

**CAPE COD REGIONAL GOVERNMENT  
ASSEMBLY OF DELEGATES**

**APPROVED Journal of Proceedings - August 6, 2014**

Speaker BERGSTROM: Good afternoon. Welcome to the Wednesday, August 6<sup>th</sup> session of the Cape Cod Regional Government, Assembly of Delegates.

I would like to call this meeting to order. And we will 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.)

Okay. Now we'll stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

Speaker BERGSTROM: Is this meeting being recorded by anyone besides our regular recording? No? Okay.

The Clerk will now call the roll.

**Roll Call (82.30%): Cheryl Andrews (1.36% - Provincetown), Ronald Bergstrom (2.84% - Chatham), Leo Cakounes (5.67% - Harwich), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Teresa Martin (2.30% - Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), John Ohman (6.58% - Dennis), Patrick Princi (20.92% - Barnstable), Julia Taylor (14.61%- Falmouth).**

**Absent (17.70%): Richard Anderson (9.15% - Bourne), Ned Hitchcock (1.27% - Wellfleet), Christopher Kanaga (2.73% - Orleans – arrived at 4:05 p.m. and left at 5:05 p.m.), Anthony Scalese (4.55% - Brewster).**

Clerk O'CONNELL: Mr. Speaker, we have a quorum with 82.30 percent of the Delegates present; 17.70 percent absent.

**Committee of the Whole**

Speaker BERGSTROM: Thank you.

I'll now need approval of today's Calendar of Business.

Deputy Speaker MARTIN: Move to Approve.

Ms. KING: Second.

Speaker BERGSTROM: Moved and seconded. Any additions or corrections to the Calendar? Hearing none. All those in favor, say "Aye." Opposed?

(Motion carried.)

Speaker BERGSTROM: Okay. You should have received a copy of the Journal of July 16<sup>th</sup> -- it seems like a long time ago, 2014. Are there any additions or corrections to the Journal?

Hearing none. Do I have a motion to accept the Journal of July 16<sup>th</sup> ?

Deputy Speaker MARTIN: Motion to Accept.

Ms. KING: Second.

Speaker BERGSTROM: Okay. All those in favor say "Aye." Opposed?

(Motion carried.)

Communications from the Board of Regional Commissioners

Speaker BERGSTROM: Okay. Communications and discussions with the Board of Regional Commissioners regarding temporary staff assignments. None of the Commissioners are here, but if Mr. Brillhart would like to address us.

Usually under the Commissioners, anybody who works for them is included so.

ADMINISTRATOR BRILLHART: Mr. Speaker/Delegates, good afternoon. Michael Brillhart. Commissioner Flynn; I just spoke with her. She is on her way here but the rain is a little bit thicker in Falmouth. So I can try to address any of the questions in regards to the temporary staffing assignments. But a little bit of background.

This particular letter was put together based upon some concerns with the Department of Finance in light of a leave of absence for Mr. Mark Zielinski. So I wanted to try to get through this memo as signed and prepared by Commissioner Chair Flynn and myself just a little bit of a background as to what's taking place right now in the Department of Finance and the financial situation of the County.

And I've broken it down into what I would call six tasks, those primarily in the Finance but some also in the Administrative side. But to let you know that right now with Mark's leave, the basic financial department has been handled through JoAnne Nelson, who is the County Accountant. And when JoAnne has any particular questions or concerns, I try to work with her as best I can in looking at a combination of the budget and the warrants that we prepare every two weeks.

Tricia Rogers is the Assistant County Treasurer, the assistant to Mark, has been and is continuing to do so, the executing of County checks and this is based on, of course, the Warrant list that is prepared.

So those two roles primarily that deal with JoAnne and Tricia, Mark would normally oversee and sign off on. But now as they do my work a little bit, JoAnne has assumed the function of Director of Finance on the interim. And so these responsibilities are being handled by JoAnne and Tricia and our payroll staff.

So, fortunately, there has been a continuation of the work level in Mark's absence with the interim promotion of JoAnne to the Director of Finance in his stead.

Going down to the item number 5, the Head Department Supervisor responsibilities. There are a number of directors that report directly to the Director of Finance Treasurer. Since Mark's leave of absence, they have been reporting to myself where I would sign off on their weekly work efforts, their budget, and their departmental operations, sign off on those types of administrative responsibilities.

And going down to Item Number 6, Maggie Downey resigned as the Assistant County Administrator and is now serving full-time, and I apologize for this, it's not Executive Director, it's the Administrator of the Cape Light Compact and that was effective August 1.

There was an initial timeline of July 1 when her role as Assistant County Administrator was to be terminated but it was continued for roughly three-and-a-half weeks, and that was based upon a number of outstanding human resource activities that

were going on whereby Maggie was serving and had served for a number of years as the Human Resources Director.

I have since taken over the human resource capacities and we are going to soon be looking into hiring a temporary part-time individual to do human resources on a part-time basis working with me.

Speaker BERGSTROM: Okay. Are there any questions for Mr. Brillhart?

Yes, Cheryl.

Ms. ANDREWS: First, it's an understatement but I'll say it, thank you.

ADMINISTRATOR BRILLHART: You're welcome.

Ms. ANDREWS: I appreciate your work very much. Just a quick question. At one point and maybe he still is, Bill Doherty was the County's rep. on the CLC. Is he still the County's rep.; do you know?

ADMINISTRATOR BRILLHART: I actually don't know but I could find out and give you a report back.

Ms. ANDREWS: The other question was who is the County's rep. on CVEC? And I think it was Mark -- Mark had a role in CVEC, so I was wondering whose taking care of that?

ADMINISTRATOR BRILLHART: Yes, Mark, had a role on the Executive Committee of CVEC, and the Board of County Commissioners recently appointed Commissioner Lyons to serve in that capacity during his leave of absence.

Ms. ANDREWS: Thank you.

Speaker BERGSTROM: Anybody else? Go ahead, Leo.

Mr. CAKOUNES: Because we just recently approved the budget, are there any paid reflections in with you mentioned that Ms. Nelson's taking on some more work; are we going to need to supplement the budget because of that or is she just continuing to do the work at the same pay scale?

ADMINISTRATOR BRILLHART: Mr. Speaker/Delegate Cakounes, in the budget there was a little bit of extra in general fund for that particular department, the Department of Finance. And so on a temporary basis, her pay scale increased up to that for the work level that she's now undertaking. But it is within the fiscal year '15 budget to pay her at that amended level.

Mr. CAKOUNES: And one more, Mr. Speaker?

Speaker BERGSTROM: Yes.

Mr. CAKOUNES: In regards to Ms. Downey leaving on August 1, I imagine is there going to be a supplement three-and-a-half week adjustment to her pay scale too because she was -- that salary was completely removed to zero and I would think to balance the budget we would need to have a supplement for it did go to August 1.

ADMINISTRATOR BRILLHART: In her role prior to August 1, her salary and benefits for the 25 percent of her work effort which was for the Board of Regional Commissioners was paid out of general funds out of the Commission -- the County Commissioners' office general funds.

We did have in there a couple of new positions neither of which have been hired yet. And so we were able to take some funds out of that particular line item for an Executive Assistant to reimburse for those three-and-a-half week timeframe.

Mr. CAKOUNES: Thank you.

Speaker BERGSTROM: Okay. Suzanne.

Ms. MCAULIFFE: Yes. I really appreciate this uncertain time right now. Do you have a date certain on when Mr. Zielinski's medical leave will end?

ADMINISTRATOR BRILLHART: We do not.

Ms. MCAULIFFE: Okay. So you're planning through September, but it could potentially be longer than that and then you'd have to kind of rethink a lot of sort of stop-gap measures if it turns out to be longer.

So I guess what I'm saying is without a certain return, this will get you over the bridge until September but then you may need to do some rethinking.

And I apologize because I think this has been discussed before and I can't remember the answer. Karen Loura, it was Maggie Downey's Administrative Assistant --

ADMINISTRATOR BRILLHART: Yes.

Ms. MCAULIFFE: -- so who is she now being the Administrative Assistant for? And I see that she's also Clerk to CLC. So does she get paid out of CLC's budget as well?

ADMINISTRATOR BRILLHART: I did some research on that yesterday and found out that all of Karen Loura's salary is paid out the CLC/CVEC budget. So none of it is out of the County's general funds.

Ms. MCAULIFFE: So she was an Administrative Assistant for CLC -- for Maggie's CLC duties and not County duty?

ADMINISTRATOR BRILLHART: that's correct.

Ms. MCAULIFFE: Okay.

Speaker BERGSTROM: Yes, Mr. Brillhart, two things. I know that Mark was Chairman of the Retirement Board. Do you know, and this is kind of out of your purview, but was he Chairman of the Retirement Board because of his position with the County or is he elected; do you know? Any idea? Because I think some of the members are elected by he may be designated.

ADMINISTRATOR BRILLHART: Mr. Speaker, I actually don't know.

Speaker BERGSTROM: I don't know. We'll find out. The other thing is, and I don't want to put you on the spot, but we're going through sort of a transition in the administration and part of that transition, you know, your position, I noticed that all of these changes were submitted under the letterhead of Mary Pat Flynn, which means that the Commissioners are still taking day-to-day responsibility of staffing, which is something that they have indicated they were trying to transition over to the Administrator.

ADMINISTRATOR BRILLHART: Yes.

Speaker BERGSTROM: You know I'm sure that you're involved in this, but have you got any discussion with them as to how exactly they intend to -- because, you know, in Massachusetts we've all moved to strong Charters where basically the manager does everything. It varies from town to town. In Chatham, the managers do everything. Some of the towns are a little more flexible. The Board of Selectmen takes responsibility.

But it was my understanding from the discussions we had with the Commissioners a few months ago that they were going to move toward a strong Administrator and that most of the staffing and recommendations would be done from your office. Have you had

any discussions with them on that?

ADMINISTRATOR BRILLHART: Mr. Speaker, only briefly. Over the last few months, they, what I would call from a practical point of view, have given me greater responsibility in working with the staff.

Speaker BERGSTROM: Yes.

ADMINISTRATOR BRILLHART: And so I think that's been beneficial for staff because they can come directly to me and ask me questions.

Speaker BERGSTROM: They don't have to deal with the Commissioners. Okay. All right. Well, that sounds -- so, anyways, is there anything else?

Well, thank you very much. I'm hoping that Mary Pat doesn't sloop through the rain to get here only to find that we don't need her anymore but we'll see. Maybe we can have her in when she arrives.

