

SUFFOLK COUNTY LEGISLATURE

GENERAL MEETING

SECOND DAY

February 2, 2011

**MEETING HELD AT THE WILLIAM H. ROGERS LEGISLATURE BUILDING
IN THE ROSE Y. CARACAPPA LEGISLATIVE AUDITORIUM
725 VETERANS MEMORIAL HIGHWAY
SMITHTOWN, NEW YORK**

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**(*THE FOLLOWING WAS TAKEN AND TRANSCRIBED BY
LUCIA BRAATEN-COURT REPORTER*)**

(*THE MEETING WAS CALLED TO ORDER AT 9:44 A.M. *)

P.O. LINDSAY:

Could I have all Legislators to the horseshoe, please? I apologize for those in the audience. We're starting about ten minutes late. There's still some people coming in on the road with traffic, but we're going to get started in a few minutes.

Okay. Mr. Clerk, could you call the roll, please? Let's have all Legislators to the horseshoe, please.

(Roll Called By Mr. Laube, Clerk)

LEG. ROMAINE:

Present.

LEG. SCHNEIDERMAN:

Here.

LEG. BROWNING:

Here.

LEG. MURATORE:

Here.

LEG. EDDINGTON:

Here.

LEG. MONTANO:

Here.

LEG. CILMI:

Here.

LEG. BARRAGA:

Here.

LEG. KENNEDY:

Here.

LEG. NOWICK:

Here.

LEG. HORSLEY:

Here.

LEG. GREGORY:

Here.

LEG. STERN:

Here.

LEG. D'AMARO:

Here.

LEG. COOPER:

Here.

D.P.O. VILORIA-FISHER:

Here.

P.O. LINDSAY:

Here.

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Could everyone rise for a salute to the flag, led by Legislator Ricardo Montano.

*(*Salutation*)*

P.O. LINDSAY:

If you would remain standing, Legislator Montano is going to introduce our visiting Clergy.

MR. MONTANO:

Thank you, Mr. Presiding Officer, members of the Legislature and members of the public. It's my privilege today to introduce Reverend Angel Manuel Falcon, who is a founder and Senior Pastor of Faith Alive Ministries, a multi-cultural non-denominational church located at 17 West Suffolk Avenue in Central Islip. It is there where the focus is to strengthen families, church, and the community in Central Islip and the region. *Faith Alive Ministries* was birthed in January 1992 out of a great need within the Body of Christ in our region to make disciples and to bring them into greater maturity as to our covenant promises and rights as believers.

Pastor Falcon believes that the Father's overall intent was not only to save us, but to empower us by His Holy Spirit to be a light in the world, impacting our generation and establishing His purpose here on Earth today. Pastor Falcon has been actively working in the community since 1974, some 36 years, and has dedicated his life to empowering the lost and broken through Biblical truths and principles. His mandate is to be relentless in *"Pursuing His Purpose, Expanding His Kingdom, and Equipping His Saints"*.

Pastor Falcon enjoys his home in Central Islip. Since 1974, he's happily married to Lissette Falcon. He enjoys their children, Zhamaine, Lea'von, Christina, and the recent addition to their family, the youngest daughter, Karis, which is Grace, and finally, Gabriel, their only son. He also richly enjoys his grandchildren, Aiyana, Benjamin, and Jayla.

Pastor Falcon's first memory of the call of God in his life was at the age of ten, while looking out his window from their Bronx, New York apartment on December 1964. He was overwhelmed by what he saw; the condition of the neighborhood, drunkenness, homelessness, individuals sleeping in alleyways with no direction; dirty and smelly. He remembers specifically how emotional he became, and being naive at 10 years old, asked God to make him rich so that he could help clean up these people. Ten years later, in May 1975, Pastor Falcon surrendered his life to God, and realized that what mankind really needed was to be cleansed from the inside, the heart of man, and come into the saving knowledge of Jesus Christ, the Son of God. Since then he has never looked back and has been running the race of God's high calling, looking to honor and serve Him wholeheartedly by

serving God's people.

Members of the Suffolk County Legislature and the public, please welcome me -- please join me in welcoming The Reverend Angel M. Falcon, Faith Alive Ministries. Pastor?

*(*Applause*)*

PASTOR FALCON:

Thank you so much. I need to have that shortened a little bit.

*(*Laughter*)*

This is my second opportunity to stand before this Legislative Body. And I am compelled to tell you how honored I am to be here, knowing that even as a Pastor and shepherd a small church, I know the challenges that I'm -- that fall upon my shoulder, let alone the responsibility that you all have to steer this County in a way that would benefit us all. So I'm honored to be here, and enough to say that, though this is my second time here, I want to let you know that for the past 34 years, I have specifically adhered to God's mandate to pray for our government. And so, weekly, I want you to know that you are in our prayers. Those that I have disciplined along the way, I entrust them with their responsibility to uphold this honorable position that had been entrusted to you all. So I'm honored to be here today.

I kind of don't do this, I normally don't write my prayers, but I felt I wanted to make sure on this special occasion that I share what is in my heart for you today.

Heavenly Father, graciously do we acknowledge you here this morning among the gathering of this Legislative Body, comprised of men and women whose calling and purpose is to -- in their lives is to serve their fellow man. I am honored to be among them today and so lift them up before you. And I humbly ask for your divine wisdom to descend upon us each and every day. Wisdom to collaboratively work together to find solution to the many challenges facing our beloved county, state, and nation. Wisdom to see broader than maybe our own preconceived ideas, judgments or conviction. Wisdom to know that we are all in this together, working for the common good of us all. Wisdom to learn to value and respect one another, though we may so often disagree. And most importantly, wisdom to know that one day we will all stand before you and give an account for choices and decisions we've made for our lives.

Father, I also am aware of the awesome weight of responsibility and trust it to them by the people. And so I pray that their strength of character would be able to sustain them, as they make these decisions that would move us through this generation's challenges in hopes of making a better future for our children and the generations to come. I pray for renewed courage to stand unwaveringly for what is right before you, and that they may be resilient in their stewardship to maintaining fiscal and social responsibility. I ask that you would help them not lose sight as to why they do what they do, so that their strength can be renewed each and every morning, charting a course favorable for us all.

And finally, help us to uphold the moral compass of thy word, so that we won't fall short of what we all yearn to achieve. As our founding Fathers wrote, "We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." May your grace, wisdom and strength rest upon them and upon the task at hand, I pray in our son's name. Amen, and Amen.

P.O. LINDSAY:

Thank you, Pastor. If everyone would main standing for a moment of silence for the following people:

Elizabeth Bodkin, who recently passed away at the age of 91. Elizabeth is the mother of Christopher Bodkin, a Legislative Aide in my office.

Bernice Dyson Smith, who's Shinnecock tribal name was Princess Red Fox, died of cardiac arrest last Friday at the age of 85. Bernice lived on the Shinnecock Reservation and helped to keep her Shinnecock heritage alive with traditional dances and regalia. After retiring from the New York Telephone Company, she went to work as Director of the Shinnecock Senior Nutrition Program.

And this one is really sad. Suffolk County has lost one of its sons. Last Friday, Sergeant Anthony Venetz of Wading River was killed in action in Afghanistan.

Doris Metz, a driver at the First Student Charter Bus Rental Company, who tragically lost her life during last week's snowstorm.

And let us also remember all those men and women in the military who put themselves in harm's way every day to protect our country.

And please join us in a moment of silence as we remember the victims of the tragic earthquake that struck Haiti one year ago on January 12th. While the survivors of the disaster continue to recover and rebuild, we remember all the victims, and thank all those who came together to assist the local relief efforts. So a moment of silence.

(*Moment of Silence*)

Okay. Welcome, everyone. First up, we have some proclamations. The first is by Legislator Browning.

LEG. BROWNING:

Good morning. I do apologize, Legislator Lindsay. I should have mentioned also the Mastic Fire Department is here with me today and they just recently laid to rest Christopher {Clay}, a member of the Mastic Fire Department. He was also a retired New York -- sorry, Suffolk County Police Officer. So, please, keep him and his family in prayers. He was 47 years old.

But we're here today to let you know about the Mastic Fire Department. I'm sure you've all read about it, but in the early morning of New Year's Day, there was a fuel delivery being made at the Southport Shopping Center in Shirley, and the employee noticed there was gas emitting from it and immediately fled the scene and called 911. I'm here today -- today I have Chief Dwight Blankenship and his Assistant Chief, Jim Mickert, of the Mastic Fire Department, who were among the first responders on the scene, and they recognized the need for serious concern and began taking emergency action to avoid any potential dangerous situation. Mutually, it was called out to many fire departments and ambulance companies throughout Suffolk County, and I'd like to extend my thank you to many of them. There was approximately 80 responders that day, so a special thank you when you go to the installations. You know, I do have that list, and FRES can provide that list, but I can't say how grateful I am that so many did respond.

There was approximately 900 homes with 2,000 residents who were evacuated, and an emergency shelter was set up at the William Floyd High School. The volunteers of the Mastic Fire Department worked tirelessly throughout the day attempting to contain the leak, and once this was accomplished, the entire area and the surrounding homes and businesses had to be checked and

rechecked for any lingering fumes before electricity could be turned back on. All of the volunteers of the Mastic Fire Department went above and beyond the call of duty this day by knowingly and willingly jeopardizing their own safety to avoid potential disaster.

Each volunteer of the Mastic Fire Department deserves to be commended, especially Chief Dwight Blankenship, who's here today, and Assistant Chief Mickert for their leadership and courage that they have showed New Year's Day 2011. So my colleagues here at the Legislature and the residents of Mastic and myself would like to say a special thank you to the Mastic Fire Department for protecting the residents of the Mastic/Shirley community. And we also thank Chief Blankenship and Assistant Chief Mickert for their leadership and professionalism.

So I have three proclamations here. One, I guess I have to take -- one is for the Mastic Fire Department as -- to say thank you for all of their hard work and their commitment and dedication to the community in this time. And if you would like to take this one. You want to come up and represent your husband? And many of you know Lola Quesada from Suffolk County Police Department.

*(*Applause*)*

And her husband is -- was a former Chief, Steven Quesada. So, if you would like to just come up. As you see, we have many wonderful people in my community. And I have here the proclamation for Chief Dwight Blankenship. Thank you, Dwight.

CHIEF BLANKENSHIP:

Thank you.

*(*Applause*)*

LEG. BROWNING:

And, also, Assistant Chief James Mickert. Thank you, James.

ASST. CHIEF MICKERT:

Thank you.

*(*Applause*)*

LEG. BROWNING:

And, please, don't forget at your installations to say a special thank you for me -- from me to your fire departments and ambulance companies.

D.P.O. VILORIA-FISHER:

Presiding Officer Lindsay will be presenting a proclamation.

P.O. LINDSAY:

I guess it was about two weeks ago you read about it in Newsday, an 11-year-old girl, Sarah Thalhammer, and I think Sarah's with us today -- come join me, Sarah -- was walking a neighbor's dog in Sayville and the dog pulled her out onto the ice, and her and the dog fell through the ice. And a very alert neighbor called 911, which set into effect a chain of events that saved Sarah's life and the dog's as well. And I don't think there is anything that our public safety people, our policemen, our firemen, our ambulance people, could do better than save a life. I mean, that is the ultimate, I think, reward in their career, to save another person's life.

And I have a lot of those folks with us today. I think Officer DeMatteo is with us today. Officer, if you could join us. Officer DeMatteo was the first one on the scene and went out on the ice and rescued Sarah, and then bringing her back, they both fell in. Then he was backed up by the Sayville Fire Department, the Sayville Ambulance Corps, and they subsequently got everybody to shore, including the dog, and it turned out to be a real happy ending.

So I'd like to call up Captain Robert Smith from the Sayville Ambulance Corps, Firefighter Zach Haller, Firefighter Chuck Hartman, who actually went in and got the dog, I think; Chief Donald Hodgkinson, Firefighter Peter Williams, and, of course, Police Officer DeMatteo. This is yours. Thank you. And Lieutenant Daniel Karl from the Sayville Fire Department as well. So I just wanted to have all of you folks here today. And who couldn't be here today was Chris Gonzales from the Sayville Community Ambulance Company, but he certainly deserves mention for his role in this rescue as well.

Sarah, you're a little girl, but it took a lot of men to rescue you and the dog, but they got it done, you know.

*(*Laughter*)*

So we're very happy that you're here with us today, Sarah, and it turned out to be a happy ending. Would you like to say anything?

MS. THALHAMMER:

No.

P.O. LINDSAY:

No, no. I don't blame you, that's scary, you know. But, gentlemen, I just want to thank you for your efforts and for the role that you played in this rescue. I want to thank you.

*(*Applause and Standing Ovation*)*

And I have one more proc, and I'd like to call up -- this is a little bit unusual, but this Department certainly went above and beyond so far this winter. I'd like to call up our Commissioner of Public Works, Gil Anderson. You know, this is the winter from hell, and these guys have done some fantastic job so far in this winter. And I thought it would be appropriate -- well, everything's still going good, you know.

MR. ANDERSON:

Don't jinx it.

*(*Laughter*)*

P.O. LINDSAY:

To give the Department a proclamation from all of us, all 17 of us signed this proclamation. If you could just convey to your Department that we appreciate the effort that they've put in this winter into cleaning our roads and to keeping us safe. You have put up with some really, really tough conditions and we greatly appreciate your efforts.

MR. ANDERSON:

Thank you.

*(*Applause*)*

P.O. LINDSAY:

Okay. Vivian, you can take over.

D.P.O. VILORIA-FISHER:

I'd like to invite Moke McGowan to come forward for the presentation. This presentation that Mr. McGowan will give is in accordance with Resolution No. 1238 of 2004, quote, "To provide oversight of the activities of the Long Island Convention and Visitors Bureau, which requires an update be given to the Legislature each year as to the effectiveness of the efforts of the Long Island Convention and Visitors Bureau with respect to the agency's success in increasing sales tax revenues and tourism using verifiable statistics." So it's all yours. Please don't forget that you have to keep your finger on the button at the base of the microphone so we can hear you.

MR. MCGOWAN:

Thank you, Deputy Presiding Officer Fisher, and thank you, Members of the Legislature, for this opportunity to make a brief presentation this morning on the current state of our tourism industry in Suffolk County and on Long Island.

Essentially, what I would like to do is take about ten minutes at the most to give you a brief look at where we were at the end of 2010, and also taking a look at the challenges, as well as the opportunities, that face Long Island and Suffolk County's tourism industry in 2011. Before I go further, let me introduce Sharon Wyman, who is our office manager; like all of our staff, wears a number of hats, and this morning she's my audio/visual specialist to help me along here.

You know, as many of you already know, our primary focus at LICVB is on driving overnight visitation from off the Long Island. As such, one of the key indicators that we continually monitor to gauge the health of our tourism industry and economy is the performance of our lodging community. As you can see, overall demand for Suffolk County's lodging improved somewhat in 2010, but only slightly and at a cost. While occupancies improved a little over 2 1/2%, this came as hotels in the County significantly reduced their rates to stimulate demand. The same thing can be observed as it relates to the Island as a whole with demand in occupancies being stimulated through room rate reductions. And, as I've said, we're seeing only modest improvements. Unfortunately, when we look at where we were in 2008, it's obvious that we have a long ways to go to catch up. As you can see by this slide, even with the slight improvements we enjoyed last year, we're still down 8% in both rates and occupancy compared to 2008.

As I've said before, most of the large accountancy firms that track the lodging industry's performance nationally, including PKF, Price Waterhouse and Smith Travel Research, are still looking to 2013 and 2014 as the time we'll see a return to pre-recession levels of business. But that said, however, they are projecting rate increases by over 5% in 2011. And I should point out that this data is provided by Smith Travel Research, which tracks primarily the corporate lodging sector, and does not include in its report a large portion of the family owned and operated properties on the East End. However, anecdotal feedback from a number of our East End partners and properties indicate that these seasonal properties did extremely well this past spring and summer, certainly owed in no small part to the excellent weather we enjoyed from Memorial Day to Labor Day.

And as we work to catch up to 2008, we are faced with a number of challenges in the marketplace. The economy is expected to continue to impact business travel decisions, including corporate meetings and conventions. Further, it should be expected that budget reductions within school districts will have an impact on youth programs, particularly as it relates to sporting -- youth sporting events. While the cost of gasoline does impact leisure travel decisions. AAA does not expect this to be a major factor unless the \$4 per gallon of gasoline threshold is crossed. Unfortunately, as of yesterday, at \$92 a barrel of petroleum, that threshold may be crossed. On the other hand, aviation fuel costs will certainly force a rise in the cost to fly, adding to the growing

animosity towards not only airlines, but air travel in general.

Now, compounding these challenges is the continued growth in hotel room inventories, and especially here in Suffolk County. Since the bottom fell out of the market in 2008, six new properties have opened in the County, adding over 700 new rooms to our already overinflated inventory. This year another property will open in Riverhead and will add yet another 110 rooms to the inventory. And I think we can all understand the challenge these presents in our current tourism economy, but that's the downside.

As we look ahead to this year unfolding, I do find a number of reasons for optimism, not the least of which is the fair amount of pent up desire for leisure travel by consumers and a loosening of corporate travel budgets and meeting budgets. Consumers are expected to act on these desires in 2011 with last minute impulse getaways, with just six days of planning or less. Mostly they'll be seeking ways to relieve stress by traveling to destinations no more than four to five hours away.

Additionally, international travel remains strong, and especially to New York City. Our intent is to continue to leverage the gains we've already realized in this market and expand on its growth. And to be effective, our job will be to seek out, identify and leverage marketing opportunities. And let me give you a brief few examples of how we have done this in the immediate past and how we plan to do so in 2011. Our plans this year include leveraging the national and international awareness we generated last year following the proclamation by Dr. Steven Leatherman, better known as "Doctor Beach", that Coopers Beach in East Hampton was the number one beach in the nation.

LEG. SCHNEIDERMAN:
Southampton.

MR. MCGOWAN:
Southampton. Thank you. To launch this announcement in grand style last May, the LICVB secured a posting on Reuters' seventy-four-hundred square foot digital billboard in Times Square. Solely through the LICVB efforts, over 165 articles appeared in print or online media, reaching a total audience in excess of 53.7 million consumers.

This past September, we launched our all new and dramatically redesigned website, discoverlongisland.com. Now, for those of you who have not had the opportunity or taken the opportunity to visit this site yet, I certainly encourage you to do so. The site incorporates the most up-to-date online web navigation elements and tools to make it faster and easier to get to know, appreciate and plan a visit to Long Island. But the site also features visually stunning content that draws the web visitor in to better entice them with all that Long Island has to offer. Among destination websites, be they large cities or I might say even state developed, I dare say you will find non better.

Augmenting our online presence, the Bureau also launched it's Long Island Facebook page just a little over a year-and-a-half ago. Since that time, our Facebook fans has grown to over 185,000, placing Long Island in the top tier of base fans for destinations. To put that into perspective, New York State's own "I Love New York" Facebook page, which is over two years old, has just over 106,000 fans. And if you get the sense that we are focusing a fair amount of our marketing efforts on E-marketing initiatives and strategies, you're absolutely right. Currently 5% of our web traffic comes to us from mobile smart phones, and currently 40% of all Americans have smart phones, at least that was reported in 2009. Ten percent of all web traffic was mobile then. Well, this year the LICVB will develop our first mobile specific site for smart phones. Our intent, obviously, is to further extend our reach to potential visitors through mobile applications and platforms in order to better take advantage of the opportunities this will make or present.

And finally, as it relates to our online initiatives and strategies, I'm pleased to report to you that yesterday the Bureau launched the newly designed micro-site devoted solely to Suffolk County's cultural heritage and performing arts assets. The development of this micro-site was a strategy contained in our 2010 marketing plan under the Suffolk Tourism Specialty Marketing Program. Niche marketing that focuses on a destination's individual experiences and assets is an expensive endeavor. However, with the increase in our funding, we now this have the ability to begin developing limited niche marketing opportunities and campaigns. This new micro-site will be the foundation of our endeavors to generate a greater awareness among targeted potential visitor audiences of the depth and diversity of Suffolk County's heritage assets and experiences. Now these are just a few of the examples of the types of programs and strategies that Bureau has initiated in an aggressive attempt to overcome the ongoing challenges we face in the marketplace.

Finally, I am pleased to report that through the work of a board-appointed Task Force, the Long Island Convention and Visitors Bureau has developed a revamped tourism matching grants program. This program, fully supported by our East End partners from Riverhead, including both forks, the program was unanimously adopted by our full Board of Directors during the January meeting, and, yes, that did include directors from both counties. In short, the program calls for setting aside 10% of the revenue that Bureau receives from the County to fund this program. Overall, the allocations within the program are rather complex and would be difficult to fully explain in this forum. However, the program is now tied into formulas for revenue generation by the destination marketing organizations in the Peconic region, while providing funds to other organizations that compliment the Bureau's tourism mission. It's a shared growth program that escalates as lodging tax revenues increase, and it recognizes the importance and the impact of our East End partners to the overall tourism economy of Suffolk County and to Long Island. It works to leverage the funds most effectively and efficiently in line with the Bureau's mission and with our previous matching grants fund, or as with our previous matching grants programs, it is accountable.

But that said, this program is not a competitive grant program. It is not intended to, nor can it, provide funds to every applicant. To ensure the most effective use of these funds in line with our contractual obligations to the County, applicant eligibility requirements and criteria have been established, as well as provisions for eligible and ineligible expenditures. Overall, we believe this new program will ensure a stronger return on the County's investment, both in the Long Island Convention and Visitors Bureau and its tourism industry.

Mr. Presiding Officer and Deputy Presiding Officer, that does conclude by immediate remarks. Thank you.

P.O. LINDSAY:

Thank you, Moke, I appreciate it. Does anybody have any questions? Legislator Viloría-Fisher.

D.P.O. VILORIA-FISHER:

Thank you, Mr. McGowan. I have a question. You may have said this, but I'm not certain. You said that with the addition of 110 more hotel rooms, that there seems to be a surplus or an overabundance of available rooms. Did you mention a vacancy rate? Is there -- are we seeing an extraordinarily high vacancy rate?

MR. MCGOWAN:

Our occupancies are currently a little higher than they were in 2009, but well below 2008. We were, up until the bottom fell out in the economy, close to a point of absorbing those -- our existing hotel rooms into our inventory so that our occupancies were more in line with a stable environment in the industry. The bottom fell out of the market. The only reason our occupancies are where they are today is because the rates have come down so incredibly much. Now, this has had a dramatic impact on what we would call limited services properties, unique services properties,

Hamptons Inn, Holiday Inn Expresses, those types of properties, because folks are now able to stay for a price in a three-star property that they would normally spend in a two-star property. So that's really one of the major impacts on the industry as a whole. The obvious impact to the County is a reduction in lodging tax generation, because the rates are so far, down.

D.P.O. VILORIA-FISHER:

Okay. But you're saying that there had been higher occupancy rates, and so that justified the expansion of the industry, of the hotel industry at that time, but these additional rooms now could be anticipating a recovery.

MR. MCGOWAN:

I think the situation that we found ourselves in, going back over the past four or five years, is it takes so long to get permits in order to move ahead with the development of a lodging property, that a lot of these properties, when they were envisioned, the economy was robust, travel was coming back to decent levels following the 9/11 attacks and things of that nature, so there was optimism at that time. The timing of the opening of these properties could be -- could not be worse. And, quite honestly, I think we will see a number of properties struggling to stay afloat and open and meet debt service and things of that nature.

D.P.O. VILORIA-FISHER:

Just another quick question. The website does look very good. I've looked at it, I've visited it. But Newsday has an Explore Long Island platform and I'm wondering how much of the efforts of the LICVB are duplicative of what Newsday is doing with that Explore Long Island site? Can we use that as something that's covering certain areas of what LICVB does in order to look at other areas that aren't being tapped, so that we're not duplicating our money and efforts?

MR. MCGOWAN:

I think that what you have to look at is the audiences that you are working to approach. Newsday does a fairly decent job approaching the resident population of Long Island, as it should, but it also uses that approach in talking to that audience. We talk to our audience from a standpoint that they don't have a lot of institutional and straightforward knowledge of the Long Island product as a whole. We don't assume they know how to get around on Long Island, where various assets are and experiences are, so we do have to spoon-feed that to our audiences. And as we approach the marketplace, of course, our mission is really focused on off-island audiences trying to get them to create the awareness of the Long Island product, its proximity, and things of that nature.

D.P.O. VILORIA-FISHER:

So your answer is yes, that you see it as a complement rather than a duplicative effort.

MR. MCGOWAN:

It is. And, quite honestly, a good portion of our audience, or, rather, our customers do come from Manhattan, Queens, Brooklyn and enjoy what Long Island has to offer. And I think what it does is, like you said, complements not only what Newsday provides them from that perspective, but also from the perspective of approaching it from a visitor's eyes.

D.P.O. VILORIA-FISHER:

Thank you. Thank you, Mr. Chair.

P.O. LINDSAY:

Any other questions? Yes, Legislator Kennedy.

LEG. KENNEDY:

Moke, as always, you do a great job. And I just want to follow up on what Legislator Vilorio-Fisher spoke about. And maybe you touched on it and I might not have heard it, but the capacity issue, you're tracking it. You see how it may correlate to vacancy, but have you had an opportunity to have dialogue with anybody from a planning perspective, either Long Island Planning Council, any one of our thirteen town planning directors, or, for that matter, possibly even boards? Look, entrepreneurs are going to go and put project forwards and that's the nature of the market, but there's probably nobody better to advise venture capitalists or anybody else what the prospective return on investment is going to be than you folks.

MR. MCGOWAN:

We have had a number of individual conversations with, if you will, consultants, business consultants to developers and to hotel management firms, and what have you, over the course of the last five, six years. We are constantly called asking for numbers, asking for history of occupancies, rates, {REPAR}, and the things that they should be doing due diligence-wise. We also provide them with other folks that they need to touch bases with it, might be Pearl Kamer, to look at the overall economy of Long Island in various areas and industries. That said, once we impart that information to them --

LEG. KENNEDY:

It goes where it goes.

MR. MCGOWAN:

-- it goes where it goes.

LEG. KENNEDY:

Okay. Well, at least you're being available and I appreciate that. Thank you.

MR. MCGOWAN:

Absolutely.

LEG. KENNEDY:

Thank you.

P.O. LINDSAY:

Okay. I don't see anybody else, so thank you very much, Moke, for your presentation.

MR. MCGOWAN:

Thank you.

P.O. LINDSAY:

Okay. Next up is public portion. First speaker is Dick Koubek.

MR. KOUBEK:

Good morning, Ladies and Gentlemen. My name is Richard Koubek, and I'm Chair of the Welfare to Work Commission of the Suffolk County Legislature. I'd like to speak in two capacities this morning on behalf of overriding County Executive Levy's veto of Resolution 1238, creating a pilot project for Sunday bus service.

The County Executive is correct in his veto message, that the majority of riders do so out of necessity, not choice. It is on their behalf, many of them working poor people, that the Welfare to Work Commission supports this pilot. The County Executive's concern that the 50 cent increase in the bus fare will cause many of these riders to fund a service that they will not receive we found to

be overstated. To begin, Legislator Schneiderman did an excellent cost survey of the pilot. His data show 12 Sunday routes in the first year of the pilot, and possibly 16 in the second year, far more than the number of bus routes that the County Executive projects in his veto message. Second, the Commission created an ad hoc committee on Sunday bus service. We identified 22 low-income communities that need Sunday bus service. We found that if the routes are selected, and this is important, to include low income communities, 12 projected routes could serve as many as 20 low-income communities, perhaps 70% of the people, most in need of Sunday bus service.

I also want to point out that we agree with County Executive Levy, that the Suffolk County has done an excellent job keeping the bus fares down. The reality, however, is that the last increase was almost 20 years ago, and that the 50 cent increase would bring the Suffolk bus fare in line with New York City and still less than the Nassau County fare.

Finally, we agree, it would be great if Suffolk County could get Federal and State funds, as the Executive calls for, to pay for full Sunday bus service, but given the deficits at both the State and Federal level, that's not likely to happen.

Second hat I'm wearing today is as the Community Outreach Coordinator for Long Island Jobs With Justice, and we're a group that along with Vision Long Island, Sustainable Long Island, the Long Island Federation of Labor have endorsed Sunday bus service. In that capacity with Jobs With Justice, I had a chance to speak with the directors of four agencies that serve working poor people in the Brentwood and Central Islip communities: Vivian Hart of Pronto, Irma Rubio of Saint Luke's Outreach, Ana Sullivan of Saint John of God, and Debra {Kernan} of Saint Ann's Outreach. Each Director immediately saw the need for Sunday bus service. Several of these agencies distributed surveys in English, Spanish and Creole and the results overwhelmingly supported a fare increase for Sunday bus service. Hundreds of these surveys were collected. So we were going to have Debra {Kernan} of Saint Anne's Outreach here this morning, but she had a family crisis that prevents her from getting here. She asked me last night to speak for her. These are her concerns. She wants the service for her clients because many of them get ripped off on Sunday by taxi drivers.

P.O. LINDSAY:

Dick, could you wrap up? You're out of time.

MR. KOUBEK:

Yeah, I'm done. Who are raising their fares on Sunday because they know there's demand due to the lack of service. She wants the service for her clients who work on Sundays, she wants the service for family members who want to visit each other, even for people who want to attend church services. So on their behalf, working poor people, Jobs With Justice and the Welfare to Work Commission and these other groups urge you to override the veto. Thank you.

P.O. LINDSAY:

Thank you, Dick. Michelle Minton.

MS. MINTON:

Good morning. My name is Michelle Minton and I'm here --

MR. LAUBE:

You've got to hold the button down.

MS. MINTON:

Hi. Good morning. Thank you for having me. I'm Michelle Minton. I'm a Policy Analyst from the Competitive Enterprise Institute in Washington, D.C. I've come here today to express my opposition to the proposed energy drink ban, which I see as a threat to individual liberty, harmful to

local business, and, worst of all, harmful to those it seeks to protect, teenagers. First and foremost, my opposition is based on the belief that it is not the role of government to force citizens into making, quote, healthy choices. I also believe it is not the right of Legislators to put their personal fears into public policy.

Second, and almost as important, there's little scientific information -- excuse me -- scientific evidence that the products in question are harmful to any age group in reasonable quantities. The only evidence provided by those supporting such a measure is a fear of abuse, to which I say any product can be abused. The behavior of a few should not result in the punishment of all.

There's also a lot of talk about the possible harm energy drinks could cause, but a lot of that had been based on factual inaccuracies. As I wrote in an article co-authored with Dr. Elizabeth Whelan, which I've made available to everybody here, there's little reason for health concerns regarding energy drinks. Their ingredients have been approved by the FDA and nothing in such drinks has shown cause when ingested in reasonable quantities. The fear of energy drinks seems to surround the quantity of caffeine that they contain. And to put that perspective in -- to put that into perspective, here are a few figures: A bottle of 5-Hour Energy is 138 milligrams of caffeine. An average Starbucks coffee has 150 milligrams of caffeine. Even if this ban passes, teen-agers in Suffolk County can still buy as much coffee they want.

The measure will certainly hurt local convenience store owners. I'm sure you've heard from them. They'll bear the brunt of the financial costs. The sign that they'll be forced to put up will reduce purchasing by adults, as well as teens, which will result in lost revenue. In addition, they'll have to bear the cost of putting up the signs, training the clerks, carding consumers, dealing with long lines, and paying fines with the hundred and -- I'm sorry, excuse me -- paying fines up to \$750 each time they sell an energy drink to somebody underage.

Perhaps the worst part of this proposed ban is that it does a disservice to the young adults it's supposed to protect. If they're ever going to become full-grown adults, they need to learn how to make their own decisions about nutrition and moderation. A ban teaches them nothing except perhaps that the product -- if a product is on the market, it must be safe in any quantity, otherwise the government would have banned it. If we rob teens of the opportunity to make decisions about things like what they eat, how can you expect them to make more important decisions later in life?

This brings me to my final point. If the ban passes, where does something like this end? The logic used in this legislation can and will be used in the future to usurp the rights of adults to make their own decisions about purchasing and consuming products. It would only take one Legislator with a strong distaste for a certain product to pass legislation to prevent everybody from using it. Instead of abusing the power of the Legislature by banning a product that one fears, I encourage you to protect the freedom of your citizens by allowing them to make their own choices and, instead, engage in educational outreach. Thank you.

P.O. LINDSAY:

Perfect, Michelle, right on time. Peter Mastando. I'm sorry, Peter, Mastando, Mastando. And John Rogers is on deck, if you can go close to the mic.

MR. MASTANDO:

Good morning, Mr. Lindsay, and the panel here, Legislature. Peter Mastando. I work at John J. Foley Nursing Facility.

First, I've got to say, I'm very, very confused, I feel like a ping-pong ball. I think if I turn myself into the lost and found, I think I could find my way better -- find my way back better from where I am, because I don't know what is going on. I'm almost in a position to have to retire. Retire?

Retirement is really nice if you could afford it. I can't afford it. I follow the procedures how to keep a home. I went for a grievance. One year they gave me \$100 off. All right, I got something. The second year they gave me nothing. My house's taxes is up to \$10,000. I'm losing my job. I will earn, between my social security and my pension, roughly twenty-three hundred dollars. Do the math. Twenty-seven hundred dollars for a mortgage payment, \$10,000 in taxes; it don't work, it does not work.

I woke up 4 o'clock this morning and I woke up in a different country, 4 a.m. I don't know why. I woke up in Greece. There's a country that was almost bankrupt. I woke up in Great Britain, rioting, throwing things at the Queen's car. Well, first of all, I don't think there should be a King and Queen in a country, but that's a different story, because that's like a dictatorship, as far as I'm concerned. Well, then I went over to Egypt. What rioting, it's not necessary. We don't do that here. We are normal people. We put up with situations, we try to make the best of what we can. Can we make the best of it without you? No.

Four years ago we got a virus at John J. Foley, believe it or not, it's called the County Executive virus. He uprooted John J. Foley, he dismantle -- he didn't dismantle it, he started to corrupt it, stopped filling jobs. If you retire, you can't fill it. And here we are, winding down, we don't know where we're going yet. What's happening? Do we have to have rioting like we have in Egypt? We're not that kind of people, but this is where we're at. Look at the unemployment line. Those are the people that are going to start it. No food. How do they get food? They rob, they'll have to rob. That's not right. I don't approve of it. So what is this country coming to?

I say start the generators up at John J. Foley. Keep us County workers County. The stimulus of a good economy is jobs. You have to have jobs. Create jobs? Yeah. What's wrong with ours? Why can't we keep them and create other jobs? Fund John J. Foley. We'll pay the money back. We had a good administrator and they took him out of there, for whatever reason I don't know, but he was doing a very good job. Mr. Lowell Fein, he was all right in my book. He saved money. What happened? He was doing too good of a job with that County Executive virus? What's wrong with this country? County Executive virus, that's what I call it, Mr. Levy. Thank you very much. Please keep us County, we need the jobs.

*(*Applause*)*

P.O. LINDSAY:
Thank you, Peter.

MR. MASTANDO:
Thank you.

P.O. LINDSAY:
John Rogers.

MR. ROGERS:
Thank you, Presiding Officer Lindsay and members of the Legislature. My name is John Rogers. I am the current Chair of the Greater Bellport Coalition, which is a coalition of community groups working with Brookhaven Town and Suffolk County to address current quality of life issues, as well as guide the future growth of North Bellport. These issues include housing, unemployment, economic development, etcetera. However, residents will tell you over and over that nothing will change unless we bring the crime under control.

Now, if you read the ShotSpotter report, it may come to you as a surprise that there's this widespread perception that there's crime in North Bellport. However, the conclusion from the ShotSpotter report that the neighborhood is safe is viewed by residents not as an indicator that the neighborhood is safe, but as an indicator that the problem or the extent of the problem is unknown. Now, North Bellport is only one square mile, but we've had nine people shot in the last twelve months. We have kids who go to bed at night thinking the sound of gunfire is normal, and we have residents taking Sarah Palin's words to heart, not to retreat, but to reload. Towards that end, the Greater Bellport Coalition believes the installation of ShotSpotter will go a long way towards reducing gun-related incidents in the community. We have acquired \$80,000 and other funding sources towards the purchase and installation of the system.

I would like to thank Legislator Browning, who is laying the bill on the table this morning to appropriate \$600,000 to the Police Department technology budget. I would also like to thank Legislator Eddington and Legislator Cooper for their support. And I would ask, when this bill comes up for a vote in March, that you also support the bill. Thank you.

P.O. LINDSAY:

Thank you, John.

*(*Applause*)*

P.O. LINDSAY:

Carol Hart, followed by Roger Clayman.

MS. HART:

Good morning. As Executive Director of the Vanderbilt Museum, I'm here this morning to ask you to override the County Exec's veto of the Vanderbilt facade restoration funding. This project has been in the Capital Program really for almost ten years, and this is the final piece of funding for the phase to protect and restore the museum's bell tower from further deterioration, and to protect visitors and staff from falling masonry. The tower is the only vehicular and handicapped entrance to the mansion. It is the main entrance, because visitors must pass under the tower. In 2004, netting scaffolding was erected to protect visitors. This was supposed to be temporary.

We had a taste of what a closure of this entrance would be like for the museum two years ago when there was concern that there might be a structural failure of the tower. The entrance was closed for a few weeks. During that time, any children in wheelchairs coming to any of our education programs for the mummy, or the mansion, or the butterflies had to be carried in. We had a wedding ceremony scheduled. In the ceremony, the mother of the bride had to be carried in. We've lost photo shoots and the opportunity to market our bell tower as an iconic symbol of Long Island's Gold Coast.

Next year is going to be a landmark year for the Vanderbilt. Last week the contract for the new Planetarium projector was fully executed and signed. The kickoff meeting is next week. We are incredibly excited about this. This means that we have a firm start date of summer, late spring, 2012, and we will have the best equipped Planetarium, one of the best in the country. We would love to have a wonderful visitor experience for the historic mansion as well. Thank you.

P.O. LINDSAY:

Thank you, Carol. Roger Clayman, followed by Adrienne Esposito.

MR. CLAYMAN:

Thank you, Legislator Lindsay. Good morning. My name is Roger Clayman. I'm the Executive Director of Long Island Federation of Labor, and I'm here to address Resolution 1238, the override of

the veto on Sunday bus service. I think Dick Koubek hit the high point, so there's no need for me to repeat them.

I wanted to thank Legislator Schneiderman for the work he's done in highlighting some of the concerns. It's very difficult to be an expert about bus service and to be certain that all of the neighborhoods and the people get covered that ought to be covered. But one thing we've learned in mess in Nassau County with the threatened closing of their bus service is, in studying it, how many working people rely on the bus to get to work, and how many working people work on Sunday. And how many of our institutions, such as hospitals and home health aides, for example, rely on bus service to do the jobs that are indispensable and nobody else will do? So I understand it's a cost, and -- but I think in this case it's worthwhile because of the difficulties we find throughout Suffolk County in people getting to work. So I want to thank you for considering it, and thank you for your time.

P.O. LINDSAY:

Thank you, Roger. Adrienne, followed by Tom Harrington.

MS. ESPOSITO:

Good morning, Members of the Legislature. My name's Adrienne Esposito, I'm Executive Director of Citizens Campaign for the Environment. I'm here today to please ask you to vote yes on Suffolk County Resolution 2243-10, that's Suffolk County Legislator Wayne Horsley's resolution banning the option of incineration for the sludge generated by the Bergen Point Sewage Treatment Plant. You may or may not know, but the County had a process, it was the Sludge Management Task Force, a riveting process that Citizens Campaign for the Environment was a member of since 2008, and that was a process that engaged policy-makers, and community members, and environmentalists to evaluate the various options to deal properly with sludge and sludge management generated from Bergen Point. There was a number of criteria looked at, and out of all the options, incineration was at the bottom. It didn't conform with community options, community values for air emissions and also for home values, it didn't conform with environmental values for how it would impact negatively the Great South Bay and also air emissions. And also, there were other more reasonable and more cost effective options, including beneficial reuse. In fact, the County put out what was called a Request for Qualifications, which means they looked at are there companies that would take this sludge and reuse it in a beneficial way. The results were very positive. Six companies responded yes, that they would, and three more potentially could.

So, therefore, what we're saying is if you vote yes on this resolution, it would be consistent not only with community values, not only with environmental goals, but also with the study that the County itself looked at, and take it off the table so we can look at the more reasonable and the more healthful options. Thank you very much.

P.O. LINDSAY:

Thank you, Adrienne. Tom Harrington, followed by Jack McCloy.

MR. HARRINGTON:

Good morning. I am here once again to speak about the CJCC report on the Suffolk County Community Service Program, as directed by Resolution 940-2009.

D.P.O. VILORIA-FISHER:

You have to press the button.

MR. HARRINGTON:

Is that better?

P.O. LINDSAY:

Much, thank you.

MR. HARRINGTON:

Okay. In June of 2010, when I addressed the Legislature, I questioned the ethics of the CJCC Work Group and stated that this report was a collection of fabrication. This time I come bearing documents that will further support my comments. In the name of public interest, I do know that some of you, the members of this government, have taken issue with alleged lies, deception and questions of ethics of other members of this government. In recent, there have also been questions about a recent CJCC generated report, yet somehow this matter continues to go ignored. Each of you have been given copies of documents that you can follow what I am saying. The top page is the original referral form that the report focused on. This is the document that I will concentrate on. Let it be noted that nowhere in the original report did it say that they actually reviewed the physical document.

Item No. 1, which is marked on that referral form, references to Page 19 of the report that states that the defendant paid a \$150 fee. The referral form states that that fee should have been \$100. Item No. 2 refers to Page 20, and states, as was the practice in 2008, there was no contact between the D.A.'s Office and the Pre-Plea Program after the case was closed. However, the referral form in use at the time clearly states, "The above defendant is being referred by me to the ARC for post plea assignment. Please advise me to this person's placement and completion." Again, the report contradicts this.

Item No. 3 references to Page 24 and states a number of altered-by-hand changes. If you look at the report, the next court date was never changed, nothing was handwritten. The copy you have of this referral form was finally acquired by means of a FOIL to the D.A.'s Office after it was discovered that it was not among the court records. What was in the court records is the next document in the pile you have, which is a list of conditions of discharge for the defendant. I can personally tell you that every one has been checked and he abided by none, but nobody did anything about this, which leads me to the next point. Page 7 of the report states that the work group reviewed a Memorandum of Understanding between the D.A. and the Red Cross. In the interest of time, you have copies of FOIL requests that we made to the D.A.'s Office asking for that Memorandum of Understanding. The D.A.'s Office sent us back a response that no such document exists. They also told us that this document should only exist between the New York State Department of Probation and Correctional Alternatives, which is false, because it has to be between the government body that's overseeing it, which in this case was the D.A. and Pre-Plea.

Two FOILs were sent out to the D.A.'s Office for a memorandum, to the Department of Probation for a memorandum, and to the CJCC, none of which have been responded to. We have been ignored again. I am going to ask one member of this Legislature to stand with us and ask for a formal investigation into what happened in this matter. Thank you.

P.O. LINDSAY:

All right. Thank you, Mr. Harrington. Unfortunately, you ask a lot of questions and we can't -- we can't comment under public portion. But what I would strongly suggest to you is that you get a hold of your local Legislator and have a discussion with him about it.

MR. HARRINGTON:

My wife and I have tried repeatedly to get in touch with Legislator Muratore. Our E-mails, our phone calls generally go ignored. As far as I'm concerned, we have to representation. We did finally get some information from his office, only because I believe Senator Flanagan's office also called them looking for the same information. I spoke to the Legislator at a civic meeting in September. I asked him if he would stand up for us to order a formal hearing into this. He told me

I would hear from him. Today is February the 1st. That meeting was somewhere in the last week of September. I'm still waiting to hear from you.

P.O. LINDSAY:

Okay. Thank you, Mr. Harrington. Jack McCloy, followed by Margaret Bolton.

MR. MC CLOY:

Presiding Officer Lindsay, Deputy Presiding Officer Fisher, Members of the Legislature, my name is Jack McCloy. I wanted to personally come to address you today to talk about the wrong-way driving situation. I want to thank those of you who have corresponded with me via E-mail, and I wanted to speak to the rest of you regarding some points that I think deserve to be brought to your attention.

The wrong-way driving situation has gotten enough press that many of you have seen Newsday's cover stories about it, but Newsday talks about wrong-way driving as an uncontrollable situation. And also, the Suffolk County Public Works Commissioner and Chief Engineer says there's not a lot that can be done. I would like to suggest that there is something that can be done, and my suggestion has been sent to each of you. And those of you who have been too busy to take a look at it, I wanted to ask you if you might be able to take time to take a second to look.

What I'm suggesting is something that you may be familiar with if you've rented a car and seen the one-way strips that many of the car rental places use so cars cannot be removed from the parking lots in an unauthorized fashion. These strips are used to dismantle the tire's integrity if they're driven out of the parking lot unauthorized. But, if they are authorized, the strips just fall back into place. My suggestion is one-way strips be used at the exit ramps of some of the highways that are most apt to be frequented by wrong-way drivers.

Now, I do want to mention to you that I've received some correspondence from members of the Suffolk County Legislature saying that many of these roads are State and Federal roads, like the L.I.E., Northern State, Southern State Parkway. I understand that, and I intend to speak to the State officials and Federal officials about implementing such a one-way driving strip test initiative, but I think my suggestion would be fortified by your correspondence to me stating your opinion one way or the other as to whether you think a test initiative is warranted. I certainly do. One of the other things I would like to mention is, when I addressed the Nassau County Legislature, one of the Legislators asked me, wouldn't this be dangerous if it was put on the highway with a car traveling at 55 miles an hour, so if hitting this, maybe if they were going in the wrong direction. And my answer to him and my comment to you is that these wouldn't be placed on the full -- full highway mile-per-hour stretch of roads, they would be used at the very end of the exit ramp where a wrong way driver would enter a highway in the wrong direction at a very low rate of speed, but if he was going in the wrong direction, his tires would be affected. All traffic traveling in the correct direction would not be affected at all.

I'd suggest that maybe the Chief Engineer in Suffolk County try to pick one or two locations that this could be tried out. These are not very expensive items. They could be purchased for a few hundred dollars. And if you find that there are no incidents, you might want to expand the program. But again, I have copies of what I'm suggesting for your consideration, if you haven't seen my E-mail initially. And I think that your attention to this matter may prevent the next tragedy, and I thank you very much for your time.

P.O. LINDSAY:

Thank you, Mr. McCloy. Margaret Bolton, followed by Chris Destio.

MS. BOLTON:

Hello. My name is Margaret Bolton. I have been employed at John J. Foley for 14 1/2 years as a CNA. I'm a single mom of three who resides in Bellport. I'm here today to say that unemployment is not going to cover my mortgage payments, let alone food and electric. Does it make any sense to have another house boarded up in Suffolk County? Who is going to pay those taxes? Thanks to County Executive Steve Levy, I'm going to be forced to go on Social Services for assistance for medical insurance, food stamps, which will average about \$800 per month, whoopee, heat, for electric and fuel oil, until my mortgage company forecloses on my house. Now times that by 200 other County workers. More money from your taxpayers, right? Oh, just continue stressing out the residents, because selling John J. Foley is like a BOGO sale at Payless Shoe Store, buy one, then get one half price. So let's sell it for a steal or close it and continue to pay more money from the taxpayers, right? It doesn't take a genius to know that keeping it open and finding ways of making money is the best option, such as an assisted living, an in-house pharmacy, or even renting out some of the buildings. That's why I ask you to please support Resolution 2271, which increases services at John J. Foley and increases revenues at the same time.

I urge you, if Mr. Levy puts it a Certificate of Necessity through, to vote no for the sale of John J. Foley. Thank you.

*(*Applause*)*

P.O. LINDSAY:

Thank you, Margaret. Chris Destio.

MR. DESTIO:

Good morning, honorable Legislators. My name is Chris Destio, I'm an employee of the John J. Foley Nursing Facility. I believe Mr. Levy once again will make another ill attempt to push through the sale of our County nursing home through a Certificate of Necessity. I ask the honorable Legislators here today to, please, vote it down.

The Legislators have spoken and this witch hunt on this nursing home needs to end. What I do urge you to do today is to pass Resolution 2271. It keeps the John J. Foley Nursing Home County-owned, and the increase in services at Foley at the same time will increase our revenues. It gives the County residents a place to go, instead of crawling to the private sector.

Closure is a terrible option. It robs the County of its nursing home license, it robs the residents of their home. And during the last Health Committee, Alan Schneider mentioned there will be 258 layoffs, 32 bump-and-retreat, and 258 will be put on the preferred list. No jobs, no placement for just 258 workers to be on the unemployment line. So that kills the myth that these County employees will have jobs.

I would like to make a quote from a man who was running for public office. "To paraphrase Mary Hibberd, who quit in frustration, they can never find money to do the important needs, but they can find the money for patronage. We'll change that come January. I believe that we have many chiefs and not enough Indians. And I'll lessen the priority of patronage jobs and look to bolster our workers in the trenches who deliver services to our constituents and to seek fair wages for hard-working civil servants of Suffolk County. Sincerely, Steve Levy, New York State Assemblyman, candidate for Suffolk County -- Suffolk County Executive, October 27th, 2003." I think that person is long gone.

We need to get our full potential out of this nursing home and that's what Resolution 2271 is all about. Closing it is not an option, and selling it is not either, and Mr. Levy does not have the votes to sell, in my opinion. Resolution 2271 is a more respectful way to go for the nursing home

residents, the family and the taxpayers and the staff. To lessen the burden on our taxpayers, to quit wasting money and trying to sell it or close it should be on our agenda today. I think Mr. Levy should start looking into his backyard for savings and stop looking into ours. Thank you.

*(*Applause*)*

P.O. LINDSAY:

Michael Sheehan.

MR. SHEEHAN:

Good morning. How are you doing today? This speech is not directed at all politicians about John J. Foley.

MR. LAUBE:

You have to hold the button down.

MR. SHEEHAN:

Should I start again?

MR. LAUBE:

No, no, you're okay.

MR. SHEEHAN:

All right. There's a lot of things I can say, most have been said, but it's not only our duty to question the people in office, it's our right. The quote is, "Something stinks in Denmark." How does this back-stabbing, flip-flopping turncoat of a so-called County Executive think he can do anything? What happened to the so-called investigation you all ordered and hired an attorney to look into him? One year Steve Levy signs a proclamation how John J. Foley contributes immensely to American history and a lifetime achievement of the citizens is the backbone of our countries heritage; the next year he wants to sell it. So does that mean he does not care no more of American history or the citizens whose backbone this country was founded on? If this is the type of people we have in office who are cold, heartless and don't care about the needy who need us now the most, then we need to change the people all of us thought we could count on.

If most politicians in this country have come to sell out America, this country is becoming a third-rate place to live. We're supposed to have love, compassion, loyalty, trust, dignity, respect for our fellowmen and women. For you all to let this institution fall or to be sold, well, I should say given away for peanuts, I'm ashamed to live in this County. But why should I be surprised? Most politicians have been sticking it to the poor and needy for years. It's always the poor to blame for the frontline level of our government's workforce as the budgetary culprit. Don't blame the deliberately woeful mismanagement that was put into place by the County Executive. When you are called upon by the big person in the sky, "How did you treat my children," will your actions be worthy of entrance? An error does not become a mistake unless you refuse to change it. Thank you.

