

WAYS AND MEANS

COMMITTEE

of the

SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Ways and Means Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Wednesday, March 2, 2011.

MEMBERS PRESENT:

Legislator Ricardo Montano - Chairman
Legislator Steve Stern - Vice-Chairman
Legislator Kate Browning
Legislator John Kennedy
Legislator Lynne Nowick
Presiding Officer William Lindsay - Ex-Officio Member

ALSO IN ATTENDANCE:

George Nolan - Counsel to the Legislature
Gail Vizzini - Director - Budget Review Office
Robert Lipp - Deputy Director - Budget Review Office
Renee Ortiz - Chief Deputy Clerk of the Legislature
Eric Kopp - Deputy County Executive
Gail Lolis- County Attorney's Office
Christine Malafi - County Attorney
John Holownia - Child Support Enforcement Bureau
James Farrell - Child Support Enforcement Bureau
Ed Hernandez - Deputy Commissioner - DSS
Paul Perillie - Aide to Majority Caucus
Marge Acevedo - Presiding Officer's Office
Justin Littell - Aide to Legislator D'Amato
Dot Kerrigan - AME
All other interested parties

MINUTES TAKEN BY:

Donna Catalano - Court Stenographer

(*THE MEETING WAS CALLED TO ORDER AT 10:15 A.M.*)

CHAIRMAN MONTANO:

We're going to begin the meeting of the Ways and Means Committee. Legislator Kennedy is on his way. He should be here shortly. We are going to start with the Pledge of Allegiance led by Legislator Stern.

SALUTATION

Thank you. You may be seated. Moving to the agenda. We were going to have an Executive Session, but we are going to delay that until next -- our next meeting. Do we have any cards? We have no cards. Would anyone like to address the committee this morning. Hearing none, we're going to move right into the agenda.

2018, Adopting Local Law No. -2010, A Local Law to promote the preservation and Integrity of the Pine Barrens Core area by prohibiting the redemption or conveyance of vacant or unimproved Pine Barrens Core parcels acquired by Suffolk County by tax deed. (Co. Exec.)

I'm going to make an application to -- motion to table that.

LEG. BROWNING:

Second.

CHAIRMAN MONTANO:

Second. All in favor? Opposed? Abstentions? Motion to table is approved. **TABLED (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

2045-2010, Adopting Local Law No. -2010, A Charter Law to limit campaign donations by members of the Ethics Commission. (Cooper)

I'm going to make a motion to table that, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

2100-2010, Directing modernization of the County Financial Disclosure Form. (Co. Exec.)

Likewise, I'm going to make a motion to table, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

2208-2010, Adopting Local Law No. -2010, A Local Law implementing the Charter Commission's recommendation regarding the terms of the Presiding Officer and Deputy Presiding Officer. (Romaine)

Likewise, I'll make a motion to table, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**.

2236-2010, Declaring as surplus and authorizing sale of real property in Yaphank pursuant to County Law Section 215. (Presiding Officer)

I'm going to make a motion to approve. I understand that the Environmental Impact Statement has been completed; is that correct, Counsel?

MR. NOLAN:

I believe the draft Environmental Impact Statement has been completed. Before it's in complete final form, there's many months ahead. A couple of resolutions would have to be passed by this Legislature. But in terms of the work, that, I understand, is basically done. There have to be tweaks for there to be a final Environmental Impact Statement, but the draft study is done.

CHAIRMAN MONTANO:

But we can approve this resolution today?

MR. NOLAN:

Of course.

CHAIRMAN MONTANO:

Okay. Any other motions? All right? Motion to approve.

P.O. LINDSAY:

I'll second.

CHAIRMAN MONTANO:

Seconded by the Presiding Officer, Legislator Lindsay. Any other motions? All in favor? Opposed? Abstentions? **APPROVED (VOTE: 5-0-0-1; Not present, Legis. Kennedy).**

Moving on to the Introductory Resolutions. **1010, Adopting Local Law No. -2011, A Charter Law to reaffirm the County Legislature's policy-making authority. (Schneiderman)**

And I'm going to table that for a public hearing. We need a motion. I'll make it, seconded by Legislator Lindsay. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

1011, Authorizing certain technical corrections to Adopted Resolution No. 1280-2010. (Co. Exec.)

I make a motion to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. Okay, I'm going to amend that. Make a motion to approved and place on the Consent Calendar, seconded by Legislator Stern. All those in favor? Opposed? Abstentions? **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

1015, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Arthur Lima (SCTM No. 0400-210.00-02.00-018.000). (Co. Exec.)

I make a motion to approve and place on the Consent Calendar.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **APPROVED**

and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**.

1016, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Alice J. Bauer, as surviving tenant (SCTM No. 0800-061.00-01.00-036.000). (Co. Exec.)

Same motion, if you will, same second, same vote. Motion **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**.

1017, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Frances B. Lewin Trust, by Thomas Austin Lewin, as successor trustee (SCTM No. 0200-424.00-04.00-014.000). (Co. Exec.)

Same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

1018, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Beatrice Reid (SCTM No. 0100-014.00-06.00-032.000). (Co. Exec.)

Same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

1019, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Luis A. Lopez and Dionizia Garcia (SCTM No. 0200-973.80-03.00-017.000). (Co. Exec.)

Same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

1020, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Eleanor Hughes (SCTM No. 0500-372.00-01.00-007.000). (Co. Exec.)

Same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

1021, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Mark Rosenman and Beth Rosenman, his wife (SCTM No. 0800-044.00-05.00-013.000). (Co. Exec.)

Same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)** .

And finally, **1022, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Estate of Nellie Laporte by Mary Louise McHugh as administrator and Mary Louise McHugh, individually, and Greta Pryor as to a life estate (SCTM No. 0300-162.00-01.00-009.002). (Co. Exec.)**

Same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**.

That's all to place on the Consent Calendar.

Moving on to 1038, **Authorizing certain technical corrections to the 2011 Adopted Operating Budget for the West Islip Symphony Orchestra, Inc. (Barraga)**

I'll make a motion to approve and seconded by Legislator Stern. This is omnibus money, correct?

MR. NOLAN:

Yes.

CHAIRMAN MONTANO:

Okay. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 5-0-0-1; Not present, Legis. Kennedy).**

1039, Amending the 2011 Capital Budget and Program and appropriating funds in connection with the Upgrading Court Minutes Application (CP 1681). (Pres. Off.)

And I'll make a motion to approve.

P.O. LINDSAY:

I'll second that.

CHAIRMAN MONTANO:

You want to speak on it?

P.O. LINDSAY:

Yeah. Thirty nine and 40 are both requests from the County Clerk. And we did receive some information. It didn't go through the IT Committee. I'm going to ask the County Clerk to be at our meeting on Tuesday to give us some further explanation? Oh, do you have some further explanation? Please come some forward.

CHAIRMAN MONTANO:

Do we need a bond on this?

MR. NOLAN:

There will be a bond.

CHAIRMAN MONTANO:

There will be at the meeting? Okay.

P.O. LINDSAY:

Budget Review -- first of all, these two resolutions are included in the Capital Plan, am I correct?

