

**RULES, ENACTMENTS AND INTERGOVERNMENTAL RELATIONS COMMITTEE  
"SPECIAL MEETING"  
MINUTES**

**TUESDAY, MARCH 12, 2013  
3:30 P.M.**

**PRESENT:** L. Stephen Brescia, Chairman  
Michael Amo, Jeffrey D. Berkman, Melissa Bonacic, Katie Bonelli, Kevin W. Hines  
Thomas Pahucki

**ALSO**

**PRESENT:** Mike Anagnostakis, Legislator  
Patrick J. Berardinelli, Legislator  
Daniel G. Castricone, Legislator  
Myrna K. Kemnitz, Legislator  
Michael D. Paduch, Legislator  
Matthew A. Turnbull, Legislator  
Antoinette Reed, Legislative Counsel  
David C. Green, Commissioner, Board of Elections  
David Church, AICP, Commissioner, Planning Department  
Megan Tennermann, Planning Department

Mr. Brescia opened the meeting at 3:30 p.m. and requested that everyone stand for the Pledge of Allegiance to the Flag. All members were present.

Mr. Brescia addressed the committee stating that thirteen people spoke at the public hearing in regard to the reapportionment of legislative districts.

Mr. Berkman stated for the record that he has a hydraulic fracturing resolution that he would be forwarding the Mr. Brescia for future discussion.

Legislative Counsel Reed reported that they had a very good attendance at the public hearing with good substantive comments from professionals and the public at large which should be review and adjust accordingly. She went on to address some of Dr. Benjamin's issues and explained why they use election districts as the basis in preparing their legislative districts. In 1969 Orange County implemented a Charter form of government and from its conception each year that reapportionment has been done they have adopted a local law addressing the legislative districts by legislative districts and was done this way in 1968, 1973, 1984, 1993 and in 2005. Also mentioned at the public hearing was the removal of the prison population in legislative districts and in the Laws of 2010 Senate Bill No. 6725 removed from redistricting incarcerated persons, they then took that language and amended the municipal home rule law and require municipalities for the purposes of redistricting and to remove incarcerated persons from the population count of the census block of the correctional facility and where possible allocate the incarcerated persons to census block of their residence prior to their incarceration and was challenged on a constitutional basis with the law withstanding the constitutional challenge. So they did use census blocks, election districts and removed incarcerated persons in the redistricting of Legislative districts accordance with state law.

Mr. Brescia asked where the locations where that the populations where removed.

Ms. Tennermann reminded everyone that this was as of April 2010 for which there were still prisoners at the Mid-Orange Facility in Warwick, the two prisons in Otisville and Orange County Jail. Because state prisoners were also reassigned to their residents prior to incarceration in the cities of Newburgh and Middletown there was an increase in population of between 300 and 400 people.

Legislative Counsel Reed added that at the public hearing they heard comments on gerrymandering and cracking districts and both packing or cracking is part of gerrymandering and they could be accused of packing or cracking district which would be packing meaning that they are consolidating a minority so that they would be centralized and have one district to vote out of cracking would be when they are split between various districts so as to dilute their vote. That would be a matter of law in that the effect of the district does that to the vote of that minority. There are constitutional challenges that can be made to redistricting: "voting rights act of 1965" as well as the "equal protection clause of the fourteenth amendment" she went on to explain that there are standards and when a district is created racial motive cannot be the sole basis for creating the district and it must be balanced with the totality of the circumstances for when districts are created under traditional redistricting principles by looking at the continuity of the district, observe and respect boundary lines and keep local municipalities or communities of interest intact. Because of this there are principles and it becomes a balancing act and as they proceed through the Supreme Court they see that standards change and evolve. This came about through various constitutional cases from the United States Supreme Court; Miller vs. Johnson 515 U.S. 900 (1995), Shaw vs. Reno 509 U.S. 630, Bush vs. Vera 517 U.S. 952 and Abrams vs. Johnson 521 U.S. 74 so when they look at the federal decennial census for 2010 they can see a shift in popularity in Orange County with the total population being 372,813 with white alone being 287,102, black alone 37,946 with a large increase in the Hispanic/Latino population of 67,185.

