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PETER SCHMITT,
Presiding Officer

RULES COMMITTEE

PETER SCHMITT, Chairman

1550 Franklin Avenue
Mineola, New York

Monday, April 16, 2012
1:00 P.M

REGAL REPORTING SERVICE
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A P P E A R A N C E S :

PETER SCHMITT,
Chairman

HOWARD KOPEL,
Vice Chairman

DENNIS DUNNE (substituted by
Vincent Muscarella)

ROSE MARIE WALKER

KEVAN ABRAHAMS,
Ranking (1:03 p.m.)

JUDY JACOBS

WAYNE WINK

WILLIAM J. MULLER,
Clerk of the Legislature
(Substituted by MaryAnn Weiss)

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1 Rules Committee/4-16-12

2 CHAIRMAN SCHMITT: Calling the
3 Rules Committee to order. Everybody please
4 rise for the Pledge of Allegiance lead by
5 Legislator Rose Walker.

6 (Whereupon, the Pledge of
7 Allegiance was recited.)

8 CHAIRMAN SCHMITT: Madam Clerk,
9 would you please call the roll of the Rules
10 Committee?

11 CLERK WEISS: Legislator Wink?

12 LEGISLATOR WINK: Here.

13 CLERK WEISS: Legislator Jacobs?

14 LEGISLATOR JACOBS: Here.

15 CLERK WEISS: Legislator Kevan
16 Abrahams?

17 (No verbal response.)

18 CLERK WEISS: Legislator Walker?

19 LEGISLATOR WALKER: Here.

20 CLERK WEISS: Substituting for
21 Legislator Dunne is Legislator Muscarella.

22 LEGISLATOR MUSCARELLA: Here.

23 CLERK WEISS: Vice Chairman
24 Legislator Kopel?

25 LEGISLATOR KOPEL: Here.

1 Rules Committee/4-16-12

2 CLERK WEISS: Presiding Officer
3 Chairman Peter Schmitt?

4 CHAIRMAN SCHMITT: Here.

5 CLERK WEISS: We have a quorum.

6 CHAIRMAN SCHMITT: Thank you very
7 much. We have a quorum. We are now going
8 to call in the meeting of the Rules
9 Committee that considers contracts and then
10 we will recess and come back -- that's not
11 today. It's just this. I'm going to call
12 the first and only item on the Rules
13 Committee agenda which is E-97-12, a
14 resolution authorizing the county executive
15 to execute a personal services agreement
16 between the County of Nassau on behalf of
17 the Office of Management and Budget and
18 Morgan Stanley & Company. May I have a
19 motion, please?

20 LEGISLATOR WALKER: So moved.

21 LEGISLATOR MUSCARELLA: Second.

22 CHAIRMAN SCHMITT: Moved by
23 Legislator Walker, seconded by Legislator
24 Muscarella. The item is before us. Mr.
25 Deputy County Executive Tim Sullivan, is he

1 Rules Committee/4-16-12

2 here? He's not here.

3 LEGISLATOR WALKER: Kevan
4 Abrahams has joined the chamber.

5 MR. WALKER: Tim's coming. We'll
6 do this together.

7 CHAIRMAN SCHMITT: Mr. Rob Walker
8 and Mr. Tim Sullivan, how are you?

9 MR. WALKER: It was a long
10 stairwell today.

11 CHAIRMAN SCHMITT: The elevators
12 are not working, we're saving power? We
13 have this contract for Morgan Stanley. Can
14 you tell us about it, Tim?

15 MR. SULLIVAN: Good afternoon,
16 Presiding Officer Schmitt, Minority Leader
17 Kevan Abrahams, and members of the Rules
18 Committee. The contract before you secures
19 the services of Morgan Stanley to act as a
20 financial advisor to explore the possibility
21 of entering into a public private
22 partnership for the operation of the county
23 sewer system.

24 As pointed out by NIFA in the
25 October 2009 staff report, the county is

1 Rules Committee/4-16-12
2 using approximately \$25 million of fund
3 balance on an annual basis to subsidize
4 sewer operations. NIFA opined in that 2009
5 staff report that by 2013, all fund balance
6 would be gone.