Speaker BERGSTROM: Okay. Communications from Public Officials?

#### Communications from Members of the Public

Speaker BERGSTROM: Okay. Remember now, once we convene, we only talk to ourselves or each other I should say. Please identify yourself. We know who you are but you have to --

Mr. SCOTT RIDLEY: My name is Scott Ridley; I'm a resident of Harwich. And I've been working actively on energy issues for the past 30 years. My consulting firm is Ridley & Associates. They work largely with municipalities and state governments and as well as some private clients.

I was the person who drafted the original Aggregation Plan for the Cape Light Compact. And so I thought it would be helpful for me to come in and provide some perspective. I've been following what's been going on. I'm doing a project with the County right now, as a matter of act, focused on their energy-efficiency programs and marketing those.

However, I've been watching this evolving and I thought I may have something to add here and perhaps can help things along.

The Aggregation Plan was drafted in 1998-1999 through a long -- it was an intensive process. We had several periods of consultation with the Division of Energy Resources as well as the Department of Public Utilities which was known as Department of Telecommunications and Energy at that time. They've changed their name back and forth.

But we've had extensive conversations with them. The legislation laid out a dozen points that had to be covered in an Aggregation Plan, and they were very firm on our sticking to those dozen points and covering those dozen points because their jurisdiction with the DPU was to cover those points and just oversee what the Legislature had given them.

As a result, the Aggregation Plan that was developed and then approved by the DPU covered those dozen points.

I know that there's been a question about funding and there have been certain

kinds of allegations about the Compact never had approval for mill adder. That was in the original Aggregation Plan. One of the 12 sections was funding. And there's a section in the Aggregation Plan that directly states that there would be a volumetric charge if the Compact had reached the point where they weren't receiving funds from the County anymore for operations. The state wanted to know that they're beyond the operational funds. And so that charge was in there at that time.

And so as far as, you know, any allegations that there wasn't approval for this, the DPU approved the Aggregation Plan with those charges in there, and subsequently, they approved contracts that the DPU had -- that the Compact had in other documents that included those charges going back 10 years.

It's only recently that the Attorney General's office has become concerned about that and has intervened in the case questioning those funds and the use of those funds and that's now being heard before the DPU. And the DPU is the authority here.

I should also say that way back in 1996-1997 and 1998 when the legislation was going through to restructure utilities, the Attorney General's office was not a fan of the concept of municipal aggregation.

Historically, we have a situation where the ratepayer functions of the Attorney General's office applies to private utilities. It doesn't apply to the 40 municipal electric utilities in Massachusetts. They set their own rates. And the law as written gave this kind of authority to the municipalities that were doing aggregation.

The AG's office did make an issue -- a major issue at that time. However, as more aggregations have now come forward and people proposing aggregations in various municipalities in other sections of the state, I believe the AG is seeing that they're losing some of the control that they have over ratepayer funds in private utilities.

So they have an issue here. They're trying to litigate that before the DPU. The DPU has said very clearly just last week in a decision on Hampshire Council of Governments that this is not the venue to do this. If you want to take this issue up, whether it's a fee or tax, however this is done, go to the state Supreme Court. The AG will have to determine whether they have a strong case and whether they'll do that or not.

And Stephan Wollenburg who's on the Compact staff is here and he can address some of those other issues more specifically.

I also want to say that one of the reasons that I came was I was at the Chatham Board of Selectmen's meeting last night in regard to some of these issues. And the Chatham Board of Selectmen did determine that they would write a letter to the Attorney General's office because they were concerned that they were being included with a response to the Attorney General's office that information that they were requesting was not going to be provided within the context of the DPU.

The Compact has had the position consistently that they'll provide any information the AG wants outside of that context. And as you know, they've also provided information to the Assembly in the past.

And I believe that we're at a point in time now where rather than have the Assembly go further off on these issues and have more acrimony between the Compact and the Assembly, it's time to have some members of the Assembly and of the Compact sit down and see what they can hash out for common ground. And I believe that would be

beneficial for all of the citizens of Barnstable County, and I hope that you would consider that.

But, right now, I think I'd like to turn this over to Stephan so that he can address some specific things going on in the particular case and what the Compact is doing.

Thank you.

Speaker BERGSTROM: I'm going to have to recognize him. Yes, in the audience there. Have a seat.

Mr. STEPHAN WOLLENBURG: Thank you. I also --

Ms. MCAULIFFE: Mr. Speaker, point of order.

Speaker BERGSTROM: Yes.

Ms. MCAULIFFE: Once again, this is a presentation in the public of our agenda where we cannot have a discussion or a -- ask questions or get information. I have four questions right here that I don't even know if I can ask.

I just would like to state this is not on the agenda.

Speaker BERGSTROM: Well, I understand that but since we do have the letter to DPU on the agenda and we do have the discussion about separate legal counsel in this matter, I'm going to allow him to speak but understanding that we're not going to debate with you.

Basically, say what you're going to say and then we're not going to respond. That's normally the procedure in a lot of places under public comment.

Mr. STEPHAN WOLLENBURG: I've got you.

Speaker BERGSTROM: So, keep it quick before another Assembly Delegate jumps up and they start to give me a hard time.

Mr. STEPHAN WOLLENBURG: Will do. I have something that I wanted to share so I could keep it really, really brief.

Speaker BERGSTROM: If you can hand it out and we can read it at our leisure.

Mr. STEPHAN WOLLENBURG: Okay. Great. Perfect.

Speaker BERGSTROM: I've given Mr. Bibler long consideration so you're not going to get any more time than he does.

Ms. MCCUTCHEON: Mr. Speaker, point of order.

Speaker BERGSTROM: Okay.

Ms. MCCUTCHEON: Would it be possible to have these two gentlemen engage in discussion when we've reached that point in the agenda where we're going to be talking about these issues?

Speaker BERGSTROM: That will be up to the Assembly if they want to suspend the rules.

Mr. CAKOUNES: No.

Ms. MCAULIFFE: Then how about setting a future agenda item so that we can have a discussion with CLC?

Speaker BERGSTROM: I don't want to pull rank here, but I've made a ruling and I'm going to give you a short time considering that it's going to be germane to the things that we're going to speak on the agenda later; okay?

Mr. STEPHAN WOLLENBURG: I'll be very brief.

Speaker BERGSTROM: Very brief.

Mr. STEPHAN WOLLENBURG: Okay. So, my name is Stephan Wollenburg. I'm the Power Supply Planner from the Cape Light Compact. I've met some of you but I haven't gotten a change to meet all of you.

So I just wanted to give a very, very brief update on what's going on with the Cape Light Compact's Proposed Revisions to its Aggregation Plan.

So just very, very quick background. We filed our Aggregation Plan, our revised Aggregation Plan after a 7-week public comment period, free public information sessions, an additional public comment period that was held by the Department of Public Utilities as well as an additional public hearing again convened by the Department of Public Utilities which was in Mashpee.

From the beginning, the direction of the Department of Public Utilities has been they want to keep the scope of review very limited in this case. They want to keep it focused on the proposed revisions to the Aggregation Plan.

And throughout we have been trying our best to adhere to that. That's based on direction from the Department of Public Utilities. It's also based on, and Scott alluded to this, it's based on precedent that they set in various proceedings including the City of Lowell's and the Hampshire Council of Governments.

The AG in our case as it has in those previous cases in which it was rebuffed by the Department of Public Utilities has tried to, once again, expand the scope beyond what we believe the Department said was their -- the scope of review that they wanted to include in this proceeding.

Because of that, we've objected to -- we have not responded to some of the question that the Attorney General has asked us that we thought were outside of the scope of review.

We are, however, going to provide responses to all of your questions, just not within the scope of the proceeding because, again, we don't think that it's appropriate to introduce some of those issues into the proceeding.

So we will answer all of the questions and we will post them to the Compact's website.

I should also say that when the DPU rules/makes a decision on whether or not all of the Attorney General's questions should be included in the proceeding. If the DPU says they should, we, of course, will take the answers that we will at that point probably have already produced and we will give them to the Attorney General within the scope of the proceeding.

The AG has also raised a question about whether the Compact's operational adder is a tax. It's a little bit of a radical so I provided more detail in the handout that you guys have in front of you.

And if you would like to have an agenda item and have the Compact come back and discuss this in a little more detail, I think that would be great. I think that would be beneficial for everyone, like as Scott said.

But just the very brief supports on that. The DPU has made it clear in a ruling which the AG appealed and which the --

Speaker BERGSTROM: I'd rather not get into the legal back-and-forth.

Mr. STEPHAN WOLLENBURG: Okay. That's fine. That's fine. Suffice to say, the Compact -- the DPU doesn't have jurisdiction over it. They've said that. The Compact is confident that even if they did, the operational adder is not a tax.

Again, happy to go into more details. Some of it is there, but if you wanted to have us back and have us discuss it, we would be happy to do that.

And so I'll end it there.

Speaker BERGSTROM: Okay.

Mr. STEPHAN WOLLENBURG: Again, in general, any questions, any other time you want to have us, we're happy to come.

Speaker BERGSTROM: Just one comment. I've gone through the legal back-and-forth. If you have direct communications from DPU stating that they want to limit their discussion of the Aggregation Plan to just new changes, could you please copy us with that. We got that from BK Law but I didn't get anything directly from DPU that stated -- that says we're going to keep it just to new -- just the changes.

Mr. STEPHAN WOLLENBURG: Can I respond to that in two sentences?

Speaker BERGSTROM: Okay.

Mr. STEPHAN WOLLENBURG: Okay. So it was within the procedural circumference that they gave that direction.

Speaker BERGSTROM: Verbal?

Mr. STEPHAN WOLLENBURG: Yes.

Speaker BERGSTROM: Well we don't accept verbal.

Mr. STEPHAN WOLLENBURG: I know.

Speaker BERGSTROM: Okay.

Mr. STEPHAN WOLLENBURG: I know.

Speaker BERGSTROM: I'll go to Suzanne.

Ms. MCAULIFFE: I have a question for Mr. Ridley because you wrote the original Aggregation Plan. And you said that the mil adder was approved -- this is just information.

Speaker BERGSTROM: Yes.

Ms. MCAULIFFE: It was approved for operational funds for CLC. Was the mil adder also approved for operational funds for CVEC? That's my question.

Mr. SCOTT RIDLEY: There were a dozen different purposes for the Compact that are laid out in the Aggregation Plan, and one of those purposes addresses renewable energy.

Speaker BERGSTROM: Okay. Already we're --

Ms. MCAULIFFE: That was just an information question.