MS. DELUCA:

Nicole DeLuca, Chief Deputy Clerk.

P.O. LINDSAY:

Nicole, these were scheduled changes in our Capital Budget, am I correct?

MS. DELUCA:

Yes. These two Capital Programs are in the book. They're actually in the adopted program. We're just moving them forward from 2012 to 2011.

P.O. LINDSAY:

That's what this resolution does is move them from '12.

MS. DELUCA:

Yes, and it appropriates the money.

P.O. LINDSAY:

Okay. Yes, Gail.

MS. VIZZINI:

Just to augment that, 1039 uses an appropriate offset; one of the other County Clerk Capital Projects, the historic documents for the Library Sheldon, which is money in 2011 that provides the offset to advance the court minutes to 2011.

P.O. LINDSAY:

Nicole, could you tell us why it's important that we advance this project at this time?

MS. DELUCA:

Yes. Well, 1039 is to replace our repository for the land record system. We purchased that server in 1998. It's 13 years old, and we're going to lose the maintenance contract this June of 2011. So we ask to move that forward.

The court minutes Capital Program, we're moving that forward, because the State -- we're going forward with mandating electronic filing in the State of New York. So we had that project in 2013. We'd like to move that forward so we can update our system.

P.O. LINDSAY:

Gail, what's the offset for that?

MS. VIZZINI:

Nicole tells me that it is the same, it's the Sheldon project.

P.O. LINDSAY:

Okay. So that project is big enough to cover both of these?

MS. DELUCA:

Yes. It was a \$400,000 project, CP 1681. And it took care of both of the programs.

P.O. LINDSAY:

And I guess the Executive Budget Office had an issue with it not going through the IT Committee. Could you shed any light on that?

MS. VIZZINI:

Actually, they contacted me on that. And Nicole and I spoke at length. We arranged for the projects to be discussed at the most recent Information Processing Steering Committee Meeting. I think there was a question in terms of the actual protocol here. Once we get to the point where the monies will actually look to be spent, the department will have to -- that's the point where the department has to go before the Information Processing Steering Committee to assure that what they are buying conforms with what they have.

P.O. LINDSAY:

So both these resolutions are good to go?

MS. VIZZINI:

As far as we are concerned, yes.

P.O. LINDSAY:

Thank you. Thank you very much for shedding light on it.

CHAIRMAN MONTANO:

Okay. I'll take a vote. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**

1040, Amending the 2011 Capital Budget and Program and appropriating funds in connection with the Digital Image Storage Repository (CP 1809). (Pres. Off.)

We just had discussion on that. I'll make a motion to approve. I need a second.

LEG. BROWNING:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Browning. Any further discussion? All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**.

1044, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Anthony Vultaggio and Victoria Vultaggio, his wife (SCTM No. 0800-023.00-01.00-040.000). (Co. Exec.)

I'll make a motion to approve and place on the Consent Calendar. I need a second. Seconded by Legislator Browning. All in favor? Opposed? Abstentions? Motion carries. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**.

1045, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Theresa Heinert (SCTM No. 0500-131.00-05.00-002.000). (Co. Exec.)

I'll make a motion to -- same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 5-0-0-1; Not present, Legis. Kennedy)**.

1046, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Matthew R. Poole and Sara K. Poole his wife (SCTM No. 0200-559.00-01.00-008.000). (Co. Exec.)

I'll make a motion to approve. I need a second. That's different, because it's not going on the Consent Calendar; is that correct, Counsel.

MR. NOLAN:

Yes.

CHAIRMAN MONTANO:

So it's just a motion to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Nowick. All in favor? Opposed? Abstentions? Motion carries.

APPROVED (VOTE: 5-0-0-1; Not present, Legis. Kennedy).

1047, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Mark Ebsen and Andrea Ebsen, his wife (SCTM No. 0200-969.00-01.00-039.000). (Co. Exec.)

Same motion, same second, same vote. **APPROVED (VOTE: 6-0-0-0).**

1048, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Glenna Margaret Crow (SCTM No. 0800-006.00-02.00-026.002). (Co. Exec.)

And we can do the same motion, same second, same vote. **APPROVED (VOTE: 5-0-0-1; Not present, Legis. Kennedy).**

1049, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Big Blue Six Corp. (SCTM No. 0500-393.00-03.00-081.001). (Co. Exec.)

I'll make an application to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. And this is -- what's the price on this, Counsel.

MR. NOLAN:

It is \$806.

CHAIRMAN MONTANO:

Eight hundred and six dollars. Okay. We have a motion and a second. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 6-0-0-0).**

1050, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Guy Schafer and Ann Marie Schafer, his wife (SCTM No. 0500-361.00-01.00-098.000). (Co. Exec.)

This is in West Islip. I'll make an application to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 6-0-0-0).**

1073, To repeal Resolution No. 652-1997 which abolished the charging of legal fees by the Department of Law in Child Support Services (CSS) Cases. (Co. Exec.)

I'm going to for purposes -- right. I had spoken with representatives from the Department of Social Services. And I understand the administration was going to send some people to discuss this particular bill. I've read it, I've read some of the backup. Just for purposes of getting this moving, at this point, I'm going to make a motion to table. But I'd like to hear from the administration. Are the individuals here? We have -- all right. Commissioner Blass regrets he will be unable to attend, blah, blah, blah, but Deputy Commissioner Dr. Edward Hernandez, the Director of the

agency's Child Support Enforcement Bureau and Janes Farrell to attend in his place. Are they here.

P.O. LINDSAY:

Denis, why don't you sit at the table? There's two of you. It's more comfortable.

CHAIRMAN MONTANO:

Denis, are you going to speak on this?

MR. BROWN:

I might be able to answer some of your questions. I know some of the background.

CHAIRMAN MONTANO:

Mr. Farrell.

CHAIRMAN MONTANO:

I've just been advised that the title to the bill has been changed. So it really should read -- bill was amended, amended copy as of February 28th. "Resolution to implement New York State Office of Temporary and Disability Assistance Administrative Directive 10 ADM-02, requiring the recovery of legal fees by the Department of Law in child support services cases." So go ahead, Mr. Farrell.

MR. FARRELL:

This is just a little history of the provision of legal services by the Department of Social Services Child Support Enforcement Bureau. It's a services that's to non-public assistance clients legal representation.

From 1988 to 1993, the services were provided by Nassau-Suffolk Law Services through a program funded by New York State, and it was provided to non-public assistance clients free of charge. The anticipation was that they handle approximately 300 cases per year, but with the ability to get legal services for free, the number got to 700 cases a year.

It got to the point where Nassau-Suffolk could not handle that volume. And when the pilot project ended, they were not able to continue the project. The cases then were handled by Suffolk County Attorney's Office. New York State allows for recovery of the cost of legal services. And from 1993 until 1997, the department charged non-public assistance clients for the provision of legal services.

In 1997, I believe it was, a resolution was enacted by the County Legislature which set a sliding scale fee for non-public assistance clients. New York State, at that point, changed their policy and decided that the local districts had the option of charging or not charging for legal services, the recovery of the cost of legal services. So in 1997, Suffolk County stopped charging for legal services.