*(*Applause*)*

P.O. LINDSAY:

Nanci Dallaire.

MS. DALLAIRE:

Good morning. Welcome back. As we start this snowy new year, we face new choices, new chances, new opportunities and new challenges. But I come here today to speak about the John J.

Foley Skilled Nursing Facility.

After three years I still cannot believe this institution and these vital services have been allowed to be put on the chopping block or an auction block, but here we are. And I would be remiss in my duty as a citizen to allow this devastating decision without expressing my fears. The limited mindset of the County Executive regarding John J. Foley has me very concerned. Not everything is so cut and dry, close or sell. We will certainly not find solutions if we're not looking for them.

In an article in Sunday's Newsday, *Hospitals Seek Cuts*, there was a quote from Stony Brook's Assistant Director to Governmental Relations that states, "You have to make investments to keep growing. You stop growing and just get those provider cuts, you're done." John J. Foley could use an Assistant Director to Governmental Relations, because that describes exactly why this facility suffered. Just take a look at the adult day program that was growing and showing signs of increased revenue for this facility when the incompetence of the past caused the ruin of that successful program. And I cannot figure how that certificate of occupancy went undetected for years. What did that mistake cost John J. Foley, and not only financial, but reputation, reliability? But that was of the past. Let's put our mistakes away, start fresh, build for the future. Unfortunately, the County is not anticipating those needs. This concerns me.

This is the year baby-boomers begin to turn 65. They will require health services. Are we ready? In these uncertain times, we should stay prepared to welcome home our troops, and if they require rehabilitation or physical therapy, John J. Foley is ready to serve them. New York State has approved a plan to close this health care facility. I would like to look at that acceptable plan, because this state-of-the-art building is an evacuation center for this County. What happens to that plan? I would not be -- it would not be wise for us to forget the past of this Long Island, but it would be reckless if we were not prepared for our future. Why would we look to dismantle this structure? This facility has been damaged enough. Do we really need to destroy it? When will we recognize the potential that has yet to be recognized and is definitely not being utilized? Convicted felons cannot be the only ones to be given second chances. John J. Foley deserves to be given a fair chance.

*(*Applause*)*

P.O. LINDSAY:

Thank you. Before I go any further, I need a motion to extend the public portion.

LEG. BROWNING:

Motion.

LEG. BARRAGA:

Motion.

P.O. LINDSAY:

By Legislator Browning, second by Legislator Barraga. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. Public portion is extended. Patricia Lenehan.

MS. LENEHAN:

Hello and good morning. My name is Patricia Lenehan. I am the writer of Lady Liberty Newspaper and I am a bus rider. And I want to thank Steve Levy for not increasing the fare, for the reason Sunday bus service is an entitlement, it's not something that should be thrown in as a ploy to raise the fares on people that cannot get to jobs and cannot get to services like doctors appointments, because the buses' routes are not in the areas they have to go to. We have people unemployed in our County because they can't get to the jobs, they can't get to the Labor Departments, they can't get to their Veterans Administration Offices, because the buses run every hour. If you miss your transfer station by five minutes, you have to wait another hour for the next bus to come, and then the 40 minutes that it might take you to get to where you're going. Before any increase is put to this company, we have to re-route, we have to rethink, and we have to figure out how to get our people back in the workforce.

On Friday, I was at Stony Brook University where these students cannot get off the campus to get jobs. Okay? I talked to the students there, they're very upset. They're going around with petitions as well, they want a change. Okay. I rode with a child from Hong Kong, okay? The bus was 45 minutes late. The kid tells me that in his country, he's in a village outside of Honk Kong, the buses run all day long and it's a small village. I said to him, "All you have to do is when the buses are late is spend that extra quarter for the transfer." It tells everybody the time the buses come and goes against their schedule. If they're late, you'll be able to prove it. I get on the bus, speaking to this young man who put a quarter in for the transfer and I put a quarter in for the transfer. And, as we're speaking, the bus driver turned to me and says, "Do you have a problem? Are you directing this at me?" I was like, "No, I'm talking to this young man." There were five other people on the bus. This bus driver threatened to throw me off the bus if I continued talking. I will not pay to be abused by a County worker. Well, they don't work for the County, they work for the company. I should allow my money to go to them? Why.

I'm not the only person. I've heard of this abuse by other patrons. As I said, I ride the buses. They told me some of the bus drivers, because they like me, that they were informed to slow down recently, not to get to their stations. What's going on in this County here? Are you paying attention to what's going on with the public?

I have a copy of my newsletter. Since I was here the last time, as far as Sunday service, guys, we deserve it, we're entitled to it. And the Sunday service that they're talking about is the 60 bus, which we're not going to get, that goes to Stony Brook University. They're not going to put that on the road. Are you paying attention? Okay. We are being abused by this transit company and I don't think we should have to pay for it.

I am giving you all a copy of the newsletter. Ever since I was here last -- I think it was June, to first speak, people in Riverhead, people in Patchogue, Bay Shore, up on the Lake Grove area, they're getting together with petitions still to fight the fact that we need better bus service on Long Island -- in Suffolk County. Not only that, but as of March, there will be demonstrations with the kids from Stony Brook University, so -- and everybody else that really wants to do it. So I'm not done yet. I hope you really look and agree with Levy, because no one should be paid more money to abuse their customers. Thank you.

P.O. LINDSAY:

Sarah Anker.

MS. LENEHAN:

Oh, she didn't throw me off the bus, because I decided to keep my mouth shut in my country. A communist country, this kid from Honk Kong and he put his --

P.O. LINDSAY:

You're out of your three minutes.

MS. LENEHAN:

All right. Well, you're going to get this one. He put his transfer down on the seat --

P.O. LINDSAY:

You're done. You're done.

MS. LENEHAN:

-- because he was scared.

P.O. LINDSAY:

Done.

MS. ANKER:

Hi. I'm here today to talk to you and to add my comments regarding the Suffolk County Executive's veto for the appropriations of the funding and this is for the restoration of the tower facade at the Vanderbilt Museum. I've been on the Board for about two years, and since that time, the Vanderbilt Museum has struggled to get to the point of sustainability. We are almost there, and I appreciate the entire Legislature's support, which has been wonderful, phenomenal, considering the circumstances of the economic conditions.

This funding, and I just wanted to state, basically, is for safety, it's not for beautification. And I don't know if the County Executive realized that when he vetoed that -- you know, when he made that step, which was a mistake. I really felt that -- I feel that he does not have a full understanding of the museum. The facade is a beautiful structure. The cement is starting to deteriorate, and those fundings would go to create a safer place for the residents to go to. The facade is part of the museum's main entrance, so, again, it's very important for the residents, when they do come and visit the museum, to have something beautiful to look at, but also safe to venture and enter into.

So, again, I just wanted to give public comment in support of -- hopefully, that the Legislature will override the veto that the County Executive has placed regarding the appropriation of funding for the repairs.

And I also wanted to mention, as far as the Board and the staff at the Vanderbilt, we work really hard, extremely hard. And, again, what we've had to overcome in the past two to three years, you know, we deserve a lot of credit, but there's not a lot of people out there that will see us -- you know, see that potential that we've had and that we're going to continue to do. We are going to seek public financing for the museum and for the support. We will get the museum off the payroll, off the money roll of the County. We are determined to do that and we will do that, but right now, we ask for a little bit of time, a little bit more time. We are almost there. There's so much community support, as there is also government support.

And, again, I just wanted to thank the entire Legislator for supporting us and being patient with us. And, hopefully, we'll come back here next year, in another two years, once we get the projector up and going. And everyone here and, hopefully, everyone will still be here, will be proud to be a County Legislator for Suffolk County because of museum and because of the good -- the good feeling, everything that it will bring to the County. So thank you.

P.O. LINDSAY:

Thank you, Sarah. Bill O'Leary, followed by Kathleen Reeves.

MR. O'LEARY:

Good morning, everyone. Just came to speak about a topic that's a difficult topic, unpopular topic, hoping to bring logic to a very emotional issue. I'm a therapist. I work with victims of sexual abuse, as well as perpetrators of sexual abuse. I'm also a father, also been a volunteer fireman in Brookhaven for 11 years, so I kind of try and look at a multi-angle approach to the issue.

I'm here to support the -- well, actually, to support the Legislature in overriding the veto of Superintendent Levy regarding -- I'm sorry, County Executive Levy, regarding the mini shelter proposal. Just, basically, I'm the therapist for the majority of the homeless sex offenders in Suffolk County, as well as Nassau County. I work closely with Parole, I work closely with the State regarding issues of sexual abuse. And the logical perspective regarding the issue is -- creating the homeless situation increases a risk to the community. Without stable housing, a lot of the perpetrators are at a higher risk of committing not just section offenses, but other crimes. The logical point of view is that there is a 3.6 recidivism rate in perpetration of sexual abuse in New York State. I think a lot of people think it's much higher.

Statistically, the best way to reduce the chance of a sex offender re-offending is post release supervision and treatment combined. When we create an unstable situation, what we do is we have more people go back to jail, max out in jail, and they never actually get the services or the treatment that they need to reduce the chance. So, ultimately, we're increasing the risk to the community rather than reducing it. The shelter system will create a stable situation, it will create services regarding treatment, and it will get the sex offenders, the homeless ones, from wandering, because statistically -- not even statistically, the reality is during the day they wander, they don't have anywhere to go. I work with Parole, we have them on GPS, we polygraph them, we have severe supervision and treatment and those efforts are negated or compromised by having them wander.

So again, I'm really hoping for support in the proposal of the mini shelters. And really, we're talking about, out of 975 sex offenders registered in Suffolk County, we're talking about 20 or 30 of them. We don't talk about the other ones as much because they're in-housing and they've integrated to community. Just looking to do that with the rest of them to decrease the risk to the community. Thank you.

P.O. LINDSAY:

Thank you, Bill. Kathleen Reeves.

MS. REEVES:

Okay. Good morning, Presiding Officer Lindsay, and Members of the Legislature. The reason I'm here today is, as you know, can see, I work at John J. Foley, and I'm here to urge you to pass Legislator Kate Browning's Resolution No. 2271 in order to bring more money into the facility. There's a few things that I'd like you all to understand, because I think some of you have -- some -- a lot of people have a very wrong conception of what we're doing. First of all, no one goes into health care to get rich, especially not nurses. We're in it because we care.

MR. LAUBE:

She's got her hand on it (*referring to microphone*).

MS. REEVES:

I have my hand on it. We care about people. All right? And at John J. Foley we care, give quality care for many people who have no one else to care for them. Our ancillary staff, housekeeping, dietary, laundry and maintenance care about and for our residents, but in a different manner, in a different way. But regardless of what their job is, they still look out for the residents.

We are a unique facility in that we only -- the only facility in Suffolk County that has an HIV/AIDS unit. These people do need special needs because of their diagnosis and depending on what stage of the disease they're in. We also have two dementia units. Many of these residents also have behavior issues. At times, if and when they become upset, they often can't tell us what their problem is or why they're upset, but once we have decided that it's not a physiological problem, sometimes just giving them a hug will calm them down. It is something that shows caring and it's also something that's universal.

Just to throw a few statistics at you, between 1946 and 1964, 76 million baby-boomers were born. They represent approximately 28% of the population and they're approaching retirement age. By the year 2030, the elderly population with more than double, and by the year 2050, people over age sixty -- eighty-five will increase by 300%. Not all these people will need a skilled nursing facility, but those of who -- those who do, not all will be able to afford a private facility or have family that would be able to take care of them. John J. Foley and places like that fill this need.

When you call -- whether you call it the "old infirmary" or "John J. Foley", its mission is the same, to care for the less fortunate residents of Suffolk County. It is a place where the people and families of Suffolk can turn and know that their loved ones will receive the quality of care they deserve and will be cared for with dignity and respect. You remember that these are people we're talking about, people like you and me, and I have no doubt that some of you are thinking, "They're not like me." Well, you don't know that. You really don't know what your future's going to hold, none of us do.

And in closing, I'd just like to ask you to remember a saying, "There but for the grace of God go I." I really do think it's appropriate in this case. Thank you. Applause.

*(*Applause*)*

P.O. LINDSAY:

Okay. That concludes all the cards. Is there anyone else in the audience that would like to speak to us, please? You already spoke already, Pete. I'm sorry, just once. No? All right. I'll accept a motion to close the public portion.

LEG. BARRAGA:

Motion.

P.O. LINDSAY:

Motion by Legislator Barraga, second by Legislator Browning. All in favor? Opposed? Abstentions?

MR. LAUBE:

Sixteen. (Not Present: Leg. Montano)

P.O. LINDSAY:

Okay. Counsel's just reminding me that we changed our rules a bit, that next, after public portion, is statements of the County officials, Department Heads. Is there anybody in the audience that would like, a department head, official, to make a statement at this time? Seeing none, we'll go to the agenda. Before we go to the agenda, some business that I had not taken care of earlier, but today is the birthday of Legislator Jonathan Cooper. Happy Birthday, Jon.

*(*Applause*)*

LEG. COOPER:

Thank you.

P.O. LINDSAY:

And on behalf of the body, it's good to have you here, buddy. You had us worried a little bit at the end of last year.

LEG. COOPER:

What, no birthday song?

P.O. LINDSAY:

I don't think you want to hear this crew sing.

*(*Laughter*)*

Okay. Resolutions tabled to February 1st: 1559 - Amending the Suffolk County Classification and Salary --

MR. NOLAN:

The Consent Calendar?

P.O. LINDSAY:

Oh, I'm sorry, I didn't do the Consent Calendar. Do I have a motion on the Consent Calendar?

D.P.O. VILORIA-FISHER:

Motion.

P.O. LINDSAY:

Motion by Legislator Viloría-Fisher.

LEG. EDDINGTON:

Second.

LEG. ROMAINE:

Second.

P.O. LINDSAY:

Seconded by Legislator Eddington. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Resolutions tabled to February 1st: ***1559 - Amending the Suffolk County Classification and Salary Plan in connection with a new position title in the Police Department (Range Officer I) (Co. Exec.)***

LEG. ROMAINE:

Motion to table.

P.O. LINDSAY:

Motion to table by Legislator Romaine.

LEG. CILMI:

Second.

P.O. LINDSAY:

Second by Legislator Cilmi. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

1606 - Amending the 2010 Capital Budget and Program and appropriating funds in connection with reconstruction of spillways (CP 7099) (Kennedy).

LEG. KENNEDY:

Motion to table, Mr. Chair.

P.O. LINDSAY:

Motion to table, I'll second. Motion by Legislator Kennedy. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

1606A, a bond resolution of the County --

MR. NOLAN:

Skip it.

P.O. LINDSAY:

Skip it? Okay. *1820 - Appropriating funds in connection with the Stony Brook University Hospital Comprehensive Psychiatric Emergency Program (CP4018) (Kennedy).*

LEG. KENNEDY:

Mr. Chair, I apologize. As a matter of fact, I should have asked the Clerk's Office to withdraw that. As a matter of fact, we had a CN at the last session --

P.O. LINDSAY:

Okay.

LEG. KENNEDY:

-- that addressed that.

P.O. LINDSAY:

Okay.

LEG. KENNEDY:

So please withdraw that.

P.O. LINDSAY:

It's withdrawn. 1820A, is that bond --

MR. NOLAN:

That's withdrawn, too.

P.O. LINDSAY:

That's withdrawn as well. Okay. So the last three have been withdrawn, just mark your calendar, your schedule. ***I.R. 2008 - Calling a public hearing upon a proposal to amend the map and plan of service for Suffolk County Sewer District No. 4 - Smithtown Galleria, Town of Smithtown (to determine whether it is in the public interest to extend the boundaries in the district and amend the operating and maintenance budget to reflect full current costs and annual rate to be charged for sewage treatment (Co. Exec.)***

LEG. KENNEDY:

Make a motion to table, Mr. Chair.

P.O. LINDSAY:

Motion to table; I'll second it. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. What I am going to do, we have our five independent elected officials in the audience --

D.P.O. VILORIA-FISHER:

And I'll second the motion.

P.O. LINDSAY:

-- and I'm going to take a motion -- I'm going to delve into the vetoes while they're here, because I know that's why they're here. It's ***Resolution 1171***, which has been vetoed in its entirety by the County Executive. I make a motion to take the veto out of order.

D.P.O. VILORIA-FISHER:

Second.

LEG. ROMAINE:

So moved.

P.O. LINDSAY:

Second by Legislator Romaine. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. It's before us. Would you guys like to come up and join us at the table? No?

MS. PASCALE:

We're here.

P.O. LINDSAY:

Okay.

D.P.O. VILORIA-FISHER:

I'll make a motion to override.

P.O. LINDSAY:

Motion by Legislator Viloría-Fisher to override --

LEG. COOPER:

Second.

P.O. LINDSAY:

-- the County Executive's veto of 1171. Do I have a second?

LEG. COOPER:

Second.

LEG. MONTANO:

Second.

P.O. LINDSAY:

Second by Legislator Montano. Discussion.

D.P.O. VILORIA-FISHER:

May I?

P.O. LINDSAY:

Yes, Legislator Viloría-Fisher.

D.P.O. VILORIA-FISHER:

It's very, very important when you listen to the County Executive's rhetoric regarding this particular resolution that one take into account the number of positions that are involved here, vis-a-vis the full budget. He makes it sound as if we are relinquishing the entire budget to the five department -- elected department heads who are sitting here in the audience. And, in fact, their total number of employees represent a very small percentage of our workforce. That's very important.

Number two, the County Executive will still have the responsibility, the right, and the ability to develop the budget, to amend the budget, and all of the provisions that are delineated in the Charter, we're not taking that power away from him. So we need to keep our perspective and really tone down the rhetoric with regard this resolution. And the veto message is very strong and it's full of hyperbole, and we have to just realign the perspective and make it more realistic.

P.O. LINDSAY:

Okay. Anybody else? I would just like to point out to my colleagues that, again, the Executive sounds -- makes it sound like this is a very unique thing, but, in fact, I think in Nassau County, in New York State, in New York City, some of the independent elected officials, namely the D.A.'s, the Comptroller's, do have the same power that this legislation would seek to implement here in Suffolk County. And it's cognizant of the fact that they are independent electeds, that they know best how to run their office, especially in regards where the Comptroller and the District Attorney is concerned, that have investigative powers; that it's an important function that they be able to staff their department as per the budget document, as per the positions that were put in the budget by the Executive, concurred with by the Legislature, or amended by the Legislature, and that's really all they're looking for. Nothing else? Nobody else? Any other comments? We have a motion to override and a second, and I'm going to call a roll call on this.

(Roll Called By Mr. Laube, Clerk).

D.P.O. VILORIA-FISHER:

Yes.

LEG. MONTANO:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Yes.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

No.

LEG. CILMI:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. ROMAINE:

Absolutely.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Sixteen.

P.O. LINDSAY:

Okay. You five can go back to work.

*(*Laughter*)*

INTRODUCTORY RESOLUTIONS

Okay. On Page 7 under the agenda, *2057 - a Charter Law to increase transparency and accountability in County budget process (Cilmi)*.

LEG. CILMI:

Motion to approve.

P.O. LINDSAY:

Motion to approve. Do I have a second?

LEG. MURATORE:

Second.

P.O. LINDSAY:

Second by Legislator Muratore. I'm going to make a motion to table.

LEG. GREGORY:

Second.

LEG. COOPER:

Second.

P.O. LINDSAY:

Okay. On the question, does anybody have any comments? You want to make a motion to recommit?

LEG. MONTANO:

(Nodded yes).

P.O. LINDSAY:

Okay. Legislator Montano wants to make a motion to recommit.

LEG. COOPER:

I'll actually withdraw my motion to second the tabling, I'll second the recommit.

P.O. LINDSAY:

Okay. And I'll withdraw the motion to table. Okay. We have a motion to recommit and we have a motion to approve.

LEG. CILMI:

Who's the second on that?

P.O. LINDSAY:
Legislator Cooper.

LEG. MONTANO:
Legislator Cooper.

LEG. CILMI:
On the motion.

P.O. LINDSAY:
Motion to recommit by Legislator Montano, seconded by Legislator Cooper.

LEG. CILMI:
On the motion.

P.O. LINDSAY:
On the motion, Legislator Cilmi.

LEG. CILMI:
Thanks, Mr. Chairman. This resolution, as well as the following resolution, were both approved out of committee. I see no reason whatsoever to recommit these. Debate was -- they've been in committee for sometime, they've been debated, and I would ask my colleagues to vote yay or nay on these resolutions today. Thank you.

P.O. LINDSAY:
Anyone else?

LEG. KENNEDY:
Mr. Chair, do we have a motion to approve on these?

P.O. LINDSAY:
Yes, we do, Legislator Kennedy.

LEG. KENNEDY:
Okay, and a second. Okay.

P.O. LINDSAY:
Did Legislator Schneiderman want to say something?

LEG. SCHNEIDERMAN:
Well, I just want to point out that we, as Legislators, are always afforded the opportunity on the budget to take it line by line, veto by veto. But as the budget has developed in response to the County Executive's budget, we are looking at so many various aspects of County government and they are often intertwined. And as you pull out one, you're unraveling things you may not be aware of. And for that reason, I have in the past always supported the idea of doing it as one, and I would hate to take away our ability to do it as one. So I think it remains an option currently to take it as a whole or take it individually, and I would hate for us to take away that power and potentially create a lot of unforeseen adverse consequences.

P.O. LINDSAY:
Go ahead, Legislator Cilmi.

LEG. CILMI:

Yes. Thanks, Mr. Chairman. Legislator Schneiderman, I would, in answer to your statement, not that it was a question, but I would say rather than recommit, then, let's vote up or down on the resolution today, or table it today, if that's what you desire. But to recommit it to committee to further explore this resolution and the following resolution, to rehash questions that have already been debated just doesn't make too much sense.

LEG. KENNEDY:

Bill.

P.O. LINDSAY:

Legislator Kennedy.

LEG. KENNEDY:

Thank you, Mr. Chair. And I intend to vote in support of the resolution to approve. Yes, as a matter of fact, having sat through the Budget Working Groups for the better part of the last, I think, three years, being a member of it, and the four preceding, attending, while not necessarily a member, I know the hard work and the intricate work that the budget Working Group does. And Legislator Schneiderman is right, that there are a series of adjustments that are made that actually allow for other options within the budget to be exercised by us, and, again, we are the policy-making entity.

Nevertheless, I'm told by some of my colleagues that in times past, other Legislatures have actually gone line by line. You can, in essence, effectuate some of the adjustments with tax receipt projections and allocations that may be made in the first instance by the Exec's Office and, nevertheless, achieve some of the priorities that we as a body select. So I don't see this legislation as being disharmonious with our function as a policy-making body. I think it has merit, and I think that our constituents deserve to be able to fully comprehend the process and transparency allows us to do that by going line by line, so I'm in favor it.

LEG. NOWICK:

Bill.

LEG. BROWNING:

Bill.

P.O. LINDSAY:

Okay. Let me just -- I've got a list. Legislator Viloría-Fisher, and then Legislator Nowick.

D.P.O. VILORIA-FISHER:

Transparency is very, very important, and we certainly want transparency so that the people of Suffolk County know what's going on. This is the people's work. However, we also have a commitment to have -- and a charge to have a balanced budget. And if you've read Budget Review's comments and listened to discussions over the past couple of years when this issue has come up, if you look at the budget line by -- if you look at the omnibus line by line, you can run into a serious problem in balancing the budget, because those stand-alones, those particular items might not have another place in the budget that would make up for either an added expenditure or a -- you know, a -- or a cutback on some things. So it really throws it off kilter, and that's the problem with this line-by-line process. And as I said, there are many ways in which you can have -- during a discussion, you can discuss the individual lines, and we often do that. We refer to lines within the omnibus with which one agrees or disagrees. But, certainly, the omnibus as you saw in the Working Group's workings, when the omnibus is constructed, it's with an eye on the whole rather than all of the individual little parts, because otherwise we wouldn't have a meaningful

budget.

P.O. LINDSAY:
Legislator Nowick.

LEG. NOWICK:
I think that Legislator Viloría-Fisher has said it. While I understand what Legislator Cilmi wants to do, and what you want to do is the right thing, I think what you want to do is to have the public understand what's going on. And also, where each Legislator can pick and choose, because some things in the budget we don't actually want to vote for, but because it's one we do, and so I get what you're saying. But having sat on the Operating Budget Committee for so many years, I would take it like your own home budget. If you budget certain amounts of money in one area and then we come in here and we take away or we add, I'm afraid it will, unfortunately, and again I understand what Legislator Cilmi is doing, I'm afraid if we do that, we're going to have one mess of a budget, because everything depends on what we do as a whole, and that's my fear. So I do agree with Legislator Viloría-Fisher, and I do get where Legislator Cilmi is coming from.

P.O. LINDSAY:
Legislator Browning.

MR. MONTANO:
Can I withdraw that?

P.O. LINDSAY:
Well, okay. Do you want to -- I'm going to recognize Legislator Montano for the purpose of a motion.

LEG. BROWNING:
Go ahead.

LEG. MONTANO:
Yeah. I'm not going to speak on the bill. I'm opposed to it, but in deference to Legislator Cilmi's wishes, I'm going to withdraw the motion to recommit and simply say we should then go with an up or down vote on it.

P.O. LINDSAY:
Okay. Legislator Browning.

LEG. MONTANO:
I'll withdraw the motion.

LEG. BROWNING:
No more, I just -- you know, I hate to say it, but I could see a lot of politics being played in this, and I'll say no more. However, BRO, I would like to know, you know, we did get an opinion from BRO, and if we could get her to repeat that.

P.O. LINDSAY:
Repeat it word for word, don't miss a word.

*(*Laughter*)*

MS. VIZZINI:

Let me just say that Legislator Cilmi was gracious enough to E-mail me his objectives in putting forth this resolution. And let me say that my comments are from the perspective of I was here working in Budget Review when we had the individual straw-vote resolutions. And based on my professional observations and certainly in my current role, we have improved the process considerably. This document, the 2011 Operating Budget is over 1,054 pages. It is not only a fiscal document, it is a policy document and a political document. When the County Executive puts it together, he is establishing policy in terms of what level of services will continue to be delivered and at what magnitude or not.

*(The following was taken by Alison Mahoney, Court Reporter
& transcribed by Kim Castiglione, Legislative Secretary)*

MS. VIZZINI:

He is establishing property tax levies, property tax policies, perhaps including new revenue, or not. He is establishing whether assets will be liquidated, sold, closed and other policy determinations. As a separate and coequal branch of government, it would be my hope that you would continue to take a comprehensive approach rather than a piecemeal individual line item approach to those changes that you were going to make.

Case in point, if there was sufficient documentation that there could be an increase in revenue such as perhaps projections regarding sales tax, let's say we had additional revenue of five million dollars; how would that be used? Would it be used to cut taxes? Would it be used to restore services that were deleted, the County Executive's recommended budget? Would it be used to reopen health clinics that are likely to be closed or consolidated? These are major policy decisions, and the more you break this down to individual line items, the less comprehensive it is. Even if we were to have the first resolution of increasing sales tax, how would Budget Review determine which of the many resolutions that then follow would benefit from that five million dollars? At what point does a health center close because of this piecemeal approach, or do employees get laid off because of this piecemeal approach?

You can see that a comprehensive approach, in my opinion, is more balanced and more responsible. However, should you choose to go in this direction and return to the individual line items, we will make it work as best as practicable, but it will be very different. It will be very different from what you are accustomed to.

LEG. D'AMARO:

Bill?

P.O. LINDSAY:

I'll be right with you. Legislator Gregory.

LEG. GREGORY:

Thank you, Mr. Chair. I'd like to ditto the remarks that Gail and the Presiding -- that BRO just spoke about. And I think from the standpoint as being on the working group, you know, working with BRO in a bipartisan selection of colleagues, that we do a diligent job in trying to representative a budget that is both accountable to the people of Suffolk County, that is responsible to the people of Suffolk County, that presents and puts our best foot forward, our best effort. You know, given the tremendous difficult task that we have to face, you know, we all have an opportunity to vote on, and at least since I've been here, every year there's been a movement to do the votes by line item basis and we've opted to take it as a comprehensive approach, and I think that's the best approach and the best way to go.

You know, when you talk about transparency, are we -- who are we actually talking about? Are we talking about the public? Are we talking about the County Executive, giving him the opportunity to review our changes to his budget? Because if that's the case I would say he is very much apprised of what is going on in the budget process, as many of us have seen just sitting in the working groups getting press releases about things that we discussed two minutes prior. So I think he is very much aware of what's going on.

The public, I haven't gotten one complaint from the public about the budget process, that it's not transparent enough. What I do hear is don't lessen our services and raise our taxes. I don't hear complaints about the technicalities of putting a budget together. So I question transparency for who and from where this call is really coming from. I think the process that we have in place is working, and if it becomes the will of the Legislature to change this process, we have every opportunity to change it on the floor and call for a line item vote. That's all I have to say. Thank you.

P.O. LINDSAY:

Legislator Romaine.

LEG. ROMAINE:

Very briefly. Like Gail in Budget Review, I think I'm the only member of this Legislature that still is here that voted on these items separately and singly. And I hear the argument, and it is more convenient, and it is easier, and I don't have to cast a vote on some of the troublesome things that sometimes wind up in the budget. I wound up voting for the budget once the Foley issue was removed because I was prohibited from voting on that, but I've got to tell you, I was uneasy because there was one item that glared in that budget that I really didn't want to do, which was raising park fees. But as a Legislator I have to weigh the good against the bad, and I made a judgment early on when I first got here a long time ago, that as long as there was more good in a resolution than bad, I was obligated to vote for it, and therefore I voted for the budget.

Would I like an opportunity? Yeah. What it says to all of us as 18 is we're all in this together. I watched the Legislator that was probably more divisive than this one, but they would come together on the budget because they knew that collectively they had to act because we're one branch, the Executive is another branch. I look beyond this Executive; we all should, but that's besides the point.

(Laughter)

We will have all different types of Executives and Legislators. What we need to do as a body is work together. Would I like an opportunity to vote on each and every item? No. I don't want everyone to know how I voted on every little part of a budget. Do I have an obligation to do that as a member of this Legislature? Absolutely. Because it's in those votes collectively that I set my priorities as a Legislator. I want to be empowered. I haven't served on the Working Committee, mostly by choice, because there are issues that are discussed there, such as John J. Foley, that I'm sure the Executive would love me to discuss so he could file charges against me. So I've avoided that, so I don't have a lot of input, and I have to by hook or by crook find out what's going on. I'd rather have an opportunity to vote on each and every item as difficult as that may be, and it is difficult, and it is inconvenient, and it does create a lot of work for Budget Review, but they've done this in the past.

I think as an individual Legislator it empowers me to at least have a voice and it requires something else; it requires collective action. Because if we feel strongly, we can get together and have the same outcome as we do with an Omnibus. We just have to learn to work together across party lines. Most of the time we do that, so I'm going to be voting for Mr. -- Legislator Cilmi's resolution.

Thank you.

P.O. LINDSAY:

Legislator D'Amaro.

LEG. D'AMARO:

Thank you. I'm also going to be supporting the resolution. Every -- and I've made this point before. Every other vote that we take in the Legislature people know where we stand, but when it comes to the most important votes, and that is spending their money, nobody knows where we stand. All they know is that we vote on a massive document filled with spending and revenue. Some you may agree with, some you may not agree with, but no one really knows what you are standing up for and no one knows what your priorities are.

I just wanted to ask Gail a quick question, because you were here for the process, and I beg to differ with your characterization as it being somewhat less responsible to vote line by line. But putting that aside, in your experience wouldn't the way the process actually work is that there would still be a crafting of a budget, there still would be a process where Legislators would come up with priorities. What we're really talking about here is an opportunity, as Legislator Romaine points out, to vote on all of the line items one at a time. And I think -- and you would know, I wasn't here during the process, but wouldn't you expect let's say 80 or 90% of those line items to pass? A lot of them are reoccurring spending or reoccurring revenue, and then you would have more of a focused debate on maybe ten or 20% of the line items.

So, let's say the process were changed. Do we come to the Legislature as a blank slate or was there already worked out the budget as proposed now by the Legislature or the modification of the proposed -- recommended budget of the County Executive, and when you sit to vote on the budget voting day you know what the proposals are, you just have an opportunity to say yes or no. So there is still work that goes on before you get to the General Meeting to vote on the budget.

And the reason why I'm trying -- and maybe I'm not making the point as clear as I would like to, but I don't comprehend the harm in voting line by line if there's a consensus to enact a budget with ten votes as an Omnibus. Then it's one of two things; then line by line that budget should be enacted by those same ten votes or there's an admission when you use an Omni process that some of those line items would not get 10 votes. And if that's the case, then doesn't the public have a right to know that? So my question to you is, is there work that happens before the General Meeting on the budget if you went line by line? How does that play out.

MS. VIZZINI:

I think that would be something that the Presiding Officer and the Legislature would have to determine. You know, one scenario is there is no Working Group, so Budget Review curtails its time to analyze the budget in order to provide sufficient time to brief everyone what's in it and what's not in it. And then either the respective caucuses or a respective, you know, bipartisan Working Group is developed, and you determine whether there will be a comprehensive approach or not.

In my opinion, worst case scenario is there is no Working Group or caucus approach, and then those who are interested in making changes will approach Budget Review for those specific changes seeking an offset.

LEG. D'AMARO:

All right. So, Legislators, let's say we went to a line by line vote, that's on the day of the meeting. Legislators, let's say I had a proposal that I wanted to see included in the budget. You could still form a group of Legislators to talk about proposals and find common ground. I mean, you know, when we talk about enacting a bill such as this I think it conjures up this whole scenario that we

would walk in here on the date of the meeting cold, you throw the recommended budget in front of me and say, "Okay, what changes do you want to make? Let's take a vote." I don't think it plays out that way. I think you still have some type of process or maybe even the same process that we have now with the Working Group, but when the budget is presented to the Legislature for a vote you are voting line by line as opposed to voting on one bill.

So, you know, the point I want to make here today is that if you support this resolution in my mind what you are supporting is your ability to vote line by line, to express your view, your vote on a particular revenue or spending expenditure in the budget. I don't see how that's harmful. In fact, I think as Legislator Romaine says, I think we have an obligation to do that. It doesn't mean that before that vote, the day of that vote that we can't have a process to come up with bills that we know there are consensus on and work along with our Budget Review Office to make sure that we know the impact of what we're proposing. But I really think that I know in this last budget process, even though I was part of the Working Group, being presented with an all or nothing vote was just inherently difficult for me because there were several items in that budget that I did not agree with, and yet I wasn't given the opportunity to express that.

So, again, the point is that I think there can be a process. All we're asking for through this resolution is that when it comes to expressing our vote, as we do with every other bill with thousands of votes that we take all throughout the year, that we do the same for the most important votes, and that's the budget votes.

P.O. LINDSAY:

Okay. Legislator Cilmi.

LEG. CILMI:

Thank you. Just a couple of remarks, responses. First of all to Legislator Gregory's question as to transparent for who. And the answer is transparent for everybody. You can't be transparent for some but transparent -- but not transparent for others, otherwise there's no transparency. So it's transparent for Legislators first of all, it's transparent for the County Executive, most importantly the transparency that I seek is for the public, for the taxpayers, and for the variety of agencies and departments and everybody else who is affected in one way or another by the budget that we pass. The County Executive proposes this budget some time late September, if I'm correct, Gail.

MS. VIZZINI:

Yes.

LEG. CILMI:

So there's some time between when the County Executive proposes his budget to the time that we vote on the budget for the public to look at it, and for the departments to look at it, and for agencies to look at it and for us to look it at it. But when we present a budget amendment that's filled with such a wide variety and such an extensive list of changes, both on the revenue and expense side, literally a day and a half or so before we're asked to vote on it, there's no opportunity for the public to have -- for us to have public hearings so the public can listen to the changes that we're proposing, for agencies to know who's being cut and who's not being cut.

So, this transparency is absolutely necessary and it's -- you know, to supplement what Legislator D'Amaro said, as far as the process and as it would relate to how Budget Review deals with us and how we deal with the, you know, voting, effectively when we sit here and debate each of those line items, Budget Review is going to have to endure the same process that they presently endure, except they're enduring it outside of the realm of public view. Presently they're enduring it in a room downstairs. So to do it the way I'm proposing, they would endure the same process except that they would be doing it in full view of the public, here before the media, here before the agencies

that we're affecting.

And I would certainly hope that if this resolution fails, that my colleagues give serious consideration to the following resolution, which would require that five days lapse between the time that a budget resolution is presented and the time that we have the opportunity to vote on it, because then at the very least there is some opportunity for disclosure and debate and review of the public. Thank you very much.

P.O. LINDSAY:

Legislator Viloría-Fisher.

D.P.O. VILORIA-FISHER:

Legislator Cilmi, I just have a question about what you just said. I'm trying to envision what you're envisioning. Are you suggesting that the voting period in crafting the budget become a multi-day exercise rather than one day on which we vote on the amendments? Because that's how it sounded to me and I just wanted to see if that's what you meant.

LEG. CILMI:

I'm not proposing any specific time period. I'm proposing that we take as long as it takes to give ample time to do this function that is such an important part of what we do as Legislators. And if that transparency, if the public input and the public knowledge and our own comfort with the breadth and depth of the amendments that we're putting forward requires that we're here for more than one day to do so, then I say let's have at it.

D.P.O. VILORIA-FISHER:

Then we would be changing the structure of the calendar.

LEG. CILMI:

Okay.

D.P.O. VILORIA-FISHER:

We would have to schedule -- I'm not arguing with you, I'm trying to see how the practical way that that would work because, you know, the people who work in the Working Group spend many, many hours working on that and Budget Review spends many, many hours.

LEG. CILMI:

Right.

D.P.O. VILORIA-FISHER:

So then it would probably result in let's say a week of the Legislature meeting, you know, one day after another or perhaps over a period of several weeks meeting a number of times where everyone is here. I'm just trying to picture what you have in mind.

LEG. CILMI:

Yeah, I don't -- you know, I don't envision it taking quite that long. In fact, you know, years ago I recall that, you know, sometimes it may take a couple of days. If I'm right, Gail, you know --

LEG. D'AMARO:

Bill.

LEG. CILMI:

I remember the process maybe taking a couple of days, but I don't think any longer than that. And, you know, to do this wouldn't preclude Legislators from assembling, be it in a caucus or as a

Working Group or even in the Budget Committee, which is where I believe it really should be addressed prior to, you know, the process by which we vote to discuss amendments. So, yeah, I think we should take as long as it takes.

LEG. COOPER:

Bill.

LEG. CILMI:

If it takes a week, it takes a week. I think we owe it to the public.

MS. VIZZINI:

Mr. Presiding Officer.

P.O. LINDSAY:

Legislator -- oh, I'm sorry. Gail, did you want to weigh in on that?

MS. VIZZINI:

Only to clarify. My understanding of this bill is that it precludes an Omnibus approach. None of those changes in how we do things or when we meet, etcetera, etcetera is in there, correct?

LEG. CILMI:

That's correct. I mean, the -- what would drive the process of when we meet, you know, what -- you know, the Working Group, etcetera, what would drive that process is, you know, very simply our own desire to review the budget as it currently exists and talk about amendments that we might like to make. And, you know, I might make one further point is that this amendment doesn't summarily prevent amendments or line items from being included in one resolution. Because it does make provision for amendments that look to achieve a similar purpose to be included in the same resolution. So the way I envision it, for example, would be that Health Department, you know, resolutions that are relative to the Health Department, might be included in the same or amendments might be included in the same resolution. Amendments that might deal with, you know, the roads or Public Works might be included in the same amendment. So it does provide some flexibility is my point.

P.O. LINDSAY:

Does that answer your question, Ms. Vizzini?

MS. VIZZINI:

Yes, other than there really is no definition of Omnibus, so what we're talking about is some latitude in terms of like things being included. Okay.

P.O. LINDSAY:

Legislator D'Amaro.

LEG. D'AMARO:

Mr. Presiding Officer, I saw you cringe a little bit when Legislator Cilmi was talking about it's not a long, drawn out process, and I know why you cringed. It is a long, drawn out process crafting that budget, and it's a lot of work, and credit and hats off to anyone who's ever worked on that, and especially to BRO who does a great job. It's not an easy task, and that's why I was trying to make the point that there would be some process occurring before we got here to cast our votes. In my mind we're talking about how do we cast those votes; do we cast those votes as we do now on an all or nothing basis, or do we cast those votes item by item or perhaps, you know, mini-Omnibus by mini-Omnibus. I'm not sure how that would play out.

But one thing we could consider rather than a Working Group is to empower the Budget Committee. Let the Budget Committee budget. That's, in my mind, what they should be doing, and bring that process out to the committee. It would probably require four or five meetings at least of that committee, it would be a real commitment of anyone who sits on that committee, and have the debate in public. I would strongly favor that if for no other reason it's not that we're hiding something when we work hard on a Working Group, it's simply that people have a right to know. People have a right to know what you're thinking and more than just voting up and down on a 1,200 page document at the end of the process.

So I think one of the things we could consider if we were to pass this bill, we know we're heading for a line item -- item by item vote. Let the Budget Committee work as a group, it is bipartisan, and craft those bills, the budget bills, and then present them to the Legislature just like the process we have now. No one would be precluded from presenting their own standalones, we could still do that, but I think you would just bring the process out into the open. You have the committee apparatus in place already to do that type of work, and then I think when you get to the line item voting the day of the meeting, it may become problematic at some points where certain items are passing and certain items are not, but isn't that exactly what we want to happen? Don't we want the majority will to be expressed line by line, so that the end of the day when a budget is enacted, we have a budget that was supported by ten votes completely, not just, you know, all or nothing, take it or leave it. So I think we would have an opportunity with this bill. You know, it's difficult to make change, it's difficult to change a process, but I think it would be for the better. Thank you.

P.O. LINDSAY:
Legislator Stern.

LEG. STERN:

Yeah. Thank you, Mr. Presiding Officer. First, I know it is not yet before us, but Legislator Cilmi had mentioned some of his ideas in 2106. I was wondering if, through the Chair, I might be able to inquire of Legislator Cilmi how he views some of the language in 2106 and how that complements the bill before us, how does it differ from what is before us, are these bills that are to be considered together as both or can you go one without the other? I was, again through the Chair, I was hoping to get your thoughts on that.

P.O. LINDSAY:
Go ahead.

LEG. CILMI:

Thank you. Sure, you know, they complement one another, but they're not -- you don't necessarily have to support both of them. If the bill that we're debating, and I don't have the number in front of me, if 2057 doesn't pass, 2106 does lend itself to transparency as well because it provides for a length of time that is much more conducive to transparency than our present format.

If I recall correctly, you know, although we're -- I mean, we all on the Legislature are exposed to the debate on what's going to be in the, you know, the Omnibus bill and what's not prior to the bill actually being presented. But if I recall correctly, last year the actual meat and potatoes of the bill wasn't presented to us until late in the day on a Monday. The following day, of course, was Election Day, and then we had to vote on that bill on Wednesday. So, you know, again, it gave little time for the public to scrutinize the changes that we proposed to make.

So whether we -- whether we take the process apart and vote line item by line item so that we can cast our votes based on our consciences on each item that we're voting on, or -- and/or whether we allow for the public to have more time to view the changes that we're proposing, whether they be individual changes or in some larger format, I think both create -- both resolutions create

transparency. It's just a matter of how transparent you really want the process to be.

LEG. STERN:

Thank you.

P.O. LINDSAY:

Okay, I just want to have --

LEG. COOPER:

Bill, I had --

LEG. SCHNEIDERMAN:

Bill?

P.O. LINDSAY:

Oh, I'm sorry. Legislator Schneiderman and then Cooper.

LEG. SCHNEIDERMAN:

When a bill gets out of committee we don't pick it -- well, we pick it apart but we don't vote on elements of it, you know, if we're going to change it, it goes back to committee. I think what's being suggested here, if you are going to change the budget that comes out of this budget working group, which is bipartisan and hours and hours and hours of work and completely interrelated, it's almost like send it back to Budget Working Committee to consider those things. But the way this bill is, the way I see it, this severely restricts our powers as a legislative body by taking away our ability to take it as one. To me it will unravel, and I don't want to support something that's going to limit the powers of this body. So I, you know, I think it's not ready. If somebody -- Legislator Cilmi wants to refine it so you have that secondary process we can take another look at it. I think the only motion so far out there is to approve it because the motion to recommit has been withdrawn. So I will make a motion table.

LEG. STERN:

Has it --

LEG. GREGORY:

Has it been withdrawn?

P.O. LINDSAY:

We have a motion to table. Is there a second to the tabling?

LEG. BROWNING:

I'll second it.

P.O. LINDSAY:

Legislator Browning will second the tabling. Legislator Cooper.

LEG. COOPER:

I have a question for the sponsor. Legislator Cilmi, you spoke as to how one of the goals of this resolution is to increase transparency, and I assume that would involve public input in some fashion or another. So I was wondering what you were envisioning. Let's say that the Legislature votes on a series of budget amendments, potentially dozens of budget amendments, that could potentially reduce or eliminate funding for programs currently in place, anti-gang programs or sports programs, what have you. And going into this process the public was not aware of a particular cut to a local program, but then during our process that you're envisioning we decide to eliminate funding. Will

the public have an opportunity throughout this debate to come up and comment if we vote to cut back funding for a program we're eliminating? Will members of the public affected by that now have an opportunity to come back before us and try to convince us otherwise? What is your vision?

LEG. CILMI:

Ideally in my mind the answer to your question would be yes, and that's why I filed the subsequent resolution, because I believe there should be time for the public to see what we're proposing to change and comment on it. However, if the subsequent resolution doesn't pass, then, you know, then this body will have said that we don't want the public's input on the changes that we're proposing to make. So again, I envision both resolutions complementing one another, but they're certainly not, you know, preclusive of each other. And, you know, I might add just -- I'm sorry, whether I answered your question or not Legislator Cooper.

LEG. COOPER:

Before we leave this, let's say, for example, there was an anti-gang program in my district that the County Executive completely defunded. We restored a lot of the funding, I think it was about \$50,000, but let's say it was the reverse. Let's say the County Executive funded it, it was left in our -- we didn't touch it initially, but then on the floor here ten Legislators vote to enact a budget amendment to strip the \$50,000 from the anti-gang program in Huntington Station or Brentwood or North Bellport, what have you.

Obviously constituents in North Bellport or Brentwood might be concerned to learn that, so to be fair we should invite them to be able to address the Legislature, but we already would have perhaps been meeting for a day or two. There will be dozens of budget amendments that we may have voted on, which may mean dozens of interest groups or perhaps hundreds of members of the public might want to weigh in on this. So we'll be interrupting our meeting then to reopen public hearings and allowing them to vote because we just enacted a budget amendment that affects them? And then of course we have to give them time to get here if they're following this on the Internet. I don't know how they would find out about it.

At least right now it's publicized in advance. In this case there will be no public notice whatsoever. We'll be voting, we'll be amending. It is going to be affecting members of the public, so you are inviting them to then somehow come back, weigh in again, and then based on what we hear maybe we'll revote again and, okay, well, never mind, we won't amend it in that fashion or -- I just envision absolute total chaos. I mean, I'm sure it's well intentioned, but practically I just don't see how this could possibly work unless you are voting to completely eliminate public input and that aspect of the transparency, which I don't think is the case.

LEG. CILMI:

Well, through the Chair, if I may.

P.O. LINDSAY:

Go ahead.

LEG. CILMI:

This takes us in a step in the right direction. The process the way it exists now, you say that the public has a chance to input, but the fact of the matter is they don't, because they don't know what's going to be proposed by this body until literally, you know, the day that we're scheduled to vote on it. So I would say that, in answer to your question I would just say that this takes us a step in the right direction, a step towards a more transparent process.

And let me just -- I'll conclude by saying that this in no way, and I said this in an e-mail to all of you and I truly believe it, that this in no way takes away from the hard work that both the Presiding Officer, the members of the Working Group, Budget Review Office, Counsel, everybody who works in this process and who has worked on this process year after year after year long before I was here. This in no way diminishes the hard work that they have put in. You know, this is not a -- this is not meant to say, you know, that was all for naught, but I think we can make the process better and I think that these bills collectively and individually do that.

LEG. D'AMARO:

Bill, can I just add on to that?

P.O. LINDSAY:

Okay guys.

LEG. D'AMARO:

Thank you. I just want to tack on a thought to that, to Legislator Cooper's and Cilmi's discussion. I would answer the question a little different, Jon, a little bit.

LEG. COOPER:

Sure.

LEG. D'AMARO:

And what I would say is that we would treat the budget amendments like we treat every other piece of legislation. We have committees, the amendments are proposed, maybe even crafted somehow in the Budget Committee itself. There's a public portion to every committee meeting, people have a right to come out and speak on their bills. They'd have notice, they would be included in the legislative process, which is what we do with every other bill that we propose. So if you did it in the Budget Committee there would be ample time -- ample opportunity for public discussion. If and when those bills get passed out of that committee to the floor of Legislature there would obviously have to be a timeline or a deadline to meet to do that. It would then come to a full meeting of the Legislature on a budget day as we do now, and you'd have the same meeting that we always have. There'd be a public portion just like all the other bills that we consider. In effect, we'd be going line by line or bill by bill keeping track of the impact, the financial impact, of the votes that we take. So I don't see it as chaotic. In fact, I think it's just normal operating procedure for us if we followed that type of track.

P.O. LINDSAY:

Okay. I'm going to wrap this up because I'd like to get this vote in before the lunch break. First of all, let me just start off by prefixing my remarks. Whatever this body decides to do with this bill I'll respect. I'm not sure exactly what format this bill will take. Legislator D'Amaro talks about one thing, Legislator Cilmi talks about a different, so I don't know, we'd probably have to evolve. But I do have a question for Budget Review. Our budget is roughly what, two point six billion? How much of it do we effect in the legislative portion?

MS. VIZZINI:

We usually deal with an amount somewhere in the neighborhood of about 12 million dollars. We cut, reprioritize and --

P.O. LINDSAY:

What is that, 2%?

MS. VIZZINI:

Well, most of our efforts are either in the General Fund Police District or the hotel/motel, so it's probably --

LEG. BARRAGA:

It's probably normally two percent, even at the State level.

D.P.O. VILORIA-FISHER:

Yep.

P.O. LINDSAY:

Okay. That's a very important point for me to make.

LEG. BARRAGA:

Yes.

P.O. LINDSAY:

All right. And the one thing that I want to emphasize on this group, if you think for a minute you're shifting the power to the Executive Branch with this bill there is no doubt about it. Does the Executive Branch fashion his budget in a public forum? Absolutely not. Does he send it to us for us to study? He gives it to us after the time date every year, every year, and then we have to rush through it in order to fashion something of what we can effect. All right? And you know that's all true.

I don't have any objection to the second bill, like I said to Legislator Cilmi, before the five days, but move it back on the front end. Make the Executive give us his budget five days earlier and I'll be happy to meet the same deadlines and to get the budget done here five days and let everybody study it. But to cut down on our time limit, you know, it sounds like we've got a lot of time, but Budget Review will tell you we stand on our head and meet here for hours upon hours to get the document together.

