

**CAPE COD REGIONAL GOVERNMENT- ASSEMBLY OF DELEGATES  
CHAMBER OF THE ASSEMBLY OF DELEGATES  
FIRST DISTRICT COURTHOUSE  
ROUTE 6A, BARNSTABLE, MA 02630**

**APPROVED Journal of Proceedings - February 3, 2016**

Speaker BERGSTROM: Good afternoon. Welcome to the Wednesday, February 3<sup>rd</sup> session of the Cape Cod Regional Government, Assembly of Delegates.

Before I call this meeting to order, I'd like to ask if anyone is recording this meeting besides our normal recording?

In that case, I will call the meeting to order, and we'll begin with a moment of silence to honor our troops who have died in service to our country and all those serving our country in the Armed Forces.

(Moment of silence.)

Speaker BERGSTROM: Thank you.

We will now stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

Speaker BERGSTROM: The Clerk will call the roll.

**Roll Call (92.58%): Ronald Bergstrom (2.84% - Chatham), Ned Hitchcock (1.27%- Wellfleet), Christopher Kanaga (2.73% - Orleans), James Killion (9.58% - Sandwich), Edward Lewis (4.55% -Brewster), Teresa Martin (2.30% -Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Edward McManus (5.67% - Harwich), John Ohman (6.58% - Dennis), Brian O'Malley (1.36% – Provincetown), Patrick Princi (20.92% - Barnstable), Julia Taylor (14.61%- Falmouth), Linda Zuern (9.15% - Bourne).  
Absent (7.42%): Marcia King (6.49% - Mashpee), Deborah McCutcheon (0.93% - Truro).**

Clerk O'CONNELL: Mr. Speaker, we have a quorum with 92.58 percent of the Delegates present; 7.42 percent absent.

Speaker BERGSTROM: Thank you. Now I'll need a motion to approve today's Calendar of Business.

Ms. MCAULIFFE: So moved.

Mr. MCMANUS: Second.

Speaker BERGSTROM: Okay. All those in favor? Aye.

Opposed?

(Motion carried.)

Speaker BERGSTROM: You should have received a copy of the Journal of January 20<sup>th</sup>, 2016. Are there any additions or corrections to the Journal?

Mr. O'MALLEY: I'll move approval as distributed.

Mr. LEWIS: Second.

Speaker BERGSTROM: All those in favor? Aye. Opposed?  
(Motion carried.)

Communications from the Board of Regional Commissioners

Speaker BERGSTROM: Okay. We have at least one of the Commissioners here with us, the Chairman.

Commissioner FLYNN: I think I'm being deserted. This is an ordinance for your discussion and vote at some point.

Speaker BERGSTROM: It says resolution.

Clerk O'CONNELL: It is a resolution (for Resource Development Office).

Speaker BERGSTROM: Just a minute; we have a full complement of the Commissioners here.

Commissioner FLYNN: Yes, good afternoon. If we look a little battle-weary, it's because we are.

Let's see, first of all the most important news I have to tell you about and I know you've already read it in the paper that we have offered the position of County Administrator to John Yunits. It's a hard time getting my head around his name.

But as you may know, he is the former mayor in the city of Brockton. He was there for 10 years. And he decided after 10 years he wanted to try something else.

By background, he is an attorney. In fact, I talked to him yesterday and he was dealing with a mediation/arbitration issue, but he's available, he told me, when we are ready. So we need to work on a contract, which we're doing now. We have County Counsel preparing a contract for our review.

In other days, usually County Counsel worked on a contract and actually negotiated it with the prospective employee and the Commissioners were not that involved. So on behalf of all of us, I said, "No, I think the Commissioners want to be involved in this." And so he will be providing us with a draft of the contract and that he thinks might be appropriate to negotiate and we'll go from there. So at least the Commissioners will be part of that discussion.

And I guess the other thing I can tell you is that we continue to work on the budget. As you know, we have some significant shortfalls, and we plan to have a balanced budget and we will have a balanced budget however that may end up.

We have scheduled today three more meetings. We know February 17<sup>th</sup> is coming up pretty quickly when it's our responsibility under the Charter to send a budget to you and we will do that, but we did tentatively schedule some more meetings.

Our meeting next week will be a workshop as opposed to a regular Commissioners meeting. It will be a workshop for us to really meet with some of the staff and go through the items that we need to take a harder look at. And then we scheduled two other meetings on off days in the event that we had to meet

again prior to sending the budget to you on the 17<sup>th</sup>. And that's pretty much what I have to say.

Speaker BERGSTROM: Anybody have anything to add to that? Nice quiet group. Are there any questions for the Commissioners on the business that they had tended to over the last couple of meetings? Well, I guess you're off the hook then.

Commissioner FLYNN: Thank you. We look forward to your meeting.

Speaker BERGSTROM: Next on our agenda is Paul Niedzwiecki but I don't see Paul in the room.

All right. And the County Counsel is not in the room either. Are you sure you don't have anything else to say?

Commissioner CAKOUNES: All right.

Speaker BERGSTROM: Leo, help me out here.

Commissioner CAKOUNES: I did report to the Commissioners today that I'm working on a situation not only as the rep from the County Commissioners to CVEC but also as a County Commissioner.

As many of you from your towns may have known that CVEC offered a next-camp power purchase deal to different members and the County was going to purchase some more net metering credits.

It has come to our attention though that there may be a situation in how we've actually calculated our net meter -- our usage here on Barnstable County. And it may be that our appetite is the word that they use for purchasing net meter credits may not be significant to be able to purchase some.

And this is an important area and I'm just reporting to the Assembly and I reported to my fellow Commissioners that I will be in the next week looking at closely our usage for electricity and our relationship with our tenants and the legalities of being able to allocate the electric usage to make sure that we can benefit from these credits.

I don't want to throw numbers out there but we're probably looking at 40 grand a year in savings by being able to participate in these programs so it's a significant amount. And I just want to update everyone that if you hear anything that that's what's going on. It's basically us making sure that we can -- we do have the adequate usage so that we can transfer that usage into appetite and then purchase some more of these metering credits.

Speaker BERGSTROM: Okay. I guess I should have addressed this to the chairman, but since you're sitting there, just a quick question. Did anybody discuss a start date for the Administrator?

Commissioner CAKOUNES: No.

Speaker BERGSTROM: No.

Commissioner CAKOUNES: Nope, that's all going to be discussed during the contract negotiation stuff. I think that the chair did express that he is okay moving forward.

Speaker BERGSTROM: He's standing out in the hallway? He's good?

Commissioner CAKOUNES: He's okay to move forward.

Speaker BERGSTROM: All right. Jim.

Mr. KILLION: Thank you, Mr. Speaker. We do have an item on the agenda, an ordinance, and it seems we have a few minutes. Would you care to give us a brief overview of that, the amended language to 15-05 for the County Complex construction?

Commissioner CAKOUNES: I believe that's the one that Mr. Niedzwiecki is going to be here talking about; is that correct? Or is he just doing a general proposal?

Mr. KILLION: I think he's doing a general proposal but --

Commissioner CAKOUNES: This Proposed Ordinance that you have in front of you, I believe is Number 15 on your agenda for \$250,000 is basically -- it was appropriated in the FY15 budget. I have publicly and I will publicly again today take full responsibility for the, what I feel is the improper language on this, because the way it was expressed to me by our new finance director is the language of the original appropriation was that the majority of the money, the \$250,000 was going to be used strictly for design purposes and a very small amount of it could be used for construction purposes.

So through our Buildings Need Assessment Group and the wonderful work of Mr. Niedzwiecki and also Steve Tebo, and I guess some of the members of the board here actually took a tour. We're moving forward with trying to create a new space up in the old jail building. And, subsequently, when the County decides to -- whoever they're going to move up there or the movement of their personnel around, we will be opening up space that will be available to rent to our tenants who, by the way as you all know, are bursting at the seams and always asking for more space.

So this particular ordinance that you have in front of you is not asking for any more money. It's basically changing the language on the ordinance and it's going to be allowing us to use the money for construction. And as I understand it, and I think I saw our finance director's in the room but, as I understand it and if I'm wrong I'm hoping she'll stand right up, that with this new language we will still be able to use a smaller portion if we wanted to for design purposes.

But now our hands are tied in that we could not use any of it or a very, very small portion for construction and a large portion for design and it has been the opinion of the needs committee that we need to go the other way and actually move forward with this construction.

Speaker BERGSTROM: Mary Pat and Sheila, do you have anything to add to that? No? So you're not going to argue with Leo? Good.

Commissioner LYONS: I don't argue with Leo.

Speaker BERGSTROM: I still have to kill five minutes. Why don't I get a motion to recess for five minutes. I don't want to go out of turn on the agenda.

**Ms. MCAULIFFE: Move to recess for five minutes.**

**Speaker BERGSTROM: We'll recess now until 4:15 or**

thereabouts.

(Meeting recessed at 4:08 p.m.)

(Meeting resumed at 4:16 p.m.)

Speaker BERGSTROM: I'd like to call this meeting back to order.

We're going to hop over to 9 and 10.

Do we have any communications from Public Officials?

Do we have any communications from Members of the Public?

This is speak now or forever hold your peace.

Mr. OHMAN: Wait a minute; I don't think they understand that.

Mr. O'MALLEY: We're holding.

Commissioner LYONS: I'm sorry; what was the question?

Speaker BERGSTROM: Communications from member of the public. It's very straightforward.

Commissioner LYONS: Oh.

Speaker BERGSTROM: Yes, is there anybody in the public who wants to speak? Leo, you're a member of the public.

Commissioner CAKOUNES: Thank you. I left my hat -- oops -- I took my hat off because I am addressing the board of Assembly of Delegates here as Leo Cakounes, cranberry grower and farmer and not County Commissioner; okay.

Speaker BERGSTROM: Could have fooled me.

Commissioner CAKOUNES: I haven't given up my rights as a citizen of Barnstable to speak as a citizen so.

I see on your agenda you're going to be reviewing and discussing once the Assembly convenes the Proposed Amendment to the Home Rule Charter which is labeled "Barnstable County Bill of Rights."

I am going to respectfully ask that you not support this and there are a couple of reasons why. And, unfortunately, I'm going to have to get up and go and get another piece of paper that I have to refer to.

But specifically on the Bill of Rights, first of all, as a farmer I don't really want another level of government telling me that I have the right to farm because that scares me. That tells me then you also have the right to tell me I can't farm.

When you give me rights so graciously as you're doing in this document, it alludes to the fact that you possibly have some kind of power to take those rights away from me.

One of the probably most difficult documents, and I wasn't around but I'm sure there may be a few members on this board that were around when the original Bill of Rights was written in the Constitution of the United States, they had a very, very difficult time doing it because -- Ed Lewis, you were there, right?

Mr. LEWIS: I was there.

Commissioner CAKOUNES: They had a difficult time doing this because they didn't want to leave out an inevitable right, and they wanted to make sure that they weren't giving some rights that weren't arguably available for the government to give. It was a very difficult document to write and I believe all

Bill of Rights are for that reason.

Quite frankly, I don't think that Barnstable County has the authority nor the position nor anything to give me this Bill of Rights. Quite frankly, your Charter is very clear of it, and I will go in and grab the actual section of the Charter. I think it was 1-3, if I remember correctly, but it does state in there that the -- do you have it?

Mr. OHMAN: (Handing document to Mr. Cakounes.)

Commissioner CAKOUNES: Thank you. I'm sorry, Mr. Speaker. 1-3 states in there that the powers of the Cape Cod Regional Government, known as Barnstable County Government, consideration of laws in the Commonwealth with intent and purposes of all the voters of Barnstable County approved in this Charter.

It also goes on to say that to hold under the -- wait a minute -- maybe this isn't the right section. I'm going to go grab my copy. Do you mind if I just take a second. It's right here. Thank you. I'm very sorry. It's also bigger too, so thank you, Mr. Speaker, for allowing me to do that.

