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WAYS & MEANS COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE
MINUTES

A meeting of the Ways & Means Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on June 1, 2017.

MEMBERS PRESENT:

Legislator Bridget Fleming, Chairperson
Legislator William Spencer, Vice Chair
Legislator Kate M. Browning
Legislator Robert Calarco, DPO
Legislator Thomas Cilmi
Legislator Monica Martinez
Legislator Robert Trotta

ALSO IN ATTENDANCE:

Presiding Officer DuWayne Gregory, District No. 15
George M. Nolan, Counsel to the Legislature
Jason Richberg, Clerk of the Legislature
Amy Ellis, Chief Deputy Clerk/Legislature
Robert Lipp, Director/Budget Review Office
Katie Horst, County Executive's Office
John Marafino, County Executive's Office
Jason Hann, County Executive's Office
Dennis Brown, County Attorney
John Kennedy, Comptroller
Emily Pines, Town of Brookhaven
Alyssa Turano, Aide to Legislator Hahn
Elizabeth Sutton, Aide to Legislator Flemming
Elizabeth Alexander, Aide to Legislator Spencer
Chris DeLuca, Aide to Legislator Cilmi
Hector Gavilla, Public Speaker
And all other interested parties

MINUTES TAKEN BY:

Diana Flesher, Court Stenographer

MINUTES TRANSCRIBED BY:

Kim Castiglione, Legislative Secretary

(**The meeting was called to order at 12:34 p.m.**)

CHAIRPERSON FLEMING:

Good afternoon everyone and thank you for attending. This is a regular meeting of the Ways and Means Committee on May the 24th (*sic*). We'll start with the Pledge of Allegiance led by Legislator Calarco.

(SALUTATION)

Thank you. We have a serious flag protocol mistake. I feel better too, now. Thank you. All right, we're underway here, gentlemen, so we'll move right into the agenda. There is a letter that is being distributed to you from LIPA over the signature of Jon Mostel. And we have also distributed a chart from the Comptroller, who we'll be hearing from later in the agenda. So please be sure that you have those documents. Moving right to Public Portion, if there -- I don't have any yellow cards. Do we have any?

MS. ELLIS:

No, ma'am.

PUBLIC PORTION

CHAIRPERSON FLEMING:

Thank you. I do have a yellow card. Just in time. Mr. Gavilla, you have three minutes at the podium.

MR. GAVILLA:

Okay. Good afternoon, everybody. My name is Hector Gavilla. I do oppose a bill to make the mortgage tax, and it is a tax, exempt to just first-time home buyers. And the reason for that is because that would be an administrative nightmare. What I do support, though, is Robert Trotta's efforts to just remove it altogether, because it is illegal.

(Presiding Officer Gregory entered the meeting)

I just created this flier today. What is obvious to me is that everybody in this room who supported this law did not consult any title insurance companies, but I did after you passed it. And I had a title insurance person come to my office and spend over an hour meeting with me. And it's actually even worse than I originally had thought.

What this person explained to me was that for refinancing purposes an average refinance requires at least three or four documents to be recorded -- so on top of any of the existing fees. So that's why I just made up this very simple handout for you guys to understand. So those documents could include assignment of a mortgage. The normal fee is \$260, so for that they would have to pay another 300. Then there's a gap form, which is another \$300 on top of the existing fee, which is \$360. Then there's a consolidation modification and extension agreement, which is normally \$425 plus the \$300. So when you put it all together for someone to refinance their home on their typical mortgage, no

1 matter what the mortgage amount is, it could be a low mortgage or
2 it could be a high mortgage, they're going to have to pay Suffolk
3 County an additional \$900 in new fees that did not exist last year.
4 And so that means that going to foreclosure would be more appealing
5 for many people, especially in the lower income areas.

6
7 Now, why was this fee created, the tax map ID fee. Was there a
8 problem with recording documents? Were they not being recorded
9 properly? Do we need to train the recorders, the people that work
10 behind the desk? Did you actually consult with title insurance
11 companies before you passed this legislation to see what the actual
12 effects would be on consumers? Will the service improve?

13
14 Something else I found out from having the title person come to my
15 office is that at the County Clerk's Office they have to line-up at
16 eight in the morning, and it's lined-up out the door, and they are
17 lines that they refer to as five lines and ten lines, which means
18 that on the five line they can only record five documents at a
19 time. So for just one refinance they have to go to the back of the
20 line and they have to keep going back and back.

21
22 **CHAIRPERSON FLEMING:**

23 Mr. Gavilla, your time is expired.

24
25 **MR. GAVILLA:**

26 Okay.

27
28 **LEG. TROTТА:**

29 I have a question. I just want you to go, if you would, how you
30 got these additional fees. Like the document fee, could you go
31 over each one of those and how it changed from last year?

32
33 **MR. GAVILLA:**

34 Okay. Well, if you look at the two columns -- well, there's three
35 columns. The first one is the documents, okay, and this was used
36 as an example from my friend who owns a very successful title
37 insurance company. So what she explained to me was that this new
38 law effects the refinancing market, so what she explained to me was
39 that depending on the bank that you use, some banks there may be
40 more forms, and some of the banks there may be fewer forms. So
41 this was just an example of an average refinancing. So she said
42 that these are required documents, so there's a document that's
43 called the assignment of mortgage, which by the way, in the law
44 that you passed, okay, it's specifies here that these documents are
45 documents that you're going to add the \$300 to each one.

46
47 **LEG. TROTТА:**

48 So what you're saying -- is what you're saying this \$300 fee could
49 be used multiple times for one mortgage?

50
51 **MR. GAVILLA:**

52 For one mortgage, yes, exactly.

53
54 **LEG. TROTТА:**

55 If what occurs?

1 **MR. GAVILLA:**

2 If refinancing occurs. So that if you have an individual -- like I
3 kind of find it funny, once again I just want to say that Suffolk
4 County was bragging that they have the hotline that they want
5 people who are having financial problems that they can refinance
6 their mortgage, right, to lower their rates. So a typical person
7 like that that wants to get a lower rate is going to have to pay --

8
9 **LEG. TROTТА:**

10 So what you're saying is if you refinance the mortgage, you're
11 paying the \$300 tax map verification fee to close one --

12
13 **MR. GAVILLA:**

14 Right.

15
16 **LEG. TROTТА:**

17 -- and then you're paying it again to open one?

18
19 **MR. GAVILLA:**

20 Correct. That's correct. And these are all the documents that are
21 required, exactly. So for a refinancing there's a document that's
22 called assignment of mortgage, there's another one for the new
23 mortgage that you're replacing the old mortgage with, and that's
24 called a gap form. And then there's another one, a last one,
25 that's called the consolidation modification extension agreement.

26
27 So, Mr. Trotta, in this example to refinance, to replace the old
28 mortgage with the new mortgage, there are three documents and each
29 of those documents Suffolk County is charging \$300 each just for
30 the tax map ID verification, and we're not even talking about the
31 existing fee of recording, which went 65 to \$200. So this was not
32 very well thought out and I don't know who it's benefiting. I
33 don't even see the service getting better. And as I mentioned,
34 too, this is just for one house. They'll have people lined up --

35
36 **LEG. TROTТА:**

37 I see the Comptroller here. I don't know, is the Comptroller in
38 charge of that thing, whatever this is, with these fees?

39
40 **CHAIRPERSON FLEMING:**

41 I'm sorry, Mr. Trotta, so you're finished with your questions for
42 Mr. Gavilla?

43
44 **LEG. TROTТА:**

45 No, I'm not, but I want to just -- I don't know if the Comptroller
46 runs that? It's the Clerk. I'm sorry. Okay, never mind. So
47 you're saying if someone goes to refinance their house because
48 they're in trouble, they're paying to the tax map verification to
49 close it, and instantaneously paying it again to open it.

50
51 **MR. GAVILLA:**

52 Correct. That's correct.

53
54 **LEG. TROTТА:**

55 I never even thought of that.

1 **MR. GAVILLA:**

2 I never realized it either, but it took work on my part to meet
3 with a title insurance company to tell me that, and they're afraid
4 to come here because of retribution. They're actually afraid that
5 if they complained to the Suffolk County government, that their
6 documents won't get filed properly.

7
8 **LEG. TROTТА:**

9 Okay. I'd like a question to the County Exec's representative --
10 Katie.

11
12 **MS. HORST:**

13 This is Public Portion.

14
15 **LEG. TROTТА:**

16 I'll ask in a minute, then, thanks.

17
18 **MR. GAVILLA:**

19 Right. And just the last thing I want to mention, that some of the
20 Legislators were incorrect in saying that the fees that the title
21 companies collect, that they make money from those fees, they
22 don't. These title companies, okay, work as tax collectors on
23 behalf of the government. So the fees that I mentioned in the
24 second column where it says fee government mandated, for the
25 assignment of mortgage form there's \$260. New mortgage, that's
26 360. The 255 affidavit, that's \$5. The consolidation modification
27 extension agreement for the new debt, that's \$425. All those fees
28 are mandated by the government, so the title person's collecting on
29 their behalf. So of course they'll add other fees for their
30 services because they don't work for free, but it's unfair for any
31 of the Legislators who are on record as saying that the title
32 companies perhaps should charge less of a fee because this way you
33 can get your \$900 for anybody who refines.