7 My staff and I have looked at
8 that. We now think it's going to be in 2014
9 but the analysis clearly shows that there
10 will not be sufficient revenues in the fund
11 to maintain operations. The county has
12 therefore reached out to Morgan Stanley to
13 explore the possibility of entering into a
14 public private partnership and you have the
15 contract terms. I am here to answer any
16 questions that this committee may have.

17 CHAIRMAN SCHMITT: Legislator
18 Kopel.

19 LEGISLATOR KOPEL: Good
20 afternoon, Tim. How are you?

21 MR. SULLIVAN: Good afternoon,
22 legislator.

23 LEGISLATOR KOPEL: You and I
24 spoke a little while before and you did
25 answer some of my questions but I still have

1 Rules Committee/4-16-12
2 a few more questions that are kind of
3 general in nature.

4 Number two in the actual contract
5 describes what the services are that are to
6 be performed by Morgan Stanley. They've got
7 to provide us with financial advice and
8 advice as to valuation analyses, structuring
9 and so forth and so forth, which seems
10 sensible.

11 The appendix, though, which is
12 the more specific discussion of the services
13 says that they don't have to provide any --
14 actually it says the contract is going to
15 rely on the accuracy and completeness
16 without verifying anything or analyzing
17 anything of any information it receives from
18 third parties. It does seem to be a
19 contradiction and it kind of concerns me
20 because if we get information from proposed
21 -- are they getting involved with the
22 proposed operator as well?

23 MR. SULLIVAN: They will be
24 involved should this committee pass on this
25 contract. They will be involved with us in

1 Rules Committee/4-16-12
2 the selection of the -- we have formed a
3 committee internally to address this, but
4 Morgan Stanley will certainly be advising on
5 this.

6 LEGISLATOR KOPEL: So a major
7 part of the selection will be evaluating the
8 financial proposal, will it not?

9 MR. SULLIVAN: No, sir. There
10 would be some on the financial proposal
11 preferred by the operator with respect to
12 the cost of operating the system. But this
13 is, essentially if they go forward with the
14 public private partnership, it would be
15 bifurcated. There would be a second RFP
16 that we would put out for a concessionaire.
17 That would be the actual contract that the
18 county would enter into.

19 Again, this is something that we
20 are exploring at this point. There are
21 other options available to the county.

22 LEGISLATOR KOPEL: What I'm
23 trying to understand is, Morgan Stanley,
24 it's part of their job evaluating those
25 proposals for financial viability and so

1 Rules Committee/4-16-12
2 forth. So does the appendix then not
3 contradict paragraph two, in other words,
4 would they say they are not responsible
5 relying on accuracy and completeness without
6 verifying it independently or advise or
7 opine on solvency issues and so forth and so
8 forth. Is that not a problem for us?

9 MR. SULLIVAN: Give me one
10 second, please.

11 LEGISLATOR KOPEL: Sure.

12 MR. SULLIVAN: Sir, it's what we
13 discussed I think before. It's a standard
14 disclaimer, but, again, Morgan Stanley is
15 not going to be verifying, essentially, the
16 pipes, the sewers. That is up to the county
17 to do that. The condition of the system and
18 things like that, that would be our
19 representations.

20 LEGISLATOR KOPEL: That's fair
21 enough, what I'm concerned about is third
22 party information. In other words, the
23 proposed operator's information, the
24 proposed financial structure, the proposed
25 operator's financial proposal.

1 Rules Committee/4-16-12

2 This seems to say, unless I'm
3 misreading it, that they're not responsible
4 for that either. If I'm reading it wrong, I
5 apologize.

6 MR. SULLIVAN: My understanding
7 is, they would be evaluating the financial
8 proposal put forward by the operator, but
9 representations as to how the system will be
10 maintained, that is something that the
11 county has the expertise. I would not
12 anticipate that an investment bank would
13 have that expertise. It would be something
14 we could retain from an outside independent
15 expert to verify from a public work sector.

16 LEGISLATOR KOPEL: I don't know.
17 I think you need to look at this paragraph
18 again because I don't think that's what it
19 says. That's just my opinion.

20 There is a provision on
21 indemnification --

22 MR. CONKLIN: Hi. Steve Conklin
23 from the budget office. Just to address
24 your question. I guess you're focusing more
25 on the financial side.