What I'm afraid of, we are a political body, nobody is going to vote for any increases. Legislator Romaine already said it. I wouldn't vote for park fees, but yet any kind of give back -- I mean, last year in a horrendous, horrendous fiscal situation we capped gas tax; that wasn't responsible. I mean, the way gas tax is rising, you know, it's really a lot of money that the County has given up. We rolled back park fees last year. That wasn't responsible. All it did was -- it was good press, though. See, what I'm afraid is we'll take the fat and not take any of the pain.

And in all due respect Legislator Cilmi, I know you have a lot of visions on what this process would look like, but you've never served on a budget working group. I just think that you should participate in one before you try and alter the situation.

We have a motion to table and we have a motion to approve. Tabling goes first. Roll call.

(Roll Called by Mr. Laube - Clerk)

LEG. SCHNEIDERMAN:

Yes to table.

LEG. BROWNING:

Yes.

LEG. COOPER:

Yes to table.

LEG. D'AMARO:

No.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

No.

LEG. BARRAGA:

No.

LEG. CILMI:

No.

LEG. MONTANO:

Pass.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

No.

LEG. ROMAINE:

No.

D.P.O. VILORIA-FISHER:

No.

P.O. LINDSAY:

No. With due respect to Legislator Cilmi, I think it deserves an up or down.

LEG. COOPER:

Actually, change my vote to a no.

LEG. NOWICK:

Yeah, me too.

LEG. GREGORY:

Can I change mine to a pass?

(Laughter)

LEG. MONTANO:

No.

LEG. EDDINGTON:

No.

MR. LAUBE:

Five.

P.O. LINDSAY:

Tabling fails. Motion to approve.

(Roll called by Mr. Laube - Clerk)

LEG. CILMI:

Yes.

LEG. MURATORE:

Yes.

LEG. COOPER:

No.

LEG. D'AMARO:

Yes.

LEG. STERN:

No.

LEG. GREGORY:

No.

LEG. HORSLEY:

No.

LEG. NOWICK:

No.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

Yes.

LEG. MONTANO:

No.

LEG. EDDINGTON:

Pass.

LEG. BROWNING:

Yeah, sorry, no.

LEG. SCHNEIDERMAN:

No.

LEG. ROMAINE:

Yes.

D.P.O. VILORIA-FISHER:

No.

P.O. LINDSAY:

No.

LEG. EDDINGTON:

No.

MR. LAUBE:

Five. Check that, six.

P.O. LINDSAY:

2106, A Charter Law to enhance transparency in County budget process.

D.P.O. VILORIA-FISHER:

Mr. Chair, I had asked if we could take something out of order so that the people from the Vanderbilt could leave, the two vetoes?

LEG. HORSLEY:

Let's do this one first, though.

P.O. LINDSAY:

This shouldn't take much debate because they're companion bills. Do I have a motion on 2106?

LEG. CILMI:

Motion to approve for the moment.

(Laughter)

On the motion.

LEG. COOPER:

Can I make a motion to kill the bill or it doesn't work that way.

P.O. LINDSAY:

I'm going to make a motion to table because I think it, as I pointed out, I think it needs more work.

LEG. STERN:

Second.

P.O. LINDSAY:

Second by Legislator Stern.

LEG. CILMI:

On the motion.

P.O. LINDSAY:

Go ahead.

LEG. CILMI:

What I wanted to suggest, or ask rather, to Counsel, what Presiding Officer Lindsay suggested is actually a very, very good idea. I don't know why the County Executive, if it's prescribed in the Charter that he is to provide us with a budget on a certain date, why he's consistently late is -- and why that is allowed to happen is, you know, is something that I would love to have answered. But nevertheless, be that as it may, are we legally permitted to kind of rollback, you know, the whole process by five days?

MR. NOLAN:

The Charter provides that he is to give us the budget I think by the third Friday in September. It's Charter prescribed so I think we could theoretically move that date up if we wanted to.

LEG. CILMI:

So --

MR. NOLAN:

I'm not aware of any provision of State law that would prevent us from doing that.

LEG. CILMI:

With that said, I will ask you to do that, and I will support the tabling motion so that we could get that done and deal with it at our next meeting.

P.O. LINDSAY:

Okay. We have a motion to table and a second. All in favor?

LEG. SCHNEIDERMAN:

I'd like to --

P.O. LINDSAY:

Okay, Legislator Schneiderman.

LEG. SCHNEIDERMAN:

Since this bill is going to be changed I would like to make a motion to recommit it so that the committee could look at it before it came here.

P.O. LINDSAY:

Okay.

LEG. SCHNEIDERMAN:

I'll make a motion to recommit it.

MR. NOLAN:

It takes precedence.

P.O. LINDSAY:

Okay. We need a second to the recommit.

LEG. MONTANO:

I'll second it.

P.O. LINDSAY:

Legislator Montano makes a motion to recommit. No, Legislator Schneiderman, second by Legislator Montano. And we have a motion to table and we have a motion to approve. Do either one of them have seconds?

MR. LAUBE:

The motion to approve did not get a second; the other two, to recommit and to table, both have a motion and a second.

MR. NOLAN:

To recommit goes first.

P.O. LINDSAY:

Recommit goes first. Can we do a voice vote? All in favor of recommitting? Opposed?

LEG. BARRAGA:

Opposed.

LEG. CILMI:

Opposed.

LEG. ROMAINE:

Opposed.

LEG. KENNEDY:

Opposed.

LEG. NOWICK:

Opposed.

LEG. MURATORE:

Opposed.

P.O. LINDSAY:

You want to go to a roll call? Roll call on the recommit.

(Roll Called by Mr. Laube - Clerk)

LEG. SCHNEIDERMAN:

Yes.

LEG. MONTANO:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

No.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

No.

LEG. KENNEDY:

No.

LEG. BARRAGA:

No.

LEG. CILMI:

No.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

No.

LEG. BROWNING:

Yes.

D.P.O. VILORIA-FISHER:

Yes.

P.O. LINDSAY:

It don't make much difference; yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

I called Legislator Romaine. He voted no.

LEG. ROMAINE:

Right, no.

MR. LAUBE:

Ten.

P.O. LINDSAY:

So it's recommitted, okay.

D.P.O. VILORIA-FISHER:

Mr. Chair, I would like to take the veto overrides on the Vanderbilt Museum out of order?

P.O. LINDSAY:

Okay. Legislator Viloría-Fisher is making a motion take, what is it, 1216 out of order, the veto.

LEG. COOPER:

1217.

D.P.O. VILORIA-FISHER:

Right, and 1217.

P.O. LINDSAY:

You can't do them together. They're two separate vetoes. So 1216 out of order. Do I have a second?

LEG. COOPER:

I'll second.

P.O. LINDSAY:

Second by Legislator Cooper. Any discussion? Okay.

D.P.O. VILORIA-FISHER:

I make a motion to override.

P.O. LINDSAY:

Motion to override by Legislator Viloría-Fisher.

MR. LAUBE:

I need a vote on the take it out of order first.

P.O. LINDSAY:

Okay. All in favor of taking 1216 out of order? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

It's before us.

1216-2010 - Appropriating funds inc onnction with restoration facades at the Suffolk County Vanderbilt Museum (CP 7441) (Cooper). Legislator Viloría-Fisher makes a motion to override on 1216.

LEG. COOPER:

I'll second.

P.O. LINDSAY:

Second by Legislator Cooper. Any discussion? Roll call.

(Roll Called by Mr. Laube - Clerk)

D.P.O. VILORIA-FISHER:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Yes.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

No.

LEG. CILMI:

Yes.

LEG. MONTANO:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. ROMAINE:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

No.

MR. LAUBE:

It's fifteen.

P.O. LINDSAY:

Okay. Motion by Legislator Viloría-Fisher on 1217 to override.

LEG. COOPER:

I'll second that motion.

D.P.O. VILORIA-FISHER:

To take it out of order.

P.O. LINDSAY:

Oh, to take it out of order. Second by Legislator Cooper. All in favor? Opposed? Abstentions?

LEG. BARRAGA:

Opposed.

MR. LAUBE:

Sixteen.

P.O. LINDSAY:

Okay, it's before us.

1217-2010 - Bond Resolution of the County of Suffolk, New York, authorizing the issuance of \$300,000 Bonds to finance the cost of restoration of facades at the Suffolk County Vanderbilt Museum (CP 7441.313).

D.P.O. VILORIA-FISHER:

Motion to override.

P.O. LINDSAY:

Motion to override on IR 1217 by Legislator Viloría-Fisher.

LEG. COOPER:

Second.

P.O. LINDSAY:

Second by Legislator Cooper. On the question? Roll call.

(Roll Called by Mr. Laube - Clerk)

D.P.O. VILORIA-FISHER:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Yes.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

No.

LEG. CILMI:

Yes.

LEG. MONTANO:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. ROMAINE:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

No.

MR. LAUBE:

Fifteen.

P.O. LINDSAY:

Okay. I'm not going to address another bill because we've only got two minutes, and we can't do much of anything in two minutes.

LEG. COOPER:

Mr. Chair, I just want to make an important announcement. I wanted to caution, I wanted to caution all my legislative colleagues not to have dessert at lunch because we're delivering birthday cake at about 2:15.

LEG. KENNEDY:

Oh, nice.

D.P.O. VILORIA-FISHER:

You are dying to hear us sing Happy Birthday.

P.O. LINDSAY:

Okay. I will entertain a motion to recess until 2:30. Motion by Legislator Muratore, second by Legislator Eddington. All in favor? Opposed? Abstentions? We stand in recess.

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

I would ask -- no, I need the Ethics Committee to sit for five minutes.

(The meeting was recessed at 12:29 P.M.)

*(*THE FOLLOWING WAS TAKE AND TRANSCRIBED BY
LUCIA BRAATEN-COURT REPORTER*)*

*(*THE MEETING RESUMED AT 2:42 P.M. *)*

P.O. LINDSAY:

Okay. Mr. Clerk, would you call the roll, please?

(Roll Called By Mr. Laube, Clerk)

LEG. ROMAINE:

Present.

LEG. SCHNEIDERMAN:

Here.

LEG. BROWNING:

Here.

LEG. MURATORE:

Here.

LEG. EDDINGTON:

Here.

LEG. MONTANO:

Here.

LEG. CILMI:

Yep.

LEG. BARRAGA:

Here.

LEG. KENNEDY:

Here.

LEG. NOWICK:

Here.

LEG. HORSLEY:

Here.

LEG. GREGORY:

Here.

LEG. STERN:

Here.

LEG. D'AMARO:

Here.

LEG. COOPER:

(Not Present)

D.P.O. VILORIA-FISHER:

Yes, here.

P.O. LINDSAY:

Here.

MR. LAUBE:

Sixteen. (Not Present: Leg. Cooper)

P.O. LINDSAY:

Okay. Welcome to our afternoon session. I'm waiting for cards, and here they come. We'll start public hearings. Okay. The first one before us is ***I.R. 1782 - A Local Law to register pre-paid cell phones purchased in Suffolk County (Browning)***. And it doesn't look -- appear that we have any cards on this subject. Is there anyone in the audience that would like to address us on this subject? Seeing none, Legislator Browning?

LEG. BROWNING:

Motion to recess.

P.O. LINDSAY:

Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Sixteen. (Not Present: Leg. Cooper)

P.O. LINDSAY:

I.R. 1883 - A Local Law declaring a surplus and authorizing the execution of a contract for the sale of 255 acres in Yaphank to Legacy Village Real Estate Group, LLC, for mixed use development (Co. Exec.). Is there anybody -- I don't have any cards on this subject. Is there anyone in the audience who would like to speak to us on this subject? Seeing none --

LEG. BROWNING:

Motion to recess.

P.O. LINDSAY:

Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

J.R. 1952 - A Local Law to protect animals in Suffolk County from abuse (Cooper). It doesn't appear I have any cards on this subject. Ist here anybody in the audience that would like to speak on this subject?

P.O. LINDSAY:

Seeing none --

LEG. COOPER:

Motion to recess, please.

P.O. LINDSAY:

Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

2045 - A Charter Law to limit campaign donations by members of the Ethics Commission (Cooper). I don't have any cards on this subject. Is there anyone in the audience who would like to address us on this subject? Seeing none, Legislator Cooper?

LEG. COOPER:

Motion to recess.

P.O. LINDSAY:

Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

2107 - A Charter Law strengthening the budget adoption process (Co. Exec). I have no cards on this subject. Is there anyone in the audience that would like to speak on this subject? Seeing none, I'll make a motion to recess. Do I have a second?

LEG. BROWNING:

Second.

P.O. LINDSAY:

Second by Legislator Browning. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

*(*THE FOLLOWING WAS TAKE AND TRANSCRIBED BY
LUCIA BRAATEN-COURT REPORTER*)*

*(*THE MEETING RESUMED AT 2:42 P.M. *)*

P.O. LINDSAY:

Okay. Mr. Clerk, would you call the roll, please?

(Roll Called By Mr. Laube, Clerk)

LEG. ROMAINE:

Present.

LEG. SCHNEIDERMAN:

Here.

LEG. BROWNING:

Here.

LEG. MURATORE:

Here.

LEG. EDDINGTON:

Here.

LEG. MONTANO:

Here.

LEG. CILMI:

Yep.

LEG. BARRAGA:

Here.

LEG. KENNEDY:

Here.

LEG. NOWICK:

Here.

LEG. HORSLEY:

Here.

LEG. GREGORY:

Here.

LEG. STERN:

Here.

LEG. D'AMARO:

Here.

LEG. COOPER:
(Not Present)

D.P.O. VILORIA-FISHER:
Yes, here.

P.O. LINDSAY:
Here.

MR. LAUBE:
Sixteen. (Not Present: Leg. Cooper)

P.O. LINDSAY:
Okay. Welcome to our afternoon session. I'm waiting for cards, and here they come. We'll start public hearings. Okay. The first one before us is ***I.R. 1782 - A Local Law to register pre-paid cell phones purchased in Suffolk County (Browning)***. And it doesn't look -- appear that we have any cards on this subject. Is there anyone in the audience that would like to address us on this subject? Seeing none, Legislator Browning?

LEG. BROWNING:
Motion to recess.

P.O. LINDSAY:
Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:
Sixteen. (Not Present: Leg. Cooper)

P.O. LINDSAY:
I.R. 1883 - A Local Law declaring a surplus and authorizing the execution of a contract for the sale of 255 acres in Yaphank to Legacy Village Real Estate Group, LLC, for mixed use development (Co. Exec.). Is there anybody -- I don't have any cards on this subject. Is there anyone in the audience who would like to speak to us on this subject? Seeing none --

LEG. BROWNING:
Motion to recess.

P.O. LINDSAY:
Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:
Seventeen.

P.O. LINDSAY:
I.R. 1952 - A Local Law to protect animals in Suffolk County from abuse (Cooper). It doesn't appear I have any cards on this subject. Is there anybody in the audience that would like to speak on this subject?

P.O. LINDSAY:
Seeing none --

LEG. COOPER:
Motion to recess, please.

P.O. LINDSAY:

Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

2045 - A Charter Law to limit campaign donations by members of the Ethics Commission (Cooper). I don't have any cards on this subject. Is there anyone in the audience who would like to address us on this subject? Seeing none, Legislator Cooper?

LEG. COOPER:

Motion to recess.

P.O. LINDSAY:

Motion to recess; I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

2107 - A Charter Law strengthening the budget adoption process (Co. Exec). I have no cards on this subject. Is there anyone in the audience that would like to speak on this subject? Seeing none, I'll make a motion to recess. Do I have a second?

LEG. BROWNING:

Second.

P.O. LINDSAY:

Second by Legislator Browning. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

And here's what everybody wants to talk about. ***2156 - A Local Law to alert consumers to the health risks associated with energy drinks (Nowick).*** And I have a number of cards. Maureen Storey. Please come forward, Maureen. You have five minutes.

MS. STOREY:

Okay. Thank you for the opportunity to testify today and present the scientific data on the consumption of both caffeine and energy drinks by American youth. I am Dr. Maureen Storey, Senior Vice President for Science Policy at the American Beverage Association. Prior to joining ABA three years ago, I was a research professor at the University of Maryland, and Director of the University Center for Food, Nutrition and Agriculture Policy. Prior to that, I was on the research faculty at Virginia Tech and Georgetown University, and, as such, one of my main responsibilities was to conduct research, primarily research on nutrition and dietary consumption patterns. Given the time constraints, I'll make three summary points right up front.

One, energy drink consumption by caffeine-consuming children ten to twelve years of age on average is nearly zero, and consumption by caffeine-consuming teens thirteen to eighteen years of age on average is extremely low.

Two, caffeine is found in many foods and beverages consumed by children and teens, but average total daily caffeine intake by this age group of children and teens from all sources is well below the recommended maximum, as established by Health Canada, the only government agency to establish this type of standard for children and teens. For children ten to twelve years of age, Health Canada recommends no more than 85 milligrams per day of caffeine, or two-and-a-half milligrams per kilogram of body weight per day. For teens, the standard is the same.

Three, the energy drink market is a niche market whose growth is often portrayed incorrectly. In fact, the category's growth has declined steadily in the last few years and was flat in the 2008/2009 biennium.

I'll now share more detail on these points that I have just made. An analysis of the National Health and Nutrition Examination Survey was conducted to assess consumption of energy drinks and caffeine intake by children and teens who consume caffeine. Since these survey data are collected by the Federal Government, the data are publicly available and can be replicated by anyone. As I stated earlier, caffeine intake from consumption of energy drinks is nearly zero for children ten to twelve years of age who consume caffeine, and it is very low among teens ages thirteen to eighteen years of age who consume caffeine. The data showed that caffeine-consuming girls ten to twelve years of age consumed no caffeine from energy drinks, and for caffeine-consuming boys of this age, the mean caffeine intake from energy drinks was less than the amount of caffeine that would be found in one cup of chocolate milk.

Teenagers thirteen to eighteen years of age consume more energy drinks than do younger children. The data show that caffeine-consuming teen girls on average consume the equivalent of about a half a cup of chocolate ice cream, or the caffeine that would be in a half a cup of chocolate ice cream. The data show that caffeine-consuming teen boys thirteen to eighteen years of age consume more energy drinks than do girls, but again, this amount on average is minimal. In fact, the data show that teen boys get on average about 10.2 milligrams of caffeine from energy drinks. Nevertheless, nine out of ten boys get no caffeine from energy drinks. Importantly, total daily caffeine consumption among caffeine-consuming children and teens is below the recommended maximum established by Health Canada last year.

I would also like to correct some misperceptions about the regulation of energy drinks. The U.S. Food and Drug Administration regulates all food, beverages and supplements in the United States under the authority of the Federal Food, Drug and Cosmetic Act.

In conclusion, the beverage industry and ABA member companies are committed to being responsible corporate citizens, and have been food industry leaders when it comes to initiating voluntary policies that help address social issues. In fact, our members have removed full calorie soft drinks from our nation's schools.

Many of our members have voluntarily listed caffeine content on their packages, and voluntarily provided advisory statements on caffeine consumption. ABA agrees that children and teens should be taught and guided by their parents or guardians, teachers and health professionals about the responsible consumption of all foods and beverages. As a matter of public policy, however, ABA does not agree that a sweeping policy such as the one being proposed is necessary, nor is it supported by the consumption data. Thank you.

And I have testimony -- I have testimony from Lisa {Caddick}, who was unable to be here today due to the weather in Washington D.C. I would like to provide that for the committee members.

P.O. LINDSAY:

Thank you very much, Ms. Storey. Next up is Brian Waldman.

MR. WALDMAN:

Hello. My name is Brian Waldman and I'm a partner at the Law Firm of Arent Fox in Washington D.C. where I have practiced food and drug law for almost 20 years. Today I'm speaking in opposition to Resolutions Numbers 2156 and 2210. In particular, I want to explain a bit more fully about FDA's regulatory authority over foods and dietary supplements.

Under the Federal Food, Drug and Cosmetic Act, The Act, FDA has the authority to and historically has regulated energy drinks, as well as other foods and dietary supplements, to protect the public health. In short, the proposed resolutions are unnecessary.

In each resolution, the second paragraph of Section 1 provides as follows:

"This Legislature also finds and determines that energy drinks are classified as dietary supplements and are not currently regulated by FDA."

This is simply not true. As a preliminary matter, some energy drinks are promoted as conventional foods and some as dietary supplements, with the law permitting product manufacturers to choose based on the ingredients and desired labeling. More importantly, however, whatever the regulatory category, FDA ensures that the products are safe by limiting the ingredients that can be used in them and by requiring certain labeling. FDA's view is that, ultimately, it's the manufacturer's responsibility to ensure that its food products are safe and otherwise in compliance with the law. The agency ensures that safety by restricting the categories of the ingredients that may be added to foods.

Under the act, each ingredient in a processed food must fall into one of two categories, an FDA approved food or color additive, or a substance that's generally recognized as safe, a grass substance, which is a category of ingredient that is deemed safe by qualified experts. In either case, each ingredient must be safe under its intended conditions of use. FDA defines "safe" to mean a reasonable certainty in the minds of competent scientists that the substance is not harmful under its intended conditions of use.

Each energy drink manufacturer is responsible for ensuring that its products contain only safe ingredients that fall into one of the two categories that I just described. If a manufacturer fails in this regard, then the product is considered to contain an unapproved food additive. Under federal law, as well as under New York law, a food that contains an unapproved food additive or a dietary supplement that contains an unsafe ingredient is deemed adulterated. FDA can take the following types of enforcement action against an adulterated food or dietary supplement and the company that manufactured or distributed it:

First, FDA can initiate a product recall. Second, FDA can seize the affected products or prevent further manufacture or distribution of the affected products. Finally, FDA can seek criminal sanctions, even against individual company executives. FDA can also require labeling to inform the public about any material information, especially a safety risk. For example, FDA requires product labels to disclose the presence of aspartame and allergens in all foods. The FDA can even require additional labeling when there is no safety risk. For example, ultra-pasteurized milk must bear labeling to that effect, even though the additional processing does not alter the identity of the food and actually increases product safety.

Interestingly, over the years, FDA has received multiple requests to require product labels to declare caffeine content typically on the grounds that this information is important to pregnant women. FDA has declined to adopt mandatory caffeine labeling, although many companies have chosen to voluntarily include such disclosure.

Indeed, if the Legislature is concerned about the amount of caffeine in energy drinks and other caffeine-containing products, some of which contain more caffeine than energy drinks, encouraging voluntary labeling would be a more targeted and reasoned first step to address those concerns.

My grandmother, Esther, who lived in New York for 100 years, had a great saying about food. "Everything in moderation." This concept applies to energy drinks, just as it applies to desserts, potato chips, red meat and coffee. Unless the Legislature is prepared to restrict the sales of each food that, when consumed to excess, may lead to adverse health consequences like hypertension or childhood obesity, I would respectfully recommend that the Legislature abandon the two proposed resolutions.

So, in conclusion, I share your interest in protecting Suffolk County consumers and ensuring that all foods sold in the County are safe, but let me emphasize that the FDA has the authority and the expertise to regulate food and dietary supplements and has a long history of doing so.

Thank you for the opportunity to make this presentation. I would be happy to respond to any questions you may have, and look forward to further discussion before the Health Committee.

P.O. LINDSAY:

Mr. Waldman, you have -- you've raised some issues. You've got a lot of questions. I'll start with Legislator Nowick, who's the prime sponsor of the bill.

LEG. NOWICK:

Good afternoon. Thank you for coming out. Just, do you work for the FDA?

MR. WALDMAN:

Do I have to hold down the button?

LEG. NOWICK:

Yes.

MR. WALDMAN:

And you're not going to restrict me to five minutes?

LEG. NOWICK:

Well, you know, I have to tell you something.

MR. WALDMAN:

No, that's an easy question.

LEG. NOWICK:

It's snowing out, you know.

MR. WALDMAN:

That shouldn't take too long. I do not work for the FDA. I am a lawyer that -- in private practice at a large law firm in Washington D.C.

LEG. NOWICK:

Do you -- just curiously, because you're here from Washington D.C., do you represent a beverage association, or do you -- you just do this -- you're here today because you represent somebody that's --

MR. WALDMAN:

I'm here today because I work with an energy drink company and I represent a number of clients that have an interest in the potential affect of these kinds of resolutions.

LEG. NOWICK:

Okay. I just was trying to figure out what brought you here from Washington on this day. I just --

MR. WALDMAN:

I heard the weather was really nice up here.

*(*Laughter*)*

LEG. NOWICK:

I just wanted to say something, and I do appreciate your testimony. I've been doing energy drinks now for two years. But I have an article from the FDA that says that herbal supplements are regulated by the Dietary Supplemental Health and Education Act, and that a firm is responsible for determining that the dietary supplement it manufactures or distributes are safe. This says -- this means that dietary supplements do not, I repeat, do not need approval from the FDA before they are marketed. Now, I believe what I've learned over the past few years studying this is that the manufacturer themselves is the -- and not the FDA, the manufacturer has to say that a product is safe.

Just so you know where I'm coming from, and I'll make it fast, again because of the weather, but I'm not talking about caffeine. I understand you can have 12 cups of coffee. I'm just talking about the fact that all of these dietary supplements are combined. I mean, I have drinks in front of me that are full of caffeine, yes, but they have taurine, and guarana, and ginseng and niacin. Together, that's what makes the product that I have in question, just so you know. I mean, I just wanted to bring that out to you so you understand. So that's what I have learned so far, and I just wanted to bring that up.

MR. WALDMAN:

Can I respond to your comment?

LEG. NOWICK:

Sure.

MR. WALDMAN:

Okay. I'd say that you shouldn't believe everything that you read, and --

LEG. NOWICK:

This is from the FDA.

MR. WALDMAN:

Well, with respect to -- what the FDA is saying is that it regulates all products, and the regulatory structure that it has is not product-focused, what it is is ingredient-focused. And whether it's a dietary supplement or it's a conventional food, however the energy drink is positioned, the FDA has the authority to look at each ingredient in the product, as well as what -- how the ingredient is used, and whether there is any effect from a combination of ingredients. And when the FDA has a concern about that safety, it takes action against the products and --

LEG. NOWICK:

Yes, I do agree with you, and I have read that if there is a problem, the FDA then gets involved, but I'm talking about beforehand.

MR. WALDMAN:

Right. It's each man -- well, it depends on the product. But, as a general rule, each manufacturer is responsible for ensuring the safety of their products, and when they fail in that regard, the FDA has a variety of different very powerful tools to take --

LEG. NOWICK:

Yes, when they do fail in that regard, right. Okay. But, initially, it is the manufacturer.

MR. WALDMAN:

Right.

LEG. NOWICK:

Okay.

MR. WALDMAN:

And we are just talking about energy drinks today, but that holds true with all products.

LEG. NOWICK:

I'm going to let somebody else, because I know we have a lot of speakers.

P.O. LINDSAY:

Legislator Kennedy.

LEG. KENNEDY:

Thank you, and thank you for coming forward. I just want to make sure that I understand what you're --

P.O. LINDSAY:

You're on and off.

LEG. KENNEDY:

Yeah, I'm sorry.

LEG. NOWICK:

That's usual.

LEG. KENNEDY:

You're right.

*(*Laughter*)*

Does the FDA completely occupy this field, is that what your representation is to us, and, therefore, we're preempted from acting, or are you saying that the Federal agency is generally charged with areas of regulation, but, nevertheless, your clients and your firms are articulating some concern?

MR. WALDMAN:

I wouldn't do a preemption analysis today, but what I'd say is that the FDA definitely occupies this field, and you read in the papers every day about the actions that the FDA is taking against products that it believes are unsafe.

LEG. NOWICK:

And don't believe everything you read.

LEG. KENNEDY:

Yeah. As my colleague says, don't believe everything you read in the paper.

MR. WALDMAN:

That's an excellent point.

LEG. KENNEDY:

But -- look, we -- you must be -- as an attorney in this area, you just saw not less than a month ago Four Loko was taken off of the market and had been manufactured, possibly even by one of the firms that you may represent. But it is one of the things that folks finally came to realize was, you know -- well, I don't want to call it "death in a can", but it was dangerous, very, very dangerous. And some of what I think has brought some of this forward is a concern on the part of this body with young people consuming these items and doing so in a manner that might be deleterious or dangerous to them. I can honestly tell you, I've never had one of these in my life, nor ever had a desire to. My son, on the other hand, apparently enjoys drinking them, as do some of my staff. But I also came to find out they're apparently mixed with vodka on a regular basis and it is an attractive beverage, I guess, in bars. Again, I guess I date myself. When you see some of what's been put forward here, it's a unique and profound concern on our part about where youth are becoming exposed to something that might have an impact on a still developing body. How does your clientele tell, you know -- how do they reconcile or rationalize that or come to terms with that?

MR. WALDMAN:

Well, I think most important is to distinguish between a product like Four Loko, which is an alcohol-containing product, a highly concentrated amount of alcohol in a single use can that's flavored to mask the taste of alcohol, and then nonalcoholic or just energy drinks, which we prefer to call them energy drinks. But the Four Loko example is a good one because it's an illustration the FDA concluding that there was a problem, there was a safety problem, and energy drinks are subject to the exact same legal analysis -- legal, scientific, health analysis at FDA, and energy drinks have been on the market in the United States for 14 years, around the world for many years beyond that, and that safety concern hasn't been identified.

LEG. KENNEDY:

But I -- and I want you to go on, but I also do believe, from what I read, that the State Liquor Authority played a significant role in advising vendors here in New York State that they were going to have to remove the product. So the FDA might have been cognizant, but I think a lot of the ground swell, if you will, came by way of some local concern, be it by towns or by counties, or, for that matter, even some State legislation which engaged our State agencies, which then might have compelled the Federal governing entity to take action country-wide.

MR. WALDMAN:

Yeah. I don't know the history in your State with respect to the Alcohol Control Board, but it was the Alcohol Control Board for an alcoholic product.

LEG. KENNEDY:

Right.

MR. WALDMAN:

And here what you have is an non-alcoholic product and energy drinks are one of many different kinds of beverages that are mixed with alcohol. There are no limits on the sales of other types of mixers, and there are laws on your books, I'm sure, that prohibit underage drinking.

LEG. KENNEDY:

Oh, yeah.

MR. WALDMAN:

And, certainly, to the extent that those are enforced, I think that it would go a great extent to resolve some of the concerns that you just expressed.

LEG. KENNEDY:

Okay. There's certainly many of us who want to speak with you. Thank you for coming up.

P.O. LINDSAY:

Mr. Waldman, what I should have explained to you is if you're at the front of the line when there's 12 or 14 speakers on a subject, usually the front of the line gets all the questions, so that's -- you're a very popular man. Legislator D'Amaro.

MR. WALDMAN:

Then I would have spoken first.

LEG. D'AMARO:

Okay. Thank you. Thanks for coming down. Sir, just a few more questions.

P.O. LINDSAY:

No, I didn't see you were done.

*(*Laughter*)*

I said there's a long line of Legislators --

LEG. COOPER:

You're just getting started.

P.O. LINDSAY:

-- who want to talk to you.

LEG. D'AMARO:

We're keeping you here. I want to see if I can get a little more clarity, and I appreciate your knowledge of the area, and perhaps you can help me do that. In the first instance, the safety of energy drinks is self-policing. It's the industry itself that determines in the first instance whether or not the drink is safe.

MR. WALDMAN:

Yeah. There is no pre-market approval requirement for foods, so -- as opposed to a prescription drug. So, for a prescription drug, the company has to apply to FDA, FDA approves it, then you can market it. For a food product, there's no such pre-market requirement.

LEG. D'AMARO:

All right. So the industry has determined, as its permitted by law to do, has determined that it's responsible for the safety of the product it puts out and this product is safe. And when we talk about safe, that is a definition that is supplied by whom, the FDA or the industry?

MR. WALDMAN:

The FDA provides a definition.

LEG. D'AMARO:

Okay. So has the FDA itself ever passed on the issue of whether or not energy drinks are safe?

MR. WALDMAN:

The FDA, like I said, because they don't approve products, what they do is they set safety standards for ingredients, and they -- if your ingredient meets the safety standards, and a lot of the ingredients are either FDA approved -- I mentioned the different kinds of ingredients -- they're FDA-approved food or color additives or grass substances, and if your product contains only those ingredients, then the product can lawfully be marketed.

LEG. D'AMARO:

So the FDA has never passed on whether or not the drink, not the sum, the sum of its parts, the drink itself is safe as used under the regulations, only the industry has done that so far.

MR. WALDMAN:

Right. Energy drink is a single name that describes a product category. There's a lot of variation in formulas, and so the FDA, that's kind of not their business of looking at individual products.

LEG. D'AMARO:

Well, my point is that when you talk about energy drinks or the ingredients being regulated by the FDA, what you're really saying is they put out standards, safety standards, that apply to all food products and all dietary supplements, but it's not as though this Federal regulatory authority has tested the individual drinks and said, "Yes, they're safe under these regulations."

MR. WALDMAN:

That's not what FDA does.

LEG. D'AMARO:

Okay.

MR. WALDMAN:

That's just not their model.

LEG. D'AMARO:

So I just want to be clear on that, that -- you know, I'm not a chemist, I don't know if testing ingredients individually is sufficient. You know, what happens when you combine them all together? You know, that's a question in my mind that the industry has said, "Well, if you put these ingredients together that are individually deemed safe by the FDA, if you put them together, they remain safe." I mean, you know, I just don't know the answer to that.

MR. WALDMAN:

Right. That is the manufacturer's responsibility. And if the combination of ingredients is unsafe, the FDA can certainly take action against the products.

LEG. D'AMARO:

Well, what would prompt -- that's my next question. What would prompt the FDA to take that action, and why should Suffolk County wait for the FDA to do that?

MR. WALDMAN:

Well, FDA is kind of the designated arbiter of science, the science of safe foods.

LEG. D'AMARO:

So we should put all our faith in the Feds, huh?

MR. WALDMAN:

They do a pretty good job and --

LEG. D'AMARO:

Okay. I'm sure they do.

MR. WALDMAN:

I'm not sure --

LEG. D'AMARO:

You know, my point is that, again, in the first instance, it's the industry that came up with a beverage that's appealing to many people. It -- the industry itself said that the drink is safe, it's made with ingredients that the FDA has said meet the statutory guidelines or the safe ingredients test. It's never really been tested whether or not, other than by the industry, whether -- when you combine them all together and put them out as a drink, what are the chemical impacts, what are the physiological impacts, what are the social impacts of doing all of that? And even beyond that, you know, whose definition of "safe" should we be applying?

MR. WALDMAN:

Right. Well, I say FDA sets the standard for safety. And with respect to the interaction of ingredients, as one of the later speakers -- one or more of the later speakers will address, a scientific committee in Europe, the food regulatory authority in Europe has reviewed the potential interactions of key ingredients in energy drinks and they've --

LEG. D'AMARO:

Isn't it true that we regulate all the time based on a product that may -- like you said, my grandmother used to say everything in moderation, too, but there -- you know, you can apply that standard to anything, you know, too much of anything can probably be harmful at some point, and I think that argument misses the point. You know, if you had one cigarette a day, I think you greatly reduce the negative impact of smoking. The problem is cigarettes are addictive. And the caffeine, it's not so much the amount of caffeine here, but it is caffeine, and in my mind caffeine is addictive also, people need it. If you don't have it, you go through a withdrawal at some point. When you combine that, the addictive nature of caffeine, along with all of these other ingredients that are put together in a can that kids are consuming, and the industry itself has said it's safe, but the FDA really doesn't know, I think that's the point of the legislation, that we're seeing other impacts of the consumption of these drinks. So, you know, why should we wait as a country for something perhaps tragic to happen? Or maybe some further research ten years from now comes out and says, you know, "We didn't know this then, but now we realize, when you combine all of these things, it's really not safe." You know, why can't we be more proactive, is what I'm saying.

MR. WALDMAN:

Right. And I think some later speakers should address the -- your safety concerns, the issues with respect to safety.

LEG. D'AMARO:

Okay. Thank you for answering my questions. Thank you, Mr. Presiding Officer.

P.O. LINDSAY:

Yeah, Legislator Stern.

LEG. STERN:

Thank you. You had said earlier that the -- a request had been made from the FDA to do an analysis on caffeine content within -- within these drinks. Was there a report issued by the FDA as to caffeine content and what adverse impacts, you know, it might have, if any, on consumers?

MR. WALDMAN:

There were at least two petitions to FDA requesting that there be voluntary, or that there be caffeine content labeling, and the FDA decided not to require labeling. I don't recall the specific analysis, their description of the basis for their determination, but they said that there was -- they concluded that there wasn't enough data at the time to justify requiring caffeine labeling.

LEG. STERN:

So they declined to act on that issue. My next question is, are you aware of any other inquiries, any other requests made to the FDA to do an analysis on any other type of issue that, if I understand correctly, that was to the caffeine content? And what, if any, type of labeling might be required as to Legislator Nowick's contention that it's not simply limited to the caffeine issue, but the interaction of many different types of ingredients in these energy drinks? Do you know -- are you aware of any other inquiries that have been made to the FDA to do that analysis?

MR. WALDMAN:

Right. And just to clarify, the petitions had nothing to do with energy drinks. These were petitions requesting caffeine labeling for all caffeine-containing products. Okay? And I am not aware of any petitions to FDA where companies or individuals are requesting that FDA take additional action with respect to energy drinks.

LEG. STERN:

And understanding that the initial level that's left to all of the manufacturers to do their own analysis as to the safety of their products, are you aware of any industry-wide study or analysis that's been done by the industry, by the manufacturers regarding either caffeine content or the interplay between all of these other ingredients within these drinks? I understand that formulas might be different, depending on particular products, but is there -- has there been an industry-wide study dealing with the issues that we're talking about today?

MR. WALDMAN:

This is, fortunately, a question that I can defer to other people. The other speakers will describe the most recent large governmental review of the safety of key ingredients in energy drinks. And, as you'll hear, the conclusions were that there's no safety concern at the levels of consumption anticipated, and that they looked specifically at the potential for interactions and they concluded that that wasn't a concern.

LEG. STERN:

We're going to be hearing more about that, okay. Thank you.

P.O. LINDSAY:

Okay. Legislator Cooper.

LEG. COOPER:

I wanted to address the issue of FDA preemption, and I know that you had said that you were not speaking on that specifically, but I wanted to -- first of all, the Suffolk Legislature has a history of being proactive and taking the lead on a number of issues over the years, and one instance was back in 2003, February of 2003, where the Legislature, after months of testimony, enacted a law that I sponsored that prohibited the sale of dietary supplements that contained Ephedra, or, more specifically, ephedrine alkaloids. And we had determined at that point that it was -- even though there were questions as to whether the FDA should have had jurisdiction and whether we really should have been weighing in on the issue, we felt then, and I believe we feel now as a Legislative body, that it is entirely appropriate for us to act to protect the public health and public safety of Suffolk County residents.

The enactment in February of 2003 of the Ephedra ban by Suffolk County led to subsequent action by three states, and then ten months later, the Federal Government, the FDA, as you're aware, enacted a Federal ban following action by Suffolk County. Now, the difference there is, and I'm not saying that I'm inclined to support this legislation, the difference then was that at least two of my constituents died after they took Ephedra. One young man, a Northport High School graduate that was taking Ephedra for bodybuilding, and a mother of two that was taking Ephedra for weight loss, and one died of a heart attack and one died, I believe it was a brain hemorrhage. And according to Consumers Union, there were about 5,000 deaths that were attributed to Ephedra. If we had waited for the FDA to act, who knows how many years it may have taken before they decided to regulate the product and how many lives would have been lost.

So again, at that point, to protect public health and safety, the Suffolk County Legislature felt it was incumbent upon us to act, and I think that that's the case today. So the question is whether it rises to that level and whether enough evidence can be presented that energy drinks do, indeed, pose a hazard. But if we do reach that threshold, then I'm completely comfortable in the Legislature enacting a local ban. Were you aware of that being my position, since that was all supposed to be a question?

*(*Laughter*)*

MR. WALDMAN:

Thank you for explanation. And I'm very familiar with the Ephedra situation, and in that case there were -- there was kind of a long history of adverse effects. And in this case, I don't think that's the case. I think -- if decisions are made, policy is made based on sound science, then I think it's justified. In this case, I don't think it's based on sound science, and I think it's kind of inappropriate to single out the energy drinks when there are other products that have a similar profile and there -- all of those products I think are safe. But with respect to this, I'm a lawyer and I say that it's not based on sound science. There'll be scientists who are going to come up and explain the basis for that conclusion.

LEG. COOPER:

Although that does lead to another question, and it may not be the case in this instance, but I recall now that one problem with the Ephedra dietary supplements was that the FDA did not impose regulations on manufacturing procedures and quality control procedures, so that it was literally possible for an individual to mix up a batch of Ephedra in their bathtub and sell it and it was completely legal. Is that the case in this instance, or are there manufacturing and procedures in place to protect the public?

MR. WALDMAN:

I'm glad you asked that question, too, because things have changed since 2003, especially with respect to dietary supplements. First, there is a -- there are new GMP, Good Manufacturing Practice regulations which are extremely rigorous. They are much closer to pharmaceutical good manufacturing practices and that -- and the FDA is taking enforcement action. You can read about these warning letters that the FDA sends to companies on a fairly regular basis now where they go into the manufacturing facility, they inspect it to these rigorous standards, and if the companies fail to meet those standards, the FDA will take enforcement action against those products. And second, President Bush enacted a law that requires adverse event reporting of serious adverse effects. And so, if that kind of signal were to occur, FDA would know about it extremely quickly.

LEG. COOPER:

Okay. Thank you.

P.O. LINDSAY:

Okay. Legislator Gregory.

LEG. GREGORY:

Thank you, Mr. Chair. I know that you had stated to, I believe it was Legislator D'Amaro, that weren't aware of anyone petitioning the FDA; is that correct, if I recall?

MR. WALDMAN:

With respect specifically to energy drinks.

LEG. GREGORY:

Right, right.

MR. WALDMAN:

I mentioned a couple of petitions that I am aware of where the individuals were requesting caffeine labeling on caffeine-containing products.

LEG. GREGORY:

Okay. Through my -- I did some research and there was a petition in 2008 by a Dr. Roland Griffiths of John Hopkins School of Medicine, along with 100 scientists and physicians who petitioned the FDA, urging the agency to increase energy drink regulations because of the potential risks of caffeine intoxication. Now, the sponsor has stated that that's not something that she, you know, has focused on the caffeine aspect, the caffeine levels of energy drinks, but it's still something that's of a concern to some scientists. Are you aware of -- have you ever heard of caffeine intoxication?

MR. WALDMAN:

Yeah, I'm aware of that. I didn't realize it was a petition. I was aware of a letter to FDA.

LEG. GREGORY:

Oh, okay. Well -- and it states that caffeine intoxication can result from drinking too much caffeine with symptom like -- symptoms like vomiting, rapid heart rate, anxiety, insomnia, nausea, tremors, and even death in rare cases.

MR. WALDMAN:

Yeah.

LEG. GREGORY:

Has the FDA responded to that petition? What's the petition process?

MR. WALDMAN:

Yeah. I would have to look at -- to see if it's actually a petition. There is a process for FDA to respond to petitions. I'd have to see it to know exactly which procedure the FDA would follow in responding to that. But with respect to your specific question about the -- Dr. Griffiths urging FDA to take action based on a variety of adverse effects purportedly associated with caffeine content -- caffeine consumption, I'll defer to others on the science, but note that other products contain significantly more caffeine than most common energy drinks.

LEG. GREGORY:

Right. But can you enlighten me as to what the petition process is? Is it normal for the FDA not to respond within three -- well, potentially three years, or at least two years, after being petitioned to address an issue?

MR. WALDMAN:

The FDA takes quick action on issues that it feels very strongly about. If the FDA doesn't feel strongly about it, then the issues go into the cue and they deal with them kind of based on priority. If, in fact, this was a citizen petition for which the FDA is expected to respond, the fact that it hasn't responded in a couple of years suggests that it is not -- that they don't believe that it raises the same level of concern that the author of the letter believed.

LEG. GREGORY:

Okay. Now, to the labeling on the cans that you find. It's an FDA regulation that there has to be a label, correct?

MR. WALDMAN:

Yes, each food product has to have a label.

LEG. GREGORY:

Right. But that does not signify that the ingredients in the label are actually tested and verified as safe by the FDA, correct?

MR. WALDMAN:

The manufacturer is responsible for putting accurate information on its label. A couple of elements are an ingredient -- well, let's stick to the ingredient list. They're required to include an ingredient list that identifies each ingredient that's in the product. The FDA's detailed safety requirements for ingredients requires the manufacturer to confirm and assure that each of the ingredients that it places in the product is safe for consumption.

LEG. GREGORY:

Right, and again, it's safe for consumption based on industry tests, not FDA.

MR. WALDMAN:

Safe based on existing safety data. FDA sets the standards, and the companies and scientists around the world generate data, and those data become the basis for a safety conclusion, whether by FDA or by the company.

LEG. GREGORY:

Okay. So if I understand you, there's a standard set by the FDA, the industry --

MR. WALDMAN:

Tests to that standard.

LEG. GREGORY:

Tests to that standard. But I guess what my question is, is there -- what's the process of verifying that these tests are actually accurate and meet the standard?

MR. WALDMAN:

Well, the FDA has general enforcement authority and polices the marketplace, if it suspects and sometimes -- well, if it suspects that a product doesn't contain what appears in the ingredient list, it will pull a sample, test it, and if it's not what it says it is, the FDA has the authority to take action against those products. And the FDA issues those kinds of warning letters or cautions on a very regular basis.

LEG. GREGORY:

Okay. All right. Thank you.

LEG. NOWICK:

Just one last thing.

P.O. LINDSAY:

This is the first of twelve, you know.

LEG. NOWICK:

You know what, just keep going.

D.P.O. VILORIA-FISHER:

Thank you.

P.O. LINDSAY:

Dr. Jeffrey Reynolds.

DR. REYNOLDS:

Good afternoon. I'm not a Washington D.C. lawyer, I come from New York City. I run the Long Island Council on Alcoholism and Drug Dependence. And what I hope to share with you today is a little bit of our insight in terms of what we experience in serving young people, both in our offices in Ronkonkoma and Riverhead, who wind up using energy drinks, sometimes to excess. And I want to talk about, obviously, the connection between energy drinks and alcohol, because there is one. It's firmly established, not only the experience of treatment providers here in this region, but elsewhere and also in the literature.

I want to just also kind of reframe the conversation, because this is not about banning energy drinks. The bills you guys are talking about is about giving consumers enough information about the potential health consequences to make smart decisions, absent any other information, and to ensure that nine, ten and eleven-year-old kids can't walk into a 7-Eleven and buy this stuff and wind up with a problem that ultimately costs us all more money in the form of health care costs. So this is not about banning energy drinks, this is about taking a step in the right direction and ensuring that they're used in an appropriate way.

Another speaker made reference to moderation. Boy, if we had the ability to do that, I would have to find something else to do. We all know that moderation in some cases is achievable, in other cases it's more difficult for folks.

We know that these drinks have potential health consequences. You're going to hear a lot of back and forth today, and there are folks who can speak about the health consequences who have M.D. after their names, rather than PhD, and can probably do a better job than I can. I think it's well established, though, that particularly those with underlying conditions, there are potential health consequences in using this product. Several studies, including one that's due out later this month, have suggested a link between energy drinks and alcohol dependence. Researchers at the University of Maryland School of Public Health recently surveyed eleven hundred college students; found that student who consumed more energy drinks were more likely to get drunk for the first time at an earlier age. They are more likely to get drunk for the first time at an earlier age. They are more likely to drink more alcohol during the drinking episode, and that's largely because the caffeine and other ingredients in energy drinks keeps them awake, alert and drinking for a longer period of time. And then, finally, significantly more likely to develop a dependence on alcohol in some cases related to the early onset of use, as well as the prolonged use and involvement in binge-drinking. So, when compared to those who didn't drink energy drinks who did so only occasionally, the rate of chemical dependency, particularly in terms of alcohol, was much, much higher.

There was a study going back a year ago by the same authors who actually drew the connection between energy drinks and the misuse of prescription drugs. You had young people who are using energy drinks during the day, drinking them on a continuous basis. At night you need to fall asleep. Mom and dad's medicine cabinet is only a hop, skip and a jump away and you found kids who were drinking energy drinks in excess, using prescription meds to come back down, and then guess what, the next morning you wake up in a fog and you start the process all over again. It's something that we see at LICADD, but something that is well documented in the literature.

There was also, I guess, about five days ago in the Journal of the American Medical Association a commentary called the, quote, *High Risk of Energy Drinks*, that talked about FDA action on Four Loko and alcoholic energy drinks, and talked about how perhaps we've missed the boat and we need to go to the next step and deal with energy drinks, period. They make a series of recommendations, and I'll leave this with the Clerk, if any of you would like a copy, It's in JAMA. And they said, "Look, consumers need more information about this," and I think that's where the role of a Legislature comes in to make sure that consumers have that education and can make smart choices.

At the last hearing, and I wasn't here on December 21st, but I did read the testimony, there were some outrageous claims made. Somebody came before you who represents Beverage Works, a Red Bull distributor, and said, quote, "I would probably cut 19 jobs alone if this legislation passed." You heard from someone two speakers ago about how young people are not drinking this stuff. How, then, are we going to lose 19 jobs as a result of this law passing? Be really careful about the hyperbole here. I think for all of us it's real important that we focus on facts and focus on the science.

I do want to say, when I talk about the link -- along those lines, when I talk about the link between alcohol and energy drinks, all right, it doesn't mean there's a cause and effect. It does mean that there's a link that's been established in the literature. And if you think about our experiences with Four Loko and the alcohol energy drinks, and the discussion about the FDA drove me crazy, because here's how that went down. It's only when dozens upon dozens of kids wound up in emergency rooms and several kids lost their lives on college campuses, the college president stepped up and said, "We're banning Four Loko and other alcohol energy drinks." States then followed suit, State Liquor Authorities then followed suit. And, finally, after we had a ton of dead kids, the FDA took action. You guys have always been ahead of the curve. I think about the Salvia debate, I think about the DXM debate, you guys were ahead of the curve. The warning signs are here and I hope you'll act on both of these pieces of legislation and do it as soon as you can. Thank you.

P.O. LINDSAY:

Yeah, Legislator D'Amaro.

LEG. D'AMARO:

Okay. Thank you for your testimony. I wanted to ask you, so you're looking more at the social impact. And you're saying we're not talking about banning, but there is a companion bill to this that would prohibit sale to individuals 19 or below the age of 19.

DR. REYNOLDS:

To minors.

LEG. D'AMARO:

To minors.

DR. REYNOLDS:

Yeah.