34
35 **CHAIRPERSON FLEMING:**

36 Thank you. And Mr. Trotta, that answers your question? Because
37 Legislator Gregory has a question.

38
39 **LEG. TROTТА:**

40 I'm done.

41
42 **MR. GAVILLA:**

43 And the idea of this is all for justice, to try to make this just
44 for first-time home buyers is wrong.

45
46 **CHAIRPERSON FLEMING:**

47 Mr. Gavilla, your time is up so now the Legislators are putting
48 questions.

49
50 **MR. GAVILLA:**

51 Oh, I'm sorry.

52
53 **CHAIRPERSON FLEMING:**

54 So if you just confine yourself to answers to the questions.

1 **MR. GAVILLA:**
2 Yes. Okay. Thank you.

3
4 **CHAIRPERSON FLEMING:**
5 Thank you.

6
7 **P.O. GREGORY:**
8 So I have a question. So you mentioned mandated fees. How about
9 the unmandated fees? I think I mentioned before I just bought a
10 home December first.

11
12 **MR. GAVILLA:**
13 Yes.

14
15 **P.O. GREGORY:**
16 And there were a whole bunch of people that I never met before and
17 I think I paid like \$18,000 in closing costs, one of which was I
18 had -- I was told I had to provide, I don't know, \$200 or something
19 like that, as a tip to the title insurance company, which is not a
12:44PM 20 mandated fee. So, I mean, what's your response to that?

21
22 **MR. GAVILLA:**
23 My response is to that is that it's the --

24
25 **P.O. GREGORY:**
26 And I was told that my paperwork wouldn't be filed, by my lawyer,
27 if I didn't do it.

28
29 **MR. GAVILLA:**
12:44PM 30 Well, that's a very good question and that's something that could
31 be possible for new legislation, that there should be disclosure of
32 all title costs and closing costs 30 days before the closing.
33 That's something that I would advocate as a separate issue, but the
34 answer, the general answer to your question is that it's a free
35 market economy, so you have the right to choose the title company.
36 You have the right to choose your realtor, you have the right to
37 choose your attorneys and everybody who you want for closing of
38 your house, but you don't have the right to choose your government
12:44PM 39 and the government unfairly is charging \$1,000 just to refinance a
40 home.

41
42 **P.O. GREGORY:**
43 But I'm told that it's standard practice, and I wasn't told this
44 before after spending -- and we were under a time crunch. It would
45 have cost me thousands of dollars to get an extension of my
46 mortgage, they already had an extension of my mortgage commitment.
47 So you're put in this position like am I going to walk away from
48 the table for \$200 or am I going to pay, you know, thousands of
12:45PM 49 dollars more, because at that time it was right after the election,
50 interest rates had already gone up. It's just -- you are put in a
51 very untenable position.

52
53 **MR. GAVILLA:**
54 Right, but that is a separate issue, because we're talking apples
55 and oranges.

56

1 **P.O. GREGORY:**

2 No, I think it's an appropriate issue.

3
4 **MR. GAVILLA:**

5 But I'm talking about the government now adding fees and there's no
6 increase in services or changes in the services. Like as a result
7 of adding these fees, has the process of recording documents at the
8 Suffolk County's Clerk's Office improved. It has not.

9
10 **CHAIRPERSON FLEMING:**

11 Thank you, sir.

12
13 **P.O. GREGORY:**

14 I get your point, but your -- you came here as an advocate for the
15 homeowner, and the homeowner has a same experience of these fees,
16 whether they're government, mandated, regulated or imposed by the
17 industry, and that's what I'm speaking to.

18
19 **MR. GAVILLA:**

12:46PM 20 Right, and what I'm speaking to is there's a big difference between
21 the free market and the government, and what you're talking about
22 is there has to be full disclosure. And in my opinion, if I, you
23 know, I am running for Legislator, and if I do win, one of the
24 things I would like to impose on the real estate industry is that
25 there has to be a full disclosure of all the fees 30 days before
26 the closing, a minimum of 30 days. So that part of it I do agree
27 with you.

28
29 **CHAIRPERSON FLEMING:**

12:46PM 30 Thank you, Mr. Gavilla.

31
32 **MR. GAVILLA:**

33 Thank you very much. Have a great day.

34
35 **CHAIRPERSON FLEMING:**

36 I believe actually just for transparency sake, when you take to the
37 podium it might make sense for you to just inform us and the public
38 that you are running for office.

39
40 **MR. GAVILLA:**

41 Okay.

42
43 **CHAIRWOMAN FLEMING:**

44 Thank you, sir.

45
46 **MR. GAVILLA:**

47 And good luck to everybody.

48
49 **CHAIRPERSON FLEMING:**

12:46PM 50 You, too. Is there anyone else who would like to be heard at
51 Public Portion? I don't have any other yellow cards. Anyone in
52 the public is free to come to the podium and speak on any topic for
53 three minutes. And seeing no one, we will move on.

54
55 I'm going to make a motion to take an Introductory Resolution out
56 of order, so moving that IR 1371 be taken out of order.

1 **LEG. SPENCER:**

2 Second.

3
4 **CHAIRPERSON FLEMING:**

5 Seconded by Legislator Spencer. *IR 1371 - Directing the County*
6 *Attorney to determine the viability of commencing an action against*
7 *the Long Island Power Authority for failure to pay property taxes.*
8 *(Pres. Off.).*

12:47PM

10 I understand we have some guests here with us today to talk to
11 this. If you all wanted to come up to the table I think it might
12 make sense. Judge Emily Pines is with us, Comptroller John Kennedy
13 and the County Attorney, Dennis Brown.

14
15 Oh, I didn't call a vote to take it out of order. So all in favor?
16 All opposed? Any abstentions? The motion carries. On IR 1371,
17 John, maybe you want to start.

18
19 **COMPTROLLER KENNEDY:**

12:48PM

20 Absolutely, Madam Chair. Thank you very much for extending the
21 opportunity for us to go ahead and speak with the committee
22 regarding this resolution. Just a quick prelude, if you will, to
23 what brings us here.

24
25 I reached out to the Presiding Officer's Office. He very
26 graciously agreed to sponsor this resolution. I am presented with,
27 if you will, yet again a dilemma. I have a six-and-a-half million
28 dollar receivable. That represents underpaid property tax on
29 approximately between 750 and 800 utility owned properties located
30 throughout nine of the ten towns here in Suffolk County.

12:49PM

31
32 You have a chart before you. I would encourage you to just scan it
33 briefly if you will. What it reflects are the actual amounts by
34 township that the utility, LIPA, has elected to underpay on the
35 assessment associated with each of those parcels as a result of the
36 property tax levies.

37
38 **CHAIRPERSON FLEMING:**

39 Can I just ask you what the nature of the parcels is?

12:49PM

40
41 **COMPTROLLER KENNEDY:**

42 They scan the gamut from things as simple as possibly vacant land
43 or utility right of ways to substations, to transformers, to
44 individual poles, to all of the equipment in essence associated
45 with the transmission of electricity. They do not reflect those
46 parcels under different utility names. Very interestingly, and
47 we're very, very fortunate to have a retired Supreme Court Justice,
48 Emily Pines, with us here today, who is now with Supervisor
49 Romaine, who can speak actually to some of the statutory aspects of
50 this. And then of course, Dennis has very graciously joined us
51 because he's indicated he will be guided by the direction of the
52 Legislature.

12:50PM

53
54 **CHAIRPERSON FLEMING:**

55 I'm sorry, but my question was what are the specific parcels. So
56 you're talking about the 6.5 million includes utility poles?

1 **COMPTROLLER KENNEDY:**

2 It can run the full gamut, yes. It can run the full gamut from
3 individual poles, transmission poles, to high tension right of
4 ways, to substations. It does not, as I understand it, include
5 like the Northport Power Plant or the Port Jeff Power Plant in that
6 they are owned by KeySpan. Interestingly, the levies associated
7 with KeySpan, LILCO, a couple of other names in there as well, are
8 being paid at the rate of 100%. LIPA, for whatever reason, has
9 elected to invoke this 2% cap and to apply it in an aggregate
10 against those properties that are only in title of LIPA. Today if
11 you go out there to the County Clerk's Office, you'll still see
12 deeds that have properties in the name of LILCO and a whole variety
13 of different entities. They have never been changed.

12:51PM

14
15 The aspect, if you will, or the challenge is that I am in a
16 position where ordinarily I would simply implement the remedies
17 under the Suffolk County Tax Act for a delinquent taxpayer. I
18 would take the deed. There has been an issue raised, a variety of
19 issues raised, about the propriety of Suffolk County beginning to
20 take ownership of transmission lines, substations, and all the rest
21 associated with electricity. However, for any other property owner
22 and non-tax payer, at the end of a process where they've exhausted
23 the right to redeem, the remedy is we take the deed. It is very
24 straightforward. There's no subjectivity to it.

