

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, April 20, 2011.

MEMBERS PRESENT:

Legislator Ricardo Montano - Chairman
Legislator Steve Stern - Vice-Chairman
Legislator Sarah Anker
Legislator John Kennedy
Legislator Lynne Nowick

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
Dennis Brown - County Attorney's Office
Paul Perillie - Aide to Majority Caucus
Robert Martinez - Aide to Chairman Montano
Justin Littell - Aide to Legislator D'Amaro
Pamela Greene - Division of Real Estate
Dot Kerrigan - AME
All other interested parties

MINUTES TAKEN BY:

Donna Catalano - Court Stenographer

(*THE MEETING WAS CALLED TO ORDER AT 10:17 A.M.*)

CHAIRMAN MONTANO:

Okay. We're going to call the meeting to order beginning with the Pledge of Allegiance led by Legislator Anker.

SALUTATION

You may be seated. First of all, I would like to welcome our newest member of the committee, Legislator Anker, congratulations. And with that, we are actually going to go right into the agenda. Okay.

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

I believe the public hearing is still open on that.

MR. NOLAN:

It is.

LEG. STERN:

Motion to table.

CHAIRMAN MONTANO:

Motion to table was made, I'll second that, and it's for public hearing. All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0)**

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

I make a motion to table.

LEG. KENNEDY:

Second.

CHAIRMAN MONTANO:

All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0)**

2208, 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 will make a motion to table.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0)**

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

Anyone?

LEG. STERN:

Motion to table.

CHAIRMAN MONTANO:

Motion to table, I'll second that. All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0)**

1085, Sale of County-owned real estate pursuant to Section 72-h of the General Municipal Law (New York State) (SCTM No. 0209-024.00-02.00-026.000). (Co. Exec.)

I will make a motion to -- is this the County Executive one, and we have one from Legislator Browning on the same property? Okay. I will make a motion to table.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. Any discussion? All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0)**

1133, Adopting Local Law No. -2011, A Charter Law to strengthen County Legislature oversight of departments, offices and agencies. (Romaine)

LEG. KENNEDY:

I'm going to make a motion to approve just for the purposes of discussion, and I'm going ask Counsel to refresh us again on what this bill would do.

LEG. NOWICK:

I'll second the motion.

CHAIRMAN MONTANO:

All right. We have a motion to approve, and we will start with that. Go ahead, Legislator Kennedy, you have the floor.

LEG. KENNEDY:

Thank you. Thank you, Mr. Chair. George, can you remind us again what the bill would direct and accomplish?

MR. NOLAN:

It would add a requirement to the Charter that any County department, office or agency that is subject to Federal or State oversight or regulation, every time they receive a copy of a report or an audit from that oversight agency, that they would file a copy with the Clerk of the County Legislature who would then provide a copy to each Legislator.

LEG. KENNEDY:

Let me ask, at this point, we don't have any -- no language that makes that a specific requirement? We would rely more upon, you know, custom and practice at this -- as of right now?

MR. NOLAN:

Right. There's no expressed requirement that a department or agency of the County do this. If they receive some type of report or audit from an oversight agency of the State or Federal Government, they might provide it to the County Legislature, might they not.

LEG. KENNEDY:

Well, God knows I don't have enough to read these days, but nevertheless, I think, you know, oftentimes we will have various source funding agencies or oversight agencies that come upon particular findings over a whole variety of matters. I think the legislation has some merit. And I guess I'll reaffirm my motion to approve.

LEG. MONTANO:

I have a question. Anything else, John?

LEG. KENNEDY:

No.

CHAIRMAN MONTANO:

With respect to the audit, Counsel, sometimes audits during the process of an audit, there are preliminary audits or reports that come out and then there's a process, this don't specify whether or not we're talking about any preliminary audit or we're talking about a final -- you know, final, final report, does that matter?

MR. NOLAN:

I believe it would apply to the final report, because you are right, sometimes there's an audit and there are steps for that audit. I think this legislation would require the final product.

CHAIRMAN MONTANO:

Right, but it doesn't say that. I mean, that's the concern that I have.

MR. NOLAN:

It does not say that, no.

CHAIRMAN MONTANO:

I would be more comfortable if it specified exactly the end product, because I know that there are agencies that have been audited, and there's a process to contest and challenge the audit. And after that process is complete, in many instances, the audits are actually changed. So that's something you may want to consider in terms of do we need to do this now or do we need to clear up that language. And, obviously, counsel says that it seems to apply to the final audit, but that's not what it says.