Mr. Amo asked Legislative Counsel Reed for a copy of all the Supreme Court cases she mentioned.

Legislative Counsel Reed replied that she would get a copy to everyone.

Legislative Counsel Reed added that the Orange County Demographics breakdown the population by municipality and each community of interest with large Hispanic growth in the cities of Newburgh and Middletown as well as some smaller municipalities like the village of Walden. When Legislative district number 17 was created there was an emphasis on taking the Hispanic community in the City of Newburgh and combining it with the Hispanic population in the Village of Walden giving them a polarity. They did receive additional data and scenarios from SUNY New Paltz, Dr. Benjamin and Josh Simmons that could increase Hispanic population to a majority so that they would have a more compact legislative district, but they must take into consideration what that proposal would have on the African American vote in the City of Newburgh so after Mr. Church and Ms. Tennermann explain some of the proposals that were set forth after the public hearing with some possible suggestions as to whether or not they should change the maps.

Mr. Church explained that the goal was to either create a majority Hispanic Legislative district in the City of Newburgh or to improve the polarity of one or two districts representing the City of Newburgh, for better representation of the Hispanic community, while

not impacting the African American constituency. In addition, they received some proposals and suggestions on what could be done in the City of Middletown and in that case initial research shows that there would be no possibility of establishing a majority district for either the Hispanic or African American population as the numbers are just not there with no one represented that they should even try to do so. However, they do have some proposals that attempt to approve the polarity and representation of both those populations. There were other issues in regard to Kiryas Joel with the division of the Town of Woodbury into four pieces and professionally they are unable to do analyses which focus on religion, so it would something that would need to be done another way because a few of the proposals were why is there not one whole district in the Village of Kiryas Joel and why are they disenfranchising the Town of Woodbury because it's four districts as of the Legislative proposal. In regard to the communities of interest from their research and practice they start with communities of interest and in the case of a complicated state like New York only the northeast of the state is incorporated in a municipality, while in most of the country they are either an incorporated city or live in the county while in New York, Pennsylvania and New Jersey have embraced it all making it difficult to honor all of the boundaries because every inch of ground is in one or more municipalities with some villages being wholly contained in towns and in Orange County they have four villages split by town boundaries, so in trying to honor all of this is virtually impossible. He added that communities of interest start with cities and their neighborhoods, incorporated villages, unincorporated villages (Hamlets) with towns being less of a community of interest and adds to the difficulty of keeping towns intact. They would recommend that any amendments they make would first try to honor what Legislative Counsel Reed mentioned about the cities and to try not to divide the villages or hamlets with the four that were naturally split by town boundaries.

Mr. Berkman asked about a small sliver in the village of Warwick which appears to be inside the village boundary was that coterminous with the municipal boundary.

Ms. Tennermann that yes, it was.

Mr. Berkman added that he was pleased that the public spoke at the Public Hearing and that they were helpful and instrumental in the idea of even making modifications with the process being defective up to this point with no inclusive of the minority party or the public at large. He added that with increased dialogue he's hopeful that they will be able to reach some form of agreement, but the process of being at the table should have been initiated months or years ago with a bi-partisan approach.

Ms. Tennermann explained the specific proposals with the maps being provided by Mr. Benjamin and Mr. Simons and are based on census block data instead of the existing election districts and with some effort she believes she can get them to work with their geography.

Mr. Brescia asked if this would affect three or four proposed districts.

Ms. Replied that yes, it would and in doing so they would include all of new ward 2 and to include election districts 3-2, 4-1, 4-5 and other portions of wards 4 and 1 in the city of Newburgh and based on preliminary analysis it would create a majority Hispanic district with a Latino population of about 53%.

Mr. Brescia asked if the proposal they are talking about the proposal they are looking at was the proposal they are talking about.

Ms. Tennermann replied that it was not, but she would email it to them.

Mr. Brescia stated that they would not have a meeting on the 21<sup>st</sup> if they did not adopt what's being proposed today.

Ms. Bonelli commented that this was something that was proposed at the hearing by Dr. Benjamin and was based on different types of numbers and census than what they do with election districts and was not what was being proposed right now but to show the concept of what was talked about and to be used as a basis to further look into this but was not anything that was carved in stone and it may work and they will exhaust that possibility and see how it would pan out.