Mr. CAKOUNES: Can I ask a question?

Speaker BERGSTROM: If you ask a question, Suzanne, then everyone's going to have to question.

Ms. MCAULIFFE: Okay.

Speaker BERGSTROM: I think we could discuss this. If these gentleman want to hang around.

Mr. SCOTT RIDLEY: Sure.

Speaker BERGSTROM: When we discuss it later, we'll discuss it.

Mr. CAKOUNES: I've just got one just for clarification.

Speaker BERGSTROM: Okay. You can ask me then.

Mr. CAKOUNES: All right. Through you, Mr. Speaker, could you just ask Mr. Ridley -- when he stepped up, he mentioned a number of things. And I just want the record to reflect is he a paid contractor for Cape Light Compact? Is he a member of Cape Light Compact? And is he here today in what capacity are we to take his comments today?

Speaker BERGSTROM: I think I know the answer to that.

Mr. CAKOUNES: That's all my question is. I know the other gentleman is an employee of Cape Light Compact.

Mr. SCOTT RIDLEY: Yes, I can answer that. Leo, I think the bottom line here is that currently I do have a contract with the Cape Light Compact. I'm also a customer.

Mr. CAKOUNES: Thank you.

Speaker BERGSTROM: Go ahead. Yes.

Ms. MCCUTCHEON: I just have one point of information here.

Speaker BERGSTROM: Yes.

Ms. MCCUTCHEON: Who wrote this?

Mr. STEPHAN WOLLENBURG: Compact staff.

Speaker BERGSTROM: Okay.

Mr. STEPHAN WOLLENBURG: Your attorney had nothing to do with it?

Mr. STEPHAN WOLLENBURG: The Compact staff wrote that.

Ms. MCCUTCHEON: Thank you.

Speaker BERGSTROM: All right. So, just a matter of clarification here, we have the man, Scott Ridley, who wrote the original Aggregation Plan, and we have the man here who wrote the current Aggregation Plan.

So if you want to stick pins in voodoo dolls, these are the guys to blame. We know where to go and that's it. You're done.

Mr. SCOTT RIDLEY: That's why we're here.

Speaker BERGSTROM: First of all. I'll go back to Item 8. Mary Pat, do you have anything to add to what Michael gave, a breakdown for the staffing?

Commissioner FLYNN: No.

### Assembly Convenes

Speaker BERGSTROM: Okay. In that case, are there any other members of the public who wish to address the Board?

Okay. All right. The Assembly will now convene, and we will discuss Proposed Resolution 14-01. And I'll turn this over to Leo or Jim. It doesn't matter; whoever wants to take it.

Mr. CAKOUNES: Do you want to take it, Jim?

Mr. KILLION: Leo.

Mr. CAKOUNES: Mr. Killion and I filed this a number of weeks ago. We just believe that -- and I won't speak for him; I'll speak for myself, but I just believe that it's time that the Assembly of Delegates, which is a Legislative body of County government

have their own access to their own legal opinion.

I think there have been a number of things that have come before us in which this board has taken a different look at than the Executive Board of County Government has. And I just think it would be beneficial for us to have access to our own separate counsel.

One of the things that stuck in my mind is I wrote this because I actually watched our now present County Counsel stand in front of the Executive Board when we were going through the disagreement of the budget and trying to lay out what he thought the Executive Board could do and should do as far as reaction to the budget goes.

If you remember, we had that little difference of thinking on the 2-1/2 override. And a number of times he mentioned that, you know that he was here as County Counsel but needed to specify that it also represented the Legislative body too. And I think that kind of puts counsel in a difficult position.

I only use that small example because it didn't turn into anything and it's just one of those safe examples to use.

There are a number of other issues pending. Some may explode into things that we may end up be going to court and may not. But I don't see anything detrimental by the current Assembly of Delegates supporting this proposal. I only see it as basically another tool. And I believe that we, in reading the Charter, we are within our rights to do this.

So I hope you support it.

Speaker BERGSTROM: Okay. I'm going to -- I just discussed this with Attorney Troy in relation to his ability to be here today. Actually, I was going to solicit an opinion from him but in further communications he expressed his desire to address us directly.

He also told me at the time that the Speaker can allow anyone to speak at any time in the meeting which is a diversion from the normal course of business. But he's the one that understands the Charter so you guys -- I'm going to allow him to speak even though we don't have to suspend the rules for that. He's going to tell me why we don't have to suspend the rules for that. Attorney Troy.

County Counsel ROBERT TROY: Yes, Mr. Speaker, under the Open Meeting Law which takes precedence over all other laws with respect to public meetings, the Chair or the Speaker has the exclusive authority to recognize people to speak.

Speaker BERGSTROM: Or to not recognize them.

County Counsel ROBERT TROY: Or to not recognize. And I said that before when we did a thing on the Open Meeting Law here a few years back, I pointed out the anomaly in the Open Meeting Law that most people in Massachusetts don't know exist. Most people think they have the right to speak at any public meeting. The Open Meeting Law actually says that nobody has the right to speak at a public meeting. You have the right to be there and watch, and that the Chair has exclusive control over who speaks.

And if somebody continues to speak after the Chair has said that he or she cannot, the Chair may direct a Constable to come and the person can be put in jail and confined until the end of the meeting. And this is Massachusetts so I just thought that's an anomaly.

Speaker BERGSTROM: I wish I had known that a few years ago.

County Counsel ROBERT TROY: That's the law. Let me say I appreciate -- I want to tell you what my understanding of what your options are. I have a

recommendation for you that you may want to take or may not want to take. It's respectful of everything that has been said in terms of this particular proposal.

First of all, under Section 2.4 of the Administrative Code, there is a delineation of how legal counsel is utilized by the County; the County being one organization.

And in that, the Board of County Commissioners have the authority to name the General Counsel. That is me. I've been doing that since 1992. And there is a provision for special counsel, another section and that means that when any other board, including the Assembly, if you feel you need special counsel then you, under the Administrative Code, may ask for that. And this gets into very simply how you ask for that.

Well, if it's something that you don't think there's going to be a problem, I think it's really just a matter of communication. You communicate that to the Administrator; he presents it to the County Commissioners; the County Commissioners take action.

If your request is not honored and it's negative, then you go through the Ordinance process. And, incidentally, I appreciate the Delegate from Harwich reference to my participation in that very difficult deliberation about the budget, but I think everyone -- I deal with staff. I don't deal with the Commissioners and I don't deal, except for today, on a procedural thing, the Speaker; I don't deal with any of the Delegates. I deal exclusively with staff.

And I think both Janice and the people of the County at the time when that transpired in the administration division can tell you that I gave everybody advice. I didn't, you know, betray any secrets. And, actually, the participation that I gave, and I think your Clerk can confirm this, in guiding the Assembly through the steps to override the Commissioners' budget was actually successful. And my legal advice ironically ended up with a Legislative victory over the Executive branch.

And I think it's a very good example of when you have correct legal advice. I stand or fall on whether my advice is correct. And if I have given correct advice regardless of how it falls out, then I've done my job.

And as you all know, you're all involved in municipal government. You can't keep a job like this if you play favorites and you certainly don't keep it for 22 years.

So I suggest that that I think the process works. But I also understand that you have interest that are distinct from those of the Executive branch. And in particular situations it's appropriate, not just on procedural things which is what I was guiding both the Commissioners and the Assembly during the budget deliberations. But if there is an issue that you feel that you and the Executive branch, let's call it that, have a difference of opinion, it's completely appropriate to request special counsel.

And I think we've already -- we've put that in. I was part of the team that put that in the Administrative Code because I recognize it and I support it. I have no problem. I don't have a dog in a fight between two agencies and, frankly, as you all know all of us -- we would like to work together and we would like to have the County as was noted. I think Rob O'Leary in his comments to the Cape Cod Times on Sunday basically said that the thing that he was most concerned about, the future of the County is the friction between the Executive and the Legislative branch.

We all want that friction to be as limited as possible, although, institutionally it's obviously it's going to happen.

So my suggestion is this. If you want special counsel, then all you have to do is ask for it. And if you're unsuccessful then you employ the Ordinance procedure which you used on the budget and you used it successfully.

If you want more than that, if you want something that is a kin to you having a counsel and the County Commissioners have a separate counsel, I suggest that there are problems with that. And I think the problems emanate from the authority.

I think if you look at the "Power of Appointment," which is Section 3.5 of the Charter, and the "Power to Contract," which is Section 3.3 of the Charter, those are exclusively the Executive functions and they are given in the Charter to the County Commissioners.

And I think if you want to change that, you can do that, but you have to do that through an amendment to the Charter. That's something for Charter review, something to go on that track.

Both the federal and the state model of bicameral institutions, and I think that was a very good characterization that's in the proposed Resolution. Both of those models have a single legal officer. The Attorney General represents the Legislature; the Attorney General represents the Governor here in this state.

And in Congress and in the federal model, the Attorney General of the United States represents all federal agencies including those two agencies.

And, ironically, the best example of how broad that authority is, I'm going to take you back in history and check your memory, was in the 1970s -- 1973, I believe, in the Watergate when the president, if you remember, appoints the special prosecutor to represent Congress in its efforts to remove the president. And if you remember, we all remember Elliot Richardson, Leon Jaworski, all that was -- and it ended up with the Attorney General of the United States, Elliot Richardson resigning because he couldn't do what he felt the president wanted or he couldn't do what the president asked him to do. So I suggest that the federal and state model do not allow that.

And the Barnstable County Charter I believe emulates those models, and that's why if you look at the Charter it says, "The only reference to counsel is the Cape Cod Regional Government Legal Officer," singular.

But having said all that, I want to tell you something. I am the Cape Cod Regional Government Legal Officer right now, and I don't think it's appropriate that I tell you what your needs are and how to fill your needs.

So what I suggest is this is a very good occasion on which you can request special counsel to give you an opinion as to what your rights are here before you take any action. Before we start another, you know, potential imbroglio between the Executive and the Legislative branch, I respectfully suggest that you ask the Commissioners to appoint a special counsel for you to get you answers.

And as part of that, I prepared -- I'm not going to give you any opinion in writing because I'm recusing myself. It's my duties that you're talking about. I don't think it's fair to you. I don't want to be in that situation.

I suggest that I can give you some questions, and I have three questions that along with a case, this is the final because I'm going to wrap it up; I know you've got a lot of other stuff.

There's a case right on point and that's when the Boston City Council wanted to have their own lawyer. And the City Council is in Boston, as I'm sure you're familiar.