It would be under 1-4 of the Charter, and basically I just highlighted based upon the needs to develop effective service to meet problems which cross municipal boundaries. This is in relation to why Barnstable County government is in existence.

So you're here to meet the services to meet the problems which cross municipal boundaries to provide sophisticated services which might be beyond the ability of a single community and to support and a desire to obtain efficiency and economy of scales.

You have been established to provide services to the towns and to help the towns work across their borders to make them operate in a better and a more efficient scale.

It goes on to say that nothing in this Charter shall be constructed to impair, diminish, or infringe upon the powers or duties of the cities and towns under the General Laws. I would argue that by you simply adopting a Bill of Rights, you're exerting your power over the towns by insinuating that you have some power and authority over theirs to give their residents of their town a Bill of Rights.

It also goes on, and this is probably the most important section that I have referred to, and that's the very last sentence. It says, "Cities and towns are and shall remain the broad repository of local police power and the terms and rights and powers to legislate for the general health, safety, and welfare of their inhabitants."

Barnstable County government has no authority and no police power. So in granting me rights, you basically are saying that what's the next thing that you're going to end up doing in changing the Charter granting yourself police power so you'll be able to tell me that I cannot have certain rights?

I just find it very interesting in this document that, again, it goes on to specify and say, I think on the second page, that all persons are guaranteed by the federal government or Commonwealth Constitution a Bill of Rights. That's

correct. I already have one. I have the federal government telling me what I can and cannot do, and I have the state telling me what I can and cannot do.

And now you people are suggesting that although some of these Bills of Rights that you have labeled here are pretty good, I'm arguing that I don't really think you should have the power nor exercise your power to suggest that you're going to give me or create the Bill of Rights.

I will take exception to Number 5. There are a couple of things in there that are extremely important to me as a farmer, okay. "The right to sustainable access and use and consumption of water," okay. As a farmer, it costs me about \$600 a year to get a water withdrawal permit to operate my farm. I'm inspected by the state and the federal government under the Withdrawal Act. I have -- probably get numerous notifications from the state with other farms or other golf courses, other towns where they want to drill wells and they want to expand their water consumption. I'm already being watched by somebody. I don't need Barnstable County to tell me that I have the right to withdraw water. Because somebody sitting up here in a few years from now is going to say, "Well, why don't we charge them for that right. Let's put \$125 permit fee," like the state does.

It also says down here that you're giving me the right to consume locally produced nontoxic foods. What about the toxic foods? How are you going to police this that you're giving me the right that I can only buy what you consider a non-toxic food.

There are hundreds if not millions of kinds of vegetables, milk, meat, all kinds of products which are sold here on Cape Cod that people live on and you don't give me the right to good buy those? You left something out.

Speaker BERGSTROM: Leo, you have the right to free speech. But as Speaker, I have the right to limit that speech to a reasonable amount of time.

Commissioner CAKOUNES: I've got one more thing and I'll be done. Thank you. One more thing and I'll be done. All residents reserve the right to grow, produce, sell, and distribute foods generated from a sustainable farming practice.

I was president of Farm Bureau for 12 years, and I'm telling you I don't want another government telling me that I can or cannot farm. Massachusetts is very clear under a number of different state statutes of what constitutes a farm or constitutes a person's right to be able to grow food for sale and sale purposes.

You also say free of contaminations of pesticides. I am, for the record, a certified organic cranberry grower. This statement says "Free of contaminations from pesticides," okay, I use organic pesticides. What are you telling me now I can't even do that? I can't use any pesticides or fertilizers on my products?

Let me tell you something and I will end with this. Thank you, Mr. Speaker, for giving me the leeway. All right. Barnstable County has got an awful lot on their plate right now. Barnstable County needs a lot of attention.

Don't go down this road. I don't want it as a resident, and I'm sure you will be hearing from a lot of other residents that they do want Barnstable County giving them a Bill of Rights.

Thank you.

Speaker BERGSTROM: Okay. Since Leo addressed us as a member of the public and we do not respond to public comment, I'm not going to take any response to what he said even though --

So is there any other members of the public wish to speak?

Hearing none.

Communications with Paul Niedzwiecki regarding Building Space needs  
Committee and County Complex

Speaker BERGSTROM: We'll go back to Number 9 on our agenda, which is communications from Paul Niedzwiecki regarding update on County Complex space needs. Paul was here a minute ago. Quick, grab him before he tries to get away.

Mr. PAUL NIEDZWIECKI: Good afternoon. Paul Niedzwiecki, Executive Director of the Cape Cod Commission. We're here to talk to you a little bit about the Building Needs Committee which started and wrapped up its work last year.

And that report was presented to the Commissioners. I think you have a copy of that report with you today, so I would be welcome to answer any questions on that report.

The Commissioners then assigned me to be the County Complex Facilitator for the purposes of continuing discussions with the state, most of -- or all of my authorities really focused outward in that regard and to oversee the preliminary design that would outline a long-term space plan need here on the County Complex and a short-term space plan need.

Over the last couple of months, really around September, it became clear that the \$250,000 that was associated that we talked about with the committee as being in the 2016 budget would be an amount that would be bonded, and there were a number of capital needs and a decision, I guess, made that we would have the \$250,000 spent in the old jail to increase the available space for County departments.

So this isn't exactly the short-term space plan that we were talking about but it is necessary and I think it's in front of you in the form of an ordinance today. An ordinance that you already passed on the \$250,000 but instead of mostly being for design, the language change has it being associated with the capital improvements to the old jail.

The advantage and really sort of the financial imperative behind this is that the more that the County -- the County departments that are within the courts now, the more space they'll have to rent back to the courts. So that means

an increase in sustained revenue in the form of increased rent from the state.

It also means that the state occupies a higher percentage of any particular building means more in the way of reimbursement for capital expenses on the buildings. So it's a good financial move for the County. I think the 250,000 investment you should see that much come back potentially on an annual basis if it's managed correctly.

So the Building Needs Committee went through a number of recommendations but it was basically we involved the courts, the Trial Courts, the District Attorney's Office, the Sheriff, the Village Association and everybody agreed that the Trial Court should stay here and that we should do this based on their needs.

So I had an opportunity to work with Steve Tebo at Facilities, and we have a variance to proceed with design. We just don't have any resources to do it as of yet.

So this short-term capital plan comes to you first because, from a financial perspective, it is imperative, I think, based on the financial position of the County that the funds be spent that way.

So I think that I would just sort of stop there and open it up for questions.

Speaker BERGSTROM: Okay. Yes, Linda.

Ms. ZUERN: You said the money would come back through rent. Do you know how long that's going to take? How many years before it's paid off?

Mr. PAUL NIEDZWIECKI: No. The \$250,000 would be bonded so there would be debt service associated with that. Looking at the square footage that should be available to existing County departments, the rent that the Trial Court pays to the County will increase. The specific number is not one that I'm aware of. The lease itself needs to be revisited. It's a difficult one to sort of motor through. It's been happening in almost a traditional way for a long period of time.

But we've already done a little bit of this in that when the Open Cape building was done over here, the top floor we worked out an arrangement where the Commission would have that top third floor over there, share that with Open Cape.

When some of these issues around space and financial issues started to pop up, I agreed to pull all my people down into the Commission building and then have the Cape Light Compact (CLC) go up there, and the Cape Light Compact now pays rent to the County in the form of -- I think it's over -- maybe \$150,000 or so. It's a substantial amount of rent and that's new revenue and sustainable revenue.

So what I believe this \$250,000 that's in front of you for capital authorization today sort of continues that same effort to try to look at space that the County currently controls, make it habitable for our County departments, move County departments from the Trial Court buildings that they're in into this space so that they can lease it back.

Speaker BERGSTROM: Yes, go ahead.

Ms. ZUERN: That didn't really answer my question about how much you thought per year would be coming in to pay off.

Mr. PAUL NIEDZWIECKI: Yes, I mean the County gets about 1.6 million a year. I think as it's managed over time, you could probably see an additional \$200,000 in rent, which is a significant increase as a percentage and additional reimbursement for capital expenditures too. But I don't have the specific numbers on that one.

Ms. ZUERN: So you're not -- you're saying it could take maybe a couple of years to pay the \$250,000 off? I'm just trying to get an idea whether it's going to be 20 years before it's paid off or the five years?

Mr. PAUL NIEDZWIECKI: Yeah, it's more like closer to 2 than 20 but I don't want to be exact.

Ms. ZUERN: Okay.

Speaker BERGSTROM: Okay. Teresa.

Ms. MARTIN: I'm good with spending money on planning because I know from having engaged in construction projects you want to plan, measure, measure, plan, plan, measure, measure, plan before you spend a penny on construction because it gets really expensive fast to redo things.

So I just kind of want to understand what we're being asked here is the planning has already been done? Planning won't be done because we're just going to be building? We'll be planning and building at the same time? And how does the County feel about spending money on construction in lieu of a larger thoughtful plan first?

Mr. PAUL NIEDZWIECKI: Yes, the planning and design that needs to be done needs to be done to facilitate a conversation with the state about the ultimate disposition of the Trial Courts, what's going to happen with their buildings.

We have a variance from the Department of Capital Asset Management (DCAM) in order to do this on our own and control it here and that's a good thing. And we've had a Request for Proposal (RFP) ready really since September to go out for those services. We just don't have the money.

Speaker BERGSTROM: Yes, go ahead, Teresa.

Ms. MARTIN: We're being asked to have that money be used for construction instead of a plan?

Mr. PAUL NIEDZWIECKI: Yes, but, you know, there's only so much money and so you have to prioritize. And the capital plan that's in front of you generates income short-term right now. It's not a long-term plan against sort of a -- almost an emergency situation, and it's frustrating to be in a place where you're making a number of sort of continuous emergency decisions and not sort of taking a deep breath and thinking about exactly what's in the best interest of the County but it's where we are.

Speaker BERGSTROM: Okay. Brian.

Mr. O'MALLEY: If I could? Thank you, Mr. Speaker. If I could, I want to clarify where we stand with DCAM? You said at one point all parties

are onboard but I'm not sure that that included DCAM. You just referenced them as though we have a variance.

Mr. PAUL NIEDZWIECKI: Yes.

Mr. O'MALLEY: Is that agreed that they're going to stay or is that still floating?

Mr. PAUL NIEDZWIECKI: No. DCAM is not the agency that will determine whether the Trial Courts stay here at this complex or not. That will be a separate decision made by the Trial Court.

So we've had conversations with both the Trial Court, the Administrator Harris Spence, and with DCAM on different levels. So DCAM controls the construction. So the Trial Court will decide -- will be given money in a bond bill by the state. They'll decide in a particular area where they want to consolidate courts and build a new structure and then DCAM will build it for them. But we are subject to DCAM rules and thresholds, which are really low, and counties are not treated the same under the DCAM regulations.

So if we trip DCAM review, we actually have to turn the whole process over to them, and we have to pay for it all ourselves and really like cut a check and send it to them and it's gone and then they sort of do it. And I think that's a historical vestige of other counties that weren't doing great things.

Mr. O'MALLEY: So if I understand correctly, we're going to proceed with doing this work, clearing out here, moving up the hill, but it still could happen -- the state Trial Courts could decide to pull out? There's no guarantee here.

Mr. PAUL NIEDZWIECKI: Yes, there's no guarantee with what the Trial Courts going to do. Although the initial discussions with them, they are onboard. They want to stay here. If you look at their activities and consolidating locating courts in other parts of the state, the easiest thing for them to do would be to stay here.

But there are a number of decisions they have to make and probably things they're going to want from the County before they would be willing to do that and DCAM will run the construction project.

Mr. O'MALLEY: Thank you.

Speaker BERGSTROM: Yes, Suzanne and then Ed.

Ms. MCAULIFFE: Just two quick things I wanted you to address because I was where the Delegate from Eastham was when this whole thing started. One is the benefits of in-house construction, and the other thing is I think I would like you to emphasize the need to make a good relationship and kind of go after the state in terms of forming a good relationship, how important that is for the County.