Mr. Brescia asked if they would try to do this within a week with a meeting on March 21<sup>st</sup> being for the Rules Committee and not a full Legislative Session.

Ms. Bonelli replied that yes that was her understanding.

Mr. Church went on to explain that Ms. Tennermann would be focusing on these proposals for the Cities of Newburgh and Middletown that came out of the hearing and to be able to accomplish it with in the week.

Mr. Brescia asked if they were more not in compliance in Newburgh than Middletown.

Ms. Tennermann replied, yes.

Mr. Berkman pointed out that was incorrect because the City of Middletown is not out of compliance the county with the plan presented was out of compliance with the law and that it would not withstand court scrutiny.

Ms. Tennermann continued on and explained that the changes in district 4 would by extension affect district 6 which could be amended to encircle district 4 and create a Latino polarity and an African-American polarity but would not create a majority of either minority population but would put them in compliance.

Mr. Brescia asked Ms. Tennermann if without the minor tweaks would they be in compliance.

Ms. Tennermann replied that in Middletown there would be one minor change that could increase the Hispanic polarity in district 20 and would only affect districts 19 and 20.

Mr. Brescia asked if it was a swap.

Ms. Tennermann replied that it would be trading election district 4-3 for 1-5.

Ms. Bonacic stated that based on Ms. Tennermann's comments she would need to do further analysis and that it could possibly work but that there's nothing that says it could happen today and they need to give her the time she needs to look at this further.

Ms. Tennermann added that she must have a week to do the analysis, but it should not take longer than that.

Mr. Anagnostakis asked Ms. Tennermann if she had the actual districts in which legislative districts 17 and 6 would comprise of right now.

Ms. Tennermann replied that she has preliminary analysis on districts 4, 6 and 17 and she would need to do additional analysis on those districts to see if it would even work.

Mr. Anagnostakis commented that Ms. Tennermann was not sure then if the numbers would fit in the plus or minus 5% parameter at this point.

Mr. Anagnostakis then asked when they would be able to look at it before the vote on the floor.

Legislative Counsel Reed replied that they would not be voting on it March 21<sup>st</sup> as it would be coming come back before the Rules Committee on March 21<sup>st</sup> at 5:00 p.m.

Mr. Church reported that based on the request of Legislative Counsel Reed his staff's goal would be to have the analysis Ms. Tennermann has spoke of to the Legislative office by next Tuesday.

Mr. Brescia clarified that they would have the proposed tweaks to the three districts in Newburgh and two in Middletown.

Ms. Tennermann replied that her analysis would focus on the tweaks needed in those five districts and she could have that ready by 3:00 p.m. Tuesday.

Mr. Brescia asked if it could be emailed to all Legislators.

Legislative Counsel Reed replied that it would be emailed to the Legislature first so that it could be reviewed from a legal stand point.

Mr. Brescia asked that it be emailed to all Legislators by Wednesday so that everyone would be ready for Thursday.

Mr. Amo asked for clarification that it would not be a new map but a reaction to the proposals, so what would the deliverable look like.

Ms. Tennermann replied that it would a visional product and data analysis.

Mr. Church added that the deliverable would also be tabled data so that they would be informed of their choices.

Mr. Brescia asked if it was only Newburgh and possibly Middletown that were at issue for a possible challenge and no other areas.

Mr. Church replied that in their non legal professional view was that the most important issues to focus on based on the feedback and in what they have looked at in the last week was Newburgh with Middletown being secondary. There are miscellaneous other issues that they have not yet been charged with researching further.

Mr. Berardinelli asked if the main problem or concern was the total population in that area as it's defined.

Legislative Counsel Reed replied that it was not a problem, its addressing and providing equal representation one person one vote to the Hispanic population in the City of Newburgh. The thought they had accomplished that under the proposed Legislative district map but other experts come forward with other options to make it more compact because of that they are now reviewing it to see that was actually the case and if so under the United States Constitution and the New York State Constitution they would be remised if they did not follow it. She has spoken with Mr. Simons from SUNY New Paltz and provided them with information on the City of Middletown and was an example but he was not committed that it was constitutional issue but was providing for them to explore which was what they are going to. They are going to verify the numbers making sure that the Hispanic population in the City of Middletown and if it's not a majority then the polarity is so indicated to receive the proper representation in Orange County Legislative district.

