

**ULSTER COUNTY LEGISLATURE  
COMMITTEE MEETING MINUTES**

**NAME OF COMMITTEE:** Government Operations and Environmental Services

**DATE:** February 3, 2011

**TIME:** 7:00 P.M.

**PLACE:** UCOB, Library Conference Room, 6<sup>th</sup> Floor

**LEGISLATORS PRESENT:** Chairman Shapiro, Legislators Maio, Petit, Robert Parete and Ronk

**LEGISLATOR EXCUSED:** Legislators Bernardo and Zimet

**OTHERS ATTENDING:** Marshall Beckman, Deputy County Executive; Amanda LaValle, UC Department of Environment; Tom Kadgen, LWV; Vic Melville, LWV; Victoria Fabella, Deputy Clerk, Legislature

- The meeting was called to order by Chairman Shapiro at 7:00 PM.
- A motion was made by Legislator Parete, Seconded by Legislator Ronk, to approve the December 8, 2010 Government Operations and Efficiency Committee Meeting Minutes. All in favor. Carried.

Chairman Shapiro began the meeting by thanking the Committee Members for their support. He continued saying that this Committee has a new direction. If you look at the Committee's mission, as far as Government Operations, it is really focused on mandates; what we can do with State funding, how it affects UC, and how we can address mandates at a County level. The Governor has a mandate relief team in place. This is an issue that affects every county. The Chairman said his opinion is that the Committee could possibly find areas where there are duplication of services. Perhaps there are smaller micro issues that are affecting our budget within our county. However, Chairman Shapiro does not want to get too far into the conceptual idea. There are mechanisms in place at the State level to address this. Keep in mind there are areas where perhaps we can improve the budget and affect issues that do fall under state-funded mandates, but let's not get too far out, start to have free-form discussions, and at the end of the 11 months we have left, not really have much to show for it.

- Marshall Beckman, Mandates:

Marshall said he was the representative from the Executive's Office who, along with a group of people, did most of the work on the report submitted to the Legislature on November 5, 2010 about what is mandated and what is not. As they worked they learned that while there have been efforts by other counties, and other parties in the past to look at mandates, Marshall and those he worked with didn't agree with their interpretations. For example, Westchester County did a very extensive report that said basically everything is mandated. Marshall said that is not the case. There are some myths; even among departments, about what they believe is mandated based on what they have been told by other parties over the years and so on. Marshall said some of the attorneys in the Exec's office worked with the department heads and went right to the source regulations and the laws. After careful evaluation, it was found that there are things that were thought to be mandated but are really what we call "conditional mandates." This means that if you take the money, you have to do things, and you have to do them the way the funding

source wants them done. You often have to buy into a package of services. Sometimes those conditional mandates get you access to more money, like grant money. There may be advantages to doing it, but it doesn't mean that the service is outright mandated.

Marshall tried to get a dollar figure associated with every mandate. That turned out to be extremely difficult. Our county budget largely does not attach fringe benefits to departments. There are a few funds where fringe benefits are actually budgeted, like FICA is budgeted for road machinery and some of the road things in the Public Works Department. For the vast majority of services, fringe benefits are in accounts the County pays the vendors out of because it is more convenient that way. If we were to break the fringe benefits down in each department we would have to add another \$50M in appropriations. There would be offsets with revenues, but it would make our County budget look like a \$400M budget when it is not. An extensive amount of work had to be done to try to do a reasonably accurate job of attributing revenues to departmental programs. Marshall said that he and Art Smith would be giving a very brief presentation to the Ways and Means Committee to give an introduction to this subject. Looking at the numbers, 2/3rds of every dollar in appropriations is mandated or conditionally mandated. 34% is not. That's not a whole lot to work with.

The Governor has just released the budget and is looking to his mandate relief people and the Medicaid reform people to come back and say what should be worked on; where the best investments would be. It will take quite a while to come to an agreement as to what should be reformed in terms of mandates. It is long term stuff. We are not going to be able to do anything about those things immediately but we should pay attention because we are going to want to have a sense of which things are going to be the best things for the State government to focus on and weigh in on that. In terms of the urgencies of our budget situation, which has gotten exponentially worse because of the hard decisions the State Legislature and Governor are going to have to make, the percentage of mandated services against all appropriations is going to get higher because there will be less and less of the non-mandated things we can do. Even with a 2% cap, it's not going to solve the problem. If the mandate relief doesn't come, all we are going to do is continue to spend a greater and greater proportion of our budget on mandated services. Marshall urged the Committee Members to work with the Executive's Office and the department heads to find out as much as possible about the non-mandated services. That's the only place we can make any short term decisions. As we develop questions, it would be beneficial to have the department heads come and address them.