LEG. KENNEDY:

And I appreciate your questioning on that, Mr. Chair. I'll withdraw my motion to approve and I will look to make a motion to table. I will bring it to the attention of the sponsor who I'm going to be seeing on Friday morning. I'll ask if he might entertain some revision in language, and then, you know, look to go ahead and bring it forward.

I think your points well taken. And as a matter of fact, I know that we just and recently had an audit done with our local library up in Smithtown, and there was some dialog that went on with Comptroller DiNapoli as far as there explanation, there was a final, and that, in fact, was what was released and made available to all was the whole compendium. I don't want to wind up having the whole Legislature get into what may be an earnest disagreement or dialog for understanding or interpretation. But I do want it to be mandatory, not permissive when there is a final conclusion

from any audit or oversight agency that provides funding for us, because ultimately, we bear the responsibility of having to go ahead fix or remedy whatever may be disallowances down the road. And it seems that in many cases, we are playing catch-up ball. And we ought to know sooner rather than later what we have in front of us.

CHAIRMAN MONTANO:

And I agree, but aren't the final audits public information anyway?

MR. NOLAN:

I think they are.

CHAIRMAN MONTANO:

Okay. So this just makes sure that we get them.

MR. NOLAN:

Yes.

CHAIRMAN MONTANO:

I would second the motion that with the understanding that hopefully that the language can just be cleared up to specify that it's a final audit. And then we can go ahead at the next meeting and possibly approve it. Any other discussion? All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0).**

1205, Sale of County-owned real estate pursuant to Section 72-H of the General Municipal Law New York State (SCTM No. 0209-024.00-02.00-026.000). (Browning)

And that is the Browning bill. Pam, did you want to come forward and discuss that and give us an update?

MS. GREENE:

Good morning, Mr. Chairman, members of the committee. And welcome, to the newly elected Legislator. I'm Pamela Greene from the Division of Real Property. As you are aware, there are two bills before you; one was just tabled, that was requesting that the County taxpayers be made whole for the County investment that existed on the property that was taken off the auction last year at the request of representatives from the village, the newly formed Village of Mastic Beach.

This bill introduced by Legislator Browning proposes to transfer for one dollar. We, the Division, have not received to date a resolution from the newly formed village formally requesting the property, which normally is our policy. We like to have the municipality requesting the property so state and also state their intended purpose. And to our knowledge, that resolution has not been received yet.

CHAIRMAN MONTANO:

Well, I would agree that before you give something to someone you want to make sure that they want it, right?

MS. GREENE:

We would.

CHAIRMAN MONTANO:

All right. Is there anyone from Legislator Browning's office here that can give us an update? Legislator Stern.

LEG. STERN:

Thank you, Mr. Chairman. Although there's been no formal resolution, has there been any indication from the village as to what the ultimate purpose would be? Has there been any communication back and forth? Has there been that indication?

MS. GREENE:

Again, the County Executive's bill was specifying that it would either be for a park or for a village hall. That was part of discussions that were made last year prior to the incorporation of the village. We do request that one specific use be itemized so that if it used for a park, there are workforce housing credits that are able to be retained by the County.

CHAIRMAN MONTANO:

Legislator Nowick.

LEG. NOWICK:

I just wanted to understand the difference between the two. One is for a dollar, and the other is -- what's the other? What is the difference in the other one?

MS. GREENE:

The difference, the other one is requesting that the newly formed municipality pay the County investment to date, in excess of \$6500, which all the taxpayers of Suffolk County have been making whole.

LEG. NOWICK:

I'm sorry, but I didn't hear the amount.

MS. GREENE:

Six thousand-five hundred and fifty three dollars.

LEG. NOWICK:

What's that, back taxes?

MS. GREENE:

Yes.

LEG. NOWICK:

Okay. So this is to waive the back taxes and just give the property to the municipality?

MS. GREENE:

Correct.

LEG. NOWICK:

This piece of property, is it near the Village of Mastic Building, or there is no building yet?

MS. GREENE:

There is no building yet.

LEG. NOWICK:

Okay. So this would be to have a build. They would build a building on this property and we would gift it to them, so to speak.

MS. GREENE:

Again, the legislation before you has two purposes, not one. So one is a park, one is for a future village building.

LEG. NOWICK:

But both owned by the Village of Mastic, if we give it to them.

MS. GREENE:

It's one piece of property.

LEG. NOWICK:

One piece of property.

MS. GREENE:

They haven't specified which use they desire.

LEG. NOWICK:

Okay. My point is we're giving it to them and what are we waiving? You know, I just wanted to know?

MS. GREENE:

The County investment.