1 Rules Committee/4-16-12

2 LEGISLATOR KOPEL: I was focusing
3 on the provision in Appendix A, the last
4 full paragraph on page ten. I'm sorry, the
5 last line on page ten.

6 MR. CONKLIN: Right. As Tim
7 said, that is just disclaimer language.
8 Morgan Stanley will be reviewing all
9 information as provided to us from the
10 operators, the investor, if we get to that
11 point. They have their valuation analysis,
12 so they'll be doing all that work basically
13 saying they are not going to verify what
14 anybody provides us is accurate, but in a
15 contract that we may have with an investor,
16 we'll have reps certifying that the
17 information they are giving is accurate in
18 terms of, if you're talking about their
19 financial stability or something like that.

20 LEGISLATOR KOPEL: I'm not going
21 to beat this one to death, it just seems to
22 me that that's just not what the provision
23 says.

24 MR. CONKLIN: It basically says,
25 they are not going to audit the information

1 Rules Committee/4-16-12

2 that's provided.

3 LEGISLATOR KOPEL: I get what
4 you're telling me, I do.

5 MR. CONKLIN: So it's not
6 contradictory.

7 LEGISLATOR KOPEL: Okay. We will
8 agree to disagree. There is an
9 indemnification provision there. I didn't
10 see the backup for that. I don't know if
11 you gave that to us. Reading paragraph
12 eight, because contractor will be acting on
13 the county's behalf in this capacity, this
14 contract is practiced to receive
15 indemnification. For what it's provisions
16 related on Appendix B. I didn't see an
17 Appendix B. Did we get it in our package?

18 MR. SULLIVAN: Appendix B was
19 filed, sir.

20 LEGISLATOR KOPEL: I guess I
21 didn't see it.

22 MR. SULLIVAN: Would you like a
23 copy?

24 LEGISLATOR KOPEL: Yes, please, I
25 would love to have that.

1 Rules Committee/4-16-12

2 LEGISLATOR WINK: Howard, if I
3 could, it's after page 14, it's Appendix B.
4 It's got handwritten amendments on it, and
5 the following page then is Rider A just in
6 case you have an opportunity to review your
7 document again.

8 LEGISLATOR KOPEL: Okay. I
9 missed that. It was over here. How does it
10 work, tell me please, the aggregate value
11 clause, in other words, that's the clause
12 that would have us reimburse -- base the
13 compensation on all future revenues that
14 might come in with the present value of it
15 calculated now. It seems -- how do you know
16 -- there doesn't seem to be an end date for
17 that.

18 MR. SULLIVAN: Sir, that would be
19 if the county does enter into an agreement
20 with the concessionaire for this public
21 private partnership, and there was a
22 valuation put on it, and that is something
23 we're not certain at this point.

24 What we are doing right now, we
25 are evaluating, hiring Morgan Stanley to

1 Rules Committee/4-16-12
2 look at this as a possibility to explore
3 that option and if there was a deal, that
4 the transaction fee would be 75 basis points
5 based on that, sir.

6 LEGISLATOR KOPEL: What I mean
7 is, for instance, if there were a five year
8 term, let's say, for a transaction, I won't
9 even go into what that transaction might
10 look like, five year term, with two five
11 year options.

12 MR. SULLIVAN: I think, sir, if
13 you were dealing with a concessionaire, it
14 would be a lot longer than five years.

15 LEGISLATOR KOPEL: I understand,
16 I'm just using that for a basis for a
17 question. In other words, if there was a
18 term of X number of years, you like X
19 better?

20 MR. SULLIVAN: X is better.

21 LEGISLATOR KOPEL: A term of X
22 years, with two options for Y and Z years.
23 We would pay then right at the outset for
24 the Y and Z terms as well, would we not?

25 MR. SULLIVAN: I think the

1 Rules Committee/4-16-12
2 contract would have to be specific at that
3 point, sir.

4 LEGISLATOR KOPEL: The way it's
5 written now, it suggests that we would. Is
6 that's what intended?

7 MR. SULLIVAN: I'm not sure what
8 you are referring to, sir.

9 LEGISLATOR KOPEL: What I'm
10 referring to is also on Appendix A. That
11 would be on page ten. That would be the
12 paragraph just starting with the words "for
13 purpose of calculating the transaction fee."
14 So it would include the value of any present
15 value of contingent and non-contingent
16 payments with the present value discount to
17 it. I'm just wondering if that's what you
18 are intending as well.