Recent legislation now requires each local district in New York State to recover the cost of legal services. It redefines -- enacted legislation redefines what legal services are. In the past, it had been legal representation where a County Attorney, through a retainer agreement, provided legal representation to the non-public assistance client representing the client. The new legislation now clarifies what the County Attorney's role is, and its role is to represent the Department of Social Services and not an individual non-public assistance client.

And in addition to redefining the role, it requires each local district to charge for the provision of services if a non-public assistance client requests them. What this resolution does is it authorizes the department to begin charging for the cost of public assistance -- non-public assistance legal service.

CHAIRMAN MONTANO:

I have a question.

P.O. LINDSAY:

I might have missed it, because I was out of the room.

CHAIRMAN MONTANO:

Go ahead, Legislator Lindsay.

CHAIRMAN MONTANO:

Do we have any idea of what kind of money we are talking about here, what kind of revenue?

MR. FARRELL:

The rate which was arrived at, again, by direction of New York State Administrative Directive Procedure is \$91 an hour.

P.O. LINDSAY:

I know that, but I mean, a gross amount that the County would recover on an annual basis.

MR. FARRELL:

Because the -- because the complexity of each case varies, it's hard to come up with a dollar amount, hourly work that's put into each case.

P.O. LINDSAY:

Again, this is -- a domestic dispute, right, where there's, I guess, a divorce and there's recovery of child support that was court-mandated, that for people that aren't on public assistance, that's what we're talking about here, right?

MR. FARRELL:

Correct.

P.O. LINDSAY:

How is the mechanism -- do we charge -- I guess, the predominance are women, right, although I'm sure there's some men in this situation as well. Do we collect it directly from them? Does it come out of a court settlement?

MR. FARRELL:

The recovery of the cost of legal services would be recovered from any child support that's paid on behalf of the children.

P.O. LINDSAY:

So it's paid to the department, the department would extract the legal cost and credit the rest to the spouse's account; is that right?

MR. FARRELL:

Correct.

CHAIRMAN MONTANO:

Just on that last question, the money is taken from whom? In other words, if the supporting spouse sends a check for \$200, do you take the money from that \$200, or do you add \$200 to the child support to cover the attorney fees?

MR. FARRELL:

On the recovery of cost agreement, the non-public assistance client agrees to pay 25% of the support that's collected to repay the cost of legal services. So if it's \$100 a week support order, child support order for the children, \$75 would go to the custodial parent, and \$25 would go the repayment of the cost of legal services.

CHAIRMAN MONTANO:

So in essence, it's coming out of the money that should be going to the child for support?

MR. FARRELL:

That's correct.

CHAIRMAN MONTANO:

All right. We have a list. Legislator Kennedy.

LEG. KENNEDY:

Thank you, Mr. Chair. And just for the purposes of clarifying, we have a motion to table at this point and a second on this matter?

CHAIRMAN MONTANO:

Do we have a second on the motion to table?

MS. ORTIZ:

I didn't get a second.

LEG. KENNEDY:

I'll second that motion. I'll second that motion. Thank you for being before us, Mr. Farrell. I find this whole matter intriguing to be candid with you. It kind of makes me scratch my head as to why we would have municipal attorneys representing non-income eligible custodial parents in a matter that's before Family Court. That's not to say that custodial parents aren't entitled to all the support that they have been awarded by the court, but there's many private practitioners out there who would be able to represent.

But what I really want to get at it is -- and I've done very little work in front of Family Court -- you are saying that if there's fees that are incurred for the custodial parent to secure the support that the court has order them, those legal fees are swept out of what the recovered support is? That's not an award above and beyond the support?

MR. FARRELL:

The custodial parent has the option of requesting legal services from the department. We file approximately 4000 petitions a year on behalf of non-public assistance clients. Out of that number, approximately 300 have requested legal representation in Family Court. And again, up until this point, we have not charged, as I said, from '97 forward. New York State now requires that we recover the cost, and it states the methodology of recovering those costs.

LEG. KENNEDY:

Hold on, Ed. I want to stay with him a little bit and then I'll be happy to talk to you. So from '97 to now, we, meaning the County Attorney's Office, has been actively representing on average at least 300 custodial parents in front of Family Court. How many hours? Approximately how many hours would be involved in a case before Family Court? You have to have some idea, five hours, 50 hours, 15?

MR. FARRELL:

I'm not with the County Attorney's Office. I'm not sure what the average number would be.

LEG. KENNEDY:

I see Ms. Lolis coming up. Through the Chair. Morning, how are you, Gail?

MS. LOLIS:

Good morning. John Holownia the Bureau Chief from the Family Court is on his way.

LEG. KENNEDY:

He is here now. It's just a matter that I've never actually had the opportunity to go ahead and be engaged in. So I don't know if you're talking about a couple of hours to put a petition together and put it in front of the Family Court Judge or ten, 15, 20. How are you, John?

MS. LOLIS:

It varies from case to case, and I'll turn it over to John.

MR. HOLOWNIA:

On average for a case that does not involve a hearing with evidence and testimony, I would estimate that three to five hours would be the norm for a case in front of the --

LEG. KENNEDY:

Okay. Mr. Farrell spoke before. I think he said that there are on average, approximately 4000 petitions filed annually, and of that, about 300 of the petitioners elect to, in essence, retain the County Attorney's Office to be their counsel; is that it?

MR. HOLOWNIA:

Well, it used to be that they retain the County Attorney's Office. The change in this Social Services Law is that the State has made it very clear now that the County Attorney's Office represents the district, the local Social Services district, and there is no longer an attorney-client relationship between our office and the petitioner or the litigant.

However, your numbers are approximately right, Mr. Kennedy, it's about 300 or so of what we call CSS cases, which are local cases. There's another three to 400 interstate cases where the petitioner is outside of the state, is in another jurisdiction, requests legal services through the Child Support Enforcement Bureau in that state. The petition is transmitted to New York, and we appear for our district, which in turn is appearing for the foreign jurisdiction.

LEG. KENNEDY:

I remember seeing those judgements when we were out in the County clerk's Office. As a matter of fact, we used to docket them for enforcement purposes here where you had interstate -- types of jurisdiction.

MR. HOLOWNIA:

Yes.

LEG. KENNEDY:

My questions go more to, though, you know, at a time where we're being faced with unprecedented budget challenges and contemplating sale of assets and other types of things that are fairly draconian, we're also talking about utilizing County Attorney staff in essence to pursue what seems to be a private matter. We established that the custodial parents are non-income qualified. They are above what would be the income qualification, correct?

MR. HOLOWNIA:

There's no means test, that's correct. It can be anyone who applies for services through the Child

Support Enforcement Bureau.

LEG. KENNEDY:

Look, I can think of probably no other manner that's as important as to go ahead and make deadbeat dad or mom pay for raising their children. So it's not that we should necessarily be tied to an income threshold. I guess what I'm trying to get at is -- look, John, you're in Family Court quite frequently. There's a robust family bar -- Family Court Bar, isn't there? If the County Attorney's Office didn't provide this representation for these 300 petitioners, is there any place else that they could get representation?