LEG. NOWICK:

Okay. Thank you.

CHAIRMAN MONTANO:

I was going to ask a question. Pam, when we do our 72-H transfers, generally we do them without consideration or minimal consideration. I've just been advised by Counsel that we do that when we transfer it for affordable housing purposes. But when we transfer to municipalities, we generally do charge either an appraised value -- or why don't you explain it to me? You know, how does it normally work?

MS. GREENE:

As you will see on two other resolution that you will be having to consider today, both of those two are 72-H transfers to the Town of Brookhaven. Both of them are for the back taxes. And the effort is to make the County taxpayers whole. All the County taxpayers throughout Suffolk County, all the County taxpayers in the Town of Brookhaven have been making whole the County investment that's been accruing on these properties. So we do try to recoup that.

CHAIRMAN MONTANO:

Is that for affordable housing purposes, or is that for municipal purposes?

MS. GREENE:

Municipal purposes, open space, anything other than affordable housing. Affordable housing 72-H transfers are then -- the back taxes are waived.

CHAIRMAN MONTANO:

So then this bill, this version of the transfer, is out of the norm?

MS. GREENE:

Correct.

LEG. KENNEDY:

I was just curious, when you first looked at the property, what's the value on it? Did you get an appraised value on it?

MS. GREENE:

There was an underappraised value. Last year at auction, the upset value put on the property was \$10,000 to begin the bidding at the auction prior to it being removed at the request of the representatives of the village.

LEG. KENNEDY:

Is it a lot?

MS. GREENE:

It's about a third of an acre.

LEG. KENNEDY:

About a third.

LEG. KENNEDY:

Okay. Thank you.

CHAIRMAN MONTANO:

Okay. Thank you, Pam. I am actually going to make a motion to table this one. And I really would like to go back and look at the other one from the County Executive if, in fact, the norm is that we at least make the County taxpayers whole. So that explanation and that understanding, I'll make the motion to table, seconded by Legislator Nowick. Any discussion on this?

MS. GREENE:

Thank you, Mr. Chair.

LEG. NOWICK:

Not a discussion -- and I might have missed this -- but do we -- have we done this many times before for municipalities. We have, haven't we?

MS. GREENE:

72-H transfers to other municipalities for municipal purposes are fairly common. You see them often on this agenda. At this committee, you would see the 72-H transfers for municipal purposes such as open space. At the -- I believe it would be another committee that you would see the transfers for workforce housing.

CHAIRMAN MONTANO:

Okay. Thank you. Motion on floor, all in favor? Opposed? Abstentions? Motion carries.

TABLED (5-0-0-0).

1243. Adopting Local Law No. -2011, A Local Law to Prohibit Certain Language in County Contracts. (Romaine)

I believe the County attorney wanted to speak on that; is that correct, Dennis, you had requested that earlier? Let's get a motion first and then -- hold on. Before we start, I'm going to ask Counsel for an explanation to put on the record with respect to this particular bill.

MR. NOLAN:

This law applies to County contracts with contracts agencies, and it would bar the inclusion of certain provision in those contracts. The first one would bar any provision that requires the contract agency to name credit any individual elected office -- official, officer, department officer or agency of the County in the printed materials, advertising or publications for funding they receive from the County.

Secondly, it would bar any provision requiring any contract agency to obtain approval from the County prior to the release of any press release or media communication relating to the services provided by the agencies.

Third would bar any provision that requires a contract agency to obtain approval from the County prior to the publication of any book, article or other communication relating to services provided by the agency. And lastly, it would bar the provision -- the inclusion of any provision that would require a contract agency to submit its brochures, media advertising or other copy publicizing the contract agencies and the services it provides to the County prior to the publication of those are materials. So those are -- pretty much match up with standard provisions that are currently included in County contracts. Legislator Romaine expressed some concern about all of those provisions and requested this bill.

CHAIRMAN MONTANO:

Thank you. We don't have a motion.

LEG. KENNEDY:

I will make a motion to approve for the purposes of dialog.

CHAIRMAN MONTANO:

I'll second it for purposes of dialog at this point.

LEG. KENNEDY:

Thank you for refreshing my recollection. I believe that part of the what prompted Legislator Romaine to bring to bring this piece of legislation to the floor was efforts that he had undertaken to get some general information and some other background materials from Cornell Cooperative Extension. I believe he was told by the Director that until such time as there was approval by the administration that they weren't able to go ahead and release some of those materials to him.