If New York does some huge things with the budget this year, it will still not put the problem to rest. The fixed costs such as retirement, health insurance, contractually obligated salary increases; those things are not going away.

Marshall said that after the information is presented at Ways and Means, they would like to make it available to every legislator. It is a huge spreadsheet. It includes every department and every mandated and optional program or service within every department. There are worksheets within the spreadsheet for every department and some things that are not departments but things called "cost centers." All of these things are summarized and there is also a summary spreadsheet that lists everything and breaks it down between gross appropriations and County share. The fringe benefits are distributed there. Therefore, it will tell you how much the County would really be saving in County contribution if we eliminated a particular service. We need to be in a position where we can start to make very surgical decisions about these kinds of things.

Chairman Shapiro: Q./ Perhaps the conditional mandates are something this body can take a look at and weigh in on. In terms of your presentation, a mandate is a mandate but when you look at the mandates that come with conditions and you weigh what the benefits are, what we are reaping in and perhaps the grants, does it look like there will be a big focus on that? A./ Marshall: There should be. A conditional mandate is a place where you can make a choice. For example, the Health Department; many years ago our county decided to become a full-service Health Department. With that you get a fair amount of money and access

to grants. The Health Department is currently about 40% County share. In order to get out of that obligation, you have to file an application with the State. Once they approve the application, the State Health Department becomes responsible for taking over the services in your area. They have to staff up to do this and they don't take over the services to the same capacity that you were providing them. There is a county out there now that applied to be relieved of its full service obligations three years ago and are still waiting for the transition to happen because the State has to create the positions to do it. Will they save a lot of money in doing so? Maybe not, in fact they may lose a lot of grant money. The bottom line is they wanted to be relieved of their 40% share. These things have to be weighed very carefully. This is where the policy decisions come in. Mental Health has conditional mandates, Office for the Aging and the Youth Bureau are conditional mandates.

Legislator Parete: Q./ Is this presentation going to be to Ways and Means only or to the full Legislature also? A/ Marshall: Ways and Means is the first stop. Legislator Parete: Q./ Are you just giving out the spreadsheet or are you going to give an analysis and recommendations? A./ Marshall: No recommendations. We are going to introduce the work we have done, give a summary sheet and the breakdown spreadsheet discussed. We are talking about getting the spreadsheets to all the Legislators.

Deputy Chair Petit commented that in terms of some of the optional and conditional mandates such as the Youth Bureau as Marshall mentioned, there's the YWCA, there's FAMILY, and she is looking at other organizations in the Community that can provide these services. Legislator Petit said that she does not want to cut services, especially services that reach a good amount of people, but she wants to make sure that services are not duplicated.

Legislator Parete commented that it was incredibly difficult for him to save five/six jobs in the last budget cycle. He went through the budget spending countless hours without a lot of help from the County. He knows there were a lot of interests for the five or six jobs and they didn't ultimately get saved. This is a lofty task ahead of us. A few years back when the size of the Legislature was reduced, in his opinion, was the first step taken to reform County government. A Charter was adopted. Next year there will be a third less Legislators. Legislator Parete believes the Legislature is taking steps. If the Committee goes through this mandates exercise and identifies programs and cost-saving ideas, he hopes that there is a will to make hard decisions.

Chairman Shapiro thanked Marshall for attending the meeting and said he believes it is important for the governing bodies to maintain good communication on mandates issues. Perhaps the Committee will have a better idea of its role in relation to mandates after Marshall's presentation and information is distributed.

Marshall suggested the Committee Members study the spreadsheets and get a feel for how the information is organized and then start to make decisions on how the problem should be tackled. The Committee may decide that there is some other way it wants to organize like having other Committees of the Legislature drill down on the services pertaining to their respective departments. Marshall said he was willing to do a more in-depth presentation or otherwise work with the Committee as requested.

