defined in the legislation would be applied.

LEG. KENNEDY:

So assuming that this goes through and gets adopted, then we'll get some kind of notification? Because, see, unlike those areas, Doctor, our personnel are actually going out and doing site inspection. In this case, I think we'll be kind of relying upon the public to come to us and say, *"We received this item in the mail"*?

COMMISSIONER TOMARKEN:

It's a bit of both, yeah. Because not only do our inspectors, our sanitarians go out for regularly scheduled visits, but we may get a complaint.

LEG. KENNEDY:

Yes, that's true.

COMMISSIONER TOMARKEN:

And we then go out to see what's going on and then issue a ticket.

LEG. KENNEDY:

Okay. So wherever it's appropriate on our website or whatever the appropriate site is, whatever phone number, and there is a process. There will be notice and there's the hearing and then the subsequent penalty process.

COMMISSIONER TOMARKEN:

Correct.

LEG. KENNEDY:

Okay, fine. All right. Thank you, Doctor.

LEG. MONTANO:

Before he goes.

CHAIRMAN SPENCER:

Dr. Tomarken, Legislator Montano has a question.

LEG. MONTANO:

Good afternoon, Doctor.

COMMISSIONER TOMARKEN:

Hi.

LEG. MONTANO:

Hi. I did miss some of the speakers. This bill, just very quickly, you're going to administer this bill through the Health Department?

COMMISSIONER TOMARKEN:

Yes.

LEG. MONTANO:

Okay. And this is simply the bill that requires no distribution and samples to minors.

COMMISSIONER TOMARKEN:

Correct.

LEG. MONTANO:

Are there any other products that we do the same thing for, on Long Island or in Suffolk?

COMMISSIONER TOMARKEN:

Yeah, there are things like Cadmium and things like that.

LEG. MONTANO:

I'm sorry, what was that?

COMMISSIONER TOMARKEN:

Cadmium, that where if we get complaints -- there is certain legislation, I don't have the list, obviously, in front of me -- where we respond by complaint.

LEG. MONTANO:

All right. So in other words, there are other items that we prohibit the free samples and coupons for?

COMMISSIONER TOMARKEN:

No, not necessarily. No, I'm talking more about content, something had something in it like a Cadmium. But in terms of mailings or --

LEG. MONTANO:

To minors?

COMMISSIONER TOMARKEN:

In terms of mailings, not to my knowledge that we have any other substance that we're addressing in this manner.

LEG. MONTANO:

And the one you just mentioned, what did you say, Cadmier?

COMMISSIONER TOMARKEN:

Cadmium; it's just in jewelry.

LEG. MONTANO:

I'm sorry?

COMMISSIONER TOMARKEN:

It's used in jewelry. It's imported from outside the country.

LEG. MONTANO:

But that doesn't -- but there's no prohibition as there is in this bill, is there; is that what you're saying?

COMMISSIONER TOMARKEN:

There's a limit. There's a Federal limit on the amount of it that can be used in certain jewelry, and if we got a complaint we would have to go out and investigate it. But in terms of --

LEG. MONTANO:

Because there's a Federal law that limits that, is that what you are saying?

COMMISSIONER TOMARKEN:

There's a Federal regulation? There's -- the County has passed a law that prohibits it above the Federal regulations, I recall.

LEG. MONTANO:

All right. So there's a Federal ban is what you're saying. There's a --

COMMISSIONER TOMARKEN:

There's a Federal --

LEG. MONTANO:

Excuse me?

COMMISSIONER TOMARKEN:

There's a Federal regulation.

LEG. MONTANO:

There's a Federal regulation that I would presume bans a certain quantity of that item in jewelry, is that what you're saying?

COMMISSIONER TOMARKEN:

Yes.

LEG. MONTANO:

Okay. And we have a Local Law that exceeds the Federal limit, is that what you're saying?

COMMISSIONER TOMARKEN:

We have an enforcement, potential enforcement by complaint. Somebody would have to bring us a complaint. We don't go out and routinely examine these commodities.

LEG. MONTANO:

Right. But that ban -- just to be clear, that ban you're talking about comes from the Federal regulation. It's not a local ban, it's a Federal regulation that every state and county would have to abide by or not?

COMMISSIONER TOMARKEN:

I don't know about every state. This County does.

LEG. MONTANO:

Excuse me?

COMMISSIONER TOMARKEN:

It's a County law.

LEG. MONTANO:

George, you want to explain that to me?

MR. NOLAN:

Well, I can't really speak to that, but there is another example. The County prohibits the distribution of free informational samples of cigarettes, cigars, chewing tobacco, tobacco products, to any person within the County, so that is another example.

LEG. MONTANO:

That's what I was saying.

LEG. CALARCO:

Tanning salons.

D.P.O. HORSLEY:

Tanning salons.

LEG. MONTANO:

What was that, tanning salons?

MR. NOLAN:

Not samples, though.

LEG. MONTANO:

We don't -- yeah, no samples. We regulate.

Okay. The question was whether or not we had another one and Counsel has explained it to me. Thank you.

CHAIRMAN SPENCER:

So I have no further speakers. We have a motion to approve and we also have a second. All those in favor? Opposed? Abstentions? The motion carries, 5-0. Thank you very much.

MS. ORTIZ:

Six.

CHAIRMAN SPENCER:

Six zero, 6-0, thank you.

Next, we're going to ask if David Abecassis who is President of Biogard, he is going to be giving us a presentation on the technology regarding the removal of nitrogen from residential waste treatment centers.

MR. ABECASSIS:

Good afternoon. I'll wait a minute.

P.O. LINDSAY:

Hold on.

CHAIRMAN SPENCER:

Hello. How are you?

MR. ABECASSIS:

Thank you so much for having us.

CHAIRMAN SPENCER:

Sorry to keep you waiting. Thank you.