Mr. Berkman pointed out that after hearing from the speakers it became abundantly clear that the current map would likely be challenged in court as it did not give adequate provisions for Latino representation in Orange County. To correct the issue there needs to be changes and to offer and suggest a Latino majority district it would need to be in Newburgh given the Latino population of 48% with Middletown being at 40%. Mr. Simons and Dr. Benjamin have suggested a reconfiguration in the Newburgh area to adjust for it and if possible on the remain portion to have a district created that would have a balanced polarity to where the African-American community would be in balance with the other two communities in the second district with the idea behind it being to abide by the court decisions and the law. It was unfortunate that there was not enough consideration in the formation of the first map made to ethnic and racial composition as it has always been the law to insure "one person one vote" along with other voting rights as protected by the constitution. He understands that it would impact all of the other districts in the immediate area as election districts will need to be swapped so that they may have a more accurate look at what evolves. At this point they are just considering this and if they did not consider it and the Legislature goes forward with the existing plan he would be compelled to oppose it. In the City of Middletown the ethnic composition consists of 40% Latino, 39% non Hispanic and Non African-American and 20% African American and according to Dr. Benjamin and Mr. Simon there's not the opportunity to create a Latino majority district but maybe they should pay some difference in the idea of having a different mix of a polarity with his proposed district being at 32% Latino which gives the possibility in swapping a district with Mr. Paduch to change the numbers and to show a different calculation between the three groups and to make a better balance.

He went on to explain that he was ok with the analysis in Middletown though as is it would not be a court challengeable problem but that does not mean they should not look to make it better. He requested an ethnic racial sheet so that if they were to swap a Latino population district from legislative district 19 to legislative district 20 they would need to make sure that it would not be counter productive. In regard to the Kiryas Joel region he understands that because the population of the village exceeds 17,750 plus 5% must be in more than one district but he has noticed that the surrounding area and the village are all located in legislative district 7 and has an impact on that district and to relook at it to see if it's in the interest of all parties involved as they know that Kiryas Joel would likely be represented by Legislative District 1 and because of that the non village territories could be looked at again. He has heard they want to keep communities cohesive when possible and while it may not be a legal obligation he would suggest they minimize the division of towns where possible as there is one segment in the town of Minisink and if they were to swap it with an equally side election district in Warwick and he understands the 5% variation but some of the proposed changes would not have an impact on their neighbor.

Mr. Amo commented that during his time as a Legislator he has been through this process twice and they will never be able to do one that will make everyone happy. He has trusted in the way this works that the majority part of the Legislature makes the districts as it always has and he has never had a say in it even while being a member of the majority party. He complements Ms. Bonelli in what she has done because there are so many things that must be worked out and they must do first and foremost what they believe is right and as some of the speakers at the public hearing addressed court cases but as they know anyone can sue for anything and whether anything happens would be another issue. He does not think they should run away from their redistricting and they way they think it should be done the right way just because someone suggests they may sue them because they may change it and be sued regardless. In regard to Kiryas Joel they have been under represented over the last six years as he has been sitting with 19,000 to 20,000 constituents with some people having only 14,000 and 15,000 with his vote being equal to theirs. In the district 7 there is the Elroy Estates area which has not been apart of Kiryas Joel but a very dominate Hasidic district while over the last ten years in Woodbury another area that has also grown into a Hasidic district as they have moved out there. Now they have another portion of the village that has moved out of the village that are also Hasidic and if they were to do something that did not include the Hasidic together they would then be breaking them up.

