

**BARNSTABLE COUNTY**

In the Year Two Thousand and Thirteen

**Proposed Ordinance 13-\_\_**

To transfer appropriations within the County's operating budget for Fiscal Year 2013, as enacted in Ordinance No. 12-04, by making appropriations transfers for the Fiscal Year two-thousand and thirteen.

Section 1.

The sums set forth in section one, for the several purposes set forth therein and subject to the conditions set forth in sections four through twelve of Barnstable County Ordinance 12-04, are hereby transferred, pursuant to section seven of Barnstable County Ordinance 12-04, from the County Appropriated Reserve Fund (Budget 0019307-5730) to the designated budget group as transferred appropriations for Barnstable County for the fiscal year ending June thirtieth, two thousand and thirteen.

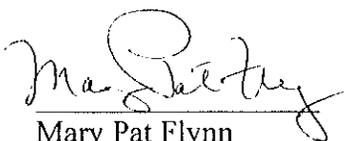
<u>Budget #</u>	<u>Sub-Program</u>	<u>Group</u>	<u>\$ Amount</u>	<u>Total</u>
MISCELLANEOUS & CONTINGENCY				
0019102 5235	Legal Services Special Counsel Charter Review	2	10,000	\$ 10,000

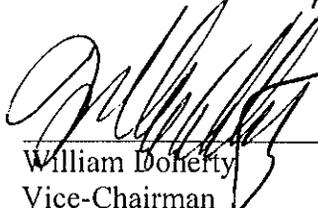
Section 2.

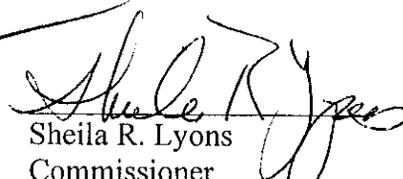
The sums set forth in section two, for the several purposes set forth therein and subject to the conditions set forth in sections four through twelve of Barnstable County Ordinance 12-04, are hereby transferred, pursuant to section seven of Barnstable County Ordinance 12-04, from the County Appropriated Stabilization Fund Reserve (Budget 0019307-5731) to the designated budget group as transferred appropriations for Barnstable County for the fiscal year ending June thirtieth, two thousand and thirteen.

<u>Budget #</u>	<u>Sub-Program</u>	<u>Group</u>	<u>\$ Amount</u>	<u>Total</u>
MISCELLANEOUS & CONTINGENCY				
0019102 5235	Legal Services Special Counsel Charter Review	2	10,000	\$ 10,000
TOTAL TRANSFER				\$ 20,000

Approved by the Board of County Commissioners May 15<sup>th</sup> 2013 (date), at 3:00 PM (time).

  
Mary Pat Flynn  
Chairman

  
William Doherty  
Vice-Chairman

  
Sheila R. Lyons  
Commissioner

Leo G Cakounes  
1601 Factory Road  
Harwich Mass. -02645  
cranberrypig@comcast.net

OFFICIAL REQUEST FOR PUBLIC RECORDS

May 12, 2013

Barnstable County  
3195 Main Street  
Barnstable, Mass.

Board of County Commissioners;

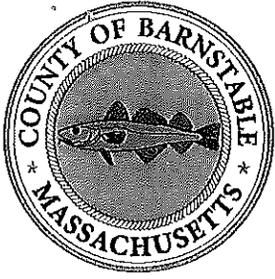
In accordance with State Law and Public Records Request please forward me the following documents and related power point presentations:

1. The "Request for Quotes" advertisement seeking companies to aid in the creation of a strategic plan of the County Commissioners. Nov.14 2012 County commissioners meeting scope for services discussed and voted for RFP. Also referred to as RFQ. Request for Quotes referred to in minutes of Dec. 19 2012 County Commissioners Meeting.
2. The response from Carole Ridley to the above mentioned Request for Quotes. Also referred to during the County Commissioners Meeting of Dec. 19 2013.
3. The contract between County Commissioners and Carole Ridley for services that was agreed upon on either Jan 10 2013, or Jan 11 2013 as per the minutes of Dec 19 2013 County Commissioners meeting.
4. Please specify the account which funds were used to pay for services between Carole Ridley and Barnstable County.
5. All documents that were submitted for deliberation and any power point presentation made during the following "Special Meeting of County Commissioners"
  - a. Jan 18 2013
  - b. March 1 2013
  - c. March 15 2013 (Already received)
  - d. April 5 2013
6. All documents and power point presentations submitted for deliberation and discussion on the matter of Strategic Planning during the County Commissioners meeting on May 8 2013. See agenda time 12:45. Note video was stopped during this meeting before this item was addressed.