The case is attached. It's an Appeals Court case. And what happened in Boston was the City Council said the same thing, argument, and I respect the argument. I understand it. They said, "Lookit, we see things differently" than what's called -- it's called Corporation Counsel in Boston -- "and we want to have our own counsel." And they actually went ahead and appointed somebody.

And then the question was, you know, "How are you going to pay?" And that's where, of course, it hits the pavement because you don't have any money and you might have a job but you're not getting paid for it, you're not going to do it too long.

So the court considered that question and went to the Appeals Court, and the Appeals Court ruled in that that the City Council could not have counsel separate from Corporation Counsel, that the mayor had the Executive power to appoint counsel.

The only reason why I think its important is that was the case does -- if you look at how the analysis goes, it says, "What is in the Charter?" That's the operative document that tells you what you can do. If you had it in the Charter, if it said that you can have separate counsel, there's no question. That's the right of the people to put it in the Charter, the people of Barnstable County.

So these are the questions I would urge you to consider. You can frame your own questions, but I suggest these questions simply say the first one says, "Does the Charter contain authority for the Assembly of Delegates to have counsel represented," other than the person of the title I just told you about. And if that question is in the affirmative, does the Charter contain provision for counsel to represent the Assembly other than Charter review?

If you look to Section 9.4, that's the only place in the Charter that it says the Assembly can have counsel. It says the Assembly can either have for Charter review purposes, they can either use County Counsel or they use the long title, or they can have their own counsel. And I think you've used that. You've used that in the past.

The question is - is there authority other than that? And that's, you know, have a lawyer look at it and give you an answer.

And then finally if those two questions are answered in the affirmative, if it's a go, then is the current Section 2.4 consistent with the Charter? Because it uses a word that I don't think is entirely accurate, and I think, in retrospect, it's probably not the right word. It says in Section 2.4 that nothing should be interpreted to limit the ability of the Assembly to employ. Employ is a very, very tough word because that directly contradicts the Charter which says that only the County Commissioners can sign contracts.

So if you're hiring a lawyer, it's a contract; right? I suggest that the way that I think all of this can be done if you have issues that you think you need separate counsel that you make the request, and, if not, then you file an Ordinance.

And then if you want the bigger question answered that whether or not you should have an in-house counsel who, you know, who would then I guess be head-to-head with County Counsel if that happened. That's your decision, but I think you should get a legal opinion and get the answer from someone other than me.

Thank you.

Speaker BERGSTROM: Let me ask you a couple questions before I turn this over to the rest of the Assembly.

I don't foresee us having some -- at least at this point, having someone on retainer, you know, someone basically standing and waiting for us to request them.

My concern is that if the Commissioner -- and I'm not saying they're going to do this, but let's say they had to have a budget transfer to cover some of these staffing things, and they said, "Well, you know, the Assembly of Delegates is too grumpy. They've been giving us a hard time. We're certainly not going to run -- we're going to take it from another line somewhere over in capital and we're just going to pay them out of that."

And I would say to them, "Hey, you can't do that. It's against the Charter." And they would say to me, "Well, pound sand; we're going to do it anyway."

So at that point, what do we do? What is the recourse? I mean they can come to you and offer an opinion, but, very frankly, you're on staff. I mean you don't have any Executive Authority. Just tell them what you think. What is the recourse that we have to say you have to obey the Charter? And if they say, "Well, we think the Charter allows us to do that." And I say, "Well, I think it doesn't." Where do we stand?

So this basically comes down to the authority of the Assembly. If the Assembly has no authority to enforce such rulings, then why are we here every Wednesday?

County Counsel ROBERT TROY: Well, I think the answer is under the current situation as things stand in the way it has been done in the past is if the Assembly had a question like that, then you would send the question to County Counsel.

Speaker BERGSTROM: Right.

County Counsel ROBERT TROY: And, you know, don't be surprised if the answer that you get you like because the answer is going to be -- if it's to me, it's going to be the correct answer. It's going to be -- I'm not going to risk my reputation in the years that I practiced law which is 40 years this year by giving out opinions that aren't going to be grounded in the law and legally correct.

If after you get that opinion, let's play it out. You get the opinion and say it's not the way you see it. And you say, "No, we don't think this is right," which is okay. You then say, "Okay. Well we want to get an opinion from our counsel," somebody that will look at this again and you make that request.

But I think that one of the things is there's two things of practice I will tell you that we do here and I think it's worked. Everything we do, we do by memo. There's not any - - it's not calls. It's all done -- all the requests are done, all the answers are done. If you go through that budget thing I sent to everybody, you know, the memos that we sent and we don't send someone one memo and someone else another memo. We send the memos and we copy everybody, you know, if it's pertinent to something.

And that's what we did -- the budget thing is a very good example, and I'm glad Leo brought it up because we played it right by the book. And if you heard the Commissioners when the options -- they asked me for options that they could do and I gave them the options because that's not -- I wasn't making up options. Those were there. They actually did the right thing and they could have pulled a procedural mechanism and they said, "No. We're not going to do that. That's not right." If the Assembly's going to overrule us, we're going to let them overrule."

So I think that -- and it's a process that showed that it can work.

Speaker BERGSTROM: I just want to make it clear. I'm not suggesting that this would come to this. I'm just saying going -- we reexamined the relationship between the various branches of government, and I think we're trying to clarify here the legal mechanisms that we have at our disposal and how everybody relates to everybody else. So that's the only reason why I bring it up.

Anyway, yes, Jim.

Mr. KILLION: Thank you, Mr. Speaker. As one of the cosponsors of this, one of the reasons I saw that this could be useful to us, I've been here about three and a half years and I've seen instances arise when we do have some questions and we would like to know who to go to.

Now I've been a long-time member of the Zoning Board in Sandwich. I'm currently the Chair. And we found out over time that sometimes the legal questions that we were asking were kind of getting filtered through Town Hall and we were getting answers that they kind of wanted us to have, and it became evident in one particular case.

So we sought and were approved to get special counsel to the Zoning Board, and we use them in special matters, 40B or other related subjects, and we found it was much easier and more direct. We could get questions answered more quickly. It was a very painless process. It created no conflict and so I sought to extend that to this body. I think it would be very helpful.

So in looking through the Charter than we're talking about here, I have an issue with this bicameral form of government having to go -- one body having to ask another permission to do something that may involve them. It seems to fly in the face.

And it was referenced in the resolution, we talked about the matters relating to the internal affairs of the Assembly, which I feel this is exactly what it's for, is a ready ordinance is not required, that we can simply do that on our own.

And, in fact, I'm not even sure that a resolution is required given the provisions of 2.8, which allows the establishment of an advisory council on any subject. Now a council could consist of anyone that the Speaker chooses, whether it's an outside attorney or a couple members of the Assembly.

So I clearly think there are provisions in the Charter for us to do this without having to go outside of this body.

My question is what if we wanted to hire a geologist to review a study that was put forth by the Cape Cod Commission? We would have to go to the Commission to do that? We couldn't form a counsel on our own to simply look into certain studies that were submitted to us?

I think it's important that these two bodies operate independently and I think that the Charter allows us to do that.

County Counsel ROBERT TROY: Well, if I might? I think Section 2-8(d)(iii) says that anything that involves an appropriation has to be done by ordinance, even if you're transferring appropriations from the account of one agency to another.

So if you're planning on paying the lawyer, you're going to need appropriations. So I think a resolution doesn't work in that instance. You need an ordinance.

This is if you're going the formal route. As I said, I just, actually, you and I agree

with one point, I don't even know whether you even need that.

I think under the Charter you can simply make an administrative request. The Clerk of the Assembly can contact the County Administrator and say the Assembly would like to hire such-and-such and that goes on the agenda of the County Commissioners meeting and they discuss it. And if they approve it, end of story. You don't have to go through any more heavy lifting. And then if they don't, then you have the ordinance procedure available to you.

I would say this is that, you know, the Council that is talked about in 2-8(b)(i) is c-o-u-n-c-i-l.

Mr. KILLION: Oh, I see.

County COUNSEL ROBERT TROY: Yes, that's a different council. What you're saying is -- but if you're hiring somebody -- if you're paying the person and they're providing legal services, you still -- that is not really -- you're still not going to have any money. You need to have an appropriation. And I think you really are required to have an ordinance.

Speaker BERGSTROM: All right. Let me ask you -- Yes. Let me ask you. We passed an Assembly budget. Included in that budget oftentimes can be anything we want. I mean it can be legal services.

County Counsel ROBERT TROY: Right.

Speaker BERGSTROM: For instance, we put a legal services line item. If, indeed, we pass -- let's say we appropriate \$100,000 in the legal services line item of the County budget to be spent at the discretion of the Speaker with the approval of or whatever language you put in there. You're saying that that may conflict with other sections of the Charter?

County Counsel ROBERT TROY: Right. Yes, in 3.5 and 3.3 because when you hire somebody, you're contracting with them and, respectfully, I'm not saying you shouldn't have that.

Speaker BERGSTROM: Yes.

County Counsel ROBERT TROY: I'm just saying the current Charter does not give you that and you would need an amendment to that. And it's very clear that Section 3.5 says, "All County officers are appointed by the County Commissioners."

And forgive me if I've got this wrong, but my memory says -- it just clicked in -- I believe that when the Clerk of the Assembly was appointed that she and in this case Diane beforehand was appointed by the County Commissioners. I think that's the source of the appointment. So even your own Clerk is appointed by the Commissioners -- because of that Charter. I'm not saying its right or wrong. You can change that.

Speaker BERGSTROM: Well, we -- we have the ability to pay them or not pay them.

Anyway, Leo.

Mr. CAKOUNES: I think Attorney Troy is correct. We went through an interview process and picked someone and then they were sent up there for their blessing and actual hiring.

I do have a situation though on the budget line item. We do pay our legal counsel from the shared costs and debt services line item in the budget. And there's presently I

think \$50,000 there.

So if any department head were to have legal expenses, that bill would be sent up to the County Commissioners and would be approved, I hope, and paid for under that line item.

We certainly get this and I'm now addressing my fellow Assembly members, I do still hope you support this. I still think we need to move forward with it. I do plan on making a very small amendment and just putting in the term at the very last line, "select special legal counsel" to coincide with Attorney Troy's mention of how our -- if we have an ability to hire special counsel so I put that word in there. I would like to put that word in there when I make an amendment or a motion.