12:52PM

25
26 **CHAIRPERSON FLEMING:**

27 Can I ask you also, John, just to put this, hooks, someplace to
28 hang -- set up some hooks so we can hang some of this very
29 complicated information on. So you're asking for the Legislature
30 simply to direct the County Attorney to explore the viability of
31 pursuing these, what you're calling delinquent taxes?

12:53PM

32
33 **COMPTROLLER KENNEDY:**

34 Yes. It's the beginning of the process, and candidly, I don't want
35 to speak for Dennis, but we have a variety of issues that are in
36 here and I need direction or guidance as to how I will treat what
37 is in essence an unperfected revenue. At a time when we talk
38 almost daily about revenue expenditure and imbalance, a structural
39 imbalance, here I'm bringing to you six-and-a-half million
40 unrealized that we do not have to spend for County efforts and, in
41 fact, which we are making towns and all the lessers whole for.

12:53PM

42
43 **CHAIRPERSON FLEMING:**

44 Of course LIPA does not agree and so litigation costs would have to
45 be offset by any revenues that we do realize.

46
47 **COMPTROLLER KENNEDY:**

48 You know, Madam Chair, so I'll agree with some of the observations,
49 yes. Not only do they not agree, they do not agree so stringently
50 I have been sent correspondence by their counsel not once, but
51 twice. Within 12 hours of when the reso was first filed I was sent
52 a letter advising me of the impropriety to support this resolution.
53 But then again as recently as yesterday I was sent another letter,
54 and I'll be happy to share it with all of you, about the
55 impropriety of me seeking the support of the Legislature on this
56 simple exploratory directive to the County Attorney. I find that

12:54PM

1 extraordinary.

2

3 **CHAIRPERSON FLEMING:**

4 Right. It is -- I mean, it's obviously our fiduciary duty to look
5 out for the taxpayers --

6

7 **COMPTROLLER KENNEDY:**

8 Absolutely.

9

10 **CHAIRPERSON FLEMING:**

11 -- money, so I appreciate your coming and bringing it. Have you
12 framed what you want to do here? Can I move on?

13

14 **COMPTROLLER KENNEDY:**

15 Yes, I'm going to defer. I think that we've got the stage set so
16 certainly let me turn to the smart lawyers in the house.

17

18 **CHAIRPERSON FLEMING:**

12:55PM

19 Judge Pines, do you want to just weigh in on what you have to add
20 to the conversation?

21

22 **MS. PINES:**

23 Sure. By the way, I'm Emily Pines. I'm no longer on the bench.

24

25 **CHAIRPERSON FLEMING:**

26 We had a discussion about that, as to how we should -- we all think
27 of you as Judge. Okay, Miss Pines.

28

29 **MS. PINES:**

12:55PM

30 Thank you. Okay. And I want to at the very beginning apologize to
31 Mr. Brown because the legislation is going to require him to do
32 some work and I understand.

33

34 **COMPTROLLER KENNEDY:**

35 Some more work.

36

37 **MS. PINES:**

12:56PM

38 Yes. But as far as what has happened here, I want to talk about
39 the issue of what laws have been passed by the State Legislature
40 and how they have been interpreted by LIPA. Remember, for many,
41 many years there was a State law, which you all know and
42 participate in enforcing, called the Suffolk County Tax Act. It is
43 a State law. In 2013, the State Legislature approved a new law
44 which was an amendment of the Public Authorities Law 1020-Q, which
45 we call the LIPA Reform Act of 2013, in which it implemented what
46 we can -- I could call it a tax cap but they call it a pilot or a
47 payment in lieu of taxes cap, with regard to properties owned by
48 the Long Island Power Authority. The first thing it did was it
49 stated in that law that the effective date of the law would be
50 2015.

12:57PM

51

52 So the first thing that LIPA did, because this was the first time
53 that there was a pilot cap in which it would not have to pay
54 anything over the 2%, was it interpreted the law to apply to the
55 2014/2015 tax year under the Suffolk County Tax Act, which was
56 based upon assessments and a lien already in effect on December 1,

1 2014. So we have LIPA taking advantage of a piece of legislation
2 which is meant to provide a remedy for both LIPA and in accordance
3 with the legislative intent, which I have read to help the
4 ratepayers within the County. It applied it one year before it
5 went into effect. The effect of LIPA's action was to deprive, I
6 guess, all municipalities throughout the County with the exception
7 of Easthampton, which I guess does not have any LIPA property, of
8 funds. That was first thing they did.

12:58PM

9
10 Now, they didn't discuss it, it just occurred. And it is my humble
11 opinion that what they did was they interpreted a law, a State law,
12 without looking at another State law. And as a matter in my view
13 of statutory interpretation, if the -- if the 2013 LIPA Reform Act
14 was meant to override an existing State law, the Suffolk County Tax
15 Act, it would have had to have stated so in its legislation or
16 legislative intent or in 1020-Q itself, or at least have said
17 notwithstanding any other law to the contrary. That's not found
18 there. So that's number one, and of course I don't know the
19 numbers, but based upon what has been given to me and to you by the
20 Comptroller's Office, it appears that at least \$2.3 million was not
21 paid by LIPA for that first year in which the cap was not in
22 effect. That's one.

12:59PM

23
24 The second thing that occurred was that LIPA interpreted the new
25 law, the Reform Act, to give them the right once the law, assuming
26 that it did go into effect for the 2015/16 and the current one,
27 2016/17 tax years, to allow them to calculate what parcel -- how
28 much in each municipality they were going to apply the 2% tax cap
29 to not on an aggregate basis in each taxing authority district, but
30 on a parcel by parcel basis. So you have, for example, Brookhaven,
31 where I am Special Counsel, but in every other town within your
32 County a situation in which what they've done is assume that LIPA
33 owns many, many parcels within a particular town, and many of those
34 parcels are under, you know, relatively -- substantially under the
35 cap. And then you have let's say even a few parcels that are above
36 the 2% cap. They don't take them in aggregate, which would
37 probably result in a situation where there is no increase, over 2%
38 increase with regard to the tax cap. They take it parcel by parcel
39 and deduct those amounts from those parcels.

01:00PM

40
41 So what -- basically what the Comptroller is stating to you is if
42 you take what has occurred thus far for the two tax years that they
43 have applied this statute to, and you take all the towns taxing
44 authorities within the County, they have as of this date, and we
45 don't have the taxes in or the Receiver doesn't -- Receivers don't
46 have the taxes in for this next tax year, but thus far
47 \$6,599,420.12 that they haven't paid based upon what I believe is a
48 second misinterpretation of the law.

49
50 **CHAIRPERSON FLEMING:**

51 Can I just stop you for a minute? Because this a lot and --

52
53 **MS. PINES:**

54 It is somewhat complex and I apologize.

1 **CHAIRPERSON FLEMING:**

2 So the -- you have two theories. One is that the law was
3 improperly applied to taxes that were assessed prior to the
4 enactment of the law itself.

5
6 **MS. PINES:**

7 Prior to its effective date.

8
9 **CHAIRPERSON FLEMING:**

10 Okay. And what was that number? One million --

11
12 **MS. PINES:**

13 I'm going to let the Comptroller --

14
15 **COMPTROLLER KENNEDY:**

16 That would be what we would see in the -- it would be the 14/15
17 year. That would be the first column of the chart you have.
18 That's approximately 2.4 million, 2.369.

19
20 **CHAIRPERSON FLEMING:**

21 And then the second theory is that the whole law is invalid because
22 of the failure to recognize that it was superseding or that it was
23 impeding on the actions of the prior law of the Suffolk County Tax
24 Act. Is that correct?

25
26 **MS. PINES:**

27 I'm not saying -- and I'm sorry --

28
29 **CHAIRPERSON FLEMING:**

30 In which case then everything that accumulated -- in which case
31 then the 2% cap is invalid and they just need to pay full freight
32 from the time --

33
34 **COMPTROLLER KENNEDY:**

35 Perhaps let me see if I can clarify a little bit. I think what the
36 Judge is pointing out is, is to your observation, (a), yes, first
37 we have an exercise of the way LIPA interpreted and an underpayment
38 before the State Legislature even contemplated providing that
39 relief.

40
41 The second theory, as you said, is an absence of language relative
42 to the Suffolk County Tax Act. Now, I'll remind you I've come to
43 you before about that, most recently about land bank. The original
44 enactment under the State Not-For-Profit Law was silent on land
45 bank, and I asked for that clarification.

46
47 **CHAIRPERSON FLEMING:**

48 I think we'd be better served by just keeping -- confining your
49 comments to what we've got ahead. It's tough enough.

50
51 **COMPTROLLER KENNEDY:**

52 Okay. But the other element to this is, is that even if LIPA had
53 the ability to somehow implement this cap by applying it in a
54 methodology that they are, they're attempting to actually gain a
55 measure of relief that doesn't appear to be the way the statute's
56 laid out. They're selectively putting it in.