If the above list is not specific enough as to items requested please contact me 508-364-1512

Respectfully Requested; \_\_\_\_\_

Leo. G. Cakounes



## BARNSTABLE COUNTY COMMISSIONERS

P.O. BOX 427  
BARNSTABLE, MASSACHUSETTS  
02630  
(508) 375-6648  
FAX (508) 362-4136

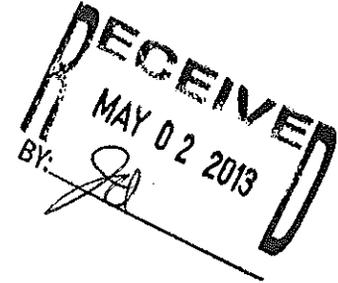
HOME RULED CHARTERED  
IN 1989

COUNTY COMMISSIONERS  
WILLIAM DOHERTY  
Harwich

MARY PAT FLYNN  
Falmouth

SHEILA R. LYONS  
Wellfleet

April 30, 2013



Janice O'Connell, Clerk  
Assembly of Delegates  
Barnstable County Complex  
Barnstable, MA 02630

RE: Resolution 13-03

Dear Ms. O'Connell:

Pursuant to a Protocol adopted by the Barnstable County Regional Commissioners, a public session was held on April 24, 2013 to consider what action was appropriate to take with respect to Resolution 13-03 passed by the Assembly of Delegates on April 17, 2013.

The County Commissioners first considered whether the Resolution refers "to matters relating to the internal affairs of the assembly of delegates or is a resolution that merely states an opinion of the assembly of delegates" as required in the Barnstable County Charter. After discussion, the Commissioners concluded that the Resolution did not meet this criteria and that the Resolution required action by the County Commissioners, in accordance with the Charter. The Commissioners' vote was unanimous with Commissioners Doherty, Flynn and Lyons in agreement.

The Barnstable County Commissioners determined that the Resolution should be disapproved and a written communication embodying the reasons for disapproval should be forwarded to and filed with the Assembly of Delegates pursuant to the Protocol.

The Commissioners' action in voting Disapproval of the Ordinance was unanimous with Commissioners Doherty, Flynn and Lyons voting in favor of disapproval.

The reasons for the Disapproval are as follows:

- 1) The Resolution undercuts the principles and concepts of regionalization that are the conceptual underpinnings of the Barnstable County government;
- 2) The Resolution undermines the principles of executive authority granted to the County Commissioners in the Barnstable County Charter;
- 3) The Resolution reflects an effort to rectify perceived conflicts of interests alleged to affect certain governmental entities in which Barnstable County participates. The Commissioners have already undertaken corrective action through the budget process for FY 2014 that will resolve these perceptions;
- 4) The Resolution proposes an overly broad remedy that would impact other regional agencies and associated advisory committees such as the Cape Cod Commission, the Waste Water Collaborative, the Housing Consortium, Children's Cove, Cooperative Extension, Coastal Resources Committee and the Charter Review Committee, all of which are served by Barnstable County, either as a direct agency or as their respective fiscal agents;
- 5) The Resolution impinges on the executive power to appoint qualified individuals to committees and commissions and related organizations that are working on solutions to regional problems;
- 6) A Charter Review Committee is being constituted to review what Proposals are appropriate to recommend reforming Barnstable County Government;

Page 3  
April 30, 2013

- 7) Massachusetts General Laws requires that any person appointed to a county committee be categorized as a "special municipal employee" and subject to Chapter 268A. The effect of this law requires that any individual appointed to an organization in which the county participates is deemed to be a county employee. Because of this law, the Resolution would effectively prevent the Commissioners from appointing anyone to any such organization and preclude the County from participating in intergovernmental partnerships;
- 8) The governmental agencies that are targeted by the Resolution are legally constituted under the rule of law and executive authority of the Commonwealth of Massachusetts as well as the Barnstable County Charter;
- 9) Section 1-5 of the Barnstable County Charter specifically authorizes the participation by Barnstable County into intergovernmental relationships to resolve regional issues.