Mr. PAUL NIEDZWIECKI: Yes.

Ms. MCAULIFFE: Those were the two things.

Mr. PAUL NIEDZWIECKI: It's important for the County to have a good relationship with the Trial Courts. They're a major tenant and they control these buildings. And there are only bad things that would happen if the Trial Court decided that it wanted to go to another parcel in Barnstable and build a new

consolidated Trial Court. We would be left with yet another behemoth or series of behemoth buildings that I don't believe the County is capitalized really to take care of. So they are essential in many respects to our existence.

The bond bill and the potential construction of a new Trial Court in Barnstable County is probably within a 5 to 10 year window. The bond bill will probably happen soon; construction within 5 to 10 years.

In the meanwhile though, the state -- the Trial Courts have some deplorable conditions that they work in and they need more space now. So the more that we can make space for the Trial Court now, the happier they'll be presently and, hopefully, that will create a better environment for a long-term discussion about what happens next.

Speaker BERGSTROM: Okay.

Mr. PAUL NIEDZWIECKI: And then your first question, Suzanne, goes to construction cost. So some of the costs per square foot, if you look at what we're doing, seem pretty low. But Steve Tebo, the Facilities director -- I had an opportunity to get to know him a little bit more over the last 12 years and watched some of the work that he's done; he's always come in on time and under budget. And that low number looks low because it doesn't count the in-kind services of Barnstable County employees doing the work themselves.

Speaker BERGSTROM: Ed.

Mr. LEWIS: Thank you, Paul; thank you, Mr. Speaker. Just for the edification of people who may watch this or people, you know that which you are planning on moving and the \$250,000 which will construct space for is primarily what? Other than the Assembly moving their meeting room?

Mr. PAUL NIEDZWIECKI: Most of the County departments -- a lot the County departments, let me say, their offices are in Trial Court buildings. So that's where they sort of live and operate. You, as the Assembly of Delegates, are an example of that. You exist in the District Court building for free. So there hasn't been a great incentive to move people out of that arrangement.

Speaker BERGSTROM: The Cape Cod Commission also meets in this building?

Mr. PAUL NIEDZWIECKI: Yes, we are here too?

Speaker BERGSTROM: Do you pay anything?

Mr. PAUL NIEDZWIECKI: No, we don't pay anything but we pay for rent where we're at. But it's the concept. You know, the Trial Courts' running out of space. They need space. The County has space in Trial Court buildings that it's not paying for.

Mr. LEWIS: I'm not questioning that. I'm just trying to get -- because I know that this room here, this room here and the Clerk's office there is in this courtroom.

Mr. PAUL NIEDZWIECKI: Yes.

Mr. LEWIS: I don't know of anything else that's in this building that's County meeting, you know.

Mr. PAUL NIEDZWIECKI: No.

Mr. LEWIS: In the other courthouse, there's the headquarters for

the County, so to speak, administration for the County.

Mr. PAUL NIEDZWIECKI: County Administration, Cooperative Extension, yes.

Mr. LEWIS: The Clerk but I don't know -- because up the hill are a lot of offices now.

Mr. PAUL NIEDZWIECKI: Yes.

Mr. LEWIS: I think Health is up there. Bill Clark, he's retired, that's up there. The Extensions up there, right?

Ms. TAYLOR: No.

Mr. LEWIS: They're in the other building, right?

Commissioner LYONS: Right, in the basement.

Mr. LEWIS: So is that also?

Mr. PAUL NIEDZWIECKI: Yes. Well, the only thing that we're trying to do is to create space.

Mr. LEWIS: I know but space for someone.

Mr. PAUL NIEDZWIECKI: Unallocated space, right. The only person with the authority to make a decision about who goes where is the County Administrator. That's it.

Mr. LEWIS: Okay.

Mr. PAUL NIEDZWIECKI: So those decisions have not been made and that's not my charge. That's not how I read it. We're just making available space.

Mr. LEWIS: If I could follow up, Mr. Chairman -- Mr. Speaker -- I always get confused.

Speaker BERGSTROM: Go ahead.

Mr. LEWIS: For me, it's difficult to understand -- I agree. I understand what you're trying to do, but unless you have a plan as to whom or what is going to go there, it appears that you create space that will then have to be reconfigured once you figure out who's going there. I know how many offices I want to put in. I know how many meeting rooms I want to put in because these are the people. That's why there should be some kind of a plan before you do construction --

Mr. PAUL NIEDZWIECKI: Yes.

Mr. LEWIS: -- and that's what I think, at least from my point of view, I'm trying to figure out exactly what's going up there.

Mr. PAUL NIEDZWIECKI: Yes.

Mr. LEWIS: And then I don't have any problem with the idea of going to construction as against design. I have no problem with voting for that. But I just think that there's got to be some plan as to whom we're going to put in those spaces so that we design space for that need.

Mr. PAUL NIEDZWIECKI: Yes. And you'll see in the report that we know the square footage of every County department what they have. So we're not making any decision -- I'm not making any decision about who's going to go where because that's the County Administrator's job.

But we have identified for the County Administrator what the

square footage requirements are. And the other issue that I think is important is that the investment that we're making up in the jail right now I think is a temporary one, so we're creating a very temporary and very flexible space that will be habitable, but it's not a long-term space for any of those departments.

Mr. LEWIS: They've got to move again?

Mr. PAUL NIEDZWIECKI: Yes, probably.

Speaker BERGSTROM: Paul, can I ask you a couple -- a few questions. First of all, and this is not just to you but maybe to John as Chairman of the Finance, and I see Mary here also, is what is the -- do you know what the term of the bond is going to be? Is it going to be a five-year bond? Seven-year bond? Is it going to be bundled with other bonds, any idea?

Mr. PAUL NIEDZWIECKI: No.

Speaker BERGSTROM: I'm just wondering if the bond -- the payments on the bond will actually outlive the purpose for which the money is used. I mean we could be paying for this after the original purpose of the expenditure is no longer relevant because we've gone on.

Mr. PAUL NIEDZWIECKI: Yes, but I do not think that that is the case.

Speaker BERGSTROM: Okay.

Mr. PAUL NIEDZWIECKI: I think the amount of money you'll recoup is much shorter than the term of the bond but you can talk to the County Treasurer or the Finance Director about that.

Speaker BERGSTROM: Mary, do you want to comment on that? We're not convened so anybody can say whatever they want as long as I approve of it.

Ms. MARY MCISAAC: Do I have your approval?

Speaker BERGSTROM: I listened to Leo so I'll listen to you.

Ms. MARY MCISAAC: Good evening, everyone. To speak specifically to the 250 and whether it's bundled or not, of course it's bundled, yes, absolutely. The term of it could be literally bundled with other things I would suggest for construction. Construction probably has a term limit of 10 years. But if the only construction in that bond sale was \$250,000 we certainly wouldn't spread it out over 10 years. We would spread it over something shorter.

As far as the question about running out the useful life and then still paying for the bond; well, first of all, really when you make a decision about term life, and I think we've talked about this a little bit before, that decision is really based on two things, affordability and useful life. So you wouldn't borrow for longer than the useful life. And certainly if you could borrow for a shorter term because you can afford it, then that's what you would do.

So inside of a bond sale, that repayment would occur based on a decision with those two criteria. Also to speak to that further, you're making an improvement in a capital asset and so you're recording an improvement to that asset at the same time. You're not just losing the money. You're not spending it and losing it.

Speaker BERGSTROM: The other question I have while you're

here --

Ms. MARY MCISAAC: Sure.

Speaker BERGSTROM: -- is the carrying cost of this bond going to be reflected in the 2017 budget if we approve it today and it's bonded?

MS. MARY MCISAAC: Well our bond sale won't be until fiscal '17.

Speaker BERGSTROM: Okay.

Ms. MARY MCISAAC: So in fiscal '18 we'll start paying the principal and interest of that bond issue.

Speaker BERGSTROM: Okay. So it's not going to affect --

MS. MARY MCISAAC: It won't affect how we contemplate '17. There might be other factors that will give us debt service for '17 but that will not be one of them.

Speaker BERGSTROM: Thank you.

Ms. MARY MCISAAC: You're welcome.

Speaker BERGSTROM: Okay. The other thing I have to ask, Paul, is that I know I've gone over old ground here as to how -- who's going to decide on what? Who's going to own what?

But, you know, I was reading when they rebuilt the World Trade Center at least what they're building there now is that the city owned the property, somebody else owned the air rights, somebody else owned the building, and they, in turn, leased the building and they, in turn, leased it out to the people who were in the offices.

Is it conceivable we could simply lease the property --

Mr. PAUL NIEDZWIECKI: Yes.

Speaker BERGSTROM: -- lease the property to the state and have them own the building and do whatever they want?

Mr. PAUL NIEDZWIECKI: Yes, a ground lease is definitely possible.

Speaker BERGSTROM: So it's still on the table, you think?

Mr. PAUL NIEDZWIECKI: Everything's on the table, sure.

Speaker BERGSTROM: Okay. Well that's all I have there. John.

Mr. OHMAN: Thank you, Mr. Speaker, and thanks for your hard work, Paul. On the window timeline, how long is this likely to satisfy the courts? I mean there's not that much space here. Are we going to run into -- it's a 5 to 10-year construction timeline.

Mr. PAUL NIEDZWIECKI: Yes.

Mr. OHMAN: And we're going to give up this space and some space in Superior Court, some space in Anastasia's building over there; is this likely to match the timeline necessary to phase the problem out?

Mr. PAUL NIEDZWIECKI: Feedback from the courts is that it would be at least five years that they would have a little bit of breathing room.

Mr. OHMAN: This particular move and the \$250,000 attached to it would likely satisfy them for at least five years?

Mr. PAUL NIEDZWIECKI: I think probably beyond five. So in

initial discussions, the Trial Court suggested that they would have enough room for 5 to 10 years, that this would make enough space for them to get to the point where they, hopefully, had a bond authorization and they were ready to go to construction.

Mr. OHMAN: Thank you.

Speaker BERGSTROM: Linda, do you have a question?

Ms. ZUERN: Yes. You mentioned in-kind work and work from the employees; have you also considered the inmates from the Barnstable County jail? They have helped the town of Bourne out in several -- don't laugh. They helped us out several times.

One time we had major damage to a pier, and they helped us out with that and saved us, you know, 100,000 or more dollars on that and helped renovate some of our schools out on the base years ago.

Mr. PAUL NIEDZWIECKI: That suggestion has come up once or twice.

Ms. ZUERN: But it's only a suggestion. You haven't really --

Speaker BERGSTROM: Linda, we're not going to call it forced labor; it's politically incorrect.

Yes, Teresa.

Ms. MARTIN: I want to return to planning one more time. So, if this \$250,000 gets approved for construction when does the planning happen and is that another chunk of money or is planning just not going to happen?

Mr. PAUL NIEDZWIECKI: Yes, I mean we've tried to narrow it down. So we're trying to do as much as we can in trying to figure out how much of the plannings of the initial budget of \$250,000 and if we sort of substitute this \$250,000 and what's happening in the jail as the short-term plan and just focus on the long-term plan, I think we can do it for \$150,000.

But as of yet, that has not been identified. So we're not -- we're certainly not going to get any help from the state this year as part of the bond bill because we don't have a design to discuss to the Trial Courts.

Speaker BERGSTROM: Yes, Ed.

Mr. MCMANUS: Paul, for the in-kind services that you're talking about, they don't really labor construction services but more the project management oversight design services that we would have to pay DCAM for --

Mr. PAUL NIEDZWIECKI: A lot of them are labor and construction services too.

Mr. MCMANUS: Really?

Mr. PAUL NIEDZWIECKI: Yes.

Mr. MCMANUS: Okay.

Mr. PAUL NIEDZWIECKI: The Facility's department is just incredible.

Mr. MCMANUS: Okay.