But I would like to say that if this is approved today and it does go in front -- it will have to go because as all resolutions and ordinances go, it will go to the County Commissioners. They will have it. I see it as a request for us to have our special counsel, and they will have the opportunity at that point to either deny it or approve it.

If they deny it, we will have the right to override that decision by a two-thirds majority vote of this board.

I think that at any given time if there's a problem with a contractual aspects of this once we, in fact, do pick a special legal counsel that if there's a problem, and I remember Mark saying that he would rather have us when we hired the special counsel, for example, for the Charter review, I specifically asked that 25,000 be put into our account, transferred from the legal expense line item to our Assembly of Delegates legal line item just for tracking purposes, but I remember Mark stating right here in front of us saying that's not necessary.

And that Diane -- sorry, Diane -- our Clerk will -- Janice will approve the bills that are submitted by special counsel and those bills will be submitted to the County Commissioners in their general packet, and the funds will be drawn from the shared cost legal fund, and we all have the ability to track that. So, I'm not too concerned with the funding on this.

But I will tell you that I'm still very, very strongly in support of this, and I think that just for the simple changing of some small languages and adding that word "special legal counsel" I think we will be falling into the request or the advice that our County Counsel is giving us now, and this, in fact, is a way of asking for that from the County Commissioners.

Thank you.

Speaker BERGSTROM: Yes. Deborah.

Ms. MCCUTCHEON: I just wanted to understand something that you said earlier. You said that the Speaker had the authority to allow anyone to speak at any time; is that right?

County Counsel ROBERT TROY: Yes, I'm referring to the Open Meeting Law.

Ms. MCCUTCHEON: Under the Open Meeting Law?

County Counsel ROBERT TROY: Yes, at an open meeting, the Speaker is, I assume the equivalent of the Chair."

Ms. MCCUTCHEON: So, there was an objection from the far end of the table there about these gentlemen being permitted to make a presentation with no questions

asked. This is the third or fourth time CLC has come here and done that.

I think that was something that was disturbing. And you're saying that the Speaker could allow under the Open Meeting Law you're saying then the Charter it can't be permitted?

County Counsel ROBERT TROY: The Charter?

Ms. MCCUTCHEON: Under the Charter it's not permitted to nor do you have to suspend the rules?

County Counsel ROBERT TROY: What I was saying, just to use your example, when the two people asked to make a presentation, the Speaker has discretion as to whether or not he wants to do it. And I think what the Speaker was doing, as I understood it, once he decided he was going to let them make a presentation, he was trying to ensure that the presentation didn't violate the Open Meeting Law by inviting anyone to deliberate.

So he, basically, as I understood what he did is he said you can come up and say what you want but we're not going to talk about it so we don't violate the Open Meeting Law. And then somebody else, and I think it was you, I think correctly said that, "Well, this comes up later on and can't this be under that." It seemed to me it could.

Ms. MCCUTCHEON: So what I understood you to say was that out of allowing question and answer at the time that that presentation was made would not have violated the Open Meeting Law; is that right?

County Counsel ROBERT TROY: Question and answer might not, yes, but deliberation would, and it's a fine line between them. And, frankly, I always prefer to be away from the line.

Ms. MCCUTCHEON: Okay. I think I understand.

Speaker BERGSTROM: The Charter gives the Speaker a lot of discretions as a matter of procedure, and I take a very expansive view of the Open Meeting Law. If it's on the agenda, the whole idea is that people who want -- people are giving a warning that this subject will be discussed at a meeting; all right? It's on the agenda so they know that in broader terms Cape Light Compact and our response to them will be discussed at the meeting.

To me, personally, that covers any comment that's made by anyone at any time on that subject. You know, that's -- you could argue that point but --

Ms. TAYLOR: I won't. Well, thank you, Attorney Troy. I think you've made it quite clear that you believe that the County has one counsel. And in my experience that has always been you, and I usually agree but not every time. I wished you thought otherwise.

But there have been times when we have, as an Assembly, hired a special counsel. And there's never really been any problem about doing that.

And worst case scenario, we could by more than a two-thirds vote pass an Ordinance and that would be that. So the only reason I can see --

Speaker BERGSTROM: Don't anticipate we need two-thirds until --

Ms. TAYLOR: I'm just saying, you know, it's well within our power if we need a special counsel to hire one. What this resolution though might give people the impression that we wish to pursue a turf battle with the Commissioners, that we wish to enhance

whatever trouble feelings there are at times.

I don't wish to give that impression. I am very happy that we have the possibility of a special counsel if we need it, but I am definitely not happy with giving the public the impression that we're always going to be pursuing our advantage over them and -- I just think this is the wrong direction.

Speaker BERGSTROM: All right. I'm going to let Janice ask a question because she has to deal with some of these.

Clerk O'CONNELL: Mr. Troy, I have a question. The references that have been made to the use of the word "special," if language were changed or a request were made to allow the Assembly to hire special counsel, does it mean that the purpose would need to be specifically identified when making that request or is just the word "special" good enough?

County Counsel ROBERT TROY: Well, I think if you look at Section 2.4 of the Administrative Code, you'll see that there is a description in the Administrative Code of the circumstances, and it says from time to time. I have it right here so I'll read it to you, if you don't mind.

It says, "It is understood that County departments, offices, and agencies may have different and unique needs for legal services and thus appropriation for special legal services or special counsel are expected."

And then it says, "Nothing in this section shall limit the authority of the Board of County Commissioners to employ special counsel." I think that's in there because they actually have to do the employment.

And I actually agree with Leo about this. I'm not sure. I don't know anything about the finance thing. I don't deal with that. That's not my -- I think it's less complicated that maybe even I understand. I think that they know how to -- when it needs to be done, they know how to get it done. Let's just put it that way.

But I think it's the same as was described when the Assembly Clerk, you know, you set it in motion. You sent the paperwork up because that, you know, even though it's not really -- you're not acting out of deference or that you're not equal, it's just that's the way the Charter is. It's legalism. It's the way the Charter kind of says it has to be done. So you're playing ball the way that the law is written is kind of what I'm saying.

So I think to answer your question is what they're saying is -- they want to know what the special and unique -- they don't want to just designate somebody special counsel, so they want to say, for instance, on issue X, whatever it is, we'd like to get special counsel and the request is sent and it goes up there and it's exactly, you know.

I'll tell you two things is that the first is that people who look at this Charter and don't appreciate it, it is a magnificent instrument. It actually works.

And I, you know, I said to Pat Flynn on the way in because we walked in. We were both actually waiting for kind of a break in the downpour that if there is a quorum here today in this monsoon, anybody who says that Barnstable County Government doesn't work is wrong. And I think that's true. This says it all.

Speaker BERGSTROM: All right. We'll let John and then Suzanne.

Mr. OHMAN: Thank you, Mr. Speaker. Thank you, Attorney Troy, for clarifying we do have two legitimate options present to us all.

My question is is this is presented as a resolution today. Is a resolution strong enough to carry the day of the proponents in this resolution if it goes forward or does it have to be in an ordinance form?

County Counsel ROBERT TROY: Well, I guess that depends on what happens to the Resolution after it leaves here and what action is taken, if any. But I think -- I personally think it should be in an ordinance form, once again respecting the words of the Charter. As I say, playing the ballgame the way the Charter envisions it.

So I think it procedurally should be an ordinance. But if it is decided that you want to present it as a resolution and it is passed, and then it is subsequently -- either there's no action taken or it is approved, then, in effect, it will have been successful maneuver -- not maneuver but --

Speaker BERGSTROM: Jim and then Suzanne.

Mr. KILLION: Just for the Delegate from Falmouth and everyone else, the reason for the resolution was that we wanted to select a legal counsel in the event that we will need one at some point.

We weren't prepared to go out and hire someone at this point, but we wanted to find someone that would meet our need should the need arise.

So, therefore, given that we're not actually hiring anyone and, in fact, this is to do with the internal affairs of the Assembly, then we should not need approval from the Cape Cod -- from the Commissioners in order to approve this motion or this Resolution.

County Counsel ROBERT TROY: Well, even a resolution has a role for the Commissioners to play. Whether it's an ordinance or a resolution, the Commissioners still have a role to play.

But I would say that if you -- yeah, if you are not implicating the power to appoint or the power to appropriate and that is the basis of the resolution, then that would conceivably arguably take it out of the ordinance process.

Speaker BERGSTROM: Okay. Suzanne.

Ms. MCAULIFFE: Yes. In my less than two years, the only experience I've had with special counsel was a positive one in terms of when Michael Curran was hired it was, and I don't know if this is the way the County Commissioners hire a special -- anyone for a special job; there was a list of their specifications, not the Charter Review Committee but the County Commissioners' specifications for the hiring.

And to the point that there was one sticking point on that piece of paper that made me very much feeling like it wasn't our special counsel.

And I also recall that there was some request made of Mr. Curran current by the Commissioners for some things that were not Charter review related, and he did state to them that he was for the Charter Review Committee and not for the County Commissioners. So he did sort of put the brakes on.

I think that when the County Commissioners hire special counsel, it's their hire. And I'm not even sure who picked up Michael Curran. It might have been -- was it us or?

Speaker BERGSTROM: Yes.

Ms. TAYLOR: It was us.

Speaker BERGSTROM: It was a consensus.

Ms. MCAULIFFE: Okay. But I guess my reason for supporting this resolution or

this concept is at the time of the Charter Review Committee I felt very much that yes it was special counsel who was working with us because of his particular individual dynamics.

But it was also under the dynamic of initially it was the County Commissioners that had done the hiring, set out the stipulations and the sort of the terms of the contract. And that didn't, you know, maybe that's the way things work, but it didn't feel much like the Assembly's special counsel at first. It ended up being the Charter Review Committee's special counsel but at first it sort of felt like it was --

And that's my only fear is that if we don't have something that's separate because the County Commissioners will have to hire special counsel for us. But the way the current Charter is, and then we might not feel like it's necessarily ours.

Thank you.

Speaker BERGSTROM: Okay. You've got Pat and then I'll go back to Deborah.

Mr. PRINCI: Basically after reviewing the Resolution and hearing all the comments today, to me, it's just basically us resolving that we agree with the Charter in a sense, especially when you put in the language at the end for special counsel. All it will do is basically give the Commissioners a heads up that we're considering looking into getting our own special counsel and it will likely be approved by the Commissioners because they follow the Charter.

And then when the time comes that we're ready, we would then file up an ordinance, a specific ordinance for what type of counsel, what we're doing with the counsel and so forth, and then go forward from there.