For these reasons, as well as all of the reasons articulated at the April 25, 2013 open meeting of the County Commissioners, the Resolution is Disapproved and returned to the Assembly of Delegates in accordance with the Protocol adopted by the Barnstable County Commissioners in January of 2013.

Very truly yours,



E. Mark Zielinski  
County Administrator

Cc: County Commissioners

**BARNSTABLE COUNTY**  
**In the Year Two Thousand and Thirteen**

**RESOLUTION 13-03**

*Whereas:* The following Resolution was supported by the Assembly of Delegates.

RESOLUTION 12-04 passed September 19, 2012: 85.39 Yes / 13.34 No

*Be it resolved that:* The Assembly of Delegates hereby instructs the Speaker to seek the cooperation of the County Commissioners to obtain a restructuring of the Executive Positions of the Cape Light Compact, the Cape and Vineyard Electric Cooperative, Inc. and Barnstable County, in order to eliminate overlapping representation in these organizations. This restructuring shall include, without limitation, the Assistant County Administrator position and its duties and responsibilities, the Chief Financial Officer position and its duties and responsibilities, as well as the participation of these employees in the operation of the organizations they administer.

*Whereas:* The Cape Cod Regional Government, known as Barnstable County acts as a fiscal agent for organization such as Cape Light Compact and Cape and Vineyard Electric Cooperative.

*Whereas:* In order to perform said fiscal duties to the best of the Counties abilities, and limit the participation of the County employees in the operation of organization they administer.

***Be It Resolved:***

As of July 1 2013, no employee, or elected official of Barnstable County shall be employed by, serve as a Board of Directors, Trustee, or on any Committee, or Commission, appointed or elected, of an organization in which the Cape Cod Regional Government known as Barnstable County is the fiscal agent.

This shall not affect the employee's participation in any agency or department of Barnstable County Government.

*Furthermore:* This ordinance upon its adoption shall be referred to the next Charter review committee for its consideration for insertion into the County Charter. Suggested site: Article 6-1 New Sec. (a) and subsequent adoption into the Manual of Governance and Procedures.

**The foregoing Resolution was adopted by the Barnstable County Assembly of delegates by a roll call vote with 55.89% voting yes, 34.53% voting no and 9.58% voting present at the regular meeting held on April 17, 2013.**

Attested by:

A handwritten signature in cursive script that reads "Janice O'Connell". The signature is written in black ink and is positioned above the printed name and title.

Janice O'Connell, Clerk  
Barnstable County Assembly of Delegates

*Leo's responses*

April 30, 2013

Janice O'Connell, Clerk  
Assembly of Delegates  
Barnstable County Complex  
Barnstable, MA 02630

RE: Resolution 13-03

Dear Ms. O'Connell:

Pursuant to a Protocol adopted by the Barnstable County Regional Commissioners, a public session was held on April 24, 2013 to consider what action was appropriate to take with respect to Resolution 13-03 passed by the Assembly of Delegates on April 17, 2013.

The County Commissioners first considered whether the Resolution refers "to matters relating to the internal affairs of the assembly of delegates or is a resolution that merely states an opinion of the assembly of delegates" as required in the Barnstable County Charter. After discussion, the Commissioners concluded that the Resolution did not meet this criteria and that the Resolution required action by the County Commissioners, in accordance with the Charter. The Commissioners' vote was unanimous with Commissioners Doherty, Flynn and Lyons in agreement.

The Barnstable County Commissioners determined that the Resolution should be disapproved and a written communication embodying the reasons for disapproval should be forwarded to and filed with the Assembly of Delegates pursuant to the Protocol.