I have no way of knowing -- I'm not directly familiar with Cornell's contract, you know, if this is standard language. I encountered it myself when it came to grant funding associated with the Nesconset Chamber of Commerce and some of the advertising that we did for our music series, our summer concert series. There was a concern on the part of the administration about some specific language that had to be contained on the banner.

I think that this is an effort to go ahead and make sure that our agencies that we fund to carry out a particular mission and purpose comport and confirm with general counter requirements, provisions and all of the other standard practices, but should not be further impacted to go ahead and carry any particular individual, because we as a County collectively are the Legislature and the Executive's Office ultimately working together to implement policy. So I think it's got merit to it.

CHAIRMAN MONTANO:

If I may add to that Legislator Kennedy. I had a discussion with Mr. Brown earlier, and he provided me with a copy of the County SOP that deals with contracts. And very clearly, SOP the states, "the contractor shall not issue press releases or any other information to the media in any form concerning the services without obtaining prior written approval from the County." And there's another section that says, "contractors shall not issue or publish any book, article, etcetera, etcetera without -- without provider written permission from the County," which to me sounds a bit strong. So the question now is that if we pass this resolution, the passage of this resolution wipes out these SOPs; am I correct, Mr. Brown?

MR. BROWN:

Yes, sir, because this is a law and SOP is not law.

CHAIRMAN MONTANO:

Okay. And what -- do you have objections -- why don't you make your statement with respect to your position on this resolution, and then we'll take it from there.

MR. BROWN:

As to the SOP, the SOP, I found that and that has a date on it going back to June, 2001, but before that, I was able to go back and look at standard clauses which are in contracts. And some of you may remember Rob Hatch, he used to work in the County Attorney's Office. And he's largely responsible for all of the language that's in the contracts as it exists today and has it has evolved over the decades. And I was able to go back and find a clause that he has used, which is from 1991, which is basically the language that is in the SOP. SOP so even though the SOP is dated June, 2001, I'm sure it predates June, 2001, because SOPs are amended from time to time.

As to the importance of the language that's in the SOP, it's probably generally a good idea to have some type of screening in advance by the departments. And in my experience, that's where the screening has been, at the departments, as to what a publication is going to say. And whether it's a press release or an advertisement or an announcement or something more formal like a book or a booklet or a pamphlet, the idea is to view the content, not to have a prior restraint on speech, but to view the content since County money is being used to fund whatever it is that is being -- that is being printed and distributed.

The other examples which are -- and by the way, the SOP, that's basically what's in the proposed G of this amendment and also the second sentence of the proposed E of this amendment. As to all the other clauses, I would just view them as ancillary to giving effect to what's in the SOP. And by the way, they are -- depending on the organization, they are subject to negotiation. So the Cornell matter, I can't speak to, but with respect to let's say Stony Brook, because we have plenty of contracts with Stony Brook. We frequently find that when there's a university involved that this language is subject to negotiation.

CHAIRMAN MONTANO:

Dennis, I have a question now. We're talking about contracts agencies, not departments. We're talking about the 501(C)3 agencies that get some money from the County.

MR. BROWN:

It would appear in a government contract or a contract with the university as well, not only the line items. We didn't put this in the contract with respect to consultant services, because if money -- because if there's a publication is going to be issued and it's basically created out of County funds, we'd just like to look at the content in advance. And in my experience, I am not aware of any that's been withheld.

CHAIRMAN MONTANO:

Well, that's a distinction that is not specified in the bill. But let's stick to the contract agencies. A lot of these agencies receive some money from the County, but in many cases, it's not their entire budget or not even a large part of their budget, yet this SOP requires them to seek written permission from the County prior to doing a press release. Isn't that a bit harsh, or isn't that a bit bordering on some kind of potential censorship? That kind of language makes me uncomfortable, so I'm trying to see why would object -- why would we want that kind of control over a contract agency, particularly when we maybe give them 5%? There are some agencies that we give \$10,000 and they have, you know, a \$500,000 budget. So the amount of control that we're exercising seems a bit steep in terms of what the agencies is doing. Why should we control them?

MR. BROWN:

Also, just to amplify your example, in some cases, we just give money for programming and nothing else, like, for example, it might be a cultural event. But I think the goal -- I think the goal is to -- and it's a general clause that applies across the board not only to small agencies, but to large agencies, like I said before, as well as governmental entities and private contractors. But I think the goal is just to see how County money is being spent in terms of what is being communicated as in a publication.

CHAIRMAN MONTANO:

All right. But if we're going to do a press release, isn't it impractical if you're going to issue a press release to have to go through the various County bureaucracy to get an approval? I mean, how long is the turnaround time?