Speaker BERGSTROM: Okay. Paul, I have one more question to ask you. I just remembered that this room is actually designated, as you see the sign out there, is the meeting room of the Assembly of Delegates.

Mr. PAUL NIEDZWIECKI: Yes.

Speaker BERGSTROM: And those who wish to use it go through the Clerk. So now the meeting room over at the jail, which I know I use because I'm on the County Drug Task Force is sort of a multipurpose room.

Mr. PAUL NIEDZWIECKI: Yes.

Speaker BERGSTROM: Are we going to now designate that as the Chamber of the Assembly of Delegates or are we going to be one of the users? In other words --

Mr. PAUL NIEDZWIECKI: Like I said, I can't speak with any authority that anybody's going anywhere, so I don't know.

Speaker BERGSTROM: Okay.

Mr. PAUL NIEDZWIECKI: You can ask the County Administrator.

Speaker BERGSTROM: Well, thank you, very much, Paul. Unless you have something else to say?

Mr. PAUL NIEDZWIECKI: No. Other than we're sort of finishing up the report which was due back in January, so I should have that delivered to the Commissioners. I hope to present that to them on the 17<sup>th</sup> and it will sort of discuss where we are to date. And at that point, I think I'm going to hand it off to the new County Administrator and we'll see where it goes.

Speaker BERGSTROM: Okay. Thank you.

Mr. PAUL NIEDZWIECKI: All right. Thank you.

#### Communications with County Counsel Robert Troy

Speaker BERGSTROM: All right. Moving right along, we now have communications from County Counsel regarding the process for proposed amendments to the County Charter and County contracts as it relates to Charter Section 2.8, Exercise of Powers. I see County Counsel in the room so.

ATTORNEY ROBERT TROY: I have a handout here, if I could? Good afternoon, Mr. Speaker. I'm here at the request of the Clerk to answer some questions that I understand pertain to three different aspects of the Charter. That's what is on the agenda.

I've given you in the handout those excerpts to assist you in following along in terms of if my response incorporates by reference any provisions of the Charter.

Mr. Speaker, can I ask for guidance?

Speaker BERGSTROM: Yes, Bob.

ATTORNEY ROBERT TROY: Do you want me to answer questions or how do you want me to --

Speaker BERGSTROM: Well, first, we've got to make sure that you're close to the microphone. We can't hear you that well.

ATTORNEY ROBERT TROY: All right.

Speaker BERGSTROM: I guess what we're looking for is guidance as to various proposed changes in the County Charter and how they

would be affected by this body. In other words, I know there's a difference between changes that have to do with the term of office and the powers, for instance, of various Commissioners, and there are also changes that are not as -- that don't have to go to the Legislature that we can make.

So right now we have in front of us a proposed ordinance -- 17 to amend a Home Rule Charter. So can you give us an idea of how such an amendment would proceed.

ATTORNEY ROBERT TROY: Sure. And I've turned my microphone on.

Speaker BERGSTROM: Now we can hear you.

ATTORNEY ROBERT TROY: Okay. I apologize. If you look at the third page of the materials I've provided and look specifically at page 28, you'll see at the bottom of page 28 Section 9-1, which is designated and titled, "Charter Changes."

It appears at first glance that there are only two mechanisms to amend the Charter. But, in fact, there is an almost elliptical reference in the first paragraph to a third mechanism which is not in print and, therefore, not readily available. I have it with me and I can describe all three of them. But I just want to correct maybe a misconception that there are only two different methods. There are actually three.

Let me describe to you what those three are. The first paragraph refers to the provisions of Chapter 801 of the Acts of 1985, and that is a special act of the legislature in 1985 which is entitled, "An Act authorizing the voters of Barnstable County to adopt a Charter defining the functions to be performed by the County to preserve, protect, and develop the resources of the County."

In that, there are optional types of government that are also contained in the statute. For instance, Section 18 of that Act allows the County to adopt the County Manager Plan. There is -- the Section 19 is the Board Chairperson Plan. And there are other sections that kind of layout different options for counties. Section 17 is the County Executive Plan.

And the idea was that after the problems in the Commonwealth with counties, the legislature passed legislation which allowed the remaining counties to reorganize in certain ways. And that statute sets forth all of the powers. There's no dispute as to what you're going to do if you adopt, for instance, the County Manager form which, incidentally, and Dukes County has. That is a form which kind of gives muscle to a single administrator. It's a woman in Dukes County, and he or she performs the functions as a Strong Executive. So these options are all available to the County by state law, and they're not readily understood because that law, for some reason, was just identified by cross-reference. It's not in your statute books. You have to go -- you have to kind of hunt for it because it is a special act but it is available.

And I know that the Clerk has it, but we're going to make sure that -- and I'm going to ask the Clerk if she will give each member of the Assembly a copy. I will make sure that each member of the County Commissioners receives a copy just so it's a reference point.

Because that's a mechanism that is clearly available under the first paragraph. Let me summarize it very quickly. This is how it can be done, how you can use that particular section.

The County Commissioners can adopt a resolution. The second is the advisory board on County expenditures can adopt a resolution, but I don't think that the advisory board is currently in existence. And the third is a petition of registered voters. Five percent of the voters in the last election can place a question on the ballot which says, "Shall the County be authorized to enable a Charter Commission to study these options and make a decision." The catch is that if you do it by petition, it has to be filed by the last Tuesday in February in the year in which you're going to put the question on the ballot.

The second option is in paragraph 2, and I have already reviewed the Resolution, the Charter change that Delegate O'Malley has submitted. And I've advised the County that that paragraph may be utilized to adopt that changes if the Assembly so designates. That says that the Assembly has to approve by a two-thirds vote of all of its membership 66.6 percent, nothing less, to provide for the submission of the amendments to the Charter such as introduced by Delegate O'Malley.

And when they are adopted by the Assembly of Delegates, they must then be approved by a majority of the voters at the next election. And, once again, there's a date. It has to be 150 days the Assembly has to act before the date of the election. And I think Janice has calculated that because we talked in preparation for this session. That is also a mechanism that can be used to affect a Charter change.

And the third is a little bit different but it's very important because the mechanism available in the second paragraph essentially talks about changes which I would have to characterize as changes less than dramatic substantive changes to the way the government is currently organized. That says that amendments to the Charter which relate to composition, mode of election, term of office of the legislative body, which is the Assembly, or election or appointment or term of office of the chief executive or administrative office of the County, which is the County Administrator, shall be approved and proposed to the voters only after the state legislature acts.

So you need three things. You need the petition of the Assembly of Delegates approving this change.

Mr. LEWIS: By two-thirds?

ATTORNEY ROBERT TROY: Yes. No, not by two-thirds. In this case, it's a vote by -- in the second instance a majority of the full membership or the full vote of the County. In other words, the majority that you use which is -

Speaker BERGSTROM: 50 point -- 50.01 percent.

ATTORNEY ROBERT TROY: -- 50.01 percent. And after the Assembly approves the change such as this with the 50.01 percent majority, it then has to go to the legislature. The legislature has to approve it. And then if the legislature approves it, it goes on the ballot.

But there's a trick here again. The third paragraph says that

anytime you have Charter amendments under this section, the County Clerk, not later than the first Wednesday in August in even-number year, the year of the election, has to notify the secretary of the Commonwealth that the question is going to appear on the ballot. So you, once again, have a very short time because you need the petition approved by the legislative body and you need in addition to that you need the -- it also has to be approved by the County Commissioners. I'm sorry; I didn't add that. In addition to the legislative body, the petition has to be approved by the County Commissioners. It then goes for legislative approval. After legislative approval, it goes on the ballot within that timeframe.

So those are basically the three options that are available. And as you can see, they are time-sensitive.

Speaker BERGSTROM: Okay. One quick question I have to you is would these amendments be considered -- in other words, the Charter says that we act by ordinance or resolution and some other language. Now would this be in the form of an ordinance or resolution?

It also says that it has to be approved by the Board of Regional Commissioners. Now, normally, an ordinance or a resolution could be vetoed by the Commissioners and that veto could be overridden by this body. But the language that I'm reading says that it has to be approved by the Board of Regional -- so what does that mean? I don't want to hit you with a tough one but --

ATTORNEY ROBERT TROY: No, no, and I think it's a very good question. I think the provisions in Article 9 are read separate and distinct from the ordinance -- the regular legislative process, and I think they are done by exactly the words in which they use. The procedures are used. They're amendments to the Charter and they're done by petition. And so the petition would be presented. You'd have to have the requisite quantum of vote that we talked about which is different in paragraphs 2 and 3. It would go to the County Commissioners. The County Commissioners would act on the petition. And then in relevant -- it would then go -- well, it would either, depending on whether it's paragraph 2 or 3, it would either go on the ballot or go for legislative approval and then on the ballot.

Speaker BERGSTROM: Okay. Let's start with -- let's go down the end of the line and we'll start with doc and we'll work our way this way.

Mr. O'MALLEY: Thank you, Mr. Speaker and Mr. Troy. I appreciate the clarification here. I want to be sure that I'm understanding correctly that the piece -- the amendment that I submitted is not one that you're -- let me read this -- that does not represent a substantive changes to the mode of election or governance, that this is one that if -- if it were to be approved by the Assembly and the Commissioners could then go to the ballot without reference to the legislature?

ATTORNEY ROBERT TROY: That's correct. Yes, that would be under paragraph 2. And for the record, I think you and I reviewed this question and made sure that any aspects of your proposal that might implicate the third paragraph of Section 9.1 were deleted.

Mr. O'MALLEY: Thank you.

Speaker BERGSTROM: Okay. Ed Lewis.

Mr. LEWIS: I want to thank you for confusing me completely. You've done what every lawyer I've ever known has done. You have the ability to do that.

ATTORNEY ROBERT TROY: Thank you.

Mr. LEWIS: You've done that well. I am thoroughly confused only as it relates to the vote in order to pass muster by the Assembly because you appear to have said there is certain Charter revisions or amendments or resolutions or ordinances, whatever you want to call them, to the Charter that in order to pass the legislature or the Assembly has to have a two-thirds vote.

And then in the last part of your discussion there you said it only had to have a majority vote. Now, there will be or there has purported to be something that will be presented to the Assembly which was written up in a newspaper the other day which is substantive.

And if I read you correctly, that doesn't have to have two-thirds or it does have to have a two-thirds?

Ms. TAYLOR: Doesn't.

ATTORNEY ROBERT TROY: Well, I'm here basically on the -- on Delegate O'Malley's proposed Charter amendment. But let me try to summarize it without reference to the text. I was kind of trying to reading the text, which is confusing.

I think that the answer is that in addition to the statutory mechanism of a Charter commission, if you don't want to use that, you had two other options. One, you can amend the Charter but let's call it -- I think that you're Delegate Lewis has got a good term -- let's call it non-substantive. It's not minimizing it -- let's call it nonstructural; how's that? I think that's a better term.

Mr. LEWIS: His is nonstructural.

ATTORNEY ROBERT TROY: Right.

Mr. LEWIS: The one I talked about in the newspaper is very structural.

ATTORNEY ROBERT TROY: And I'm going to differentiate. So a nonstructural amendment, such as proposed by Delegate O'Malley has to be approved by 66.6 percent of this body. And if done by that, it goes to the voters.

Mr. KILLION: The Commissioners.

Mr. LEWIS: It goes to the Commissioners.

Ms. MCAULIFFE: No.

Speaker BERGSTROM: No.

ATTORNEY ROBERT TROY: It does not; it goes to the voters.

Mr. LEWIS: Okay.

ATTORNEY ROBERT TROY: The process for substantive amendments --

Mr. LEWIS: Structural.

ATTORNEY ROBERT TROY: -- structural substantive amendments, that goes to the Assembly first. And in that case, it only needs to get a majority -- 50.01 percent.

Mr. LEWIS: That makes no sense.

ATTORNEY ROBERT TROY: Well that --

Mr. LEWIS: That makes no sense that something that is substantive, something that is vital, something to the way that the Assembly operates, you only need a majority. But something that's not, then you need two-thirds.