MR. ABECASSIS:

That's fine. We appreciate the opportunity to -- at Biogard, to make Suffolk County aware of -- first of all, we're a Suffolk County based company, we're out of Centereach. We've been working close to a year on a technology that's now going into validation. It's called Nitro-Cess and we believe it's the

first really cost effective way to deal with nitrogen at the origin of cesspools and septic tanks.

We've been around since 2010; again, we're out of Centereach. We're a general green technology solutions company. Our focus has been on sustainable agriculture, food, environmental stewardship technologies. We've got ten core patented technologies now and that's growing. And we focus on safe, cost effective solutions for different types of environmental problems, among others.

Nitro-Cess is patent-pending; it's currently not published but it will be. It uses a very safe, low cost proprietary media, which selectively removes nitrogen in the form that you find it when it's still in a cesspool or septic tank. We're doing the testing and we've developed, under the guidance of the Suffolk County Department of Health which has been integral in guiding our efforts, and the media was tested for efficiency in nitrogen removal by EMSL Laboratories in New Jersey.

So we're currently have the proposal for the prototyping with Suffolk County Department of Health. They're going to make additional comments and then we're going to submit it to the New York DEC for the final testing.

There are two versions of the invention right now. The first version we're looking to develop would be inserted directly into the overflow tank, the leaching overflow tank in a two-tank system, and we use passive in-tank flow to contact the nitrogen and remove it.

The second version would sit outside the septic tank, disguised as a rock or a shrub, it's a small unit. It will pull out the nitrogen-rich water from the septic tank and then pump it through the unit, contact it with the media and then return it to the septic tank where it could continue leaching.

Now, one of the big break-thrus here is this is very cost effective. Nitro-Cess Media is inexpensive. That allows us to make the unit for -- we're estimating our costs, our retail, suggested retail price, depending on the size of the unit, will be about 300 to \$700 a unit. The Nitro-Cess Media is also very selective for nitrogen. Our removal target is 15 pounds of nitrogen per home with three inhabitants or more, that's 50%. If we can do better we will, it's just simply a question of adjusting the amount of media.

Now, one of the nice things about Nitro-Cess, you know it's very easy to manufacture. We've already had some of the municipalities say, "We'd like to make it locally," so it has the potential to create a variety of Long Island jobs related to manufacturing. The setup for manufacturing is not much. A facility would be between 25 to \$40,000 to implement. The product creates both engineering and entry-level manufacturing jobs, and there's a low set-up capital requirement, and I just went over that.

Our business model is to license, train and certify service providers; these would be cesspool and septic tank service companies. We will train them on the use of our product. We would also license the manufacturing to third parties. We will also be manufacturing some of the units ourselves and selling them into the market place.

We're currently looking at ways to create value from the concentrated nitrogen. That could be fertilizer, that could be fine chemicals, we're looking into what to do with that. We will have a concentrated source of ammonia, which is the form of nitrogen that you're going to be pulling out.

Right now our initial market, we're going to be starting here. Locally, Suffolk County's got about 80% septic tank leaching and Nassau's got about 20%. So we've already made some inroads, we worked extensively in discussions with the Town of Southampton. They're actually, once this product is approved, looking to implement regulations for new construction.

We've also made attempts now, we've got a distributor for New England, it's going to be taking us into the six New England states immediately, the coastal states, all the way down to the southeast, and we've also got a Caribbean distributor who's going to be taking them to the U.S. Virgin Islands where there's very little sewage treatment.

That's roughly it in a nutshell. We'll be making the prototypes and doing the testing going to the next probably 30 to 60 days, and we're hoping to have the approval from New York DEC and also from Suffolk County Department of Health before the end of the year and be a full manufacturing. Do you have any questions for me?

CHAIRMAN SPENCER:

We do. Legislator Horsley.

D.P.O. HORSLEY:

Just very quickly. Generally when -- and maybe this is a proposal to a group like us, the Legislators, and we don't look at the science necessarily concerning it, but I think that is something obviously that we've all got to look at, particularly if you are going to be going to our -- to not only the Health Department, but also our folks in Water Quality involving the Public Works Department, you know, our sewer people. Is there a science behind this? Do you --

MR. ABECASSIS:

There's a very strong science behind it. Basically the form of nitrogen that you find in septic tanks and cesspools, its Ammonium NH_4^+ , it's a charged ion, because there's not enough oxygen for it to be nitrate. When it hits the sand, it's in the form of nitrate, NR_3 .

So our media pulls out that ammonium specifically while it's still in the cesspool or septic tank. It's a positive charge. We use a media -- not only has a negative charge, but also has a -- it's a special -- it stacks the ammonium molecule a little bit like corns inside a corn wrapper. We've validated the media at a third party lab, so it does remove the ammonium from solutions. So --

D.P.O. HORSLEY:

You provide that science to our respective parties.

MR. ABECASSIS:

Yeah, absolutely. Everything is documented. We --

D.P.O. HORSLEY:

And certified by a lab?

MR. ABECASSIS:

This is certified by a third party lab, they're an environmental lab, EMSL Labs, they're highly reputed, they're out of New Jersey.

D.P.O. HORSLEY:

Okay.

MR. ABECASSIS:

So they've tested the media. We'll further be testing the efficiency of the media, the rear wall deciding to figure out how much of the media actually has to be used to reach targets. But the core science is actually very simple.

D.P.O. HORSLEY:

Now, do you try to reach a certain level of nitrogen reduction? I know that, you know, there's --

MR. ABECASSIS:

Yes. The target --

D.P.O. HORSLEY:

-- point one, you know, whatever it may be, you know, up to ten, etcetera.

MR. ABECASSIS:

We had -- 10 PPM is what's tolerated for drinking water, 2 PPM is enough to screw up the coastal ecosystem. We're trying to -- the target for success that we were given when we first were approached with this through Suffolk County Water Authority discussions was we'd like to -- remove half of that would be considered success, but if we can up the unit and double the media and get it all out, certainly that's what we would like to do. It's about 10 pounds per person per household per year. The unit would be designed to be serviced once a year, so we're trying to get as much of that 10 pounds out per household that we can. If we can get all of it, it's just -- it's a question of the size of the unit, basically.