LEG. D'AMARO:

Well, it's debatable whether that's a minor, but the cutoff would be 19. So we are talking about a partial ban, not on this particular bill, but on the next one that's also accompanying this. I want to ask you, though, about those -- about the links, and I appreciate that testimony, and, you know, we should be concerned about that. You're right, it's not hard and fast connection being made between the two, but the literature and the studies are starting to show that this may facilitate the use of alcohol and things like that, and we should be concerned about that. But my question to you is, and since you're in the field, I mean, can we really -- I want to make sure we're not singling out one drink. When we're talking about social laws, can we really legislate that type of responsibility? How do you feel about that? I mean, if we put this into effect, your caseload is not going down. I mean, is it really effective, or are we just using this as a way to say, you know, we have a lot of societal problems, a lot of dependency problems, a lot of alcohol-related problems? I mean, I can mix alcohol with coke and soda, and I can mix Bailey's Irish Cream with coffee and get just as addicted to that, and that has caffeine in it as well. So are we just -- are we just picking out this drink? Are we really making a dent? Can we legislate that responsibility? Is this an effective way to approach that problem?

DR. REYNOLDS:

It's a great question and, you know, something that we wrestle with. You know, I'm not always in favor of bans, despite the fact that I work for a drug and alcohol organization. I'm not always a believer that a ban is the best solution. I think this approach does kind of walk that line, does say, "Look we're talking about creating some warning signs and we're talking about limiting the sale to minors." You know, the reality is I think we have begun to see the impact of that, then when you have kids who drink for longer periods of time because they're also drinking energy drinks, it does set it apart from some other drinks that are out there. And I think kind of the big upswing in incidents, you haven't seen the upswing in orange juice or other things that are used for mixing, you haven't seen that in 40, 50, 100 years. These drinks are relatively new to market and you have begun to see a fair number of cases that have drawn a concern. You know, at the end of the day, we're talking about a pretty major industry, 5.4 billion dollars in 2006.

You know, I don't think that we should have to wait for the medical costs to mount up. And, in essence, what we're saying is, "Look, let the industry continue to do its thing." We'll continue to pay, not only inflated insurance premiums, but E.R. costs and everything else as a result. So I do think this walks the line. I don't know that it solves addiction right away. I do think we're in the midst of an unprecedented epidemic, particularly Nassau and Suffolk County, around kids and addiction. This isn't the solution, but I do think it's a potential part of the equation that we need to address.

LEG. D'AMARO:

All right. I appreciate that answer. So you see this as a reasonable approach to a problem, especially where, based on what I'm reading, the long-term effects are really not known by anyone, because it is a relatively new combination of ingredients that are being put together and then marketed and used in a certain way, and we just don't really know what the impact is. The question is whether or not do we take this type of action now or do we wait until we know what the answers are. That might be private.

I just want to ask you one more question. In your experience, have you ever personally seen someone in the situation where they believe they are sober, but they are not, because of an energy drink?

DR. REYNOLDS:

Yes.

LEG. D'AMARO:

Can you tell us about that without disclosing names or anything?

DR. REYNOLDS:

We see that all the time. And I wish I could count the number of individuals who come into our office holding an energy drink, in some cases brought by their parents, who because they are super alert and they're hyper alert, and they're feeling good and they're full of energy and all, they don't believe they're intoxicated. It's a very real kind of thing that happens day in and day out. I wish there was a way for us to capture, because the folks who walk into my office are landing in a place, they're going to get help and that kind of thing. If you take that and you think about kind of what the implications are in terms of drinking and driving and other kind of things, I think it is a real public health concern. And, at the end of the day, this is a cost benefit kind of thing. What is the cost of some warning signs and saying you can't sell this to 12-year-old kids? I don't think there's a huge cost involved, there's a potential benefit that I can't yet calculate, but I think is significant.

LEG. D'AMARO:

All right. One more very quick question. That same situation where someone was not sober, but thought they were, is there any other substance or anything else that causes that that you've seen in your experience?

DR. REYNOLDS:

Yeah. You could misuse prescription medicine, you can do some other things to kind of jack yourself up along those lines.

LEG. D'AMARO:

Yeah. So just again, in fairness, you know, to single this particular drink out, this is what I'm thinking about anyway, you know -- you know, would you make a dent, perhaps, but, you know, where it may not be the right approach, because, if there are so many other products out there that you can do the same thing with and have the same content, you know, I guess that I have to, you know, resolve that in my own mind whether or not this would be the right way to approach the problem.

DR. REYNOLDS:

But assuming there are, and maybe there are, doesn't make this right, and it means that you start looking at those products and look at public health costs and figure out at the end of the day, is it worth it, and does the Legislature have a role in stepping in?

LEG. D'AMARO:

Thank you.

DR. REYNOLDS:

Thank you.

P.O. LINDSAY:

Okay. Anybody else? Yes, Legislator Gregory.

LEG. GREGORY:

Yes, Jeff. Thank you for coming here today. I know that there's a concern that we may be singling out a particular industry, and that the focus has been on caffeine, and that, you know, if we're going to ban energy drinks, we should ban, you know, children from going to Starbucks or getting coffee from Dunkin' Donuts. But from what I hear from your testimony, it's not like kids are going to Starbucks, you know, to get a -- I don't even drink coffee, but a latte, or whatever it is that they drink, then, you know, drinking alcohol. That's not the combination they're looking for with their

caffeine; is that correct?

DR. REYNOLDS:

Yeah, we don't see a lot of that. I mean, perhaps it happens. But I think, you know, kind of the way in which energy drinks are marketed, the labeling and the packaging, and somebody had a can around the horseshoe, it really is designed, neon colors, very action oriented, that kind of thing, and we can make an argument and say, "Well, that's targeted toward young active adults." It's also really, really attractive to young people. So I think the marketing of these drinks, the consumption, if you just look at the sheer numbers alone, and when I talk about young people, I'm not only talking about 12 and 13 and 14-year-olds, but as people get into their twenties, we see a high rate of consumption of these drinks. It's the marketing and I think the market penetration, they've become huge. That's why you have a whole bunch of folks up in arms out here waiting to speak. It's become a huge industry. I just need we need -- think we need to temper it a little bit and ensure that we're serving public health the right way.

LEG. GREGORY:

Yeah. From the little bit of research that I've done with the -- I found the Mintel International Group, 31 -- this was done, I think, in 2009 or 2008. Thirty-one percent of 12 to 17-year-olds consume energy drinks, 34% of 18 to 23-year-olds report regularly consuming energy drinks, which was a 5.4 billion dollar industry in 2006, is growing at a rate of 55% per year increase, so that's a lot of kids.

DR. REYNOLDS:

It's huge. It makes sense for the Legislature to take a look at it and say, "All right, let's see what the implications are of a growing industry."

LEG. GREGORY:

Okay. Thank you.

P.O. LINDSAY:

Anybody else? No? Okay. Thank you very much, Doctor. Maryann Birmingham. Maryann, are you here? Yep, there you are.

MS. BIRMINGHAM:

Can you hear me?

(*Affirmative Response From Legislators*)

MS. BIRMINGHAM:

Okay. Good afternoon. Thank you for seeing me. My name is Maryann Birmingham. I'm a nutrition educator with Cornell Cooperative Extension in Riverhead, affiliated with Cornell University. My job is to go out to the public, mainly children, low income adults, mothers, women with children, and educate them about nutrition, how they could eat better, live better, buy things more economically to feed their families and to feed them well.

I went to a symposium a few years ago regarding these energy drinks and it really sparked my interest in them, and I kind of added a bit about them to a "Think Your Drink" lesson that I teach. And the more I delved into this, the more interesting it became and the more alarmed I became as to the potential dangers, especially to children.

I know I have five minutes and I just want to talk about the effect nutritionally on the children. First, the way they're being marketed to them as we all know, we see them everywhere, we see them in the 7-Elevens, we see them in the gas stations, we see them in the quick marts, they're

right there in front of their faces. Like a gentlemen said before, they are, you know, bright, attractive. Some of them look like Ed Hardy, you know, graphics, which is a really popular thing with sneakers and shirts, and whatever. But getting back to the nutrition aspect, these energy drinks are so high in sugar and caffeine, and caffeine is something that I, myself, as a child didn't drink. I didn't start drinking coffee until I was about 18, I guess, maybe 20, and kids are drinking it regularly now. And the sugar and the amount of sugar, and the repercussions of drinking the caffeine, I mean, these kids, these little kids are drinking a Starbucks drink, or a Dunkin' Donuts iced coffee, or a slushie that's made with coffee. The caffeine, the effect of the caffeine on them is going to be just like we feel. They're going to become addicted to it, because it is a highly addictive product, and they also are going to suffer the same withdrawal effects. They're going to get used to it. They're going to want more to feel the same effect, whether they're 10 or whether they're 18, 19. They are going to become addicted to it, they're going to want more, or they're going to need more to get the same -- you know, the same feeling. That's the addictive properties of it.

The high amount of sugar that's in these are definitely impacting the possibility to add to the high rate of obesity in this country, and that's something that I go out and teach about and try to fight with my nutrition lessons every day of the week. This is something that is very dangerous for our children, the energy drinks alone, the fact that it causes and enhances the possibility of the high rate of obesity. We now have definitely one generation of children, possibly two, because of these repercussions, will not outlive their parents, and these are the sicknesses and the illnesses that come with that. We might not see them right now, but maybe in 10, 20 or 30 years. There's illnesses, there's cancers, there's the diabetes, the Type 2 diabetes, the high blood pressure, so on and so on. The American Dental Association has also reported a very high rate of dental cavities and they -- dental cavities and all that other stuff in children.

And then the other thing I wanted to touch on was their brain development. The caffeine, along with the other products that are in these energy drinks, the ones that might not meld with them too well, are affecting their brain development. The frontal lobe of the brain is not fully developed until someone's 25 years old, okay? So it affects that part. The sleep deprivation. If a child is drinking these energy drinks, if they're drinking them on a regular basis --

*(*Timer Sounded*)*

Is that my time? There's a sleep deprivation, and that affects school work, it affects their behavior, it affects their growth. There's hormones lacking when you don't get enough sleep as a child that affects your growth and development also. And then the most important thing, the ingredients -- if I may continue, the ingredients in the energy drinks, along with the caffeine and the sugar, the guarine, the taurine, the amino acids, the B vitamins, the ginkgo biloba, the echinacea, on and on and on, the interactions or the contraindications with medications that a lot of these children are on nowadays. Asthma medicine, allergy medicine, medicine for ADD, you know, ADHD, and maybe they're on ritalin, there's contraindications with those products and those supplement ingredients that don't meld with them and can cause severe reactions, whether it's allergy, or whatever else is going on.

And what I like to tell the teen-age girls, that if they're on birth control pills, some of those ingredients can render those birth control pills null and void. Okay.

P.O. LINDSAY:

Okay. Before you go, Ms. Birmingham, there's some questions for you. Legislator Viloría-Fisher has a question.

D.P.O. VILORIA-FISHER:

Hi, good to see you.

MS. BIRMINGHAM:

How are you?

D.P.O. VILORIA-FISHER:

I agree, that we need education regarding the energy drinks, the problems with medications and the impact on different medications, but I know there are groups such as Cornell who are doing a good job of going out there and educating people. You mentioned dentists, and teenage girls who might be on birth control, and their professionals should have a role in educating. I think that that seems a much more effective way of reaching people than the sign in the store. Not that I'm saying I'm opposing that at this particular point, but I'm just saying we need to have a greater awareness campaign among our educators.

As far as banning the energy drinks for anybody under 19 years of age, I know that that's not -- I find another ban isn't really a very effective way of doing this, because kids will be able to get a hold of it. And much of what you referred to were coffee drinks, the lattes and the iced coffees, which have all that sugar and caffeine.

MS. BIRMINGHAM:

Right, but they do drink the energy drinks. And like the Doctor said, according to that Marin Report, which I have in here, too, and I have a copy of it for the Legislators and I have another copy for you, Mrs. Nowick, the -- they are drinking these things. They're going into the convenience stores and they are, you know, taking them and they are drinking them.

D.P.O. VILORIA-FISHER:

Yeah. Well, clearly, they're drinking them, but the examples that you gave, you began with the Starbucks and drinking coffee. And, as Legislator --

MS. BIRMINGHAM:

Well, I'm referring to the caffeine, yeah.

D.P.O. VILORIA-FISHER:

Let me finish the thought. As Legislator D'Amato said, are we picking out one product out of many that have these effects? But my question to you is, is there a way to get the message that Cornell is delivering so well? Because we have had educators come here and talk about the education that Cornell is doing, to the professionals who deal directly, health professionals, with the American Dental Association, talking about how that opens you up to greater problems with your health of your mouth; with OBGYN's, and when they're giving prescriptions for birth control pills, let these young women know that if they're going to use -- you know, drink a lot of Red Bull, they may not have any protection. Is there a -- is there a program underway to educate the professionals on how to educate their patients?

MS. BIRMINGHAM:

Yes. I have been for, now, a year-and-a-half, going to the local high schools, middle schools, and some of the freshman seminar classes at Suffolk Community College. I have a presentation, a PowerPoint, which I presented here to you, and I take that, you know, on the road, my little show, and lecture, and I compile a whole bunch of responses and like evaluations from them. And our second phase of this now is to -- we're in the process of formulating like a "Train the Trainer" program, which, then, that would be coaches and teachers and doctors. Whoever in the professional field would like to come can go ahead and get that education, too.

D.P.O. VILORIA-FISHER:

Okay. Thank you. Are there any other questions for Ms. Birmingham? Okay. Thank you very much.

MS. BIRMINGHAM:

Thank you.

D.P.O. VILORIA-FISHER:

Our next speaker is Carolyn Sullivan.

MS. SULLIVAN:

Good afternoon. Thank you very much for allowing me to speak. For the past 24 years, I've basically met parents and adolescents on one of the worst days of their lives. It's the day that they actually tell somebody that their child is a drug addict or a substance user. I work for Daytop Village here in Huntington Station, and I'm here today to talk to you about some of the things that we've been noticing that's been happening with your constituents and their children.

When we come into a treatment program, we're looking to address not just the child using substances, but the attitudes and behaviors. And today we're living in an instant society and we're dealing with a situation where kids are looking to get immediate results based upon things outside of themselves, whether it's the promise of being thin, or having more energy, or being smarter, that something that I take is going to improve my grades, instead of going back to hard work, discipline and the ability to develop their own sense of self and self-esteem. These are the issues that we deal with in treatment.

What we've noticed over the past, I guess, decade or so is that the number of adolescents coming into treatment for stimulant abuse has risen dramatically. Part of that is because of the rise in diagnosis of ADD and ADHD, that over 311% the number of prescriptions for stimulants went up in a period between 1990 and 1995 for adolescents starting at the age as young as five years old. We're noticing a similar correlation of adolescents coming into treatment is no longer 17 and 18 years old, as it was when I started in the field 24 years ago, it is now 15 and 16 years old, with a history of use as early as 12 and 13 years of age. It's a scary process when we think that an adolescent coming into treatment, we work with them, we work with the family, and we're finding that they are relapsing and going back to using drugs, both legal and illegal, based upon their desire to have that stimulant effect again. Our adolescents have realized that if they guzzle two to three Monster drinks without any alcohol, within a very short period of time, it has the same stimulating effect as cocaine. When we try to address the behavior, the response is, "It's legal, I bought it at 7-Eleven down the road." How do we then address that type of issue and that type of attitude where we have to focus on what is it that they're looking to achieve? How are we supporting them and teaching them that, you know, through their basic hard work and their own behaviors that they will make positive changes? This debate is not new, okay? It's been going on for years.

When we look at the fact that since 2009, 564 adolescents have died from sudden cardiac dysrhythmia, which is a very unusual occurrence for a healthy adolescent, but 564 adolescents have died. Partially, it is based upon that their bodies are being overstimulated. Nine times out of ten, it's because of something that we have put into our body that changes how we feel and causes those changes. We are coming in -- we have adolescents coming in with much more physical damage to their bodies. We're seeing more adolescents with ulcers, in conjunction with drinking the energy drinks, too much caffeine, and also through their alcohol use.

There was a comment, I believe, Legislator Eddington, that you had passed about saying that you don't like to ban something for somebody that, you know, a 19-year-old that we're able to send off to war. And I understand that statement, but let's consider this for a moment: When one of our adolescents decides to make a selfless decision to serve our country, as opposed to a selfish decision to put something in their body to change how they feel, when the adolescent enters into the military, they're making that binding agreement. They're of the age of majority (sic), they understand what the risks are. All along the way they are trained, they are prepared, and they are

looked out for by those that are leading them. We make sure that we engage in activities that are going to protect and encourage our adolescents. And when they perform a selfless act, such as going into the military, we make sure that it's -- we take care of them, that we look out for them. This cannot be said for this debate.

The consequences of consuming the energy drinks by our youth has shown that over -- I'm sorry -- that over the past decade, that we have sat idly by it. We have not held the companies that make the claims that it's going to enhance their performance accountable for those statements.

*(*Timer Sounded*)*

I have to stop? Okay. As elected officials, it is -- is it not your duty, though, to ensure the safety and well-being for our most vulnerable and easily influenced of our society? Each member of this distinguished legislation, when running for office, you stated that you wanted the very best for Long Island and its citizens. I ask you today, in all due respect, please live up to your ideals and the motivation that you had performing your duties as leaders of our Island. Protect our children and hold the companies accountable for these products. Thank you.

P.O. LINDSAY:

Thank you, Ms. Sullivan. Anybody have any questions? Nope? Thank you, Ms. Sullivan. Krista Whitman.

MS. WHITMAN:

Hello. Can you hear me?

D.P.O. VILORIA-FISHER:

Make sure that you hold the button on the base.

MS. WHITMAN:

I actually am.

MS. ORTIZ:

Make sure the green light is on.

MS. WHITMAN:

Can you hear me now?

P.O. LINDSAY:

Yep, we can hear you, Krista.

MS. WHITMAN:

Whew. Okay.

P.O. LINDSAY:

You seem to have a lot of energy. You didn't have an energy drink or something, did you?

MS. WHITMAN:

No, I didn't.

P.O. LINDSAY:

Okay.

MS. WHITMAN:

This is just natural. I got a good night's sleep, ate right.

P.O. LINDSAY:

Oh, okay, good. Natural is good. Okay.

MS. WHITMAN:

Thank you. Excellent. Hello. My name is Krista Whitman. I am the Program Coordinator of the Addiction Recovery Services Department at the Pederson Krag Center in Smithtown. I specialize in treating adolescent and adult substance abusers. Today I am representing the Quality Consortium of Suffolk County, 23 nonprofit alcohol and drug prevention, treatment and recovery programs. We would like to express our support for Resolution Number I.R. 2156, to alert consumers to the health risks associated with energy drinks, and I.R. 2210, to ban the sale of energy drinks to minors in Suffolk County.

There is growing concern about the health consumption of energy drinks by adolescents and its correlation to addiction. A 2008 study of college students found that energy drink consumption significantly predicted abuse of stimulants. As caffeine stimulates the brain using the same mechanisms as amphetamines and cocaine, this does not sound surprising. The high doses of caffeine, coupled with the other herbs and chemicals found in energy drinks, often can cause a release of neurotransmitters that are found to be highly pleasurable. Continued use of these substances can cause a natural desensitization of the brain to normally pleasurable activities. This can cause an adolescent to continue to seek artificial chemicals to create this high.

We are currently in a climate where our children have increased access to drugs and pills. Our concern is that adolescents will turn to other drugs when energy drinks no longer provide the high they crave.

Furthermore, a study published in the February 2011 edition of Alcoholism Clinical and Experimental Research found that college students who regularly consumed energy drinks were at a statistically significant higher risk for becoming alcohol dependent. Compared with low frequency and non-users of energy drinks, students who consume 52 or more energy drinks per year, that's one per week, were found to have started drinking alcohol at a younger age, consume more alcohol during a drinking session, and develop an addiction to the substance.

Another concern of the Quality Consortium is the dangers of mixing energy drinks with alcohol. Although Four Loko is not currently on the market, Red Bull and vodka is easily mixed and very well known. The dangers of alcoholic energy drink blends goes beyond the significant health risks to an adolescent's body. This combination creates a sensation of wide-awake drunkenness. Whereas alcohol often creates a feeling of drowsiness, mixing alcohol with the caffeine and chemicals in energy drinks mask the feeling of drunkenness without decreasing the alcohol-related impairment. Adolescents may feel they can continue drinking alcohol since they don't feel that drunk. It has been found that college students who mixed energy drinks with caffeine got drunk twice as often, were more likely to be injured, or required medical attention while intoxicated, and were more likely to perpetuate -- perpetrate or experience sexual assault than students who drank alcohol alone. We must step in where others don't and close the loophole that exists with energy drinks. By adopting this law, we will reduce the risks of addiction to our adolescents.

The Quality Consortium of Suffolk County would like to thank Legislator Lynne Nowick and her colleagues for bringing about I.R. 2210 and I.R. 2156 and taking the lead in creating effective efforts to protect our youth. Thank you.

P.O. LINDSAY:

Yeah. Miss Whitman, Legislator Kennedy has a question.

LEG. KENNEDY:

Thank you for coming out, Krista. And you do a great job with the consortium. But, also, I know that you've got experience, extensive amounts of experience working with adolescents in a range of addictive associations. And I have to be careful with my language here, because there are many different things in our society that people can use legally and reasonably, but, unfortunately, sometimes folks can go over the edge and fall into an addictive association. Obviously, without naming any kind of names or anything like that, what do you see as a counselor or as a practitioner? Does -- do energy drinks play any kind of role in groups that you're working with, or what is it like at ground zero for what you work with and deal with?

*(*The following testimony was taken & transcribed by
Alison Mahoney - Court Reporter*)*

MS. WHITMAN:

Our adolescents -- and for that matter, our adults, but I'll focus on the adolescents. Our adolescents usually come in in the later afternoon, after school. They usually come in with a Monster drink or a Red Bull in their hands. They drink that drink and then proceed to sit in a group or in a counseling session and are not able to focus on anything that's being said or done because they're pinging off the walls. You know, they're so energetic that they're not able to sit and actually focus on what's happening around them. It creates a situation where treatment almost becomes hindered by the amount of caffeine and energy and chemicals that they're ingesting in order to -- you know, before they come into the session.

So I definitely see an effect, a social effect on our youth. I mean, I don't know how they are acting in schools who are -- you know, if they're in groups, in a one-hour group and they can barely sit still because they just consumed an energy drink before coming in. I don't know how they're performing in their schools or how they're able to focus at home. It just creates a larger problem behaviorally.

The other thing to think about is when these kids are coming off of these energy drinks, they become social -- the withdrawal effects can be behaviorally challenging to control for parents as well as for other people; they become grumpy, they're not feeling well, they want their next fix of the energy drink or the caffeine. So it definitely -- I definitely see a social effect in -- at ground zero where I'm treating these kids

LEG. KENNEDY:

Okay. And again, thank you very much for coming out.

MS. WHITMAN:

Thank you.

P.O. LINDSAY:

Pamela Mizzi. Pamela? And Patsy Hirschorn is on deck.

MS. MIZZI:

Good afternoon. My name is Pamela Mizzi and I am the Director of the County's Prevention Resource Center. I have 30 years in the system working with people who are addicted and now working to -- a little bit further upstream, to prevent people from getting addicted.

I came here today to talk about exposing the market that's invested in making cash profit at the expense of the health and stability of our youth here in Suffolk County. It's not good business or good government to subject our youth to these manipulations and misinterpretations of policy regarding products that can threaten their health. The use of energy drinks has increased so rapidly because of the addictive properties of the drinks themselves and the aggressive advertising campaign targeting adolescent and athletic populations.

Once youths are hooked on the initial positive effects, they continue to purchase the products despite the diminishing desired effects of the drug. Increased use becomes a pattern and dependence develops. John Hopkins University School of Medicine reports, "The amount of caffeine necessary to produce dependency and withdrawal symptoms is about 100 milligrams of caffeine a day. An acute overdose of caffeine can occur at about between 50 and 300 milligrams per day. One can of an energy drink can have anywhere between 80 to 500 milligrams of caffeine." And this crucial information is missing from the can and from us as consumers to make an informed choice.

Whether a manufacturer positions a particular substance as a food or a dietary supplement is central to determining how the FDA will or will not regulate the use of an ingredient. In 1994, law was enacted which prevents dietary supplements from being subjected to the same stringent approval requirements applied to food additives. A manufacturer of energy drinks simply provides notice to the FDA and claims that the product can be, quote, "reasonably expected to be safe". FDA approval is not required. Although the FDA does limit the caffeine content in soft drinks because they are foods, no such limit is required of the caffeine content or the safety of any of the many additional ingredients that are in energy drinks. By marketing energy drinks as dietary supplements, manufacturers avoid having to prove the industry standard that ingredients are, as we heard earlier today, GRAS, or Generally Recognized As Safe. But they only have to say, they only have to make the statement or the claim that they are reasonably expected to be safe without submitting to the actual FDA approval. The FDA does not, then, therefore, approve or review the energy drink product before it is marketed.

Caffeinated energy drinks are the fastest growing sector of the \$93 billion domestic beverage industry. Studies indicate that today, energy drinks outsell soft drinks two-to-one. It's estimated that a full 35% of teens and 45% of young adults drink an energy drink each and every day. Not only is it harmful, but we're teaching children that they can improve their mood and performance by ingesting excessive quantities of the drug caffeine, enhanced by the synergistic effect of additional unimproved ingredients. As tolerance and dependence rapidly develops, which it certainly will on these drugs, often more powerful drugs are utilized. Some energy brands go so far as to promote their addictiveness as a selling point, naming the drink after an illegal drug -- I don't think we have that one present here today -- enticing the prospective buyer to "meet your new addiction" or "unleash the beast". While energy drink companies make light of the addictive properties of energy drinks, scientists, nutritionists, addiction professionals all know that the combined effect of all the ingredients go far beyond the effective caffeine alone, producing a pharmacological Molotov cocktail in the brain. The combinations of several stimulant, anti-anxiety and anti-depressant agents have conflicting biochemical and pharmacological interactions in our bodies and brains.

An additional concern for youth is the link between intensive caffeine use and the development of psychological disorders such as anxiety and depression. Dependence on mood-altering substances is known --

P.O. LINDSAY:

Ms. Mizzi, could you wrap up? And there are some questions for you, all right, so you'll get a chance to talk some more.

MS. MIZZI:

These energy drinks are -- effect the brain and people develop a dependency to them. The promotion and the use of drugs for their recreational and stimulant properties sends a potentially harmful message to adolescents that glamorizes and encourages drug use. These imperative legislative initiatives to prohibit energy drink sales to minors and to caution unsuspecting public of the known risks of energy drinks are essential efforts to warn adults and guide youth away from harmful and dangerous choices. Thank you.

P.O. LINDSAY:

Okay, just stay there. Legislator D'Amaro has a question and then Legislator Gregory.

LEG. D'AMARO:

Thank you. And thanks for your testimony. The distinction between a dietary supplement and a food, which is very important when classifying something when you're going to the FDA regulations. Who decides whether or not it's a dietary supplement or a food; do you know? Is it the FDA that agrees with that, is it the industry, is it reviewed?

MS. MIZZI:

I believe that is the FDA's responsibility.

LEG. D'AMARO:

All right. So the FDA has agreed with the industry that these are dietary supplements?

MS. MIZZI:

Correct.

LEG. D'AMARO:

All right. And that allows -- if you are classified as a -- if a product is classified as a dietary supplement, it exempts you out from under some of the disclosure requirements and regulations that would apply to foods.

MS. MIZZI:

From the FDA approval process for foods.

LEG. D'AMARO:

Right, that -- and the article I'm looking at here says, "It also allows you to make claims like it enhances athletic performance, increases caloric burn and mental sharpness and things like that."

Now, I apologize, I missed -- what's your -- in what capacity are you here today?

MS. MIZZI:

I'm the Director of the Suffolk County Prevention Resource Center and I have 30 years of history in the field of addiction.

LEG. D'AMARO:

Okay. So your position is that these particular drinks, when you combine all of the additives that the industry has determined to be safe and which the FDA has said, "We agree that it's a dietary supplement," nonetheless, you're coming up with a very potent combination of ingredients in a drink that's having a deleterious effect on a lot of the people that you see; is that what you're saying?

MS. MIZZI:

That's correct.

LEG. D'AMARO:

It is. But do you see the same effects from other products?
I mean, is it just, you know, energy drinks?

MS. MIZZI:

I'm not aware of any other product that has this same combination of vitamins, caffeine and other regulated and unregulated substances, like Taurine, Guarine, {Hysop}, Glucose.

LEG. D'AMARO:

Right. I saw the ingredients, some of them I can't even pronounce.

MS. MIZZI:

Yohimbe.

LEG. D'AMARO:

Yeah. But the FDA -- do you agree the FDA has looked at those individual ingredients and determined them to be safe, or do you know?

MS. MIZZI:

I would not agree with that statement.

LEG. D'AMARO:

You wouldn't agree that the FDA has concluded that they're safe, or you would just --

MS. MIZZI:

I don't believe the FDA has looked at every single one of the many ingredients that are involved in the manufacture of a variety of energy drinks and determined any of them to be safe, either in combination or by themselves.

LEG. D'AMARO:

So what we have is a new type of drink that is marketed in a certain way to be attractive to young adults or teens, adolescents.

MS. MIZZI:

It's in the category of "reasonably expected to be safe".

LEG. D'AMARO:

Correct, right.

MS. MIZZI:

And that's the manufacturer's statement.

LEG. D'AMARO:

But by definition, then, it's really -- there's no conclusion yet, especially when it comes to long-term effect. Do we know what the long-term effect might be?

MS. MIZZI:

Right, there aren't any studies that I found about long-term effects of these combinations.

LEG. D'AMARO:

I mean, we know, you know, drinking to excess over the long-term, we know what the impact of that could be, both socially and physically on your body; the same with smoking, the same with a lot of other things. Not that I want to equate all of these. Certainly some things are much more

dangerous than others. But again, you know, in deciding, sitting here as a member of this body, whether or not we want to wait and take a wait-and-see attitude -- after all, we can rely on the FDA telling us, you know, "We've looked at a lot of these substances and we have determined that they're safe." Or do we want to say that the jury is still out, we don't know what the long-term effects are going to be, you know, it's better to err on the side of caution and say let's at least limit kids' access to this stuff until we know what the long-term effects are going to be. But if I hear you right, what you're saying is that you believe, based on your own personal observation and experience, that these particular drinks are having a substantial negative impact on teens.

MS. MIZZI:

That's correct. And they're making them more likely to use a variety of other drugs sooner than they may have without the introductory effects and dependence and withdrawal and tolerance effects of caffeine and the combination in energy drinks.

LEG. D'AMARO:

One more question. If we did go ahead and say we're going to prohibit those under the age of 19 access to energy drinks, do you think that's effective? Do you think that's an effective approach?

MS. MIZZI:

Well, to go back to my colleague Dr. Reynolds' answer on that question, yes, I think it's an important step in the right direction. It's not going to solve the entire problem, not one single solution will, but I think this is an effective and crucial piece of the entire problem.

LEG. D'AMARO:

Okay, thank you.

P.O. LINDSAY:

Legislator Gregory.

LEG. GREGORY:

Thank you, Mr. Chair. Hi. Over here.

MS. MIZZI:

Hi.

LEG. GREGORY:

Now, I'm going to play the devil's advocate. You had mentioned earlier in your testimony about the milligrams that are present in energy drinks. I met with some representatives in my office and I looked at it as well, and they were right in saying that some of the energy drinks, particularly related to caffeine, the caffeine levels for coffee and other things are at a lower level than in energy drinks. Or actually higher level, I'm sorry, or equal to or higher amounts. What do you see -- do you have a comment as to the disparity of targeting energy drinks; is it specifically because of the marketing or because of the other contents?

MS. MIZZI:

Well, the amount of caffeine is not regulated at all. And so you have a disparity from 80 milligrams up to 300 milligrams and there's nothing stopping anybody from making a drink that has 500 or a thousand milligrams of caffeine in it, that's A. B is the caffeine, in combination with a host of other different ingredients that on their own act as anti-depressants or anti-anxiety agents, in combination with other ingredients and caffeine, we are not sure of the end result except that it is -- it does include dependency.

LEG. GREGORY:

Okay. So your remarks aren't solely limited to the levels of caffeine. Because that would be something that's present in other drinks that are available to our young people other than energy drinks; correct?

MS. MIZZI:

Right. And I see a big difference between anything available at Starbucks and the host of -- the range of concoctions available under the heading of energy drinks as additives, not as food.

LEG. GREGORY:

Okay. Now, onto the studies that were mentioned by you and Dr. Reynolds earlier about the correlation between energy drinks and alcohol? Now, is it -- do the studies layout that those who tend to drink energy drinks drink alcohol, or those who drink alcohol tend to drink energy drinks?

MS. MIZZI:

I'm not as thoroughly as familiar as maybe Jeff is, but the studies I am familiar with lay it out that the energy drink was first and then they're more likely to become addicted to other substances.

And my personal take on that is because of the brain changes that have occurred as a result of this combination that we're calling energy drinks, the addiction process of dependence and withdrawal and the biochemical changes that occur in the brain to the neurotransmitters.

LEG. GREGORY:

Okay. So the energy drinks are acting in a way as a gateway drug to alcohol. But isn't the addiction of alcoholism and caffeine, that's a different -- I'm not a scientist, I don't have a science background. I would think that there's a different -- addiction or chemical dependencies are not similar, correct? I mean, addiction is addiction, but --

MS. MIZZI:

That's just what I was going to say; addiction is addiction.

LEG. GREGORY:

Okay. All right, thank you.

MS. MIZZI:

Thank you.

D.P.O. VILORIA-FISHER:

Legislator Stern.

P.O. LINDSAY:

Legislator Stern, did you want to question this witness?

LEG. STERN:

Yes, thank you. Good afternoon. I'm trying to understand the distinction or the correlation between the caffeine, the high levels, in some cases, of caffeine in these energy drinks and the other additives, the Guarine, the Taurine.

We talk about addiction, we talk about addiction to, perhaps, these products and how it serves as a gateway to other perhaps more dangerous, more addictive products. In your experience, what is the addictive quality of an energy drink? Is it the high level of caffeine or is it the additives to the high level of caffeine that causes the addiction, or is it something else?

MS. MIZZI:

Mr. Stern, I am wondering the same thing myself. It's a legitimate question because nobody knows. And that's part of the problem, that the FDA hasn't seen fit to investigate and the amounts and the combinations are completely unregulated.

LEG. STERN:

Are you aware of any scientific studies that have linked addiction to some of these other additives that aren't made a part of a high caffeine content energy drink? I'm trying to get a handle on the impact, if any, of these other additives to the high level of caffeine in the same drink.

MS. MIZZI:

Well, what I can say for sure is that there is a synergistic effect in that it's no longer an equation of one plus one equals two. We see this in addictions all the time, that when you add one drug with another, the effect is greater than the simple additive effect of one plus one. And that's what we think is going on here with energy drinks. Alone, Echinacea or {Hysop} or Taurine or Gaurine may not be that detrimental to an individual, healthy body, but in combination and in high frequency doses, we see red flags all over the place.

LEG. STERN:

And when you say one plus one doesn't necessarily equal two or doesn't necessarily equal three, of course when you throw in the marketing effort directed towards our young people, then one plus one plus one could equal ten, and I understand that.

In your experience, because you're working with our young people and these are the conversations that you're having, and you had mentioned earlier the direct marketing impact on our young people, to what extent do you find that that element either leads to or sustains the addiction for these drinks?

MS. MIZZI:

I think it has a significant effect. I was party to a gathering of high school students who were invested in their health and who were gathered specifically because they were people who were not drug users, they were leaders in their communities. They brought with them energy drinks, and someone in the group mentioned to that individual that did she know energy drinks were a risk to her health, and she was horrified herself and she set about learning for herself and sharing with others the risks and perceived benefits of energy drinks. She took it on as a personal crusade.

LEG. STERN:

Thanks.

D.P.O. VILORIA-FISHER:

Okay.

P.O. LINDSAY:

Okay, thank you very much.

MS. MIZZI:

Thank you.

P.O. LINDSAY:

Patsy Hirschhorn.

MS. HIRSCHHORN:

I have copies. Good afternoon, and thank you very much for giving such an opportunity for people to speak to you regarding this very important subject. My name is Patsy Hirschhorn, I have, for almost 40 years, been working only with families and children and helping the families to make good choices for their children and helping the children learn to make good choices for themselves.

I am a licensed clinical social worker. And my interest in this particular topic came when just about 18 months ago I was invited by the Association of New York State Youth Bureaus to attend a symposium. The symposium was in New York City in June of 2009 and was sponsored by the SUNY Youth Sports Institute. The Youth Sports Institute was chartered by the State of -- State University of New York, and one of its purposes is to identify challenges of youth sports, refined opportunities, connect -- correct inadequacies, encourage positive attributes of current sports programs, and assist local communities to create sustainable, positive sports environments.

Why would they then be talking about energy drinks? Because they wanted to make sure that among the people that had come to them as people being trained to be coaches in both organized sports teams and in Little Leagues and high schools, etcetera, through all their training sessions that they have provided over the past year and a half before this symposium was organized, parents and coaches were frequently asking questions about energy drinks and hydration, and they found that there was tremendous confusion about the purpose, nature and contents of energy drinks. So they went about getting a lot of scientists together and they met at this program, in this forum in New York City, and one of the things is that they wanted to get people together to discuss this, but also to create the science that was there at that time. And one of the -- one of the reports that I've given you is by a Michael Koester who is one of the doctors that did one of the workshops there, and a point that he made was that, "Like all nutritional supplements, there are currently no regulatory controls over energy drinks. Therefore, their contents and purity cannot be assured. This may lead to a variety of adverse consequences. The most concerning is the potential for harmful interactions with prescription medications that the athlete may be already taking. There's particular danger for those who are taking stimulant medications for ADHD," which we know many students that -- or many other people who are non-athletes are also taking. "For athletes who are subject to drug testing, there's also the possibility of a positive drug screen if the manufacturer knowingly or unknowingly adds banned substances to the beverage."

He went on to talk about the Sports Medicine Advisory Committee's position on energy drinks, which I've also given you a copy of. The background there is that energy drinks have been growing in popularity. In 2006, 500 new brands were introduced to the market, and over seven million adolescents reported that they had consumed energy drinks. The beverages are particularly popular among young athletes who see the consumption of energy drinks as a quick, easy way to maximize athletic and academic performance.

They went on to say that energy drinks should not be used for hydration. That information about the absence of benefit and the presence of potential risk associated with energy drinks should be widely shared among all individuals who interact with young athletes. Energy drinks should not be consumed by athletes who are dehydrated. Energy drinks should not be consumed without prior medical approval by athletes taking over-the-counter or prescription medications.

They went on to say, "What are the possible effects of using energy drinks?" The central nervous system can be affected by the high doses of caffeine. The gastrointestinal system can be infected by the high concentrations of carbohydrates. Dehydration, including high -- including diarrhea, can be caused by the high carbohydrates and diuretic effect increased fluid loss by caffeine, and there can be positive drug tests.

P.O. LINDSAY:

Ms. Hirschhorn, you are out of time. If you could wrap up, I'd appreciate it.

MS. HIRSCHHORN:

Okay. Finally, the NCAA has also made a ten-year report, after having had an original report or an original charge to look at things that were encouraged for athletes. And one of the impermissible supplements that is in the NCAA guidelines is Taurine which is, of course, a component of many of these energy drinks. Thank you.

P.O. LINDSAY:

Thank you very much. Okay. Dr. O'Shaughnessy?

DR. O'SHAUGHNESSY:

Hello. Good afternoon. My name is Dr. Patrick O'Shaughnessy, I am a Board Certified Emergency Physician. Locally, I am the Director of St. Catherine of Sienna's Emergency Department, I'm also the interim Chief Medical Officer. I have a background in toxicology. I am here to support the Legislator (sic) that's before you today. I think some of the prior presentations that have been given have exceptionally well summed up the issue surrounding the energy drink issue.

What I will start with, and I'm going to change focus so I don't reiterate what has been said already. Has anybody had to go into a room and tell a family member that their child is dead? No, so I have your attention. Thank you. Or that their husband just had a stroke or that their adolescent child is in status epilepticus because of ingestion of four of these types of drinks? I have and it's unfortunate. And to be blatantly honest, the problem here is that there's a clear gap in regulating production of these drinks.

I see some Starbucks containers along the table. I myself utilize caffeine regularly. Let's get one thing clear, caffeine is a drug. And a brief from a toxicologic standpoint, and I think which was articulated very well about the concept of synergy or the fact that one plus one does not equal two, and this is not purely a caffeine related issue. The problems are as follows, and I'll spell them out and be blunt. Exceptionally high doses of caffeine combined with the other additive ingredients, the herbal stimulants and whatnot. I thought you articulated exceptionally well the issue surrounding Ephedra way back when. Are we going to wait until we see similar such outcomes from these drinks? They're not regulated currently, and it's been exploited and it's exploited to especially younger patients. Children are not little adults, their physiology is very different; what they ingest and take in now can affect them for the rest of their lives on many different platforms.

What I'll share with you, and then I'm going to open it up to you for questions; since you have a physician here, maybe you have questions for me about my experiences, about what I've seen in the trenches, about what's happening in your neighborhoods, in your emergency rooms. Remember, I'm the guy at 2 AM that has to figure out what your loved one ingested and keep them alive. So caffeine, when you look at the structure of caffeine, molecularly there's not much difference. Moving down a pathway, it's a Methylated Xanthine, it's very similar to stimulants, to Ephedra, to Methamphetamine. One of my toxicology classes I took when I was a resident physician, this was back at Bellevue, once said there's an old adage that the Japanese flag was actually formulated visionally out of a Japanese General who was actually tweaking on Methamphetamine, and that's where they got the rising sun and whatnot. So caffeine addiction is a real entity. Caffeine intoxication is also a real entity, as is caffeine withdrawal.

So I'm going to open it up to the folks here and if you have any questions for me.

P.O. LINDSAY:

Okay. Legislator Nowick.

LEG. NOWICK:

Dr. O'Shaughnessy, thank you for coming here. I know we discussed this months and months ago and you were very enlightening for me. Let me ask you a question. You're the emergency doctor, or in charge of emergency at St. Catherine's of Sienna and you're well respected.

Dr. O'Shaughnessy, knowing what you know and knowing what's in these drinks, would you let -- would you let your children, if you had the choice, drink any of these drinks?

DR. O'SHAUGHNESSY:

Absolutely not. I think that what we'll find out in time is that the combination of the exceptionally high doses of caffeine parred with the herbal stimulants have serious deleterious effects; we know this. I have seen patients come in seizing, I have seen patients have lethal ventricular dysrhythmia, a cardiac erythema and go into cardiac arrest. And the problem is -- and I think that was also mentioned before over here, is the process of receptor down regulation, it's like any other addictive product. So if one can made you feel well, you're going to drink two and three because you're not going to get the same effect as you got with one. And we see this all the time, we see patients that will actually wind up making their own pharmacology out of things that are readily available.

LEG. NOWICK:

Do you -- do you feel that education alone for young people would do the trick, knowing what you know about emergency rooms?

DR. O'SHAUGHNESSY:

Education, as always, would be a key piece, number one. I mean, we were talking about steps, steps to improve the process, steps banning, perhaps, sales to, you know, pediatric under 18 population. Education, that's a piece of it, that's not all of it, unfortunately. Because there will always be work-arounds, there will always be ways to get what they need to get; unfortunately we know this. So until -- my personal feeling, that is until there is some form of FDA regulation as to what is going into the drink without adequate warnings on the bottle, I think that, too -- you know, how many years it took before that clear warning was on the package of cigarettes, that this definitively causes lung cancer. You know, we had to wait how many years before we had that data? I'll tell you, the data will be there, it will only take time. The studies just have not been conducted. Clearly there's just a gap and these classes of substances are not being regulated and this is the problem.

LEG. NOWICK:

And just one last question, and we talked about this and I see all the back -- the background paperwork. The FDA is not regulating energy drinks, as I understand it, but the Dietary Supplement Act does.

Now, if the government was so well regulated, how did that Four Loko get on the market and get sold to young people? Tell me.

DR. O'SHAUGHNESSY:

Yeah, it's a very -- it's a good point. And, you know, there are always, unfortunately, going to be things I think that sneak through. So the educational piece, we would hope, as we gain a sense of awareness about really what are in these drinks and what they can do to you. I've heard testimony that I would agree with about the potential for development of diet diabetes, hypertension, cardiovascular, cerebral vascular disease, obesity, even with the high sugar content, this is also part of it. But, you know, clearly, unfortunately, I think that people don't really know what they're ingesting, and that's the problem. They think that it is equivalent to going into Starbucks and getting a cup of coffee when it is not.

LEG. NOWICK:

Thank you.

P.O. LINDSAY:

Okay. Legislator Kennedy.

LEG. KENNEDY:

Thank you, Mr. Chair. In fact, I was going to thank you for being here. You always speak very well and, as matter of fact, we've had many conversations and, as a matter of fact, I've seen you in the ER at midnight. But I -- you've dealt with many significant issues, and I guess I'm going to try to parse my question to you as I did before, and it has to do with some of what I asked Krista about, in particular dealing with adolescents and some of the other substances that adolescents who are easily influenced may, in fact, be ingesting.

When you have a -- any patient that comes in, but particularly an adolescent, and you're trying to go through that initial they hit the door, what's the cause of this calamity; are you seeing things that may mix with these energy drinks? What's the range, what do you see there?

DR. O'SHAUGHNESSY:

It's a huge range, unfortunately. Like I said, you know, you can see people that will -- they will know how to take out of their own medicine cabinets the, you know, appropriate over-the-counter medications and combine them into a format where they become problematic. Probably the biggest piece that I'm seeing now in the older adolescent population, and this is a subset of what was discussed earlier, is the combination of alcoholic beverage use with the high energy drinks. And what's happening is, and, you know, maybe you're not getting the same effect from your plain coffee, but people are actually getting the combined poly-pharmacy effect of this stimulant with these drinks and allowing them to ingest a tremendous amount of more of alcohol, more that they probably would have never drank on their own. And the key phase of intoxication, both caffeine intoxication with alcohol intoxication, there's a lot of masking with symptomatology. So they may think that they're okay to drive, they may think that they're okay to text while driving, which we know they should not be, but my point being is the half-life of caffeine is less than alcohol. So what invariably happens, to your question, is the alcohol kind of lingers, the caffeine wares off and they become comatose. So I'm seeing people come in with caffeine related issues, drink related issues, palpitations, dysrhythmias, anxiety and then -- on the one end of the spectrum. On the other end of the spectrum, unfortunately I've had cases of sudden cardiac death, erythremia, stroke, what have you, and it's because of mixing of all the different components. And I just don't think that people really are grasping what's in that beautifully-colored can that is being marketed to them.

LEG. KENNEDY:

Thank you again, Doctor, for being here.

P.O. LINDSAY:

Legislator Cilmi.

LEG. CILMI:

Thank you. Hi, Doctor. I wonder if you could -- I'm not sure if you're equipped in your knowledge base to answer this question, but I'll ask it. The -- could you somehow compare the addition of milligrams of caffeine to the addition of these other chemicals that are in these drinks? In other words, if you have a cup of coffee that say has 80 milligrams of caffeine in it and, you know, and then you take that same caffeine level and put in these chemicals, compared to you take that 80 milligram cup of caffeine and double the caffeine content to 160 milligrams of caffeine; if you compare those two concoctions, which is -- do you have any idea which one would give you greater short-term effect?

DR. O'SHAUGHNESSY:

The combination; yeah, the combination, clearly. Because the half-life of caffeine metabolized, many times what these additives will do is they will extend the half-life of the compound, or what potentiated. So what happens is you get a poly-pharmacy effect.

It's not one plus one equals two, it's one plus one more likely equals four. And you compound that on top of the fact that you're getting a ten-fold, on average, increase in dosage of caffeine.

Now, when you get a hot cup of coffee, you're sipping it, you're enjoying it maybe over an hour or so, but these energy drinks many times are ingested very rapidly, and we're seeing multiple doses of that. So now you have a therapeutic index for herbal stimulant and caffeine, and then you very rapidly move off of that curve into the toxidrome of caffeine intoxication and then all of the issues that come with which are deleterious to our health.

LEG. CILMI:

Talk to me about all of these other -- this other spectrum of chemistry that goes into these drinks. Are they -- are they being studied currently -- maybe not by the FDA, but by some other private organization -- to look to see each one individually and then in concert with each other when infused into a caffeine drink, what the effects are?

DR. O'SHAUGHNESSY:

Right. To the best of my knowledge, no, there's not random placebo control trials. When you look at what it takes to take a drug from RND to market, it is a tremendous process that is regulated. Now, I'm not equating that they're equal players, but what I will say to you is, to extrapolate off on the whole nutritional supplement market that's not regulated, how many times I'm sure you yourself have been -- you know, get a bottle in GNC and it said, "Oooh, Ginseng, it's good for my mentation, it's good for cognitive ability." Recently it was just actually shown in a study in the New England Journal to have zero benefit, and that's published medically now, it took time for that to happen. So all of these things, as far as with the herbal supplements and the herbal stimulants and the herbal components to these drinks, there's a lot of anecdotal evidence but there are not strong, random placebo control trials to justify the benefit. Now, I'm not saying that there may not be a benefit to some of them, they're just not studied so we don't know.

LEG. CILMI:

Well, and I'm sure you would agree that we could undertake a study today that would tell us X and 20 years from now we could hear that it's the exact opposite. We see that over and over and over again with a variety of different foods and other things.

DR. O'SHAUGHNESSY:

Correct.

LEG. CILMI:

Are there any other food products or beverage products that contain the chemicals that are talked about in this bill? Not the caffeine but the other chemicals.

DR. O'SHAUGHNESSY:

There are other beverages out there that will have smaller component amounts of, say, amino acids in them, vitamins in them, but nothing to the extent where they have this potent concoction of a ten-fold increase in caffeine paired with herbal stimulants on top of it.

So you may see other drinks marketing, say, vitamin B-6 or different vitamin supplementation in that beverage, but not as a stimulant, not as this is marketed.

LEG. CILMI:

But I thought part of the problem here is that we have no -- they're not required to indicate what percentage or quantity of all these different chemicals exist in these drinks; correct?

DR. O'SHAUGHNESSY:

They merely -- if there is some deleterious side effect per the Supplement Act, they need to make that public, they need to state that. They don't need to necessarily quantify the amount that is in it to be specific, you are correct.

LEG. CILMI:

So, therefore, in other foods that might contain these same substances, does the same hold true, that while the substances may exist in these other foods, they're not quantified and, therefore, we don't really know how much is in there and, therefore, how do we know if it's having a deleterious effect or not?

DR. O'SHAUGHNESSY:

I do not know of any other food, nutritional source or beverage that has the same profile as these agents as a class.

LEG. CILMI:

Okay. Okay, thank you.

DR. O'SHAUGHNESSY:

You're welcome.

D.P.O. VILORIA-FISHER:

Legislator Barraga.

LEG. BARRAGA:

Doctor, thank you very much for joining us. I guess -- I've been listening attentively in terms of the different speakers, but let me ask you a question. For example, I don't know what your specialty is, but certainly you've been detailed by pharmaceutical representatives who come in and they have a particular product, they express the benefits, and they should be telling you also the side effects associated with their medications, and then you make a judgment call as to whether or not you will prescribe their particular drug.

