

RULES, ENACTMENTS & INTERGOVERNMENTAL RELATIONS COMMITTEE
Held In Room 318
PUTNAM COUNTY OFFICE BUILDING
CARMEL, NEW YORK 10512

Members: Chairwoman Nacerino, Legislators Castellano & DiCarlo

Tuesday 6:30 P.M. March 19, 2013
(Immediately Followed by the Physical Services Committee Meeting)

The meeting was called to order at 6:30 P.M. by Chairwoman Nacerino who requested that Legislator Castellano lead in the Pledge of Allegiance. Upon roll call, Legislator Castellano and Chairwoman Nacerino were present. Legislator DiCarlo was absent. Chairman of the Legislature Othmer filled the seat of the absent Legislator DiCarlo.

Item #3) Approval of Minutes – February 12, 2013

The minutes were approved as submitted.

Item #4) Discussion/NYSAC Resolution #1 Calling for the Governor and State Legislature to Compensate Counties for State-Mandated District Attorney Salary

Deputy County Executive Bruce Walker stated that the Administration and the Legislature have been working a great deal to get funding from the State for mandated costs. He stated that 74% of our budget actually goes towards mandated costs. This initiative is geared towards offsetting some of the costs that would otherwise be borne by the County taxpayer.

Chairwoman Nacerino agreed.

Item #5) Discussion/NYSAC Resolution #2 Urging the New York State Legislature to Honor Home Rule Sales Tax Requests in Order to Meet the Intent of Home Rule Authority Granted to Counties in the State Constitution

Deputy County Executive Walker stated that on November 30, 2013, our Sales Tax Provision, that provides us with the additional revenue which equates to approximately \$12 million, sunsets automatically. We have been working through NYSAC with the other counties that are in a similar situation to advocate for a mechanism whereby we did not have to go through the New York State Senate and Assembly to actually get this done every time it sunsets.

Legislator Oliverio asked Chairwoman Nacerino that after the discussion if she could move both Items #4 and #5 to the Full Legislative Meeting in April.

Chairwoman Nacerino stated that she intends to do so.

Legislator Albano asked if this was already in the works in Albany.

Deputy County Executive Walker stated that it is but it has not been completed as of yet.

County Executive MaryEllen Odell stated that the Governor mentioned it in his Budget.

Chairwoman Nacerino made a motion to pre-file the necessary resolution for Item #4, seconded by Legislator Castellano. All in favor.

Chairwoman Nacerino made a motion to pre-file the necessary resolution for Item #5, seconded by Legislator Castellano. All in favor.

Item #6) Discussion/NYSAC Resolution #3 Opposing the Passage of Legislation to Allow Early Voting, or to Allow Counties to Opt-In to Early Voting Opportunities, and for the State to Fully Fund any Increased Costs Associated with Early Voting

Chairman Nacerino made a motion to accept the additional information for this item, seconded by Chairman of the Legislature Othmer. All in favor.

Commissioner of Elections Anthony Scannapieco stated that in order to comply with early voting that their department would incur \$110,000 in personnel expense alone. That is two weeks from 7AM-8PM having a minimum of five places where people can go and complete early voting, including the Monday before elections. The Commissioners have no idea how the State intends to implement this because you have to, as they understand, be able to go to any of those five places to vote. This means the database for the entire County has to be at each of the five locations for early voting. The database at each location has to be interlocked so an individual cannot vote multiple times by voting once at one location and again at another. These are some of the things that are not clear. The only way it could be done is through electronic poll books and he asked who was paying for that. He referenced how New York City has lines for voting places. He further stated that if you look up New York State Election Law there is always an exception for New York City. He stated that if the State wanted to do early voting for New York City then fine but we do not have lines here in Putnam County elections.

Commissioner of Elections Robert Bennett stated that there is great opportunity in the situation that the State proposed for all kinds of things to happen and we want to be very careful because it presents opportunity for double-voting, fraud, and beating the system in some way. It is flawed to the extent to it is not acceptable.

Commissioner Scannapieco stated that every state that has early voting has not increased voter turnout by having an early voting option.