MR. KOPP:

If I might. Administratively, I don't -- many years ago, back in the '80s when I was the press person in the County Executive's Office, it doesn't take that long to get a press release reviewed. Usually a phone call will help you get a press release reviewed if you're a contract agency.

We're just speaking to paragraphs specifically F through H. We're not here directly addressing E. F through H though administratively provides for administrative control so that the Executive Branch of government can make certain that the terms of the contract are being fulfilled and that the policy objectives that were expressed by the Legislature in funding these contracts are fulfilled. It provides another form of oversight from the Executive Branch to contract agencies.

CHAIRMAN MONTANO:

Last question. If in fact an agency that we contract with issues a press release and they don't get prior approval, then they're in violation of the contract and we can pull their funding?

MR. BROWN:

Theoretically.

CHAIRMAN MONTANO:

Anyone want to weigh in on this?

LEG. KENNEDY:

You know, Mr. Chair, I think I will just stay with the comments that I made originally I agree with the County Attorney's Office that there's value and merit to having departmental review of written materials that are being put out there beforehand. I guess I would ask you, Dennis, do you believe that this bill, if it was adopted, would then eliminate that initial requirement of review prior to dissemination?

MR. BROWN:

Yes. But, of course, you know, you draft a bill and you say you can't put in this language, that doesn't mean we can't craft other language that would achieve the goal in a similar manner. But I think that if you had passed the bill, what it does do is it takes -- it would take away some of the bargaining power that we currently hold not only with agencies, but with anybody that we do business with. And like I said, this language does come -- you know, it is sometimes subject to negotiation and revisions. And like I said, in my experience, I've never encountered any situation where this has proved so problematic that we couldn't work something out.

LEG. KENNEDY:

You know, all I can relate to is the direct experiences my office has had in dealing with Parks or

some of the other departments; Economic Development, you know, in implementing CSI grants or Omni grants, which are not, you know, hundreds of thousands of dollars for delivery of its service. It's generally for the purposes of supporting a small community group that's maybe doing maintenance of a historic property, an upkeep, or hosting a summer concert series or sponsoring some type of a merchants expose or symposium. And more often than not, Dennis, I have to tell you what happens is there's some pretty heavy-handed requirements that come out of the departments. And there's never been any negotiability associated with that. It's been basically the department saying the periodical or the advertising of the material must be in the format of X, must have a content of Y, and absent that, we're going to deny the reimbursement. If it was genuine, you know, negotiability, I'd be inclined to say to you, "Okay. You're right, maybe we don't need to get there," but I haven't experienced that get.

MR. BROWN:

May I respond? Mr. Chairman, may I respond?

CHAIRMAN MONTANO:

Yes, absolutely.

MR. BROWN:

As to the CSIs, for example, if you pass this -- if this bill passes, and you, Legislator Kennedy, or Legislator Stern sponsored a specific, program, this would preclude your acknowledgement of that sponsorship. And I'm not so sure if that's the intent, nor if that is really, you know, a desired goal. It's not necessarily a bad thing you have an appropriation and you sponsor a movie night that there's some acknowledgement of that.

As to the other contracts, the line item contracts, specifically as to publicity and sponsorship, what you are stating about funding being denied, I've never experienced that. But what I know -- but what I know anecdotally that has been tried to be reconciled is that if there is going to be an event, and it's a line item contract as opposed to a CSI and sponsorship is being recognized, that the sponsorship be credited to the local Legislature as well as the County Executive's Office.

LEG. KENNEDY:

You know, what, Dennis? Look, I'm somewhat disinclined to go ahead and discuss the contents, the nuts and the bolts. Let me ask you this, because I am not the sponsor of this bill, Legislator Romaine is, have you had any dialog with his office about your office's concerns?

MR. BROWN:

We have not. But also, Legislator Kennedy, it's not so much as a per se legal matter, it's not so much that this bill is illegal, it's not violating some law. It's that it disempowers the County, the departments, I believe the Legislature as -- I believe the County as a whole in terms of provisions which should be in the contract and which ordinarily would be revised or enhanced or taken away during the contract negotiation process.

LEG. KENNEDY:

All right. But, Dennis, hold on a second, because I am going to caution you and stop you now. If there is a policy discussion or dialog, then that's something that Mr. Kopp and I should probably be doing. I don't want to tell you how to do your job, but you are the attorney, you are the one who actually is the draftsman at this point who goes ahead and puts the words down on the page that implement the policy that's determined here, and then here ultimately with concurrence from the Exec's Office. So I'm going to stop you at the words that you said as far as illegality. In advising us, I guess you would concur with our Legislative Counsel that we have no element of outright violation or prohibition there; that's correct?