MR. HOLOWNIA:

Mr. Kennedy, I don't think we are going to do that under the Social Services Law and the regulations. The Child Support Enforcement Bureau is mandated to provide this service.

LEG. KENNEDY:

Oh, this isn't permissive? You must make this available.

MR. HOLOWNIA:

Connect.

LEG. KENNEDY:

And yet, there's no -- in other words, does the County Attorney's Office receive any kind of support or funding? Or is there anything -- are any of your attorneys then offset with State or Federal funding to go ahead and conduct this work?

MR. HOLOWNIA:

Mr. Farrell I think can answer that, buy, yes, there are -- there is money that comes back to the County as a result of 4D Services provide -- it's called 4D Services that are provided to these litigants.

LEG. KENNEDY:

4D is what you're saying?

MR. HOLOWNIA:

Yes. It's from the Social Services Law, but it's a reimbursement from the Federal Government.

MR. FARRELL:

There's a reimbursement for the cost of the legal services that are provided at the rate of 79.5% comes back from State and Federal reimbursement.

LEG. KENNEDY:

Now I'm even more confused. So we are billing out at \$91 an hour. Most attorneys who are out there, you know, they're going at a buck and a half or 200 an hour. So we're going out at below the market rate to begin with, but then we are getting 79.5 -- what do we charge the Feds at? Do we bill them at all? How does it go?

MR. HERNANDEZ:

Aren't these just specialized services as supposed to general services we provide. These are specialized services we're talking about right here, specific activity. The County Attorney's Office provides much more services than that, and that's the funding that's in jeopardy by not complying with the State mandate.

LEG. KENNEDY:

Hold on, Ed. Hold on. I'm not suggesting to you that we not comply. What I'm suggesting here is a need to understand what it is that the State's suggesting that we do. I mean, the State has, to the best of my knowledge, not sent multiple millions of dollars worth of reimbursement. So I'm not persuaded by the fact that we're jeopardizing that they're not sending us to begin with.

What I really want to understand is what our cost is and why it is in the first instance that we're being compelled to provide something that might in fact be able to be obtained through the private bar out there, that's all.

How about if we do this: I mean, we are going to table already on this, can anybody, can you, Ed, or you, John, gives me something that shows me the number of folks that we are talking about, the average hours associated with the matter, the approximate cost for us, you know, if we have an Assistant County Attorney or a County Attorney I that's in there, what's being involved and the amount of money that being realized?

Look, I'm not suggesting to you in any way I want to minimize efforts to go ahead and collect support. Parents are supposed to pay for their kids. That's very basic. And there's a lot of slime out there that don't and I understand you have to bring to bear the full force of court and you've got to force them to do that. And you guys do that very well. I just want to see if this is an area where we have to consider many different things at this point. Maybe there's a way for these services to be obtained in an alternative manner, that's all. I'll yield, Mr. Chair.

CHAIRMAN MONTANO:

All right. I have some questions also, but we do have a list, so, Legislator Nowick, the floor is yours.

LEG. NOWICK:

Hi. Good morning. How are you, John?

MR. HOLOWNIA:

Good. How are you?

LEG. NOWICK:

Just a question. Where did this idea come out of, Social Services, is that --

MR. HOLOWNIA:

The idea of providing legal services?

LEG. NOWICK:

Of charging the \$91.

MR. HOLOWNIA:

It has always been in affect as a regulation under the New York Code of Rules and Regulation -- I'm sorry. There's a regulation under the New York Code of Rules and Regulations which has been in affect. This program, this CSS Program was established in 1993 to aggressively enforce child support orders and to obtain child support orders for people that were not on public assistance.

LEG. NOWICK:

Okay. But now charging the \$91, when did that -- that's this legislation?

MR. HOLOWNIA:

Well, it's the State legislation. They've mandated that everybody must charge. We, starting in 1997, did not charge any fee. We used to charge 45 to \$50 an hour. And then following Resolution 652 of 97, the Commissioner at the time, Mr. Wingate, determined that we were no longer going to charge for these services that we were providing.

So since 1997 up until now, with respect to CSS cases, we have not been charging an hourly fee. The State has now amended the Social Services Law. And they've issues this All Districts Memorandum, which mandates that we charge for the service and that it be done on an actual cost basis. And perhaps to answer Mr. Kennedy's question, the 91.49 an hour is the calculation based upon the State's parameters as set forth in that ADM.

LEG. NOWICK:

Not to cut you off, but -- so are you saying that there is no other choice but to charge because of the State mandate?

MR. HOLOWNIA:

Yes. What CSEB had been told is that to not charge will jeopardize the overall funding, not just for this, but for the public assistance representation that we provide to CSEB and their funding, you know, through the Federal Government.

LEG. NOWICK:

What is the threshold on public-assisted citizens? How much -- before you get public assistance -- because this is if you're not on public assistance -- what is the yearly salary or the yearly amount of money you make before you have to go -- you can go on public assistance?

MR. HERNANDEZ:

It's Federal poverty levels. It's roughly 14, \$16,000 for a family of four. It's very low threshold for public assistance. Those standards haven't been changed in 20 years.

LEG. NOWICK:

So if somebody is making -- a woman -- I guess it could be the reverse too, maybe there's a man -- a woman that has to pay child support -- but let's just assume a woman is expecting child support, she's making 17,000 a year, husband is not paying it, from what I'm -- just so I'm trying to get clear, because she is not on public assistance or he, an attorney would charge \$91 -- it would cost her \$91 an hour -- an hour?

MR. HOLOWNIA:

An hour.

LEG. NOWICK:

How many hours do you think it would take for someone to go into court and argue this? What's one appearance in court?

MR. HOLOWNIA:

Probably about two hours.

LEG. NOWICK:

And that's with the waiting for the calendar and all that?

MR. HOLOWNIA:

About that. If there's no hearing and there's only one appearance and the case is resolved on that first appearance, I would say about two hours.

LEG. NOWICK:

And that doesn't ever happen as we well know, rarely.

MR. HOLOWNIA:

It happens sometimes.

LEG. NOWICK:

Here's the problem, and I think we all feel the same, and I think we're all frustrated, how can somebody that's making \$20,000 a year that has children, that is not getting payments, how do they afford to go into court? I know this is not your fault, but I also see this -- I know a woman -- I know of someone that is being battered at home and doesn't have enough money for an attorney, so she will be battered forever, because she can't afford to be divorced. It's just such an unfair system. And I know it's not your fault, and I know it's a State mandate, but I have a problem with charging somebody who doesn't make any money. I think it's probably that part of it is the threshold being entirely too low. And then, coming into Nassau and Suffolk Counties, where I mean, I don't know, I got -- the oil truck came the other day, that was \$900. I just don't know how people do it. And I feel frustrated, and I'm certainly sure that you do as well.

MR. HOLOWNIA:

The same concerns that you are voicing right now were voiced back in 1993 when this started, and led ultimately, I think, to the decision in 1997 by the Commissioner after receiving information from the State that they would -- that we would no longer charge for this service.