- Amanda LaValle, Esopus Creek Update Discussion:

(See handout *Issue Brief from Ulster County Executive Hein on the NYC DEP Pollution of the Lower Esopus and Ashokan Release Information Briefing*)

Amanda reiterated to the Committee that the County has filled a Notice of Intent to Pursue Legal Action against the City of New York for releasing turbid water, violating the Clean Water Act. The City started discharging turbid water in the beginning of October. They stopped as of last Friday, 1/28/11, and changed to clear water. Although that seems like a big victory, it's a first step but we are not at a place where we

can let up on pressuring the City to do what's right here. The notice got their attention and the DEC also came out after the City stopped and said they are going to pursue an enforcement action against DEP for this illegal release. Until we see the action we can't back away.

Amanda explained the Esopus Creek Watershed covers most of the North part of Ulster County. It starts way up in the mountains, about 250 square miles known as the Upper Esopus, and drains and feeds the Ashokan Reservoir. The Ashokan Reservoir dams the Esopus Creek in Olivebridge and then you have the Lower Esopus which runs through the Towns of Olive, Marbletown, Hurley, City of Kingston, Town of Ulster, and Saugerties Town and Village. It's about 32 to 35 miles from the Olivebridge Dam to Saugerties.

This is probably the biggest change to water quantity and quality to the Lower Esopus Creek since the building of the Reservoir. It's been done by the City of NY as kind of an operational procedure without any environmental review, without any public comment and without any permit that would require any kind of public input.

Since the start of the release thru last week, they have let out over 50 billion gallons of water, about 40% of the total capacity of the Ashokan Reservoir. It was particularly turbid water. That is from a natural source; from clays and geology that you find in the Upper Esopus but was released in a way that is not natural. Storms have a pulse of water and sediment that will run through a creek system. This was bled out of the Reservoir over a long period of time. Turbidity impacts the way light and oxygen work in a stream, affects the whole food chain in a stream, and also impairs and kills fish egg, larvae and juveniles. The document used to determine the turbidity limits around the Shandaken Tunnel has two columns where you look at duration of the turbidity and how much is being released. If you follow those down for what they are doing here, it was 60- 100% mortality for eggs and larvae and 20% mortality for juveniles with delayed growth rate in different fish populations.

Amanda showed the Committee Members pictures of the Esopus Creek taken from different locations at different times before and throughout the turbid water release period, demonstrating the effects the turbid water has had on the waterway.

Amanda said the technical ability is there to work on other solutions for this; to look at low-flow releases, to look at flood control releases in a more holistic strategy. We need to force them to do it because if not forced they just won't. Their big peace offering was that they were going to release clean water for the first time ever from the Ashokan Reservoir. Per NYS regulations from the 70's, Part 672 in the NY Code, it is a requirement to release clean water from below large dams because it improves the aquatic ecosystems for fisheries, for flow, and for recreation. It actually says in the regulations that the Ashokan Reservoir is exempt from those regs owing to the lack of release works. They said that they didn't have the ability to do it. There is an additional stipulation of discontinuance over the top of that. So right now they are offering to do this voluntarily. We need to make sure that gets back into the regulations. They could turn out of the room and do whatever they want to do. Pushing to make sure they are regulated to do low-flow releases is a very important thing. Also, they are developing really sophisticated new modeling software for reservoir operations. We need to make sure the need for flood mitigation releases and what those look like is something that can be done. Lastly, this is an operational release, and calling on the DEC to say maybe turbidity levels into the Ashokan equals turbidity out, only on an emergency basis, really setting up some perimeters for this because we know that doing this for 4 months at a time without any studies has major implications.

Deputy Chair Petit: Q./Do you know what kind of ecological damage has been done yet, or do you have to wait until Spring? A./ Amanda: We don't know. The literature suggests that any kind of trout eggs or larvae are most likely dead. There is some evidence that the upper reaches of the Lower Esopus is trout spawning. It definitely has impacts on other kinds of fish too. There will be an impact on fisheries.

Legislator Parete praised Amanda, her office and the Executive for the work that has been done and their continued efforts to make progress with this issue. Chairman Shapiro echoed Legislator Parete's sentiments.

Legislator Ronk said that the City has a history of bullying Upstate and it's finally time for someone to stand up and say "enough is enough."