1 **CHAIRPERSON FLEMING:**

2 A measure of relief in that relief from the full burden of the tax?
3 Is that what you mean by measure of relief, that they don't have to
4 pay the whole tax. Is that what you mean?

5
6 **MS. PINES:**

7 I think -- what he's saying and what I'm saying is that what they
8 did, assuming, and this is assuming, that the State law is
9 appropriate that was enacted and that it is or should be in
01:04PM 10 compliance with the Suffolk County Tax Act. What they have done is
11 they've taken an aggregate of all of the properties they own and
12 applied the tax cap to the consolidation of all the properties. I
13 mean on a property by property basis as opposed to a consolidation.
14 Had they applied it, for example, within the Town of Brookhaven to
15 all the properties, there would have been an addition of \$3,438,000
16 owed.

17
18 **CHAIRPERSON FLEMING:**

19 Can I ask you, is this best practice to count it that way? Does
01:05PM 20 the statute actually speak to whether it should be considered in
21 the aggregate or singly and separately?

22
23 **MS. PINES:**

24 That's a very good question. It does not say, so it does not say.
25 And therefore, what you do or what somebody who has interpreted
26 laws for more years than I'd like to discuss, but what you do is
27 you look at other legislation which has similar kinds of
28 provisions. For example, tax caps. And we have within the same
29 time period a piece of legislation enacted, the General Municipal
01:06PM 30 Law 3-C, which provided for taxes levied -- a cap on taxes levied
31 by municipalities outside the City of New York. And then we have
32 another one under the State Education Law, I think it's 2023 of the
33 State Education Law, which has a complicated formula with regard to
34 school district taxes and how -- that there's a cap on them from
35 year to year, and in both cases they have been interpreted to apply
36 to the congregate or the group of parcels that they're taxing and
37 not on an individual parcel by parcel basis.

38
39 The whole point of this proposed legislation is that it's giving
01:07PM 40 the County Attorney a basis to take a look at these issues which
41 are significant issues of State legislation and interpretation of
42 State legislation, and have had serious implications, monetary
43 implications, on the amount of taxes paid to the various
44 municipalities within this County.

45
46 Now, if you look at the legislative intent of this LIPA Reform Act
47 of 2013 and you read about it, they say that this is not only for
48 the benefit of LIPA, but for the ratepayers within the County, and
49 what has occurred of course is that the municipalities, having lost
01:08PM 50 the 6.5 and I guess soon it will be more like nine or \$10 million
51 once we include this tax year in tax payments from LIPA, are now
52 required to tax guess who? The rest of the residents within their
53 municipality. So you have residents and businesses whose taxes are
54 going up as a result of LIPA's interpretation, in my view
55 misinterpretation, of the State law.

1 By the way, when one is interpreting a State law, you look at the
2 language of the law, you look at how other laws have been
3 interpreted and you try to make sense of what the purpose of the
4 law is based upon the legislative intent and the language itself.
5 That is in my personal opinion what LIPA has improperly done and
6 what we hope that the County Attorney will at least be asked to
7 look at.

8
9 **CHAIRPERSON FLEMING:**

01:09PM 10 Got you. So thank you very much for spelling that all out. This
11 is just a discussion of this, consideration of whether we should
12 ask the Town Attorney to even look at it. So I think for all of us
13 it's helpful to have that background.

14
15 But, Dennis, do you want to weigh in here before the panel takes
16 some questions from Legislators?

17
18 **MR. BROWN:**

01:09PM 19 The only thing that I would say is I have no predetermined
20 conclusions, so wherever the facts and wherever the law leads
21 that's where we'll follow. There's been precedence for this.
22 Legislator Calarco introduced a similar resolution a couple of
23 years back dealing with looking at the feasibility of a suit
24 against opioid manufacturers. We did that, and I look at this the
25 same way. So I have really nothing else to add. We'll look at the
26 facts, we'll look at the law.

27
28 **CHAIRPERSON FLEMING:**

01:10PM 29 I don't know that the Introductory Resolution itself addresses the
30 three theories here, but I guess it's helpful. I would suppose
31 that if you were to come up with some other theory it wouldn't be
32 precluded for us to go forward on some other theory, too.

33
34 **MR. BROWN:**

35 No, and I'm sure as we get going we'll see issues come up that
36 haven't yet even been discussed, so we'll try and vet through all
37 the issues and address them all.

38
39 **CHAIRPERSON FLEMING:**

01:10PM 40 Thank you. I think Legislator Spencer had a question or two.

41
42 **LEG. SPENCER:**

01:11PM 43 Hi, thank you very much. We recently had a resolution where we
44 were looking at eminent domain and it turned out that we were
45 unable to move forward with it because it was relating to the State
46 and we weren't able to, I guess, apply eminent domain. My concern
47 here, and again, I totally agree with the feasibility and maybe we
48 should even be discussing this in Executive Session. There's a
49 hybrid sort of nature about LIPA and its regulatory status and how
50 the transmission lines are broken up and the State component that
51 makes me concerned. And, again, I'm not a lawyer, but that seems
52 to be one stark difference that stands out that I'm hoping that --
53 and maybe the study will encompass that, but we may just see right
54 at the beginning that someone says, "You can't do it."

1 So why do we think that we can, because I do know there is a State
2 controlled portion of utilities. Like I don't think we can sue the
3 Post Office or something. So there's a component of LIPA that's
4 like that. I don't know if you have any thoughts about that.

5
6 **MR. BROWN:**

7 The only thing that I would say -- the only thing that I would say
8 is that you're right. There could be elements of preemption
9 involved so that the type of lawsuit that's being, not the type of
01:12PM 10 lawsuit, but that the type of action that could be considered, even
11 if there is some type of differences, reasonable people can differ
12 about how that 2% pilot cap is to be applied, whether in the
13 aggregate or whether into individual parcels. Maybe reasonable
14 minds can differ about that. And when you get into analysis like
15 that, you're right, there could be some issue of preemption or
16 issue of -- even an issue of a deference that's paid -- that's
17 being paid to the regulatory agency, because that does happen as
18 well. So you are correct, that there could be issues that even if
01:12PM 19 people differ about the way something is being applied, that if
20 they're doing it in a reasonable way it could preclude further, you
21 now, some type of corrective action.

22
23 **CHAIRPERSON FLEMING:**

24 Although I have to say that if, you know, no one's ever disputed
25 the fact that the authority should pay property taxes. So if we
26 have the ability to levy a tax and that person is or that entity is
27 part of the taxable community, how could we -- how could it
28 possibly be that don't have some kind of remedy if they don't pay
29 their taxes.

01:13PM 30
31 **MR. BROWN:**

32 I can tell you without having looked at the issue in depth yet,
33 but I can tell you what I do know, is that when LIPA was formed it
34 took over the properties of LILCO, and those properties were
35 assessed as taxable properties because LILCO was a corporation.
36 And what LIPA subsequently did, and it included not only parcels
37 like were just described by Comptroller Kennedy, but poles and
38 distribution system as well, that I guess in connection with the
39 franchise that was received through the towns and I guess other
01:13PM 40 municipalities to LILCO, there were, if not tax map numbers
41 assigned to the various types of properties that were operated by
42 LILCO, taxes were paid on them. And instead of there being pilot
43 agreements like you might have with an IDA and a corporation on an
44 economic development project, instead of pilot agreements what LIPA
45 continued to do was to pay the amount that was previously being
46 paid by LILCO subject to year to year increases. And except they
47 were calling it pilots instead of taxes.

48
49 And so if there was then increases and the increases were growing,
01:14PM 50 and then so we had this law that was adopted, the LIPA Reform Act,
51 and this particular section went into effect in January of 2015.
52 It simply said that if there was going to be an increase of greater
53 than 2% over what was paid in the prior year, then that increase
54 would be capped at 2%. So there could have been increases that go
55 back a long ways connected to what LILCO was paying and how -- and
56 how those taxes were transformed or mutated into the pilot

1 payments.

2

3 **CHAIRPERSON FLEMING:**

4 I guess my thought is just -- I would find it hard to accept an
5 argument that you can't sue me once I've already said that I am
6 responsible for taxes if there's no other remedy to come after me
7 if I haven't paid them. That's all.

8

9 **MR. BROWN:**

01:15PM

10 I don't disagree with you.

11

12 **CHAIRPERSON FLEMING:**

13 Okay. You had more?

14

15 **MS. PINES:**

16 I had a comment, if you don't mind.

17

18 **CHAIRWOMAN FLEMING:**

19 Yes.

20

21 **MS. PINES:**

22 Okay. The issue of preemption is based upon the interpretation of
23 legislation. When the State wants to preempt -- when it wants to
24 preempt a lower municipality, like the County or a town, all it
25 really has to do is broadly legislate that area of law. Sometimes
26 it says it preempts, etcetera. If it's going to preempt an
27 existing State law, it's got to say so one way or another. It did
28 not say that in 1020-Q.