LEG. NOWICK:

But you're saying if they do that, then we're getting money from the --

MR. HOLOWNIA:

But the State has changed its mind and they've said that they can no longer do this. And it's not just this. To give you another example, case where there is only spousal support and no child support being paid at the same time, the Federal Government had now directed that and the State as a result of the Federal Government has directed that the Child Support Enforcement Bureau can't collect those funds anymore for that litigant. So it's just another example. There's also an example that the application fee, which is \$25, the State used to -- or the County I guess -- the state, I'm sorry -- the State would waive that fee except for one dollar. And they're now being told that that's no longer permissible as well, right, Jim?

MR. FARRELL:

Right. There's a \$25 fee once \$500 in child support has been collected. But that only applies to people who have never been on public assistance or are on public assistance.

LEG. NOWICK:

This change, though, this is mandated by the State, not the Federal Government? The change is by the State, is that who's telling us?

MR. HOLOWNIA:

This change is a result of the amendment to Social Services Law. And then this All Districts Memorandum to the Child Support Enforcement Bureau --

LEG. NOWICK:

The State Social Services Law?

MR. HOLOWNIA:

Yes, the State Social Services Law.

LEG. NOWICK:

So what I'm seeing here is that we need to talk to our State representatives. I mean, there's a problem here. I see a problem. If someone is not getting their child support, they're not going to be able to afford \$91 dollars times how many hours. I don't know how the rest of the committee feels, but I think we need to talk to our State Legislators.

MR. HOLOWNIA:

The way that these fees would be paid are set forth in the regulation as well. And perhaps Jim could speak to the way that the fee would be paid by the individual that you are mentioning.

MR. HERNANDEZ:

Could I just read -- I have the ADM here. It's March 23rd, 2010. It says, "Federal Law allow states to recover costs beyond the application fee either by recovering the actual cost of services or a standardized cost." I'm going to jump New York a bit. "New York has elected to recover costs through the standardized cost methodology or actual cost for service." And it says, "Program implications: Local districts must review current procedures for obtaining and providing legal services to CSS recipients and ensure compliance with the statute and regulation in these instructions." I'm reading from the ADM from the State to us.

It's not giving us choice. It's saying New York State has elected to do this and we are mandated to do that. So, you know, we don't necessarily agree with what's going on here, but, you know, we have seen strange State Laws before, it's nothing new.

MR. HOLOWNIA:

Legislator Nowick, the ways that the fees are paid as set forth in the regulation is that let's say that the child support is \$100 a week, the regulation says that up to 25% of that would be paid back to the Child Support Enforcement Bureau for the actual cost of that representation. And further, the way I understand that this works is that if there are -- in addition to current support, if there are arrears owed to that individual, the arrears would be paid first before any legal fees recouped by the Child Support Enforcement Bureau.

LEG. NOWICK:

All right. I'm frustrated and I'm sure you guys are too. It just reminds me of -- and I hate to say this, but it reminds of our real property tax system when people don't pay their taxes and it goes to the County and it just keeps multiplying and multiplying and multiplying and nobody ever gets out of -- there's just no end to it. And this is what I see happening. It just -- it just -- it's tough. Thank you. Thank you for your definition.

CHAIRMAN MONTANO:

Legislator Stern.

LEG. STERN:

Thank you Mr. Chairman. John, hello.

MR. HOLOWNIA:

Good morning, Legislator Stern.

LEG. STERN:

How are you. Thanks for being here. You did a great job of -- everybody did -- taking us through the explanation, answering Legislator Nowick's questions. I just had a couple of questions. The

cooperative agreement that's offered to someone that you are working with, I'm assuming that's like a retainer agreement, correct? Is it just defined differently? Maybe you can explain how that process actually works.

MR. HOLOWNIA:

The process is when someone applies for child support services, they fill out an application form. In the application form, they can request legal services. The application form sets forth this repayment that is mandated by the regulation, and that packet of information along with other things, comes over to the County Attorney's Office, and we assign an attorney to handle that particular matter.

We don't -- we will not be signing a retainer agreement. We have not -- we are not doing that anymore. We used to do that where there would be -- as a private attorney would do -- sign a retainer agreement and represent the individual as their attorney. The State is saying now, "You can't do that anymore, you have to represent the district." That makes the individual a witness for us, but we don't have an attorney-client relationship any further with that petitioner.

LEG. STERN:

It makes it clear that there is no attorney-client relationship, so there is no longer any type of retainer agreement. It's merely this cooperative agreement that's signed as part of the original application process?

MR. HOLOWNIA:

Well, there's an application by the litigant. And the cooperative agreement is between our office and DSS. That's the cooperative agreement they're referring to.

LEG. STERN:

So at no time is anything then signed by the litigant, by the applicant?

MR. HOLOWNIA:

Correct.

LEG. STERN:

This is a cooperative agreement between you and the -- I'm sorry -- the County Attorney's Office and DSS.

MR. HOLOWNIA:

Correct.

LEG. STERN:

Got that. Okay. The 25% recovery, that comes -- the 25% recovery comes out of a check that a litigant is going to receive. And I assume that it's 25% per check that they receive up until the time when, what, the bill is paid off, is that how it works?

MR. FARRELL:

That's correct.

LEG. STERN:

And just to be clear, I thought it was pretty clear when I originally read the statute and the administrative directive that came as a result of it. It's pretty clear that New York State has elected the option and that we as a local level of government are merely going to, if we need -- if we decide to approve this resolution, it's really just approving what is essentially a State mandate.

MR. HOLOWNIA:

Yes, I believe that's correct.

MR. HERNANDEZ:

Don't forget, we're a district of New York State OTDA, so, yes, we're bound to comply by those mandates. Whether we choose not to legislatively, then there's the penalties that would be involved in that.

LEG. STERN:

Next question then is there's a motion to table right now and a second before us, from a timing perspective, is there any potential down side to putting this over a cycle or two cycles and continue our conversation from a time perspective?

MR. HERNANDEZ:

At this point, this says, "The administrative directive was effective immediately, which is March 23rd, 2010." We have not seen any negative implications to date. Postponing it another cycle will probably not make that much of a difference, nor will it change any of the facts that have been placed in evidence.

LEG. STERN:

But just to be clear, postponing approval of this resolution, giving us time to perhaps get a handle on the process, but at the end of the day, it's not like this Legislature has any discretion whether to charge or not charge. Again, it's merely the implementation of a State mandate. Now, there might be corresponding penalties or loss of revenue to us or reimbursement as a result of the decision that we make going forward, but it's not like we at the local level have discretion here. The State has clearly created a scheme, and it's up to us to decide whether or not we're going to implement it as is or not, correct?

MR. HERNANDEZ:

That's correct, Legislator.

LEG. STERN:

Legislator Kennedy before mentioned perhaps working with the local bar, working with not-for-profit organizations, which I strongly believe is something that we need to work towards. Whether we provide the service or not, there's clearly not enough lawyers to go around to provide these kinds of services to those who are in need and need these kinds of services.

If there was a not-for-profit organizations, if there was a clinical legal education program, if there was a pro bono effort on the part of the local Bar Association or a combination of all of them, this would still be the system that we would have to implement because of State Law. If which want to continue to provide the service, regardless of what other sources there might be, this is something that we would still need to implement, correct?