- Resolutions:

**1. Draft Resolution No. 0229- February 15, 2011:** Authorizing The County Attorney To Commence Litigation In Matters Affecting The Waterways And Estuaries Of Ulster County- County Attorney

**Motion offered to move Resolution forward by Legislator Robert Parete, Seconded by Legislator Maio. All in Favor. Unanimously Carried.**

**2. Draft Resolution No. 0230- February 15, 2011:** Authorizing Funds For The County Attorney To Commence Litigation - In Matters Affecting the Waterways and Estuaries Of Ulster County - Amending The 2011 Ulster County Budget - County Attorney

**Motion offered to move Resolution forward by Legislator Robert Parete, Seconded by Legislator Petit. All in Favor. Unanimously Carried.**

Legislator Ronk suggested putting in a clause or whereas in the resolution stating that any settlement received in relation to legal reimbursement be put into contingency to replace the money being taken out.

Chairman Shapiro said he believes that the first step would be to rectify the situation, to have accountability and have them abide by regulating. However, the Chairman thinks Legislator Ronk's idea is worthy of a discussion with the County Attorney to explain the Committee's position on legal reimbursement.

Deputy Chair Petit said she would like to see the litigation for the release of turbid waters include the Napanoch and Wawarsing area. Q./ Why are we not taking task with everything? Is it counterproductive to do so?

Legislator Parete said he thinks it is two totally different issues. He believes we can multitask but the issues shouldn't be lumped together.

Amanda LaValle added that it is very grey. What we have filed is a citizen's suit under the Clean Water Act. The Napanoch situation involves ground water.

**3. Draft Resolution No. 0208- February 15, 2011:** Appropriation For The Ulster County Soil And Water Conservation District

**Motion offered to move Resolution forward by Legislator Robert Parete, Seconded by Legislator Ronk. All in Favor. Unanimously Carried.**

- Hydraulic-Fracturing Discussion

Chairperson Shapiro would like to have a forum/hearing and invite the public, groups interested in this from a resource and environmental perspective, and organizations in mining that are in favor of hydro-fracking. The Chairman sees this as a good opportunity to create dialogue. If the Committee is interested, he will pull together the different parties and see if he can make this idea come to fruition. It would be sponsored by this Committee and held in Chambers. The Committee Members were in agreement to move forward with this initiative.

Amanda LaValle suggested holding the forum in Wawarsing because that is probably the most vulnerable portion of the County. There is staff at the Dept. of Environment that has some background on this issue and could be of use if requested.

Deputy Chair Petit said that she has been in contact with Legislators Bernardo and Zimet who could not attend tonight's meeting due to prior commitments. The Deputy Chair continued by saying that Legislator Zimet has been instrumental on the State level with hydro-fracking issues. Recently, Governor Paterson issued Executive Order 41 to suspend any high volume hydraulic-fracturing. Legislator Zimet asked that the Deputy Chair bring forward on her behalf a draft Resolution prohibiting the leasing of any county owned property for high-volume hydro-fracking, along with some background articles. (See Draft Resolution dated March 15, 2011, Resolution Prohibiting the Leasing of Any County Owned Lands, Including but Not Limited to County Parks For High-Volume Slick-Water Hydraulic-Fracturing to Extract Natural Gas; Press Statement Dated December 11, 2010 titled "Gov Paterson Sets National Precedent, Calls for a Timeout on Fracking"; and "Battle On The Hudson- Frack Action Leads Fight to Pass a Moratorium Bill on Hydro-fracturing Gas Extraction in NYS and Creates Political Action Committee") Deputy Chair Petit said it is important that the Committee take a stand on this issue because the County does have the water supplies.

Legislator Parete: Q./ Has Governor Cuomo extended or continued Executive Order 41? A./ Deputy Chair Petit: It was only signed by Governor Paterson in December 2010 and ends July 1, 2011. It is unknown at this time if Cuomo continued it.

Chairman Shapiro thanked the Deputy Chair for the communications and asked that the Committee Members review the information that was provided.

- New Business:

Deputy Chair Petit spoke about the Global Warming Committee saying that there was a Resolution passed and there is supposed to be an active committee. There was a presentation which Amanda had incorporated into the Energy policy. The Deputy Chair does not believe the Committee has met. Chairman Shapiro said the Committee would address this issue at its next meeting.

- Motion to Adjourn:

The meeting was adjourned at 8:11 P.M. with a motion by Legislator Parete, Seconded by Legislator Ronk, with all in favor, Carried.

**Respectfully Submitted,**

**Victoria Fabella  
Deputy Clerk, Ulster County Legislature**