29

01:15PM

30 And so in answer, Legislator Spencer, to your question, I don't
31 think this is the kind of case where it may not be that we can do
32 what you would do in a non-payment of taxes case where you take
33 over the property, but that doesn't mean you can't bring a
34 declaratory judgement action that the amounts have to be paid.

35

36 **COMPTROLLER KENNEDY:**

37 It also, Doctor, leaves us again, I hate to keep bringing matters
38 back to money, but that's basically what I'm supposed to do every
39 day. It's an equity issue. Today is a very telling day, June
01:16PM 40 first. All of the property taxes that were supposed to be paid for
41 580,000 parcels throughout this County have been tendered to ten
42 Town Tax Receivers or not. And as of today, for all of those
43 entities that we were supposed to collect off that levy who haven't
44 been made whole, guess who's writing them a check? Us.

45

46 So in the end we're the ones left, if you will, holding the bag.
47 We can speak about a lot of those broader concepts, but at the end
48 we're the one bearing the freight. So we have to get some kind of
49 clarity as to how this uncollectable right now is going to be
01:17PM 50 treated. And that's really what the ultimate goal is here.

51

52 **CHAIRPERSON FLEMING:**

53 So in your chart here, when you say balance due, for instance in
54 the -- balance due and the town listed as Babylon, that's the
55 balance due from LIPA, but we've already written that check to
56 Babylon to make them whole?

1 **COMPTROLLER KENNEDY:**

2 We've made them whole.

3
4 **LEG. SPENCER:**

5 So along that line of questioning with the preemption, my other
6 concern, because the Northport Power Plant sits in my district, and
7 there's another side of this and I just want -- and I'm sure you're
8 already aware of this, but a major issue in the Northport School
9 District is that it's the reverse, where LIPA is saying, "Hey, wait
10 a minute." They're grieving their taxes. And that school district
11 and the Town of Huntington is sitting in sheer terror of the impact
12 of if there's a successful grievance of just the disproportion and
13 impact that would have on the school district and the taxpayers in
14 that area.

15
16 So I'm wondering perhaps another way to go about it, too, would
17 also be to look at those other issues, where when it's still LIPA's
18 advantage where they have to pay more taxes. Like to us they
19 refuse to pay, but on the other hand when they have the opportunity
20 to pay less taxes -- so they can't have it both ways. And perhaps
21 there's some way that we can negotiate because what I don't want to
22 see is -- number one, that we're successful and they just
23 immediately just pass that on to the ratepayers. Or number two,
24 that -- and these local issues where they're disputing their taxes
25 then all of a sudden they accept -- the grievances move forward and
26 we really put a substantial, an epic economic burden on a school
27 district, which is that's kind of the role of the County to kind of
28 absorb some of that shock. So I hope that, Mr. Comptroller, I
29 guess this would be directed to you, that that's in your analysis.

30
31 **COMPTROLLER KENNEDY:**

32 Absolutely, Doctor. And this is not an effort to try to take what
33 is something that's untenable for us and lay it over to rather than
34 the citizen taxpayer, the citizen ratepayer. Remember, we are a
35 ratepayer as well. Twenty-eight million is what we paid PSE&G for
36 these things up here and for all of the buildings we have in the
37 County of Suffolk. So I'm mindful of that.

38
39 I fully intend to work with the County Attorney on developing the
40 theory. He's got knowledge in this area. As the Judge laid out,
41 we have an almost 100 year old statute in play, and we have a
42 complex statute in essence in its infancy, with no case law
43 whatsoever. And so -- but we also have a receivable that is
44 growing and my contact with the Brookhaven Tax Receiver's Office
45 was that there was no second half of payment on any of the 379
46 parcels in Brookhaven. So I don't think that the utility has all
47 of a sudden had an epiphany in an effort to turn around and now be
48 compliant. I think they're going just the other way.

49
50 **LEG. SPENCER:**

51 Thank you very much. I'll yield.

52
53 **CHAIRPERSON FLEMING:**

54 Thank you. And question here based on the letter that we received
55 from LIPA, Mr. Mostel, which I distributed. So he references in
56 the last paragraph that in 2016 Nassau school districts sued LIPA.

1 **COMPTROLLER KENNEDY:**

2 Yes.

3
4 **CHAIRPERSON FLEMING:**

5 And they were permitted to pay. They settled --

6
7 **COMPTROLLER KENNEDY:**

8 Let me speak to that if I can, Madam Chair --

9
10 **CHAIRWOMAN FLEMING:**

11 Yes, go ahead.

12
13 **COMPTROLLER KENNEDY:**

14 -- because I had an opportunity to speak with an attorney last
15 night from one of the firms that was involved in that litigation
16 from last year. To the best of my knowledge it was three firms, I
17 believe. Ingerman Smith, Jaspan Schlesinger and Guercio and
18 Guercio. I had an opportunity to speak with one of the attorneys
19 that was familiar with the matter. That matter differs
20 substantially from the situation we have in that the Nassau County
21 Assessor I believe it was, elected to unilaterally reduce the levy
22 across the County for the school districts by \$100 million,
23 reflective of LIPA's position that they would pay no more than 2%.

24
25 In that case, the school districts bore the extent of the hardship,
26 if you will, and I think what are we talking, maybe 30, 40 school
27 districts. Litigation was commenced, there was discussion, and
28 ultimately a settlement in which Nassau County indicated it would
29 refrain from any unilateral action regarding assessment going
30 forward.

31
32 **CHAIRPERSON FLEMING:**

33 What do you mean by unilateral action?

34
35 **COMPTROLLER KENNEDY:**

36 On their own. So the Leg adopted an assessment, and the Assessor
37 just whacked it by 100 million. That issue was not this issue.
38 This issue is a simple issue of failing to remit.

39
40 **CHAIRPERSON FLEMING:**

41 If this legislation passes, is it something Dennis can consider?
42 Legislator Trotta, did you have a question?

43
44 **LEG. TROTTA:**

45 Why are you coming to us? Can't you just call them up and say, you
46 know, "Hey, look into this for me?"

47
48 **COMPTROLLER KENNEDY:**

49 To Dennis?

50
51 **LEG. TROTTA:**

52 To George. Can't they just -- I mean, is this appropriate? This
53 seems like a phone call.

54
55 **COMPTROLLER KENNEDY:**

56 Legislator Trotta, let me speak to that for a second. Without

1 getting into too much, we have talked about this over the last
2 couple of months and we have explored a couple of different
3 pathways and this seems to be the most prudent way to move forward.
4 How's that?

5
6 **LEG. TROTТА:**

7 Why? It just doesn't seem logical to me. Call them up and say,
8 "Hey, look into this. You're the County Attorney. Does this look
9 like it's going to work?" It seems like a -- is it a legal
01:24PM 10 responsibility for them to come to us?

11
12 **MR. NOLAN:**

13 Obviously anybody can call the County Attorney and ask him to look
14 at a question. What this resolution represents the entire
15 Legislature. That's basically it. We've done this before probably
16 -- probably a couple of times a year we ask the County Attorney
17 collectively.

18
19 **LEG. TROTТА:**

01:24PM 20 Is it legally necessary?

21
22 **MR. BROWN:**

23 There are cases where the County has acted affirmatively with
24 respect to litigation. There have been challenges to the ability
25 of the County and the County Attorney to act affirmatively in the
26 absence of formal approval to move in that direction.

27
28 **LEG. TROTТА:**

29 Do you have case law that --

01:25PM 30
31 **MR. BROWN:**

32 Yes, actually we do, yes.

33
34 **LEG. TROTТА:**

35 Can you forward it to me?

36
37 **MR. BROWN:**

38 Yeah, sure.

39
40 **LEG. TROTТА:**

41 So you're saying you have to do this?

42
43 **MR. BROWN:**

44 Well, first of all, there's a provision in the Charter that says
45 that the County Attorney's Office acts at the direction of the
46 Legislative body or the County Executive, but also in the absence
47 of some type of formal approval, yes, there is case law that does
48 attack the ability of the County to move forward on affirmative --

49
50 **LEG. TROTТА:**

51 So everything that you do has to either be approved by the County
52 Executive --

53
54 **MR. BROWN:**

55 Well, not everything that we do because clearly not every single
56 thing that we do, but generally in the Charter, yes, that's what it

1 says.

2

3 **LEG. TROTТА:**

4 So if someone sues the County do you have to come to us and ask for
5 us to do it?

6

7 **MR. BROWN:**

8 No.

9

10 **LEG. TROTТА:**

11 So then what's different than this?

12

13 **COMPTROLLER KENNEDY:**

14 I would offer to you the difference is I don't have the ability or
15 the authority to articulate policy. When I sat on that side of the
16 Legislature I did. So since this clearly is something -- it's an
17 operations issue, it's a revenue issue, but I would offer to you it
18 is a policy issue.

19

20 **LEG. TROTТА:**

21 Are they paying a 2% increase every year now?

22

23 **COMPTROLLER KENNEDY:**

24 No. As matter of fact, I think what we've just laid out in front
25 of you is, is that they are electing to utilize this cap in the
26 most creative way, and thereby they're subverting the amounts that
27 they're paying across hundreds of properties. So, no.