MR. BROWN:

I don't disagree with that.

LEG. KENNEDY:

Okay. Good. So then the policy dialog would be something that ought to be had with Mr. Kopp. And I'm going to stop there too, Eric, because as I said, it's not bill, it's Legislator's Romaine's bill. And if there's a dialog to be had there -- again, I will table, I will move back from the motion to approve, but I'm going to ask then that you make an effort to reach out to Legislator Romaine and have that policy dialog so when we see it next time, we'll be prepared to act.

MR. KOPP:

I will take the advice of the minority leader and I will contact Legislator Romaine and have that discussion.

LEG. KENNEDY:

Thank you. Thank you, Mr. Chair. I will withdraw the motion to approve and I'll make it a motion to table.

CHAIRMAN MONTANO:

And I'll second the motion to table. Any further discussion? All in favor? Opposed? Abstentions? Motion to table carries. **TABLED (5-0-0-0).**

1246, Adopting Local Law No. -2011, A Local Law mandating compliance with financial disclosure requirements. (Cooper).

I'm going to make a motion to approve, again, for the purposes of discussion. I need a second.

LEG. STERN:

I'll second for the same purposes.

CHAIRMAN MONTANO:

Dennis, I know that we had a discussion on this bill also. I'm going to ask Counsel to put on the record an explanation of this bill, and then we can discuss the legal issues.

MR. NOLAN:

This relates to the County's Financial Disclosure Law. The County has an approved financial disclosure statement that is attached to Chapter 61. This law would reiterate that all people, all employees and officers of the County who are required to file financial disclosure must file the approved County statement.

And the impetus for the law, obviously, is the fact that there's a State disclosure requirement. The Ethics Commission has authorized certain County officers and employees in file that State financial disclosure statement in lieu of the County form. This law would clarify and restate that anybody who is required to do financial disclosure in the County has to file the County form, notwithstanding any State provision to the contrary.

CHAIRMAN MONTANO:

Just one question. You state that this law reiterates a policy. If the policy or law is clear, then do we need to restate it, or does this do something a little bit more than simply restate?

MR. NOLAN:

It goes a little bit further, because the Ethics Commission in authorizing County employees and officers to file the State form were guided by a section of State Law, which they believed authorized a filing of the State form in lieu of the County form. What this law is recognizing is in essence that

State provision, but saying notwithstanding that, you are going to file the County form.

CHAIRMAN MONTANO:

So this, in essence, every County employee that falls within the reporting guidelines to file a financial disclosure report irrespective of whether or not they are required to file one for a State agency, is that --

MR. NOLAN:

That's correct.

CHAIRMAN MONTANO:

Okay. Dennis, you have an opinion on this or a position?

MR. BROWN:

Yes. The Local Law, the proposed Local Law, that violates the State Law. And under the State Law --

CHAIRMAN MONTANO:

Which State Law?

MR. BROWN:

The main section would be Paragraph 1B of Section 811 of the General Municipal Law. In general, as you know, a person who has to file a State form, he has to do that filing under Public Officers Law Section 73A. And 1B of Section 811 of the General Municipal Law, it specifically allows a person to satisfy the local requirements of -- for filing by filing the State form. And that's expressly stated in 1B of Section 811 of the General Municipal Law.

If I may go into more detail about that, Section 811 of the General Municipal Law allows a County that requires employees or elected officials -- either elected officials or employees to file to treat an equal footing policy -- party types of people. But the statute also goes on to say -- and they can make all those classes of people subject to the local filing requirements. But the statute also goes on to say provided however, provided however, that a person satisfies the local filing requirements by filing the State form. So that to pass the current IR, that would be in violation of the State Law.

This opinion has been supported by local state -- by local and State experts on ethics, Mark Davies, Barry Ginsberg and Steve Leventhal. Davies has gone on to say -- and I have his testimony here from September 22nd, which I can give to the Clerk -- he went on to say that the Temporary State Commission takes the position that the municipality has no authority to vary the provisions of the State Law. And he also went on to say that the New York City Conflicts of interest Board has opined that the board has no alternative but to accept the State form in lieu of the City form even though the City form requires certain information not contained in the State form.

CHAIRMAN MONTANO:

Let me interrupt you. You are relying on opinions from other people, are you not?

MR. BROWN:

Only partly, sir.