So I'm supporting this just because it's really nothing. It's a resolution that reaffirms the Charter.

Speaker BERGSTROM: Okay. Deborah, did you want to say something?

Ms. MCCUTCHEON: I think Suzanne kind of identified an issue that you had talked about which is at the point in time when we actually want to hire a person and get advice, there may be a difference of opinion between the County Commissioners and the Assembly that might lead them to decide that maybe they don't want us to have a separate counsel.

And it seems to me that it's sort of anticipatory to say there was this sum of money that's been set aside. There's an authority to hire because certainly they have the right to delegate their authority to hire to us. So that when a question comes up and there might be a disagreement of opinion and you can't give an opinion because you're conflicted there, then the Assembly can go ahead. Is that not a reasonable interpretation of that?

County Counsel ROBERT TROY: Well, I don't think the Commissioners can Delegate the authority to appoint because that is in the Charter. That is one of the key provisions of the Charter.

I think that there is a procedure on which it can be kind of finessed and that is that the name of the person that you have suggested goes to them and they actually make the appointment.

I will tell you this. During this -- there have been a lot of things that have happened in the County since I've worked here in 1992. I have never -- I have no memory, and I have a pretty good memory, of the Commissioners ever saying no to any

request for special counsel by any department including the Assembly.

Speaker BERGSTROM: Okay. I'm going to just say a few words. Mary Pat wants to speak, but I'm just going to give you a little history here.

I anticipated this discussion as much as a year and a half ago and I know we had Attorney Troy in here at the time and it was around the time of the MMA conference in Boston. So there I am wandering around throwing things in my bag at this vendor's thing, and I said, "Well I'm going to research this a little bit."

So I first went to the Town Counsel's Association, which I'm sure you're a member of and there were a couple of gentlemen there, and I said, "Well, what happens if we have a dispute? I said could we just simply go out and hire an attorney?" And he pointed right away to the City Council decision and said, "Yes, you can, but they pay for it." In other words he said -- he pointed out the city. So he showed me the objections that would be raised if we tried to do that.

So then I wandered around and threw a few more things in the bag and then I approached one of the largest town counsel firms in the state, somebody I knew, you probably all know him but I won't say who it is, and I said, "You know, maybe the Assembly could have a problem." I said, "Could we hire a counsel?" And he said, "Don't do that." He said, "If you have an issue, send us a list of questions."

In other words, saying so-and-so, "Attorney Troy has issued an opinion; we disagree. Here are the points; what do you think?" And he says, "We'll issue an opinion and we'll send you a bill" and you pay the bill.

So his advice was not to have someone sitting in the hallway waiting for a question.

So the third -- so what we're discussing here is the gray area between having someone assigned as the counsel to the Assembly which we -- and I think Attorney Troy quite rightly says we can't do that. I think there's no question that we could solicit an outside opinion if we disagree with an opinion of his or if there's some controversy.

The question really is in the middle there. If we say, "Well, we have an issue with CLC" or we have an issue with anything, and we want someone there to discuss this issue. And that's really when you get into a gray area because then you could be going back-and-forth with this, you know.

So I will support Leo's resolution for the same reasons that Pat does. But in the future, I think -- and we can identify people who we could then approach for an opinion if we feel we need it, or in the case of some kind of liability, which I can't imagine on the account of the Assembly.

But I think it has to be specific to an issue, and I think it really has to be disciplined enough that we're not simply saying okay, we're going to hire Joe Schmo, and then we constantly go back and forth.

And I think that we could -- like, for instance, Attorney Troy gives us a list of questions on our ability to do that, we can simply say we have questions on our relationship with the County as far as contracting with CLC or someone, and here's the questions we have and what do you think?

So that's pretty much where I see this going. So, Leo -- Julia -- somebody over there?

Ms. TAYLOR: I've lost my train of thought. I think Attorney Troy in response to something Deborah has said made it very clear he does not represent the Commissioners; is that correct, Attorney Troy?

County Counsel ROBERT TROY: Yes, that's correct.

Ms. TAYLOR: I think this is a very important point, and I think Deborah was assuming he did. And, therefore, we would need our guy or girl. No. He doesn't represent the Commissioners. He represents the County government.

If we, as the Assembly, did disagree with his interpretation of the Charter or other aspects of the law, then we, under the Charter, have a right to ask for a special counsel.

If that special counsel were refused, we have a right to pass an Ordinance. This we don't -- we have these rights, and he represents us at least as much as he represents the Commissioners.

I think the Commissioners should be worried, you know, but they are the appointing and the hiring. That is the law.

So we can't be the appointing and the hiring, but he doesn't work and represent them. He works for us collectively.

Speaker BERGSTROM: Let me get in. Mary Pat, did you want to speak? It's my newfound power to identify people. We're going to have to discuss this because for 20 years we've had to suspend the rules.

Commissioner FLYNN: Well, thank you for the opportunity to speak. I just want to say that you are an important governmental body of Barnstable County. You have a right to counsel. This isn't something that you should even ask for. The only thing you ask for is the appropriation. You don't ask for the right.

And Julie is absolutely correct that Bob Troy is the General Counsel for Barnstable County, and he doesn't represent us. We asked him for opinions and he provides us with opinions. You can ask him for opinions. You are entitled to special counsel, and if you want or need special counsel, the only reason you send it to us is because it requires an appropriation. And it wouldn't matter if it was -- they're County funds.

But I would suggest going forward if you think there are going to be issues over time where you think you might need special counsel, put a line item in the budget, in the legal budget so that you have an appropriation that you think that you might -- that might be sufficient to serve your needs. You would still, under the current Charter, have to get the Commissioners to sign off on it.

But, you know, please don't be antagonist in this. We're not antagonists. We want to provide you with what you need, and we don't have -- we're not -- I don't see that we need to be in conflict over things that you need or that we need.

I am convinced that if we really work at this, we can work together and we can resolve issues. And if it needs -- and I'm only speaking for myself, but, honestly, I would suspect that both Bill and Sheila would go along with what I'm saying.

So let's work on this together. I have no issue with what you're requesting.

Speaker BERGSTROM: Okay. Teresa, you haven't spoken yet.

Deputy Speaker MARTIN: Actually, I want clarification from my colleagues from Sandwich and Harwich that kind of reflects what the gentleman from Barnstable is saying.

What's the outcome of this resolution if we pass it? What is the outcome?

Mr. KILLION: Very simply, and to the Commissioner, it's just to simply find a counsel who can serve us in some way. That's the whole point of the resolution is that we can find someone so if we need them we know who to call. Because if we do need someone in a fast time period, we don't want to go looking and go "Whom do we call?" We want to put someone there so we can reach out to them.

That's all it's about.

Deputy Speaker MARTIN: So we get the right to shop?

Mr. KILLION: That's it.

Mr. CAKOUNES: That's what it says.

Speaker BERGSTROM: Cheryl, you haven't spoken yet. Cheryl.

Ms. ANDREWS: I'm thinking. Every time I start to mull my comments, which I'd like to keep brief today.

Speaker BERGSTROM: You don't have to think before you speak. It's not required.

Ms. ANDREWS: I will simply say this. The delegate next to me used, specifically from Falmouth, specifically talked about perception. And if there's been anything that has intrigued me this year in my life as a political being, it's the distinction between perception of one person, perception of another.

You pick up the paper and the reporter has a different perception; you walk down the street, and in the end perception is important. And, often times, it's consistent with what's going on and many times it's not.

If, indeed, the resolution simply says we're going to follow the Charter, and if, indeed, I'm to accept Commissioner Flynn's comments at face value, which I do, then anyone supporting this Resolution, the perception is simply that we have a very vigorous Assembly of Delegates who is interested in being educated on topics and wants to do that.

In my view, that's consistent with what Attorney Troy said maybe about 20 minutes ago which was, "Barnstable County works," that we're all here and we're energetic. And oftentimes it has to do with word choice.

What concerned me in the beginning was Attorney Troy used the word "friction." That is a loaded word for me. It sounds like something that's bad, like a rock in your shoe and you need to get rid of it.

I, on the other hand, don't look at what I've experienced at the County level that way at all. I look at it that I happened to join the Assembly right at a time where we were having some healthy debate as opposed to maybe years where there wasn't an awful lot of debate and things just happened because maybe people were less interested.

So I'm going to speak especially about this perception work and say that when I think about what's been going on from my couple of years here, I think about the words vigor. I think about debate. I think about interest. I think about energy, which is the same thing as vigor.

But in any case, I think it's all been very healthy for Barnstable County. I want to see it continue. I don't know if the day will come where the Assembly needs or thinks it needs to ask for an appropriation.

But today, this Resolution doesn't ask for an appropriation. It simply states, as the Delegate from Barnstable did, that we're learning about the Charter and the Charter says if

we're interested in retaining some services, we have the right to send up the ladder to the Commissioners that request.

So, I don't see the real issue here. Seems to me we're kind of getting a little bit ahead of ourselves. We're debating about whether we will ever even need to hire these services and that doesn't seem to be before us today.

So back to perception, I think perception should be that we have a very vigorous Assembly of Delegates.

Speaker BERGSTROM: Okay.

Ms. TAYLOR: Just briefly, I guess it may be that Patrick is right and this is innocuous. But I would not think it would be a good idea to identify a special counsel because I think I would want to hire someone if we did want one that was, like Mr. Curran, was the right person to be special counsel for the Charter. Someone else might be appropriate to be special counsel for some other issue.

I'm assuming it's going to be a pretty complicated issue if we're really not going to be happy with what the County lawyer tells us.

So, I mean I'm not going to vote for the resolution, but that isn't the end of the world whether it passes or not. But I don't think we should go out and identify someone at this time.

Speaker BERGSTROM: All right. I'd like to try to resolve this quickly. The resolution that Leo and Jim have submitted asks for two things.

First of all, directs the Speaker to prepare a list of no less than three qualified legal firms to represent and counsel in all matters deemed appropriate. I have no problem doing that. We can simply say, look, we can go onto the website and find town counsel and say here are three firms. If we ever need them, here's their phone number.

Okay. The second thing is, the Assembly shall -- and here's -- this goes to Julia's objection. The Assembly shall at the first regularly scheduled meeting upon receipt of the Speaker's list of qualified firms by simple majority vote select legal counsel to advise and represent them.

I can see where you might have a problem with that. We're saying we call up Joe and we say, "Hey, Joe, guess what? You're our counsel, you know, if we need you." I would say that we would select counsel by majority vote in case we feel we need them.