With all the dialogue and your experience, what seems to be lacking here is any research data. For example, most pharmaceutical companies, they all provide one study after another after another to show the effects of their particular drug. In this particular case, you've got caffeine plus herbal supplements, and the question is you've had dire consequences with this combination, but yet no one anywhere seems to have a study, something that says, "Look. You know, when you combine these different elements together, this is what happens." The Food and Drug Administration has nothing, State Health Departments have nothing; why is that? I mean, you're saying there's a gap, but if it's such a serious issue, why hasn't someone done something or why aren't studies in progress right now to determine the effects of these particular energy drinks? Because we're not getting that, we're not getting that.

DR. O'SHAUGHNESSY:

Correct. And to your point, that's why I'm here; I just can't understand why not. Because I know clinically, I see the outcomes, I see the side effect profile, I see what happens.

Now, listen, I'll be the first to raise my hand and say that I, too, am an addict for caffeine. I have my cup of coffee a day; you take my coffee away, I'm not the same guy. But it's very different than what is in these drinks. And to your point, it has not been studied. In fact, even when it is studied, you still, as a physician, you have to question the validity of the data. What is the underlying agenda? How many times in the pharmaceutical business do we see a study, whether it be a COX-2 inhibitor, whatever it may be, that the literature has changed on the efficacy and safety profile, but we're not seeing that in the whole nutritional supplements as a class.

LEG. BARRAGA:

Is this ever discussed, for example, among members of the Suffolk County Medical Society or the New York State Medical Society or different medical conventions that takes place throughout the nation, this particular issue, to put pressure on someone to do a comprehensive study?

DR. O'SHAUGHNESSY:

To your earlier point, as a Board Certified Emergency Physician, we have brought this to our college, the American College of Emergency Physicians. We have broached this topic. We are working within our collective college and with the American Medical Society to get these points to the right people so that people can then make the correct Legislative changes to make sure that we do have added safety on these products.

LEG. BARRAGA:

Because I certainly understand your experience, but what you're asking the Legislature to do here is to make a decision based on information we don't have, nothing concrete. We can have supposition and we can have your experience, but we don't have a study that says, "Look, you know, we took a look at 4,000 people who are using these energy drinks with these supplemental elements in those drinks and this is what we found"; we don't have that.

DR. O'SHAUGHNESSY:

And neither did you for cigarettes 40 years back.

LEG. BARRAGA:

Oh, I understand.

DR. O'SHAUGHNESSY:

You know, so that's the point. The point, I think, why we're all here is to say are we going to find a way to collectively be proactive and to act -- to invoke safety for our --

LEG. BARRAGA:

But should we be passing this legislation to be proactive or should we be putting pressure on pharmaceutical companies, medical societies to do comprehensive studies, to make a determination as to the side effects and negatives associated with this particular drink?

DR. O'SHAUGHNESSY:

I think, you know, like I said, the fact that there is not a, you know, multi-center, random placebo control trial demonstrating the risk profile of the ingredients in these drinks, I don't think that any physician colleague of mine would say that we would wait to advise our patients on the dangers of these drinks until that such data is published. Because kind of what you're referring to is, you know, anecdotally what we see in clinical practice versus what has been published, there are many studies that will never happen, will never occur for various reasons, and yet we know what is the best outcome for our patient and that's what we advise them on. So my advice, my practical advice for patients is, you know, if you really feel that you need caffeine, have a cup of coffee a day and limit it to that.

My biggest concern is for the kids. It's for the adolescents where these drinks are marketed to, to the points that were well articulated earlier. There is a real entity of caffeine intoxication and inebriation. It is releasing neurotransmitters in the brain, it is providing a euphoria, it is addictive and this is what we're seeing. And it leads -- it is a gateway to other drugs, unfortunately, I believe. Again, whether we want to go down the pathway from a stimulant perspective or not, that has been well published in emergency medicine literature.

LEG. BARRAGA:

Thank you for your -- thank you for coming and thank you for detailing your experiences. But on a personal level, I'd like to see some firm data with reference to the effects of this particular drink on a population before I make a positive decision in supporting a bill like this. And obviously there is no data. Thank you.

DR. O'SHAUGHNESSY:

You're welcome.

D.P.O. VILORIA-FISHER:

Legislator Cooper.

LEG. COOPER:

This whole debate has taken me back to 2003 and reminding me slowly about the arguments that we had when we considered my Ephedra legislation. And my recollection is that under DSHEA, the Dietary Supplement Health and Education Act, which I think was enacted in 2000 -- 1994 or 1993.

DR. O'SHAUGHNESSY:

Right.

LEG. NOWICK:

Ninety-four.

LEG. COOPER:

Ninety-four, that if it's a pharmaceutical drug, it has to be proven safe before it's allowed on the market. But if it's a dietary supplement, it could be out -- allowed on the market and then the FDA has to act to remove it from the market if they subsequently find out that it's unsafe.

DR. O'SHAUGHNESSY:

Correct.

LEG. COOPER:

So it's sort of flipped, and which is why -- one reason why the Suffolk Legislature acted to ban Ephedra. But also, I think it was last year or maybe the year before, another one of my bills banning electronic cigarettes where there were no hard, definitive studies proving that they were unsafe, there was certainly anecdotal information, but we decided as a body that it made more sense to protect the health of Suffolk County residents to ban their sale until proven safe rather than allow them to be sold and then find out later, like cigarettes, that they are unsafe.

DR. O'SHAUGHNESSY:

Right.

LEG. COOPER:

You -- and I'm sorry, I was out in the lobby so I may have missed this. But you had mentioned earlier that you had some personal experiences with patients of yours that either showed up at the emergency room with serious adverse health effects, or maybe even fatalities, but I don't think you

gave any concrete examples. I mean, can you give us some idea, how many incidences like this have arisen; where there two or three cases, dozens of cases? And maybe if you can just very briefly recount a couple of the cases.

DR. O'SHAUGHNESSY:

Yeah. I mean, specifically for me, you know, fortunately I haven't had that many bad outcome cases related to the use of drinks as a whole, but I have had specific cases where patients have come in seizing, cardiac erythema. And what I would say is a better way to obtain the data, I mean, I reflect back to my time with Bellevue, if you contact a poison control center, you could very easily get the numbers of calls that are put into poison control regarding ingestion of such agents. And regarding Legislator Barraga's comments, I mean, we could easily conduct a trial now where I've given three cans of such drink and you would see the effects almost immediately and they are very potent, they're very clear, you could pick up on them immediately.

So regionally, if you look at the number of cases that occur, I would say that the majority of ingestions, fortunately, they're not fatal or they don't have life-altering outcomes. But clearly, to the points that were mentioned earlier, we don't know what the long-term effects would be, either on brain chemistry, blood vessel, you know, composition. You know, the whole issue of spiking your blood pressure, it's a sympathomimetic response; blood pressure goes up, mean arterial blood pressure goes up, intracranial pressure goes up. I mean, these -- at a low dose level, these are good things; you feel more alert, you feel more responsive, dopaminergic transmissions increase, serotonergic transmission increases, you feel more euphoric. This is why people keep going back to Starbucks. The problem becomes when you go ten-fold above what is normal and you go into that toxicologic curve that I mentioned earlier.

So to get back to your point, I have had my share of specific cases that have been linked to use of such drinks. But I think globally you get a much better sense, even local. Unfortunately, I think Winthrop is actually closing, that's the local poison control center here on the Island. But, you know, I could certainly reach out and communicate results to the panel from my colleagues at Bellevue about the number of cases that are called on, and it is quite a few.

LEG. COOPER:

If you could do that, that would be very helpful.

DR. O'SHAUGHNESSY:

Sure.

D.P.O. VILORIA-FISHER:

Legislator D'Amaro.

LEG. D'AMARO:

Yeah, thanks. Hi. Thanks for your very enlightening testimony, I appreciate it. I want to go back to something you said, people don't know what they are ingesting; that's a scary statement coming from a physician, I have to tell you.

The debate in my mind is, you know, which way do we err? Where do we go with this? Legislator Barraga I think is correct, there's not nearly enough data or probably studies out there. It's a relatively newer product, there's not enough scientific information out there to satisfy individuals such as yourself as to "Yes, it's safe," or, "No, it's not." But how do you square that with the FDA, allowing it to be classified as a dietary supplement and also the FDA saying that these individual ingredients standing alone are safe? I mean, why has -- why wouldn't the FDA step in at this point? Do you know anything about that?

DR. O'SHAUGHNESSY:

I can't specifically comment as to why such action has not been taken, but I know that it is, you know, in dire need. And I know that -- I think part of the problem really stems back to the issue that caffeine is near and dear to all of us, right? It's not necessarily viewed as a drug, but it is a drug; in fact, we use it for some pulmonary patients. I think you mentioned your grandmother said, you know, a little bit of everything is not -- you know, is not a bad thing, and that's actually applicable somewhat here. I mean, you know, too much acetaminophen will kill you, clearly, too much salt or even too much oxygen will kill you. So there's a dose of response that's very important and I think we lose site of the fact, we think of caffeine as an every day part of our life, you know, next to the sugar in the cabinet and whatnot. We don't think of it as a drug. But clearly, what we need to keep in mind is that the milligrams per deciliter in the blood, but as it increases and as you slip off of what would be a normal therapeutic amount of caffeine, 50 milligrams, and you get up to ranges of 500, you know, per can, that is a tremendous amount and your body views that and it acts in response to that as it is, you know, a drug. But your point is well taken; I don't know why it has not been regulated.

LEG. D'AMARO:

But it's more than just caffeine in your opinion?

DR. O'SHAUGHNESSY:

Yes.

LEG. D'AMARO:

You know, because you can get quite a lot of caffeine into your body very quickly just by visiting a coffee shop --

DR. O'SHAUGHNESSY:

Absolutely.

LEG. D'AMARO:

If you needed to. But, you know, I don't know anything about these other additives; I know nothing about them. And the authorities that in my mind are charged with telling me about them really don't seem to have the data either. But so that leads me, then, to your clinical observation, as you called it. Working as you do, day-to-day in an emergency room, and you've witnessed specific individual cases where you can directly link back a person landing in the ER because of consuming too much of this energy drink.

DR. O'SHAUGHNESSY:

Correct.

LEG. D'AMARO:

But don't you also witness people landing in the ER from too much alcohol and drugs and, you know, all these other things? Which, again, goes to the point of, you know, we don't really know whether it's safe or not, you know, at best, but, you know, are we really going to solve a problem? You know, can we really legislate responsibility? You know, we could have the same hearing on alcohol; you know, we could do the same thing, any drug. You know, I'm just -- is there something specific to this type of drink that in your mind would warrant an outright ban to those under 19 years of age at this point as opposed to saying, you know, let's raise public awareness and let's wait till the jury comes in with some hard data.

DR. O'SHAUGHNESSY:

I think, you know, without looking at the ingredients that are in -- you know, the components that are in the drinks, on their own they certainly have their own toxicologic profiles. But again, adding

them together, they are synergistic. Now, all of these components, especially, you know, the Gaurine is a big part of it, the Taurine and whatnot, they're known to be herbal stimulants, we know this.

And again, I think back, just like Legislator Cooper, thinking about the whole Ephedra issue. I remember guys that would be in the gym, you know, taking Ephedra for the {veza dylatore property} and coming in with strokes. I remember people, you know, having heart attacks. I remember one person that actually developed pulmonary hypertension, which was a big issue with pulmonary peak pressures in their lungs and whatnot. These things were not known at the time, there was no evidence, there was no medical literature published to show the deleterious effects at that point. We found out about this retrospectively.

To me, I really think it's not -- the two key points here are the dose of caffeine in combination with the herbal stimulants. And by themselves probably people would not get into the degree of trouble that they are in, but putting them together and the amounts in the beverage is the key of the problem.

LEG. D'AMARO:

Okay. Thank you.

DR. O'SHAUGHNESSY:

You're welcome.

D.P.O. VILORIA-FISHER:

Legislator -- oh, I'm next. Okay. Doctor, I read today a column in the New York Times -- well, an article in the New York Times called, Scientists See Dangers in Energy Drinks, and reading that and listening to today's testimony has made me more and more confused.

You speak of the synergy in different -- and the components and how they can react. I have never been attracted to Red Bull or any of this, I go for the softer, gentler sell. And I really like the Arizona Green Teas, until one day I drank an Arizona Green Tea and it had Ginseng in it. And when I drank it -- maybe it was because I hadn't had anything to eat, I don't know -- my heart started racing, I felt very anxious and I've never had one again. And that's an Arizona -- I bought it because it has those pretty flowers on it and it's green tea and all the good things. But probably the Ginseng --

DR. O'SHAUGHNESSY:

Absolutely.

D.P.O. VILORIA-FISHER:

-- the sugar, the tea and whatever my particular propensity was at that moment in time; I might have been tired, hungry, whatever.

I'm reading this and it's very, very confusing, and I'm just going to read you the -- or mention the four pieces of this that I find confusing and why we need to have a real study. Because this refers to a study that was done, one of the co-authors is Roy Tuttle who's a physiologist at Houston University, and his comment here is, "Almost all the studies done on energy drinks have involved small sample-sizes of young, healthy individuals in whom you're unlikely to see short-term ill effects. But what about the long-term, what about liver and cardiovascular disease, insulin resistance and diabetes? We could speculate about a lot of possible problems, but we just don't know," and he goes on further to talk about the need for long-term effects.

And relative to that, another doctor from another study, I think in Cleveland, said -- this is Dr. Clausen who said, "The average healthy person who consumes one serving of an energy drink is unlikely to encounter difficulty. Those most likely to get into trouble," he said, "are toxic jocks who overindulge and those with an underlying heart condition." Again, we go back to that propensity issue and that moderation piece that we spoke about earlier. So that I find a little bit confusing because we're talking about not necessarily having an effect on those who drink it in moderation and who are healthy.

I also read another -- another piece of this article talks about sports competitions that ban high caffeine levels and ingesting that. And I had read a report a couple of weeks ago in which students said that when they took an SAT exam, if they had had an energy drink, there had been some statistics showing that those who had ingested a Red Bull had X number of points higher than those who had not. So I agree with Legislator Barraga, we really need some serious studies done on this, and I believe the onus is on the FDA to regulate. Just because as someone who taught high school and junior high school for 30 -- over 30 years, I saw that if kids wanted something they could get it. And so my emphasis would be on the educational piece of this.

But I just have one more question, because I'm seeing that I numbered three places. Yes, we talk about the Ginseng and other exotic ingredients, but it seems to me that one of the most serious ingredients here is the combination of the caffeine and the sugar, the very high sugar levels. And sugar is also addictive, isn't it?

DR. O'SHAUGHNESSY:

I don't know that there's ever been anything to show that sugar is addictive. You know, fortunately, or unfortunately, however you want to -- we are glucose metabolizers, that's what we do really well. So we metabolize sugar very readily. If we reach a point where we cannot metabolize the glucose, it spills over and you excrete it very readily.

D.P.O. VILORIA-FISHER:

But don't you have that sugar high and then the crash?

DR. O'SHAUGHNESSY:

Well, yeah, but you don't necessarily develop an addiction pattern to sugar; in fact, it would be counter-intuitive, I guess physiology, if it were so.

But certainly to your point, looking at consumption of the beverages -- and again, the big take-home point that I would like everyone to remember is the concept of tolerance and the concept of receptor down regulation throughout your body. You don't necessarily have to have the beta-mimetic effects in the heart to become tachydysrhythmia, but it's the cerebral effects as well. It's no different when you ingest something that causes you to release pleasure neurotransmitters. Number one, it's going to reinforce the behavior.

Furthermore, when one can may have gotten you to feel pretty good or maybe bumped up your SAT scores by -- I don't know, it's been so long since I took test -- but 60, 80 points, whatever it may be, three or four cans, you know, you may need down the line after your PSAT to get the same effect. And at the same time, then, to get the effect that you want, you're developing the toxicity profile associated with the caffeine because that part does not change. That's the complexity of it that's not really being looked at.

D.P.O. VILORIA-FISHER:

And I think that goes directly to my point, the complexity of it. It's very, very complex. There are some indicators here that were listed in the resolution itself, that there's a contradiction with certain medications and with certainly, you know, a propensity or a predisposition. But I don't know -- and

I don't want to see eleven year-olds, you know, drinking Red Bulls for breakfast. I've seen ads lately where people could take a shot of some small thing that will last for five hours instead of drinking a cup of coffee, it's so much quicker and you get out the door? That must be very potent stuff. And I saw that little bottle of -- what is that called, Lynne?

DR. O'SHAUGHNESSY:

That's called 5-Hour Energy.

LEG. NOWICK:

No.

D.P.O. VILORIA-FISHER:

No, that thing.

LEG. NOWICK:

Power Shot. He's got 5-hour Energy.

D.P.O. VILORIA-FISHER:

Oh, okay, you've got the 5-Hour shot.

LEG. EDDINGTON:

I'm ready to take it any minute.

D.P.O. VILORIA-FISHER:

But it says, "Danger: This is not an energy drink."

LEG. NOWICK:

It also says, "Shouldn't be given to children."

D.P.O. VILORIA-FISHER:

It says, "Don't give to children," but of course the letters are so small you can't see them.

DR. O'SHAUGHNESSY:

And to your point, clearly --

D.P.O. VILORIA-FISHER:

But I think where we want to go is put pressure on the FDA to do some regulating.

DR. O'SHAUGHNESSY:

Well, I would support that as well; again, we have to make steps in the right direction. The educational piece, I would just love to see people really have a greater sense of awareness, because there's this overwhelming sense of how benign this is, and this is just like a cup of coffee. It is not just a cup of coffee, it is everything but.

D.P.O. VILORIA-FISHER:

Thank you, Doctor. Legislator Gregory.

LEG. GREGORY:

Yes, thank you. I'm kind of confused. Someone very early on had said that this product has been around 10, 15 years. I'm at a loss as to why there hasn't been a study into the effects of this product. Is that unusual? And to have such an outcry 10, 15 years after a product has been on the market, to limit it's, you know, use, you know -- have they increased the -- have they changed the content of the energy drinks over this amount of time? What's the cause of that?

DR. O'SHAUGHNESSY:

I mean -- and again, this is not to pick on any one manufacturer or whatnot. But as a class, you know, when you compare them to probably -- which was the first drink on the market, and we've talked about Red Bull, that was probably -- and they still have, I think, the predominance of the market share when you look at energy drinks as a whole. It basically was some caffeine with, you know, a carbonated beverage, a little Taurine and whatnot, and some B-6 vitamins.

The drinks have become far more complex; to your point, you're absolutely right. People very much know the response that they want to get out of the drink, which is the euphoria from caffeine intoxication, the increased mental alertness so they're sharper, they're wittier, they're more easily engaged in conversation and whatnot. Perhaps -- and also, they're documented in sports literature about caffeine and in the military about caffeine use as well, it is a stimulant. So they know what the side effect profile is. And to your point, you're exactly right, it has changed, it's gotten to be that there's more concentration of the key components in there to get that desired effect out.

LEG. GREGORY:

But is it unusual that a study hasn't been done for a product that's been on the market for so long and there seems to be, you know, a height of concern now about the product, or is it that's just typical FDA, you know, action or inaction?

DR. O'SHAUGHNESSY:

I would say inaction. I don't know why there hasn't been. I mean, you would think that -- you know, there are enough cases I think reported in the medical literature about adverse outcomes, number one. Side effect profiles with other medications and whatnot, that it would warrant, I think, investigation in the proper format. The problem is, you know, actually sitting down and getting the study done, the cost associated with the benefit right now, they're not regulating it, so they have no means to really step in and do anything.

LEG. GREGORY:

Okay. All right, thank you, Doctor.

D.P.O. VILORIA-FISHER:

Legislator Nowick.

LEG. NOWICK:

I just wanted to thank you for coming out and spending so many hours. Again, what we talked about, when we originally talked about this, just to make it clear, I'm not looking to take it off the market, I'm just looking to do what you do, to protect the children, to save lives is what you do. And you do it medically and, as Legislators, in the past we've done it with cigarette smoking and cell phones and Ephedra and Salvia and DXM, and we do it in a different way. And I just want to make sure that people know, we don't want to take it off the market, we just want to do the right thing for the kids. Thank you so much again for coming.

DR. O'SHAUGHNESSY:

You're welcome. And that's why I'm here, to work together as a team. So thank you all.

D.P.O. VILORIA-FISHER:

One more question, Doctor. Sorry. Legislator Stern.

LEG. STERN:

Very quickly. Thank you, Madam Chair. When you're talking about your experiences, and I guess going to you or based on your experience of the studies that you see and the conversations that

you're having with your colleagues, I'm just trying to get a feel for the kinds of numbers that we're talking about. I mean, in your position, you're seeing thousands and thousands and thousands of patients, I mean, over -- pick a period of time, a year, two years, five years; how many cases do you think you've seen, personally and that you've heard of in our local area that are related, you know, to energy drinks and the potential adverse effects of drinking them? Particularly among our young people.

DR. O'SHAUGHNESSY:

Sure. I mean, again, I would probably say a better source to get you a quantitative, you know, data set to the number of adverse outcomes that happened, I would refer to the local tox centers to get the numbers.

My clinical experience and from the experiences of my colleagues when we discuss, this is something that you don't go through -- I'll put it this way. You don't go through a 12 hour shift in the ED without seeing somebody come in with some kind of adverse react. Now, it might just be palpitations, it might just be anxiety, it might be they think they're having a heart attack or they might think they're having, you know, a mild stroke, those kind of things, and at the end of the day, all is fine. So as far as we're telling you what the outcomes are, which is, I think, a key piece of what you're looking to ascertain, you know, are these all broad outcomes that you're seeing, or is it a plethora? It's a mix. I mean, people are coming in with side effects, clearly.

Not all of them, fortunately, have life-altering, bad outcome events, but the problem that I see is biggest subset growing is the adolescents, and I see adolescents using more and more and more. And then furthermore, as they get into their, you know, 20's, the mixing with alcohol is being a real problem, and I'm seeing a lot of bad outcomes specifically related to that, whether it be vehicular trauma, okay, assault, or just, you know, they were so inebriated that they couldn't protect their will and they wind up on a vent with me in the ER for a night. You know, I saw this in the city for years from different agents, from GHB, DXM, you name it, right? But now what I'm seeing is I'm seeing there's a lot of use of these kind of drinks that then gateway into other, you know, uses.

LEG. STERN:

All right.

P.O. LINDSAY:

Okay.

LEG. NOWICK:

Thank you.

P.O. LINDSAY:

Thank you very much, Doctor. That's the last card on this bill. Is there anyone else in the audience that would like to address us on this bill? Dr. Tomarken, you want to talk to us?

COMMISSIONER TOMARKEN:

Yeah. I know you're probably all tired and confused and --

D.P.O. VILORIA-FISHER:

Is your finger on the button, Doctor?

COMMISSIONER TOMARKEN:

It is. Can you hear me? All right. So I can imagine that you are saturated with information and confusion. Maybe I can just give some perspective as to how I see it from a public health perspective, and that is that it's clearly, as many people have said, this is not just a caffeine issue.

This is -- we are looking at a population that is what I would describe as a vulnerable population, the adolescents, the young children who are known for pushing the envelope. They will try anything that they can get their hands on, they will do all kinds of risky behaviors that, as parents and as physicians and public health people, we cringe at. And we are -- I am concerned and I think you all are concerned with are we condoning behaviors that say to young children, "When you're tired, take an external substance," rather than get some rest, eat a good diet and get some sleep.

Having said that, there are also very clear indications from well renowned scientists at John Hopkins, at Stony Brook and at the University of Buffalo Research on Addictions that have raised the alarms that there are issues with these substantives. Quibbling about the actual number of milligrams I don't think is the issue. The issue is as well as how much they take, but in what context do they take it and do they take it for what purposes? People are constantly asked the question is this substance caffeine safe, or are these other substances safe. There is no safe drug if you abuse it. People need to understand that, yes, I can do a study and give you -- give somebody one cup of coffee and say, "Well, caffeine seems to be safe." If you do a study, you do it because you do it at a certain level of a concentration of the medication or the drug and then all you can say and the only conclusion you can draw is that for that amount of the drug, it is or isn't safe. So if I do a study and give you each two cups of coffee, and let's say that's 150 milligrams, I can't say that taking 500 is safe. So you need to appreciate that the studies you're all asking for are only part of the issue and part of the answer.

Granted, there aren't a lot of the studies, and part of the reason that there aren't a lot of studies is that no one has had a vested interest in doing studies. If I'm a manufacturer and I'm producing this stuff and I'm selling it, I have no interest in doing a study. And the FDA does not do studies. The FDA turns back to the manufacturer and says, "You do the study and prove to us that it is or isn't safe." So be careful about hoping that the FDA will do something. The FDA, when the drugs -- when the drinks and the alcohol were combined, they were taken off the market because the FDA was about to act. They were ready to say to the manufacturer, "Go do studies and prove to us that it's safe." The manufacturers decided to preempt them and take them off the market.

So you need to look at the context of what this substance is being used, and it's in a population that is notorious for acting in their least best interest. These are kids who will take this on the way to school, during school, after school. They don't drink energy drinks the way we drink a cup of coffee. They don't sit for two hours and have a conversation; they drink one, they down it, if it makes them feel better they may take another one, right away or in a couple of hours. So it's different context and so the comparison between drinking a Starbucks and drinking energy drinks I don't think is a valid comparison.

Having said that, there's clearly a need for more studies, there's no question about it. But in the meantime, educating people about what they're taking and trying to educate them to the point of understanding that just because it's in a supermarket or a 7-Eleven or a convenience store doesn't make it safe or appropriate. And it's hard to imagine that 10 year-olds or 12 year-olds need to have these kinds of drinks available; I just don't see a need for it. How we deal with that is another separate issue. Because we all know that if you ban it in Suffolk, people drive 20 miles to the west and load up with it and come back, or they go someplace else. So it's a very complex and a very difficult issue, but I think you need to keep it in the context of the vulnerable population, the reasons that they take it and the dangers that have been associated with it. And from that perspective, I think it is a public health problem.

How we deal with it, I don't have any magic answers, and none of us -- and none of the people who have testified do either, but I think we need more information. I would like to see what the effect of banning has been on other jurisdictions, if it has really made a difference, because I don't know the answer to that. But I do believe that it is a problem in the younger population and I don't see a

need for children at this age to have access to these substances.

P.O. LINDSAY:

I don't think too many of us disagree with you here. The question is the practicality of it.

COMMISSIONER TOMARKEN:

Uh-huh.

P.O. LINDSAY:

I mean, has the Board of Health weighed in on this? Have you looked at this issue at all?

COMMISSIONER TOMARKEN:

No, this particular issue hasn't come to the Board of Health yet. It can. I think the same -- it's going to be -- it will raise the same issues and will have the same questions.

P.O. LINDSAY:

Yeah. But, you know, the Board of Health is health professionals, they're probably more better equipped than we are, and we look to you guys for guidance on a lot of these medical issues.

COMMISSIONER TOMARKEN:

We'd be glad to. Because it's not a lot different than some of the other issues we're dealing with and we'd be glad to look at it and give you our opinion.

P.O. LINDSAY:

And the other question is -- Legislator Nowick, the enforcement agent here is the Department of Health?

LEG. NOWICK:

Yes.

P.O. LINDSAY:

How do you feel about that?

COMMISSIONER TOMARKEN:

Well, it's enforcement by complaint. I mean, we have no ability to go out and do preemptive evaluations of places, and that's one of the problems. We've looked at this with other issues and maybe, if it's felt that a ban is needed, maybe it needs to be done on a Statewide basis.

P.O. LINDSAY:

Well, I think probably the wider the jurisdiction, the better it is. But, I mean, that's really never stopped us before. Legislator Browning, did you have a question for Dr. Tomarken?

LEG. BROWNING:

Yeah, just real quick. I mean, I spoke with Dr. Tomarken about it at a Board of Health meeting, I do sit on it as Chair of the Health Committee, and we did discuss maybe creating a, I hate to say, task force; sometimes I think it's a bad word. But about creating, you know, a task force that could look a little bit more into it, and I think bringing it to the Board of Health is definitely something that we should look at. Bring in some more experts, you know, addiction researchers. I mean, we had Steven Dewey here; I'll tell you, I think he's great. I mean, I think we do need to do a little bit more work on it.

LEG. NOWICK:

Can I interrupt?

LEG. BROWNING:

Again, have the Board of Health address it, I think it would be a good idea.

P.O. LINDSAY:

Okay. Legislator Nowick.

LEG. NOWICK:

Just to the interrupt, Dr. Dewey was on his way when he was on 110 and he got stuck in an accident. We had a presentation from him. He's also very supportive, just so you know. But unfortunately, with the roads the way they were, that's what happened with him.

D.P.O. VILORIA-FISHER:

Thank you.

P.O. LINDSAY:

Okay. Thank you, Dr. Tomarken, for weighing in on this. Is there anybody else that would like to be heard on this subject? Please come forward and identify yourself.

MR. WATT:

Good afternoon. My name is Michael Watt and I'm here to speak on behalf of the 600 plus members of the Long Island Gasoline Retailers Association, many of whom conduct their business in Suffolk County.

We're concerned about IR 2156, requiring the posting of information alerting consumers to the health risks associated with energy drinks, and proposed IR 2210 which would ban the sale of energy drinks to people 19 and younger. Violation of this law would be punishable by a fine of up to \$500 for the first violation, with subsequent violations punishable by a fine of up to a thousand dollars.

The men and women who operate service stations and convenience stores face unprecedented challenges. Market forces drive up the wholesale price of a gallon of gas in an economy where the consumer is unwilling and unable to pay more than a few pennies above what the station operators pay. Many of these station operators are thinking long and hard about whether they continue to own and operate their stations. Now, on top of all that, the Suffolk County Legislature wants to place an even greater burden on convenient store operators, asking them to serve as the poor-choice police and threatening significant fines should they fail to do so. Is this what operating a convenience store has come to? If signs spotlighting the downside of energy drinks are the order of the day today, then how soon until we need to post similar warnings on the cupcake aisle or next to the beef jerky? Where does it end?

As the father of two sons, one a 20-year old and another who just turned 16, I know and appreciate firsthand parental concerns in this day and age. We do what we can to educate and direct our children to do the right when it comes to what they consume. Whether they heed our advice is another story. But to expect a convenience store operator to pick up the slack when the kids choose to behave in a manner contrary to their parent's desires is unrealistic and misguided. It is also unrealistic and misguided to think that focusing specifically on energy drinks will solve the problem of all the caffeinated youngsters, especially when you consider the multitude of options at their disposal. Coffee, soda, chocolate and painkillers are just as readily available, yet this proposal does not even begin to address that.

Based on what I've heard this afternoon and following up on Legislator Viloría-Fisher's comments, I think your beef is with the FDA, not with the convenient store operators. However well intentioned this resolution is, it does not warrant passage. Thank you very much for allowing me to speak on this issue.

P.O. LINDSAY:

Okay, thank you. Is there anybody else that would like to speak? No. Seeing none; Legislator Nowick, what would you like to do with this legislation?

LEG. NOWICK:

I think we've played this out till the end. I'm going to close it. Motion to close.

P.O. LINDSAY:

Motion to close.

LEG. KENNEDY:

Second.

P.O. LINDSAY:

Second by Legislator Kennedy. All in favor? Opposed? Abstentions?

LEG. MONTANO:

What are you doing, Lynne?

P.O. LINDSAY:

Closing the hearing.

MR. LAUBE:

Seventeen. Sixteen (Not Present: Legislator Vilorio-Fisher).

P.O. LINDSAY:

Okay. Next up is *Public Hearing on IR 2210*, and I have -- it's a Local Law to ban the sale of energy drinks to minors in Suffolk County (Nowick). A lot of the same -- let me see. Andreas Kadi? Forgive me if I am not pronouncing your name correctly, sir.

MR. KADI:

Good afternoon, Ladies and Gentlemen. My name is Andreas Kadi and I'm the Chief Scientific Officer of Red Bull GmbH. Red Bull appreciates the opportunity to participate in this public hearing.

Red Bull is an Austrian company with almost 7,000 peoples -- employees worldwide and more than 2,500 employees and contractors in the United States.

LEG. SCHNEIDERMAN:

Are you pushing the button?

MR. KADI:

I am.

MR. LAUBE:

You've got to speak into the mic.

MS. LOMORIELLO:

Speak and lean in, please.

MR. KADI:

Okay. I am here today to address scientific and regulatory issues about the safe use of energy drinks in general, and Red Bull in particular. You will hear a lot today, and you have heard a lot today, but let me be clear on one point; it would be unfair to single out one caffeine-containing

beverage when there are so many on the market.

Red Bull shares the commitment of Suffolk County's Legislature to ensuring that consumers have access to safe and quality foods and beverages. And we also support initiatives directed towards responsible use of energy drinks, as long as these initiatives are based on sound science. However, we believe that the Suffolk County draft bill, 2156 and 2210 on energy drinks, would impose labeling and restrictions on sales that are unwarranted, given the science and the U.S. Federal Regulatory scheme.

Red Bull was launched in 1987 in Austria as the first carbonated energy drink. Red Bull is now widely consumed around the world in 160 countries. Health authorities across the world have concluded that Red Bull is safe. Last year alone, more than four billion cans and bottles were consumed worldwide, and about 1.5 billion in the United States. Since the first launch of Red Bull in 1987, a total of 30 billion of cans and bottles have been consumed in the U.S. and around the world. Red Bull contains 80 milligrams caffeine per 8.4 ounce can. This is less than the amount in one cup of coffee and this is less than half the amount of caffeine in a tall cappuccino from the most popular coffee chain in the United States.

In addition, the Red Bull labels in the U.S. clearly and voluntarily indicate the quantity of caffeine the product contains. Caffeine is found in a variety of consumable products. In the United States, consumers, as you have heard, get minimal amount of caffeine from energy drinks as compared to other sources. According to an intake estimate by the FDA from 2009, U.S. consumers, including children and teens, get about 70% of their caffeine from natural sources such as coffee, tea and cocoa beverages. The remaining 30% come from other beverages including soft drinks and energy drinks, chocolate products and other caffeine-containing products.

Many scientific and regulatory bodies around the world, such as Health Canada and the European Food Safety Authority, have concluded that the general population of healthy adults may safely consume up to three to 400 milligrams of caffeine per day. This intake level has also been supported by the U.S. Food and Drug Administration and the American Medical Association, which recommend consumption up to the same range. Two 8.4 ounce cans of Red Bull per day will contribute only 160 milligrams of caffeine, which is 50% or less of the maximum daily recommendation for healthy adults mentioned before.

The safety of Red Bull is based on sound science and has been validated by health authorities in various countries and scientific expert panels in the European Union, Australia and New Zealand. Most recently, in 2009, the European Food Safety Authority, which is the European equivalent to the FDA when it comes to risk assessment, reviewed more than 70 of the most recent scientific articles, review paper and safety studies on the ingredients used in Red Bull. The European Food Safety Authority confirmed the safety of the key ingredients, caffeine, Taurine and Glucuronolactone. They also concluded there is no harmful interaction from the combination of these ingredients. This EFSA opinion, which is comparable to a GRAS assessment by the FDA, concluded a history of more than ten years of safety assessment of energy drinks and their ingredients in Europe.

Red Bull urges this Legislature to ensure that the assessment of energy drinks is based on sound science and fact. Red Bull is fully prepared to partner with authorities and other stakeholders to these ends. Ladies and gentlemen, I thank you again for the opportunity to make this presentation. I also look forward to having a more detailed discussion at the public Health Committee, and I welcome questions from the Honorable Members of the Legislature. Thank you.

P.O. LINDSAY:

Mr. Kadi, thank you very much. You've come a long way. We do have some questions for you. I hope you're not flying back to Austria tonight.

MR. KADI:

I hope I will fly back tomorrow, which I think is not yet sure.

LEG. NOWICK:

We might still be here.

P.O. LINDSAY:

I hope so, too. Okay, Legislator D'Amaro is the first on the list.

LEG. D'AMARO:

Thank you. And welcome, sir. Thank you for coming, as the Presiding Officer mentioned, to help us out in this debate, because that's what we're looking for, the facts. We want to make a decision, but we want it to be based in fact, and so I appreciate you being here.

All right, a couple of things. You mentioned that the scientific community, especially in Europe, has done the studies. You're obviously convinced that the product is safe. You also mentioned that the studies show that even when you combine all of these ingredients together, that that the product is safe. What are the side effects; are there side effects to taking this stuff?

MR. KADI:

The only side effect, if you want to talk about side effects when you consume this products, are the same you would observe with an excessive consumption of coffee, because of the intake of caffeine.

LEG. D'AMARO:

Okay.

MR. KADI:

And when you talk about side effects, if you allow me, I would like to make one observation, what I learned from this discussion today.

D.P.O. VILORIA-FISHER:

Excuse me, Mr. Kadi. I think the stenographer is having difficulty hearing you. Can you speak a little closer to the mic.

MR. KADI:

Okay. Yes, of course. So as I said, if you allow me one observation. I think you're discussing energy drinks here and I think, as has been mentioned, this group of energy drinks is actually a large number of individual and different products on the market place. And I've heard you express concerns about some of the ingredients, many of them actually botanical herbal extracts where there may be questions about safety. And I understand these questions because a producer has to be able to answer these questions, as I'm willing to do that here for my product and include -- ingredients included therein.

But I'm not sure if the approach of this proposal here is kind of a long-way approach which will encompass all of these products, where for many probably there won't be any concern, but there may be a few left where there are questions open that need to be answered. So I'm not sure if a more targeted approach also looking at individual ingredients which could be a concern is the better approach here, also in term of protecting public health.

LEG. D'AMARO:

All right, I understand that. What -- who did the studies that you're relying on in marketing your product, making the claims?

MR. KADI:

The studies as I mentioned, the European Food Safety Authority has looked at more than 70 individual papers. They were a combination of the available scientific literature, of toxicological tests that had to be done upon the request of the European Food Safety Authority on the individual ingredients where they wanted to know the toxicological background. And EFSA really was interested if there are any combinations between this ingredient, so they asked for that. They have looked at review papers. The European Members States actually have given submissions from their own safety institutions to EFSA to look at that, so this will be a large body of scientific evidence to have considered.

LEG. D'AMARO:

So as far as you're concerned, the jury is not still out. The studies have been done, the product has been shown to be safe to a scientific certainty, you're convinced of that.

MR. KADI:

For our product, we are convinced about that, and this is why I made the comment before. There is a large variety of products out there. So of course, you cannot speak for the category in general because the composition may vary significantly, as we have also heard from the colleague from the medical field before.

LEG. D'AMARO:

You know, I asked you about side effects and you said none really, except for if you assume or abuse caffeine and, let's say, coffee or chocolate or some other means. But what about -- we heard a lot of testimony here today about this is a product that's targeted towards teenagers, perhaps children even, that it has an addictive effect to it. It sometimes can even be used as an alcohol delivery device, if nothing else, that the science is really still out. Based on clinical observations, there are some local physicians, reputable, local physicians that have been kind enough to come down here and testify today. They tell us that they're convinced that they have seen actual cases of someone coming into an emergency room based on the use or misuse of this product. So what we're talking about here today is, you know, whether or not to accept your conclusion that the science has concluded that it is perfectly safe -- as long as it's not abused, like anything else -- or whether or not we feel that more study needs to be done. But how do you -- I just want to give you an opportunity to respond, because I think you were here and heard some of that testimony about the clinical observations made by some of our local physicians where they're telling us, as a Legislative body, that no, there is more study to be done, and until it's done, you should err on the side of caution and certainly limit access to these drinks by teens. I mean, where do you -- can you respond to that?

MR. KADI:

I think there are many points that have been raised today also by the people who spoke before me, and it is important. And it is a scientific discussion which can be tiring, but I think it's really necessary in this case, that one can address every single one of them. And actually, the approach to investigating this can be very different.

But to cut the story also short, when it comes to effects you may see also in the clinical area. The discussion in Europe also included observations that have been done and have been reported to countries such as Germany or France who -- which, for some time, actually looked into that. And this helped also EFSA to form the conclusion it finally did, because in everything they looked at, to say, "We cannot find a single case where there is an established causal relationship between energy drinks and whatever the event was." And the second conclusion was when they saw something, they saw something I mentioned before, that there may be an excessive abuse of caffeine which, of course, is not recommended.

Which I think brings me to a second point that has been mentioned already also in the Legislature here, how do we inform consumers?

The quantitative labeling of caffeine is currently not a requirement in the United States. We do this voluntarily. The American Beverage Association has guidelines for their members also to do this voluntarily, and if to do it in the same format. So I think informing consumers is an important first step in telling them two things; how much caffeine do you have in a product, and this can also encompass other ingredients. And secondly, you know, what is kind of the range that is acceptable for you? Caffeine, as we heard, is our dear-and-neighbor and we consume it every day, but many people actually don't know how much the advice would be from an authority like the FDA or Canada.

LEG. D'AMARO:

Are your studies making this conclusion based on long-term observation, or is this more of a short-term and you're still continuing to study the long-term effects, if any?

MR. KADI:

When you look at the studies that EFSA looked at, it is a combination of toxicological studies which are done in a clinical setting. And very often, as it is required in the U.S. by FDA but also in Europe, when you look at toxicological studies of food ingredients, this may go over more than one generation. So this is also being looked at.

What the toxicologicals -- the toxicologists do is really to see what is the fate of the individual substances in the body? Is there a chance that they go along the same metabolic pathway? Could they have a synergistic effect? If yes, to which extent? Can this be detrimental, etcetera. So when we do this assessment or the European Food Safety Authority does these, they look at this complete set of information.

LEG. D'AMARO:

So that's something that's still ongoing; is that correct?

MR. KADI:

No, the EFSA opinion has concluded in 2009 and it has been published.

LEG. D'AMARO:

I'm sorry, I missed the point. That's the long-term effect or the short-term effects, if any?

MR. KADI:

It included both. It does not include epidemiological surveys which is not done in any safety assessment of this kind, that's a different story. But when it comes to the safety of the ingredients per se and combination of ingredients, this is what they have looked at.

LEG. D'AMARO:

Okay. Well, I guess it's the battle of the experts. Because, you know, I have other periodicals in front of me that just say, you know, when it comes to long-term effects, we just don't know. There's another quote here by a physician that, "Energy drinks contain a slew of ingredients, most of which are unresearched, especially in combination with one another," which is 180 degrees different than what you're telling us today, that at least when it comes to your product, every ingredient has been studied individually and in combination, long and short-term. There's no link clinically and there's no scientific evidence that they have any kind of detrimental effect, if used properly. I mean, anything abused, of course, can be harmful, but we're talking about whether or not this passes a line and should be restricted to people under 19 years of age. That in and of itself is confusing to me. You know, it's -- you must face a very difficult task in going around the globe, I guess, and speaking about this, or speaking to these issues about whether or not, you know, your

product is safe. You're kind of on the defensive all the time, I guess, about this.

MR. KADI:

Yeah, and that's also why we're here, we want to engage into this dialogue. But when it comes to ingredients, what we heard, for example, is that the caffeine content is not regulated in the U.S.; in some other jurisdictions, this may be. So again, when there is a concern about this, one could ask the question, you know, would it make sense to approach it from this side. So really get it on spot and say is there something we have to look at when we are concerned that there are -- and these are really probably a handful of products with a small market share, but always -- you know, it's a small number that can create the issues for actually a much larger population here. Then would it make sense to approach it from this side which would be much more targeted to address the issue and say, you know, do we want to regulate it this way.

LEG. D'AMARO:

Okay. Thank you.

P.O. LINDSAY:

Okay. Legislator Gregory.

LEG. GREGORY:

Okay. Thank you, sir. I just wanted to clarify something. You had -- it was my understanding that Red Bull is banned in France and in Turkey; now, you said something that led me to believe that that wasn't the case.

MR. KADI:

No. And actually, just to show you my concern also about some of the scientific publications which have been quoted today, when you really go through them, you'll find that sometimes this is a copy and paste exercise where one copies from the other, like in the introductions.

I've read at least in three papers that Red Bull is banned in France and in Denmark, and I also hear Turkey now. In all these three countries and the whole European Union, the product is lawfully marketed as a food. But, you know, one starts to write something that is not a fact, and unfortunately other researchers are copying that, which I do not find it a very responsible approach when it comes to publishing scientific literature.

LEG. GREGORY:

Okay, so that is not true.

MR. KADI:

No, it's not true.

LEG. GREGORY:

Okay. All right, thank you.

P.O. LINDSAY:

Legislator Stern?

LEG. STERN:

Thank you. Along those lines, also in the literature, I've read that although there was no ban instituted in Great Britain, that because of some concern that was brought up in their market, that there have at least been warnings, particularly when it comes to the use of the Red Bull product by pregnant women and young children. I was wondering if you can speak to that; is that the case in Britain, or is that also inaccurate in the literature?

MR. KADI:

No, it's not the case in the U.K., there is no such warning statement on it. The European Union has a unified approach to food labeling as a kind of Federal regulation put forward, 27 Member States. And there are rules for labeling the quantitative caffeine content on products which have more than 150 milligrams per liter. This is a requirement; of course, we do that in all the countries.

LEG. STERN:

Thank you.

LEG. GREGORY:

Just a follow-up question?

P.O. LINDSAY:

No, I've got a list. I've got a list.

LEG. GREGORY:

Okay.

P.O. LINDSAY:

Legislator Barraga.

LEG. BARRAGA:

Yeah, just a couple of questions. And thank you for joining us. How many countries is your product distributed in?

MR. KADI:

One hundred sixty.

LEG. BARRAGA:

One hundred and sixty countries. How many of those countries have a ban in place on the sale of your product for those under the age of 19?

MR. KADI:

There is not a single -- there's not a ban in place, not a single country

LEG. BARRAGA:

Not one single country. How many countries?

MR. KADI:

One hundred sixty.

LEG. BARRAGA:

Thank you.

P.O. LINDSAY:

Legislator Muratore.

LEG. MURATORE:

No, my question was the same as Legislator Gregory. I was concerned that it was banned in a couple of other countries; France, Denmark. And I think Russia banned one also that was allegedly --

MR. KADI:

It's also on sale in Russia, yes.

P.O. LINDSAY:

Could you repeat that?

MR. KADI:

It's also on sale in Russia.

P.O. LINDSAY:

For sale in Russia, okay.

LEG. MONTANO:

It's not?

P.O. LINDSAY:

It is, it is.

Okay. Does that answer -- okay. Legislator Gregory, your follow-up question? Legislator Gregory, follow-up question.

LEG. GREGORY:

Yes. I amend my previous question. From what I understand, there was a ban from 1996 to 2008, but it's no longer banned over concerns over Taurine, the levels of Taurine and some other substances. Now, is your product in the United States similar to what it is in Europe? Have you had to change the content of -- or the ingredients of Red Bull in Europe as opposed to here and that's why they were able to lift the ban?

MR. KADI:

No, the key ingredients, caffeine, Taurine, Glucuronolactone, they are the same. There are slight variations in the vitamin blend which basically has regulatory considerations.

LEG. GREGORY:

Okay. Thank you.

LEG. NOWICK:

One quick question.

P.O. LINDSAY:

Wait. Legislator Viloría-Fisher.

D.P.O. VILORIA-FISHER:

I couldn't quite hear the end of your response to Legislator Stern. I believe you said that there's uniform labeling in the European Union?

MR. KADI:

Yes, that's correct.

D.P.O. VILORIA-FISHER:

And that there's uniform labeling regarding caffeine, products that contain caffeine; is that what I heard? What are the limitations put on caffeine in drinks, in that labeling?

MR. KADI:

Yes, there are two issues. First of all, food labeling, the total set of food labeling is unified in Europe, so the label should look like the same in the UK, in France, Austria, Germany. In addition to general food labeling, there are unified rules for the labeling of the caffeine content in caffeine-containing beverages. This also has been made the same for the whole European Union.

When it comes -- and that's a different issue. When it comes to setting maximum levels for certain substances, this, to a large extent, is still the jurisdiction of the individual Member States, because the U.S. is currently in the process of unifying also this legislation. And as a bit complicated in Europe, so when there is European Union legislation, everybody has to follow that. If the legislation is not there yet, the Member States have the liberty and the freedom to do certain legislation on their own. This is why it's a bit complicated to explain that, because some countries do their own thing.

D.P.O. VILORIA-FISHER:

Okay. Now, you said you -- you have the same formula -- throughout your distribution, you have the same formula, except, you said, in certain vitamins. Are you talking about the B vitamins that are in this?

MR. KADI:

Yes, also.

D.P.O. VILORIA-FISHER:

So the formula that's sold in the United States would contain some B vitamins that are not contained in the formula in France, let's say?

MR. KADI:

No, they are the same. They are the same vitamins but with slight variation in the quantity.

D.P.O. VILORIA-FISHER:

Okay. Thank you.

MR. KADI:

And this also has European history, because only recently the European Union unified the approach to adding vitamins and minerals to foods. So, but no, we have that same legislation in the whole FCU.

P.O. LINDSAY:

Okay, Legislator Nowick.

LEG. NOWICK:

Yes. Thank you for coming here from Austria. Just quickly, in all of the countries that you sell Red Bull, in any of the countries on any of the cans, do any of the cans have a warning this may not be an appropriate drink for a minor?

MR. KADI:

In some countries we have advisory statements, so the -- very often the government say this is an advice to consumer.

LEG. NOWICK:

What's the advisory statement?

MR. KADI:

Which may actually say that, "This drink is not recommended for children, pregnant women and people sensitive to caffeine."

LEG. NOWICK:

And you put that on there because?

MR. KADI:

We put that on there because there may be a regulatory requirement to do that.

LEG. NOWICK:

From the countries that ask you to put that on there before they will sell it in the country?

MR. KADI:

Yes.

LEG. NOWICK:

The drinks that we sell in the United States, the ingredients, of course, are all on the can.

MR. KADI:

Yes.

LEG. NOWICK:

Does it say on the can how much of each ingredient is in there?

MR. KADI:

Yes.

LEG. NOWICK:

Does it say how much caffeine is in there?

MR. KADI:

Yes, the caffeine --

LEG. NOWICK:

Well, you don't want to say that, though.

MR. KADI:

The caffeine is given on the label, yes.

LEG. NOWICK:

But does it say how much?

MR. KADI:

Yes; it says it's 18 milligrams for an 8.4 ounce can.

LEG. NOWICK:

Not this can.

LEG. HORSLEY:

You want to pass it up?

LEG. NOWICK:

Unless you can find it. I can't find it anywhere on this can.

MR. KADI:

It should be on there.

LEG. D'AMARO:

Well, we're not going to take him away in cuffs.

LEG. NOWICK:

I'm sorry, I don't mean to put you on the spot. But my point is that maybe -- maybe somebody doesn't know what percentage of caffeine is in there because it's not on there, and that's an issue. You found it?

MR. KADI:

To be honest, I can't find it. And you already put me on the spot now, because --

*(*Laughter*)*

I mean, fair point. And I have to say, I'm embarrassed, because we want this to be on the can voluntarily.

LEG. NOWICK:

Okay. So just as a future thing, it would be important, in case we --

MR. KADI:

This will change, I promise that to you. You will have a can where it's on there.

LEG. NOWICK:

Right. Whether or not this is passed, it's still on the market. It's always going to be on the market here, so it's probably something that the manufacturers would want to be aware of. Thank you.