The Commissioners' action in voting Disapproval of the Ordinance was unanimous with Commissioners Doherty, Flynn and Lyons voting in favor of disapproval.

The reasons for the Disapproval are as follows:  
RED LEO'S RESPONSE

- 1) The Resolution undercuts the principles and concepts of regionalization that are the conceptual underpinnings of the Barnstable County government;

This resolution only prohibits an employee of the County on serving on a Board or Committee of an organization in which the County is fiscal agent. It will not prohibit an appointment of an individual from serving as the County representation.

- 2) The Resolution undermines the principles of executive authority granted to the County Commissioners in the Barnstable County Charter;

The Resolution does not affect the appointing authority of the Executive Body, only the practice of not having an employee be that representation.

- 3) The Resolution reflects an effort to rectify perceived conflicts of interests alleged to affect certain governmental entities in which Barnstable County participates. The Commissioners have already undertaken corrective action through the budget process for FY 2014 that will resolve these perceptions;

This fact alone proves that there is problem, waiting is not the answer.

- 4) The Resolution proposes an overly broad remedy that would impact other regional agencies and associated advisory committees such as the Cape Cod Commission, the Waste Water Collaborative, the Housing Consortium, Children's Cove, Cooperative Extension, Coastal Resources Committee and the Charter Review Committee, all of which are served by Barnstable County, either as a direct agency or as their respective fiscal agents;

Completely untrue, as the Resolution specifically address this shall not affect any Department of the County. Agencies that operate under a Service Agreement with the County shall be affected in that all services shall continue, yet any representation on their Boards shall not be a County employee.

- 5) The Resolution impinges on the executive power to appoint qualified individuals to committees and commissions and related organizations that are working on solutions to regional problems;

The Resolutions dose not impinges on the Executive Boards power to appoint, only the policy to not appoint an employee. Given that there are 200,000+ residences on Cape Cod this limits the pool slightly.

- 6) A Charter Review Committee is being constituted to review what Proposals are appropriate to recommend reforming Barnstable County Government;

The Resolution directs the Charter Review Committee to adopt this language and incorporate it in the Charter and Policy and Procedures.

- 7) Massachusetts General Laws requires that any person appointed to a county committee be categorized as a “special municipal employee” and subject to Chapter 268A. The effect of this law requires that any individual appointed to an organization in which the county participates is deemed to be a county employee. Because of this law, the Resolution would effectively prevent the Commissioners from appointing anyone to any such organization and preclude the County from participating in intergovernmental partnerships;

The fact that the State categorizes the Special Employee in MGL 268A is evidence to show that Special Employees are treated different that Employees. The Resolution prohibits the appointment of Employees.

- 8) The governmental agencies that are targeted by the Resolution are legally constituted under the rule of law and executive authority of the Commonwealth of Massachusetts as well as the Barnstable County Charter;

The Resolution does not affect these agencies, the Service Agreement, or Rule of Law, only the person or persons that represent the County on their Board.

- 9) Section 1-5 of the Barnstable County Charter specifically authorizes the participation by Barnstable County into intergovernmental relationships to resolve regional issues.

The Resolutions will not affect any Intergovernmental agreement or the Counties participation in regional issues.

For these reasons, as well as all of the reasons articulated at the April 25, 2013 open meeting of the County Commissioners, the Resolution is Disapproved and returned to the Assembly of Delegates in accordance with the Protocol adopted by the Barnstable County Commissioners in January of 2013.

FUTHERMORE:

It has been mentioned during the County Commissioners meeting of April 25 2013 that the Assembly in voting the Resolution has acted beyond their scope and authority.

I refer to the Barnstable County Charter:

Section 4,1 (i)

- i) Ordinances – Subject only to an express prohibition in a general law or this charter, the assembly of delegates may, by ordinance, recognize, consolidate or abolish, create, merge or divide, alter the term of office, the manner of selection or, if a multiple member body, the number of members of any Cape Cod regional government agency, in whole or in part, establish new Cape Cod regional government agencies and may prescribe the functions, powers, duties and responsibilities of any such agency.