Chairwoman Nacerino stated that there really is no gain and there is a significant increase in cost and ability for fraud.

Commissioners Scannapieco and Bennett agreed.

Commissioner Scannapieco stated that this past year we had four elections. The Presidential primary last year cost the County \$104,000 with an 8% voter turnout, \$60 per vote cast. The Congressional election which had Republican and Democrat cost the County \$111,000 with a 12% Democratic voter turnout and a 5% Republican turnout, \$36 per vote.

Legislator Castellano asked if we would incur the same cost at the primaries next year.

Commissioner Scannapieco stated we would unless the State Legislature moves off a September primary. If the State Legislature does not do something we are going to have four elections every two years.

Legislator Oliverio asked where this early voting movement came from.

Commissioner Scannapieco stated that it started in other states and it has moved to New York. It is convenient to have extra days to vote if voters are unable to get to a polling location on Election Day.

Commissioner Bennett stated that there are states that it has been proven to not be very effective.

Chairwoman Nacerino made a motion to pre-file the necessary resolution, seconded by Legislator Castellano. All in favor.

Item #7) Discussion/Chapter 173 of the Code of Putnam County Entitled "Item Pricing"

Chairwoman Nacerino stated that this law, passed by the Legislature in 2012, may have had a fee schedule that was a bit ambitious. This evening, we will seek a solution to consider amending this legislation while remembering that this law's goal is to provide consumer protection. She further stated that since this responsibility came under the County's jurisdiction in 1991, to the best of our knowledge, there have only been three cases of County enforcement. Last year, our new Director of Consumer Affairs Jean Marie Noel realized the County was remiss in not amending the law in strides of technology, enforcement, and most importantly, not providing accountability for protection of the consumer. As a result, this amendment was presented to the Legislative Office, moved through Committee, passed by the Full Legislature, completed a Public Hearing, and signed by the County Executive, all with little dialogue at meetings and little public feedback at the public hearing. She believes that there were four major factors that may have been misinterpreted, miscommunicated, or misunderstood. First, compliance to pay the waiver fee is voluntary to businesses.

Second, this legislation does not hurt small business; businesses generating less than \$3 million per year are exempt. Third, under this new provision, there has been no enforcement to date. Fourth and lastly, Putnam County is not unique in incorporating an anticipated revenue line into their budget.

Legislator LoBue asked if the statement that Chairwoman Nacerino read was her own opinion alone.

Chairwoman Nacerino stated that is correct.

Legislator LoBue stated that usually we have an open forum, we discuss the issue and we have the manager here and then we open it up to the attendees for questions.

Chairwoman Nacerino stated that Director Noel will complete her presentation and then we will open it up for questions.

Director Noel stated how this amendment, including the waiver program, came to be. She then stated that she has witnessed many stores in Putnam implementing only Scanning Accuracy and not marking the individual items but only marking on the shelves. It was clear to her that under the law, her department could go into these stores and fine these individuals for that when these stores have already invested the time, money, energy, and training, in technology that these waivers would give them the opportunity to address. She further researched Item Pricing in Putnam County and found that between 1991 and 2001 the A&P was fined three times and each time the fine was over \$10,000.00. She stated that she did not see how today that would benefit a business. She thought perhaps what could be modeled as a waiver program on a voluntary basis, could benefit businesses in Putnam. She came to the Legislature for a redress and she thought they did homework and discussion on the topic and came up with a voluntary waiver program. She knows that there have been concerns about the item pricing's effect on small businesses. There are exemptions in the law for small businesses. It says a retail store should not include any store which had an annual gross sale in a previous calendar year of less than \$3 million unless the retail store is part of a network of subsidiaries, affiliates, or other member stores under direct or indirect common control as a group and as a group had annual gross sales in the previous calendar year of \$3 million. We may have a very nice delicatessen that does \$3 million, and she does not know that but if we did there is another provision that if the store has as its only full-time employee the owner thereof or the parent or the spouse or the child of the owner in addition to thereof not more than two full-time employees they are exempt. Another provision is the store engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director of Weights and Measures determines by regulation would be appropriate for item pricing. It would be like Cracker Barrel, where the primary is consumption but they have the mini store on premises as well, they would not have to be item priced. To her it seemed this addressed very clearly any concerns with small businesses.