ATTORNEY ROBERT TROY: Well, no, because this is what the substantive --

ATTORNEY ROBERT TROY: No. There are two additional hurdles for the substantive. There's approval by the County Commissioners and there's approval by the legislature. So I think what it does is it represents an effort to encourage the Assembly if they want to make structural amendments to bring those things forward to then go to the Commissioners, and then go to the legislature, and then go to the ballot.

It's actually a more rigorous process but it is less rigorous at the Assembly level. And my interpretation of it is that the legislature was trying to encourage if there was a needed amendment. And this is not speaking to any amendments that may be proposed or have been proposed. This is just general.

There is the thought that if there were a structural change and the process -- the government body wasn't working, the county wasn't working that they want to encourage that process by saying at the Assembly you only need 50.1 percent. You go to the Commissioners, you need 2 of the 3. You go to the legislature, you need to get legislative approval. And then you go on the ballot and you need to get the approval by the voters.

So it is a rigorous process but it's one that encourages the genesis -  
- the start.

Mr. LEWIS: Not even close to done. I mean I understand your point, but if I could just follow with one? It marginalizes the Assembly. And if you're talking about realism, you're going through a lot of -- you have to go through a lot of hoops, but the hoops are just hoops that are out there and are not part of the real -- well, I'll leave it at that.

Speaker BERGSTROM: Don't shoot the messenger, Ed. He's just telling us what the story is, not to justify it.

Mr. LEWIS: I'm sorry.

Speaker BERGSTROM: Okay. Are we going down the line here? Anybody? You've got something, Ed?

Mr. MCMANUS: Yes. In your description you said after it's approved by the Assembly and then by the Commissioners and it goes to the legislature, you indicated they must approve it. By must, you mean they must if it's to move forward?

ATTORNEY ROBERT TROY: Oh, exactly.

Mr. MCMANUS: Yeah.

ATTORNEY ROBERT TROY: Right. If the legislature --

Mr. MCMANUS: Kills it.

ATTORNEY ROBERT TROY: -- yeah, it's over. Yes, I

apologize. Maybe the better word would be it requires the approval of the general court.

Mr. MCMANUS: Okay. And then in some commentary in various newspaper sources, it's been suggested that people who want a change in the County structure will take a petition straight to the state legislature; is that allowed?

ATTORNEY ROBERT TROY: Well, the legislature itself has plenary authority to do anything so that's a given. It's a principle of legislative authority and there's nothing that can be done about that.

However, that is not commonly the process and that would be very, very unlikely in my view for the legislature to take action. Even in towns when towns propose Charter mechanisms, the legislature always wants a comfort level. They want to vote. They want to know that the town is in favor of it either through the town meeting or through some electoral process.

So given -- this is only based on history, given the history of legislative action, it would be highly unlikely for the legislature sua sponte to take action particularly when they had set forth a specific legislative provision in their own law. But it doesn't mean that they can't do it because they can do anything.

As you know, other counties when there were significant problems that were approaching the level of financial scandals, the legislature did take action. They didn't wait for the County; the County wasn't going to do anything because they were the problem.

Mr. MCMANUS: Okay. Thank you.

Speaker BERGSTROM: Okay. Bob, just a quick question. Actually, I agree with you there. I think there's an inscription in Latin over the legislature which means translates into to "When in doubt, do nothing." So if they have an issue with anything, they're not going to act on it.

But what if, indeed, the proposal here before us today is approved by 66 percent -- I know you'll be in contact with Janice. I mean filing it with the legislature is basically -- do we do that through a legislator or do we just send them a note or an email? Do you know what the process is?

ATTORNEY ROBERT TROY: Well, I think the process would be that if the Delegates do, in fact, vote to submit a proposed amendment that would be the title of the document. It's "Submission of Proposed Amendment to the Barnstable County Charter." And if, in fact, that were done, the Clerk upon receiving and certifying that vote would forward a copy of that obviously to our area legislators, our senator, and representatives but also directly to the Speaker of the House of Representatives and the General Counsel.

Speaker BERGSTROM: Okay. Thank you. Pat and then Linda.

Mr. PRINCI: So I haven't been up in the State House in a while, but I'm certain that the process hasn't really changed in such that these types of Home Rule petitions can be passed through in formal sessions; is that still correct to your knowledge?

ATTORNEY ROBERT TROY: I couldn't answer that as to -- I mean --

Mr. PRINCI: Just as far as I mean timelines and such go. People here know that things go to the legislature and they start to think, “Oh no.” Like Speaker Bergstrom said, it’s just going to sit there in committee for a while unless there’s any action. And a lot of people are concerned with certain things having to go before sometimes having a full roll call vote through the legislature can take some time.

However, from my knowledge is that these types of Home Rule petitions can be voted on through informal sessions which are held probably about two or three times a week so.

ATTORNEY ROBERT TROY: Yes, I’m not going to disagree with that. As I have said, the legislature has plenary authority and, frankly, is able to make its own rules. And if the legislature wants to do something, the legislature will do it.

Speaker BERGSTROM: Okay. Linda, do you have a question?

Ms. ZUERN: Yes. Commissioner Cakounes was addressing this earlier, and he brought up Section 1-4 where it says, “Construction” and what the powers are of the Assembly and County government. And it talks about developing services to meet the problems across municipal boundaries and it talks about more services provided and that kind of thing.

At the end of that section, it says cities and towns are and shall remain the broad repository of local police power in terms of the right of power to legislate for the general health, safety, and welfare of their inhabitants.

So would we have to change that part of the Charter before we can even adopt something like this to be part of the Charter because we really don’t have the power as a County to pass something like this for a Bill of Rights and have that police power.

And then in Section 8 of this Bill of Rights, it does say, “Enforcement by Barnstable County through an action and equity, Barnstable County government may enforce this Bill of Rights through an action brought in a court of competent jurisdiction and be entitled to recover all costs of litigation including without limitation expert and attorney's fees.” So it seems to be contradictory to what a Home Rule Charter is.

Speaker BERGSTROM: Do you want to answer that?

ATTORNEY ROBERT TROY: The only thing I can say about that is that I think the process -- obviously, when the proposed amendment is presented to the Assembly, the Assembly has the authority to amend that amendment and shape it as it wishes.

Part of that process, I guess, would be the kind of judgment of the Delegates as to whether or not they felt different provisions should not be contained in the proposed amendment.

But I think that the language in Section 9.1 as to Charter changes is broad enough to allow the Assembly to fashion and shape a proposed nonstructural amendment and send it to the legislature.

Now the issue that you raised is one that I know that the legislature has looked at in the past. And, as a matter of fact, in many of the towns and I

believe I have seen this in my practice, I believe in the towns of Provincetown and Bourne there is a similar provision for authorizing an enactment. One that I have similar doubts about but it went to the legislature and were passed. The legislature has allowed these.

So that's ultimately what this is -- this whole mechanism is in both cases you are presenting or kind of writing, either to the voters or to the legislature, you are fashioning something and it's up to them ultimately to see what they want to do. If it's not structural, there's, obviously, more authority. But if it's structural, then the legislature still look at it.

Ms. ZUERN: Thank you.

Speaker BERGSTROM: Bob, the one question I want to ask you, and this goes to Linda's questions, is I, as Speaker, basically have a policy when somebody submits something, they do it at their own risk. In other words, if it's defective or something, you know, that's their problem and they should straighten it out before they submit it.

The alternative to that is I could refuse to accept something that's defective. So, I mean, I just wondered from your experience with the County whether which one of those policies is the best one to follow because I don't want you to have to do a lot of work. I don't want people to be saying, "Well, I'm submitting this article but I'm going to run it by the Clerk and I'm going to run it by the County attorney. I want to make sure everything is fine before I submit it." I feel, personally, that should be up to them and if they want to discuss it with you they can.

But have you had experience with this in the past with the Assembly?

ATTORNEY ROBERT TROY: Well, my experience is that there's a liberal attitude to accepting different ideas from members of the Assembly from the Delegates. And after it is submitted and it's submitted in appropriate procedural form, if there are questions about substantive or about the shape of the proposal that are legal, they are referred to County Counsel and we are happy to work on that because the idea is if it's something that the Assembly wants to get done, we want to shape it in a way that it's not subject to question.

Speaker BERGSTROM: That's normally done after it's --

ATTORNEY ROBERT TROY: After it's submitted, correct.

Speaker BERGSTROM: After it's submitted, okay.

ATTORNEY ROBERT TROY: And that's what I did incidentally. But I actually did it after it was submitted, but I kind of worked with Dr. O'Malley about certain concerns that I had. I just expressed my concerns and then he said, well, this is what I'm going to do. He made a decision but I just kind of flagged the different areas including the area that Delegate Zuern just spoke about.

But given everything that was done to amend the original proposal, I believe that it is eligible and fits within the parameters of paragraph 2 of Section 9.1.

Speaker BERGSTROM: Okay. Thank you. Yes, Suzanne.

Ms. MCAULIFFE: I don't want to cut off questions but I wanted

to go onto contracts. That's also on the agenda.

Speaker BERGSTROM: Oh yeah, that's fine. Yes, let's do that.

Ms. MCAULIFFE: And I did want to just make one comment before I -- to the Delegate from Barnstable. My experience with Home Rule petitions is you don't necessarily know what's going to go quickly and what's not. Towns have sent Home Rule petitions up to the legislature year after year after year and they've not acted on them.

So I'm not exactly sure what the process is and why they don't ask sometimes or why they do. So if we do end up with a Home Rule petition, perhaps we need to get information about the exact process. But I do know that the Town of Yarmouth had frustration with several Home Rule petitions as did other towns.

My second -- my question relates to contracts. I've seen on the County Commissioners agenda for the last several weeks that there have been a lot of contracts that have been on the agenda for specifically, I guess, regarding the Cape Light Compact, and I think CVEC, and the County. So I was sort -- it sort of peaked my interest.

And if you read the Charter on page 11, which is under the 2.8, "Exercise of Powers for the Assembly" and you go down to (vii), the Assembly "Approval of contracts presented by the board of regional commissioners."

And then you go to page 14, which is the Powers and Duties of Commissioners, and it says that they sign all deeds, contracts. It doesn't really address approval.

So my question is do you take the Charter at its word? Is approval required before signing or is signing considered approval; number 1? And it says, "Context presented by the board of regional commissioners to the Assembly." How do they decide what contracts come forward? What contracts don't? What contracts are relevant to the Assembly to sign? What aren't?

ATTORNEY ROBERT TROY: I think the answer to the question -- I think you have to look at the entire document in its totality. In Section 3.3, I think this form -- and, incidentally, I just want to make clear so that anything that I had spoken about today is just theoretical. I don't have any position on anything that's before the Assembly. But I think there are some fundamental rules that apply.

One is, if you look at Section 3.3, the first paragraph which you've cited a subsection (g) is most important. It says, "The Commissioners shall have all the powers, rights, and duties commonly associated with the office of chief executive of a local government unit." And I think that's a broad grant of authority to the Commissioners that this form -- it doesn't have to be. You could do it anyway you want but that's the Charter that we have. And I believe that executive authority includes the right to make decisions on contracts to either decide to sign them or not sign them and, therefore, legally bind the County.

And it includes all of the authority given in Section (g). I agree with you completely that if I were drafting this document I would not use the word "sign" because I think that is not really the appropriate word in the context

of what the document intends to convey. I might use “execute” because that has a little more legal meaning within it. And I assign makes it seem ministerial or clerical and I really don’t think -- but I think the intent when you look at it all is the Commissioners have the authority to decide whether to enter into contracts. They have the authority to sign, and once they sign, those are legal documents. They’re binding in Barnstable County.

Now Section 2.8 that you have cited in subsection Roman numeral VII also says that, “The Delegates can approve contracts presented by the board of regional commissioners.” That would be when there were appropriate instances in which a contract was going to be signed -- there could be, for instance, the Assembly could pass an ordinance either requesting the Commissioners to execute a contract for certain and make as part of it the requirement that it come back to the Assembly for its approval.