CHAIRMAN MONTANO:

All right. Do you have an opinion, a written opinion from your office to us indicating what your position is, because I haven't read all these sections that you're citing. I had asked specifically before that when we come up to these issues, that we'd like to have a written memorandum indicating what your legal position would be on issues such as this where I guess you're maintaining

that the State Law preempts us from passing this law.

MR. BROWN:

That has been done in the past, sir, yes. Originally, it was done back in August when the original bill sponsored by Legislator Cooper -- and when the second bill was sent, it was recirculated.

CHAIRMAN MONTANO:

Okay. We will pull that out? Were you done, Dennis, with your presentation or do you want to put more stuff on the record?

MR. BROWN:

I would just like to add a couple of things, if I may. That according to Davies, this State form, as it's drafted, is actually more comprehensive than the County form. I can give you several examples. I won't go into all the examples. I'll give out the testimony of Davies that was given on September 22nd. But for example, the State requires disclosure of gifts, which the local form does not, and also the nature of agreements relating to future employment or promises of future employment. Those are omitted from the local form that are in the State form.

And finally, I would just close by saying that unequivocally, the Local Law cannot, as a matter of State Law, as you know this, Legislator Montano, that the Local Law may not prohibit that which is expressly permitted in the State Law.

CHAIRMAN MONTANO:

Just one comment. I am familiar with the State form, because I was required to fill it out when I worked at the Attorney General's Office. And, of course, I'm familiar with the County form both as a Legislator and a prior employee. And, you know, I beg to differ with you with respect to -- with Mr. Davies, not with you -- that the State form is more comprehensive than the County form. But I also don't see it as inconsistent where you have two forms which require different information. I don't see why a particular employee or a public official would not be -- would be prohibited from filing both; one with the County, the municipality and one with the State, particularly in light of the fact that they are two separate and distinct forms which ask for separate and distinct information. Counsel, can you opine on that?

MR. NOLAN:

Well, I believe I prepared an opinion for Legislator Cooper several months ago. And I believe we can supercede the State Law provision, particularly if it is more inclusive, has more -- is requesting more information. That's my opinion. Other people disagree with that, and I think they can do so in good faith. I would just note, there's no -- I don't think there's any case that has interpreted this particular issue or Attorney General opinion or Comptroller opinion. Mr. Davies obviously feels a certain way about the State Law and whether it preempts the area in terms of the financial disclosure statement. What this law is saying, you're going to file the local statement, if somebody's got a problem with it, I guess they can challenge that in court. And maybe then that issue could be adjudicated as to whether or not we had the authority.

CHAIRMAN MONTANO:

Let's take a three minute break.

(*A RECESS WAS TAKEN FROM 11:00 A.M. UNTIL 11:02 A.M.*)

Okay. We are back to order. Do we have a motion on the floor?

MS. ORTIZ:

To approve.

CHAIRMAN MONTANO:

To approve. I made the motion. All right. I'm going to withdraw my motion to approve. I'm going to make a motion to table this. I need a second.

LEG. NOWICK:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Nowick. Is there any further discussion on this issue? Hearing none, all those in favor? Opposed? Abstentions? Motion to table carries. **TABLED (VOTE: 5-0-0-0)**

MR. BROWN:

Thank you, Chairman Montano.

CHAIRMAN MONTANO:

Thank you, Mr. Brown. We will take this up at the next meeting. And could you do me a favor, Dennis? Could you make sure that my office and the other Legislators have copies of those opinions you have? Whatever you want to give us on this bill so we have a chance to read it in full before it comes up for a vote at the next meeting.

MR. BROWN:

Very good. Thank you.

CHAIRMAN MONTANO:

Moving along. **1254, Authorizing certain technical corrections to Adopted Resolution No. 12-2011. (Co. Exec.)**

I'll make a motion to approve and place on the Consent Calendar, seconded by Legislator Stern. All those in favor? Opposed? Abstentions? Motion carries. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE:5-0-0-0)**

1256, Adopting Local Law No. -2011, A Local Law expanding legal representation of County employees. (Lindsay)

We need to table that for a public hearing, I'll make the motion, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0)**

1258, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Peter Canelo and Emily Canelo, his wife (SCTM No. 0500-493.00-05.00-008.000). (Co. Exec.)

I make a motion to approve and place on the Consent Calendar, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 5-0-0-0).**

1259, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Peter Canelo and Emily Canelo, his wife (SCTM No. 0500-493.00-05.00-008.000). (Co. Exec.)

I make a motion to approve, second by Legislator Stern. Pam, is this one of bills that you -- could you please step up? Is this one of the bills that you referred to earlier where we are receiving compensation?