Chairwoman Nacerino stated that one point Director Noel made very clear is Putnam County champions small businesses and the fact is that this is not imposing an undue

burden on small businesses. This is another thing that might have been misinterpreted or misinformed by the intent of the law.

Director Noel stated that back in 1992 there was a report by the New York State Food Merchants Association where the costs of supplies to item price were broken down. The cost for an average item pricing store in 1992 was \$209,411.00 and for an average non-item pricing store was \$154,910.00. The additional costs to the item pricing store according to this study was \$54,501.00 in 1992. This report demonstrates that in 1992, there was significant cost savings to a business to not item price. Her department is trying to develop a program where businesses can seek relief, if they so choose, and it is not very different from what many other counties have done.

Jennifer Maher, Chairwoman of the Putnam County Chambers of Commerce, stated that she would have liked to see the Legislators reach out to the stakeholders when making this decision.

Chairwoman Nacerino stated she agrees and will have Ms. Maher's contact information added to our calendar and agenda distribution lists.

Ms. Maher stated that she does feel that it is so important to be in-line and competitive with surrounding locations and compared to Westchester our waiver fees are just too high. She does not want this to add to Putnam County's current stigma of not being business-friendly.

Chairwoman Nacerino stated that we understand and acknowledge that and that is the reason we are here tonight discussing this five months later. Taking a second look, the fees were perhaps too high. We are not above revisiting the fee schedule.

Ms. Maher stated that while we are looking at everything, the feedback that she has received is that perhaps the technology to achieve this waiver structure is pricier than other technologies that are out there.

Legislator LoBue stated that she requested that this be put on the agenda. Last November she voted against this resolution. She spoke to Legislator Gross and Legislator DiCarlo and stated that all three of them are against this law. She feels that this is anti-business legislation. She further stated that we sit very close to the Connecticut border and we are in very tight competition with Connecticut businesses. Not only is our sales tax strangling our businesses here but also there is more variety and a greater number of stores in Danbury compared to us. She stated she has communicated with different businesses and stated they were outraged at the fee schedules because it is close to Westchester's. You cannot compare our economic base to Westchester's. The scanner, seems to be very expensive. For her, she stated, if we are not inundated with consumer complaints that this legislation is not necessary. In this time of all times she believes this is a bad move for the County to make. Some of these stores will be pushed out of business. For stores to come up with \$15,000.00 they would have to generate \$1.5 million extra in business. This was brought up as a revenue initiative by the Consumer Affairs Department last year in the budget process.

To her this is about revenue and not about consumer protection. She would like to see this law repealed.

Chairwoman Nacerino stated that the minutes of November 13, 2012 show that Legislator LoBue did not say anything that she said tonight. The only thing Legislator LoBue has on record as saying at that meeting was voicing her concern over the threshold of \$750.00 for stores under 3,000 square feet.

Legislator LoBue stated that the audio should be listened to for better details, that our minutes are not verbatim.

Chairwoman Nacerino stated that she did listen to the audio for said meeting as well. She further stated that Legislator LoBue is quoted at that meeting saying, Legislator LoBue stated that she would feel more comfortable removing the under 3,000 square feet fee line. If we were able to amend that she would be in favor of the law.

Legislator LoBue stated that if you listen to the audio of that meeting that she asked if Dutchess County had this law and she was told yes. In fact, Dutchess does not right now and they are grappling with the same issues we are discussing here. She voted "no" against this law and so did Legislator Gross.

Chairwoman Nacerino stated she would like to read into the record an email from Legislator Roger Gross dated March 15, 2013: I am not in favor of repealing this legislation. I feel the fees need some modification along the lines of Westchester. I wanted to give you my two cents and I regret that I will be out of town for the meeting. Chairwoman Nacerino stated that Legislator Gross supports the modification, he does not support the repeal. Chairwoman Nacerino stated that Legislator Anthony DiCarlo emailed her today stating: I have no problem looking at adjusting some of the concerns needed but not getting rid of the law. We need to continue to protect the consumer at the same time making sure the law is fair. As discussed, other municipalities have similar laws and we want to make ours fit the needs of Putnam County.