Or another provision as an example says that whenever any of the property, the real property of the County is leased, the Assembly has to approve that, and, therefore, it would be appropriate in that context for the Commissioners to submit to the Assembly and say this is the contract that we intend to sign but we need your sign off as part of the lease and you are entitled to know the information, which is the basis of the lease.

Ms. MCAULIFFE: Oh, thank you. And I have a second question.

Speaker BERGSTROM: Go right ahead.

Ms. MCAULIFFE: And the only reason I bring up the CLC contracts is that there’s tens of millions of dollars going back and forth in some of these contracts. Do you review all these contracts that are signed between the County and CLC?

ATTORNEY ROBERT TROY: I do not. I do not review any contract unless requested -- if requested, I do. The contracts -- if you’re referring specifically to the CLC, I think that the CLC, which has separate counsel, its relationship with the County is not accurately understood. And I think that the Commissioners intend to deal with that issue in, and I think the CLC does because there’s a process that’s already begun, in which the role that the County does have in the Intergovernmental Agreement as its fiscal agent, that contract needs to be addressed. And the contents of that contract, I think, are going to be the basis by which the counties identification or association with the CLC is clarified. The CLC is clearly a separate legal organization. It has its own counsel and it proposes contracts. Those contracts are, obviously, reviewed by the County financial officers, and, you know, we have extremely capable people there. If there’s a legal question, then there’s consultation with me.

So I can’t say I have never reviewed one. I’m just saying as a matter of practice I don’t. That’s once again, too, something of an administrative practice by the County Administrator which can change from Administrator to Administrator and is something that a -- some County Administrator’s or Town Administrators kind of require that across the board. So that’s at the option of the County and something that’s readily available, you know, under our current form of government.

Speaker BERGSTROM: Okay. I can't -- I can't --

Ms. MCAULIFFE: I just wanted to finish up with that.

Speaker BERGSTROM: Yes, but you can't go too far -- you can't go too far into any specific contract.

Ms. MCAULIFFE: No, no, I'm not going into specifics. I'm just saying --

Speaker BERGSTROM: Okay.

Ms. MCAULIFFE: So, in terms of the way the current -- you said the way the contracts are currently structured is under review or is being looked at. These contracts that were signed in general, they are signed by CLC and the County. So, once again, the age-old question, is the County liable if it's a cosigner on a contract for CLC?

ATTORNEY ROBERT TROY: Well --

Speaker BERGSTROM: That's kind of wandering off out topic a little.

Ms. MCAULIFFE: Okay. For a future agenda.

ATTORNEY ROBERT TROY: I have a response which I don't think I can give under the Open Meeting Law, but for future, I have actually communicated some language and legal opinions about that question but I don't think it's appropriate that we deal with it.

Ms. MCAULIFFE: Okay. Fine.

Speaker BERGSTROM: Okay. Jim.

Mr. KILLION: Thank you, Mr. Speaker. Good afternoon, Mr. Troy. Along that line of the approval of contract, so would it be permissible then if the -- given the powers that are given to the executive branch to sign contracts that they could actually sign without our approval if we did not grant it to them under a resolution that came to us for approval, we denied it, they could sign it anyway?

ATTORNEY ROBERT TROY: Well, the County Commissioners have authority under the Charter to make a decision on contracts independent of the Assembly.

Mr. KILLION: Correct. So the answer to my question would be positive that we --

ATTORNEY ROBERT TROY: Yes.

Mr. KILLION: Okay. We could deny that contract and they could continue -- they could sign it regardless of our vote?

ATTORNEY ROBERT TROY: Well, it depends. It would also -- I mean a contract if it is encumbering funds is part of the budget. So to that extent, the Assembly has a role in the budgetary process.

Mr. KILLION: I guess what I'm missing in all the conversation is how this approval process is clearly defined? As you said, the powers enumerated to the executive branch are fairly encompassing. However, there's a yeah, but, okay, they can do it but there may be things that they need the approval of the Assembly for but they don't seem to be clearly defined.

And as I said, you said they could pretty much sign anything that

they felt that they were entitled to sign or execute is probably a better term. However, where it does stipulate we are given the authority to approve contracts, it doesn't seem that those two steps will fall in line, that because it clearly says they don't need our approval.

ATTORNEY ROBERT TROY: Well --

Mr. KILLION: So I guess I'm a little -- I guess if that matter could be defined a little more clearly as to what would constitute a requirement in both the legislative and executive branch to execute any contract?

ATTORNEY ROBERT TROY: And I think the answer to the question is that there could be an amendment to the Charter which would layout procedures different than in the current Charter with respect to the Assembly's role in contracts. That is something that could be. But as currently stated the County Commissioners have broad authority to execute contracts.

And, incidentally, one of the things I want to make sure -- I don't want to minimize the role -- the County Commissioners are just not signing things. There's administrative review by the County Administrator. There is very careful review by the County financial office. Their expertise guides the Commissioners. And as you know, anything that the Commissioners sign in terms of contracts is on an agenda that's posted ahead of time so that the public can have input, specific contracts.

So, for instance, if they're, you know, I'm just going to say if they're intending to execute a contract for X, there is public notice and any person including members of the Assembly certainly are entitled to express any concerns they have about those contracts being executed. They're all done in an open public meeting. Anybody can participate. So I think -- there is a process.

Speaker BERGSTROM: All right. Let me just clear this up because I think the answer is pretty simple. I had a previous discussion with County Counsel over this.

Section 2.8 enumerates the powers of the Assembly. The Commissioners can sign a contract, let's say, for IT services or something like that. But if any of the contracts that they sign infringe on our authority, for instance, to authorize or conveyance to lease of any real estate, to grant a new franchise, in other words, if that contract has to -- it comes into conflict with our authority, then they have to provide us with that contract because they're not authorized to do these things without our approval. So it really has to do with the nature of what the contract is about, I think, more than anything else.

And I agree that the language is contradictory but I mean that's the best explanation I can come out of that. Our power is enumerated and, you know, we're not certainly going to -- if they sign a contract for \$50,000 for some minor thing it's not going to come before us. But I'm going to try to move on.

Mr. KILLION: I just had one more.

Speaker BERGSTROM: Okay, Jim. Go ahead.

Mr. KILLION: As it relates to 2.8 and 2.7. The way it's written, if we have questions of anything as it relates to the County, we are supposed to address those questions through the Commissioners.

However, it appears as exception to that, perhaps matters come up in subcommittee. For example, I, as an Assembly member, if I have a question about some contracts that the IT department is engaging in and would like to see the finances, under 2.7 I would engage the board of regional commissioners and ask these questions.

However, as a chairman of the subcommittee dealing with this department, would it be allowable for me to go directly to that department and seek that information?

ATTORNEY ROBERT TROY: Well, I think that the answer to the broad delegation in Section 2.7 is the final paragraph which says, “The Assembly can by a vote representing majority” and that’s 50.1 percent, “delegate any number of its members as an ad hoc committee to consult with the commissioners or the administrator on any matter and to report back to the full Assembly with the results of such meetings.”

So that means that any time the Assembly feels that they need information or they want something to see what’s going on, they simply vote it by a majority vote and designate 1-2-3, however they want to go out and get the information and report back. That’s, I think, the broadest.

There are other provisions in Section 2.7 that talk about request of the Assembly in which they require the Commissioners and the County Administrator to appear before the Assembly as a delegate of -- as a delegate -- excuse me -- as a committee of the whole and to bring to the Delegates any records they need. That’s the way that you get records. If maybe the last paragraph is utilized and you’re not satisfied with that information, you can utilize that.

And then, obviously, there’s the third paragraph which says that you can -- if you’re not still satisfied, you can summons witnesses to attend and produce books or whatever you need.

So it’s very similar to the authority that Congress has in a Congressional committee to get information that it needs as the legislative body to see what the executive is doing. I think it kind of mirrors the federal model.

Mr. KILLION: But given that, any one member of the Assembly could make this request of the executive branch together --

Ms. TAYLOR: No.

Mr. KILLION: -- according to the first paragraph that any member can request a report. Again, would it be permissible for an individual to or a member of a subcommittee dealing with a specific branch of the County government to seek that information directly from that department or would they be forced to go through the Commissioners for that information?

ATTORNEY ROBERT TROY: I think under the current model that it is pretty clear that you go to the Commissioners as the executive branch and that you do not go to people in the administration without consulting the Commissioners.

Ms. TAYLOR: Hello.

Speaker BERGSTROM: That’s pretty much common practice in

just about all governments.

Mr. KILLION: Okay. But I'm saying so if the subcommittee had some questions about some aspect, they have to go to the Commissioners, not the specific branch that they would be dealing with?

ATTORNEY ROBERT TROY: Right. Or under the last paragraph, they could go to the Administrator.

Mr. KILLION: Correct. Thank you.

Speaker BERGSTROM: All right. I'm going to let you off the hook here, Bob, because we have a big agenda.

ATTORNEY ROBERT TROY: Thank you. Yes, thank you. I appreciate it.

Speaker BERGSTROM: But thank you very much for coming in and clearing these things up.

ATTORNEY ROBERT TROY: Thank you.

Speaker BERGSTROM: We already went through 11 and 12, communication from public officials, communications from members of the public.

### Assembly Convenes

Proposed Resolution 16-01:

To approve certain budget transfers for fiscal year 2016 in accordance with Barnstable County Ordinance 15-02.

NOW, THEREFORE,

BE IT HEREBY RESOLVED that the Barnstable County Assembly of Delegates Proclaims:

The following transfer between budget groups one and two for fiscal year 2016 are approved:

For the Children's Cove Department :

<u>Decrease</u>	<u>Salaries-Children's Cove account 0013201 5100</u>	<u>\$ 28,983.00</u>
<u>Increase</u>	<u>Misc Contractual-Cove account 0013202 5299</u>	<u>\$ 28,983.00</u>

Speaker BERGSTROM: So we will now convene and we will begin with Proposed Resolution 16-01, Children's Cove, \$28,000 budget group transfer.

John, are you familiar with this or do you know who did this?

Mr. OHMAN: I am not.

Speaker BERGSTROM: Okay. Everyone got a memo on it. Do you have any questions on this? Maybe Bob can --

Mr. BOB LAWTON: Hopefully, this item will be less intense, but the Finance Director and I are here.

Speaker BERGSTROM: Oh, wait a minute. Since we convened, I have to suspend the rules.

Mr. BOB LAWTON: Sorry.

Speaker BERGSTROM: But before I do that, I'm going to find out if you're going to serve any purpose here where we have some questions on it.

Mr. BOB LAWTON: Most likely not.

Speaker BERGSTROM: All right.

Mr. BOB LAWTON: I'm happy to be here.

Speaker BERGSTROM: Please, be quiet. Okay. Do we have a question on this? Ed.

Mr. MCMANUS: I have a motion.

Speaker BERGSTROM: Oh, your motion. Okay.

**Mr. MCMANUS: I move that we approve Proposed Resolution 16-01: Children's Cove \$28,983 budget group transfer.**

**Ms. MCAULIFFE: Second.**

Speaker BERGSTROM: Okay. It's been moved and seconded. Any further discussion? Hearing none.

**Roll Call Vote on Proposed Resolution 16-01:**

**Voting "YES" (92.58%): Ronald Bergstrom (2.84% - Chatham), Ned Hitchcock (1.27% - Wellfleet), Christopher Kanaga (2.73% - Orleans), James Killion (9.58% - Sandwich), Edward Lewis (4.55% - Brewster), Teresa Martin (2.30% - Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Edward McManus (5.67% - Harwich), John Ohman (6.58% - Dennis), Brian O'Malley (1.36% - Provincetown), Patrick Princi (20.92% - Barnstable), Julia Taylor (14.61% - Falmouth), Linda Zuern (9.15% - Bourne).  
**Absent (7.42%): Marcia King (6.49% - Mashpee), Deborah McCutcheon (0.93% - Truro).****

Clerk O'CONNELL: Mr. Speaker, Proposed Resolution 16-01 passes with 92.58 percent of the Delegates voting yes; 7.42 percent are absent, now known as Resolution 16-01.