MR. KADI:

Thank you.

P.O. LINDSAY:

Thank you for your testimony, Mr. Kadi. I know you came a long ways. Thank you very much.

MR. KADI:

Thank you.

P.O. LINDSAY:

Okay. It looks like Christopher -- is it Dr. Christopher Alford?

DR. ALFORD:

It is.

P.O. LINDSAY:

Thank you, Dr. Alford. You came a long ways as well.

DR. ALFORD:

I did, and it's a pleasure to be here.

P.O. LINDSAY:

Thank you very much. I wish I could say the same.

DR. ALFORD:

Okay. I would like to thank the members of the Legislature for providing me with the opportunity to speak with you today about draft bills 2156 and 2210 from 2010 regarding energy drinks, which I believe are unwarranted.

My name is Dr. Chris Alford and I'm a researcher at the University of the West of England in Bristol in the UK. I'm a specialist in sleep research and the effects of substances on sleep and daytime performance. I have been involved in research for over 30 years.

My research experience includes experimental studies of caffeine and energy drinks. My energy drink research has looked at the effects of these drinks on physical and mental performance, as well as their effects in combination with alcohol.

I'm here today to inform you that the evidence does not support that energy drinks mask the feelings of intoxication due to alcohol consumption. My caffeine studies have looked at the effects of caffeinated drinks, including energy drinks and coffee, on mental performance and as a way of limiting the consequences of sleep loss. I have also investigated the disruptive effects of caffeine on sleep when taken at bed time.

I have followed with interest the emerging debate in the U.S. on the effects of energy drinks mixed with alcohol, because I have studied this in England where there is even greater per capita consumption of energy drinks. First, let's briefly consider the effects of alcohol. In the United States and in Europe, alcohol is a popular social drink and widely consumed. For healthy adults, it is acceptable to enjoy drinking alcohol in moderation. However, I am also aware that it can cause problems. Excessive alcohol consumption and intoxication may cause accidents and aggressive or violent behavior.

There have been concerns raised in the published literature about the consumption of energy drinks combined with alcohol. This is because energy drinks contain caffeine, a stimulant, and the idea is that the caffeine might mask the feeling of alcohol intoxication; if true, this could have dangerous consequences. If someone did not feel as drunk as they should, they might either drink more or they may think themselves sober and safe to drive a car when they are not.

Looking through the literature, there's only one experimental study that examined the effects of energy during -- combined with alcohol in relation to subjective state, or how intoxicated people felt. This is the Ferreira Study. It is important to evaluate this study as it is widely quoted and has formed the basis of concerns that energy drinks mask feelings of intoxication. Ferreira investigated the effects of alcohol alone and of alcohol combined with energy drinks. The investigators noted the expected effect with alcohol alone, as well as in combination with energy drink impaired performance. Despite the fact that the majority of test parameters had shown no difference between the consumption of alcohol alone compared to alcohol mixed with energy drink, they wrongly concluded that energy drinks overall mask the subjective feelings of drunkenness.

In our lab, we carried out a study with similar doses to the Ferreira Study. We also showed that impaired performance with alcohol and with an alcohol/energy drink combination. But in contrast to the Ferreira Study, we did not find any parameters that showed a reduced awareness of intoxication for the alcohol and energy drink combination compared to alcohol.

On the basis of our study, as well as taking the overall findings from the Ferreira Study, our conclusion is that the drinks do not mask the feelings of intoxication after drinking alcohol. Support for this conclusion also comes from a very recent U.S. study with caffeinated beer. Howland and

colleagues found no difference in people's self-estimates of how much alcohol they had consumed between those who had consumed caffeinated beer and those who had non-caffeinated beer.

In summary, we could not reproduce the conclusions of the Ferreira Study. In addition, on the basis of the study that we have undertaken and from the scientific literature and the evidence available, we do not support that energy drinks mask feelings of intoxication due to alcohol consumption.

I look forward to taking this further at the Health Committee meeting. Thank you for giving me the time to talk and listening to me. I will try and answer any questions you have.

D.P.O. VILORIA-FISHER:

Doctor, your time is impeccable; that was exactly five minutes. Are there any questions?

LEG. KENNEDY:

Yes.

D.P.O. VILORIA-FISHER:

I just have a quick question regarding --

MR. STRAUSS:

Your mic is not on.

D.P.O. VILORIA-FISHER:

Oh. I'm pressing the timer instead of my mic, I'm sorry. You mentioned your study in contrast to the Ferreira Study. How many people were involved in each one of those studies.

DR. ALFORD:

There were 20 in each.

D.P.O. VILORIA-FISHER:

Oh, so it was the same number of subjects.

DR. ALFORD:

Yeah, similar.

D.P.O. VILORIA-FISHER:

Okay. Okay, thank you. I believe Legislator Kennedy has a question.

LEG. KENNEDY:

Thank you, Doctor. I -- again, you came a long way to speak to us about this. You and your colleagues have sat very patiently and heard many of the other speakers beforehand. And you heard the emergency room doctor, Dr. O'Shaughnessy, speak at length about what he has experienced not only here in the Smithtown area, but his prior experience at Bellevue.

I'm curious from your perspective, you spoke about a controlled study looking to either validate or disprove what had been the study of another group. Have you made any efforts to look at what might be anecdotal experience or do a data pole of emergency room facilities or other places like that in your area in England? I'm just wondering, what have you looked at besides this one controlled study regarding the impacts?

DR. ALFORD:

I haven't done any studies involving emergency rooms, so I'm afraid I can't give you an opinion on that.

LEG. KENNEDY:

Okay. And is that -- as a researcher in this area, are you aware if there's any data out there? Might there -- let's say I wanted to look at a study; where would I go to look for objective material or evidence about this?

DR. ALFORD:

Well, you do literature searches, and then we've also done some literature searches and I don't think that's come up. I think it may be that it would be very helpful to have some more data and this is all we can say. When we haven't got definitive studies, then we need to do studies or get the appropriate data.

LEG. KENNEDY:

Is there a way to get a hold of your study, Doctor? How might I get a copy of it? If I had a card and I give you an e-mail address, could I get a copy of it?

DR. ALFORD:

The study that we've done, it's about to be published very soon in an abstract form and we are currently writing up a longer version, so that would take a few months. But very quickly, within a week or so, we should be able to give you an abstract of the study, and I would certainly be very happy to provide you with it.

LEG. KENNEDY:

Okay, I'll jot down an e-mail address. Thank you. I appreciate it, Doctor.

P.O. LINDSAY:

Is that it?

D.P.O. VILORIA-FISHER:

That's it.

P.O. LINDSAY:

Thank you very much, Doctor. Get home safe. And again, I apologize if I mess up this name; Joris Verster? How was the pronunciation?

DR. VERSTER:

It was very good. It is Joris Verster from The Netherlands. I would like to thank the members of the Legislature for providing me with the opportunity to speak with you today about the draft bills 2156 and 2210 regarding the energy drinks which I believe are unwarranted.

My name is Dr. Joris Verster, Assistant Professor of Psychopharmacology at Utrecht University in The Netherlands. Psychopharmacology is the study of psychoactive substances on cognitive functioning, behavior and mood. My particular research focuses on substance abuse, risk-taking behavior and traffic safety. I have extensive experience with conducting survey research and analyzing and interpreting the data.

As a scientist, I have been following the recent discussion about the wrongly assumed health risks of energy drinks, alone or when combined with alcohol. I am here to explain there is no scientific evidence of a causal relationship between mixing energy drinks with alcohol and adverse behavior such as increased alcohol consumption or drug use. Given the lack of scientific evidence, I believe

that the two draft bills concerning energy drinks are unwarranted.

The misconception that mixing energy drinks with alcohol increases overall alcohol consumption comes from several surveys or interviews that describe a correlation between the two, but just because two things occur together does not mean that one causes the other. Unfortunately, our intuition can lead us astray when it comes to distinguishing between causality and correlation. It is my opinion that this is what happened in the current energy debate. When a correlation is found between two things, this does not prove that there is a cause and effect relationship. A simple example is the correlation between the number of taxi drivers wearing a raincoat and the number of traffic accidents. One could argue that a coat limits the movement of the driver and, therefore, more accidents may happen. However, the two have nothing to do with each other, since a third variable, bad weather, is the common cause that explains the increase in those wearing coats and the number of traffic accidents.

Surveys can only provide us with a correlation between two things, but do not tell us anything about a possible causal relationship. They should not be confused with scientific experiments providing the explanation. To establish whether there is a causal relationship, a controlled experimental study is needed. Regarding energy drinks and alcohol consumption, these controlled experiments are currently lacking.

Several researchers presented their correlations as if they found a causal relationship and urged Legislators to take action against energy drinks. In this way, the audience was misinformed about the alleged health risks of energy drink consumption. It is important to present data in a fair, objective and balanced manner, especially when this data is used as the basis for considering regulatory interventions.

Despite the shortcomings, the surveys did provide us with two important facts. First, only a minority of students occasionally combine energy drinks with alcohol; and second, an even smaller percentage of them consumed several energy drinks with alcohol. Most surveys compare a group who consume energy drinks with a group that does not consume energy drinks. The great disadvantage of such a study design is that two groups may differ greatly from each other in many ways. For example, they may already differ in personality and level of sensation seeking from birth, long before they consumed their first alcoholic beverage or energy drink. This makes a direct comparison between the two groups unfair and biased.

Much more controlled data come from studies that make comparisons within the same people. In these studies, alcohol drink consumption is recorded twice; once when they drink alone and again when they mix energy drinks and alcohol. Such research has, in fact, been conducted and showed that when mixing energy drinks with alcohol, people consumed 27 to 41% less alcohol when compared to occasions when they drank alcohol alone.

To summarize, there's no scientific proof for the conclusion that there is a causal relationship between energy drink consumption and alcohol or drug use. I do share the concerns for the health of this community. But it's common knowledge that the excessive and irresponsible consumption of alcohol can have adverse effects on human health and behavior, but it should be clear that this is due to the alcoholic drink and not the mixer. Thank you for your time and attention, and I'm happy to answer any questions you may have.

P.O. LINDSAY:

Thank you, Mr. Verster.

D.P.O. VILORIA-FISHER:

Question.

P.O. LINDSAY:

Legislator Viloría-Fisher has the first question for you.

D.P.O. VILORIA-FISHER:

Thank you, Doctor, for being here. I just have a question about a study that you mentioned regarding the causality. Were you referring to Dr. Alford's study?

DR. VERSTER:

No, I'm referring that no studies will show any casualty; that's the big problem.

D.P.O. VILORIA-FISHER:

Rather that it showed that there was no causality is what he had said. And you referred to a study; was that the study to which you were referring?

DR. VERSTER:

No. I confirmed -- I'm referring to several surveys and interviews that have been published and they show -- they present correlations between energy drinks.

D.P.O. VILORIA-FISHER:

Okay. But you're saying you haven't seen a study that either rejects or supports the theory of causality?

DR. VERSTER:

Yes. There's no study that proves any causality between energy drink consumption and alcohol drug use.

D.P.O. VILORIA-FISHER:

Okay. And you haven't seen any study that --

DR. VERSTER:

It's pure speculation that one causes the other; it's a correlation.

D.P.O. VILORIA-FISHER:

Okay. I may have misunderstood you; I thought you said that there was a study that rejected the causality theory.

DR. VERSTER:

No, there is only one study that I mentioned that shows where you look within the same persons on one night when they only drink alcohol and another night when they combine it with energy drinks. On the night that they combine it with the energy drinks, they actually drink 27 to 41% less alcohol. So --

D.P.O. VILORIA-FISHER:

Okay. And that wasn't Dr. Alford's study.

DR. VERSTER:

No.

D.P.O. VILORIA-FISHER:

Okay. All right, thank you.

P.O. LINDSAY:

Legislator Gregory.

LEG. GREGORY:

Thank you. I thank you for coming here today. Are you familiar with the, what is it, Willoughby Study from Austria, Australia?

DR. VERSTER:

Can you repeat the name, please?

LEG. GREGORY:

The Willoughby, it was a study done by the Cardiovascular Research Center in Australia back in 2008.

DR. VERSTER?

No, I am not familiar with that.

LEG. GREGORY:

Okay. Well, in that study it found that energy drinks could increase the risk of strokes and heart attacks. And it said, "Even consuming one can of energy drink" -- and I think it was -- specifically, the study was on Red Bull, "Could increase the risk of blood clotting."

DR. VERSTER:

Yeah. Well, this is probably -- I don't know the study, but it sounds like it's the same problem that we have with all the survey studies. They find a correlation, one goes up and the other thing goes up, so. But there's probably no causal relationship; that's not proven by the fact that there was a correlation.

LEG. GREGORY:

Okay. So you're saying that --

DR. VERSTER:

Andreas Kadi can answer the question if you like, because he says -- he whispers in my ear that he knows the study.

MR. KADI:

I know the study.

D.P.O. VILORIA-FISHER:

Is that okay?

LEG. GREGORY:

I'll just ask a general question. So you're -- the general studies that you've seen you're saying are basically surveys, and from your research you've been able to discredit those surveys based on the methodology that's used in the studies?

DR. VERSTER:

Well, those studies are important survey studies because they show correlations between A and B. But that's just a start to say, "Well, we need more research to see if A has a causal relationship with B." It does not prove that there is causal relationship, it just shows a relationship. But there are so many relationships between the ice cream sales and the number of shark attacks in Miami, that's a correlation. But there's not -- the shark attacks are not caused by the ice cream sales that go up, it's the good weather while people go to the beach, buy ice creams and get attacked by the sharks.

P.O. LINDSAY:

Unless you get a shark that likes ice cream, you know?

*(*Laughter*)*

DR. VERSTER:

Yeah, maybe he's jealous.

LEG. GREGORY:

Okay. All right, thank you, Mr. Chair.

P.O. LINDSAY:

Anybody else? No. Thank you very much. Again, get home safe.

Okay. Michael Watt, do you want to weigh in on this, or did you --

LEG. ROMAINE:

He left.

P.O. LINDSAY:

He left; oh, wonderful. Matthew Vishnick?

D.P.O. VILORIA-FISHER:

Where is he from?

P.O. LINDSAY:

Holtsville.

D.P.O. VILORIA-FISHER:

Oh, okay.

Michael, I don't -- Matthew, I don't want your frequent flier miles, I want the last three guys, all right? Matthew is from Holtsville.

*(*Laughter*)*

MR. VISHNICK:

To pay my gas bill.

MS. LOMORIELLO:

Hold down the mic, please.

MR. VISHNICK:

Legislator Nowick and this Honorable Legislature, I'm here today to speak with respect to IR 2156 and 2210. After reading articles and studies provided to me by your office, other sources, and listening to all of the testimony at this hearing, at this time the proposed resolutions should not be enacted as the burden to justify the resolutions has not been met. Based on the limited and speculative information regarding energy drinks, enacting the proposed resolutions is premature. More documentary and test-proof evidence is clearly needed. None of the relied upon information can substantially support the position that energy drinks are unsafe and, therefore, justify a posted warning at the place of resale and the sale of energy drinks to be restricted to individuals at least 19 years of age.

Notwithstanding that energy drinks were first introduced to the United States in 1987, energy drinks have been consumed on a regular basis since 1962 in Asia. Suffolk County is the 20th largest market in the country, with energy drinks sales of \$31 million and over \$5 billion dollars worldwide. This equates to over ten million drinks consumed annually, or three-quarters of a million drinks per month, or 28,000 drinks consumed daily in Suffolk County; basically, 1,000 drinks an hour. So by the end of this hearing, and I'm assuming it's a few hours already, approximately 3,000 energy drinks have been consumed in our County.

I was raised in Suffolk County. I care about our citizens with respect to their health and jobs. To enact such a drastic resolution based on isolated, rare incidents regarding individuals that allegedly incurred negative effects from energy drinks is improper and unwarranted at this time. Energy drinks are simply today's alternative to coffee, tea or soda. By enacting the resolutions which encroach on free enterprise, jobs will be lost, gross receipts will decrease, tax revenues to the County will decrease, stores will incur unnecessary enforcement procedures, and litigation will increase rising out of a violation of the law. There is no direct link to an energy drink causing serious harm to an individual. In virtually all cases attempting to connect an energy drink to a health issue, the individual over-consumed or abused the product. Any product can cause an adverse reaction to an individual, as Ms. Fisher explained with the Arizona Iced Tea. The amount of incidents is clearly diminimous considering the number of sales and consumption on a daily basis. If energy drinks were unsafe or detrimental to our health, our hospitals and doctors offices will be overwhelmed with patients with energy drinks being the proximate cause.

It is human nature to want that which you cannot have. Passing this resolution will solely cost the Suffolk County businesses millions of dollars, as the individuals in the restricted class will simply drive to a jurisdiction that permits the sale to them. Furthermore, by restricting the sale of energy drinks, which at this time can be concluded as safe for various reasons, the individuals in the restricted class will resort to using alternative alertness products such as coffee shots, other beverages with high caffeine classified as soft drinks, caffeine pills and powdered-mixes regularly sold in all types of stores. Alertness products are sold in many forms, from chewing gum, energy powders, health mixes, weight-gainer drinks, to the individual ingredients in nutrition stores. Caffeine and various other dietary supplements and herbs are readily accessible.

I am confident that by enacting the resolution, individuals will create their own drinks, the contents and quantities are the same which are not controlled in any manner. Simply put, anyone can buy a soft drink, like a Big Gulp, add a caffeine tablet, a multi-vitamin and any other ingredient and effectively make an energy drink. Now, that gets back to the FDA regulations where the manufacturers are at least certifying with Certificates of Authority any herbs that they may put in to their drink, from where it was grown to the time it was put into the drink, and giving their GRAS State notice as well.

The current resolution is flawed, as the ingredients it intends to ban to the subject class are in various other foods and drinks commonly consumed daily. Therefore, it is simply wrong to single out an entire product-type without justification. Taurine, our bodies can easily accom -- consume up to 3,000 milligrams of Taurine, that's considered safe; and any excess, our kidneys will excrete it. Caffeine, while we already know that the energy drinks have 80 to about a hundred --

*(*Beeper Sounded*)*

That's my five minutes. You want me to continue, or --

P.O. LINDSAY:

Well, if you could wrap up. I hate to cut you off mid-sentence, you know?

MR. VISHNICK:

Okay. With respect to no direct correlation with the energy drinks, I also see that there is -- it's a parenting issue. So if a parent is not desirous of a child consuming an energy drink, it's within the province and right of that parent to discourage his child from ingesting the product. Based on the proposed resolution, there would be challenges to it constitutionally. People should have the right to consume what they want. Energy drinks are regularly consumed by our military. The FTC and the FDA, they're the proper agencies to implement regulations regarding our drinks. In line therewith, I respectfully ask the Suffolk County Legislature not to enact Resolutions 2156 and 22 (sic) into law. I also brought copies of my speech.

P.O. LINDSAY:

You can just give them to the Clerk, Matthew. You get home safe, too, all right? Okay, Thomas P. Davis.

LEG. NOWICK:

How many more?

D.P.O. VILORIA-FISHER:

I think three more, right?

P.O. LINDSAY:

Two.

D.P.O. VILORIA-FISHER:

Two more.

DR. DAVIS:

Good evening. And thank you very much for letting me speak today, honorable Legislators. My name is Dr. Thomas P. Davis, I'm a Professor of Pharmacology, Toxicology, Physiology and Neuroscience at the University of Arizona College of Medicine and the University Medical Center in Tucson, Arizona. I have a rather unique record. I've been in the beverage business since I was 12-years old because my family is the Hanson Family. And the Hanson Beverage Company is the beverage that puts out the Monster Energy Drink, of which I formulated together with colleagues.

I will tell you that there's nothing more clear to me than being careful with the components in the Monster Energy Drink. I agree with what I've heard from the Red Bull people today. It's the first time I've ever met them or talked to them, but I have followed their research, I have followed the work in the European Union, I have followed the work in Health Canada, I have followed the work in virtually every country including Sweden, Tahiti and another 48 to 55 countries that Monster Energy Drink is sold.

I'm also an expert in drugs of abuse. My research field is drug delivery to the brain. So for 30 years, I've been funded by the National Institutes of Health to research the delivery of narcotic analgesics, Opiates and various other compounds to the human brain. I've listened with a lot of ability to learn today from the presentations of everyone, and it's a very complex subject, I am very sensitive to that. I have been teaching pharmacology to medical students and graduate students for 30 years. Unfortunately, in most medical schools across the United States, an average medical student might get two or three hours on drugs of abuse, and that's if they're lucky. So pharmacology is a very, very difficult discipline to understand, and today you have had to hear a tremendous amount of information that is confusing, and I've heard quotes of confusion, but let me try to simplify it a little bit. And really, I can only speak to the Monster Energy Drink and the formula that we have because, as I've said, I'm quite intimately associated with it.

The one synergy study that's been done has been quoted already, and I think Andreas Kadi did an excellent job in that European study published in 2009. And yes, the three components in Red Bull are the same three major components in Monster. The other components in Monster are three vitamins in the one to two to ten milligram range per can. This is one-tenth to one-fiftieth of the RDI, Recommended Daily Intake, of those three vitamins. There isn't a single compound in the Monster Energy Drink that causes any stimulant activity except the increase in blood pressure and heart rate that you know occurs from caffeine.

We have one herbal ingredient in Monster. There's been a lot of discussion about the potential synergy, synergistic action, and how those can be studied. I'm in the business of doing clinical studies; I've been doing them in the Cancer Center, again, for 30 years. But the truth of the matter is the only synergistic study ever done has been done on those three compounds that Andreas talked about that I am aware of. The one herbal compound we have is one milligram of active Ginseng; that is a trace level and it has no stimulant effect. How do I know this? There's been copious studies done on each component in the Monster Energy Drink. There's been copious studies done on each component in the Red Bull drink. It's true caffeine studies would fill this room, literally. If you xeroxed them all, you'd be downing a forest; thank God for computers. But the truth is if you look in the literature and you want to study Glucuronolactone, you want to study Taurine, it's an amino acid. You want to study the literature on the safety of Taurine and humans, it's all there. It's all in the medical literature. I have to bet the name of my family on it, all right?

So the bottom line is this. If you are a responsible manufacturer like we are and you have some pharmacologists that you can call upon, and one of them happens to be a family member and the last one in the family in the company, you're going to be responsible, you're not going to be putting stuff in those drinks that's going to hurt children. So, I have three children, I have two grandchildren. And the bottom line is that there's nothing in the Monster Energy Drink that's going to cause a toxicity issue in those individuals except one thing, the same thing each one of you drinks in the morning if you drink Starbucks coffee, and that is the caffeine. And yes, if you get three to four grams of caffeine, you're going to have a negative effect. If you have three to 400 milligrams of caffeine, the literature shows the blood pressure increase and heart rate increase is about 10%. All right, if you're sensitive to caffeine, will it cause an epileptic episode? It's possible. But a lot of compounds will lower the seizure threshold in an individual, in a population; I ought to know, my daughter has epilepsy. So a lot of these issues are very emotional and very difficult to grasp because they effect children and we're worried about it. I'm sensitive to that, believe me.

Okay. The Hanson Beverage Company has 450 products, all right? It's got about 45 Monster-type related products and about two, 300 other products. We are that company that makes that natural soda, all right? It's that soda without preservatives and it's without artificial colors. We are always consensus of the health of the consumer, otherwise we wouldn't be the first natural beverage on the -- in the United States and we're still there, these many years later.

D.P.O. VILORIA-FISHER:

Dr. Davis, can you wrap it up?

DR. DAVIS:

So that's about it. If you have any questions, I'll be happy to answer them on any of the subjects presented today. Thank you very much.

D.P.O. VILORIA-FISHER:

There is one question. Legislator Cilmi?

LEG. CILMI:

Hi, Doctor. How are you? You spoke about your drink, Monster Drink, as well as Red Bull and the ingredients in those three drinks, or at least the primary ingredients in those three drinks. Are you aware of any other ingredients -- without naming the names of other drinks, competitors drinks. Are you aware of any other chemicals that may not be found in your drink or the Red Bull drink that could have a synergistic effect such that it significantly elevates the dangerous effects of the higher levels of caffeine in the other drinks?

DR. DAVIS:

Can I answer that two ways? The first way is as follows. There's a lot of compounds I don't put in Monster and I wouldn't put in Monster. And I was very well aware of Ephedra years ago, just based on its chemical structure; identical to Amphetamine, identical to Dopamine and Epinephrine in the human brain. I was very well aware of that. So yes, there are some chemicals out there in other drinks that I would not use, that's a fact. Okay?

Now the synergism issue is much more complicated. Policy pharmacy is something that's a nice term used by a lot of different people, but it's difficult to understand because the longitudinal studies, what you're asking for, are known as epidemiological studies. In other words, if someone is on vitamin C, A and E and three B's and they take a vitamin pill every day, what's going to happen 15 years from now?

In the cancer centers of our country, of which we have one of the top cancer centers, I think we're number eight or nine right now in the country, those studies have been done longitudinally for prevention of cancer. All right? But they're incredibly expensive, they're NIH driven and they just have not been done on the components in any energy drink. Epidemiological studies going out years because they're so expensive. And the end point, it's not cancer prevention, that's what drove those epidemiological studies on vitamins for cancer centers. So we're not there yet, the pressure on the NIH isn't there yet to tell us about 20 years from now on Glucuronolactone, caffeine plus Taurine. It's just not there yet.

LEG. CILMI:

You know, one of the issues I had with this bill from the onset when I first saw it was that the -- the characterization of the chemicals that the bill talks about as being in energy drinks that would be prohibited for sale to minors was somewhat -- I mean, it lists some of those chemicals, but it's -- I believe it's -- it says "chemicals like" blah, blah, blah. So my question to you is would it be possible for you to provide to us a list of those chemicals that you wouldn't put in Monster, for example? So that we could study those, look at those chemicals and --

DR. DAVIS:

That -- I think Red Bull and Monster would have to work together on something like that. You're asking us to look at basically the formulas -- there's over 1,000 energy drinks on the market today, 1,000. All right? There's two right here; number one and number two. And they plowed the road; if it wasn't for Red Bull, Monster, I don't think, would be off the ground. All right? So we have two. I know chemicals that I don't like because I'm a professor in toxicology as well. All right? Does the data support the dose level that's being used in those energy drinks at the consumption level in that individual? That's the difficult question, A. And B, a lot of these studies were done in rats and mice. We don't do toxicology studies in humans, it's not a very good thing to do.

*(*Laughter*)*

But rats and mice, by extrapolation is the way we do it and it's done all the time and we do it in front of college {intoc}. But I'd have to look at each one of these laundry lists, if they're out there, from these other energy drinks and find out which of these I wouldn't put in, and then I'd have to

make a -- it's a very long, difficult task, but if Red Bull wants to get on board it's feasible. I will not speak for Red Bull.

LEG. CILMI:

Very quickly, last question. What other foods or beverages other than, quote/unquote "energy drinks", do some of these other chemicals appear in?

DR. DAVIS:

Well, if you look for an Inositol, if you look for Ilconatine, you'll find it in some grains, you'll find it in some cookies. If you look for the vitamins, you're going to find them in cookies. There are other foods that some of these compounds are in, okay? There's candies, there's bars, there's workout bars, there's a large number of different products that carry these. And in caffeine, we are definitely a clean source of caffeine. You're taking in over 150 to 200 different xanthenes in your Starbucks coffee; most of those we have no clue what they do longitudinally.

LEG. CILMI:

Okay, thank you.

P.O. LINDSAY:

I've got two more people on the list. This debate's been going on for two-and-a-half hours, guys. You know?

MS. ORTIZ:

Three.

P.O. LINDSAY:

Huh?

LEG. GREGORY:

It's more than that.

P.O. LINDSAY:

Well, maybe longer than that. And, you know, a lot of these folks came from a long way, so I'm being very -- you know, our rules say we can cut off debate after two hours. Come on. You know, make it quick. Legislator Stern.

LEG. STERN:

Doctor, thank you for being here.

DR. DAVIS:

Hi.

LEG. STERN:

The first question is I had read that when you have an amount of caffeine in an energy drink and you have another substance such as Taurine, let's say, that when you have that type of a synergy, that there is an additional caffeine kick, let's say, because of the presence of the other substance. I'm wondering if you believe that that's correct. And two, does that make the caffeine amount that might be reported on the can or otherwise actually exponentially greater as a result?

DR. DAVIS:

It's absolutely categorically false. Taurine is a sulfur-containing amino acid, it's an anti-oxidant. It aids the contractility of the heart. Five to eight grams a day as prescribed in the Japanese culture, just as an over-the-counter, to help an individual's heart after they've had some kind of a stress or

some kind of an issue. All right? The world's expert in Taurine was Dr. Ryan Huxtable who was right down the hall from me until he retired three years ago and went up to Washington State to live off an Island. But he has published more papers on Taurine than anybody alive, and I've read a lot of them, including his textbook. There is absolutely no data on Earth that I'm aware of -- and it might be out there; somebody might find it and I'd like to look at the study and really determine if there's any basis to it, truthfully -- that Taurine exacerbates caffeine's effect. I've never seen it; if it's there, I would like to read it and find out why. It's an anti-oxidant, for God's sakes, it's an amino acid. I mean, they're building blocks of protein in our human body. It stabilizes heart cells, it acts to stabilize other cells as well. I don't see any mechanistic way it can potentiate caffeine's effect.

Caffeine acts on the adenosine receptor in the brain. It doesn't even act on the pleasure center Dopamine. It doesn't act like cocaine. It's not -- I'm sorry, okay? The pharmacology -- and this is really complicated. It requires a course sometimes. It's not fair sometimes to have to present a lot of that and expect all of you to have to hear it and figure out what's true and what's false when something so important as a child's health is involved. But there's no basis for Taurine caffeine interaction potentiating the effect of caffeine that I'm aware of.

LEG. STERN:

Thank you.

P.O. LINDSAY:

Legislator Kennedy.

LEG. KENNEDY:

Thank you, Mr. Chair. Doctor, thank you for coming. I was sitting over here before when you were listing your credentials. I was intrigued, the areas that you practice in, but you spoke about a proficiency in addictions as well.

DR. DAVIS:

Just drug delivery to the brain, not behavioral addiction. My area, field is, quite honestly, delivery of drugs to the brain and how to improve our delivery of the drugs to the brain without toxicity and side effects such as respiratory depression, pinpoint pupils and that kind of thing.

LEG. KENNEDY:

Okay. And I am a dangerous individual because I have a minimal amount of knowledge. I'm actually taking some case act study right now, and I took a brain chemistry course which talked extensively about changes to synopsis based on the various range of addictive substances. And as we've heard about, there are many, many drugs that we have, you know, in common day life that cross the blood brain barrier.

*(*SUBSTITUTION OF STENOGRAPHER - DONNA CATALANO*)*

LEG. KENNEDY:

What does caffeine due to synopsis particularly when you're talking about adolescent brains?

DR. DAVIS:

That's a very good question. Caffeine acts on what's called the Adenosine receptor, okay? It acts to -- it binds to a protein in the brain, okay? Amphetamine binds to Dopamine, cocaine binds to Dopamine receptors, okay? Caffeine does not. So caffeine has a specific function that bind to Adenosine receptors. And they're basically inhibitory. Adenosine acts as an inhibitory compound. When you give caffeine, it causes what's called disinhibition. All right. What happens is, yeah, you get some increase in blood pressure and heart rate. The euphoric concept of caffeine is under a lot

of argument right now whether that's even real, because we don't know the pathway by which it follows. It could be the fact that it releases beta endorphins. It makes you feel better because the beta endorphin is somehow affected, okay? But the actual mechanism after it binds to Adenosine receptors in a disinhibition, there's no evidence that it changes the human brain. There's no evidence it causes long term changes. If it did, the pharaohs wouldn't have been -- caffeine has been consumed since pre-B.C. And the truth is there's no evidence out there in the caffeine literature which could fill this room that it changes the human brain or the neurons in the human brain. If there was, you would have Starbucks sitting in here, and you don't. And the truth is that I am sorry, but it just doesn't.

LEG. KENNEDY:

I wasn't seeking a particular answer one way or the other, Doctor. This isn't a trick question. But in the gamut of what we're charged with as far as protection of the public health, safety and wellbeing, particularly of minors, if in fact, there were those types of biological changes that might be brought about, we would absolutely be compelled to act. So you're probably as close to an expert that's ever going to step to that podium.

DR. DAVIS:

The enzyme system that breaks down caffeine is a S1PH2-1-A, it's a specific enzyme family, okay? Children break down caffeine even faster than adults, okay? So the half life of caffeine is about four to five hours. In children it's about three. In peak concentrations, it's 60 minutes. All right. Alcohol blows out of your system in what's called zero order {concentration}. You take it, it flows out of your urine. Caffeine has a longer half life. That's just a fact. So the truth of the matter is we know so much about it, all right, but we don't see these brain toxic affects. In children -- if we don't see these brain toxic affects, what are we going to see in children when we clear the drug even faster than our adults.

LEG. KENNEDY:

Okay. And the last question -- and it's almost rhetorical and then I'll stop -- you as well as your colleagues did hear the testimony before from Dr. O'Shaughnessy from the emergency room. He is relating individual incidents coming in based on consumption. As a scientist or researcher, have you done anything to examine or correlate or anecdotally look at what may have the affects of consumption?

DR. DAVIS:

I'm unaware of any studies in the literature which could be done with questionnaires, etcetera across the ERs across the United States. I'm unaware of any studies that have summarized the findings of an ER physician. I do not doubt what he sees. I do not doubt his anecdotal -- what he is looking at. But the basic science doesn't necessarily support what he is seeing.

If you take a blood from everybody who comes into an ER and you find out everything in their bloodstream, you might be on the road to finding what that affect was due to. But if we continue to point just at an energy drink, because if we remove it, that's one less we've got to worry about, I don't know if that's fair. I don't know if that's really good science or even a good way to do this. That's all I'm trying to say today. Yes, I trained to PhD's that are on my clinical faculty and they're ER Doctors right now. They have seen episodes that they would -- they come to me and say, "That damn energy drink you got." I say, "What did you see? Where is the blood level amphetamine? Were they on coke at the time?" "Oh, yeah, as a matter of fact, we got a trace level of cocaine metabolite." I say, "Please, don't throw the baby out with the bath water," because the data is not there yet. But if it's there, then I will read it and I will be aware of it, because I'm not going to let us go down that slope. Okay. We have four other products to protect.

LEG. KENNEDY:

We've been at this a long time.

P.O. LINDSAY:

Yes we have.

LEG. KENNEDY:

I was almost going to suggest how about you query the NIH to see if they would be interested in doing or funding that kind of inventory then so we do get the science --

DR. DAVIS:

I'm the last guy to do it. I have a conflict of interest if I touch an energy drink in my lab. The university has made it crystal clear to me 30 years ago. And the only reason I'm able to do this is I'm a family member. So as long as I don't touch the area, I have no conflict of interest. And I love being a professor.

LEG. KENNEDY:

Okay. All right. Thank you.

P.O. LINDSAY:

Legislator Gregory last question. Last.

LEG. GREGORY:

Let me get my whole list of questions. I'm only kidding.

P.O. LINDSAY:

I'll tell you what. You are going to be talking to an empty house, my friend, because we are going to adjourn.

LEG. GREGORY:

Okay. I'm kidding. I want to talk to the business aspect of it. Do you have an idea of how much business will be affected by a ban like this?

DR. DAVIS:

I apologize. I am totally out of the business. I don't have any business information. I'm the Senior Vice-President of all technical affairs. The business marketing and everything, I'm not even in the meetings.

LEG. GREGORY:

Okay. Very quick then. Thank you.

P.O. LINDSAY:

Thank you very much. I know you came a long ways. Not as long as some of the prior speakers, but thank you for your being here.

DR. DAVIS:

I want to thank you very much for hearing this and working on it. It's been enlightening to me, and I mean that sincerely. And I thank you all very much.

P.O. LINDSAY:

I don't have any other cards on this subject.

APPLAUSE

P.O. LINDSAY:

Is there anyone else -- you can't speak a second time, I'm sorry.

MR. KADI:

Mr. Chair, could I correct something?

P.O. LINDSAY:

Go ahead, correct it.

MS. KADI:

In one sentence. Andreas Kadi, Chief Scientist Office from Red Bull. Because Ms. Nowick really managed to put me on the spot, and I would briefly like to step back into the spot. The can you gave me actually was an old can from 2008. We've stopped caffeine labeling about a year ago. We got this now out of the stores from Long Island, Suffolk County. It contains quantitative caffeine information. And I wanted to put the record straight. And thank you for the opportunity and would like to give you the cans afterwards. Thank you very much.

P.O. LINDSAY:

Thank you very much. Legislator Nowick.

LEG. NOWICK:

Motion to recess.

P.O. LINDSAY:

Motion to recess? Okay. I'll support it. You closed the one, now you're recessing the other, right? Okay. We have a motion and a second to recess. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Next up is 2210 -- **IR 2244 - A Local Law to regulate the off-road use of four wheel drive vehicles and motorcycles. (Browning)**

I don't have any cards on this subject. Is there anyone in the audience who would like to speak on this subject? Seeing none, Legislator Browning.

LEG. BROWNING:

Motion to close.

P.O. LINDSAY:

Motion to close, seconded by Legislator Viloría-Fisher. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

IR 2256 - A Charter Law to eliminate requirement for verbatim minutes. (Viloría-Fisher)

I don't have any cards on this subject. Is there anyone in the audience that would like to talk on this subject? Seeing none, motion to close by Legislator Viloría-Fisher, I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

IR 2258 - A Charter Law to provide for fair and equitable distribution of public safety sales and compensating use tax revenues. (Schneiderman) I don't have any cards on this subject. Is there anyone in the audience who wants to speak on this subject? Seeing none, Legislator Schneiderman.

LEG. SCHNEIDERMAN:

Motion to close.

P.O. LINDSAY:

Motion to close. I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Eighteen -- seventeen.

P.O. LINDSAY:

IR 2279 - A Local Law to enhance Article XXXVI of the Suffolk County Administrative Code to add a local preference to benefit victims of natural disasters. (Romaine)

LEG. ROMAINE:

Motion to recess.

P.O. LINDSAY:

I don't have any cards. Anybody in the audience want to talk about it? No? Okay. Motion to recess by Legislator Romaine, I'll second it. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

IR 1002 - A Local Law to protect the public from injury caused by accumulated snow or ice on moving motor vehicles. (Cooper)

P.O. LINDSAY:

I have one card. Kevin Rooney is still with us.

D.P.O. VILORIA-FISHER:

He's still smiling.

MR. ROONEY:

Since I run a drug and alcohol testing consortium, on behalf of my industry, I want to thank this Legislature and all the speakers with providing me with one hell of an education today.

I'm actually here to speak about Legislator Cooper's bill. About ten years ago, I was driving down to Washington. It was a bright, clear, sunny day. And it had snowed considerably a day or so beforehand. In the middle of the Delaware Memorial Bridge mid span, a sheet of ice approximately about a foot high and width of a tractor trailer came off that tractor trailer and landed on my vehicle. It landing with such force that it totally collapsed the front suspension and the hood, it buckled the window frame and blew out the windshield, the passenger-side window and the sunroof. My car spun around a few times in the middle of the bridge and came to a stop up against the railing on the

side of the bridge, and I was looking down at the Delaware River a couple of hundred feet below.

Other than those occasions where I parachuted out of a military aircraft and prayed to God that the guy who packed my chute the night before, you know, wasn't hung over, that few moments on that bridge were as close as I have ever come to a near death experience. And to be perfectly honest, ladies and gentlemen, I put about 35 to 40,000 miles a year on a car. I do a lot of driving and a lot of highway driving.

And when I see vehicles, be they cars, SUVs, panel trucks, school buses, tractor trailers all traveling at high speed with large amounts of snow which has now hardened into ice that is just waiting for a little bit of warm weather to come loose, when I see them traveling at high speed, I wish I had the opportunity to ask them a very simple question, and that is how could you be so damn inconsiderate to drive your vehicle at high speed with a potentially deadly projectile on the roof.

And I was intrigued by a question which Legislator D'Amaro asked of Dr. O'Shaughnessy, if I can quote you, Legislator, he said rhetorically: "Can we legislate responsibility?" And I would rephrase that. Can we legislate responsible behavior? And the answer to that, of course, is no. But if laws are a combination of carrots and sticks, if they're a combination of encouragement and punishment, then surely we would try, in this instance, to encourage people to do the right and responsible thing, and that is clean off their vehicles. And if they don't, then punish the hell out of them. Impose whatever fine you think is appropriate for people who act irresponsibly.

And I support this bill, and I would urge you to do the same thing, but with one caveat, and that caveat is that we all know that any law is only as good and as only as effective as the level of enforcement which follows enactment. So should you pass this legislation, and I hope you do, I would strongly encourage you to, in turn, strongly encourage law enforcement agencies at the County, town and local levels to fully and aggressively enforce this law. And if they do enforce, then property damage will be reduced, vehicular accidents will be reduced. And maybe, just maybe, ladies and gentlemen, you might save somebody's life. Thank you very much for your time and attention.

P.O. LINDSAY:

Thank you, Kevin.

D.P.O. VILORIA-FISHER:

Thank you, Kevin.

P.O. LINDSAY:

I don't have any other cards on this subject. Is there anyone else in the audience who would like to talk to us on this subject? Seeing now, Legislator Cooper, what is your pleasure?

LEG. COOPER:

Motion to close.

D.P.O. VILORIA-FISHER:

Second.

P.O. LINDSAY:

Motion to close, seconded by Legislator Vilorio-Fisher. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

We have a CN that has to have a public hearing. It was posted earlier today. It's a **Local Law amending the County Affordable Housing Program to find affordable housing to homeowners displaced by natural disasters.** That sounds familiar. Is there anyone in the audience that would like to speak on this public hearing? Seeing none, I'll make a motion.

LEG. ROMAINE:

Motion to close.

P.O. LINDSAY:

Motion to close by Legislator Romaine.

D.P.O. VILORIA-FISHER:

Second.

P.O. LINDSAY:

Seconded by Legislator Viloría-Fisher. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. I'm going to make a motion to set the date for the following public hearings of March 8th, 2011, 2:30 p.m. Maxine Postal Auditorium, Riverhead, New York:

IR 1008, A Charter Law to Enhance Budgeting Flexibility and Responsiveness. (Schneiderman) *Budget & Finance/Information Technology.*

IR 1010, A Charter Law to affirm the County Legislature's Policy-Making Authority. (Schneiderman) *Ways & Means*

IR 1042, A Local Law to require responsible disposal of expired and unused medications by hospitals, nursing homes, hospice facilities and long-term care facilities. (Cooper) *Health & Human Services*

IR 1100, A Local Law to increase awareness of the harmful effects of tobacco use. (Cooper) *Health & Human Services*

IR 1102, Local Law in relation to disposition of auction properties. (Co. Executive) *Ways & Means*

IR 1103, A Local Law to amend Chapter 152 of the Administrative Local Law exempting the Health Commissioner and the Chief Medical Examiner from certain salary caps. (Co. Exec.) *Labor, Housing and Consumer Protection*

1104, A Local Law to prohibit pet waste and waterfowl feeding on County property. (Co. Exec.) *Health & Human Services*

IR 1105, A Local Law to amend the Rules and Regulations for the use of the Suffolk County Parks. (Co. Exec.) *Parks & Recreation*

And that's it. I made that motion. Do I have a second?

D.P.O. VILORIA-FISHER:

Second.

P.O. LINDSAY:

Seconded by Legislator Viloría-Fisher. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

There was a mistake before on the Tabled Resolutions. We forget to address Tabled Resolution **Number 11, to designate local newspapers in which County notices may be published.**

Did you want to -- Legislator Kennedy?

LEG. KENNEDY:

I'm going to make a motion to table, again, Mr. Chair. As a matter of fact, I spoke with the Majority Leader at length. He and I have one more round of conversation to have with this.

P.O. LINDSAY:

We'll be two months into the year, so you've got to get this resolved.

LEG. KENNEDY:

I understand that. As a matter of fact, whatever the issues are, we will have them resolved by our next cycle.

LEG. HORSLEY:

Question. Does that mean that they're not publishing at all to those other local papers.

P.O. LINDSAY:

I think they carry on from the 2010 schedule. Okay. So we have a motion to table, I'll second that. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. So it continues to be tabled. Back to the agenda on Page 7. Let's see what we can do to expedite this. Legislator Browning.

LEG. BROWNING:

I'd like to request that we take 2271 out of order. I make a motion.

LEG. KENNEDY:

Second.

P.O. LINDSAY:

IR 2271 - Directing the issuance of a request for proposals to increase services and revenue at the John J. Foley Skilled Nursing Facility. (Browning) Is there people here?

LEG. BROWNING:

There are John J. Foley workers here. I'd like to let them get out of here.

P.O. LINDSAY:

Okay. So you make a motion to take out of order, I'll second it. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

It's before us. Do you want to make the motion?

LEG. BROWNING:

I'll make the motion to approve.

P.O. LINDSAY:

Motion by Legislator Browning to approve, seconded by Legislator Eddington. On the question, anybody want to speak? Okay. We have a motion and a second. All in favor? Opposed? Abstentions?

LEG. BARRAGA:

Opposed.

LEG. ROMAINE:

Will the Clerk please list me as a recusal?

LEG. D'AMARO:

Opposed.

LEG. STERN:

Opposed.

MR. LAUBE:

Thirteen.

P.O. LINDSAY:

Okay. Back up to the top of the agenda. **IR 2251 - Amending the 2011 Operating Budget and appropriating funds in connection with bonding a settlement for attorney fees for an Employee Practices Liability Case. (Co. Exec.)**

LEG. COOPER:

Motion to approve.

LEG. GREGORY:

Motion to approve.

P.O. LINDSAY:

Motion by Legislator Gregory. Do I have a second? Seconded by Legislator Cooper. On the question, anybody?

LEG. MONTANO:

Quick question.

P.O. LINDSAY:

Legislator Montano.

LEG. MONTANO:

County Attorney.

P.O. LINDSAY:

County Attorney is in the room.

LEG. MONTANO:

Maybe Mr. D'Amaro could answer. Two quick questions. The cause of action arose when in this case, and what an equity employee practices liability case? I'm not sure what that is.

P.O. LINDSAY:

It would probably be more appropriate to ask the County Attorney.

LEG. MONTANO:

Well, I know it was passed in Ways and Means before. Lynne, did you hear me? And you know my policy, I don't like bonding these settlement cases. Quickly, cause of action arose when, if you know?

MS. BIZZARRO:

2005.

LEG. MONTANO:

Okay. And what is the employee practices liability case mean? What exactly are we talking about here?

MS. BIZZARRO:

This is a federal action, and it was brought under Section 42 ELC 1983, it's a Title 7 case.

LEG. MONTANO:

Okay. So it was brought by an employee and we are liable.

MS. BIZZARRO:

This was actually a settlement of it.

LEG. MONTANO:

Do you know what the basis was it of this?

MS. BIZZARRO:

I'm sorry?

LEG. MONTANO:

What was the basis of it; was it sex discrimination, harassment, what was it?

MS. BIZZARRO:

Under that statute, it's under discrimination based upon age, sex, gender or race.

LEG. MONTANO:

I know that. I'm familiar with Title 7. What I'm asking is what was the basis of this case, if you know?

MS. BIZZARRO:

There was just an allegation that he was passed over for a promotion, and that was essentially the allegation.

LEG. MONTANO:

All right. I won't belabor it. Thank you.

P.O. LINDSAY:

Okay. We have a motion and a second on 2251. All in favor? Opposed? Abstentions?

LEG. MONTANO:

Opposed.

LEG. ROMAINE:

Opposed.

MR. LAUBE:

Fifteen.

P.O. LINDSAY:

You called the vote?

MR. LAUBE:

Yes, sir.

P.O. LINDSAY:

2251 A, the accompanying bonding resolution. Same motion same second, roll call.

(THE ROLL WAS CALLED BY TIM LAUBE - CLERK OF THE LEGISLATURE)

LEG. GREGORY:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Yes.

LEG. STERN:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

Yes.

LEG. CILMI:

Yes.

LEG. MONTANO:

No.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. ROMAINE:

No.

D.P.O. VILORIA-FISHER:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Fifteen.

P.O. LINDSAY:

IR 2252 - Amending the 2011 Operating Budget and appropriating funds in connection with bonding a settlement for an auto liability case. (Co. Exec.)

LEG. GREGORY:

Motion.

P.O. LINDSAY:

Motion by Legislator Gregory, seconded by Legislator Cooper. On the question, Legislator Romaine.

LEG. ROMAINE:

Yes. Quick comment on this and the previous resolution. In committee, I raised the same questions that Legislator Montano did regarding bonding. And I asked Budget Review essentially how much do we have in the pay-as-we-go, because it's the beginning of the year? At that time, I was told approximately \$2 million, but then someone from the administration indicated there was -- and the Chairman can correct me -- a potential for cash flow problems. And maybe you want to address that. That's why we're bonding that. Maybe you would address that question.

MS. VIZZINI:

Actually, if you recall that meeting, I corrected myself on the record. I initially responded that we usually budget around two million. This year we budgeted 500,000. And I did correct myself while we were talking about that. So that's --

LEG. ROMAINE:

Okay. So that's why we're bonding.

P.O. LINDSAY:

We have a motion and a second. All in favor? Opposed?

LEG. MONTANO:

Opposed.

MR. LAUBE:

Sixteen.

P.O. LINDSAY:

On the accompanying bond **2252 A**, same motion, same second, same vote. Roll call.

(THE ROLL WAS CALLED BY TIM LAUBE - CLERK OF THE LEGISLATURE)

LEG. GREGORY:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Yes.

LEG. STERN:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

Yes.

LEG. CILMI:

Yes.

LEG. MONTANO:

No.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. ROMAINE:

No.

D.P.O. VILORIA-FISHER:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Fifteen.

P.O. LINDSAY:

IR 2242 - To reappoint Maria Loreta Celitan as a member of the Suffolk County Citizens Advisory Board for the Arts. (Nowick). Legislator Nowick, you want to make that motion?

LEG. NOWICK:

Motion.

P.O. LINDSAY:

Seconded by Legislator Viloría-Fisher. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

IR 2264 - Amending the Adopted 2011 Operating Budget to transfer funds from Fund 477 Water Quality Protection, amending the 2011 Capital Budget and Program, and appropriating funds in connection with the Hauppauge fueling facility remediation project (CP 8710). (Co. Exec.)

D.P.O. VILORIA-FISHER:

Motion.

P.O. LINDSAY:

Motion by Legislator Viloría-Fisher, do I have a second? Second by Legislator Romaine.

LEG. KENNEDY:

On the motion, Mr. Chairman.

P.O. LINDSAY:

On the motion, Legislator Kennedy.

LEG. KENNEDY:

My question with this resolution is simple. I know I've seen a lot of the work that was done over at the fueling station. There were problems with the filler caps, but there was spillage. Was there actual remediation that went on, or was it limited only to work on the tanks?

D.P.O. VILORIA-FISHER:

I believe there's remediation. My understanding is that there was remediation that went on there. I recall that from a conversation at the Water Quality Review Committee.