Director Noel stated that the revenue in the budget was not exclusive of waiver fees. It is an inclusive number for pricing accuracy, scanning accuracy, and item pricing waiver law fees. That number is comprehensive.

Legislator LoBue asked Director Noel how she came up with this number. What amount is allotted for the waiver fees in this number?

Director Noel stated that she did not know what the waiver number would be exclusively. She looked at item pricing for other counties with the laws on the books and looked at their inclusive numbers and that is how she came up with her inclusive number.

Chairman of the Legislature Othmer stated that we balanced our budget this year on the sales of our Chapter 31 properties and that is an abstract number. He stated that Legislator LoBue voted for that.

County Attorney Jennifer Bumgarner stated that we also balance our budget with the sales tax revenue every year. She further stated that even if we were to repeal our law, there is a state item pricing and scanning accuracy law which provides for fines and penalties as well.

Legislator LoBue asked why we cannot let the State take it over.

County Attorney Bumgarner stated that we would do the work and the State would get the revenue/fines collected.

Director Noel stated that the State mandates that we do the scanning accuracy and it is an unfunded mandate. She then read from New York Senate Open Legislation A-57-2011. She further stated she has extensive experience in consumer protection and has read the Charter thoroughly.

Legislator Oliverio stated that the State is reinvestigating the law but it is not on the books yet. He stated that his parents owned the Adams Corner Store for ten years and he knows that any additional tax or fee is always onerous. His concern was about the mom and pops and he likes the way this law protects them. The fee schedule is the bone of contention. The law is here and he does believe the State will initiate it eventually. There is a big movement in Albany, from what he understands, to have this passed within a year or two and if it does we are going to have to do it anyway. We should not relinquish to the State when that happens because that would be giving the State the money and he would rather keep the money here. He thinks that the best compromise is to reconsider our fee schedule and with the support of the Chambers of Commerce, really come to a good happy medium and a good agreement. The bottom line is that this is important, it provides the waiver for that onerous task of item pricing for the very large stores but at the same time protects our mom and pops. That is the biggest thing because that is the livelihood of many of these families.

Chairwoman Nacerino stated that Director Noel and herself have been working diligently to come up with a fee schedule which they deem as balanced. She stated they understand the concerns.

Mitch Klein, Vice President of Retail Services of Krasdale Foods and Chairman of the Board of the Food Industry Alliance, stated that he recognized the Legislature's right to make any changes in laws but no one from Putnam County had contacted them regarding this. When Westchester County looked at this they contacted the industry and got input from them. They met approximately seven times before a bill came to fruition and was passed. That never happened in Putnam County. His industry makes less than a penny on a dollar. They would need to bring in millions of dollars more to cover this fee. The only way we can do that when we make less than a penny on a dollar is to raise prices. They do not have a problem with a waiver; the fees are nowhere in-line.

Chairwoman Nacerino stated that the Committee acknowledges that wholeheartedly. The fees are ambitious and high and that is the purpose of this discussion this evening.

Mr. Klein stated that they are not trying to be argumentative; they would like to work out something for their businesses as well where the consumer does not suffer with a price increase on a product and does not push them over to Connecticut or other areas. They did this in many other counties and all have considerably lower fees than Putnam. He stated that the bill Director Noel referred to died.

Michael Rosen, Senior Vice President of Government Relations & General Counsel for the Food Industry Alliance of New York State, Inc., stated that they welcome the opportunity to discuss the fee schedule.

Legislator Castellano stated that this is a waiver to the law. Stores are going to save money through the waiver because they do not need to item price every item therefore there will be a savings for the businesses.

Mr. Rosen stated that this law was not strictly enforced in Putnam. He stated that the reality is that it has gone from 0 to 60 in a very short time. The County is either asking people to start doing something they have not been doing, which will be an expense, or pay the steepest waiver fee in the State. They are okay with an annual fee but the fees are high.