28

29 **MS. PINES:**

01:26PM

30 What they're doing, if you took the amalgam of all the taxes that
31 they owed in each of these towns, they're all under the 2% cap. By
32 interpreting it the way they want, they're ignoring all the
33 parcels, which are most of them, that are under the 2% cap, taking
34 parcels that are above it, and cutting those down to the 2% cap.

35

36 **LEG. TROTТА:**

37 So are we getting a 2% increase a year on these properties?

38

39 **MS. PINES:**

01:27PM

40 No, no. There are many that are below. The answer is no.

41

42 **LEG. TROTТА:**

43 Okay, but generally if one's going up 6% a year and one is going up
44 nothing, are we getting an increase from LIPA every year on these
45 properties?

46

47 **MS. PINES:**

48 Do you mean for a particular property that has gone up the 6%?

49

50 **LEG. TROTТА:**

51 In all of them added together, are we getting more money every
52 year.

53

54 **COMPTROLLER KENNEDY:**

55 I would have to look at all of them. Are we getting an additional
56 amount? I would say to you yes, but we are not getting the amount

1 that has been adopted regarding the variety of budgets that you
2 adopt a warrant and a levy for. So unlike every other taxpayer,
3 like you and everybody around this horseshoe, they're not paying
4 the amount of the tax bill sent to you in December.

5
6 **LEG. TROTТА:**

7 You know, I'm reading this and it says that, you know, you had a
8 meeting and it was canceled and they want to reschedule it and were
9 unable to reschedule it. I mean, it seems -- this doesn't seem --
01:28PM 10 you know, and the fact that it settled in Nassau, it seems to me
11 like you should go talk to them.

12
13 **COMPTROLLER KENNEDY:**

14 Legislator Trotta, I have spoken with them, as matter of fact. And
15 when they came to my office what they explained was that they were
16 operating under what their view of the legislation was. So I could
17 have another conversation with them. I doubt that it would be
18 anything different. But more importantly, it's not going to do
19 anything to cure the six-and-a-half million they owe us today,
01:28PM 20 because candidly, they don't agree they owe us six-and-a-half
21 million. So I'd ask you then, tell me if they don't offer -- owe
22 us six-and-a-half million, pass a bill. Pass a bill that says
23 that's a, I don't know, an unauthorized levy and, in fact, that
24 they get treatment that no other taxpayer gets. Go ahead.

25
26 **LEG. TROTТА:**

27 Do you think this worth it, to the County Attorney? I mean,
28 ultimately who's going to pay? You know, it's going to be the
29 taxpayer or the ratepayer.

01:29PM 30
31 **COMPTROLLER KENNEDY:**

32 Here's a third option. They could spend six-and-a-half million
33 less.

34
35 **LEG. TROTТА:**

36 Who could spend six-and-a-half million less?

37
38 **COMPTROLLER KENNEDY:**

39 LIPA. That doesn't have to get passed on.

01:29PM 40
41 **LEG. TROTТА:**

42 Then the taxpayers pay it ultimately. It just, you know, it seems
43 to me this, you know, just do it.

44
45 **CHAIRWOMAN FLEMING:**

46 Well, good. I think that's a yes vote.

47
48 **COMPTROLLER KENNEDY:**

49 There you go.

01:29PM 50
51 **CHAIRPERSON FLEMING:**

52 Dennis, could you just -- in terms of what we're being asked to
53 consider today, this resolution, would you anticipate this being
54 done in-house, this feasibility study, and then I know it might be
55 premature to say it, but if you were to consider litigation, would
56 you need to hire outside counsel or would that be handled in-house?

1 **MR. BROWN:**

2 Yes, yes, to both of your questions. So, yes, we would do it
3 in-house as far as the feasibility study is concerned. And it's
4 premature to say whether we would do it in-house or use outside
5 counsel.

6
7 **CHAIRPERSON FLEMING:**

8 But we would not -- but we would not be authorizing hiring outside
9 counsel. We wouldn't be authorizing any kind of expenditure of
01:30PM 10 money on lawyer fees in this reso that the Comptroller is asking us
11 to consider.

12
13 **MR. BROWN:**

14 That's correct.

15
16 **LEG. TROTТА:**

17 That would have to come back to us if that were to happen.

18
19 **CHAIRPERSON FLEMING:**

01:30PM 20 Would that have to come back to us is Rob's question.

21
22 **MR. BROWN:**

23 If we have the appropriation available and we were going to use
24 outside counsel, if we did go down that road we would do it with an
25 RFP or an RFQ, and if we did it with an RFQ it goes then to the
26 Waiver Committee, RFP Waiver Committee.

27
28 **LEG. TROTТА:**

29 It wouldn't necessarily come to us.

01:30PM 30
31 **MR. BROWN:**

32 If we -- there would be, well, I shouldn't say that because if we
33 were going to commence affirmative litigation I would be asking for
34 -- I would be looking for the support of the Legislative body to do
35 so, just as we did with respect to Legislator Calarco.

36
37 **LEG. TROTТА:**

38 Especially if you came to us ask here.

39
40 **MR. BROWN:**

41 Correct.

42
43 **CHAIRPERSON FLEMING:**

44 So that's reassuring. Are there any further questions? Sorry,
45 Legislator Calarco.

46
47 **LEG. CALARCO:**

48 Thank you, Madam Chairwoman. And here's the question I have for
49 you, Mr. Comptroller. So we want to go after LIPA because they're
01:31PM 50 not paying their full freight in taxes, right? So --

51
52 **COMPTROLLER KENNEDY:**

53 Well, hold on. Hold on. I'm asking for the legal opinion to
54 determine if they can be sued, because unlike any other non-payer,
55 at this point I don't have the ability to seize the property, so
56 they are unique.

1 **LEG. CALARCO:**

2 They have not paid their full assessed value as we have determined,
3 because they believe that we are following the State law as it's
4 written and that they're not required to pay that, right?

5
6 **COMPTROLLER KENNEDY:**

7 You know, I'm not in their mind but that's what they're
8 articulating with that 2%.

9
10 **LEG. CALARCO:**

11 I just wanted to clear that up. So we're saying it's to the tune
12 of -- I guess you're saying it's to the tune of 6.6 million,
13 thereabouts, for this year?

14
15 **COMPTROLLER KENNEDY:**

16 For a 24 month time period, yes.

17
18 **LEG. CALARCO:**

19 For a two year period, okay.

01:32PM

20
21 **COMPTROLLER KENNEDY:**

22 Raw, unpaid and penalty and interest.

23
24 **LEG. CALARCO:**

25 Okay. So here's my question for you. We take them to court and we
26 win. They remit that money to the County as they're required to.
27 Where do they get that money from? Are we not suing ourselves? I
28 mean, they're going to take it from the ratepayers.

29
30 **COMPTROLLER KENNEDY:**

31 Well, first of all, I would tell you or remind you that I believe
32 the LIPA service area runs from the Rockaway Peninsula all the way
33 out to Orient and Montauk. It includes a small part of Queens, the
34 whole of Nassau and the whole of Suffolk. As to how they may or
35 may not address a six-and-a-half million dollar obligation to pay,
36 again, I'm not their CEO and I'm not on their board.

37
38 **LEG. CALARCO:**

39 Well, it's based on their properties they own for generation,
40 correct? So they're going to tack that on to their -- on to the
41 bill as power supply, which is not something they go to the PSE for
42 permission for. They raise that and lower that as they see fit,
43 correct?

01:33PM

44
45 **COMPTROLLER KENNEDY:**

46 They have established the pilots I believe, as the Judge had
47 alluded to, as a successor to when they were in the name of LILCO
48 and they were deemed as taxable property.

49
50 **LEG. CALARCO:**

51 Yeah, I guess -- listen, I mean, I understand for the protection of
52 the County it may make sense for us to do this, but I just think
53 we're robbing Peter to pay Paul when it comes to the actual people
54 who are paying the bills, which are our taxpayers and our
55 ratepayers. We're almost all both.

56

1 **COMPTROLLER KENNEDY:**

2 We do have a fiduciary obligation on the behalf of ratepayers, and
3 as a matter of fact, this body has a history going back over the
4 last 30 years of bringing LILCO and LIPA to task for a variety of
5 issues, but when presented with a six-and-a-half million dollar
6 unpaid tax bill, as I said, unlike anybody else.

7
8 **LEG. CALARCO:**

9 So, I mean, play it out, John, all right. If we had seen it the
01:34PM 10 same way LIPA had seen it and we had just lowered their assessment
11 as they believe their assessment should have been lowered, it's not
12 that we would have collected less taxes. That assessment would
13 have been spread out over the tax base that was existing. Maybe
14 some other people may have paid a little bit more, but it would
15 have equaled out. Our warrant would not have changed and the
16 collection would not have changed. In fact, by not doing that we
17 produced this shortage that we have now. And at the end of the day
18 it's all the same people are paying these bills.

