

**RULES, ENACTMENTS AND INTERGOVERNMENTAL RELATIONS COMMITTEE
MINUTES**

**THURSDAY, MARCH 22, 2018
4:15 P.M.**

PRESENT: Thomas J. Faggione, Chairman
Michael Amo, Katie Bonelli, Barry J. Cheney, Kevin W. Hines, James M. Kulisek,
Michael D. Paduch, John S. Vero

ALSO

PRESENT: L. Stephen Brescia, Chairman
Kevindayán Luján, Legislator
James D. O'Donnell, Legislator
Paul Ruskiewicz, Legislator
Peter V. Tuohy, Legislator
Rob Sassi, Legislator
Joel Sierra, Legislator
Kathy Stegenga, Legislator
Antoinette Reed, Legislative Counsel
Harry Porr, Director, Operations and Cost Control
Langdon Chapman, County Attorney
David C. Green, Commissioner, Board of Elections
Louise Vandermark, Deputy Commissioner, Board of Elections
Michael Ventre, Budget Analyst
Richard Golden, Esq., Burke, Miele & Golden, LLP

Mr. Faggione opened the meeting at 5:25 p.m. and requested everyone stand for the Pledge of Allegiance to the Flag. All members were present.

Mr. Faggione explained that Agenda Item No. II a Local Law to continue the imposition of tax under Local Law 13 of 2009, known as the "Orange County Hotel and Motel Room Occupancy Tax Local Law for an additional three years" and Agenda Item No. VI. Resolution of the Orange County Legislature urging the New York State Legislature and Governor of the State of New York to enact Senate Bill No. 2761 and Assembly Bill NO. 3398, "Laree's Law" would be withdrawn.

Ms. Bonelli moved request to accept salary schedule for Election Inspectors, Voting Machine Technicians, Voting Machine Operators, Poll Clerks for the Nursing Homes, Poll Clerks for Court Orders, Polling Place Information Clerks, Polling Place Interpreter, Post-Election Audit Clerks, Polling Place VRA Clerks, Inspector Training, Green Bag Pick-Up, and Warehouse, Delivery and Machine Pre-Lat, seconded by Mr. Amo.

Mr. Green explained that as required by New York State Election Law they come before the legislature annually for the approval of their salary schedule. Most salaries remained the same with the exception of their ten Voter Referral Application (VRA) Clerks.

Motion carried. All in favor.

On the agenda was an update on the Board of Elections.

Mr. Green addressed the committee stating that the voting machines or ballot marking devise (BMD) are now ten years old and many counties are starting to have problems with the machines and repairs. Due to the useful life of the machines they need to start planning for their replacement and a capital plan would be required. They have spoken to Dominion Voting Systems and the cost of a new machine would be approximately \$11,000.00 and they would need 155 at an approximate cost of \$1.7 million. The new machines are quoted to have a life expectancy of about 15 years. In addition, there is no aftermarket on these machines.

Mr. Kulisek asked if was part of the Capital Plan. Mr. Green replied currently no, it would have to be added.

Mr. Kulisek asked about rollout as they could not replace all the machines at once. Mr. Green replied that they would look at replacing whole towns as they would not want a town to have a mix of old and new machines.

Mr. Kulisek suggested they have those numbers by town for the Capital committee.

Mr. Green agreed and to his knowledge no "pocket money" would be available like with the original machines that were funded through HAVA.

Mr. Paduch moved resolution recognizing April 11, 2018 as Holocaust Memorial Day "Yom Hashoah," seconded by Mr. Kulisek.

Motion carried. All in favor.

Ms. Bonelli moved resolution of the Orange County Legislature urging the New York State Legislature and Governor of the State of New York to enact legislation to create a Presumption of Invalidity for any project in which criminal conduct by public officials occurred and for which permits were issued. Such state legislation must be retroactive and apply to the CPV Project in Orange County, seconded by Mr. Vero.

Legislative Counsel Reed presented the committee with a revised resolution.