D.P.O. HORSLEY:

Is this a testing phase, is that what you're doing? Or you've pretty much done your science, you're ready to go, you're ready to process?

MR. ABECASSIS:

The fundamental science as they've demonstrated, now we're going to make actual prototypes that we're going to test at actual cesspools that will be designated -- approved by Suffolk County Department of Health, but also from volunteers. We've had offers from the Town of Southampton individuals. Those would be approved and then once the unit is proven to be efficient in the real world setting, then based on that measurement we can adjust the amount of media and remove the remaining nitrogen.

D.P.O. HORSLEY:

It sounds interesting. Okay, thank you. Appreciate it.

MR. ABECASSIS:

Thank you so much for having me. Any further questions?

CHAIRMAN SPENCER:

No, we're not finished with you yet (*laughter*).

MR. ABECASSIS:

Okay (*laughter*).

CHAIRMAN SPENCER:

Legislator Lindsay.

P.O. LINDSAY:

Your product sounds very interesting. Where do you start, though? Do you start at the County level, or town zoning levels or zoning boards? How would you implement this?

MR. ABECASSIS:

Well, once it's gotten the approval from Suffolk County Department of Health and from the State of New York, we've already -- we've already been in proactive discussions with the Town of Southampton, which has a lot of vision. They've got environmental stewardship, they're very concerned about the effect of nitrogen on their coastal ecosystem and indirectly, obviously, on their tourism.

So I guess one of our first places that stepped up to the plate has been the Town of Southampton. Anna Hope-Throan -- or Throan-Hope, I keep getting it mixed up, and Jennifer Garvey have been very helpful, both in having us meet with their sustainability committee. So once this is approved, they're actually looking to implement regulations in the Town Code.

P.O. LINDSAY:

But that's my point. The power to enforce the use of your product lies with the towns; am I correct?

MR. ABECASSIS:

I believe that is correct.

P.O. LINDSAY:

Okay.

MR. ABECASSIS:

They're the ones that enforce limits on nitrogen. I believe so.

P.O. LINDSAY:

Okay. That's it.

MR. ABECASSIS:

Were there any other questions?

CHAIRMAN SPENCER:

Legislator Kennedy.

LEG. KENNEDY:

Yes, thank you. Thank you for being here, as a matter of fact. You're based in Centereach?

MR. ABECASSIS:

We're based in Centereach. We're a start-up company, we've been trying to find local, Long Island tailored solutions since 2010, so we actually started working with wineries initially. We've got a non-polluting fertilizer that had some pesticide effects that we started launching with the wineries. We did some testing, we did some testing with Cornell. We've also developed some soil additives, some wine technology, and we also have remediation technology for oil and hydrocarbon.

This came out of a discussion with a gentleman named Chuck Schwartz of Long Island Green. We were at Suffolk County Department of Water, Water Authority, and we were talking about hydrocarbon plume removal which we have products for. And he says, "Hey, you know, there's this really big problem. If you guys could solve this, this would be -- this would be a big thing for Suffolk County." So we spent about a year doing research to find a solution.

LEG. KENNEDY:

Tell me a little bit about -- and I apologize, I was out of the room, you might have described it. So I did hear you speak about the fact that there is a medium that actually absorbs the nitrogen.

MR. ABECASSIS:

Right.

LEG. KENNEDY:

You talked about servicing once a year.

MR. ABECASSIS:

Uh-huh.

LEG. KENNEDY:

But, you know, like the average homeowner -- I shouldn't say the average homeowner. I don't know much about my septic system; it sits out in my front yard and that's it.

MR. ABECASSIS:

I understand.

LEG. KENNEDY:

How would you -- what would be the process that it would be modified and how would the average individual then do that, that service function?

MR. ABECASSIS:

That's a great question. The way we're thinking about doing it, from the business point of view right now, is that it would be offered probably through the cesspool, septic tank service companies now, that normally do -- we don't want to compete with them, they've already -- this would be an ad-on to their business.

LEG. KENNEDY:

So you're in the tank, you're not above.

MR. ABECASSIS:

We have two forms of the product. In one, which is in development which would go into the actual tank, it's a tubular -- -- it's like a large tape worm, if you want to think of it that way. It goes in, it works very similarly. It goes into the system, it forms a coil, and then it absorbs as much nitrogen as it can contact. Okay? There are some flow issues with that, getting the max amount of contact the way the water flows down and the leaching, we're going to be working on that.

There's another unit that's going to be much simpler to service that would sit outside the septic tank. We're going to make it look like a rock or a tree or a shrub, it will be a small, plastic tank. There we'd have tubing that would run into the septic tank or the cesspool, into the clarified part where most of the nitrogen is. It would, using a peristaltic pump, pull out the water, run it through the media ensuring really good contact, and then it would reintroduce the denitrate, the nitrogen-reduced water back into the cesspool or septic tank.

LEG. KENNEDY:

So my advice to you -- and as a matter of fact, I'd be happy to talk to you afterwards with this, is that the Presiding Officer was on to something, particularly when you talk about nitrogen content in particular physical areas. But also, your septic discharge system from anything, whether it's a residence or a commercial property or anything else, is something that's initially approved. And if there's any modification to it, that modification has to be reviewed as well by our Suffolk County Health Department Office of Wastewater Technology. So --

MR. ABECASSIS:

And this is Walter Dawydiak; is that right?

LEG. KENNEDY:

Yeah, Walter Dawydiak and Walter Hilbert.

MR. ABECASSIS:

I've had four or five meetings with them. They're actually helping us guide the process. So we've collaborated with them through this and said, *"Listen, guys. Where do you think we should put this? What are your thoughts?"* They're actually reviewing my proposal right now --

LEG. KENNEDY:

Perfect.