19
01:35PM 20 So, again, I understand it from the perspective of protecting the
21 County's bottom line. We're \$6.6 million short of what they owe us
22 for the last two years because we assessed them this value and
23 they've decided that they don't believe that we are assessing them
24 properly. So in essence this is their way to challenge our
25 assessment. But at the end of the day it's still going to be
26 either the ratepayer or the taxpayer who is paying this money,
27 because I don't think that the, you know, the folks over there at
28 PSE&G are going to take it out of their pockets. And when you
29 think about it in the long-term, like the only real advantage of
01:35PM 30 having a power company be an authority of the State of New York is
31 that they can get themselves out of paying these property taxes so
32 that it does produce a lower bill for the ratepayers. Otherwise,
33 if they're paying taxes as if they were LILCO, what's the real
34 advantage of having the authority in the first instance. So I
35 mean, I just -- I feel like, you know, it's just taking from one
36 pocket and putting in the other, but I guess from the perspective
37 of protecting our bottom line it's something worth doing.

38
39 **CHAIRPERSON FLEMING:**

01:36PM 40 Well, this has been a good discussion. Are there any further
41 questions?

42
43 **LEG. TROTТА:**

44 One quick one.

45
46 **CHAIRPERSON FLEMING:**

47 Yes, Legislator Trotta.

48
49 **LEG. TROTТА:**

01:36PM 50 The LIPA law doesn't supersede -- doesn't say it supersedes any
51 other law? The 1020, Section 1020 of the Public Authority Law?

52
53 **MR. BROWN:**

54 Yeah, Legislator Trotta, I believe what you're referencing is -- I
55 saw the letter but I didn't look at that section of the law, but I
56 know in the letter that the General Counsel says that the law

1 pertaining to the cap, the pilot cap, it says notwithstanding any
2 other law or language to that effect.

3
4 **LEG. TROTТА:**

5 Yeah.

6
7 **MR. BROWN:**

8 I suppose the only thing that really needs to be looked at is
9 whether because the Suffolk County Tax Act is a special law that
10 language in and of itself is sufficient to override the dictates of
11 the Suffolk County Tax Act. I don't have an opinion on that right
12 now.

13
14 **MS. PINES:**

15 It don't believe it does, unless it says so, because --

16
17 **LEG. TROTТА:**

18 Two lawyers with different things? This is unbelievable.

19
20 **MR. BROWN:**

21 I said I don't have an opinion.

22
23 **MS. PINES:**

24 I agree.

25
26 **CHAIRPERSON FLEMING:**

27 Okay. Very good discussion. Thank you all for coming. We
28 actually have a motion and a second for IR 1371. All in favor?

29
30 **COMPTROLLER KENNEDY:**

31 Thank you, Madam Chair, and thank you members of the committee. I
32 appreciate it.

33
34 **CHAIRWOMAN FLEMING:**

35 So we'll go back to our regularly scheduled agenda.

36
37 **TABLED RESOLUTIONS**

38
39 *1195 - Adopting Local Law No. -2017, A Local Law to repeal Local*
40 *Law No. 36-2016 (Trotta).* I'll make a motion to table.

41
42 **LEG. TROTТА:**

43 A motion to discharge without recommendation.

44
45 **LEG. CILMI:**

46 Second that.

47
48 **LEG. TROTТА:**

49 On the motion.

50
51 **CHAIRPERSON FLEMING:**

52 Yes, Legislator Trotta.

53
54 **LEG. TROTТА:**

55 I just, you know, I'd like to discharge this and I'm going to base
56 it on a letter I'm going to read that I gave -- handed out that I

1 received from a constituent. Actually, I guess this is one of
2 mine.

3
4 It says, "I recently closed on a home equity loan that I had for
5 ten years. With a satisfaction letter in my hand from the bank I
6 made a trip to Riverhead to record it with the County. I was
7 expecting to pay a \$60 recording fee. You may probably imagine my
8 surprise when I was presented with an invoice for \$555.50. I was
9 flabbergasted. When I asked the Clerk to itemize the charges she
01:38PM 10 vaguely answered that a new charge of \$300 was added in January for
11 a mortgage verification fee. The process took less than five
12 minutes and I didn't see any evidence of the Clerk verifying the
13 mortgage. I walked out of the building with the feeling that I had
14 just been violated. I can't imagine the feeling would be very much
15 different if a robber had come up to me, put a gun to my head and
16 dragged me to an ATM machine and demanded that I withdraw \$550.
17 Clearly I have been robbed by the County that I have lived in for
18 more than 30 years. I am hopeful that you can bring the situation
19 to the County's attention and ask for a reversal of these fees. I
01:39PM 20 don't believe these fees, which are listed below, have
21 substantiated as a value. Thank you for your attention to this
22 matter."
23

24 So to the County Executive's person, I'd like to ask a question.
25 You know, we heard Hector --
26

27 **MS. HORST:**
28 Katie.

29
30 **LEG. TROTТА:**
31 -- come in here earlier and lay this out about -- I want to know
32 what the County Executive's position is on his mortgage, on his --
33 what did he call it? The foreclosure hotline, when in essence when
34 you're redoing a mortgage if you're in foreclosure you're going to
35 refinance to get a better rate. So it's actually an increase of
36 \$1950 for those costs based upon this. What is the position -- was
37 he aware that this would happen?
38

39 **MS. HORST:**
01:40PM 40 I will have to get back to you on that. I don't know.
41

42 **LEG. TROTТА:**
43 You don't know? I mean, is this a concern to the County
44 Executive's Office that we have people -- 17,000 pending
45 foreclosures in this County.
46

47 **CHAIRPERSON FLEMING:**
48 Legislator Trotta, I think you have your answer to the question.
49

50 **LEG. TROTТА:**
51 No, I don't have my answer.
52

53 **CHAIRPERSON FLEMING:**
54 She said she'll get back to you.
55
56

1 **LEG. TROTТА:**

2 No, that was the one question. Now I'm asking appreciate -- and I
3 would appreciate it if you didn't interrupt me because I was asking
4 a question.

5
6 **CHAIRPERSON FLEMING:**

7 I appreciate it, however, you asked the question --

8
9 **LEG. TROTТА:**

01:40PM 10 And she answered and I was asking another one and you interrupted
11 me.

12
13 **CHAIRPERSON FLEMING:**

14 I'm telling you you got your answer when she said that she cannot
15 speak for the County Executive.

16
17 **LEG. TROTТА:**

18 On one question. I was asking her another question. I would
19 appreciate it if you wouldn't interrupt me. I don't interrupt you,
01:40PM 20 so I don't expect you to interrupt me.

21
22 **CHAIRPERSON FLEMING:**

23 I Chair the meeting and we need to keep a certain level of decorum.

24
25 **LEG. TROTТА:**

26 Exactly my point. So don't cut me off when I'm in the middle of
27 talking.

28
29 **CHAIRPERSON FLEMING:**

01:40PM 30 I will run the meeting as I see fit. Ask another question, Mr.
31 Trotta.

32
33 **LEG. TROTТА:**

34 What was the County Executive's thinking or did he know that this
35 would affect refinancing twice, \$550 going in and \$550 going out.

36
37 **MS. HORST:**

38 I wasn't part of the group that put the budget together. I'll have
39 to get back to you on that. I don't know.

01:41PM 40
41 **LEG. TROTТА:**

42 Okay. For this reason I would like this discharged without
43 recommendation so that the entire Legislative body could vote on
44 this, because quite honestly, as Counsel has told us in the past,
45 this is very, very troubling and could be the subject of
46 litigation. I don't want to have the County sued for this down the
47 road or we have to pay more money back.

48
49 **CHAIRPERSON FLEMING:**

01:41PM 50 Very good. We have a motion to discharge, we have a motion to
51 table. The tabling motion comes first. We have a second on that
52 motion. All in favor? All opposed? Please see hands. Any
53 abstentions? The motion carries. **(VOTE: 4-3-0-0. LEGISLATORS**
54 **TROTТА, BROWNING AND CILMI OPPOSED)**

1 **CHAIRPERSON FLEMING:**

2 I'm afraid I didn't take a full vote on the discussion that we had
3 on 1371. We voted to take it out of order and I didn't take the
4 vote on the substantive bill. Okay. So moving *IR 1371 - Directing*
5 *the County Attorney to determine the viability of commencing an*
6 *action against the Long Island Power Authority for failure to pay*
7 *property taxes (Pres. Off.).* Do I have a motion to approve?
8

9 **LEG. SPENCER:**

10 Motion.
11

12 **CHAIRPERSON FLEMING:**

13 Motion by Legislator Spencer; seconded by myself. All in favor?
14 All opposed? Any abstentions? Thank you. The motion carries.
15 *(VOTE: 7-0-0-0)*
16

17 Back to Tabled Resolutions. *1276 - Accepting the donation of a*
18 *monument honoring United States Service members who came in peace*
19 *killed in Beirut bombing terror attacks (Stern).* I wonder if
20 anyone is aware whether Sitings has considered this?
21

22 **LEG. CALARCO:**

23 They don't have a finalized design for Sitings to make a decision
24 upon. That's why it's been held up at this point.
25