Ms. Bonelli addressed the changes that were made after further discussion with legislators. The last WHEREAS was changed to a RESOLVED and the wording "state projects" was changed to "projects" in the first sentence and in the last RESOLVED the governors name was added.

Ms. Bonelli explained that she was speaking to this as a legislator and not the Majority leader. After talking with legislators, she felt it was time for them to take a careful look at the recent developments specifically the findings of trial by jury in the Federal District Court. This basically

echo's the sentiments of other elected officials in the Hudson Valley including County Executive Neuhaus and calls upon the state to look at and put substance in the way they handle issues such as this where a shadow has been cast on the validity of projects and how they came about. It was proven in court that this project was plagued with criminal intent and conduct by public officials and she would like this legislature to review it as it has not discussed by this body. This would be the first time that this was discussed and it has not been discussed in the respective caucuses but she felt it was something they needed to address.

Mr. Paduch stated that by including the permitting process it would be regulatory and a state agency matter not one for the state legislature. In his opinion, the state senate and assembly have no control over the permitting process and they would be asking them to revoke permits that they have no authority over.

Ms. Bonelli clarified that they are asking the state legislature to enact further legislation that would mandate them to look at this. While she is normally not comfortable with memorialization resolutions she felt that because it had some substance and direction it had warrant.

Mr. Paduch commented that in his opinion, the New York State Senate and Assembly do not have the oversight and would recommend the following verbiage be added to the resolution "We, the Orange County Legislature, hereby urge the Governor of the State of New York to direct the appropriate state agencies and to revoke any and all state permits." However, he was unsure as to where it should be placed in the resolution.

Legislative Counsel Reed explained that to give the resolution some "teeth" they would want it to be a state law. It could be a penal law in connection with a criminal act, environmental conservation law and/or public health law but they would want state legislation stating that if this project is plagued with criminal conduct with state officials there would be a presumption of invalidity on the project. They would want that done through the state legislature because if left in the hands of the governor it may not happen. With a state law on the books the governor would have to comply along with the regulatory agencies.

Mr. Paduch asked if the verbiage "regulatory agencies" would be added as it is not stipulated in the resolution. Legislative Counsel Reed replied that state agencies are the regulatory agencies.

Mr. Paduch pointed out that while he supports the resolution he would like to ensure that the correct message is sent and in his opinion, it does not read correctly to be supported.

Legislative Counsel Reed replied that they are looking to be retroactive on this project as it has been identified that criminal conduct was involved and they would want to make a broader statement so that they do not have to go back project by project.

Mr. Paduch asked about prior projects and could there be any repercussions for other projects. Legislative Counsel Reed replied that they are only asking about the CPV project.

Mr. Chapman added that the DEC already has the authority to do this so they are not asking the DEC to do something that they already have the authority to do. They are trying to get the state legislature to say that if the DEC does not act then they need to start with the presumption of invalidity and assume that it is bad and to legally justify the permit that was granted. In

Environmental Conservation Law Section 70-0115 it reads: "Upon the provision of notice stating the grounds for its action and giving an opportunity for hearing to the permit holder, the department may modify, suspend or revoke a permit." However, they are trying to put a legislative mandate in place that assumes that a permit tainted with criminal activity is inherently bad and forces it to be revisited.

Mr. Paduch asked about the message they are sending, because the permits are still in place even after going to court. Mr. Chapman replied that they were in court prior to the conviction. He referred to the Department of Environmental Conservation Enforcement Policies, Section DEE-16: Record of Compliance Enforcement Policy that reads: "The Department has the general authority to modify, deny, suspend, condition or revoke permits and to refuse to contract with persons or their investors who are found to be unsuitable. Suitability includes such factors as past compliance records, criminal and civil violations" and this resolution is trying to set a simple standard.

Mr. Amo asked for the legal definition of presumption of invalidity. Legislative Counsel Reed replied that the presumption is that the project is invalid so the burden shifts to the applicant who must prove that the process used to get the project approved was legal and by the rules.