MR. ABECASSIS:

-- to Albany and to put in their two cents on what they think should be done. So we've relied heavily on their guidance.

LEG. KENNEDY:

Okay. I'm glad to hear that. And I'll be happy to give you my card, if there's anything we can do to help going forward with it. It sounds good.

MR. ABECASSIS:

Thank you so much.

LEG. KENNEDY:

Thank you.

MR. ABECASSIS:

Any further questions?

LEG. HAHN:

If the chair will allow?

CHAIRMAN SPENCER:

Legislator Hahn. You are next on the list.

LEG. HAHN:

Thank you. I'm Chair of the Environment Committee, so I'm really excited that this is something that could be an option. So tell me again what, you know, it -- it would have to remove either externally through the rock, you know, take it out there --

MR. ABECASSIS:

Right, right.

LEG. HAHN:

-- or open up the tank. And so what happens with what was collected? And I guess I don't understand enough about chemistry.

MR. ABECASSIS:

Right.

LEG. HAHN:

You said you remove the ammonia, the nitrogen automatically goes with it?

MR. ABECASSIS:

Right. Now, what happens is the form that nitrogen takes when there's not any oxygen around, the microbes break down the sewage. There's nitrogen in the sewage, but since there's no oxygen around, they convert it to Ammonium which is NH_4^+ . Okay? That's a cat ion. It's a form of nitrogen that's the form that's present inside the septic tank or cesspool, and it's because of the lack of oxygen.

LEG. HAHN:

And it's what bubbles up when you see a --

MR. ABECASSIS:

Not really bubbles up, but it's the thing that would smell strong. Ammonia is smelling salt. So if you've ever in a locker room, that's what they wake you up when you've gotten punched and you're a boxer or whatever. It's a very, very pungent smell Ammonia.

Now, because the soil is slightly acidic, the PH of the soil is slightly acidic, it's Ammonium NH_4^+ which means it stays water soluble. Ammonia NH_3 can actually bubble out as a gas. So what happens is it will leach through -- this form of nitrogen will leach down through the sand, since Long Island's a big sand pit, and as it slowly migrates towards the sound, it comes in contact with enough oxygen that the microbes can change it to nitrate, which is usually what you're hearing about when you're hearing about pollution. But it's the same atom of nitrogen that started in Ammonium that goes through these different chemical changes and becomes the polluting nitrate that we're familiar with.

So we're using the magnetic properties of this charged ion to pull it out. In addition, we've got an almost food grade material meter that's approved for cosmetic use so it's very safe, which through experimentation I found was highly effective at selectively removing this ammonia. And it does that two different ways; it has a negative charge which attracts it, so like the magnet will stick, but also it has a very special shape that holds a lot of Ammonium molecules inside a pocket, so to speak, and that increase the efficiency of the media. So it makes it very selective and it addresses the specific form of the ammonia that's in -- that you actually find in the septic tank when nitrogen is being freed up to go out and pollute the sound later. So we're grabbing it at the source.

Now, the media is going to be really, really -- it's going to have concentrated Ammonium on it, and part of what we want to study is how to get more business; we're a for-profit business, we're a start-up. How do we get value from that ammonia? There are a couple of very obvious ways. We can use it as fertilizer, you know, sterilize it or whatever, sell it to the Chinese, I mean, it's actually a form of fertilizer. We can also use it as a chemical feed stock. We could evaporate the ammonia and you could have green Suffolk County Legislature brand window cleaner, because that's all ammonia really is. And we're looking for other uses such as chemical feed stock, if it can be used for any biotechnology purposes where there's added value. So we're trying to create a value chain that doesn't just stop when we remove the nitrogen. We'd actually like to find a way to make money with removed nitrogen as well.

LEG. HAHN:

And that would help in terms of what it may cost the homeowner --

MR. ABECASSIS:

Well, it would --

LEG. HAHN:

-- if there is like a value to it, the sum --

MR. ABECASSIS:

The value of removing the nitrogen is, first of all, environmentally, it protects our environment and our sound. The homeowner --

LEG. HAHN:

Right. But on John's point, you know, that he might not remember to call someone up to come and clean it or whatever, remove it and replace the --

MR. ABECASSIS:

If we install the unit through a -- it's going to be a Biogard license, they're going to have a service record; just like your dentist, just like your doctor, it's time for your annual cleaning.

LEG. HAHN:

And the cost for the annual maintenance would be?

MR. ABECASSIS:

We're talking it over right now, but it's probably going to be a couple of hundred dollars is my guess, you know, three to five, something like -- they have minimums they charge for a cesspool model.

LEG. HAHN:

So the majority of the cost is -- like because you had said six to \$800.

MR. ABECASSIS:

The unit may -- we may be able to make it for as much -- for as little as -- sell it with a profit for as little as three. The larger units with, you know, four, five, six members in a home, probably more like the five and \$600 range. But the unit itself is --

LEG. HAHN:

And then that would be an annual cost, is basically what you're saying.

MR. ABECASSIS:

It would be a one-time cost to buy the unit, then there would be a service cost that would be repeated every year, but it would be far less than what you'd pay in taxes to have a sewer district and it's less than you'd pay to have a fine for excess nitrogen in your system. So it would be a couple of hundred dollars.

Now, we've talked, we've had some discussions with -- these are going back a while, with Jay Schneiderman about the potential for putting -- looking at bonds that would reimburse part of the cost to the homeowners. Obviously the municipalities can't force the homeowners to use the product, but they'd like to find a way, because of the pollution issues, to help compensate the homeowner. And so that's in discussions as well.

LEG. HAHN:

Okay. Thank you.

CHAIRMAN SPENCER:

So I had a question regarding with the handling of the ammonia and transporting it. Now, and I know Ammonium nitrate is actually, you know, fertilizer but can also be used in --

MR. ABECASSIS:

Explosives.

CHAIRMAN SPENCER:

-- explosives. So with the transport, with the cesspools, with the reactions, what are the safeguards against it? I mean, if this is exposed to a flame, if there's -- is there any explosive potential? That's my question.