Mr. Berardinelli added that the City of Newburgh has gone from at large to a four ward system by dividing the city into four equal portions with approximately 7,000 in each portion bring them to a total of 28,000. In his opinion, it should not have had any bearing on the legislative districts because regardless of how the lines came out they would have the same number regardless of the population mix in each of the wards. He added that there's an area called the Heights that would be a total concentration of the Hispanic vote in the City of Newburgh which he believes is in contention if they are looking at the population based on race and he cannot see how they would be able to make one district out of it without impacting either side of the ward. He added that the population was a "floating population" as they come in and out of the area as it's primarily rentals with very few home owners and if that information would be taken into consideration when they are looking at the generic makeup of district. They need to look at a city map because they cannot just take a chunk and say that's the concentration of Hispanic and African-Americans.

Mr. Brescia stated that he would hope they take into consideration Mr. Beradinelli's comments as they need to make sure legally that they are in compliance.

Mr. Castricone added that with all the "slams" they received the experts did say that this was a "good faith effort, but" so know they fix it.

Mr. Brescia emphasized that they need to get it right.

Ms. Bonelli explained that they did look at population and ethnicity of those populations and she would agree that they need to take a careful look at Newburgh and Middletown areas. After meeting with Mr. Church and Ms. Tennermann they think that with further examination the Middletown numbers would probably be on target with that one small swap but it does bare taking a look at the Newburgh area. She went on to explain that it can take a whole circle around the county when they make one little change.

Ms. Kemnitz commented that on the proposed maps she would be representing three distinctly different municipalities that are in court against each other so she is not talking about delusion of a voting population but of the legislator who has three different municipalities. She would be representing Kiryas Joel, Monroe and Woodbury with Monroe suing Woodbury over the annexation with Woodbury suing Kiryas Joel over the pipeline and sewage and these things are not small issues they are issues that peculate throughout the county once they are finally settled so how is she suppose to represent her constituency if there three different constituencies.

Mr. Brescia replied that it's difficult, when he first saw the map he was also upset but it's give and take with people who are happy and those that are not. He has the largest district on the map and represented the village of Walden for nineteen years and three months, represented four municipalities and now have five in the new district. He's sure the town of Crawford would love to have one Legislator as their representative while the town of Montgomery historically has had two but now they will have three. His new district now goes into five districts in the town of Wallkill with his district changing by 40% with them all going to areas they have never represented before but he can understand the criteria that made up the map.

Mr. Berkman added that he has a respectful and cordial relationship with both Chairman Pillmeier and Ms. Bonelli but there was no visible attempt to keep politics out of it and in actuality it was the opposite. When he made the two different suggestion for a Charter Commission he summed it up by asking for everyone else's suggested and was at a time when there ample time to devise a bi-partisan attempt. With the short window of time people got the perception that they were forcing or imposing a map on for which they had no participation in drawing and only builds in opposition instead of unity and cooperation and they should consider for next time having a Charter change as it specifically identifies that the Chairman may appoint a commission and he would like it to say "shall." In his opinion, that would be a better idea instead of having two people of the same political party.

Legislative Counsel Reed explained that there were also technical corrections on the map; the renumbering of the election districts using the new numbers so that they are consistent an conform with the Board of Elections election districts as they are today.



Ms. Bonelli moved to accept the renumbering of the election districts using the new numbers so that they are consistent an conform with the Board of Elections election districts, seconded by Ms. Bonacic.

Mr. Berkman asked if it was only renumbering of election districts and it was news to him that their county used election districts in the determining factor as most counties do not and use the census track districts. In his opinion, they should analysis for future use whether to do as other people do or go on as they have.

Legislative Counsel Reed explained that census blocks are incorporated to the extent that they can be into the election districts and was what Ms. Tennermann spent a great deal of her time doing with several instances in which census blocks have been split and have occurred when it was a natural boundary where there would be no population with no impact on the population but the census blocks are built into the election districts and they use the election districts as a point of reference to create the legislative districts.

Mr. Berkman asked if Legislative Counsel Reed could corroborate the statement that they are unique among the counties for using this method.

Legislative Counsel Reed replied that she does not know that.

Mr. Castricone commented on the views that there was evidence of a political aspect to this map and was something that he had not saw. He certainly saw a good faith attempt and that it would be unfair of them to judge the motives by the result especially when experts have come forward and said that it was a "good faith attempt" if they had been presented a map of three districts with two of the minority party living in them who would have run against each other it would have been fair to assert that political motives had been involved in the generation of the map. In his opinion, it's not fair to subject that based on the results that they have seen without asking.