26 **CHAIRPERSON FLEMING:**

27 Understood. Okay. So Legislator Spencer -- we have a second by
28 Legislator Spencer, and on the motion, Legislator Browning.
29

30 **LEG. BROWNING:**

31 Yeah. Just so there is a monument already?
32

33 **LEG. CALARCO:**

34 No. There is an entity that has -- my understanding of this is
35 that there's an entity that has volunteered to provide the
36 resources to build this monument and they have been going through
37 the phase of designing what that monument will look like. I think
38 that they were almost there at one point in time and then I guess
39 didn't get there. So Sitings can't make a decision on-site -- on
40 that monument until they know what it's going to look like in its
41 finality.
42

43 **LEG. BROWNING:**

44 Do they know where they're going to put it?
45

46 **LEG. CALARCO:**

47 I don't know the location off the top of my head. I think they
48 were looking in front of the Dennison Building but I could be
49 wrong.
50

51 **LEG. BROWNING:**

52 Okay.
53

54 **CHAIRPERSON FLEMING:**

55 So we have a motion and a second. All in favor? All opposed? Any
56 abstentions? The motion to table carries. *(VOTE: 7-0-0-0)*

1 **1366 - Adopting Local Law No. - 2017, A Local Law to enact a**
2 **Campaign Finance Reform Act to limit campaign contributions from**
3 **County contractors and public employee unions (Trotta). Mr.**
4 **Trotta?**

5
6 **LEG. TROTТА:**
7 Motion to table.

8
9 **CHAIRPERSON FLEMING:**

01:44PM 10 Motion by Legislator Trotta to table for Public Hearing; seconded
11 by Legislator Calarco. All in favor? All opposed? Any
12 abstainers? The motion carries. (VOTE: 7-0-0-0)

13
14 **INTRODUCTORY RESOLUTIONS**

15
16 **1387 - Authorizing a technical correction to the 2017 Adopted**
17 **Operating Budget for OLA of Eastern Long Island (Fleming). I'll**
18 **make a motion to approve.**

19
20 **LEG. CALARCO:**
21 Second.

22
23 **CHAIRPERSON FLEMING:**

24 Seconded by Legislator Calarco. All in favor? All opposed? Any
25 Abstentions? 1387 is approved. (VOTE: 7-0-0-0)

26
27 **1389 - Authorizing a certain technical correction to Adopted**
28 **Resolution No. 254-2017 (Pres. Off.). That's just changing the**
29 **project number. I'll make a motion to approve. And that can go on**
01:44PM 30 **the Consent Calendar. So that's my motion; seconded by Legislator**
31 **Calarco. All in favor? All opposed? Any abstentions? 1389 is**
32 **approved. (VOTE: 7-0-0-0)**

33
34 **1390 - Authorizing the sale, pursuant to Local Law No. 16-1976, of**
35 **real property acquired under Section 46 of the Suffolk County Tax**
36 **Act Rafael Camacho and Imelda B. Vaquero, as tenants by the**
37 **entirety (SCTM No. 0900-232.00-03.00-005.002) (Co. Exec.).**

38
39 **LEG. SPENCER:**
01:45PM 40 Motion.

41
42 **LEG. CALARCO:**
43 And place on the Consent Calendar.

44
45 **CHAIRPERSON FLEMING:**

46 Motion by Legislator Calarco to place on the Consent Calendar,
47 seconded by Legislator Spencer. All in favor? All opposed? Any
48 abstentions? 1390 is approved and placed on the Consent Calendar.
49 (VOTE: 7-0-0-0)

50
51 **1395 - Sale of County-owned real estate pursuant to Local Law No.**
52 **13-1976 Debbie Lewis (SCTM No. 0100-170.00-02.00-071.000) (Co.**
53 **Exec.).**

54
55 **LEG. SPENCER:**
56 Motion.

1 **CHAIRPERSON FLEMING:**

2 Motion by Legislator Spencer. Seconded by Legislator Calarco. All
3 in favor? All opposed? Any abstentions? 1395 is approved.

4 **(VOTE: 7-0-0-0)**

5
6 **1396 - Authorizing the sale, pursuant to Local Law No. 16-1976, of**
7 **real property acquired under Section 46 of the Suffolk County Tax**
8 **Act Matthew Carragher (SCTM No. 0900-123.00-04.00-014.000) (Co.**
9 **Exec.).**

01:46PM

10
11 **LEG. SPENCER:**

12 Motion to approve and place on the Consent Calendar.

13
14 **LEG. CALARCO:**

15 Second.

16
17 **CHAIRPERSON FLEMING:**

18 Motion to approve and place on the Consent Calendar by Legislator
19 Spencer; seconded by Legislator Calarco. All in favor? All
20 opposed? Any abstentions? That motion carries. **(VOTE: 7-0-0-0)**

01:46PM

21
22 **1397 - Authorizing the sale, pursuant to Local Law No. 16-1976, of**
23 **real property acquired under Section 46 of the Suffolk County Tax**
24 **Act Elizabeth Foley (SCTM No. 0400-197.00-03.00-037.000) (Co.**
25 **Exec.).** Same motion, same second. All in favor? All opposed?
26 Any abstentions? So moved. **(VOTE: 7-0-0-0)**

27
28 **1398 - Authorizing the sale, pursuant to Local Law No. 16-1976, of**
29 **real property acquired under Section 46 of the Suffolk County Tax**
30 **Act Bolla Property and Development Corp., by Joshy Abraham,**
31 **President (SCTM No. 0100-053.00-02.00-126.001) (Co. Exec.).** Same
32 motion, same second. All in favor? All opposed? Any abstentions?
33 The motion carries. **(VOTE: 7-0-0-0)**

34
35 **1401 - Authorizing the sale, pursuant to Local Law No. 16-1976, of**
36 **real property acquired under Section 46 of the Suffolk County Tax**
37 **Act Alicia Gonzalez, Sandy Gonzalez and Michelle Rodriguez (SCTM**
38 **No. 0500-201.00-03.00-015.000) (Co. Exec.).** Same motion, same
39 second. Any opposition? Wait. Same motion, same second. All in
40 favor? All opposed? Any abstentions? So moved. **(VOTE: 7-0-0-0)**

01:47PM

41
42 **1402 - Authorizing the sale, pursuant to Local Law No. 16-1976, of**
43 **real property acquired under Section 46 of the Suffolk County Tax**
44 **Act Janet Roache (SCTM No. 0900-296.00-02.00-010.000) (Co. Exec.).**
45 Same motion, same second, same vote. 1402 is approved. **(VOTE:**
46 **7-0-0-0)**

47
48 **1417 - Authorizing the lease of premises located at 15 Pinehurst**
49 **Drive, Bellport NY for use by Suffolk County Department of Fire,**
50 **Rescue and Emergency Services (Co. Exec.).** Motion by Legislator
51 Calarco; seconded by Legislator Browning.

01:48PM

52
53 We were informed by the Commissioner earlier today at the Public
54 Safety Committee that this is 100% grant funded. It's been in use
55 since 2013 and there's no other place and County property to use
56 for this function. So we have a motion and a second. All in

1 favor? All opposed? Any abstentions? 1417 is approved. (VOTE:
2 7-0-0-0)

3
4 **1441 - Directing the Real Property Tax Service Agency to develop a**
5 **plan to exempt first-time homebuyers from additional tax map**
6 **verification fee (Krupski).** I'll make a motion to table.

7
8 **LEG. SPENCER:**
9 Second.

01:48PM 10
11 **CHAIRPERSON FLEMING:**
12 The sponsor respectfully requests that we table the resolution
13 while he continues to work with the Office of Real Property
14 regarding the issue. So motion to table.

15
16 **LEG. SPENCER:**
17 On the motion.

18
19 **CHAIRPERSON FLEMING:**
01:48PM 20 Yes, Legislator Spencer.

21
22 **LEG. SPENCER:**
23 One of the things I wanted to find out on this particular
24 legislation from Budget Review, is there any assumptions that can
25 be made if this goes into effect what sort of revenue impact that
26 that will have, and is there differences between what the
27 assumptions on the western towns versus the eastern towns because
28 of population density.

29
30 **MR. LIPP:**
31 So far we haven't gotten any data. Like, for instance, we thought
32 maybe the Clerk would have a breakdown like that. So we weren't
33 able to do it in terms of make an estimate. With that being said,
34 we'll continue to look into it and the actual impact would be once
35 the plan is developed, and then we would have to at least attempt
36 it. I could get you something, I'm not sure how good it would be,
37 it would be -- we can make some assumptions, take a look at it.

38
39 **LEG. SPENCER:**
01:50PM 40 Thank you.

41
42 **CHAIRPERSON FLEMING:**
43 Thank you. We have a motion and a second. All in favor? All
44 opposed? Any abstentions? 1441 carries. (VOTE: 7-0-0-0)

45
46 We have no Procedural Motions, we have no Executive Session today,
47 so we are adjourned. Thank you.

48
49 *(*The meeting was adjourned at 1:49 p.m.*)*

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