MR. HOLOWNIA:

Yes. And I think the ADM is very clear that even with that, the legal fees have to be charged.

LEG. STERN:

Thank you.

LEG. KENNEDY:

Mr. Chair, can I just pick up the conversation a little but further?

CHAIRMAN MONTANO:

With all due respect, Legislator Kennedy, there's a list with Legislator Browning and Legislator Lindsay next, and I'll put you right after that.

LEG. KENNEDY:

I'll be happy to wait.

CHAIRMAN MONTANO:

I have a lot of questions also. I don't know if we're going to get to them, but I'd rather do it in that format.

LEG. KENNEDY:

Sure.

CHAIRMAN MONTANO:

Thanks. Legislator Browning, go ahead.

LEG. BROWNING:

Yeah. I think I can be quick. You know, I'm looking at experience in my office and the single parent with four kids who has the deadbeat father. Now, if she gets child support, it comes out of her child support check. What if he's the deadbeat parent that he's been the past six years and -- so now she's got all these legal fees, who is paying for them?

MR. HOLOWNIA:

It depends on what kind of a case is before the court. If it's a violation petition that's filed because the non-custodial parent is in arrears, and we succeed in establishing that it's a willful contempt, the Family Court Act permits us to file a motion for the counsel fees to be paid by the deadbeat or the non-custodial parent. And the statute says that the court must order those fees. So what we will do in those cases is we'll file a motion to have the non-custodial parent be assessed the fees that are charged in this case, and it would be paid then by the non-custodial parent and not by the custodial parent. But that only is applicable to violation cases.

Take a case where you are establishing the order of support initially, the statute does not mandate that the court award legal fees against the non-custodial parent. But in a violation case where there are arrears and we can prove a willful contempt, we can have the court assess them against the non-custodial parent and then the custodial parent would not be responsible for them.

LEG. BROWNING:

I know you mentioned, you know, the federal poverty level being around \$14,000, and let's say the custodial parent does get maybe \$200 child support and it's just putting them over maybe by ten bucks that it's putting them over the poverty level, but now you are taking it away from them. So now -- it seems like you're going to wind up getting it from one end or the other, because now that parent is eligible for Social Services, correct?

MR. HERNANDEZ:

You're absolutely correct. We would like to see every penny that the custodial parent is entitled to go to the custodial parent. It will keep them out of the service system and help improve their lives, but unfortunately, we're not in the position where we can do that.

LEG. BROWNING:

I just think it's insane, because child support is child support. It's about putting food on the table and clothing the child. And, you know, here we go again. They're going to wind up on DSS, which is going to cost us more. It's just insane, absolutely insane. I'm done, Rick.

CHAIRMAN MONTANO:

Legislator Lindsay.

P.O. LINDSAY:

I know we are dragging this out folks. And it's just -- I guess this would fall under the category of another unfunded mandate from the State. What is their incentive for doing this? It was our dime, right?

MR. HERNANDEZ:

That's correct. There is the option in the Federal Social Security Law that gives it them. And somebody in New York State somewhere along the way decided that they will be enforcing and mandating this.

P.O. LINDSAY:

Okay. But are we missing something here? Does the State benefit financially here in any way, or are they hoping that we're not going to follow the mandate and remove a bunch of aid from us?

MR. HERNANDEZ:

I would say the budget affect would be minimal. I'm not sure if there are any legal implications by enforcing certain provisions that would come up. But I can't see any significant gain. As Legislator Browning just said, you are talking money out of the pockets of custodial parents. Some of them are at the cusp of the poverty level that you are going to put them out of a house or into the service system.

P.O. LINDSAY:

It's about the cruelest mandate I've heard so far.

MR. HERNANDEZ:

It just doesn't make sense. Nevertheless, we've got it in black and white right here that we have to do it.

P.O. LINDSAY:

And probably in the long run -- I mean, in '97, evidently we, County Government, voted to provide this service. The rational must have been, "let's go after the deadbeat dads rather than these folks winding up on welfare and maybe housing assistance and the whole gamut," because that's what, you know, they are forced to do if the guy doesn't -- or the gal, whichever doesn't pay the custodial benefits.

MR. HERNANDEZ:

We are as baffled as all of you are.

P.O. LINDSAY:

Just bear with me one more time. Let me carry this through. For example, a woman goes through a divorce. We're not talking County Attorney representing her in a divorce proceeding, right?

MR. HOLOWNIA:

That's correct. This is only in a Family Court proceeding.

P.O. LINDSAY:

So the judge makes an award; two kids are involved, the spouse has to pay so much a month, that's part of the divorce settlement, right?

MR. HOLOWNIA:

It would be part of the judgment of divorce, it would be an order of the Supreme Court, correct.

P.O. LINDSAY:

So this take place after that where the spouse isn't paying, that's one situation that we covered before, right? What would be another situation?

MR. HOLOWNIA:

Well, in a --

P.O. LINDSAY:

Why would you have to have a lawyer to go back to court, to reinforce the original order?

MR. HOLOWNIA:

Usually it's for the initial enforcement purpose. The Supreme Court order has to be made an order of the Family Court. We call it an enforcement action. Once the Family Court adopts the higher court's order, then it is enforced through the Family Court and through the Child Support Enforcement Bureau, we're talking about cases here only where someone has elected to utilize the services of the Child Support Enforcement Bureau. Pay if it's a pay-direct case, Legislator Lindsay, from the non-custodial parent to the custodial parent outside of this, we're not involved at all and neither is CSEB.

P.O. LINDSAY:

And from my experience, I mean, it's beneficial to go through our department, because you don't have to deal with the spouse directly.

MR. HOLOWNIA:

There are a lot of enforcement efforts that are automatic, and it usually is much better to go through them. So to finish up answering your question, many of these cases are violation case where the non-custodial spouse is in arrears for child support.

P.O. LINDSAY:

That's probably the predominance of it, right?

MR. HOLOWNIA:

A lot of them are. You know, in those cases, there's also upward modification requests and downward modification requests. But with respect to violation petitions for failure to pay, in those cases, the custodial parent, if we're successful, is not obligated for the legal fees, because the court will, on our motion, assess them against the non-custodial parent.

But let's say that we have a case, an upward modification increase in child support or where the non-custodial parent is asking for a downward modification, those cases, the court is not obligated to award counsel fees to the custodial parent. In those kinds of cases, that's where the individual would be responsible for them to be paid back according to the regulations.

P.O. LINDSAY:

So it isn't quite as bad as the first perception? It's a narrow --

MR. HOLOWNIA:

It's a portion of the overall caseload.

P.O. LINDSAY:

Okay. But the typical one with the deadbeat spouse, the judge could order not only enforcement of the child support, but the additional legal fees?

MR. HOLOWNIA:

That's correct.

P.O. LINDSAY:

That the custodial parent wouldn't be charged \$91 an hour. If the court orders that the deadbeat has to pay, then we're not going to charge them \$91 an hour.

MR. HOLOWNIA:

Well, he is going to be responsible for the \$91 or the non-custodial parent, I should say.