In other words, we got these three names. We're not going to sit down and say we're going to pick a name. We'll basically say, okay, six months down the road we got something we need a special opinion on, by majority vote we can agree to solicit an opinion or have counsel represent us.

And I think that -- I'm asking Leo and Jim if they want to clear up that language. I mean I could, you know, or do you want us -- see, my problem is that by the second paragraph there we're essentially appointing a counsel, and I'm thinking that runs into the gray area whether or not we're actually conflicting with the Charter.

I'm looking to saying we've identified counsel. We got their phone number in our rolodex, and if we vote by majority that we need them, there they are.

So, anyway, what do you think about that?

Mr. CAKOUNES: Well, just a couple of things. I just want to clarify on one thing that my colleague from Barnstable stated and procedural matters on this.

Under the Section 2.4 of the Administrative Code, we do not even need a resolution to do this. We can do it with a simple motion, that's the way I understood Mr. Troy.

So this resolution is, in fact, one step better in the ball game rules because it does need to go to the County Commissioners for their approval.

The only time it would require it to be then put into an ordinance would be if they were to deny it. Then we would have to go through the two-thirds majority override. As we heard this evening, there doesn't seem to be a lot of pushback on it.

Specifically to your section on this, Mr. Speaker, as far as the second half, I'm sorry but I submitted this sometime mid-July and here we are in our first meeting in August.

Wheels of government do not move quickly. I would not feel comfortable removing the second half of this. I do believe that we need to do due diligence as our fiscal responsibility as the legislators -- Legislative body of the County to at least identify firms that meet our needs. Our needs are simple. I don't think we're talking about drunk driving experts. I don't think we're going to be talking about burglary experts. We're looking at a law firm that handles municipal law.

So to find and to actually earmark a specific special counsel I think is absolute necessary.

I do want to remind you that we are at really different odds of opinions with the Executive branch of County government on some major issues. The CLC and DPU thing is a major issue, and we have voted. This Legislative body voted to send a letter as a Legislative body and the County Commissioners have said, "No, don't do that."

So, there are some push and shoves in kind of turf areas, and I do think it's time that we need to identify and have that special counsel.

I do just want to add one other thing though too.

Speaker BERGSTROM: Yes.

Mr. CAKOUNES: You know I've heard a lot in my travels around the Cape as the discord, if you will, or this bad feeling or whatever might be -- people want to -- the negative connotation they want to put on it between the Legislative branch and the Executive branch of County government. And my reaction to that is I don't know what you're talking about.

A Legislative branch of government and an Executive branch of government should not be holding hands and hands and skipping down the path. We are here for a purpose and the Charter is clear because we are a check and balance for the people of Cape Cod.

So I don't see any bad feelings whatsoever. I, personally, certainly don't have any between the Legislative body and Executive body of County government. I think we're doing our jobs. And that's how this Charter works. As Mr. Troy said, this is an excellent document because it's boiled down to basically what government should be in this country.

So, I really stand behind the ordinance -- I mean the resolution, and I'm hoping you'll support it because, quite frankly, I think you've heard nobody's really against it.

Speaker BERGSTROM: All right. Just a quick comment. I know I've said a lot

already but since -- Leo's right. It's been a long time since this resolution was presented. And in that time I've had discussions with our Clerk, Janice, and through her with Mr. Troy about this resolution. Not about the substance of the resolution but by making sure that this resolution does not overtly violate any, you know, provisions in the Charter.

I wanted something that could go through with -- and, you know, somebody might look at it and not like it. I'm not saying the Commissioners. And say well I can attack this and I can say it's incorrect or it's procedurally wrong.

So when I suggested changing the last paragraph where it says that we should select legal counsel, I was saying that I was simply trying to change it in such a way that it would not conflict, or would not in the view of someone else, conflict with the provisions of the Charter that says that the County shall have only one counsel.

So I'll vote for this and we'll send it wherever it goes. And if it bounces back, well then we'll deal with it at the time.

Okay. Yes, Jim.

Mr. KILLION: Just to follow-up with Leo. And that is the point of this is expediency because, as we know, sometimes it takes a great deal of time.

And I specifically use the word "firm" because we really had in mind an office that had several attorneys with varying degrees of specialties so that they will be able to handle whatever issue came before us.

So, again, this is all about just speed when you need an answer. We don't want to have to vote two weeks and out, open the phone book and find someone. We have a firm at our disposal and they can, hopefully, serve all of our needs in the future.

Speaker BERGSTROM: It comes to my attention we haven't put this on the floor.

Mr. CAKOUNES: No, I'm going to do it.

Speaker BERGSTROM: Leo.

**Mr. CAKOUNES: I would like to move Proposed Resolution 14-01. And, Mr. Speaker, I do plan on amending it; do you want to move it first and then amend?**

Speaker BERGSTROM: Move it first and second it and then we'll amend it.

**Ms. MCAULIFFE: Second.**

Proposed Resolution 14-01:

To approve the hiring of legal counsel for the express purpose of advising and representing the Barnstable County Assembly of Delegates.

Whereas the Barnstable County Assembly of Delegates is the legislative branch of a bi-cameral government with separate and distinct powers and duties apart from the County Commissioners who represent the executive branch of county government, and

Whereas both branches of Barnstable County government utilize a common legal counsel in the course of executing their duties despite inherent conflicts that arise between branches of government, and

Whereas the FY 2015 budget has a line item for appropriation for Legal Counsel, Shared Costs and Debt Services, Account #0019102-5235, page 270, and

Whereas this proposed Resolution is a matter relating specifically to the internal affairs of the Assembly of Delegates. Ref: County Charter Sec 2-8 (b-i) "establishment of advisory council." And Sec 3-8 "internal affairs of the Assembly",

Now, Therefore,

Be It Hereby Resolved that The Barnstable County Assembly of Delegates directs the Speaker to immediately prepare a list of no less than three qualified legal firms to represent and counsel them in all matters deemed appropriate.

The Assembly shall, at the first regularly scheduled meeting upon receipt of the Speaker's list of qualified firms, by simple majority vote, select legal counsel to advise and represent them.

Speaker BERGSTROM: All right. It's been moved and seconded. Leo, do you have an amendment?

**Mr. CAKOUNES: I do. I would just like to amend on the last line. It says, "The Assembly shall, at the first regularly scheduled meeting upon receipt of the Speaker's list of qualified firms, by simple majority vote, select a --" add the word "a special legal counsel to advise and represent them."**

Speaker BERGSTROM: Okay.

**Ms. KING: Second.**

Speaker BERGSTROM: Second on the amendment.

Mr. CAKOUNES: On the amendment, Mr. Speaker, I only believe that certainly clarifies and coordinates the language to be in conjunction with Section 2-4 of the Administrative Code.

So on the amendment, I would like to please have a vote on that.

Speaker BERGSTROM: Okay. I'm going to ask Troy, our lawyer, because he's right here a question. I have a procedural question, just a quick one.

Does the sponsor of an ordinance have to offer an amendment to the ordinance or can he simply change the ordinance? In other words, the ordinance was put on the floor.

County Counsel ROBERT TROY: Right.

Speaker BERGSTROM: Leo sponsored the resolution -- he proposed it.

County Counsel ROBERT TROY: When the moving party, which is the sponsor, of the resolution moves the motion, he may amend it at that time because it's his motion and he's offering it.

You're considering what he's offering. So technically I don't think you need to have a formal amendment. But if he wants an amendment then I think either way works.

**Speaker BERGSTROM: Just for future reference, now we know. Okay. So we've got a new motion seconded on the amendment. All those in favor of the amendment say "Aye." Opposed?**

**(Amendment passes.)**

Speaker BERGSTROM: Okay. Now we've got the main motion which is Proposed Resolution 14-01. It's been moved and seconded. It doesn't require --

Clerk O'CONNELL: Somebody asked for a roll call. Did somebody ask for a --

Mr. CAKOUNES: I didn't ask for it.

Speaker BERGSTROM: No. Okay. All those in favor say "Aye." Opposed?

The DELEGATES: No.

Speaker BERGSTROM: Okay. Why don't we take a roll call vote.  
Clerk O'CONNELL: Okay.

**Roll Call Vote on Proposed Resolution 14-01 as amended:**

**Voting YES (54.62%):** Cheryl Andrews (1.36% - Provincetown), Ronald Bergstrom (2.84% - Chatham), Leo Cakounes (5.67% - Harwich), James Killion (9.58% - Sandwich), Teresa Martin (2.30% - Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), Patrick Princi (20.92% - Barnstable).

**Voting NO (27.68%):** Marcia King (6.49% - Mashpee), John Ohman (6.58% - Dennis), Julia Taylor (14.61% - Falmouth).

**Absent (17.70%):** Richard Anderson (9.15% - Bourne), Ned Hitchcock (1.27% - Wellfleet), Christopher Kanaga (2.73% - Orleans), Anthony Scalese (4.55% - Brewster).

Clerk O'CONNELL: Mr. Speaker, Proposed Resolution 14-01 as amended passes with 54.62 percent of the Delegates voting YES; 27.68 percent no; 17.70 percent absent.

Speaker BERGSTROM: Thank you.

Mr. CAKOUNES: Thank you.

Whereupon, it was moved, seconded, and by a roll call vote with 54.62 percent voting "yes";  
**VOTED:**

**To approve the hiring of legal counsel for the express purpose of advising and representing the Barnstable County Assembly of Delegates.**

**Whereas the Barnstable County Assembly of Delegates is the legislative branch of a bi-cameral government with separate and distinct powers and duties apart from the County Commissioners who represent the executive branch of county government, and**

**Whereas both branches of Barnstable County government utilize a common legal counsel in the course of executing their duties despite inherent conflicts that arise between branches of government, and**

**Whereas the FY 2015 budget has a line item for appropriation for Legal Counsel, Shared Costs and Debt Services, Account #0019102-5235, page 270, and**

**Whereas this proposed Resolution is a matter relating specifically to the internal affairs of the Assembly of Delegates. *Ref: County Charter Sec 2-8 (b-i) "establishment of advisory council." And Sec 3-8 "internal affairs of the Assembly"*,  
Now, Therefore,**

***Be It Hereby Resolved* that The Barnstable County Assembly of Delegates directs the Speaker to immediately prepare a list of no less than three qualified legal firms to represent and counsel them in all matters deemed appropriate.**

**The Assembly shall, at the first regularly scheduled meeting upon receipt of the Speaker's list of qualified firms, by simple majority vote, select a special legal counsel to advise and represent them.**

Speaker BERGSTROM: Okay. Moving right along. We now have Committee Reports but I think there aren't any. Report from the Clerk

Report from the Clerk

Clerk O'CONNELL: Thank you, Mr. Speaker. I just want to remind everyone that I have placed some materials in your folders, and I would suggest that before you leave tonight, if you haven't already done so, to look those over and remove the ones that you want to take from the hall tonight.