19 MR. SULLIVAN: Yes, sir.

20 LEGISLATOR KOPEL: In other
21 words, if there are two five year optional
22 terms, or whatever it is, those would be
23 paid for as well?

24 MR. SULLIVAN: I don't think we
25 would do optional terms, sir. First of all,

1 Rules Committee/4-16-12

2 we would have to -- if one were to go in
3 that route, you would have to retire the
4 debt of the system and, again, you're not
5 talking those sort of scope, sir, it would
6 not be five year terms to retire the debt.

7 LEGISLATOR KOPEL: Mr. Presiding
8 Officer, that's all for the moment. I may
9 come back. Thank you.

10 CHAIRMAN SCHMITT: Anybody else
11 on this side? Anybody on this side?
12 Legislator Abrahams.

13 LEGISLATOR ABRAHAMS: Thank you,
14 Presiding Officer Schmitt. How are you, Mr.
15 Sullivan?

16 MR. SULLIVAN: Good afternoon,
17 legislator. My first round of questioning
18 really ties into the fact that we had sent a
19 letter to the presiding officer on Friday
20 which we had a copied to the administration
21 requesting that Morgan Stanley be present.

22 CHAIRMAN SCHMITT: The letter was
23 delivered at 5:15 p.m. I didn't see it
24 until this morning.

25 LEGISLATOR ABRAHAMS: I'm sure it

1 Rules Committee/4-16-12
2 was delivered a little before that. That
3 said -- I mean, also the fact that,
4 Mr. Presiding Officer, it shouldn't even
5 require a letter. We should demand that
6 Morgan Stanley be here even without me
7 having to write a letter.

8 That said, Mr. Sullivan, is
9 Morgan Stanley present?

10 MR. SULLIVAN: I do not see
11 Morgan Stanley present.

12 LEGISLATOR ABRAHAMS: Would you
13 think it's indicative or important to have
14 Morgan Stanley here today?

15 MR. SULLIVAN: I would not
16 speculate, sir. That is not my position.

17 LEGISLATOR ABRAHAMS: It's our
18 position, as I think it should be the
19 position of everyone on this particular
20 committee that Morgan Stanley be present.
21 You're talking about a contract of upwards
22 of \$5 million. Also, I think that if Morgan
23 Stanley is to approve the evaluation
24 process, as you explained it, we're talking
25 about a humongous privatization of our sewer

1 Rules Committee/4-16-12
2 system. I think the standpoint that we
3 don't have input or any knowledge from
4 Morgan Stanley in terms of how they see fit
5 in terms of their evaluation process seems
6 to me a little unheard of that anybody on
7 this committee would not want them to be
8 here.

9 MR. SULLIVAN: Sir, I would just
10 opine, when we do financing transactions, it
11 has not been my recollection that the
12 vendors have been here for that.

13 LEGISLATOR ABRAHAMS: It's
14 definitely my recollection that we always
15 find this committee requesting people to be
16 here and they're not here. The fact remains
17 that they're not here today. We are talking
18 about a contract which, if they believe its
19 evaluation process' approval could be
20 upwards of \$5 million, which is a very
21 sizeable large contract, and then on top of
22 that, you're talking about the
23 privatization. Is that evaluation process,
24 are they going to come back to this
25 committee so we can take a look at what they

1 Rules Committee/4-16-12
2 have presented before it gets recommended
3 for a privatization deal?

4 MR. SULLIVAN: Yes, sir. Just
5 before any contractors consummated for the
6 sale of the system or anything like that, we
7 would obviously come back and have
8 discussions.

9 LEGISLATOR ABRAHAMS: That part I
10 agree. That part has to come back to this
11 committee. What I'm saying is, during their
12 evaluation process, are they going to be
13 sharing any documents with this committee?