MR. ABECASSIS:

We have not flame-tested the material, I can do that. Normally -- it's a mineral compound, so like dynamite, it should reduce that. However, fuel is actually one of the legitimate uses. It's a clean -- it's a non-CO2 generating fuel. There's actually a guy in Oyster Bay who is a professor at Brooklyn Polytechnic, had a patent on using ammonia fuel, and it's actually a very clean, green fuel. Now, we're not set up for that and I don't know what the mass balance looks like as far as how much nitrogen we would actually be collecting. But, you know, if we're looking at 15 pounds out of 600,000 homes, that's enough for somebody.

So the first thought was maybe there are chemical companies in New Jersey that would like a reasonably low cost green source of ammonia for their own synthesis, their own existing process. But as far as handling procedures, we would take into account any risk including flammability, but that's certainly something we can test for now.

CHAIRMAN SPENCER:

I think that would be really important. I can imagine with a homeowner, that if there was construction or work, or there are things that could occur that would be outside of jurisdiction when your product is left at the site. The foolish things that a homeowner may do, it would be important to know whether --

MR. ABECASSIS:

No, I certainly would -- I appreciate the suggestion. I think we'll go right into that test.

CHAIRMAN SPENCER:

Fair enough. I appreciate your time. That's all the speakers that I have. I appreciate what you're trying to do. Thank you for coming before this committee.

MR. ABECASSIS:

Sure. Thank you so much for having us.

CHAIRMAN SPENCER:

I think that we'll work to partner with you to see if we can take advantage of this exciting new technology that you're bringing before us. Thank you.

MR. ABECASSIS:

Thank you so much. Thank you.

CHAIRMAN SPENCER:

That's our presentation of the day. And at this point, if Dr. Tomarken could come forward. Is Dr. Tomarken still here?

Last month in terms of tabled business, we were going to address -- the County Executive's Office here? So there was a memo that was apparently sent out with regards from one of the employees in the Department of Public Health Nursing, apparently there was an inspection from the State that yielded results that were of concern with regards to the performance in the Department of Public Nursing. I understand that there were charts that were reviewed and perhaps some deficiencies that came up and a formal report that came back from the State and this was something that was concerning, it was brought by Legislator Hahn to this committee and we wanted to see if we could address those issues. Looking here, if you could, Dr. Tomarken, correct any place where I may have been wrong in terms of describing the issue.

And then with regards to whatever information came from the State, also give us your comments and suggestions and then I'd like to hear from the Executive's Office also, whether we're looking to see if we could have a corrective action on this item.

COMMISSIONER TOMARKEN:

We had an unexpected -- unannounced, not unexpected -- unannounced visit by the State to the Bureau of Public Health Nursing, and they cited us for two deficiencies; one was documentation in our charts, and other was coordination with the providers. So for example, if a patient or was told by his or her doctor to change their dosage of medication, that should have been -- our nurses should have, every time they visited that patient, checked the bottle, say, "*Are you taking this number or that number,*" and recorded it in the chart, and we were deficient in that area.

As a result, we have put together a plan of correction, which is required by the State. It will be submitted -- it has to be going tomorrow, that's the latest. They will review it, generally it takes a week or two. If they're satisfied with it, we will then implement it; if they have issues or want additions for corrections, then we will -- they will tell us and we will make those changes. And we will -- we have already started a review of the issues with the current staff and our -- will be adding a quality improvement person to the bureau to be able to develop policies and procedures to prevent this from happening again.

As well, we have requested five SCINS for four Public Health Nurses and one Clerk, which I'm advised today will be signed shortly by the Administration.

P.O. LINDSAY:

Wonderful.

CHAIRMAN SPENCER:

Tom from the County Executive's Office. Oh, just to -- Kara, I know -- should I let Tom speak or would you like to ask Dr. Tomarken a question before Tom speaks?

LEG. HAHN:

Let Tom speak, but I'm anxious to ask my question.

CHAIRMAN SPENCER:

All right. Okay. Thank you. Tom?

MR. VAUGHN:

The information about the SCINS being signed has actually come over since the beginning of the Government Ops Committee, so that is certainly an update of the situation.

CHAIRMAN SPENCER:

Okay. Kara?

MR. VAUGHN:

Thank God for Blackberries.

CHAIRMAN SPENCER:

Kara has requested; you have the Commissioner and the Executive's Office, please ask.

LEG. HAHN:

Thank you. I'm just concerned because I think, you know, we were made aware of the issues and we've known for a long time that this is an under resourced division, severely under resourced division. And I just hope -- because we've been told SCINS would be signed for a couple of weeks now and I just want them to be signed and I want us to -- not that that would be enough to get us where we need to be on Public Health Nursing in my mind, but I do -- I do want to at least get up to the speed here where we should be currently. And I'm just frustrated that, you know, there's pleading that has to happen and calls and back and forth, and then you think it's getting done and then it's not and then you've got to wait another week and ask again. I just would like to see it done as soon as possible.

CHAIRMAN SPENCER:

Commissioner, I -- and Tom, thank you for coming, and I do appreciate you getting the information.

Dr. Tomarken, if I could just dig a little deeper, if I may. I had a chance to look at the report that came back from the State and I think that I have some concerns that I wanted to address. I mean, I definitely understand the manpower issue always being -- that can lead to deficiencies. But as I

look at the report, too, it also seems that there were actions that were being taken, and in those actions there were deficiencies found. So I wonder from an administrative point of view with regards to that department, is it a training issue? Is it a disciplinary issue? Because I think -- I'm looking at it globally, and I appreciate the Executive's Office giving resources and we are -- we're taking that. But when I look at -- and I also realize, too, in medicine that sometimes things may have been done but not documented, so if it's not documented then technically it's considered not done. But just from your oversight perspective and then from a departmental perspective, are there things we can do better?