LEG. KENNEDY:

Okay. And did they actually -- they did not have to get involved with tank replacement, though, did they? Had the tanks been done already?

D.P.O. VILORIA-FISHER:

Do you remember the answer to that question? You know what? I'm going to pass this over to Ed, because he did a lot of questioning at the committee.

LEG. ROMAINE:

I asked a lot of questions, because essentially, the 477 money was supposed to be used for the County to replace many of their underground tanks. And instead, it was being used to remediate the oil spill, which I checked in with DEC, and the indicated the County was slow to come to remediation on this, number one. And number two, we moved \$204,000 of 477 funding to do the remediation. And the indication I got was that wasn't going to be enough.

So I had a lot of questions which I'm going to come back -- you saw e-mail -- I'm going to be asking at your committee again. You know, I'm not saying this is a bad thing. I'm simply saying, one, we did this at the expense of not funding the tank removal, which we're making all the gas stations remove. I'm sure we all know that. And two, \$204,000 probably won't be enough to do the full remediation at Hauppauge. So guaranteed, as you know, because I e-mailed all the committee members and all the people involved, I'll be asking those questions back on the Environment Committee.

D.P.O. VILORIA-FISHER:

But this is a correct use of the 477, because that remediation was there. And the DEC was looking to us to the remediation. And we did drag --

LEG. KENNEDY:

No doubt. And it's proximate right to the Nissequogue. I'll be happy to support this, but I will have to find out what extent of the balance of work is that needs to be done as well. Thank you.

P.O. LINDSAY:

Okay. We have a motion and second. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

LEG. BROWNING:

Can I intervene again?

P.O. LINDSAY:

Sure. I would like to make a request to Procedural Resolution Number 3 out of order.

P.O. LINDSAY:

Okay. **Procedural Motion Number 3, authorizing an intervention Lawsuit to prevent unlawful closure of the Foley Skilled Nursing Facility.** You want to make a motion to talk it that our of order.

LEG. BROWNING:

I make a motion to take that out of order.

P.O. LINDSAY:

And I'll second that.

LEG. BROWNING:

And I'd like to make a motion --

P.O. LINDSAY:

First, we've got to take a vote. All in favor? Opposed? Abstentions for taking it out of order.

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Did you call the vote?

MR. LAUBE:

I did.

P.O. LINDSAY:

It's before us. Motion to approve.

LEG. BROWNING:

Motion to approve.

P.O. LINDSAY:

Okay. Do we have a second?

LEG. KENNEDY:

Second.

P.O. LINDSAY:

Seconded by Legislator Kennedy. On the question.

LEG. D'AMARO:

On the motion.

P.O. LINDSAY:

On the motion, Legislator D'Amaro.

LEG. D'AMARO:

I apologize, I have to find it in stack of papers here, but could we get an explanation perhaps?

P.O. LINDSAY:

Legislator Browning, do you want to explain?

LEG. BROWNING:

Sure. I mean, I know that many of you've heard about the Mary Hibberd Law. It's a County Law that was implemented -- I am trying to remember what year. George, would you like to fill me in?

MR. NOLAN:

Back in '95.

LEG. BROWNING:

Right. It was the middle to late '90s. And this is something that you have heard AME come up and talk about this -- about the Mary Hibberd Law and that -- you know, the closure of John J. Foley. And I believe -- and I do believe many of my colleagues agree -- that we are in violation of the Mary Hibberd Law if we close without the Legislative approval, which has not happened.

As you know many of us voted against the sale. I know many of us don't want to see it closed. And I appreciate the support for the RFP. However, at this point in time, there has been no approval by this Legislature to close the John J. Foley Skilled Nursing Home. And I believe it's appropriate that we would intervene with the current residents and employees of John J. Foley to participate in the TRO.

P.O. LINDSAY:

Legislator Montano. Are you done, Legislator?

LEG. D'AMARO:

I just want to understand what we are voting on. In other words, there is a private lawsuit pending right now with a few plaintiffs, as I understand it, with respect to whether or not this law was violated when -- when what, when we passed the County Budget?

MR. NOLAN:

I think the basis of the lawsuit is the inclusion of closing the Foley facility in the budget, to approve a proposal to close through the budget, and that would be the violation of the Hibberd Law.

LEG. D'AMARO:

When the County enacted its budget and did not fund the Foley facility past April 1, the thrust of this lawsuit is that that was in violation of this particular statute.

MR. NOLAN:

Correct.

P.O. LINDSAY:

I have a question for Counsel. Is that correct, or does it maintain the violation is by putting the revenue into the budget -- the County Executive putting the revenue into the budget before it was approved by this body?

MR. NOLAN:

I think it's all in a piece. The Hibberd Law says that you cannot privatize a County health facility without going through certain procedural steps including a vote of the County Legislature. And in a specific section of the statute, it says, "in the absence of Legislative authorization, you cannot put that in the Operating Budget or Capital Budget," which the County Executive did. And then when the Legislature failed to override, it ended up being in the budget.

LEG. D'AMARO:

I don't want to debate the merits of that, and I don't even want to state on the record what I believe the merits of that to be. All I want to ask -- and thank you for that explanation, I

appreciate it. But I just wanted to ask, if the lawsuit is already pending and has already been heard, why are we intervening at this late time? What's the need? My understanding was that the Appellate Division had restated a stay, which now just gives the lower court an opportunity to make a decision on this very lawsuit and on this very issue. What's left for us to do at this point?

MR. NOLAN:

I don't know if that's a question for me to answer. A Legislator asked me to draft a resolution to intervene in this lawsuit.

LEG. D'AMARO:

That's fine. I'll go through the Chair. I'd like to ask the sponsor, you know, what's left to be done? My understanding is that we're just waiting for a decision at this point.

LEG. BROWNING:

The Mary Hibberd Law was a law that was written by this -- maybe not specifically this body -- but it is a law that was put in place by this Legislature. And if we were not abiding by -- if the County Executive is not abiding by our County Law, then I think it's necessary for us to intervene.

LEG. D'AMARO:

But aren't we just waiting for a decision at this point? What's left for us to do?

LEG. BROWNING:

But we, as a Legislature, our law is being violated, and I think it's necessary for us to intervene. Yes, I know what you're saying, that there is a TRO by residents and by employees. However, I don't think it's necessarily their responsibility. I think it should be our responsibility. And therefore, since they have one, we will join them.

LEG. D'AMARO:

Okay. Well, I don't think that really answers my question, but I understand that you believe that the law has been violated. You know, I think the court is going to answer that question definitively at some point, maybe relatively soon. And it was my understanding that the lawsuit's already been heard. So why are we intervening at this point?

MR. NOLAN:

I think what they've been -- my understanding, what I've heard about the lawsuit is they really haven't talked about -- gone to the merits of the case yet. It's mostly been about whether or not there's going to be a restraining order until the merits of the case are heard. So I don't think courts have really dealt with the merits of the action yet, to my understanding.

LEG. D'AMARO:

It's not on the merits, it's really the restraining order and TRO in place until the restraining order is decided?

MR. NOLAN:

That's what my understanding is, that's what been heard before the Supreme Court and then in the Appellate Division. But I don't really think they've gotten close to the merits.

LEG. D'AMARO:

George, the other question I have for you is isn't it just a little inconsistent if the -- aren't we, in effect, litigating against our own enacted budget by doing this? I don't understand how, just conceptually, we could do that.

MR. NOLAN:

I think that's -- when I was asked about this, I think the way it would have to be -- and the resolution was written a certain way, it would have to be -- it would authorize the Presiding Officer to bring the case almost as an individual Legislator, but, you know, with the authority of the backing of this body. Individual Legislators have done that; previously have brought lawsuits against the County to -- you know, the Levy case being the most famous. Back in the '80s, he brought a lawsuit that him and several Legislators said that the County had adopted a budget in violation of the CAP Laws. And they went to the Supreme Court. Supreme Court Judge said, "That's true." County had to go back and change the budget.

LEG. D'AMARO:

But that was in an individual capacity.

MR. NOLAN:

Yeah, there were three Legislators.

LEG. D'AMARO:

Yeah. I don't -- it's an inherent conflict in my mind that we have stated our policy in a budget document, it was properly enacted according to law, and now we're litigating against our own budget.

P.O. LINDSAY:

Legislator D'Amaro, I disagree with you.

LEG. D'AMARO:

When I say "we," I mean if we intervene as a body.

P.O. LINDSAY:

What happened here with this budget is revenue was put in the budget from the sale of the nursing home before it was approved by this body. The Budget Working Group didn't take it out, because we didn't know what the final vote was going to be. When the final vote came down, there wasn't enough votes to sell the facility, and there wasn't enough votes to overturn the County Executive's veto to fund it. So we left -- we're left with this mess right now. And I think it starts with the violation of the Mary Hibberd Law to start off with.

LEG. D'AMARO:

I just need to understand this. Then the lawsuit we're looking to intervene in goes to putting the proceeds of the sale of the facility into the budget, is that what you are saying?

P.O. LINDSAY:

No. I think what we're saying is that the budget, the way it turned out, is the proceeds from the sale shouldn't have been put in the budget.

LEG. D'AMARO:

But I thought the budget we enacted simply does not provide funding past April 1. So what proceeds are in our budget from a sale? Are they in our budget?

P.O. LINDSAY:

Absolutely. There's revenue from the closure.

LEG. D'AMARO:

Right. But we enacted that budget.

P.O. LINDSAY:

We enacted it because we didn't act on the accompanying resolution, which should have been approved first. We voted on December 21st not to sell the facility. The budget had already been passed. The exact reason why the Mary Hibberd Law was enacted in the first place; to prevent this type of situation from happening. You know, if this -- if this fails in the court, then I know for one am going to put in a resolution to repeal that law, because there's no sense in us passing legislation if it isn't going to be adhered to.

LEG. D'AMARO:

Just to step back for a minute, though, this lawsuit is challenging something that's included in the budget; is that correct?

MR. NOLAN:

That's correct. But as I mentioned --

LEG. D'AMARO:

The Suffolk County Budget. So we are, in effect, litigating against our own budget.

MR. NOLAN:

I think what you are litigating against is the -- effectuating the closure through the budget process.

LEG. D'AMARO:

Let me say it another way. By enacting that budget and going through the proper procedures, the County has already taken a position that the budget is legal. I don't understand how you could now say it's not.

MR. NOLAN:

You have an analogous situation, identical situation almost in the Levy case, where the County Executive gave a budget that Levy alleged -- claimed that it pierced the cap. The Legislature was unable to correct that, they couldn't override a County Executive veto. Levy and two Legislators go to court saying, "It's in the budget, but it was enacted against the Cap Law, it was done improperly, illegally," and a court agreed. I think theoretically the same thing could happen here. I'm not saying it will, but certainly a Legislator could bring a case, say that the law was not complied with, and a court could theoretically invalidate what happened.

LEG. D'AMARO:

I would not deny any Legislator the right to commence or join an action. If you think something is wrong, then join the action. But I think at this time in the timeline to ask this body to take a position after the budget has been duly enacted, I see that as -- if we function as a body in that capacity, we're litigating against ourselves. I just don't see how we can do that. We're conflicted from doing that. And it's not in the interest of the County to litigate the legality of our own budget that was enacted according to law.

So, you know, I don't want to belabor it. I think it's inconsistent. Again, I understand that there's a lawsuit pending. If anyone wants to join that lawsuit, they can do so. But I am certainly not going to support any lawsuit against our own budget that was duly enacted. I think, you know, in effect, it's almost a violation of my responsibility to the County. I don't see how I can do that.

P.O. LINDSAY:

Legislator Stern.

LEG. STERN:

Asked and answered. Thank you.

P.O. LINDSAY:
Legislator Montano.

LEG. MONTANO:
Couple of quick questions. If we passed this resolution, this is just simply to request permission of the court to intervene. My understanding -- I'm not that familiar with the intervening statute in State Court. Is that discretionary with the court? Maybe, Gail, you can --

MS. LOLIS:
It is.

LEG. MONTANO:
It is. So the court would decide whether or not we're too late or whether or not we should have standing to intervene; am I correct?

MS. LOLIS:
Yes.

LEG. MONTANO:
Okay. Number two, the County Attorney right now is defending the action that was brought by the individual parties; is that correct?

MS. LOLIS:
That's correct.

LEG. MONTANO:
Now, if we intervene, you're also our attorney. Does that create a conflict for your office? And if so, what does your office do in that case? And the other question I have is who is going to represent -- if this passes, who is going to represent us in this case? Maybe, George, you can answer that first.

MR. NOLAN:
The bill names me as the attorney who will bring it forward.

LEG. MONTANO:
So then the second question is with respect to the County Attorney, what kinds of issues does that engender in terms of your representing the County on this lawsuit and us intervening and you being our Counsel under the statute? What does that create, if anything?

MS. LOLIS:
The County Attorney will ultimately make the determination, but it will likely result in us having to retain outside counsel.

LEG. MONTANO:
Okay.

MS. LOLIS:
Mr. Presiding Officer, if I could just correct one statement.

P.O. LINDSAY:
Go right ahead.

MS. LOLIS:

The Supreme Court is considering the merits of the action. That is what it has before it. We argued the Temporary Restraining Order, the court refused to issue it. That went up on appeal. Part of it was reinstated. But the court has before it all of the papers on the injunction motion. So it is considering the merits. And that's the decision we're waiting for.

P.O. LINDSAY:

Anybody else?

LEG. D'AMARO:

If I may, that does make another one of my points, that the case has already been litigated, and it's pending a decision at this point on the merits. I'm not sure there's any -- you know, as a practical matter also, putting aside the whole conflict issue, why intervene at this point?

P.O. LINDSAY:

Well, for one thing, this body passed that law. I'm not a judge, but if I was a judge, I would say, "Where is the body that passed the law? Where are they on this thing?"

LEG. D'AMARO:

Well, we've made that very clear by enacting the budget.

P.O. LINDSAY:

I think you are wrong.

LEG. D'AMARO:

Oh, I don't think I am.

P.O. LINDSAY:

I just think you are dead wrong.

LEG. D'AMARO:

We acted as a body.

P.O. LINDSAY:

The County Executive vetoed the funding measure and we could only get 11 votes to overturn the veto. There was never a positive vote by this body --

LEG. D'AMARO:

It's irrelevant.

P.O. LINDSAY:

-- to close that facility. Or is it irrelevant? That's what Mary Hibberd says.

LEG. D'AMARO:

No. I mean, Mary Hibberd talks to privatization. We enacted a budget that simply doesn't fund the facility.

P.O. LINDSAY:

But Mary Hibberd says that you can't dispose of a health-related facility by sale or closure without a positive vote of this body.

LEG. D'AMARO:

I'm not arguing that point, I'm just simply saying that by us intervening on the side of the plaintiff, we are litigating against ourselves as a County. I don't see how the County Legislature as a body can litigate against Suffolk County after we enacted that budget. As a practical matter, we're just waiting for a decision on the merits at this point anyway.

LEG. BROWNING:

Call the vote.

P.O. LINDSAY:

Go ahead.

LEG. MONTANO:

I have a question. As I read this resolution, it simply -- what we're simply doing is asking the court for permission to intervene. If the court feels that our intervention is not necessary --

LEG. D'AMARO:

On behalf of the plaintiff, though.

LEG. MONTANO:

We're coming in as a party.

LEG. D'AMARO:

On behalf of the plaintiff we're intervening. We're coming in the lawsuit as a plaintiff.

LEG. MONTANO:

Right.

LEG. D'AMARO:

Saying that when we enacted our budget, we violated our own law. But we enacted the budget.

LEG. MONTANO:

Right. But those issues are already before the court. And the court has discretion. We're not bringing a new lawsuit, we're making a motion to intervene, and the court doesn't have to grant the motion. If the court feels that the issues are already sufficiently briefed before the court or that our application is untimely or unnecessary, this issue becomes academic.

LEG. D'AMARO:

I'm not addressing that. I'm saying it's inappropriate and inconsistent and conflicted for us to pass this bill.

LEG. MONTANO:

That's your opinion, but the court may feel otherwise. And the court may agree with you --

LEG. D'AMARO:

It's not up to the court, I have to vote today.

LEG. MONTANO:

No. No. What I'm saying is that -- go ahead, Lou.

LEG. D'AMARO:

I'm just saying, it's about me deciding whether to support this resolution today.

LEG. MONTANO:

I understand that.

LEG. D'AMARO:

Okay.

LEG. MONTANO:

I'm addressing the issues that you raised. And from my perspective, if, in fact, the court deems that our intervention is unnecessary, then they'll simply deny the motion. So we don't lose anything by making the application, we haven't intervened.

The other thing is that the arguments that you raise will in all likelihood be raised by the County Attorney in opposition to the motion to intervene. We're simply taking a vote today as to whether or not we want to have our input into this court case that's already proceeding. I don't see any damage -- you know, no harm, no foul, particularly if the court says, "We don't need your intervention. I'm ready to make a decision, and we're going to do it."

LEG. D'AMARO:

Okay. That completely misses my point.

LEG. MONTANO:

Then what is your point? You want to restate it?

LEG. D'AMARO:

My point is that there's litigation pending against Suffolk County right now --

LEG. MONTANO:

That's a fact.

LEG. D'AMARO:

-- that involves our budget that was properly enacted. We voted it, it was properly enacted.

LEG. MONTANO:

Properly enacted I think is the issue that we're addressing now. I mean, that's your conclusion.

LEG. D'AMARO:

There's no issue as to whether or not our budget was properly enacted. The only point I'm making is that if the court -- lets say the court said, "Yeah, if you want to come in and intervene as a plaintiff in a lawsuit against yourself, you know, be my guest." I, as a matter of policy, I can't vote for that. How could you support that?

LEG. MONTANO:

I think the disagreement we have here is that you've concluded that it was probably enacted and some of us are not so sure. And I don't have a problem with letting the court make a decision.

LEG. D'AMARO:

So you believe our 2011 Budget was not probably enacted.

LEG. MONTANO:

No. What I said was that I'll let the court make that decision.

LEG. D'AMARO:

Okay. So it's possible. Not possible in my mind.

P.O. LINDSAY:
Okay. We have a --

LEG. MONTANO:
Minds will differ.

P.O. LINDSAY:
-- motion and a second. Roll call.

(THE ROLL WAS CALLED BY TIM LAUBE - CLERK OF THE LEGISLATURE)

LEG. BROWNING:
Yes.

LEG. KENNEDY:
Yes.

LEG. COOPER:
Yes.

LEG. D'AMARO:
No.

LEG. STERN:
No.

LEG. GREGORY:
Yes.

LEG. HORSLEY:
Yes.

LEG. NOWICK:
No.

LEG. BARRAGA:
No.

LEG. CILMI:
No.

LEG. MONTANO:
Yes.

LEG. EDDINGTON:
Pass.

LEG. MURATORE:
Yes.

LEG. SCHNEIDERMAN:
Yes.

LEG. ROMAINE:

Recuse.

D.P.O. VILORIA-FISHER:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Eleven.

P.O. LINDSAY:

Back to the agenda.

**IR 2265 - Amending the Adopted 2011 Operating Budget to transfer funds from Fund 477 Water Quality Protection, Amending the 2011 Capital Budget and Program, and appropriating funds in connection with a fish passage at Woodhull's Dam in Cranberry Bog County Park (CP 7180).
(Co. Exec.)**

Motion by Legislator Viloría-Fisher, seconded by Legislator Cooper. All in favor? Opposed?
Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

**2273, Amending the 2011 Capital Budget and Program and appropriating funds in connection with the Charter Law extending and accelerating the Suffolk County ¼% Drinking Water Protection Program for Environmental Protection for land acquisition.
(Co. Exec.)**

Motion by Legislator Viloría-Fisher.

LEG. COOPER:

Second.

P.O. LINDSAY:

Seconded by Legislator Cooper. I have a question, Ms. Vizzini. Does this accelerate this program at all, or it is as per the referendum?

MR. LIPP:

This is as per the referendum. And this will represent the last of the allocations for borrowing. It was over four years; 2008 to 2011. After this borrowing, then starting 2012, once the proceeds of bonds are used up, then we will be doing it on a pay-as-you-go basis, land acquisitions.

P.O. LINDSAY:

Okay. We have a motion and a second. All in favor? Opposed?

LEG. MONTANO:

Quick question.

MR. LIPP:

Forty six million.

LEG. MONTANO:

And we borrowed how much to date?

MR. LIPP:

This would be -- I believe it's a 153 we borrowed to date, and this will add the total up to 209 million.

LEG. MONTANO:

We were allowed to borrow up to how much of percentage?

MR. LIPP:

Two hundred and nine million.

LEG. MONTANO:

Was that a dollar amount, or was it a percentage of this?

MR. LIPP:

It was a dollar amount resulting from a percentage. In other words, I believe it's 31.1% of the quarter cent sales tax for land acquisitions, and there's requirement that the bonding in the four years could only be a maximum of 80% of any one year's debt service. And between the Budget Office and Budget Review Office, we calculated it, and this is -- 209 million total is a conservative number.

LEG. MONTANO:

All right. Thank you.

P.O. LINDSAY:

We have a motion and a second. All in favor? Opposed? Abstention?

LEG. CILMI:

Opposed.

LEG. MONTANO:

Opposed.

MR. LAUBE:

Fifteen.

P.O. LINDSAY:

On the accompanying bond resolution **2273 A**, same motion, same second, same vote. Roll call.

(THE ROLL WAS CALLED BY TIM LAUBE - CLERK OF THE LEGISLATURE)

D.P.O. VILORIA-FISHER:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Yes.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

No.

LEG. CILMI:

No.

LEG. MONTANO:

No.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. ROMAINE:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Fourteen.

P.O. LINDSAY:

IR 2034 - Adopting Local Law No. -2011, A Local Law establishing a Food Policy Council for Suffolk County. (Viloria-Fisher)

D.P.O. VILORIA-FISHER:

Motion.

P.O. LINDSAY:

Motion by Legislator Viloria-Fisher, seconded by Legislator Schneiderman. What exactly will they do, Legislator Viloria-Fisher.

D.P.O. VILORIA-FISHER:

This Food Policy Council was a recommendation that came out of the Victory Garden Task Force. And what it's doing is we are -- around the table will be the head of the Long Island Regional Planning Council, retailers like King Kullen, Farmers, food providers like Long Island Cares, etcetera, to look at issues of locally raised food, food pantries, food equity, how it's being distributed throughout Suffolk County and trying to support our farmers, support farm stands and see how we could best bring food to the people of Suffolk.

P.O. LINDSAY:

Okay. Thank you. We have a motion and a second. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

LEG. SCHNEIDERMAN:

Cosponsor.

LEG. HORSLEY:

Cosponsor.

P.O. LINDSAY:

IR 2274 - Authorizing the Department of Social Services To Consider And Utilize An Additional Vendor To Provide Emergency Housing Services. (Schneiderman)

LEG. SCHNEIDERMAN:

Motion.

LEG. ROMAINE:

Second.

P.O. LINDSAY:

Motion by Legislator Schneiderman, seconded by Legislator Romaine. Any discussion? All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen. (*THE VOTE WAS RECONSIDERED*)

P.O. LINDSAY:

IR 2261 - Approving the appointment of a relative of a County Legislator in the Suffolk County Board of Elections. (Pres. Off.)

LEG. HORSLEY:

Mr. Presiding Officer, I'm going to recuse on this.

P.O. LINDSAY:

Okay. Legislator Horsley will be recused. Do I have a motion? Motion by Legislator Gregory, seconded by Legislator Cooper. On the question All in favor? Opposed? Abstentions?

MR. LAUBE:

Sixteen.

P.O. LINDSAY:

IR 2233 - Adopting Local Law No. -2011, A Local Law to broaden qualifications for the Vanderbilt Museum Trustees. (Cooper)

LEG. COOPER:

Motion.

P.O. LINDSAY:

Motion by Legislator Cooper, seconded by Legislator Stern. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

IR 2255 - Appointing Duncan W. Armstrong as a member of the Suffolk County Vanderbilt Museum Commission (Trustee No. 15). (Cooper)

Motion by Legislator Cooper, seconded by Legislator Stern. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

IR 2234 - Adopting Local Law No. -2011, A Local Law to restrict the residence of sex offenders near amusement parks. (Gregory)

LEG. GREGORY:

Motion.

P.O. LINDSAY:

Motion by Legislator Gregory. Do I have a second? Seconded by Legislator Stern.

LEG. SCHNEIDERMAN:

On the motion.

P.O. LINDSAY:

On the motion, Legislator Schneiderman.

LEG. SCHNEIDERMAN:

I just wanted to know how you were defining amusement parks in the bill.

LEG. GREGORY:

As Lynne Nowick so eloquently described it, the things with the ferris wheels and merry-go-rounds. Generally, you know, we have --

LEG. SCHNEIDERMAN:

We'll be making sure we have more ferris wheels in Suffolk County.

LEG. GREGORY:

You know, amusement park as defined by, you know, ferris wheels. You know, not the -- I forget the names -- the names escape now -- the ones that come in town, they leave -- carnivals, you know, games and food. Two that come to mind are Adventureland in my district and Splish Splash. But there are other facilities that could qualify. I also have a Nathans, which has a Fun Zone that has a ferris wheel inside the facility. Those types of facilities would not be -- this bill would be applied.

LEG. SCHNEIDERMAN:

Would a museum or aquarium qualify under your definition?

LEG. GREGORY:

No.

MR. NOLAN:

Let me just read the definition of amusement park, that might do it; "a commercially-owned permanent enterprise which is open to the public without an admission fee, it is equipped with recreational devices such a merry-go-round, ferris wheel or roller coaster. This definition will not include traveling fairs that move attractions or recreational devices to more than one location throughout the calendar year, not shall it include retail establishments or restaurants with an interior or attached playground with small coin-operated children's rides.

LEG. SCHNEIDERMAN:

It says that it must be commercially owned. Like, for example, in Greenport, there's a permanent carousel in downtown Greenport. Is that an amusement park, or is that not an amusement park?

MR. NOLAN:

Who owns it?

LEG. SCHNEIDERMAN:

It's owned by the village.

MR. NOLAN:

I would say no then. It's a commercially owned permanent enterprise. It doesn't sound like a village carousel would be covered, no.

LEG. SCHNEIDERMAN:

All it would take is one carousel then to be an amusement park?

MR. NOLAN:

I'm sorry?

LEG. SCHNEIDERMAN:

One commercial carousel makes you an amusement park?

MR. NOLAN:

Open to the public without an admission fee --

LEG. SCHNEIDERMAN:

I'm just making sure.

P.O. LINDSAY:

I can see Jay putting a carousel in the jail now, you know?

LEG. SCHNEIDERMAN:

There's one coming into downtown Riverhead any day now.

P.O. LINDSAY:

Any other questions. We have a motion and a second on 2234. All in favor? Opposed? Abstentions?

LEG. D'AMARO:

Mr. Presiding Officer.

MR. LAUBE:

Seventeen.

LEG. D'AMARO:

My apologies. I was having a discussion, I missed a vote that I would like to retake if that's acceptable to my colleagues.

P.O. LINDSAY:

Which one did Legislator D'Amaro miss? I think he counted you on it, because you never left the auditorium.

LEG. D'AMARO:

It was 2274, if I was counted as a yes, I would like the opportunity to register a no vote.

MR. LAUBE:

I have 17 yeses on that.

P.O. LINDSAY:

Legislator D'Amaro, would you like to make a motion to reconsider 2274?

LEG. STERN:

Motion to reconsider.

P.O. LINDSAY:

Motion to reconsider.

LEG. D'AMARO:

Can I second that?

P.O. LINDSAY:

Sure.

LEG. D'AMARO:

Okay. I will second that.

P.O. LINDSAY:

Seconded. The reconsideration is before us. All in favor? Opposed? Abstentions?

LEG. D'AMARO:

Opposed.

P.O. LINDSAY:

This is just to reconsider.

MR. LAUBE:

Seventeen on the reconsideration.

P.O. LINDSAY:

Motion to approve, who made the original motion? Legislator Schneiderman and Romaine; is that correct?

MR. LAUBE:

Schneiderman and Romaine.

P.O. LINDSAY:

Is that okay? Motion and a second. Okay? All in favor? Opposed?

LEG. STERN:

Opposed.

LEG. D'AMARO:

Opposed.

MR. LAUBE:

Fifteen.

LEG. HORSLEY:

Tim, I've change my mind too.

MR. LAUBE:

So I have three opposed, 14. **(AMENDED VOTE ON RESOLUTION 2274: 13-4; Opposed, Legis. D'Amaro, Stern, Horsley and Gregory*)**

P.O. LINDSAY:

Back to page eight. We have too much caffeine on our minds. 2234, we passed that one, right?

IR 2267 - To improve the safety and security of Suffolk County through the use of surveillance cameras. (Cooper)

LEG. COOPER:

Motion to approve.

P.O. LINDSAY:

Motion to approve. Is there a second?

LEG. D'AMARO:

Second.

P.O. LINDSAY:

Seconded by Legislator Gregory. This is just a survey, right?

LEG. COOPER:

Right. This is similar to the ShotSpotter study last year. It would direct the Police Department to come up with a hundred locations.

P.O. LINDSAY:

Okay. So we have a motion and a second. And that's locations County-wide, right?

LEG. COOPER:

Yes, County-wide.

P.O. LINDSAY:

Motion and a second. All in favor? Opposed? Abstentions?

LEG. BARRAGA:

Opposed.

MR. LAUBE:

Sixteen.

P.O. LINDSAY:

IR 2243 - Banning the incineration of waste at the Bergen Point Sewage Treatment Plant. (Horsley)

Motion by Legislator Horsley. Do we have someone from Babylon that's wants to --

LEG. D'AMARO:

I'll second, but I had a question.

P.O. LINDSAY:

Seconded by Legislator D'Amaro. Legislator D'Amaro, on the question.

LEG. D'AMARO:

Yeah. Just through the Chair to the sponsor, banning -- I mean, obviously we're doing this now at the plant. So what are we going to do in lieu of burning.

LEG. HORSLEY:

Just to edify you, Legislator. What we -- we went through a study, a \$510,000 study, to look at alternatives to trucking the sludge out of Bergen Point Plant, which is what we presently do. And they came up with 46 alternatives, and incineration came in dead last. And that was a decision made by not only our Public Works Department, but community members, environmentalists like Adrienne Esposito -- you may have saw her this morning speaking against this other -- as well as other neighborhood representatives. It came in as dead last. So the alternative is to find a suitable solution to turn the sludge into something that is sustainable, like turning it into fertilizer or the like, you know, carting it to locations that are green.

LEG. D'AMARO:

So let's just say, you know, ten days from now this is affective and a truck pulls in with the sludge, what are we doing with it?

LEG. HORSLEY:

The sludge leaves the plant. What this does is --

LEG. D'AMARO:

Are we trucking it out?

LEG. HORSLEY:

We're trucking it out.

LEG. D'AMARO:

Rather than burning it here.

LEG. HORSLEY:

Rather than burning it. I can give a long tirade on the ban of public policy -- and you've probably heard me before on this issue -- of burning human waste on the Great South Bay 100 feet from a town park and also abuts the County Golf Course.

LEG. D'AMARO:

And is there a cost impact?

LEG. HORSLEY:

That has not been determined yet, but there was an exact cost, but that was one the factors that led to the decision on how we chose the alternative of converting it to fertilizer and the like. If you will take a look, I passed out earlier today, the final evaluation criteria. And one of the criteria was that it was cost effective.

LEG. D'AMARO:

I just want to make sure that -- I want to support this, but I want to make sure that if we're not going to burn onsite, we're going to truck offsite --

LEG. HORSLEY:

That's right, off campus.

LEG. D'AMARO:

How much more does that cost us?

LEG. HORSLEY:

Presently right now, we are trucking it out of to areas such as Virginia, Georgia and the like, which is not sustainable either. And we know that that's not the alternative that we're looking for. So what we are -- this will be a more close location. There are areas Upstate, New York, where they could go to to convert this into a fertilizer or another alternative usage for the sludge itself.

LEG. D'AMARO:

Right. But -- so there's going to be an increased cost until we figure out what to do with this stuff?

LEG. HORSLEY:

No, not necessarily. The cost of us trucking the sludge off to Georgia is very costly.

LEG. D'AMARO:

So we're not burning the waste at the facility?

LEG. HORSLEY:

We are not presently burning the waste. Incineration of the waste was suspended about 25 years ago. DEC came in and said, "This is bad public," and we should close down these incinerators, and they took our permit away.

LEG. D'AMARO:

So you are trying to make sure we never burn waste again.

LEG. HORSLEY:

I am making that decision, yes. That's the bottom line.

LEG. D'AMARO:

You should have said that in the first place.

P.O. LINDSAY:

I don't mean to correct you, Legislator Horsley, but I don't think it was 25 years. The incinerator down there went through its useful life, and we had a \$42 million resolution to rebuild it, as you well recall.

LEG. HORSLEY:

I do recall. And this body unanimously voted not to replace them.

P.O. LINDSAY:

I know. But just to correct it.

LEG. HORSLEY:

I don't think you are right.

P.O. LINDSAY:

Whatever.

LEG. HORSLEY:

The incinerators were closed long before that resolution two years ago.

P.O. LINDSAY:

No doubt about it, but it wasn't 25 years ago. All right? And it was that the incinerator needed to be rebuilt. It used its useful life.

LEG. HORSLEY:

The DEC took away its permit.

P.O. LINDSAY:

Well, that's probably the result of it, but it needed to be rebuilt.

LEG. HORSLEY:

We could have rebuilt it, and maybe they would have repaired it. But anyone who lived in the neighborhood --

P.O. LINDSAY:

Okay. You've got enough votes, all right. We have a motion and a second. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

LEG. SCHNEIDERMAN:

Cosponsor.

P.O. LINDSAY:

IR 2259 - Requesting the conveyance of a portion of a parcel of real property, having a Suffolk County Tax Map Identification Number of District 0100 Section 045.000 Block 01.00 Lot 008.000, for a public highway purposes and requesting approval from the Deer Park Fire District, Suffolk County, New York, and from the State of New York, Office of General Services, for conveyance of same, pursuant to New York State Public Lands Law

§34. (Co. Exec.)

LEG. STERN:

Motion.

LEG. D'AMARO:

Second.

P.O. LINDSAY:

Motion and a second. All in favor? Opposed? Abstentions?

P.O. LINDSAY:

Seventeen.

P.O. LINDSAY:

IR 2260 - Authorizing execution of agreement by the Administrative Head of Suffolk County Sewer District No. 7 – Twelve Pines, and Intercounty Associates II, LLC (BR-1445). (Co. Exec.). Do I have a motion?

LEG. COOPER:

Motion.

P.O. LINDSAY:

Motion by Legislator Cooper. Legislator Nowick? .

LEG. NOWICK:

Second.

P.O. LINDSAY:

Second. There you go. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

1000. Authorizing the County Executive to enter into an agreement with Heritage-Riverhead Retail Developers, LLC and accepting a payment of money in lieu of performance of certain mitigation measures, constructed under Capital Project 5529, Old Country Road, Riverhead, and amending the 2011 Capital Budget and Program and appropriating funds in connection with the reconstruction of CR 58, Old Country Road, Riverhead (CP 5529).

LEG. ROMAINE:

Motion.

P.O. LINDSAY:

Motion by Legislator Romaine, seconded by Legislator Schneiderman.

MS. BIZZARRO:

If I may, Mr. Chairman.

P.O. LINDSAY:

Who was that? I didn't know where that voice came from. Yes, Ms. Bizzarro, go ahead.

MS. BIZZARRO:

I just wanted to alert the body that after this bill came out of committee, I was informed by Bond Counsel that the resolution would violate the Local Finance Law and the General Municipal Law. So I just want you to be aware of that. He basically said that the \$1.9 million that the County anticipates receiving must be put into a reserve account and it must be used to pay down existing debt services relating to the project and cannot be used for any future expenditures on the project. So I just wanted you to be aware of that. Thank you.

LEG. ROMAINE:

Mr. Presiding Officer.

P.O. LINDSAY:

Yes, Legislator Romaine.

LEG. ROMAINE:

Its now twenty to eight on February 1st. This resolution passed last Tuesday, I believe, at the Public Works Meeting. One week has gone by. I haven't heard or seen any such written opinion from Bond Counsel. And to have this discussed at the last minute is nothing short -- and I will say this -- of unprofessional. So I would like to ask the opinion of our Counsel. Thank you.

MR. NOLAN:

I just would like to ask the County Attorney, did Bond Counsel issue a written opinion?

MS. BIZZARRO:

No, he did not, it was just a conversation.

LEG. ROMAINE:

That's why we didn't get it.

MS. BIZZARRO:

And that can be forthcoming if the Chair would so direct that. I could certainly ask Bond Counsel for that.

LEG. ROMAINE:

To make a statement without a written opinion from Bond Counsel is irresponsible before this body, and it's nothing less.

MS. BIZZARRO:

Absolutely not. No one had asked for a written statement. And the only time --

LEG. ROMAINE:

For you to interject yourself in a Legislative proceeding and making a statement without an opinion of Bond Counsel is nothing less than irresponsible.

MS. BIZZARRO:

Again, if someone requests that the County Attorney provide a written opinion from Bond Counsel, I would be pleased to get that for the body.

LEG. KENNEDY:

Mr. Chair.

P.O. LINDSAY:

Legislator Kennedy.

LEG. KENNEDY:

Thank you. Can I ask Counsel, my recollection with this resolution is that it would direct mitigation fees that have been received -- currently are received and are anticipated to be received by three large commercial developers along County Road 58, that those mitigation fees, in fact, would be directed towards the completion of a capital project as it was first developed by Public Works; is that correct?

MR. NOLAN:

My understanding is the mitigations fees that were collected in relationship to this road project would go back into the same road project. But I will also state that in matters like this, you know, Bond Counsel is expert. It would be great if we had seen an opinion to look at, you know, so I could evaluate what he was saying. It's just very difficult.

LEG. KENNEDY:

Through the Chair, can I ask the County Attorney? Lynne, first of all, why is that Bond Counsel is just sharing this opinion with us today, and then --

MS. BIZZARRO:

It came about -- if I could. There's a competing bill -- I don't know if you want to call it competing -- it's a similar bill --

LEG. KENNEDY:

The County Executive has a bill that would take the mitigation fees and direct it towards debt retirement, I believe; is that correct?

MS. BIZZARRO:

Right. And at that time, it was structured in line with putting the money in a Reserve Fund, and then the money would be used to pay back debt service. Subsequently, this bill came out and it just -- like I said, nobody had asked that it be reviewed, no one asked me for an opinion on it. It was just in my conversation with him, and then I realized that it had been approved and that the other bill had been tabled. And he reiterated to me that the County Exec's version of the bill was the proper way that the bond money -- that the money coming into County had to be utilized. I did not ask him for anything in writing, because I was not asked to, you know, provide anything in writing.

LEG. KENNEDY:

All right. Let me try to go to the next level with this. This capital project as it was originally prepared by our Public Works Department went from, I believe, the end of the Expressway all the way through to the merger of 58 and Route 25. Now, what, in fact, was actually done only took the road project through to Northville Turnpike and, in fact, did not complete roughly the last whatever it is, two miles, two and a half miles of a project as it was originally drawn, let, planned and envisioned by Public Works. So how can we now at this late date have Counsel tell us, "Well, you can't use those bond proceeds, I guess, or fees that are generated off the project in order to complete the road project, but instead, you have to retire a bond for less than the whole project?" That's the part that doesn't make sense.

MS. BIZZARRO:

Well, the money -- the mitigation measures that were done by the County, this money -- those measures should have been done by the companies and were not. I think they did a portion of it. I think they said there was a few hundred thousand dollars that they had done. And they're remitting back to us for the work that was done. So it's a one-for-one.

And according to Bond Counsel, it has to be looked at like a sale of an asset, it's a sale of a capital improvement. You would basically do the capital improvement, and we're getting reimbursed for the work that was done on that particular location on the project. So the monies have to be married. And therefore, his decision was that the monies needed to go into a reserve fund and then used to pay down the debt service through time. It's not all paid in one lump sum. But again, this is according to Bond Counsel. I look to Bond Counsel, as George Nolan just said, he's the expert in the field body. And I just wanted this body to be aware of that. I apologize for presenting this late, but as I said, it really was just circumstances.

LEG. KENNEDY:

Okay. The object is for a Legislator whose got a major artery in his district to go ahead and get completion by way of the normal course that we all take on road projects in our districts. Is there any opportunity to look at getting the remainder of what was, you know, some major work that was done so that it doesn't dead end, you know, futilely? There's got to be some way to resolve this.

MS. BIZZARRO:

I was not at the committee meeting on this, but my understanding is there is more money available still from the existing bond proceeds. I don't know if DPW had, you know, an opportunity to address that. And I heard something about the original project was one lane and then they were talking about this would be utilized for a second lane. So I don't know all of the ins and outs and the facts of that, so I can't answer that question right now.

LEG. KENNEDY:

I wasn't at Public Works either, so.

P.O. LINDSAY:

I was there. There was a lengthy discussion about this with the Commissioner. And before I did go on, maybe Legislator Romaine could just clarify.

LEG. ROMAINE:

I'm not worried about the ultimate end of this project. Projects like this are decided as part of an overall fabric, which we call elections. There will be an election this November. It will be decided on that. It will one of those issues that will be discussed and with great vigor. This is a project, a capital project that was for County Road 58, one of the busiest roads in the highway, that would go from the Long Island Expressway in the west to Route 25 in the east.

This project stopped about mile and a half short of that, okay? When the County Executive had a press conference in June and declared the project completed, I was somewhat amazed, because I know the project wasn't completed according to the capital project, but I assumed money was at issue. I didn't say anything, let it go. But as busy as this road is, it's about to get a lot, lot busier. There are going to be three major big box stores that are going to be built. I won't go into an accounting of how the impact fees were devised. If this issue remains, I will start looking at that next. But right now, the first impact fee was a little bit more than \$1.9 million for a very small, short piece of roadway in which Costco on a flag lot is going to go.

*(*The following was taken & transcribed by
Alison Mahoney - Court Reporter*)*

LEG. ROMAINE:

And originally it was called "Shops at Riverhead", it was a little less than 500,000 square feet. That's what we're dealing with here. What I'm saying, unlike the County Executive whose resolution said retire the debt, and I'm all for retiring debt, it's take the impact fee. You don't have to bond, you don't have to tax people; take the impact fee, finish the road. Finish the road.

LEG. SCHNEIDERMAN:

If I can --

LEG. ROMAINE:

In addition to that, there will be two other big-box stores; Lowe's where Suffolk Life used to be, and a new Wal-Mart. So I'm sure there will be more impact fees. How they're calculated is a question I am not raising now, or should I say yet. But suffice it to say, my goal is to have this roadway finished, that's what I've asked for; I believe that this money will assist in that effort. Even if it doesn't finish all of it, it will finish enough of it until the next impact fee is being bonded.

This resolution was laid on the table on January 3rd at our meeting. At no point -- and this was drafted with the assistance of Legal Counsel. At no point did anyone come up with this and say, oh, this could be something we, who give Bond Counsel a lot of work, could get Bond Counsel to say, "This isn't maybe the proper way to go."

I've got to tell you, this raises a lot of questions, and I am definitely, definitely going to pursue this. But right now, I'm not looking to get this tabled. I'm looking to bring this to a vote because I think there's an issue here. If there's a legal issue after the fact, the County Executive can exercise his right to veto. But this decision, this issue will be one of many that will be discussed in the 2011 Election, without question.

LEG. SCHNEIDERMAN:

Bill, if I may?

P.O. LINDSAY:

I've got a list. I let Legislator Romaine go out of order because it's his bill. Legislator D'Amaro.

LEG. D'AMARO:

Okay. Putting aside the legal issue of whether or not -- or how the proceeds have to be used, I just want to ask the Budget Review Office, on Capital Project 5529, if -- one, is the project, as Legislator Romaine indicates, not complete? And two, is there -- are there funds available or bonding authorization available to finish the project?

MS. VIZZINI:

This was one of those projects that was initially broader in scope and then in efforts to hold down the magnitude and do what was actually critically necessary, it was down-sized and we've mitigated some of the concerns. We've appropriated about 14.5 million, and according to the financial system, there is -- you know, they're still working and there's a \$2.3 million balance to complete what the down-sized scope is.

LEG. D'AMARO:

All right. So this is -- this almost equates with that; this is 1.9 million, or a little more. So if we use this mitigation fund to complete the project, would we then not have to continue with the bonding?

MS. VIZZINI:

No, the concept here is that there is more work to be done; Legislator Romaine can expand on it. And rather than take the 1.9 million, bond the additional work, take the mitigation fees and use cash.

LEG. D'AMARO:

Right. So just through the Chair, to Legislator Romaine, if it turns out that this mitigation fund is targeted or earmarked for the paydown of debt, do you believe there's sufficient funding left in the

Capital Program to complete the project?

LEG. ROMAINE:

No. I believe that the estimates that we heard at that committee meeting -- and there were several people there and they can correct me if I'm wrong -- was well about \$4 million is what they were talking about.

LEG. D'AMARO:

So it's --

LEG. ROMAINE:

So no, I don't believe there's enough. And that's why I have never -- you know, there were many things with this road that were problematic, but the County Executive made this his centerpiece. Despite the fact we have narrower lanes, we have no shoulders, we have no bus cutaways and a number of other deficiencies, this was his centerpiece and he wanted to get it done. He got it done, he had his press conference and, guess what, the project wasn't finished. But I said, "You know what? I understand, there probably isn't enough money." Then this impact fee comes along and he puts in a resolution to retire the bond and I'm thinking, wait a second, the project isn't finished. We have money coming in, let's finish the project. We're getting all these stores here, this is going to be a massive, congested area. The road as it's built is probably not going to be functional after ten years anyway and will have to be redone, but he got the press conference he needed out of it. Well, let me tell you, my constituents, Town Board, others in Riverhead all said, "Let's finish the road." We now are given the means to do that, the County is taking impact fees, I don't know how they calculated these impact fees.

LEG. D'AMARO:

But Ed, aren't we then just, in effect, increasing the debt by the amount of the impact fee?

LEG. ROMAINE:

No. What we're doing is we're using --

LEG. D'AMARO:

Well, because we're not paying it down; that's what the project contemplated.

LEG. ROMAINE:

No, the debt stays the same. We're taking -- we knew what the debt was going to be, we all authorized this for this project.

LEG. D'AMARO:

Right, but I think normally a project contemplates mitigation fees for paydown or partial paydown of the debt.

LEG. ROMAINE:

And I'm going to tell you that I truly believe if they're hitting Costco for 1.9 million, I can only imagine what they would hit Wal-Mart and Lowe's for which have larger road frontages. And I would think at the end when -- if all three of those, at the end we close-out a Capital Project, we can use the close-out money to pay down the debt.

LEG. D'AMARO:

Let me just make my point.

LEG. ROMAINE:

But usually that's done at the end of a project, not in the middle of a project.

LEG. D'AMARO:

I understand. I don't want to -- right. I'm not necessarily disagreeing with you. I think it's nice to finish a project and I'd like to do it without incurring additional debt. But maybe if there's insufficient capital authorization in the Capital Budget, we just need to amend the Capital Budget, if we can't use these mitigation fees.

LEG. ROMAINE:

Lou, I put this in on January 3rd. I'm a reasonable guy. I had a resolution to help the people on Horton Avenue; that's been kicking around since December. The County Executive came over here with a CN today because he couldn't get his name on my bill, and it was the only way he could get a name on a bill. And you know what? I'm more interested in my constituents and I let that happen, and you'll see it come up and that's why I recessed my hearing.

LEG. D'AMARO:

All right. You're not addressing my point, so I'll just leave it at that. Thank you.

LEG. ROMAINE:

I mean, all you have to do is be reasonable. But when you play games, when you play games and you act unreasonable, watch out. Because you are asking for this Legislature to stand up and say, "Mr. County Executive, start treating us fairly. Start treating us as an equal branch of government and stop dumping on us. And if you don't do that, we're going to stand up and say, "Guess what? We have a roll in running this government, too. Shame on you."

P.O. LINDSAY:

Legislator Cilmi.

LEG. CILMI:

Thank you. I have a couple of questions for Counsel; for the County Attorney's Office, actually.

P.O. LINDSAY:

Okay.

LEG. CILMI:

Hello, Lynne.

MS. BIZZARRO:

How are you, Legislator Cilmi?

LEG. CILMI:

Good. Question for you; when did you speak with Bond Counsel about this?

MS. BIZZARRO:

I believe it was late Friday.

LEG. CILMI:

Late Friday.

MS. BIZZARRO:

Yes.

LEG. CILMI:

Any reason why somebody wouldn't have picked up the phone to call Legislator Romaine between then and now to talk about this?

MS. BIZZARRO:

Well, I don't know that he would have been very receptive to a phone call from him -- from me. So let's just say that.

P.O. LINDSAY:

Calm down.

LEG. ROMAINE:

I just compromised on the Horton Avenue.

LEG. SCHNEIDERMAN:

That's a bad answer. Bad answer.

MS. BIZZARRO:

And it really had nothing to do with the Horton Avenue. So I'm speaking from the County Attorney's Office, I just did not think I would get a response on that, so.

LEG. CILMI:

Okay. Well, that's --

LEG. ROMAINE:

You're getting a response today.

LEG. CILMI:

That's really not an excuse. The other question I have is I don't know if you ever shared with us what exactly were the objections of Bond Counsel.

MS. BIZZARRO:

The objections are just that the money needs to be put into a reserve fund under the Local Finance Law and under the General Municipal Law. And once that money is put in the reserve fund, it must be used to pay down the debt that's already existing in connection with this Capital Project. That's the objection.

LEG. CILMI:

Okay. I just wanted to hear what they were. Thanks.

P.O. LINDSAY:

Legislator Montano.

LEG. MONTANO:

Yeah. I actually had a -- I stepped out of the room and when I came in I thought --

MR. STRAUSS:

Your mic is off.

LEG. MONTANO:

Lynn, I have a question for you. I guess I came in on the middle. But from what I understand, there were -- this bill had passed committee and there is a competing bill from the County Executive that did not pass committee and that was tabled and this one came out?

MS. BIZZARRO:

Correct.

LEG. MONTANO:

All right. And then you come in -- you came in today and said that you had a conversation with Bond Counsel --

LEG. ROMAINE:

Private.

LEG. MONTANO:

-- and now you said you had the conversation on Friday. My understanding a while back was that I thought we had an understanding that when you had legal opinions of this nature, they would be given to us in writing.

MS. BIZZARRO:

Only if a request is made for it in writing; otherwise, there's no reason that we get them in writing. So nobody had asked me -- had requested it.

LEG. MONTANO:

That's not -- all right.

MS. BIZZARRO:

Well, I believe the County Attorney had put that on the record as well, that upon request, not a problem.

LEG. MONTANO:

Okay. But let me say this, then. I'm a little disturbed, because under the Charter, you represent the County Legislature; am I correct?

MS. BIZZARRO:

Right, and the County and all its departments.

LEG. MONTANO:

And that means that you represent us individually when we have bills pending before the Legislature; am I correct?

MS. BIZZARRO:

I will say that definitely as a body and assisting the Legislators with their bills as well, yes, if they ask.