14 MR. SULLIVAN: If I will make
15 known your request to them, sir. I'm just
16 getting this.

17 LEGISLATOR ABRAHAMS: I just
18 think from the standpoint the fact that
19 they're not here is not an appropriate
20 action for this committee. I think we
21 should have all the facts. I can't
22 understand why the majority does not see fit
23 that Morgan Stanley not be here present
24 today. Especially when it's our belief that
25 anyone who votes for this particular

1 Rules Committee/4-16-12
2 contract is indicative of voting for the
3 privatization of the sewers, is that your
4 estimation as well?

5 MR. SULLIVAN: No, sir. I think
6 it says, as the county executive has stated,
7 it's something right now that we are
8 exploring and we're hiring a financial
9 advisor to explore that possibility, but I
10 would not try to --

11 LEGISLATOR ABRAHAMS: And the
12 cost of this exploration is how much?

13 MR. SULLIVAN: In the five to
14 \$700,000 range.

15 LEGISLATOR ABRAHAMS: We are just
16 going to willy nilly explore --

17 MR. SULLIVAN: I don't believe
18 it's willy nilly, sir. I think it's, again,
19 as NIFA pointed out, we are losing \$25
20 million a year. This has been going on for
21 some time. We realize that this sewer
22 operation, as constructed, would not viable
23 starting in 2014.

24 LEGISLATOR ABRAHAMS: But, I
25 mean, the fact remains that basically we are

1 Rules Committee/4-16-12
2 going to enter into a contract with Morgan
3 Stanley, which I have to think that
4 eventually if they are going to recommend
5 some type of privatization of a sewer
6 system, they're going to come forward with
7 some kind of document or plan of how they
8 think the county should proceed. From that
9 standpoint, they get paid 75 basis points
10 based off of whatever that deal brings in
11 for the county. We already know that there
12 are people who are lining up to do this deal
13 with the county.

14 It just seems to me that anybody
15 on this committee who doesn't think that
16 this is a vote that is indicative of a
17 privatization deal is a little bit naive.
18 You would have to have your head in the sand
19 to not know the fact remains that this deal
20 is pretty much done once this contract goes
21 forward.

22 MR. SULLIVAN: No, sir. I would
23 not. I think this deal will allow us to
24 visit the sewage system to analyze its
25 operations, to analyze with a private sector

1 Rules Committee/4-16-12
2 investor and what a private sector operator
3 could bring to the table, and whether or not
4 this would be something that would be
5 advantageous to the county and its
6 ratepayers.

7 LEGISLATOR ABRAHAMS: Let me just
8 make sure I understand this correctly, Mr.
9 Sullivan. Focusing in on the financing of
10 this deal. This deal is to address the
11 budget gap that exists in the budget today.
12 We wouldn't be doing this deal if there
13 wasn't a budget gap is what I'm trying to
14 figure out.

15 MR. SULLIVAN: No, sir. I think
16 we're talking about, as the sewer fund is
17 currently constructed, as NIFA pointed out
18 in 2009, it's been losing \$25 million a year
19 every year. At some point in time, it stops
20 being viable. NIFA opined that that would
21 happen in 2013. My analysis shows that it
22 would be one year later, but essentially
23 NIFA was correct. We think at this time, a
24 couple of years in advance, it's good to
25 explore other alternatives that could

1 Rules Committee/4-16-12
2 provide operational, environmental benefits.
3 There is a lot into the running of a sewage
4 system and it's a pretty complex issue.

5 LEGISLATOR ABRAHAMS: But you had
6 mentioned that NIFA in 2009, or in 2010,
7 based on what you just said --

8 MR. SULLIVAN: It was 2009, sir.

9 LEGISLATOR ABRAHAMS: But
10 recently NIFA has criticized this deal?

11 MR. SULLIVAN: I have heard their
12 criticisms.

13 LEGISLATOR ABRAHAMS: Heard? I
14 will remind you, refresh your memory.
15 Mr. Marlin clearly stated that -- and I'm
16 paraphrasing what he said, this week the
17 county announced the makings of a new
18 borrowing scheme without a deal in hand. If
19 it becomes reality, it will be the biggest
20 one shot revenue fiscal abuse in the
21 county's history. That's Mr. Marlin.