**Committee Report**

Speaker BERGSTROM: Thank you. And now for committee -- we'll need a Committee Report. I'll look to John on approval of the minutes and a report on 15-14.

Mr. OHMAN: Thank you, Mr. Speaker. I would request from the members present at both of these sessions of the public hearing on Proposed Ordinance 15-14 to approve the minutes as presented.

Ms. TAYLOR: Aye.

Ms. MCAULIFFE: Aye.

Ms. MARTIN: Aye.

Mr. OHMAN: Aye.

Mr. OHMAN: Thank you.

Speaker BERGSTROM: Okay. And now do you want to give the presentation of 15-14 -- although we should know it but just formally give a motion to --

Proposed Ordinance 15-14:

To amend a portion of Ordinance 15-05 adopted by a vote of the Assembly of Delegates on June 17, 2015 and approved by the Board of Regional Commissioners on June 24, 2015, which amended Ordinance 15-02 adopted by a vote of the Assembly of Delegates on April 22, 2015 by deleting the phrase “County Complex Design” in Section 1(d) and inserting in its place “County Complex Construction”, so that the amended vote reads in its entirety as follows:

To authorize the County to purchase capital equipment, purchase a conservation restriction and implement capital improvements for use in conducting the business of the County and to borrow money to pay therefore;

Barnstable County hereby ordains:

Section 1: The Board of County Commissioners is hereby authorized to purchase capital equipment, purchase a conservation restriction and implement capital improvements for use in conducting business of the County as follows:

- a.) Purchase the following equipment for the Health and Environment department for use in conducting business specific to the operations and services of the Barnstable County Commissioners.

	<i>Finance Account Number</i>	
Replacement of gas Chromatograph	\$89,000	0053028 5838
Mass Spectrophotometer (GCMS)		
Replacement of small equipment	\$ 8,900	0053028 5839
Total cost	\$97,000	

- b.) Purchase a conservation restriction by Barnstable County for use in conducting specific services of the Barnstable County Commissioners.

	<i>Finance Account Number</i>	
ARC Conservation Restriction	\$250,000	0052308 5864
Purchase		
Total cost	\$250,000	

- c.) Purchase the following equipment for the Information technology department for use in conducting business specific to the operations and services of the Barnstable County Commissioners.

	<i>Finance Account Number</i>	
Software licensing	\$325,000	0051058 5849
Total cost	\$325,000	

- d.) Implement the following capital improvements for the Facilities department for use in conducting business specific to the operations and services of the Barnstable County Commissioners.

	<i>Finance Account Number</i>	
First District window	\$ 60,000	0052018 5817
County Complex Construction	\$250,000	0052048 5829
Superior Courthouse heating	\$269,000	0052038 5802
Registry of deeds windows	\$150,000	0052058 5817
Registry of Deeds epoxy	\$ 15,000	0052058 5830
Children’s Cove addition	\$ 72,500	0052088 5808
Children’s cove security gate	\$ 12,000	0052088 5812
County Complex paving and new drains	\$165,000	0052048 5815

<u>Fire Academy HVAC</u>	<u>\$ 30,000</u>	<u>0052168 5802</u>
<u>Replacement</u>		
<u>Fire Academy new roof</u>	<u>\$ 60,000</u>	<u>0052168 5802</u>
<u>Total cost</u>	<u>\$1,083,500</u>	
<u>Total cost of equipment, improvements, and projects = \$1,755,500 – and;</u>		

Section 2. For the purposes set forth in Section 1, the County treasurer, with the approval of the County Commissioners, may borrow from time to time, on the credit of the County, such sums as may be necessary, and may issue bonds or notes of the County therefore;

Section 3. All bonds or notes issued pursuant to this proposed ordinance shall be signed by the County Treasurer and countersigned by a majority of the County Commissioners. The County may sell securities at public or private sale upon such terms and conditions as the County Commissioners may deem proper but not at a price of less than par value. Indebtness incurred under this proposed ordinance shall, except as herein provided, be subject to chapter thirty-five of the Massachusetts general Laws.

**Mr. OHMAN:** Thank you, Mr. Speaker. Yes. The problem is Mr. Niedzwiecki was quite articulate in giving you the rationale for this but we did meet twice on this.

And what I really liked about this Proposed Ordinance -- what I did not like is what was articulated by Delegate Martin is that it does seem to leave a gap going forward on the presentation of looking at the new structure proposal under the design part.

But, really, what this is is a Band-Aid that we really need to do because the court system desperately needs this money and, financially, I think it's a tremendous bang for the buck. Because for a very short amount of money, we're going to get a lot more rent over the next coming few years.

And also we're going to get -- we planned most of the capital project costs going forward on the same amount. We have a lot of stuff going on in these buildings that needs a lot of capital money and the state will reimburse us on a greater level for that.

**So I recommend that you approve the ordinance as written.**

Speaker BERGSTROM: That's a motion to approve. Do I hear a second?

**Ms. MCAULIFFE: Second.**

Speaker BERGSTROM: Okay. Moved and seconded. Do we have any further questions on this? I will then take a vote.

**Roll Call Vote on Proposed Ordinance 15-14:**

**Voting "YES" (92.58%):** Ronald Bergstrom (2.84% - Chatham), Ned Hitchcock (1.27% - Wellfleet), Christopher Kanaga (2.73% - Orleans), James Killion (9.58% - Sandwich), Edward Lewis (4.55% - Brewster), Teresa

**Martin (2.30% -Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Edward McManus (5.67% - Harwich), John Ohman (6.58% - Dennis), Brian O'Malley (1.36% – Provincetown), Patrick Princi (20.92% - Barnstable), Julia Taylor (14.61%- Falmouth), Linda Zuern (9.15% - Bourne). Absent (7.42%): Marcia King (6.49% - Mashpee), Deborah McCutcheon (0.93% - Truro).**

Clerk O'CONNELL: Mr. Speaker, Proposed Ordinance 15–14 passes with 92.58 percent of the Delegates voting yes; 7.42 percent are absent, now becomes Ordinance 16-02.

Report from the Clerk

Speaker BERGSTROM: Okay. The next item of business, a report from the Clerk.

Clerk O'CONNELL: Just quickly, I think I placed an invitation in everyone's folder today. There will be a swearing in ceremony on Friday the 12<sup>th</sup> in the main courtroom for Justice Katheryn Hand and the Delegates have been invited to attend that at 3 o'clock.

That's it.

Other Business

Speaker BERGSTROM: Okay. Next item...other business, is discussion of Proposed Amendment to Home Rule Charter, Barnstable County Bill of Rights proposed by Delegate Brian O'Malley of Provincetown. And I'll toss this off to Dr. O'Malley.

Mr. O'MALLEY: Thank you, Mr. Speaker. I move the Proposed Amendment to the Barnstable County Home Rule Charter, entitled, "Barnstable County Bill of Rights," as distributed, which was introduced at a prior session. Briefly --

Ms. MCAULIFFE: Second.

Mr. KANAGA: Second.

Speaker BERGSTROM: Before you do that, Brian, you know that if you move it, when you get a second it's now on the table for vote.

Mr. O'MALLEY: Oh, I'm sorry. Yes, I'm sorry. So you can either remove your motion and discuss it or you can ask for a second, in which case we're going to vote on it. So it's up to you while I'm doing this; okay.

So right now we've got a motion on the table.

Mr. O'MALLEY: I'm seeking a second.

Mr. KANAGA: Second.

Speaker BERGSTROM: Okay. Moved and seconded.

Mr. O'MALLEY: Are we now open for discussion?

Speaker BERGSTROM: We're now open for discussion.

Mr. O'MALLEY: Am I recognized?

Speaker BERGSTROM: Yes.

Mr. O'MALLEY: Thank you, Mr. Speaker.

Speaker BERGSTROM: I recognize you right over there.

Mr. O'MALLEY: In the fall of 2013, a diverse group of residents from across the Cape came together and studied for a weekend at what was known as Democracy School. This was taught by the Center for Environmental Legal -- the Center for Environmental Legal Defense Fund.

These people were largely motivated by the effort to stop NSTAR, now Eversource, from applying pesticides, including Roundup to the aquifer -- to the power line rights-of-way. And given our sandy soil and sole-source aquifer, we were concerned because Roundup alone is associated with a host of human toxicities.

Now all 15 towns have voted no repeatedly but the spraying continued. So we learned in Democracy School about a number of counties across the nation that were trying to control industrial feed lots, hydrofracking, corporate-scale water extraction, and other environmental disasters. And we learned about an effective defense in the -- in what's known as a rights-based ordinance, which is a Home Rule law which gives communities legal standing to challenge such corporate assaults on local voice, zoning, and governance.

Now that comes to a point that we came to understand about the distinction between regulatory and definitional law. Regulatory law is the kind of thing about how much sodium can be in your drinking water or how much Mercury can be in our seafood. Anything within the limits is protected. Municipalities and regional government have no legal standing to contest these standards which are set usually by state and federal level.

Definitional law, on the other hand through rights-based ordinances, confers legal standing through a Home Rule process. And across the country, communities have enacted such rights-based ordinances to successfully enable those counties, cities, and towns to protect the health and safety of their public by having legal standing to protect defined Home Rule rights.

Now it happens that our discussion and our study and our dialogues were all happening and parallel to but very much within an awareness of what was going on here, the County Charter review process that was concluding that same spring.

So we determined, through our work, to craft such a protective and legally defensible Home Rule assertion of our rights, the one we propose today.

We expect as we talked about this that it will help us to define what we see as the mission, the purpose, the function of Barnstable County -- the County itself, which we think is an important preliminary to before we get to what is its structure.

So we read in the Charter, adopted in 1988, references in the Preamble our rights in this paragraph, "In order to gain for ourselves and for our communities all of the rights, powers, privileges, duties, and obligations to be derived from regional government."

But on further reading, the word "rights" is never again referenced. So this proposed definition of our basic environmental rights is intended to look

to the future, as human-caused changes bring environmental and climate threats to our fragile peninsula.

I will do a very brief review of the rights this proposed amendment would assert. First, a declaration that the people are sovereign and that self-governance by law is the instrument of policy to “protect the health, safety, and welfare of natural persons and our natural community.”

We here declare our right to proactively pass law to protect ourselves in these following defined areas, specifically: the right of the human community on behalf of our biosphere to control and limit the toxins, pollutants, fertilizers, and radiation that we impose. The right to have clean drinking water. The fragile aquifer beneath our sand right under our feet. The right to a sustainable local food system to grow, raise, produce, and sell or distribute foods generated from sustainable farming practices and to be free of chemical and genetic toxicity. The right to develop sustainable energy resources, as determined by each town, with a goal of energy self-sufficiency.

We are a peninsula with enormous wind and tidal energy available. We should be able to develop a renewal energy industry that both promotes local growth and employment but brings energy independence.

And rather than listening to me expand on each of these, we have six people, if this body grants permission, who have helped to draft this proposal here to give a brief perspective on their engagement in this effort and on each of these points. I'll come to that later.

The amendment to the Charter imposes no costs or mandates on Barnstable County. There are no rules here. There are simply rights asserted. It would give the County legal standing to intercede to defend those Home Rule Charter defined rights.

This amendment, as we've heard, if approved by two-thirds of the Assembly, will appear on the ballot in Barnstable County next November where a simple majority would prevail.

And, finally, the long first sentence of our Home Rule Charter after the reference above to the rights goes on to declare that the purpose of our County government is to deal -- quote, “Deal with regional issues which transcend existing boundaries of municipal governments,” as we heard earlier this afternoon.

This proposed Charter amendment seeks to strengthen the legal hand Barnstable would hold to backstop our towns when they face threats to these very basic rights.