P.O. LINDSAY:

Okay. Okay.

CHAIRMAN MONTANO:

Any other questions? I have some, but the hour is getting late. Just a couple of quick ones. Ed, you mentioned earlier the word penalties, now from what I heard, you said that this administrative regulation was promulgated in March of 2010; is that correct?

MR. HERNANDEZ:

Correct.

CHAIRMAN MONTANO:

So we're in 2011. A year has passed and nothing has happened.

MR. HERNANDEZ:

That's correct.

CHAIRMAN MONTANO:

What do you mean by "penalties"? Let's assume for argument's sake that the motion to table prevails today and we don't pass it, what's going to happen?

MR. HERNANDEZ:

The likelihood that nothing has happened so far --

CHAIRMAN MONTANO:

Will continue.

MR. HERNANDEZ:

May continue. I mean, it's a short period. We're not saying we are going to reject the resolution and continue on our way. We're saying we're going to table it for one cycle.

CHAIRMAN MONTANO:

Or more. We are going to table today, and then we'll table it until we pass it.

MR. HERNANDEZ:

Okay. But let's be clear though. If we're going to table it what you want from us for the next meeting so that we have the information that you need to help you make a decision.

CHAIRMAN MONTANO:

You said earlier that this is an administrative regulation, but it's not -- from what I gather, it's not written into the Social Services Law; am I correct? I mean, there is a difference being it being statutory versus an administrative interpretation of the statute promulgated by, I guess, the Commissioner or whomever.

MR. HOLOWNIA:

The ADM, Legislator Montano, is based upon the modification to the Social Services Law.

CHAIRMAN MONTANO:

Right.

MR. HOLOWNIA:

As far as the Child Support Enforcement Bureau and DSS is concerned, they have to follow that.

CHAIRMAN MONTANO:

Okay. Are you following it now? In other words, since March of 2010, those cases that you have taken, have you charged the client for your legal services?

MR. HOLOWNIA:

We have not. We have also, however, stopped accepting retainer agreements. And we are following the ADM except for the imposition of the legal fees pending the action of the Legislature.

CHAIRMAN MONTANO:

So that money that you would be reimbursed for, that 75%, what is the status of that money? Is that on hold or are you ignoring that? Explain to me what we're dealing with on that. Because from what I understood of the 100% of the fee, 75% is reimbursable by the Federal Government. So for -- if I understand that correctly, in the last year, you are owed 75% of whatever work you have performed; am I correct?

MR. FARRELL:

That's correct. On a monthly basis, the County Attorney submits their cost, their expenditures and claims are put into New York State on a monthly basis based on those claims.

CHAIRMAN MONTANO:

And are those claims being paid or are they pending? What is the status of those claims?

MR. FARRELL:

The claims are not pending, they're being paid on a regular basis by the State. Now, I can't say dollar-for-dollar, but the fact that this ADM has not been implemented has not halted the repayment of the claims.

The problem that we could encounter is that at any point in time, the State or Federal Government could come down and perform an audit, and based on our performance on what we're doing or not doing, could jeopardize the reimbursement of future services or even past services.

CHAIRMAN MONTANO:

So what you are saying is that in the interim, the status quo remains the same; that is that you now charge for the services, you submit the vouchers to the State -- who do you submit them to, the State or Federal Government?

MR. FARRELL:

The State.

CHAIRMAN MONTANO:

Does it pass through the State, is that how it works?

MR. FARRELL:

It goes up to the State and into the Federal Government.

CHAIRMAN MONTANO:

All right. So you're submitting your bills to the State and you're getting reimbursed as we speak now in spite of the fact that this regulation has been passed -- or the administrative regulation was promulgated and we have not passed a resolution to annul Section 00 what it is -- 6 -- Resolution 652 of 1997. Now what would happen, Ed, if we simply don't pass this?

MR. HERNANDEZ:

Eventually the program will be audited and they will find we are not in compliance with the ADM. Two things can happen; they could issue a finding and say, "You must comply," in which case we're going through this all over again; or they can say, "You were mandated to comply and didn't," and that reimbursement can be withheld.

CHAIRMAN MONTANO:

Well, you have already been reimbursed. So in order for them to implement, they'd have to charge back, is that what you are telling me?

MR. HERNANDEZ:

That could be a possibility.

CHAIRMAN MONTANO:

Because if you've already been paid, then you have the money. Another claw-back, right, Bill?

MR. HERNANDEZ:

These are the situations we're trying to avoid getting into, because in this day and age, we can't predict what a higher level of government is bound to do. I think we've see examples all over the country about things that are happening that government is doing. And I think we just got hit with something ourselves with the health centers.

CHAIRMAN MONTANO:

Yeah, the claw-back. If this was passed in 2010, in March, why are we here in 2011 in March? I mean, why didn't this come sooner if it was something that was promulgated back then and you wanted to enforce it?

MR. HERNANDEZ:

We've been playing around with draft legislation for the last couple of months. First we did the analysis of what it exactly means and what our options are, and then we drafted legislation, and it's finally come to the table now.

CHAIRMAN MONTANO:

All right. George, you have some questions. I'd like to turn this over to Counsel.

MR. NOLAN:

My only question, and I guess I'll pose this to everybody, is why do you need a legislative resolution? There's no legislative law or resolution that states that we have to provide this service for free. You have a State mandate. Why don't you just, you know, change the policy administratively? That's my question.

MS. LOLIS:

I'll take that one. In reviewing it -- in reviewing the resolution, initially it was filed because it was believed that we needed to repeal a prior resolution. After reviewing it more closely and looking at

the prior resolutions, I don't believe we need to repeal. As a matter of fact, there was an amended copy filed to change the title, because we no longer needed to repeal the prior resolution.

So in light of what Counsel is asking, I would have to look into it a little bit further, but I believe in light of the fact that we do not need to repeal a prior resolution, it can be implemented without legislative approval.

CHAIRMAN MONTANO:

Why don't we do this: There's a motion to table now, I will table it -- I will ask for a vote on the tabling. Why don't you send us your analysis by the next meeting, but in writing so that we have something we can look at and then we can question? And if you can, get it to us before the meeting so that we have a chance to review it. And I think we're coming up -- and with respect to your thing earlier, Ed, we don't table for one cycle, we either table or we don't is what I meant. So the motion to table is just now until the next meeting, which I think is in two weeks. And if you can get us that within -- you tell me how long.

MS. LOLIS:

Just so -- I just want to be clear. The analysis that you are requesting, that would be the analysis as to -- as to whether we believe a legislative --

CHAIRMAN MONTANO:

Resolution is required.

MS. LOLIS:

-- is necessary. If it's not required, the administration could just withdraw it.

CHAIRMAN MONTANO:

Right. And that's a conversation that some of us, you know, had here at the podium as to whether or not we even need to pass this resolution if, in fact, it's an administrative -- you know, it was promulgated by the State.