MS. GREENE:

This is a 72-H transfer to the Town of Brookhaven for open space purposes, and there is a resolution attached stating that desired purpose. And, yes, there is also a resolution stating the Town of Brookhaven will make the County whole for the County investment of \$5,422.80.

CHAIRMAN MONTANO:

Thank you very much. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 5-0-0-0)**

1260, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Daniel V. O'Leary and Marilyn O'Leary, his wife (SCTM No. 0900-044.00-01.00-058.000). (Co. Exec.)

I will make a motion to approve.

LEG. KENNEDY:

Second.

CHAIRMAN MONTANO:

Second. We don't need any explanation on that one. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 5-0-0-0)**

1261, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Efstratios Velonakis (SCTM No. 0100-046.00-02.00-002.000). (Co. Exec.)

I'll make a motion to approve and place on the Consent Calendar, seconded by Legislator Nowick. All in favor? Opposed? **APPROVED** and placed on the **CONSENT CALENDAR (VOTE:5-0-0-0)**.

1262, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Efstratios Velonakis (SCTM No. 0100-046.00-02.00-002.000). (Co. Exec.)

Just give us a brief explanation on that one.

MS. GREENE:

This property actually was already proposed for affordable housing purposes for the Town of Brookhaven. Unfortunately, they determined through their environmental department that it would not be conducive for that purpose. And they have -- at which point, there would have been a transfer for dollar, at which point they then changed their desired purpose for open space purposes. So they have also submitted a resolution stating that. And the County investment that is being repaid on this is \$33,694.

CHAIRMAN MONTANO:

Thank you very much. We have a motion on the floor. All in favor? Opposed? Motion carries. **APPROVED (VOTE: 5-0-0-0)**

1267, Dedicating certain property in Yaphank as County parkland and authorizing its transfer to the Suffolk County Department of Parks, Recreation and Conservation for open space preservation. (Browning)

It has to be tabled for a public hearing, so I'll make motion to table.

MR. NOLAN:

The sponsor needs to make some additional changes to the resolution, and it needs to be for that reason.

LEG. MONTANO:

Okay. I'll make the motion to table, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 5-0-0-0)**

1271, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Heidi Murphy (SCTM No. 0200-373.00-02.00-010.002). (Co. Exec.)

I'll make a motion to approve and place on the Consent Calendar, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE:5-0-0-0)**

1272, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Carol Molnar (SCTM No. 0100-134.00-01.00-065.000). (Co. Exec.)

Same motion, same second, same vote. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE:5-0-0-0)**

1284, Approving list of Title Insurance Companies as designated by the Division of Real Property Acquisition and Management. (Co. Exec.)

LEG. KENNEDY:

Motion to table, Mr. Chairman.

CHAIRMAN MONTANO:

Motion to table.

LEG. NOWICK:

Second.

CHAIRMAN MONTANO:

Second.

LEG. KENNEDY:

This comes as a result of legislation that we passed last year. There are a couple entities I need to have a discussion with the County Attorney on regarding inclusion on the list. So I'm going to ask for a table.

CHAIRMAN MONTANO:

I have no issue with that. All in favor? Opposed? Abstentions? Motion carries. **TABLED (5-0-0-0)**.

We have no Procedural Motion, no Home rules Messages. But we do have an Executive Session on three cases? Gail, three cases? Four cases. Now, procedurally, Counsel should I just put the name of the case on record and then make a motion to go into Executive Session.

MR. NOLAN:

We need a motion to go into Executive Session. You have to state what the reason is. This would

be to discuss pending litigation. If we have the case names, that would be fine, but certainly it's not required. If there are settlements approved in Executive Session, when we come back, you will put the names of the cases on the record.

CHAIRMAN MONTANO:

Okay. I'm going to make a motion to go into Executive Session so that we can discuss four cases involving litigation. When we come back we'll -- I need a second on that.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

And I need a vote. All those in favor? Opposed? Abstentions? Motion carries. We're going to go into Executive Session.

(*AN EXECUTIVE SESSION WAS HELD FROM 11:09 A.M. UNTIL 11:50 A.M.*)

CHAIRMAN MONTANO:

We're BACK in session having completed Executive Session. The committee has approved three settlements; Barbara Morse versus County of Suffolk; James Masten versus Suffolk County Police Department; and Pahmira Gohel versus County of Suffolk. And the vote of each of those was five to nothing, unanimous. With that, I guess we can adjourn. We are out of Executive Session. We are formally adjourned. Thank you.

(THE MEETING WAS ADJOURNED AT 11:50 A.M. *)

{ } DENOTES BEING SPELLED PHONETICALLY