LEG. MONTANO:

So in many ways you're acting as -- not in many ways, you're acting as our Counsel when it comes to legal issues that pertain to the bills that are before the body; am I correct?

MS. BIZZARRO:

Right, which is what I'm doing right now, and that's why I'm presenting it to the body.

LEG. MONTANO:

Right. And then what I'm asking you is that as -- this is not my bill, but as my Counsel, why would you not call your client the minute that you found out that there was an issue with respect to the legality of the bill and then explain to your client that you have some objection, instead of waiting for the last minute? We've been here all day and you knew about this on Friday. I'm just kind of -- you know, I'm kind of disturbed that as Counsel -- I mean, if I did that to my client, I'm sure my client would be more than angry, and rightfully so. He could probably fire me but we can't fire you.

So what is your explanation? I mean, is that a proper -- you know, is that proper conduct for an attorney? And I'm not trying to put you on the spot, but don't you think that that is unreasonable?

MS. BIZZARRO:

As I said, I do not believe that I would have -- that my concerns would have been very receptive to the Legislature as I don't believe they have been in the past. But perhaps --

LEG. MONTANO:

Whoa, whoa. My client --

MS. BIZZARRO:

-- that is not true and perhaps I can try in the future.

LEG. MONTANO:

My client doesn't hire me to tell him what he wants to hear, he hires me so I can give him good, legal advice, whether he likes it or not. So that to me doesn't seem to be a fair -- you know, a good mindset.

I think that what I'm saying is, and I'm not going to belabor this, is that your obligation, as our Counsel, is to inform us the minute that we have an issue or that you say you have an issue. And then maybe then, if you would have explained it to Counsel, whether he likes -- I mean to the Legislature or the Legislator, whether he likes the -- or she likes the response or not, I think at that point they're entitled to say, "Well, if you take that position, then I want some further documentation. And if you are relying on the opinion of another attorney, then I'd like to see that opinion." Would that not be a better process to deal with in the future?

MS. BIZZARRO:

I just have not had success on that. But in light of what you're saying to me and some of the points expressed by the other Legislators, I'm always willing to give it a try again.

LEG. MONTANO:

Let me flip it, and we'll leave it here because I don't want to -- it's a long day. But my impression is that in those instances where there's been a conflict between the County Executive's position and the Legislature, it seems that your office always winds up arguing the other side. And that I think -- and it may not be your fault, but the issue is that we want to get our information, you know, fairly quickly so we can act on it. And I don't blame Legislator Romaine for being upset in the sense that he's blind-sided by someone who really is his Counsel. So I think, you know, we'll have this discussion further on, but for today I think, Legislator Romaine, your pleasure is to pass this bill through?

LEG. ROMAINE:

Yes. If it has the defects that Counsel has said, I'm sure the County Executive can state that in his veto and we can weigh that accordingly.

P.O. LINDSAY:

Legislator Schneiderman.

LEG. SCHNEIDERMAN:

Thank you. I'm going to hopefully provide some information that may help Legislator D'Amaro understand exactly what happened, because I also supported this. When we say "finish the project", we're talking about two different things. The original project was two lanes the entire length, all the way through. Somewhere along the line the project was changed because it ran over, the money that we authorized wasn't enough to finish the two lanes all the way through and

the project was changed. So instead of asking for an additional few million dollars, which is necessary, the project was altered. But the road needs to be two lanes the entire distance.

So yes, there's enough money in the bond now to finish the road as DPW has changed it, but that's really not the right solution for the road. So by taking this impact fee, we no longer have to then go out and borrow some more money and then take this impact fee and pay it down, which is ridiculous. And maybe if Bond Counsel knew all the facts, had all that information, he might have come to a different opinion.

I want to say in terms of the information we got today, and I'm a little bit disturbed by the comment that the Legislator was not informed because he thought he -- she thought he might react poorly. I wonder if it was my bill here and a legal opinion surfaced that was not presented to me so I could check it or get a second opinion, but here I am after the time of the vote, late in the day on a very long day, not having anything in writing, it puts you in a very -- quite a disadvantage. And I would think, as a professional courtesy, the Legislator should have been notified so he could have done his own research --

LEG. ROMAINE:

Even by e-mail.

LEG. SCHNEIDERMAN:

-- or our Counsel could have looked at -- made sure that Bond Counsel had all the information that was necessary to make his decision.

But we do need to finish the road all the way through, and this additional \$1.9 million we believe is sufficient to do that and we can do it without additional borrowing, which will save the County as well. Thank you.

P.O. LINDSAY:

Anybody else?

LEG. ROMAINE:

Call the question.

P.O. LINDSAY:

Okay. We have a motion and a second to approve; is that correct, Madam Clerk?

MS. ORTIZ:

Yes, it is.

P.O. LINDSAY:

Okay. Roll call.

*(*Roll Called by Mr. Laube - Clerk*)*

LEG. ROMAINE:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Can I explain my vote?

P.O. LINDSAY:

Sure.

LEG. D'AMARO:

I'm going to vote yes with -- just with the understanding that if it gets vetoed and we have, in the intervening time, an opportunity to look at the Counsel's opinion and we shouldn't be approving this, I'm going to sustain the veto. But I will vote yes now.

P.O. LINDSAY:

Go ahead.

*(*Roll Call Continued by Mr. Laube - Clerk*)*

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

Yes.

LEG. CILMI:

Yes.

LEG. MONTANO:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

D.P.O. VILORIA-FISHER:

Circling the wagons, yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Seventeen.

LEG. SCHNEIDERMAN:

Tim, cosponsor, please.

P.O. LINDSAY:

Okay. ***2246-10 - Sale of County owned real estate pursuant to Local Law No. 13-1976 Richard M. Poitras and Patricia L. Poitras, his wife (SCTM No. 0100-206.00-02.00-039.000) (County Executive).*** Do I have a second?

LEG. MONTANO:

Motion.

P.O. LINDSAY:

Motion by Legislator Montano. Do I have a second?

LEG. CILMI:

Second.

P.O. LINDSAY:

Second by Legislator Cilmi. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

2247-11 - Sale of County owned real estate pursuant to Local Law No. 13-1976 Frank Perri and Jennie Perri, his wife (SCTM No. 0200-596.00-04.00-022.000) (County Executive).

D.P.O. VILORIA-FISHER:

Motion.

LEG. MONTANO:

Motion.

P.O. LINDSAY:

Motion by Legislator Viloría-Fisher, seconded by Legislator Montano. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

2266-10 - Authorizing certain technical correction to Adopted Resolution No. 1324-2006 (Romaine). Legislator Romaine, do you want to make that motion?

LEG. ROMAINE:

Motion.

P.O. LINDSAY:

Motion. Do I have a second?

LEG. CILMI:

Second.

P.O. LINDSAY:

Second by Legislator Cilmi. Counsel, what's 1324?

MR. NOLAN:

This is amending a planning steps resolution. A small, less than half-acre piece was not included in the planning steps and this is adding this.

P.O. LINDSAY:

Okay. We have a motion and a second. All in favor? Opposed? Abstentions?

LEG. GREGORY:

Opposed.

MR. LAUBE:

Sixteen (Opposed: Legislator Gregory).

P.O. LINDSAY:

IR 1001-11 - Setting date for Special Election to fill vacancy in the 6th Legislative District (Presiding Officer Lindsay), and I'll make that motion.

LEG. KENNEDY:

Second.

P.O. LINDSAY:

Second by Legislator Kennedy. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay, that concludes that agenda.

D.P.O. VILORIA-FISHER:

Yes.

P.O. LINDSAY:

All right, let's go to the manilla folder. We did most of the stuff in the manilla folder, but we've still got some work to do. Let's do Procedural Motion No. 2. Did we have a one?

MR. NOLAN:

We must have done one previously. Number two is the first one.

P.O. LINDSAY:

Okay, *No. 2-2011 - Technical correction to Procedural Motion 12-2010 (Presiding Officer Lindsay)*, and it's some CSI money that's been up out of Legislator Nowick's district. So would you like to make a motion?

LEG. NOWICK:

I'll make the motion.

P.O. LINDSAY:

Motion by Legislator Nowick and I'll second it. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

We did three.

No. 4-2011 - Appointing to Long Island Power Authority Legislative Oversight Committee (Peter G. Schuller (sic) (Romaine)).

LEG. ROMAINE:

Schlussler.

P.O. LINDSAY:

Schlussler, okay. Legislator Romaine, would you like to make that motion?

LEG. ROMAINE:

Motion.

LEG. KENNEDY:

Second.

LEG. HORSLEY:

Second.

P.O. LINDSAY:

Second by Legislator Kennedy.

LEG. D'AMARO:

I'll recuse.

P.O. LINDSAY:

All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

LEG. D'AMARO:

Yeah, I recuse on that vote.

MR. LAUBE:

Sixteen (Recused: Legislator D'Amaro).

P.O. LINDSAY:

Procedural Resolution No. 5-2011 - Appointing to Long Island Power Authority Legislative Oversight Committee (Matthew C. Cordaro) (Romaine).

LEG. ROMAINE:

Motion.

LEG. HORSLEY:

Second.

P.O. LINDSAY:

Okay. Motion by Legislator Romaine, second by Legislator Horsley.
All in favor? Opposed? Abstentions?

LEG. D'AMARO:

Recuse.

MR. LAUBE:

Sixteen (Recused: Legislator D'Amaro).

P.O. LINDSAY:

Procedural Motion No. 6-2011 - Appointing to Long Island Power Authority Legislative Oversight Committee (Irving Like) (Romaine).

LEG. HORSLEY:

Motion.

P.O. LINDSAY:

Motion by Legislator Horsley.

LEG. ROMAINE:

Second.

P.O. LINDSAY:

Second by Legislator Romaine. You have a question, Legislator Montano?

LEG. MONTANO:

Yeah. I'm sorry, I was inattentive for a minute. What is that about?

P.O. LINDSAY:

This is the LIPA Oversight Committee that was passed by legislation last month, I believe. And these are making the appointments to that committee.

LEG. MONTANO:

Oh, okay. Yes, I have it now. Thank you.

P.O. LINDSAY:

Okay. Did we call that vote?

MR. NOLAN:

No.

P.O. LINDSAY:

No. Okay, we have a motion and a second. All in favor? Opposed? Abstentions?

LEG. D'AMARO:

Recuse.

MR. LAUBE:

Sixteen (Recused: Legislator D'Amaro).

P.O. LINDSAY:

Okay, *Procedural Motion No. 7-2011 - Appointing to Long Island Power Authority Legislative Oversight Committee (Sheldon R. Sackstein) (Romaine)*.

LEG. CILMI:

Motion.

P.O. LINDSAY:

Motion by Legislator Cilmi.

LEG. HORSLEY:

Second.

P.O. LINDSAY:

Second by Legislator Horsley. All in favor? Opposed? Abstentions?

LEG. D'AMARO:

Recuse.

MR. LAUBE:

Sixteen (Recused: Legislator D'Amaro).

P.O. LINDSAY:

Procedural Motion No. 8-2011 - Appointing to Long Island Power Authority Legislative Oversight Committee (Fred Gorman) (Romaine).

LEG. KENNEDY:

Motion.

P.O. LINDSAY:

Motion by Legislator Kennedy.

LEG. HORSLEY:

Second.

P.O. LINDSAY:

Second by Legislator Horsley. All in favor? Opposed? Abstentions?

LEG. D'AMARO:

Recuse.

MR. LAUBE:

Sixteen (Recused: Legislator D'Amaro).

P.O. LINDSAY:

Okay, working our way through that packet. We've got vetoes. Let's go to **1238-10 - Increasing County bus fare for the implementation of Sunday bus service (Schneiderman)**.

LEG. SCHNEIDERMAN:

Motion to override.

P.O. LINDSAY:

Motion to override by Legislator Schneiderman.

LEG. ROMAINE:

Second.

P.O. LINDSAY:

Second by Legislator Romaine. On the question; anybody want to talk?

LEG. SCHNEIDERMAN:

Just on the motion, very briefly.

P.O. LINDSAY:

Go ahead, Legislator Schneiderman.

LEG. SCHNEIDERMAN:

I know it's late and we don't want to hear long speeches. We all know the issue. I just want to mention that, you know, since we've passed this, we've seen support come from Jobs With Justice, Welfare-to-Work Commission, Pronto, Sustainable Long Island, Vision Long Island, Long Island Federation of Labor, many church groups. There's been a poll of over 200 riders which overwhelmingly supported it, too. I feel we are at a historic moment. If we override this veto, we will have the beginning of Sunday bus service in Suffolk County. It's desperately needed and I just urge you to support this override and let's get this program going. And in the years ahead, I know that we'll be able to expand it, as we can, so that all the people who depend on public transportation will have the option of Sunday transportation.

P.O. LINDSAY:

Legislator Kennedy.

LEG. KENNEDY:

Mr. Chair, I listened, as we all have, with the need for Sunday bus service. I have wrestled with it, but I've also attempted to say to my colleagues, we canvassed 40 riders between our bus stops here in the North Complex and Smithhaven Mall, and not a single person was in favor of the bus fare increase. And as a matter of fact, it gave us an opportunity to hear the depth and magnitude of discontent with our current bus operations.

More importantly, I had an opportunity to look at the six contracts with our providers at this point, and this is probably one of the most dysfunctional aspects of County government that I've seen in the seven years that I'm here, because operators are compensated on miles traveled. There's absolutely no incentive for an operator of a regular main-size bus or SCAT bus to have even one single patron. Their financial incentive is based on driving that bus and that's it. And that is -- if ever there was something that was crying out for us to fix, that's it.

So we should be providing Sunday service, but we should not be charging riders five more cents for the crappy service they get now. As a matter of fact, we should roll up our sleeves, fix it, address the issues that Legislator Schneiderman talks about on the east end, provide better timing, better

routes and more serviceable operations. But it stinks right now, and we shouldn't legitimize something that's broken. So I'm voting against it.

LEG. MONTANO:

Bill?

P.O. LINDSAY:

Legislator Montano.

LEG. MONTANO:

Very briefly. I voted no originally. I've spoken with the sponsor, I'm going to maintain the vote that I took last time, but that does not mean that I'm not in favor of Sunday bus service. I don't think that the surveys that were alluded to earlier or mentioned earlier in my district were actually accurate, well thought out. I know that we haven't been -- my office hasn't been contacted before those surveys were out there. It would be unconscionable on my part for me to raise the fare fifty percent without doing the appropriate --

LEG. SCHNEIDERMAN:

Fifty cents.

LEG. MONTANO:

Fifty cents, right. Without doing the appropriate survey, backup, you know, and analysis. And I'm not going to vote to increase bus service when I'm not sure that the people in my district are going to benefit from that, particularly when I don't think that they're even aware, for the most part, that this is before us.

So I, unfortunately, am going to vote no to override. But I would be more than willing to revisit the issue and work with you in the future, as long as it's done in a fashion that gives us all the information we need and the support that we should have before we take this action.

P.O. LINDSAY:

Legislator Barraga.

LEG. BARRAGA:

I'm going to continue to vote in the negative with reference to this piece of legislation. Because, you know, you're talking about a 33% increase on low income people, people who are very hard-pressed as it is, and now they're going to pay an extra dollar a day, \$5 a week, \$20 a month. And I just have this feeling that many of those people who take a look and use the bus service right now may be in favor of Sunday bus service because they think they're all going to get Sunday bus service, and that's not the case. We raise it 33%, maybe nine, ten different bus routes, but the balance will not receive it.

So I think from an economic perspective where you're dealing with people who -- they are hard-pressed to begin with, and this isn't just something unique. I mean, the case has been made, "Well, we haven't had an increase in 16 years," but everything else goes up; food, clothing and rent. I mean, just take a look if you have oil heat, the oil truck comes down, it's \$3.50 a gallon now; 200 gallons, that's \$700. Everything else is going up, and these people are hard-pressed and they just can't afford this.

P.O. LINDSAY:

Legislator D'Amaro.

LEG. D'AMARO:

Similar remarks to my colleagues. I agree with you, we need Sunday bus service. We're in a tough time, rough economy, it's not the time to be talking about 33% increases, especially if I think it would be imposed upon people who can least afford it at this point. So although I think the sponsor is well intentioned and I do agree with the need, I think given our financial circumstances, this is just not the time to put that on the backs of the ridership. So I'm going to also vote to sustain.

P.O. LINDSAY:

Okay, roll call.

*(*Roll Called by Mr. Laube - Clerk*)*

LEG. SCHNEIDERMAN:

Yes.

LEG. ROMAINE:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

No to override.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

No.

LEG. BARRAGA:

No.

LEG. CILMI:

No.

LEG. MONTANO:

No.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

No.

LEG. BROWNING:

Yes.

D.P.O. VILORIA-FISHER:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

No.

MR. LAUBE:

Ten.

P.O. LINDSAY:

Okay, the override fails.

Okay. Another veto, ***Resolution No. 1189-2010 - Authorizing and directing the Department of Social Services to enter into agreement to house sex offenders (Romaine & Schneiderman)***. I'll make the motion.

LEG. SCHNEIDERMAN:

Second.

P.O. LINDSAY:

Second by Legislator Schneiderman; the motion is to override.

On the question? Okay, roll call.

(*Roll Called by Mr. Laube - Clerk*)

P.O. LINDSAY:

Yes.

LEG. SCHNEIDERMAN:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

No.

LEG. STERN:

Nope.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

No.

LEG. NOWICK:

No.

LEG. KENNEDY:

No.

LEG. BARRAGA:

No.

LEG. CILMI:

No.

LEG. MONTANO:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

No.

LEG. BROWNING:

Yes.

LEG. ROMAINE:

Yes.

D.P.O. VILORIA-FISHER:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Nine.

P.O. LINDSAY:

Okay. What about the CN?

MR. NOLAN:

Yeah, we've got to do that one.

P.O. LINDSAY:

Okay, we've got a CN, 10 -- ***1012-11 - Adopting Local Law No. -2011, A Local Law amending the County Affordable Housing Program to provide affordable housing to homeowners displaced by natural disaster (County Executive)***. Legislator Romaine, would you like to make that motion?

LEG. ROMAINE:

Well, I wish Steve was here because he would make it for me, but I guess because he's not a member I have to. I'll make the motion.

P.O. LINDSAY:

Is there a second?

D.P.O. VILORIA-FISHER:

I'll second.

P.O. LINDSAY:

Second by Legislator Viloria-Fisher.

LEG. GREGORY:

Mr. Chair?

P.O. LINDSAY,

Yes, Legislator Gregory.

LEG. GREGORY:

I would like to inquire as to the nature or reason of why this is coming in the form of a CN. Is it complying with our laws, our law, or our rules?

MR. NOLAN:

It's complying with our rules and our law.

LEG. GREGORY:

It's complying in what capacity?

MR. NOLAN:

In every capacity, Legislator Gregory. No, what it is, it came over -- this was a law that was already introduced. It was scheduled to be on the next meeting's public hearing calendar, but it came over today as a CN. It was posted for an hour, the public hearing notice. We, in fact, held the public hearing. Throughout the day, I believe Legislator Romaine, who had his own bill to do substantially the same thing, I believe has been talking to the County Executive's office. I believe they've come to some type of agreement on this particular bill and here it is.

LEG. ROMAINE:

The most important thing, most important thing is that the constituents of my district benefit; that's the most important thing. And I've agreed to recess my bill and the public hearing for it and allow the County Executive's bill to come forward for that purpose.

LEG. GREGORY:

But that doesn't really answer my question. My question -- and maybe I should phrase it in a different way. Yes, technically it meets the requirements because the public hearing was posted, we had the public hearing, closed it. But, you know, and I'm sure you can give me guidance on this, but my understanding is that not just any bill can come before us in the form of a CN. There should be some --

LEG. COOPER:

Pressing need.

LEG. GREGORY:

You know, unique purpose or urgent purpose for a bill to come through with a CN and to usurp the committee process, not to just, you know, put a bill forward to, you know, kind of get in front of another Legislator's piece of legislation.

MR. NOLAN:

No, I understand your point, Legislator Gregory. What the law requires is that the CN articulate the County Executive's reasons why he thinks it must be passed today. It does that, it has the cover sheet with his explanation. It's up to the Legislature to decide if they accept that as being okay. Whether it was nice what was done, you know, I can't really speak to that, but they've complied with the law and apparently Legislator Romaine has been speaking with the County Executive and he's okay with it.

LEG. GREGORY:

Okay.

LEG. MONTANO:

Question.

P.O. LINDSAY:

Yes, Legislator Montano.

LEG. MONTANO:

My question, maybe Legislator Romaine. And I understand that this bill benefits the residents of your district, you had a prior bill in there. But what is the necessity for passing this today? I mean, is there a particular reason why this has to be done at this moment? What is the urgency? Other than -- other than making your constituents, you know --

LEG. ROMAINE:

Right.

LEG. MONTANO:

-- happy, is there an urgency attached to this particular resolution today?

LEG. ROMAINE:

I introduced my bill in December. My bill went through a public hearing today, it was going to go through the committee process.

MS. LOMORIELLO:

Your microphone is off.

LEG. ROMAINE:

It was going to go through the committee process, the County Executive has a competing bill and he can talk to you about the urgency of that competing bill.

LEG. MONTANO:

He's not here.

LEG. ROMAINE:

His Chief Deputy County Executive is here to speak for him.

LEG. MONTANO:

Okay, Mr. Kent, I will ask you a question. What is the urgency of passing this today as opposed to going through the regular committee process?

MR. KENT:

The standard is a pressing need and we feel there is a pressing need to get this legislation adopted as soon as possible. We met -- we've been working with the victims of the Horton Avenue flooding since April of last year; not only our office, but Legislator Romaine has also been working with them. In November, we met with some of the residents who are still displaced from their homes and we were asking, "What could we do at this point to assist them and assist them quickly?" Both Legislator Romaine and our office started working immediately on granting them some preference under our 72-h Program.

If you went through with the program, under 72-h of General Municipal Law, we have an ability to convey land to municipalities for certain purposes. The purpose here is to provide affordable housing. We are -- under this legislation, we are granting a preference to people who have been displaced by natural disaster. Both Legislator Romaine and our offices were both working on bills. We looked at Legislator Romaine's bill. We filed ours also in December, but it didn't get placed on the calendar until much later. We were looking at his bill and our bill; our bill, it makes more effort to amend the Administrative Code. We've been talking to Legislator Romaine about it for some time. I made every effort last week to work with him on this. I continued to work with him yesterday and today until we reached a compromise where we felt move forward with our bill which amends the Administrative Code to add special sections for individuals displaced by natural disaster that would allow them some preference in being awarded the right to own an affordable home through the County program.

So that's what this bill does. Legislator Romaine and the County Executive's Office have worked together on the bill, he's cosponsoring the bill with us. His bill was heard today at public hearing and we felt that the best time was to move this by CN today so that the flood victims on Horton Avenue do not have to wait any longer for some relief from the County. We believe they deserve that and that's why we moved it forward today. We did believe there was pressing need and we've worked together with Legislator Romaine to come up with what we think is the best amendment to the Administrative Code to allow for preference to be given to these people who have suffered a natural disaster and been displaced from their home.

LEG. MONTANO:

I understand the -- your explanation. But I'm -- and I don't want to be argumentative, I'm just not clear on the urgency, particularly because we -- it's a -- it's actually a lengthy bill. And we haven't had a chance in committee, and I don't know what committee it's going to, to discuss the merits and format. What you've told me is that -- unless I've missed something, is that you and your office and Legislator Romaine have agreed that this is something that you want to do, but I'm still not clear on the urgency of getting this done today. What -- if it goes to committee and comes out of committee after a full hearing and is voted on, how many -- when's our next meeting, by the way.

LEG. NOWICK:

March 8th.

LEG. BROWNING:

A month away.

LEG. MONTANO:

Okay. Is that your urgency, that you're losing a month? I mean, I just want to get a clear understanding of the urgency, not an explanation of the bill.

MR. KENT:

By the time this gets through the process, this is a Local Law, it still has to be filed with the Secretary of State of the State of New York. So you're looking to put these people off who have suffered flood damage to their homes and have been displaced. They're no longer living in the homes they own based on the flood that occurred in March of 2010. These people are out of their homes and they're looking for some relief. If we wait until March 8th, you are then -- we would have to file it through the New York State Department of State, you're putting them off more than a year beyond the time that they were displaced from their homes.

LEG. MONTANO:

So --

MR. KENT:

We are trying to move this as quickly as possible. And I think if we can move it today by CN, get it through the process, we can start -- we've already conveyed some lands to the Town of Riverhead under 72-h. We're looking to convey another piece to the Town of Riverhead. We are just trying to get these people into a program, because we still have to build the homes. So I'm trying to get this moved as quickly as possible so that these people who have been displaced by their home by flood damage, to have a place to live that they can own.

LEG. MONTANO:

So just to simplify it, what I guess you're saying is that if we pass this today, whatever relief they're going to get, they will get into the new home that you're going to build 30 days or 35 days sooner; is that what you're saying?

MR. KENT:

I'm saying, yes, this will give us some time, we can get started on the program.

LEG. MONTANO:

Okay. So you're --

MR. KENT:

This property gets conveyed to the Town of Riverhead, then they have to enter into agreements with someone to construct the homes. The Town of Riverhead enters that agreement and we've got to start the building. And once you -- you've got to go through that process, they've got to get building permits.

LEG. MONTANO:

If you agree with me that we're saving 35 days of them being displaced, then we don't have to continue.

MR. KENT:

That's 35 more days of not being in their homes as a result of flooded --

P.O. LINDSAY:

He's agreeing with you.

LEG. MONTANO:

Thank you. Okay, I'll buy that.

P.O. LINDSAY:

Okay. We have a motion and a second. Roll call.

*(*Roll Called by Mr. Laube - Clerk*)*

LEG. ROMAINE:

Yes.

D.P.O. VILORIA-FISHER:

Yes.

LEG. COOPER:

Yes.

LEG. D'AMARO:

Yes.

LEG. STERN:

Yes.

LEG. GREGORY:

Yes.

LEG. HORSLEY:

Yes.

LEG. NOWICK:

Yes.

LEG. KENNEDY:

Yes.

LEG. BARRAGA:

Yes.

LEG. CILMI:

Yes.

LEG. MONTANO:

Yes.

LEG. EDDINGTON:

Pass.

LEG. MURATORE:

Yes.

LEG. BROWNING:

Yes.

LEG. SCHNEIDERMAN:

Yes.

P.O. LINDSAY:

Yes.

LEG. EDDINGTON:

Yes.

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay. Counsel just said to me, "Let's see if we can do the rest of them without roll call."

MR. NOLAN:

You did this one.

P.O. LINDSAY:

We did it already?

MR. NOLAN:

You just did that one.

P.O. LINDSAY:

Okay.

LEG. COOPER:

You can do the next bill.

P.O. LINDSAY:

IR 1062-11 - Amending the 2011 Adopted Operating Budget to transfer funding from programs operated by Suffolk Community Council to the United Way of Long Island, Inc. (County Executive). Do I have a motion? I'll make the motion.

LEG. STERN:

Second.

P.O. LINDSAY:

Second by Legislator Stern. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

IR 1074-11 - Accepting and appropriating a grant award for a Health Workforce Retraining Initiative Grant Program from the New York State Department of Health, 100% reimbursed by State Funds at Suffolk County Community College (County Executive).

Motion by Legislator Muratore.

LEG. BROWNING:

Second.

P.O. LINDSAY:

Second by Legislator Browning. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

IR 1086-11 - Creating a Bipartisan Commission to preserve Public Health Services in Suffolk County in the face of State Aid disallowances (County Executive).

D.P.O. VILORIA-FISHER:

(Inaudible).

P.O. LINDSAY:

Legislator Kennedy, would you like to make a motion on this?

LEG. KENNEDY:

Well, you know what, Mr. Chair? I think that --

P.O. LINDSAY:

I'm throwing you a softball.

*(*Laughter*)*

LEG. KENNEDY:

Yeah, I know you did. I know you did, as a matter of fact. But there's some discussion that still remains to be had on this bill, and I may just make a motion to commit to committee because --

LEG. SCHNEIDERMAN:

Second.

LEG. KENNEDY:

-- there needs to be some dialogue, I guess, about the nature and the -- whatever else I can think about to say here.

P.O. LINDSAY:

Did you make a motion?

LEG. KENNEDY:

Yes, I did. Motion to commit to committee.

P.O. LINDSAY:

And Legislator Schneiderman seconded that. And just to weigh in, I mean, myself and Legislator Kennedy have already met with the Executive's people and the Health Department. You know, we've got a mutual problem, it's about \$20 million worth of mutual problem, and I guess he's looking for our help because he don't know what else to do. But yes, Legislator Romaine, you want to weigh in?

LEG. ROMAINE:

Yes. Do we have a representative of the County Executive here?

P.O. LINDSAY:

Yes, we do.

LEG. ROMAINE:

Okay. My understanding -- my understanding is that --

MR. CRANNELL:

Sure thing. Ed, go ahead.

LEG. ROMAINE:

-- in Suffolk County law, if there is a cut of State or Federal aid, those programs are cut automatically unless the Legislature votes by a two-thirds margin to restore them; is that correct?

MR. CRANNELL:

Yes, I believe it is.

LEG. ROMAINE:

Okay. Could you explain to me, since we've got this memo from the County Executive, I think I got a letter about a week or so ago.

MR. CRANNELL:

Sure.

LEG. ROMAINE:

Could you explain to me what steps you've taken to reduce those programs that are affected by this cut in State funding?

MR. CRANNELL:

What we propose tonight is a committee to discuss about how to handle these cuts. The aid cut cuts across --

LEG. ROMAINE:

No, that isn't the question. I've asked you what steps has the County Executive taken to fulfill the requirement of the law?

LEG. MONTANO:

Bill?

MR. CRANNELL:

Well, we've just received notice of the cuts, we're determining that plan now.

LEG. ROMAINE:

How long before you make -- before you enact the provisions of that law?

MR. CRANNELL:

I think it's our intention with this bill to make recommendations to the Legislature by April 1st. And I also might add, the State budget that was proposed today further cuts the Article 6 aid. The proposal by Governor Cuomo is to fully eliminate all reimbursement for optional services, so that would add an additional \$6.5 million to this total, so it would be 26.5 million.

LEG. ROMAINE:

So you will have a plan before us by our second meeting in March, or -- because our last meeting -- our meeting in April is April 27th, so you'll have this before us so that we can weigh this and consider this? You will have the plan of how you will comply with County Law before us when?

MR. CRANNELL:

Well, certainly our plan was to try to devise a plan between both the Executive and Legislative Branch. We've heard a lot of discussion tonight about the coequal branches of government and that was our intention, to offer this --

LEG. ROMAINE:

You propose, we dispose is the way it usually works, but we'll wait on you to present that plan. Thank you.

MR. CRANNELL:

Thank you very much, Legislator Romaine.

LEG. BARRAGA:

Billy, can I ask a couple of questions?

LEG. MONTANO:

Yeah, after me.

P.O. LINDSAY:

Sure, right after Legislator Montano.

LEG. MONTANO:

Ken? Just a couple of quick questions.

MR. CRANNELL:

Sorry, Legislator.

LEG. MONTANO:

That's all right. The title here is to create a bipartisan commission, and I'm looking at the members of the commission and I don't know everybody's registration. I do know that the Presiding Officer is a Democrat, the Minority Leader is a Democrat, the Chairperson of the Health & Human Services --

D.P.O. VILORIA-FISHER:

No, Minority Leader is a Republican.

LEG. MONTANO:

Oh, no, I'm sorry, I got it wrong.

*(*Laughter*)*

He's a Republican.

D.P.O. VILORIA-FISHER:

You forgot there's a Majority.

LEG. KENNEDY:

What am I? What am I?

LEG. MONTANO:

I'm reading Majority.

LEG. ROMAINE:

Endorsed by Democrats.

LEG. MONTANO:

My math is off.

LEG. COOPER:

That was supposed to be a secret.

*(*Laughter*)*

LEG. MONTANO:

Sorry, John. It's getting late and I'm looking at Majority and I had a -- I don't know the registration of the other people here, but this doesn't look bipartisan. It looks more partisan on one side than on the other, and it also looks more County Executive side or Executive Branch than Legislature -- Legislative Branch; could you address that? Because it's supposed to be a bipartisan commission, according to its title.

MR. CRANNELL:

Well, certainly all the elected officials are listed here, it is a bipartisan commission. The other representatives on the commission are professionals from the Health Commissioner, the Medical Examiner, the Director of Legislative Budget Review, you know, the nonpartisan members.

LEG. MONTANO:

But that's not what it says. It says "bipartison commission", which to me is -- would infer that there's at least an equal representation of the major -- you know, major parties.

MR. CRANNELL:

By my account, I see --

LEG. MONTANO:

And actually, I counted more Dems than there should be, and I apologize, Legislator Kennedy.

LEG. BROWNING:

There's a third party.

LEG. MONTANO:

And there's a third party in there also; I was going to get to you, but I screwed up the other one. But seriously, this is not about bipartisan commission. I mean, if you want to establish a commission or a committee that's fine, but you're calling it a bipartisan commission; it really isn't, in my opinion. Am I correct or --

MR. CRANNELL:

Well, certainly I'm looking at the make-up of the commission; the County Executive, the Presiding Officer, the Minority Leader, the Chairperson of Health & Human Services, those are the elected officials on the commission. I read that as two Republicans and two Democrats.

LEG. COOPER:

Yeah, but --

LEG. MONTANO:

And with the -- with the exception of the Director of BRO, everyone else is in the Executive Department; am I correct?

MR. CRANNELL:

Well, certainly. I mean, the idea was to bring department heads and people with the budget experience to work on the working group, that was the intention.

LEG. MONTANO:

I won't belabor the point.

LEG. KENNEDY:

Bill?

P.O. LINDSAY:

Okay. Are you done?

LEG. MONTANO:

Yes.

P.O. LINDSAY:

Legislator Barraga wanted to --

MR. CRANNELL:

Sir, if I could just add, I mean, this is about making -- we have a very hard decision to make. As Legislator Romaine properly pointed out, the Charter requires us there's a rock-solid prohibition from absorbing cost shifts of this manner from the State, we need to develop a plan to address it. This will be on top of the other things that we learned about today; its impact is substantial. We've got to begin making those tough decisions. This was our proposal to try to move that forward and try to reach a compromise, reach -- develop a plan that reflects just a broad diversity of the service that's delivered at the Health Department. This impacts not only every health center, it impacts all of the EMS training done by the Health Department and it slashes funding for the Crime Lab for the Medical Examiner. The intention of this is to develop a plan to address those cuts.

LEG. MONTANO:

I don't have a problem with the intention. I know exactly what you're dealing with, but it's really the nature of the way that the bill was drafted. And I want to be clear on how it's structured and what the you -- you know, what the different persons or individuals that it will serve and who they represent.

MR. CRANNELL:

Well, certainly, Legislator Montano, we did --

LEG. MONTANO:

And I don't care where the ideas come from, they can come from, you know, wherever, as long as they're solid ideas.

MR. CRANNELL:

Thank you. And like I said, this was shared with you in advance for comments; we received no comments. We did have a preliminary meeting, the Presiding Officer was there, the Minority Leader was there, and we had no discussion about that we needed to change the make-up of the body so.

LEG. MONTANO:

Okay.

P.O. LINDSAY:

Legislator Barraga.

LEG. BARRAGA:

Mr. Crannell, as I understand it, this 20 million, now adding 6.5 based on the Governor's State-of-the-State this afternoon, comes about as a result of rule changes by the New York State Department of Health. Were those rule changes unique to Suffolk County?

MR. CRANNELL:

No, they were not. First of all, the State has been trying to cut this reimbursement 40 years. The answer is yes and no; the cuts to the Crime Lab are not in the --

LEG. BARRAGA:

How many other counties found themselves in a position where, based on these rule changes, they now owe money to the State?

MR. CRANNELL:

Approximately five.

LEG. BARRAGA:

Just five counties in addition to or including Suffolk County.

MR. CRANNELL:

That's correct. And no other county has the system of health networks that we do and is impacted on that side.

LEG. BARRAGA:

Okay. So of the 20 million, roughly five million pertains to this year and the rest is a retroactive amount going back to 2008.

MR. CRANNELL:

That's correct.

LEG. BARRAGA:

Has there been any effort on the part of anyone to negotiate with the State as far as the payback of the 15 million which is retroactive, so that we don't take the hit of 20 million immediately?

MR. CRANNELL:

The answer is yes, we've had those discussions. And like I said, we were led to believe there was no willingness to compromise on behalf of the State Health Department.

LEG. BARRAGA:

Who participated in those discussions?

MR. CRANNELL:

We've had representatives, myself, representatives of our Health Department, of our Budget Office; we've been working on it for some time.

LEG. BARRAGA:

When you say the budget -- your Budget Office?

MR. CRANNELL:

The County Executive Budget Office, yes.

LEG. BARRAGA:

Anybody from this end, Legislature, this Budget Review Office here?

LEG. BROWNING:

No.

LEG. BARRAGA:

And what kind of discussions were we talking about; did you meet once, did you meet twice? Who did you speak with?

MR. CRANNELL:

This has been an on -- first of all, this reduction that is implemented here has been proposed for some time. The State has been trying to clawback these funds for many, many years. This has been an ongoing debate. This is the first time -- what they've done is bypassed the Legislative process and changed the rules to regulation.

LEG. BARRAGA:

Okay. What are the other four counties?

MR. CRANNELL:

The counties with the Crime Lab, with the Medical Examiner I believe are Westchester, Onandoga, Nassau -- I'm sorry, I don't have the full list in front of me.

D.P.O. VILORIA-FISHER:

Erie?

LEG. BARRAGA:

All right. Now --

MR. CRANNELL:

But the larger counties.

LEG. BARRAGA:

-- realistically, when you take a look at Nassau County, Westchester, the Assembly and Senate representation in the Legislature, can't legislation be put at the State level to, on the retroactive element, phase it out over a period of years as opposed to one hit for \$20 million?

MR. CRANNELL:

Yeah, I know. We've been reaching out to the delegation, we've included it in our State agenda. The problem is the budget impact is so large this year. I mean, to give you an example, Governor Cuomo proposed over \$5 billion in gross Medicaid cuts today; that kind of a reduction has never been seen in the history of New York State. The message we've been getting back from our delegation is that the list is going to be long and painful and this one they may not be able to help us on.

LEG. BARRAGA:

Yeah, it's my understanding that the Medicaid cuts that he has proposed were not as large as some people anticipated. All I'm saying is that I think it's worth the effort with the State delegation to see if legislation can be put in to take that retroactive portion and spread it out over three or four years, as opposed to turning around and demanding it from a County and having to take it out of our existing budget, all 20 million plus another 6.5 million.

MR. CRANNELL:

Yeah, I think part of the problem is that State, you know, looks at this -- they operate their budget on a cash basis, whereas Suffolk County operates on modified accrual; whereas we book an expense when we deliver the service, the State books the expense when they pay the bills.

LEG. BARRAGA:

But the challenge here is the Majority members of the Assembly and the Senate, and we have them

here in Nassau and Suffolk Counties, they'll put that legislation in. They don't care about the bookkeeping of the State of New York, they just don't want us to get hit down here. Nassau is in dire shape, and why should we have to pick up at least a \$15 million tab? I don't mind dealing with the five million, and it's easier for this task force to do that, but to go on and have to retroactive it back another \$15 million when there's a real strong possibility you can get your delegations at the State level to put legislation to forgo that, I think is worth pursuing.

MR. CRANNELL:

Yeah, Legislator Barraga, first of all, I agree with that approach. That sounds like a great idea. Unfortunately, they've already begun clawing back the funds, that's the problem. The last claim that was paid took back these funds, they intend to fully recoup these funds. The cuts have already begun, that's the problem that we face.

LEG. BARRAGA:

But the point is if they're taking monies back retroactively, clawing back the funds, legislation can be put in so they -- the legislation could be designed so they give you back the funds and then the County has a period of "X" amount of years to pay back the retroactive.

MR. CRANNELL:

Of course, Legislators. That would advance that as part of a State budget would have to find the money to fund that change; that's the problem we face.

LEG. BARRAGA:

Look, you know, 15 million, believe me.

MR. CRANNELL:

Oh, I know.

LEG. BARRAGA:

Out of 132 billion? That's a sneeze. They'll find it. But the point is I think it's worth pursuing because Nassau is in terrible shape, and why should we have to incur an extra \$26 million hole in this budget when there might be an alternative to forgo that?

MR. CRANNELL:

The reduction is outrageous, but we have to plan for it and come up with a plan to implement it and make up for it in our budget. As Legislator Romaine pointed out, our Charter requires that we offset these costs and not absorb them unless, I believe, there's a super majority vote of the Legislature.

D.P.O. VILORIA-FISHER:

Not all at once is what you're saying.

LEG. BARRAGA:

Yeah. I mean, we're going to absorb the cuts, as Vivian indicates, but phase it out over a period of years. We'll take the five million, but that other retroactive portion maybe can be paid off over a period of four or five years in the future.

MR. CRANNELL:

Legislator, I think that's a proposal to make. Unfortunately, we have to deal with the reality that the cuts are before us, they've begun clawing back these funds already. So we have to come up with a plan if that approach doesn't work.

LEG. BARRAGA:

Yeah, because I have a sense that this Governor, what he's doing when he's making the cuts, basically he's saying in just about every area rather than, you know, go out, like in the case of school districts, and say, "Well, we're going to layoff "X" amount of teachers and we're going to do this, we're going to do that"; what he would like to see is everyone sitting down and now coming up with a plan to operate within his parameters, his fiscal parameters, and yet keep the services for the customers that were really in public office to serve.

And I think in this particular case, before we just sit down and say, "Okay, our plight here is 26.5 million," there are other options where in the end the State gets their money back, but we have a better opportunity to pay it over a prospective period of time.

MR. CRANNELL:

Well, like I said, in the best case that would be a good idea. Unfortunately, we have been down the path, we've gotten a lot of resistance. They've begun clawing back these funds. We can't ignore the problem, we've got to take this problem head-on. There's a lot more coming.

D.P.O. VILORIA-FISHER:

But we have representatives.

LEG. BARRAGA:

But you have -- okay, I'm going to end. I think you have members of the Assembly and the Senate, if you sat down with them and discussed the issue, they would also feel reasonably assured that, you know, this is only right. They're being whacked to go back to 2008, let's put some legislation in to preclude that from happening right now and make it a prospective payment over a four or five year period, so in the short term at least we're only dealing with a \$5 million problem, or maybe an \$11.6 million problem based on what you're telling us.

MR. CRANNELL:

Well, I appreciate that, Legislator Barraga. But remember, there's 211 members of the Legislature, it's a tough bill to pass.

LEG. BARRAGA:

No, no. No, you've got a key majority member in the Assembly and a key majority member in the Senate from Nassau and Suffolk County and you'll get this done.

MR. CRANNELL:

Okay.

LEG. BARRAGA:

And I can give you some names.

D.P.O. VILORIA-FISHER:

He can name names.

MR. CRANNELL:

I know he can.

P.O. LINDSAY:

And the other thing to add, what you're saying, Legislator Barraga, what it's called is an unfunded mandate when you go back retroactively, after we've already offered the services and delivered the services. Legislator Horsley.

LEG. HORSLEY:

Yeah, just quickly, to carry on a little bit more than what Tom said. Let me ask you, when this \$26 million, what other -- those other counties, what did they have to pay back? A lot of them don't have health centers; is that correct?

MR. CRANNELL:

That's correct. The impact --

LEG. HORSLEY:

Is the majority in the health centers? The majority of the money is in the health centers?

MR. CRANNELL:

Yes, it is. The majority is the health centers. The impact would essentially be the Crime Labs for the Medical Examiners. It's a much more piece of the puzzle --

LEG. HORSLEY:

So much smaller piece that they've got to worry about. So to the first question that Legislator Barraga asked, you know, are we being -- are we being pointed out as the one that is going to have to pay the most? Absolutely that is what we're saying.

MR. CRANNELL:

Oh, absolutely. I think this change in regulation was crafted, because it would --

LEG. HORSLEY:

For Suffolk.

MR. CRANNELL:

Correct, it would cause the -- looking at the Statewide picture, this would cause the least objection from a Statewide basis.

LEG. HORSLEY:

So which leads me to believe, Mr. Barraga, that you're absolutely right. They're saying that this is singling out Suffolk County, and they threw in a few bones to get the other four counties on board. That's outrageous. Let's do it ourselves, Mr. Barraga. Mr. Presiding Officer, let's work on this. That's ridiculous.

P.O. LINDSAY:

Well, Legislator Romaine wants to speak, but the net effect of this -- and, you know, some of us might say, "You know, I might represent an affluent area and I don't have a health center, so how does it effect me?" If the health centers close, those people are going to go to the emergency rooms.

LEG. HORSLEY:

That's right.

P.O. LINDSAY:

And we all use the emergency rooms and the emergency rooms are going to be so flooded that you're not going to be able to get emergency services.

LEG. ROMAINE:

Flooded homes.

P.O. LINDSAY:

Which makes it worse.

LEG. HORSLEY:

But let's --

MR. CRANNELL:

Presiding Officer, if I could add. That's absolutely correct, it's my understanding there's about 12,000 recipients across the County that would lose service from the health centers and would have to go to emergency rooms for these services.

P.O. LINDSAY:

Legislator Romaine.

LEG. ROMAINE:

Yes. Last week I had an opportunity to open my mail and in that mail came the good news from Steve Levy, our County Executive, about this \$20 million cut. What perked my ears up is in your discussion, you said you had been working on this for a great -- for some time now; you, representatives of the Health Department and the Budget Office, in response to Legislative Barraga's comments. When did you know this? And if you knew this sooner than later, why did you -- why did the administration wait 'til last week to notify the Legislature about this?

And what's even worse, from my perspective, is this is a body, which I'm sure you're familiar with, works through its committees, there was a committee meeting of the Health Department this past Thursday, no one from the Executive's Office came to brief in person the Health Committee about this, and the only information I got was in the letter I got from Steve.

MR. CRANNELL:

Legislator, first of all, when I say that we've known about the issue, -- the State Health Department has been trying to implement these cuts for many years. This has been an ongoing State budget proposal for six, seven, eight years, it's been going on a long term.

LEG. ROMAINE:

This is my sixth year here, I haven't heard about this once.

MR. CRANNELL:

This had never --

LEG. ROMAINE:

And believe me, I take an interest in things with a \$20 million price tag.

MR. CRANNELL:

Legislator, we learned that they actually changed the regulation and implemented the cut with our payment that was made in December, so we found out about this in December.

LEG. ROMAINE:

And I got a letter at the end of January from the County Executive about something that's going to cost us \$20 million, knowing full well that the Governor had campaigned on making even larger cuts. That's a month that went by. I guess our involvement isn't time sensitive.

MR. CRANNELL:

Legislator, it took some time for the Health Department to go back through this claim and determine exactly what the impact was. We were very timely with our notice. This proposal before you takes

on this problem, deals with it in a way between the Executive and the Legislative Branch. All's I've heard tonight is that that's what you're trying to accomplish, that you want to be involved in the decision making. Here it is.

LEG. ROMAINE:

But you had an opportunity Thursday to go to the Health Committee and at least make a preliminary report about what you viewed as the impact of this \$20 million cut, and no one from the administration showed up at the Health Committee and made that presentation.

You know, I don't want to go back and forth, I don't want to point out -- I don't want to use the word "disingenuous", I don't want to do any of that, but this is what I would recommend. At the next Health Committee meeting, you be ready with your slides, your charts and your proposal of what you see this cut doing, what you're proposing and allow the Health Committee to interact with it so it can report back to the full Legislature. Strong recommendation. I think it would have gone a lot smoother had you done that this past Thursday, because the Health Committee doesn't meet for another month, unless you want to have -- ask the Presiding Officer for a Special Meeting where the County Executive can present his programs, his plan, as he has done for every other financial issue that has faced the County. Thank you.

MR. CRANNELL:

Just to clarify, Legislator Romaine. There was a meeting on Thursday that we had, Legislator -- the Presiding Officer was there, the Minority Leader, the Health Commissioner, and Legislator Browning was invited but she wasn't able to attend. We began this discussion on Thursday.

LEG. ROMAINE:

She was chairing her committee.

LEG. BROWNING:

I got a very short notice. So don't say I was invited, you gave me very short notice. And like Legislator Romaine said, yes, you could have been here to do a presentation in front of the Health Committee. It didn't need to be on the 12th floor behind closed doors, it could have been open and right here.

LEG. ROMAINE:

Right in front of the committee for the public and the press to know, transparency. Thank you.

D.P.O. VILORIA-FISHER,

Okay, let's vote.

P.O. LINDSAY:

Okay. What kind of motion do we have, Madam Clerk?

MS. ORTIZ:

To recommit.

P.O. LINDSAY:

That's the only motion before us?

MS. ORTIZ:

Yes, sir.

P.O. LINDSAY:

We have a motion to recommit and a second. All in favor? Opposed? Abstentions?

LEG. D'AMARO:

Opposed.

P.O. LINDSAY:

One opposed.

MS. ORTIZ:

Sixteen (Opposed: Legislator D'Amaro).

LEG. CILMI:

Recommit?

P.O. LINDSAY:

Recommit.

D.P.O. VILORIA-FISHER:

It's just to commit.

LEG. NOWICK:

We have one more?

P.O. LINDSAY:

One more. *IR 1116-11 - Accepting and appropriating grant funds received from the New York State Division of Criminal Justice Services, under the Crimes Against Revenue Grant (County Executive).*

LEG. NOWICK:

Motion.

LEG. BROWNING:

Motion.

P.O. LINDSAY:

Motion?

LEG. NOWICK:

Motion.

P.O. LINDSAY:

Motion by Legislator Nowick.

D.P.O. VILORIA-FISHER:

Second.

P.O. LINDSAY:

Second by Legislator Viloría-Fisher. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

Okay, yellow file. Where's my yellow file? All right, nobody leave now. Wait a minute, I need the yellow file. Thank you very much. Thank you, Ann Marie.

Okay, I'm going to make a motion to waive the rules and lay on the table the following Late Starters: 1106 to Ways & Means; 1107 to Public Safety; 1108 to Public Works; 1109 to Public Works; 1110 to Ways & Means; 1111 to Budget & Finance; 1112 to EEE; 1113 to Parks & Recreation; 1114, Labor, Housing & Consumer Protection and set a Public Hearing for March 8th at 2:30 in Riverhead; 1117 -- is that the next one?

MS. PASTORE:

It should be 1115.

P.O. LINDSAY:

Okay, 1115 -- what would it go to?

MR. NOLAN:

Send that to Labor.

P.O. LINDSAY:

Labor, Housing & Consumer Protection; 1117 to Budget & Finance; 1118 to Health & Human Services. Do I have a second to that motion?

LEG. COOPER:

Second.

P.O. LINDSAY:

Second by Legislator Cooper. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

I'll accept a motion to adjourn.

LEG. COOPER:

Motion.

P.O. LINDSAY:

Motion to adjourn by Legislator Cooper, second by Legislator Stern. All in favor? Opposed? Abstentions?

MR. LAUBE:

Seventeen.

P.O. LINDSAY:

We stand adjourned.

*(*The meeting was adjourned at 8:59 PM*)*

{ } - Denotes Spelled Phonetically.