COMMISSIONER TOMARKEN:

Let me explain that during this time, we had a -- our Director was out for six weeks on a medical leave, we had one supervisor retire.

So this is really a supervisory oversight issue, by and large, so somebody to check to make sure things are done. It's quality improvement. So it's a combination of people need to be supervised more closely and we need to have supervisory staff available, which we didn't for the last couple of months, and we need to have policies and procedures in place that close the loop to make sure that if there is a problem it's fed back to the employee and that they correct it and we're back on the right track. So it was a combination of people being out and being under staffed.

CHAIRMAN SPENCER:

Certainly. And I can, you know, speak to it from the standpoint that if you have one -- ten patients to see versus thirty patients, that sometimes you're doing everything you can do just to get through it and you may not document and do everything you should. But ultimately, though, if I'm seeing the 30 patients, I'm still liable for the care of those 20, although I can say I'm overworked.

There's -- I know that SCINS were sent up, but is there a mechanism in place where if there is a supervisor that is out or ill, is there a backup plan? Should this information have come to you a lot sooner, is there a mechanism in place to notify you of a potential shortage that may lead to us being in this situation?

COMMISSIONER TOMARKEN:

That will be part of the QI person's responsibility, to develop that mechanism, and that should be in place as soon as we get that person on board and get those policies developed.

CHAIRMAN SPENCER:

And back to my earlier point, is there any issue with regards to maintenance of training, any training issues that are involved? I know that the nurses are skilled, but perhaps -- I know, for instance, that you have to maintain your basic life support, your advanced life support. You have to take continuing medical education. Were there any, from the deficiencies you saw, that would be from outdated training?

COMMISSIONER TOMARKEN:

I haven't seen any evidence of that, but that's another aspect of what the quality improvement staff will be looking at.

CHAIRMAN SPENCER:

If I could request formally that if we could get an update once the SCINS are signed, and if I could formally request a presentation from the Department of Public Health Nursing with regards to the corrective action plan for items that could put on record, and just to make sure that this committee has fulfilled its oversight role in terms of addressing this issue.

And the last thing I'd like to ask, what are the consequences of this report? Does it have any impact potentially on State funding?

COMMISSIONER TOMARKEN:

Not at this point. We had no violations of Federal regulations, so we were -- the CMS, Center of Medicaid Services, is not involved. This is strictly a State issue. And if we perform our plan of correction appropriately, then that will be the end of it.

CHAIRMAN SPENCER:

Thank you, Commissioner. I appreciate you giving us the information that you have. Do any of my colleagues --

LEG. KENNEDY:

Mr. Chair?

CHAIRMAN SPENCER:

Yes, Legislator Kennedy.

LEG. KENNEDY:

Thank you. I am glad Legislator Hahn brought the issue to the committee. I have not seen a report, so I would have an interest in seeing that. But I just have a more basic question, Doctor.

You know, I've been struggling with a cold for the past couple of days, so maybe I'm a little loopy by now. But Tuesday morning we talked about the fact that it seemed like Suffolk County was getting out of health care lock, stock and barrel, and today we got five SCINS that are being signed for nurses. Where -- do me a favor, Doctor. Tell me today, from your perspective as the Commissioner for Health, what are we going to do and not do as you see it right now?

COMMISSIONER TOMARKEN:

From my perspective, my approach would be if we want to get out of the -- have direct health care services, you do it for those patients in which there are alternatives. For the Bureau of Public Health Nursing, a very significant proportion of these patients have no alternative because they have no insurance, therefore no private agency has any obligation to take them. So this group -- we are the Safety Net for this group.

LEG. KENNEDY:

Okay.

COMMISSIONER TOMARKEN:

Now, maybe in future years, if the Affordable Care Acts embraces this service like they do for just primary care for people without insurance, that may change the picture. But this is a vulnerable group for which they really have no alternative; that's the approach on it.

LEG. KENNEDY:

Okay. And then if I can, through the Chair, over to BRO. So if we have five personnel that are coming on, and I'm all for having people to take care and treat patients, are we going to be able to fund them through the end of the year? Is there sufficient funding, Craig? I mean, I imagine if we actually bill for the services we'll get some reimbursement.

LEG. HAHN:

There's like 66%.

MR. FREAS:

We typically do get reimbursement for Public Health Nursing services. It's not a hundred percent reimbursement, most of our direct care services are not funded at 100%.

LEG. KENNEDY:

But I imagine with these patients we go ahead and we make an effort to get them Medicaid eligible?

MR. FREAS:

Absolutely. We make an effort to get to the Medicaid eligibility, we collect on a sliding fee scale for them. If they are -- as you know, if they're disabled, there's an opportunity to make them dual eligible for both Medicare and Medicaid, in which case some of their other services may be covered under Medicare as well.

But the original question was is there funding in the budget for these five Public Health Nurses? Off the top of my head, I could not say whether there's funding, but apparently there's funding in the department as a whole to move around. Do we still have a two hundred and -- a possible budget deficit, as was briefed Thursday? Yes, but we have also done other budget amendment within this department and other departments in the course of the project to move our -- to move the hole slightly from one side of the budget to another.

LEG. KENNEDY:

Okay. Margaret, is -- again, through the Chair -- is there something you want to share with my question here?

MS. BERMEL:

Thank you, Legislator Kennedy. To also supplement what Craig had just -- as he had just responded, there is funding within the department at large to fund these positions through the end of the year which will be approximately \$180,000 to fund these five --

LEG. KENNEDY:

I'm sorry, a hundred and eighty is what our cost is for these folks to come on?

MS. BERMEL:

To fund these through the end of the year, yes.

MR. FREAS:

Six months.

MS. BERMEL:

Well, not six months, about 19 payroll periods, so starting towards the end of -- middle of April.

LEG. KENNEDY:

Okay.

MS. BERMEL:

Yeah. So there is sufficient funding and we will make the appropriate transfers of funds.