This is why I proposed the first draft of this Resolution as an Ordinance. After running it by the County Council, I determined that the better avenue would be Resolution. As it reflects the opinion of the Assembly and referred it to Charter Review committee to draft correct language for insertion in Charter and Policies and Procedures, or adopted as Policy by the Commissioners.

Page 6

Furthermore:

It has been expressed at meeting of the Assembly of Delegates that the practice of acting as Fiscal agent for an Agency and also having the Employee of the County, especially an employee that provide the service for said Agency for the County, serve on that Agency Board and take part in votes and deliberation on matter such as expenditure of funds and general direction of said Agency is in fact a violation oOf State Ethics Law.

Barnstable County Charter section 3-8

....“The assembly of delegates shall upon receipt of notice of disapproval from the board of regional commissioners forthwith reconsider the measure. If the assembly of delegates shall, notwithstanding the objections of the board of regional commissioners, by a vote of its members representing two-thirds of the population of Barnstable county, taken by roll call vote, again pass the measure, the measure shall, subject to the provisions of Article 7, be deemed to be in effect.”

I MOVE THAT: The Assembly of Delegates “reconsider the measure” on Resolution 13-03 due to the receipt of the disapproval letter dated April 30 2013.

Leo G. Cakounes, Town of Harwich representative.

**BARNSTABLE COUNTY ASSEMBLY OF DELEGATES**  
**Report and Minutes of the Standing Committee on Governmental Regulations**  
**Proposed Ordinance 13-05**  
**May 1, 2013**

Dear Assembly Delegates:

This is a report on Proposed Ordinance 13-05. The proposed ordinance was submitted to the Clerk of the Assembly of Delegates by the Cape Cod Commission on April 11, 2013. A public hearing was scheduled and held by the Standing Committee on Governmental Regulations on Wednesday, May 1, 2013 at 3:30 p.m. The public hearing was duly advertised in the Cape Cod Times on April 24, 2013.

The purpose of the proposed ordinance was to amend and add language relative to a qualification after a missed hearing, to Section 7 (vii) Chapter A, Enabling Regulations of the Code of Cape Cod Commission Regulations.

Committee members present: Chair Ronald Bergstrom, Richard Anderson, Christopher Kanaga, Teresa Martin, John Ohman, and Julia Taylor.

Chair Ronald Bergstrom opened the public hearing and read the public notice.

Cape Cod Commission Counsel Jessica Wielgus provided an explanation relative to this proposed ordinance. The proposed ordinance will allow board members who miss one public hearing to rehabilitate themselves (using specific methods available such as reading a transcript, watching a video, listening to audio, or reading through evidence) and certify on a form that they have done so.

It has also been referred to as the "Mullin rule" which refers to an appeals case in Massachusetts that was codified into a Massachusetts statute. This Massachusetts statute does not apply to Cape Cod Commission Members (as a regional authority) and therefore the Commission wants to codify this rule and be able to apply it to the regional authority.

The Cape Cod Commission's enabling regulations (Chapter A) governs the review of DRIs and describes the process used for DRI reviews. The language will be located in the section that describes the process – Section 7 (vii).

**Julia Taylor motioned, and it was seconded, to recommend Proposed Ordinance 13-05 to the full Assembly. Motion carried. 6-0-0.**

The meeting adjourned at 3:45 p.m.

Respectfully submitted:

Ronald Bergstrom, Chair  
Richard Anderson  
Christopher Kanaga  
Teresa Martin  
John Ohman  
Julia Taylor

**BARNSTABLE COUNTY ASSEMBLY OF DELEGATES**

**In the Year Two Thousand and Thirteen**

Proposed Ordinance 13-05

**Section 7 (vii) Chapter A, Enabling Regulations of the Code of Cape Cod Commission Regulations of General Application shall be amended to include the following language:**

**Qualification after a Missed Hearing**

(b) Notwithstanding any general or special law to the contrary, for hearings held for review of developments of regional impact and adjudicatory hearings, a member of the Cape Cod Commission shall not be disqualified from voting in a matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he/she has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing.

**(Submitted by the Cape Cod Commission to the Assembly Clerk on April 11, 2013.)**