The next meeting will be at the beach and maybe Mr. Ohman will elaborate a little bit on that as we get to the end of the meeting, towards the conclusion of the meeting.

And in the folder there is an invitation to an open house at the Cultural Center. I think it is in Yarmouth on the 27th. I just want to give you a little bit of advance notice in case you want to put that on a calendar, and I believe that's related to the anniversary of the Cooperative Extension.

And that's it. That's all I have today.

Other Business

Speaker BERGSTROM: Okay. Under other business, I put a discussion regarding County Commissioners temporary staff assignments because it was not -- it was possible that Commissioner Flynn might not be able to make it for one reason or another. They didn't have a meeting today, so it was nice of her to come in the rain.

So if anybody wants to have anything further to say about that, this would be the opportunity to do it. Are we all settled on that? Okay. Do you want to -- Deborah?

Ms. MCCUTCHEON: Did I miss this?

Clerk O'CONNELL: No, no. It's next.

Speaker BERGSTROM: It's next.

Ms. MCCUTCHEON: Oh, okay.

Speaker BERGSTROM: You have in your packet a letter -- a draft of a letter to the Department of Public Utilities. I was not the original author of this letter. So I will turn it over to -- but it would go out under my name as Speaker if it comes from the Assembly. So, I'm going to turn it over to either Jim or Leo or whoever.

Mr. CAKOUNES: Jim, do you want to take this?

Mr. KILLION: No, it's your letter.

**Mr. CAKOUNES:** I asked the Speaker to consider sending this letter along because, once again, as you know, this is a long-standing difference of opinion, if you will. And I just believe that this time it would be beneficial for not only the Attorney General's office who we've already sent some correspondence to allowing them to understand our position as a Legislative body of Cape Cod or Barnstable County, I should say.

Just a follow-up along those lines to the DPU. **Once again, if you want, Mr. Speaker, I would make a motion that we approve the letter and ask you to send it along.**

Speaker BERGSTROM: Okay. Is there a second on that?

**Ms. MCAULIFFE: Second.**

Speaker BERGSTROM: Okay. It's been moved and seconded. This letter does not call for any action on the part of the Assembly, as opposed to other previous letters that we've sent which created a bit of a controversy.

So my only comment is I had a meeting last night with the Chatham Board of Selectmen last night on this issue and some of the people in the audience were there, and I came out of that meeting deciding that I had said just about everything I wanted to say on this issue and that thank God it was up in Boston with people who are more verse in this than I am.

If you want to send this letter, that's fine. I'll support it. If it creates a controversy, you have to ask yourself, "Are we gaining anything?" In other words, what are we gaining by sending this letter as opposed to not sending it; that's where I am right now, and maybe I'm in a bad place.

Yes, Suzanne.

**Ms. MCAULIFFE:** Just one thought and I doubt that you want to open up this can of worms. I find that Cape Light Compact comes forward with information that they want us to have in the way they want us to have it.

And to the people who haven't been here before when our special committee did ask for information from the Cape Light Compact we were not -- we did not receive the information. It's not your fault. That's just where we're coming from and why we're on edge here.

**So to that end, the second to last paragraph in the last sentence where you say "The counsel is completely uncooperative," I would say perhaps not completely, just say "uncooperative" because there is information coming out but its selected information.** It's sort of pick and choose information so that there's an appearance of cooperation but not total cooperation.

**Mr. CAKOUNES:** I'll accept that as an editorial motion.

**Speaker BERGSTROM:** Okay. If you give me the authority, I can change that. But I will -- I think it should be, "We found the Cape Light Compact and their counsel to be selectively cooperative with our requests."

**Ms. MCAULIFFE:** Okay. That's good.

Speaker BERGSTROM: Okay. Because they've been selectively cooperative.

Ms. MCAULIFFE: They're better words.

Speaker BERGSTROM: So, anyway, so we know -- yes, John.

Mr. OHMAN: I won't support this letter. My signature's not going on this; right?

Speaker BERGSTROM: Nope.

Mr. OHMAN: Only the Speaker will do that? I think it's out of our purview and I think it's unnecessary for us to send it.

Speaker BERGSTROM: Yes, well I send this under a cover letter saying that the Assembly, if indeed it passes, the Assembly voted by a vote of so-and-so to so-and-so, you know, endorse sending you the following correspondence. That's how we get -- and we can specifically mention, in fact, the vote.

Yes.

Ms. MCCUTCHEON: I support this letter. I think it could be coming down a little bit; I like the change to selectively uncooperative.

Speaker BERGSTROM: Selectively cooperative.

Ms. MCCUTCHEON: Selectively cooperative, I like that. But I think that it makes clear that our position as it has been inferred by Cape Light Compact is not what they said it is. And that's all I'm concerned about making clear here.

Speaker BERGSTROM: All right. Without further ado, why don't we take a vote on this. I'll take a voice -- I request a -- oh, it's been moved and seconded; right? Okay. So I'm calling for a --

Mr. CAKOUNES: With the power to edit.

Speaker BERGSTROM: With the power to edit.

Clerk O'CONNELL: Okay. Hold on a second. I'm building my spreadsheet.

**Roll Call Vote on letter authorized from Assembly under Speaker's signature to the DPU re: DPU #14-69:**

**Voting YES (58.81%):** Cheryl Andrews (1.36% - Provincetown), Ronald Bergstrom (2.84% - Chatham), Leo Cakounes (5.67% - Harwich), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), Patrick Princi (20.92% - Barnstable).

**Voting NO (23.29%):** Teresa Martin (2.30% - Eastham), John Ohman (6.58% - Dennis), Julia Taylor (14.61% - Falmouth).

**Absent (17.70%):** Richard Anderson (9.15% - Bourne), Ned Hitchcock (1.27% - Wellfleet), Christopher Kanaga (2.73% - Orleans), Anthony Scalse (4.55% - Brewster).

Clerk O'CONNELL: Mr. Speaker, authorization by delegates to send letter to DPU under your signature is approved by the Assembly with 58.81 percent voting yes; 23.49 percent voting no; 17.70 percent absent.

Speaker BERGSTROM: We can be sure that this is going to elicit a response and a counter-response and a counter-counter-response and we'll all go merrily down the road. Okay. Yes, Marcia.

Ms. KING: I'm sorry it's not on the agenda, but I brought the vegetables. And cucumbers, my garden has way too much and they were staying on my kitchen counter so I brought them here. So please help yourself. The peppers aren't hot.

Speaker BERGSTROM: You know, if this meeting got very, you know, kind of -- If we started to have problems, these things can be --

Mr. CAKOUNES: Mr. Speaker?

Speaker BERGSTROM: Yes, Leo. Do you have other business?

Mr. CAKOUNES: I have something very quickly under other through you to our Clerk. In our packets today you noticed that we have received a solicitation. It's an envelope mailed -- specifically, I'm going to use my example -- it just says Leo Cakounes, Assembly of Delegates. It has been stamped, and it has the Barnstable County's address.

I get a lot of these things in my little packet, and I'm sure you all do too.

But it has come to my attention that some of the departments in Barnstable County have collected these solicitations and have thrown them away prior to them being distributed to the person's name on the envelope.

So my question to you, or our Clerk, through you the Speaker, could you maybe ask if there is a standing protocol --

Ms. KING: Policy.

Mr. CAKOUNES: -- policy -- thank you -- that allows action like that to actually happen and maybe report to us in the next couple weeks on it if you can?

Clerk O'CONNELL: Do you want me to ask the Executive branch; is that what you want me to ask because that doesn't happen here?

Mr. CAKOUNES: That's why I purposely stated that I'm holding mine in my hand. It does not happen here. I would like you to at least address the Executive branch of County government and possibly include in your inquiry the Cape Cod Commission because they're just located at a separate address, if you would for me, please.

Clerk O'CONNELL: Okay. I may need to get a little clarification. Are you referring to any correspondence that is received that is addressed to an employee or an elected official?

Mr. CAKOUNES: Or appointed.

Clerk O'CONNELL: Or appointed. And do they always receive it or is it discarded?

Mr. CAKOUNES: Thank you. Exactly.

Clerk O'CONNELL: Okay. Well I can tell you because you're asking -- I'll tell you on the Legislative side I never do that. I always put it in your folder.

And if something comes and it looks like, geez, this may be something the Speaker needs to open right away, I would ask his permission to open it or deliver it to him. I don't open your mail so you get it all.

Speaker BERGSTROM: Well, I think what Leo's referring to is that we got something from somebody who is running for office. And as you know, the Assembly of Delegates does not permit elected office to interfere with our business or influenced in any way.

Ms. MCCUTCHEON: I think what I'd be interested in is I think what Leo's interested in is whether there's a policy of any kind written by anybody in any department or by the County Commissioners as to when mail addressed to individual employees will be confiscated.

Speaker BERGSTROM: Well, you know, I don't want to delay this any longer, but in Chatham, we had a new Town Manager when I first became the Selectmen, and their policy was if it was a letter addressed to me, they would open it, you know, and they said that that's common practice.

Ms. MCCUTCHEON: So if there's a policy here, let me know what it is.

Speaker BERGSTROM: Yes, I don't think that's the case but Janice will find out what that policy is.

Anyway, yes, Cheryl.

Ms. ANDREWS: Just a quick comment for Jan's edification. This issue cropped

up in Provincetown about 15 years ago. And I think the distinction is something that's been postally -- postal stamped and addressed and mailed versus people, you know, running for office coming in to Town Hall and trying to distribute using the Town Hall mailbox, which I think there are actually prohibitions against because you're not allowed to use -- you're not supposed to campaign and mix that with Town Hall.

So if you decide to call some of the other towns to get some policy feedback, I think that's one distinction you'd need to pay attention to.

Speaker BERGSTROM: And with that, I need one more motion.

Deputy Speaker MARTIN: Motion to Approve.

Speaker BERGSTROM: Motion to what?

Deputy Speaker MARTIN: Adjourn.

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: All those in favor? Aye.

**Whereupon, it was moved, seconded, and voted to adjourn the Assembly of Delegates at 5:45 p.m.**

Respectfully submitted by:

Janice O'Connell, Clerk  
Assembly of Delegates