LEG. KENNEDY:

Last year when we went through our staffing reduction, I recall that there was a lot of discussion about the whole Public Health Nursing Unit. And my recollection is that there were a couple of Public Health Nurses who, I don't know if they voluntarily left or if we laid them off. Did we layoff any or did they just go voluntarily?

COMMISSIONER TOMARKEN:

There were three that were offered the opportunity to come back in that interim position and they chose not to.

LEG. KENNEDY:

So they were on a preferred list, they had the offer, they've elected not to return.

COMMISSIONER TOMARKEN:

They -- I don't know if they're still on the preferred list. They may have gone and gotten a job someplace else.

LEG. KENNEDY:

Sure.

COMMISSIONER TOMARKEN:

But, yes, they chose to not return.

LEG. KENNEDY:

Okay. So is there a -- and I'm sorry, I should be able to remember this, but I can't. A Public Health Nurse is by qualification, that's not a Civil Service exam. It's basically a list established by quals?

MR. FREAS:

Correct.

LEG. KENNEDY:

Okay.

MR. FREAS:

It's an education and experience list, yes.

LEG. KENNEDY:

Okay. So there are existing folks for you to go and to canvass now to bring on?

COMMISSIONER TOMARKEN:

Potentially, yes. Not enough right now to fill all those slots, but some.

LEG. KENNEDY:

Do you have to demonstrate that you've actually brought the nurses on in order to fulfill that component of the correction plan, or is this something that you're doing just --

COMMISSIONER TOMARKEN:

The staffing issue was there before the State came. This is a standing issue. The State did not cite us for insufficient staff or anything, but we need more staff to do what we need to do.

LEG. KENNEDY:

The medication confirmation piece that you spoke about, how is that that our personnel are actually engaged with them? Is there some kind of a written confirmation or something they do?

COMMISSIONER TOMARKEN:

Yeah, they should be in touch with the doctor and document what the new order might be, if they changed the dose from, you know, one pill a day, two pills a day or whatever. And sometimes -- where they often get that information is from the patient, because the patient may have seen the doctor in between visits. So when they come in, they should say to the patient, *"Are you still taking"* -- *"My records show you're still -- I have you taking two pills a day. Is that what the doctor still wants you to do?"* *"No, he's written a new prescription. Here's my new bottle,"* or whatever.

LEG. KENNEDY:

All right, doctor. I appreciate it. I'd be interested to see the thing and I'm glad to hear we're focusing some resources on something that apparently we're going to do beyond tomorrow. Thank you.

LEG. HAHN:

And I'm pretty sure that they're reimbursed 60 to 70%.

MS. BERMEL:

The reimbursement rate is approximately 60% and it's Medicare/Medicaid, insurance companies, third party payers, a grant, Child Find Grant, and there's some Article 6 reimbursement in the amount of about \$50,000. So roughly it's about 60% reimbursement rate.

COMMISSIONER TOMARKEN:

But that's for those that have insurance.

MS. BERMEL:

But generally --

COMMISSIONER TOMARKEN:

Overall?

MS. BERMEL:

Yeah, generally overall for the program, that's the reimbursement rate.

LEG. HAHN:

Right, overall, regardless that the whole -- right. And I thank you, Dr. Tomarken, for talking about how important this division is. Because really, this is a population that's vulnerable, that wouldn't be served elsewhere, that we can't just ignore. And too often we seem to be choosing the other, but this is really a very important division that we have and we have a true history of success and achievement in making a difference in people's lives and in lives and in communities. And, you know, I think this is investment is important and we do get back. Thank you.

CHAIRMAN SPENCER:

Thank you, Legislator Hahn, for bringing this issue. Thank you, Commissioner. Tom, Margaret, thank you so much. Appreciate it.

With that, we are going to move on to our agenda. And we're going to -- first, **Tabled Resolutions:**

IR 1929-12 - Adopting Local Law No. -2013, A Local Law to strengthen requirements for safe disposal of expired and unused medications (Hahn). Let's see. Legislator Hahn, motion to --

LEG. HAHN:

No, I can't make a motion, but I would like you to table it.

CHAIRMAN SPENCER:

It's okay -- you're tabling?

LEG. HAHN:

Yes.

CHAIRMAN SPENCER:

All right. Motion to table. Second. All those in favor? Opposed? Abstentions? Motion is ***tabled (VOTE: 5-0-0-0)***.

IR 2230-12 - Adopting Local Law No. -2013, A Local Law to amend the membership of the Suffolk County Disabilities Advisory Board (Cilmi). I've spoken with the sponsor and clarified. This looks like it's good to go. I'm going to make a motion to approve.

LEG. BROWNING:

Second.

CHAIRMAN SPENCER:

Second. All those in favor? Opposed? Abstentions? Motion carries. ***Approved (VOTE: 5-0-0-0)***.

IR 1151-13, moving on to ***Introductory Resolutions, directing the Department of Health Services to become a certified training center for Narcan overdose responders (Hahn)***. Motion to approve.

LEG. CALARCO:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? Motion is ***approved (VOTE: 5-0-0-0)***.

IR 1161-13 - Amending the 2013 Adopted Operating Budget to accept and appropriate 100% additional State Aid from the New York State Office of Mental Health for Health Information Technology (County Executive). It's 100% funded, so motion to approve and place on the Consent Calendar.

LEG. CALARCO:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? It carries ***(Approved & placed on the Consent Calendar - VOTE: 5-0-0-0)***.

IR 1179-13 - To appoint member to the Food Policy Council of Suffolk County (Robert A. Schaefer)(Hahn). Before we move on to that sponsor, to Counsel. With Councils such as this, do we need them to appear for these types of motions, we're okay with approving them?

MS. GELLERSTEIN:

He's here.

CHAIRMAN SPENCER:

Oh, he is here. Wow, that makes it real easy. Mr. Schaefer, please come forward. Thank you for taking the time, I appreciate it.

LEG. CALARCO:

He's been here.