Mr. Amo commented that the first RESOLVED states ...directly tied to criminal conduct... and the second RESOLVED states ...criminal conduct by public officials...shouldn't both RESOLVED's be the same. Legislative Counsel Reed agreed.

Mr. Hines noted that Mr. Paduch's suggestion had validity and it would not water down the resolution by adding that the governor should direct the DEC to review the project again.

Mr. Chapman commented that the role of the DEC under the existing state law is to look at the projects on their merits. They need to hammer the message that the DEC needs to look at this again but if they want to include language that the governor encourages the DEC, so be it.

Mr. Hines stated that it could read: "the governor directs the DEC to start the process over with respect to the permit."

Mr. Paduch motioned and add the verbiage "We, the Orange County Legislature, hereby urge the Governor of the State of New York to direct the appropriate state agencies and to revoke any and all state permits that were granted to CPV project in Orange County, seconded by Mr. Hines.

Legislative Counsel Reed suggested it be a separate RESOLVED.

Legislative Counsel Reed explained that they need to be cautious because she was unsure if the permitting process was directly related to the criminal activities.

Mr. Vero agreed with the earlier comments and they need to be consistent in their RESOLVED's.

Mr. Sierra added that his understanding was that the EPA handles air emissions so he was pleased to see that it reads appropriate state agencies as various state agencies handle different issues.

Mr. Cheney pointed out that the approach they have taken in the original resolution of putting the onus on creating a law that has to be adhered to and requires that the governor act. In his opinion, the suggested amendment is not significant and the original intent should remain. The most important aspect of this legislation would be that they are telling the state senate, assembly and governor that they need to enact legislation.

Mr. Faggione pointed out that this discussion has taken this document from what was written and it could be something that they would want to revisit. As Chairman of this committee he could speak for his colleagues and state that no one would suggest that corruption should be part of their government. It is important that as they draft a resolution that would get unanimous consent on the floor and with the revisions that have been made he would suggest that the resolution be redrafted and brought back to committee next month.

Mr. Faggione moved to table the resolution for one month, seconded by Mr. Amo.

Ms. Bonelli commented that the amendments made today have been very good and recommends they adopt those amendments. She understands where Mr. Faggione is coming from; however, she is prepared to vote on it as amended.

Mr. Cheney agrees that it should be addressed today and he would pursue Mr. Paduch's motion to have the governor direct the DEC to look at it again. He is unsure if they have the power to direct him to revoke the permits but it does not water down what they are trying to do it just sends another message.

Mr. Amo expressed his concern that some of things they are trying to incorporate into the resolution could be items that could get it killed and they need to look at what would get it passed in Albany.

Mr. Hines concurred that it does not have to go back to committee and could be done today as they only need to add another RESOLVED.

Mr. Chapman suggested he and Legislative Counsel Reed step out and draft the additional RESOLVED in order to provide the committee with a properly drafted resolution.

Mr. Faggione concurred and asked if the committee would object to moving on to the next agenda item as they wait for clarification on the proposed amendment. The committee agreed.

Mr. Faggione explained that this was presented at the Public Safety and Emergency Services committee meeting and amended from school resource officer to police officer.

Mr. Hines moved resolution calling for State funding of a police officer for every elementary and secondary school in New York State, seconded by Mr. Paduch.

Mr. Hines explained that he is a member of the police advisory board and at their recommendation and that of the Orange County Sheriff's office this resolution was brought forward. The resolution originated with the New York State Sheriff's Association as they also believe that an armed police officer in every school. The reason it must be a police officer and not a security officer is because under Governor Cuomo's Safe Act no one can carry a gun at a school unless they are an on-duty police officer. Education Law does allow the Superintendent of Schools to allow individuals to have guns as he/she designates for safety purposes such as a security service but it is not allowed by the Safe Act per the police professionals he has spoken to. The plan is to have it done with part-time or retired police officers and in the interest of saving money a recommendation was made that the individuals be from their communities in order to get better buy in from the students and parents. The individual would have to have jurisdiction in that community and in Orange County's case it would need to be a deputy or local police officer from the various towns, villages and cities. The time has come, they have secured their borders and airports and it is time they secured their schools.