Mr. Klein stated that they have worked with other counties for the item pricing waiver but for a cost structure there is a savings. Also, most of the other counties do not have a scanner that produces a sticker. The unit that does this more than doubles and triples the cost for paper and technology. Putnam is requiring that unit. Putnam has the highest fee and the highest equipment.

Director Noel clarified that the attendees would want the same scanner as Rockland and Westchester.

Ean Rose, Retail Operations Support Specialist for Hannaford, stated that customer service is Hannaford's utmost goal and this being one of the counties that they are still pricing, they are fully in support of the waiver. It would not impact customer service or staffing.

Chairman of the Legislature Othmer asked if they were all lobbyists. He further asked if they contributed to political campaigns on the State level.

Mr. Rosen stated that his organization supports State legislators.

Director Noel stated the Mount Vernon waiver fee schedule, proving that Putnam is not the highest in the state.

Mr. Klein stated that they were not in favor of Mount Vernon's fee schedule.

Legislator Castellano stated this waiver program is a standard procedure for other counties. He stated he understands that the sticking point now might be a scanner that produces stickers?

Mr. Klein stated the cost difference between the machine that produces stickers and the machine that does not is approximately \$800 and you need more than one machine depending on square footage.

Mr. Rosen stated that the installation also costs a lot more.

Legislator Castellano asked if the other sticking point was the fee schedule.

Mr. Rosen stated it is the fee schedule.

Legislator Castellano asked how the machine is less of a sticking point than the fees. He stated a store may need to replace that every three years.

Mr. Rosen stated that they find those machines are underutilized.

Legislator LoBue asked if the modified fee schedule is sustainable.

Mr. Rosen stated it is not sustainable.

Mr. Klein stated it is not sustainable.

Legislator Oliverio stated that what he would recommend is that Chairwoman Nacerino and perhaps the Chairman of the Legislature Othmer meet with the Chambers of Commerce, the representatives from these organizations, and the County Executive or her representative and come to an agreement on the fee schedule. That is the big bone of contention here and we could be here all night. He recommends that meeting take place in the next few days. Director Noel would need to be there also. He stated that any change to this Local Law would then be on the May Full Legislative meeting agenda because there is not enough time for it to be on the April Full Legislative meeting agenda.

Director Noel stated that if nothing is done between now and the May Full Legislative meeting that she will not be able to enforce this law.

Legislator Castellano asked how many stores are over 60,000 square feet in Putnam County.

Director Noel stated that there is one supermarket, Home Depot, and Kohl's.

Chairwoman Nacerino read the current waiver fee schedule as passed in 2012, followed by reading the modification that was presented tonight by the Committee. She further stated that the Committee's objective is work effectively and collaborate to do the best things for the business and consumers of the County. We are not above revisiting this

issue further to ensure the people are protected and the businesses do not have undue hardship. We need to reach out to the people that feel they would like to be included on the conversation.

Ms. Maher stated that the Chambers would take the responsibility to ensure that all aspects of the business world that would be affected by this legislation would be represented.

Chairwoman Nacerino made a motion to accept the additional information for this item, seconded by Chairman of the Legislature Othmer. All in favor.

Colin Schmitt, Deputy Director of Operations for New York State Senator Greg Ball, stated that the Senator had distributed a letter to the County Executive and the Legislature regarding this item dated February 25, 2013.

Chairwoman Nacerino stated that we are in receipt of that letter and that she believes that the County Executive responded to that letter.

Mr. Schmitt agreed and said as stated in the Senator's letter their office is here with open arms to work with any branch of County government as well as anyone from the consumer and the business side to make adjustments for all involved.

Chairwoman Nacerino made a motion to table this discussion to next month, seconded by Chairman of the Legislature Othmer. All in favor.

Chairwoman Nacerino stated that in the meantime this will not be enforced.

There being no further business, at 8:09 P.M., Chairwoman Nacerino made a motion to adjourn, seconded by Chairman of the Legislature Othmer. All in favor.

Respectfully submitted by Krista M. Butler, Administrative Assistant.