We believe this amendment clarifies and amplifies the supportive role of County government in its relationship to our towns, building on the original intent of the Charter and look forward to an engaged discussion.

Now, it is -- I am going to ask this body to suspend the rules in a way that we do not usually do. But the intent of this process was to make a coherent presentation. It would not have been had everyone been at the beginning and, quite frankly, we couldn't all be here right at the beginning. So, I am going to ask the body to suspend the rules and allow four people to make very brief

presentations.

Mr. OHMAN: So moved.

Speaker BERGSTROM: That's a motion to approve -- to -- it's a motion to suspend the rules; do I have a second?

Commissioner CAKOUNES: I have a point of order, sir.

Speaker BERGSTROM: You can't make a point of order because we've already convened and only the Assembly can speak to us, Leo. That's my point of order.

Commissioner CAKOUNES: Yes, but you're about to change the rules and allow a presentation to be made that's not on the agenda and it's not fair for people that would have attended and made a presentation on the other side of this argument, sir. I think it's improper to suspend the rules --

Speaker BERGSTROM: Leo.

Commissioner CAKOUNES: -- and allow a presentation by four people.

Speaker BERGSTROM: Leo.

Commissioner CAKOUNES: I just want to go on record as saying that. Thank you. You're not even holding a public hearing on this. It's wrong.

Mr. LEWIS: I'll second the motion.

Speaker BERGSTROM: Good thing I have tremendous patience.

First of all, we have a motion on the floor. We can't accept any more discussion unless the motion is seconded. I don't want to stand on ceremony but I know how to run a meeting. It's been moved by -- okay. It's been moved. Now is there any discussion on the motion to suspend the rules? Okay.

Ms. ZUERN: Yes.

Ms. MCAULIFFE: Yes. I think this is too important an issue to jam into little two-minute time excerpts of people who are going to try and fit into a time constraint that we have because of wanting to not take over the Assembly's business meeting.

I would prefer that -- I don't want to suspend because I prefer to have a full presentation in the public where this important issue can be given due consideration. I think that this is the business part of our meeting where we do our business, and I believe that it's -- it should be for our business. We do suspend to sometimes talk to staff, but I'm sort of a stickler for rules, and I believe that we should do our business when we do our business and have our public presentations when the agenda is set for public.

Speaker BERGSTROM: All right. I don't know whether the motion to suspend the rules is actually debatable. I don't have my Robert's Rules of Order with me. I'll take a quick comment, yes.

Ms. TAYLOR: I, unfortunately, have to leave, and I didn't think this was going to be voted today because it was put forward as discussion. And so I thought that it was going to be discussed but it would be voted another time.

Commissioner CAKOUNES: Yes.

Ms. TAYLOR: So I'm apologizing that I have to leave so, of

course, I'd prefer the plan of doing this another time.

Speaker BERGSTROM: All right. Linda.

Ms. ZUERN: I also have to leave around 20 after six because I have a meeting at seven. So I would rather have this at another time as well.

Speaker BERGSTROM: Okay. Well I mean I hope that the proposals -- the proponents of this realize that under the rules of the Assembly, since a certain vote is required, any Delegate who is not here is counted as a negative vote. That's all you have to know. Okay.

**So I'm going to take a vote. I'm not -- I'm going to take a vote on this, the motion to suspend the rules right now and I'm going to take a voice vote -- call for a voice vote.**

**Roll Call Vote to suspend the rules:**

**Voting "YES" (15.91%): Teresa Martin (2.30% -Eastham), Edward McManus (5.67% - Harwich), John Ohman (6.58% - Dennis), Brian O'Malley (1.36% – Provincetown),**

**Voting "NO" (76.67%): Ronald Bergstrom (2.84% - Chatham), Ned Hitchcock (1.27%- Wellfleet), Christopher Kanaga (2.73% - Orleans), James Killion (9.58% - Sandwich), Edward Lewis (4.55% -Brewster), Suzanne McAuliffe (11.02% - Yarmouth), Patrick Princi (20.92% - Barnstable), Julia Taylor (14.61%- Falmouth), Linda Zuern (9.15% - Bourne).**

**Absent (7.42%): Marcia King (6.49% - Mashpee), Deborah McCutcheon (0.93% - Truro).**

Clerk O'CONNELL: Mr. Speaker, motion to suspend the rules fails with 76.67 percent voting no, 15.91 percent yes, and 7.42 percent absent.

Ms. MCAULIFFE: How do we get around the vote? Can we do that?

Speaker BERGSTROM: If Dr. O'Malley is the proponent of this ordinance and he has presented it to the -- he can at any point withdraw his motion and then a second would withdraw it. If he wants to go on a vote, he can. I've explained this to him and everybody else in the beginning. So, anyway, you're up, Doc.

Mr. O'MALLEY: Mr. Speaker, I'll withdraw the proposed amendment at this time and --

Speaker BERGSTROM: You better withdraw your motion to approve but you can still discuss --

Mr. O'MALLEY: Motion to approve; that's correct.

Speaker BERGSTROM: Okay. Do we have the second withdrawal?

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: Second, okay. So you're back on the -- you're back on the podium there.

Mr. O'MALLEY: So I would hope -- this is an important topic and

it's not one that should be decided in haste, and I understand that we are all -- this meeting has gone on long, and I don't want to push it.

We came prepared to give a very substantive presentation and as the hour is at this point, I think we should -- I would like to request that this be assigned for a public hearing at the appropriate time when it can be presented appropriately.

Speaker BERGSTROM: Well, that's up to me, and I'll be more than happy to do that; okay. Yes, Pat.

Mr. PRINCI: Mr. Speaker, just for clarification. So, basically, the way I -- the reason why I voted no was, one, because Generally when these types of matters that are on for our business and I know that you had mentioned earlier regarding public comment. You mentioned it a few times. I believe you were doing that, I don't know for sure, in thinking that people might have comments relative to this.

Speaker BERGSTROM: Yes.

Mr. PRINCI: So I just want the folks to know that are out there it's not as if we're trying to allow people not to speak. It's an issue where we had that opportunity for public comment. So, perhaps, if it was handled during public comment, there could have been a vote on this matter today. Thank you.

Speaker BERGSTROM: Yes, Ed.

Mr. LEWIS: I hope that -- I know we're getting into, you know, within the next week/two weeks, we're going to start on the budget, and Delegate O'Malley has put a lot of work into this. He's, obviously, put a lot of thought into it. So I think it deserves to be put somewhere at the beginning of the meeting in where the committee of the whole so that we can discuss it, so that the people that want to make a presentation can make a presentation.

And to Commissioner Cakounes's point that some people want to make a presentation on the other side, that's fine too. But I don't think we should give this short shift.

We go through a lot of stuff here which took a long time today, things that we knew about in advance. But I really think we need to give this some time and it should be not at ten minutes to six when people have to leave. Although, I would love to see people not leave whenever it is 6 o'clock like it's -- they turn into a pumpkin.

Commissioner CAKOUNES: I've got cows to feed.

Mr. LEWIS: You have cows to feed.

Speaker BERGSTROM: I will -- I'll assign this at the first available opportunity.

Yeah, Ed McManus, did you have something to say?

Mr. MCMANUS: I've yet to have gone through -- I think this body having a public hearing on a matter such as this, is there a procedure that --

Speaker BERGSTROM: To be honest with you, unless I find some ordinance or resolutions to the contrary, I think this should go directly to the entire Assembly. I don't think we need a subcommittee to make a recommendation.

Mr. MCMANUS: No, no. I'm not talking about that, but in terms of holding a public hearing in front of the Assembly, is there a procedure for that?

Clerk O'CONNELL: Well, based on what I read in the Charter, a proposed amendment to the Charter does not -- it's not coming in as an ordinance and, therefore, it's not required to go to a committee. A public hearing is not required for it. And that section --

Mr. MCMANUS: But you can hold one though?

Mr. LEWIS: You can hold one; it's not required but you can hold one.

Clerk O'CONNELL: I can only tell you that it's not required and it was placed on the agenda.

Mr. MCMANUS: Okay. I just -- not getting a definitive answer to that, I think on a matter of this importance, it would be wise for us under our committee as a whole to schedule something that we advertise as a public hearing and take public testimony on this issue.

And then at a following business meeting or at a subsequent business meeting take up a vote on the matter.

Speaker BERGSTROM: Well, you can recommend that, Ed, but I need to decide whether I want to do that or not.

Mr. MCMANUS: I know. I'm just stating.

Speaker BERGSTROM: You know, I don't know how many meetings I want to have on this. And I think that Dr. O'Malley has certainly given us enough head's up and enough paperwork, and he's gone over this with the County Counsel so that he knows at least in County Counsel's opinion it doesn't violate any of the other provisions of the Charter.

So I think that we're mature enough to look at this and vote and have a substantive discussion and vote on it at the next available opportunity which may be as early as the next meeting because even though we're being presented with the budget on the 17<sup>th</sup>, we're not really going to be able to discuss too much of it. It's going to be more of a presentation.

So I will take, you know, I didn't want to have, you know, we went for a long time. Maybe I should've had it scheduled earlier. I was hoping we could get some discussion under public comment. It didn't happen. Julia had to leave and Linda has to leave, that's, right there, 20 -- almost a quarter of the vote of the Assembly so that's why we are where we are now. But I will do whatever I can to make this -- get this in in our next agenda.

Speaker BERGSTROM: Okay. Any other business? Yes, Chris.

Mr. KANAGA: Sorry. Just, and I mean this by way of clarification and maybe help for the next time this comes forward for discussion. But my reading of this is that it incorporates the U.S. Bill of Rights. And that document was intended to keep the government out of our private business and to stop the government from infringing certain rights: freedom of the press, freedom of religion, the right to keep and bear arms.

If we say, as this Bill of Rights says, that those rights now apply to all places of public access and private workplaces, that means I can't have a rule

against firearms in my law office, and that kind of thing worries me.

So I would encourage rethinking of if you're going to incorporate something from another document that it be carefully thought about.

Speaker BERGSTROM: Yes. Okay. Thank you. Yes, Pat.

Mr. PRINCI: Yeah, I'm just letting the Assembly know that I'm going to be introducing a petition for the Assembly to consider that would amend the Home Rule Charter, an act to the state legislature.

Speaker BERGSTROM: Are you going to do that now?

Mr. PRINCI: Yes.

Speaker BERGSTROM: Oh, okay. Well then you have to submit it to the Clerk.

Ms. MCAULIFFE: Just a request. The Assembly voted in, I believe, 2013 on a structure of County government which was five County Commissioners and the Assembly.

Speaker BERGSTROM: Yes.

Ms. MCAULIFFE: I believe it was Resolution 13-01. Would you be able to instruct the Clerk to provide a copy of that to the Assembly members?

Speaker BERGSTROM: Yes, I will.

Ms. MCAULIFFE: Thank you.

Speaker BERGSTROM: Okay. Any other business to be brought before the Assembly? Hearing none.

Ms. MCAULIFFE: Motion to adjourn.

Speaker BERGSTROM: Do I hear a second?

Ms. MARTIN: Second.

Speaker BERGSTROM: All those in favor?

Whereupon, it was moved, seconded, and voted to adjourn the Assembly of Delegates at 6:05 p.m.

**Respectfully submitted by:\**

**Janice O'Connell, Clerk  
Assembly of Delegates**

List of materials used at the meeting

- Unapproved 1-20-16 Journal of Proceedings
- Reference materials from Attorney Troy – 4 pages
- Memo dated 12/23/15 from Robert Lawton re: Proposed Resolution 16-01
- Proposed Resolution 16-01
- Finance Committee report and minutes dated 1/20/16

regarding Proposed Ordinance 15-14

- Proposed Ordinance 15-14
- Delegate O'Malley's proposed amendment to Charter titled "Barnstable County Bill of Rights"
- Delegate Princi's proposed amendment to the Charter submitted as a petition – 10 pages