Mr. Amo agreed that something needs to be done; however, the Sheriff's Association is telling them to pass a law, have the state pay for it but does not provide them with a specific dollar figure on what it would cost the State of New York to provide these services. They heard that in Orange County there could be a few hundred police officers required and then multiply that by 60 counties. It is nice to ask but they know how the state behaves and if it goes into place what would be taken away and what mandate would they send to them, so who would really be paying. In the law there are carveouts and in the resolution, they state that the cap is off the table but why are they not asking the governor for a carveout on the cap for police officers. While agrees with the concept, fiscally he is concerned.

Mr. Hines commented that they are trying to start the discussion at the state level. They could figure out the cost with the minimum at \$30,000.00 per officer and they would have two per school. If a police officer is retired for more than four years they must be recertified and trained so the people they would be looking at would need to be retired for four years or less and if they are retired for more than ten years they would not be eligible. In addition, the police advisory board report, with its recommendations, should be released after their meeting on April 4, 2018. One of the recommendations would be armed police officers. Mr. Amo is correct, it will cost a great deal and the price will definitely be our tax dollars but they are looking at protecting children so they really have no choice. Many communities have bought into this with many school districts deciding that they have to be more aggressive in protecting these children.

Mr. Ruskiewicz added that the Warwick School District has an armed school resource officer in every school building and his understanding was that a SRO was a police officer.

Mr. Hines clarified that it was changed because an SRO is typically a full-time employee of that police department; however, some schools may opt to hire retired officers. In his district the five schools want two part-timers in each one as they are limited to only working 1,080 hours a year. At \$30,000.00 per person times five they are looking at a cost of \$350,000.00.

Mr. Ruskiewicz commented that the Warwick and Florida School Districts have taken the initiative on their own and included the funds in their budgets.

Mr. Faggione commented that at one time the Port Jervis School District had a resource officer whose duties also included teaching and possibly patrolling the building which is a different than what a police officer would do and something that was debated at the Public Safety and Emergency Services committee meeting.

Motion carried 7-1 with Legislators Bonelli, Cheney, Faggione, Hines Kulisek, Paduch and Vero voting in favor and Legislator Amo voting against.

While the committee waited on counsel, Mr. Paduch recommended the Pay-to-Play local law be brought back to committee so that the issue of LLC's and LLP's could be further discussed.

Mr. Faggione agreed and it would be brought back in the future.

Discussion resumed on the resolution of the Orange County Legislature urging the New York State Legislature and Governor of the State of New York to enact legislation to create a Presumption of Invalidity for any project in which criminal conduct by public officials occurred and for which permits were issued. Such state legislation must be retroactive and apply to the CPV Project in Orange County.

Legislative Counsel Reed thanked Mr. Chapman for his assistance. The third RESOLVED in the proposed resolution would read as follows: "that this Legislature requests the Governor to direct all permit issuing State Departments, Commissions, Boards or Agencies to review all permits issued for the CPV project in the Town of Wawayanda, Orange County and take any or all appropriate actions in relation thereto including the notification, suspension, conditioning or revocation thereof" and mirrors the state language.

Mr. Amo asked for clarification that the word "directing" was added to the resolution. Legislative Counsel Reed replied that it was.

Ms. Bonelli motioned to accept the amendments as presented, seconded by Mr. Cheney.

Mr. Kulisek stated that he would exclude himself from discussion and would abstain from the vote as he was waiting on a determination from the Board of Ethics.

Motion carried 7-1 with Legislators Amo, Bonelli, Cheney, Faggione, Hines, Paduch and Vero voting in favor and Legislator Kulisek abstaining.

The meeting adjourned at 6:17 p.m.