CHAIRMAN SPENCER:

You've been waiting all this time?

MR. SCHAEFER:

Yes, I have.

CHAIRMAN SPENCER:

Oh, I am so sorry. We would have taken you out of order. I hope you've been entertained. I thank you for being a volunteer and your willingness to serve, and I do apologize deeply for having you wait all that time,

MR. SCHAEFER:

It's better than realty TV.

(*Laughter*)

CHAIRMAN SPENCER:

So thank you. Can you just -- Mr. Schaffer, just give us a one-minute introduction of who you are, where you live, what your interests are and why you would volunteer to do this.

MR. SCHAFFER:

I'd be glad to. My name is Robert Schaffer, I live in Huntington Station. I have a food manufacturing -- a speciality food manufacturing company called *Divine Brine Foods* and we manufacture pickles, relishes, etcetera, in -- on Long Island and we are using the brand new Calverton incubator, business incubator that's started up by Stony Brook.

I've been part of the Council -- you know, not an official member -- for the last year or so. My focus and the focus of the company is to support local agriculture, farms by using the products that we're producing here on Long Island in products that we can sell and promote Long Island agriculture and keep the farmers farming instead of developers taking them over. So we produce a natural product, it's no preservatives, whatever, and my focus is a chef. I've been a chef for 35 years and I want to strengthen -- through the policy -- through this policy council, the ability to raise awareness regarding healthy food, better diets in schools and more quality products available and produce available in food deserts in Long Island.

LEG. CALARCO:

Motion.

CHAIRMAN SPENCER:

Thank you again for taking time. And Legislator Montano has a quick question, he says, for you.

LEG. MONTANO:

Yeah, what does the Food Policy Council do?

MR. SCHAEFER:

Well, the Food Policy Council is a group of about a dozen or so members that come from all different aspects of the food policies across Long Island. There's people from Sustainable Long Island, from Island Harvest, from manufacturers like John King, so it's a whole very versed group. Cornell University and Stony Brook, we're all getting together looking for solutions, getting healthy food into schools, getting local food into schools, getting -- there's a whole variety of -- just improving the food quality and the health of Long Islanders.

LEG. MONTANO:

So you're doing advocacy as opposed to specific authority that you have; am I correct?

MR. SCHAFFER:

Exactly right, yes.

LEG. MONTANO:

Okay. Thank you.

CHAIRMAN SPENCER:

Thank you again for agreeing to do this. And I'm glad to see that you're right there in Huntington.

MR. SCHAEFER:

Okay.

CHAIRMAN SPENCER:

So with that, we have a motion and a second. All those in favor? Opposed? Abstentions? Congratulations, sir. You are **approved (VOTE: 5-0-0-0)**. It has to go before the full Legislature on Tuesday, but you don't have to appear again.

MR. SCHAEFER:

Okay.

CHAIRMAN SPENCER:

I don't anticipate there will be any issues.

MR. SCHAEFER:

Okay. Thank you very much.

CHAIRMAN SPENCER:

Congratulations. Thank you.

Okay. Oh, and I think they've also -- again, there's Erin Leigh who's also here? And Erin's also been waiting for the last couple of hours, too. Thank you, Erin. I appreciate your patience.

MS. THORESEN:

Sure.

CHAIRMAN SPENCER:

We're going to -- actually, I have one resolution in between, or I'd have to make a resolution to take it out of order, so I'll approve that. Stay right there.

IR 1187-13 - Appropriating funds for the Purchase of Equipment for the Environmental Health Laboratory (CP 4079) (County Executive).

I'll make a motion to approve.

LEG. CALARCO:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? **Approved (VOTE: 5-0-0-0)**.

IR 1195-13 - To appoint member to the Food Policy Council of Suffolk County (Erin Leigh Thoresen)(Hahn).

LEG. BROWNING:

Motion.

CHAIRMAN SPENCER:

Motion by Legislator Browning. I'll second. On the motion. Hi, Erin. How are you?

MS. THORESEN:

I'm very well. Thank you.

CHAIRMAN SPENCER:

Good. Could you introduce yourself to us?

MS. THORESEN:

Sure.

CHAIRMAN SPENCER:

And again, thank you for your patience.

MS. THORESEN:

Absolutely. Thank you for this opportunity. I'm Erin Thoresen, I am a Senior Community Planner, Senior Program Coordinator with Sustainable Long Island. I've been there about four years and in that role, I started as a community planner and really helped to kind of bring together our Food Equity Program and all of the work that we do that's part of that, everything from policy, advocacy, research, educational programs to project implementation. That includes our youth staff farmer's market project that we've been working on for the last three, going on four years now. We have a Food Equity Advisory Committee which convenes 30 plus members from across Long Island, Nassau and Suffolk, to discuss issues of food access, healthy food, promoting Long Island grown products, you know, educational programs. Right now we are working on sort of a report that's looking at existing policies and what can be done to strengthen the food system on Long Island and we're in the process of putting the finishing touches on an indicator report which is looking at data to kind of establish a benchmark on the healthy food system, where we are, what we can do to improve it.

CHAIRMAN SPENCER:

Well, that really sounds very exciting, what you do. And it seems like this is something that would be right up kind of your background and skill set, and so we'd be very lucky to have you. Any of my colleagues have any questions? So good luck.

MS. THORESEN:

Thank you.

CHAIRMAN SPENCER:

And thank you for agreeing to serve. With that, we have a motion and a second. All those in favor? Opposed? Abstentions? Congratulations, you are approved by the committee and you'll be brought before the full Legislature on Tuesday. You do not have to appear again. I don't anticipate there being any problems.

MS. THORESEN:

Okay. Great.

CHAIRMAN SPENCER:

Thank you for all of your time.

MS. THORESEN:

Thank you for the opportunity.

CHAIRMAN SPENCER:

I have no other business before us today. If there's nothing else, then we are adjourned. Thank you.

*(*The meeting was adjourned at 4:47 P.M. *)*