Ms. Bonacic agreed with Mr. Castricone's statement and to her political would have been a "dog fight" for some. She as majority leader saw her map the same way as everyone else and she knows that this had been worked on for over year and as majority leader she had no input and did not see Legislative District 2 until they were all called in to look at their maps and what she saw was a "good faith effort" but she does look forward to seeing the further analysis of the maps.

Mr. Brescia added that there both Republicans and Democrats that are happy with their districts.

Ms. Bonacic added that at the time she saw her map as majority leader she did not see the whole map.

Mr. Berkman reiterated that the process was wrong and they all should have seen it.

Ms. Bonelli spoke to the technical corrections in Legislative Districts 1, 2, 4, 6, 7, 8, 14, 17 and 21 (see original minutes).

Mr. Anagnostakis asked Ms. Bonelli if he was correct to assume that in district 17 Town of Newburgh that the old 8-1 going to 3-1 was a change in the streets and population with everything else remaining in the old bounds and was only a number change.

Ms. Bonelli replied that there was a number change with the district expanding slightly going from approximately 11,000 to 15,000, 16,000 in population.

Mr. Green clarified that in the City of Newburgh they had 23 election districts which have been brought down to 15 with 9 wards going down to 4.

Mr. Anagnostakis added that in the original map and numbers have any of the other districts besides 3-1 changed in population and street boundaries.

Ms. Tennermann replied yes, they have and she would email the information to him.

Mr. Berkman asked if there was any relationship between the renumbering of the districts with census tracks or election districts being divided.

Legislative Counsel Reed replied that it was only the census track.

Ms. Tennermann added that no election districts have been divided.

Motion carried. All in favor.

Legislative Counsel Reed explained that they would need to vote on the proposed local law suspending the provisions of section 2.19 of the administrative code.

Ms. Bonelli moved a Local Law suspending provisions of the Orange County Administrative Code Article II, Section 2.19, seconded by Ms. Bonacic.

Motion carried 6-1 with Legislators Amo, Bonacic, Bonelli, Brescia, Hines and Pahucki voting in favor, and Legislator Berkman voting against.

Mr. Brescia confirmed that they would be having a special Rules Committee meeting on Thursday, March 21, 2013 at 5:00 p.m. to vote on the revisions and if they do not vote on the revisions they would then revert to the old maps and have to redistrict and run again next year with the adoption on April 5<sup>th</sup>.

Legislative Counsel Reed reiterated that it would need to sit on the Legislators desks for 7 days, so if passed on March 21<sup>st</sup>

They would have sufficient time for it to sit on the desk as their meeting will be held on Friday, April 5<sup>th</sup> "Youth in Government day" with the County Executive then having thirty days to veto or approve it bringing them out May 6<sup>th</sup> at that point they would then count out the 45 day waiting period to see whether or not a petition for permissive referendum is filed and brings them out beyond the June 3<sup>rd</sup> date, the key would be that the Legislature approve this before the circulating of the petitions. The biggest thing to watch would be that the new districts be formed at least thirty days prior to the primary election which would bring them into August.

Mr. Berardinelli asked Mr. Green if it would give the Board of Elections sufficient time to do the petitions.

Mr. Green replied that they would have to move the people to the correct election districts and it would be difficult if they are waiting until June because candidates will be in seeking lists and labels of registered voters.

Mr. Brescia asked what the process would be if there was a permissive referendum.

Legislative Counsel Reed replied that she would check on it, but they may have to have a special election or have it possibly on the general election.

Mr. Brescia asked if they were in a lawsuit if they would revert to the old districts.

Legislative Counsel Reed replied that they would need to see because it could be challenged in both a Federal and State court with one or two lawsuits and would depend on whether a court issues a preliminary injunction. A judge may determine that if the verdict was met or the standard for the court to impose a preliminary injunction and they basically in limbo and would have to run on the old maps until such time that a decision has been rendered.

On motion of Ms. Bonelli, seconded by Ms. Bonacic, the meeting adjourned at 4:55 p.m.