And whether you are doing it or not is really not our concern, but we certainly don't want to put you in a position where if there is going to be payback provision, your money is accumulating. But if it's not something that we need to do, quite frankly, you know, I don't like the resolution, and I would be opposed to it. But if it's something I have no choice in doing, I'm willing to do it. But if I don't have to, why get involved with it? It's not my job is what I'm saying. But we need you to specify exactly what it is that you are looking -- and I did, when I read it from the agenda, I did reference the fact that this was to repeal a resolution, but that's not the new title. We're not repealing anything, we're just passing something that we may not need to deal with. So if you put that in writing by the next meeting, then we can discuss it.

MS. LOLIS:

Absolutely.

CHAIRMAN MONTANO:

Thank you very much.

LEG. KENNEDY:

One item in the request there. I don't want to get -- well, yeah, actually I do want to get overly detailed. I want to know how many attorneys are involved with it; how many hours in total have been tasked to this function; what the total amount of reimbursement that we received under 4D is; and how do we come up with the \$91 per hour charge.

Because while, Ed, you are right, we are an agent of the State Department of Social Services in this function, that doesn't mean that we can't go ahead and point out to the State again how they are basically going local Suffolk County taxpayers, with what sounds like something that's truly Machiavellian.

Nobody is going to want to go ahead and facilitate a process that has custodial parents having, you know, diminish what they have to survive to raise families because of this enforcement piece. But, John, you explained, I guess, it's a smaller category of what seemed to be a larger amount.

I need to get some sense, you know, if we have 300 cases before the Family Court, you know, Bar, before Judge Freundlich, maybe we even ought to be bringing the Family Court into some of this dialog to help us find a way so the task gets done, the enforcement gets put into place, the attachments, the liens and all the other work gets done to get the money, but not necessarily making, you know, custodial parents bear the burden, or for that matter, us if it really is a burden that, you know, is there in place that the State saying, "Go ahead, local, take care of it." I want to get a chance to see what it's about. Thank you.

CHAIRMAN MONTANO:

John, if I may, you know, when this program first started and you took over, I actually handled cases with you when I was in practice. I'm a little familiar with it. Would you also address the issue, you said earlier that you really -- the Child Support Enforcement Bureau really has no option in terms of taking these cases even when the applicant is a non-Social Services recipient; is that correct?

MR. HOLOWNIA:

All these applicants by definition are non-Social Services recipients. These are people who are not on public assistance. If they were, they don't have the right to request legal services, because we provide them to the Department of Social Services and handle --

CHAIRMAN MONTANO:

Oh, so you don't handle that aspect of it. You handle the aspect -- because you are right, if someone is on Social Services, Social Services brings the action on their behalf.

MR. HOLOWNIA:

And our office represents them in those cases. These are cases where --

CHAIRMAN MONTANO:

Our office meaning the Child Support Enforcement Bureau or the County Attorney's Office?

MR. HOLOWNIA:

County Attorney's Office.

CHAIRMAN MONTANO:

So it's a separate unit?

MR. HOLOWNIA:

It's a unit within my particular bureau. The Family Court Social Services Bureau, we have attorneys who handle what we call CSS cases. But by definition, they are litigants who are not on public assistance.

CHAIRMAN MONTANO:

Right. And then the question I have is why are you even in the business? What mandates that you

take these cases? I know you said you are obligated to under some law. I'm trying to figure out what is -- when you address your memo, could you just address the issue of why or what compels you to have to accept these kinds of cases, because essentially, in my mind, you're competing against a private bar by taking these cases, and now you are telling me that -- - go ahead, you were going to say something, John.

MR. HOLOWNIA:

And we hear that a lot.

CHAIRMAN MONTANO:

And rightfully so. But now you are also telling me that while in the past you used to represent the applicant, now you're telling them, "Well, we don't even represent you. We represent the Department of Social Services. We're just giving you the benefit of our services at a reduced rate, but now we are going to charge you." So, you know, from a lawyer, I don't understand how you can charge someone that you're not representing for work that you are doing when you're not their lawyer and you're doing it for someone else. So it seems to be becoming a little more convoluted.

MR. HOLOWNIA:

There is a rational that the State -- in answer to your specific --

CHAIRMAN MONTANO:

I think the rational was that we wanted to provide assistance to people who weren't getting proper child support so that the children or the families would not become public charges. That was the rational initially, from what I understood, when the program was first initiated. Has that rational changed?

MR. HOLOWNIA:

No, it hasn't. But in our response, we can specifically address the question that you put, because the State in response to questions from the local districts has answered that. We will put that in our response to you.

CHAIRMAN MONTANO:

That's what we would like to see, and then we can deal with this. I thank you very much for your time. Anything further you would like to add? Anyone else? Thank you very much. We have a motion to table. I'm going to call the vote on that. All in favor? Opposed? Abstentions? It's **TABLED** until the next meeting (**VOTE: 6-0-0-0**).

We're moving on to 1085, **Sale of County-owned real estate pursuant to Section 72-h of the General Municipal Law (New York State) (SCTM No. 0200-980.40-03.00-026.000). (Co. Exec.)**.

LEG. BROWNING:

Motion to table.

CHAIRMAN MONTANO:

Pam, did you want to object to that motion?

MS. GREENE:

No, we did not.

CHAIRMAN MONTANO:

There's a motion to table, I won't ask why, I'll second it. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 6-0-0-0)**.

All right. 1101 has been withdrawn and 1102 has been withdrawn.

1106, Amending the 2011 Capital Budget and Program and appropriating funds in connection with improvements to Board Of Elections. (Pres. Off.)

I'm going to ask for an explanation on that.

P.O. LINDSAY:

Motion to approve.

CHAIRMAN MONTANO:

We have a motion to approve, do we have a second?

LEG. NOWICK:

Second.

CHAIRMAN MONTANO:

I have a question. What is this about?

MR. NOLAN:

It is an existing capital project, and within that capital project at the Board of Elections, it's moving money from planning into construction.

CHAIRMAN MONTANO:

What are we constructing there, Robert? Was this the warehouse?

MR. LIPP:

It's renovations, I'm not exactly sure what it is. But they were appropriating the full 500,000 that's in the adopted Capital Program. We're moving some of the money around though, but it's going to appropriate and we're going to authorize serial bonds for 500,000.

CHAIRMAN MONTANO:

So it's moving money within a Capital Program within the Board of Elections that was already -- - was already approved?

MR. LIPP:

Correct.

CHAIRMAN MONTANO:

All right. We have a motion to approve. All in favor? Opposed? Abstentions? Motion carries.

APPROVED (VOTE: 6-0-0-0).

1110, Authorizing the renewal of the lease of premises located at 32 Jackson Ave., Hampton Bays, NY for use by Suffolk County District Attorney's Office. (Co. Exec.)

I'll make an application -- I mean, a motion to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. And I assume that that's our office out on the East End for the DA's

Office.

AUDIENCE MEMBER:

Correct.

CHAIRMAN MONTANO:

Someone said correct, we will leave it at that. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 6-0-0-0).**

As I said, Executive Session on the agenda has been postponed next meeting this. Meeting is hereby adjourned. Thank you.

(*THE MEETING WAS ADJOURNED AT 11:33 A.M.*)

{ } DENOTES BEING SPELLED PHONETICALLY