22 Mr. Wyler (phonetic) said, "not
23 only will this transaction hurt the county,
24 the workers there, but the rest of the
25 county residents as well. This is a one

1 Rules Committee/4-16-12
2 shot just borrowing which ultimately kicks
3 the can down the road."

4 Mr. Steinman, I would urge the
5 county not to spend the resident's money on
6 the lawyers and the bankers without
7 reasonable exception of the passage of
8 implementation and remind the county that
9 this is not going to happen without the
10 approval of this board. The board he must
11 be referring to is NIFA.

12 And, lastly, Mr. Stack says, the
13 only reason for doing this at this time
14 would be a one-shot and at this time we are
15 extremely skeptical of such a transaction.

16 So just to refresh your memory, I
17 think it's very clear that NIFA is not
18 supporting this particular deal, and, to me,
19 this definitely -- this gives the
20 resemblance of the county coliseum where we
21 spent two and a half million dollars in
22 going down a road of a referendum which,
23 basically, at the end of the day, goes
24 absolutely nowhere.

25 So we're going to spend upwards

1 Rules Committee/4-16-12
2 of 500 to \$700,000 before a deal even goes
3 forward and basically put ourselves on the
4 hook when we know full well, based on NIFA's
5 recent comments, these are at the March 22,
6 2012 NIFA board meeting, just a couple of
7 weeks ago, that they are not even going to
8 approve it.

9 MR. SULLIVAN: Well, sir, I would
10 opine that NIFA asked us to go out and
11 re-procure the services. So we are doing
12 this RFP at the behest of NIFA to re-procure
13 these services.

14 LEGISLATOR ABRAHAMS: No, no. I
15 believe NIFA is requesting that because
16 basically the county has taken the position
17 that it's going forward with a contract --
18 has NIFA approved a contract for Morgan
19 Stanley?

20 MR. SULLIVAN: No, sir, they did
21 not.

22 LEGISLATOR ABRAHAMS: So the
23 money we approved going back a couple of
24 months ago, I remember \$25,000, \$100,000 per
25 quarter I think the dollar amounts were,

1 Rules Committee/4-16-12
2 those contracts haven't been approved by
3 NIFA?

4 MR. SULLIVAN: That's correct.
5 NIFA asked us to go back and re-procure the
6 services.

7 LEGISLATOR ABRAHAMS: That's
8 exactly my point. That's the reason why
9 they are asking to re-procure the services
10 because you didn't approve it the first time
11 when we should have done it the right way.

12 MR. SULLIVAN: What would be the
13 right way, sir, if they are asking us to
14 re-procure it?

15 LEGISLATOR ABRAHAMS: No. The
16 right way would have been when we actually
17 entered into those contracts, when entering
18 into the agreements with Morgan Stanley
19 going back, I believe, to 2010, is when we
20 entered the first agreements with Morgan
21 Stanley?

22 MR. SULLIVAN: No, sir, that is
23 not correct.

24 LEGISLATOR ABRAHAMS: You correct
25 me. When was the first time we entered into

1 Rules Committee/4-16-12
2 agreements with Morgan Stanley?

3 MR. SULLIVAN: First time I
4 believe was August 2011.

5 LEGISLATOR ABRAHAMS: So August
6 2011, going back about I guess eight months,
7 we should have basically forwarded those
8 contracts to NIFA from them.

9 MR. SULLIVAN: No. That would be
10 inaccurate, sir, that contract was for
11 \$24,750, and that would be less than the
12 threshold required for NIFA approval.

13 LEGISLATOR ABRAHAMS: So
14 basically we're going to hide behind the
15 fact that we didn't meet the threshold when
16 we know full well, and we basically --

17 MR. SULLIVAN: It's not hiding,
18 sir, it's reality. It's the law.

19 LEGISLATOR ABRAHAMS: No, it's
20 hiding, because we knew full well that their
21 contract was more than \$24,999. We knew
22 that contract was going to exceed to the
23 amounts that we're talking about today.

24 MR. SULLIVAN: And we are doing
25 as instructed, sir.

1 Rules Committee/4-16-12

2 LEGISLATOR ABRAHAMS: Mr.
3 Sullivan, let's be genuine with each other,
4 please. We are by no stretch of the
5 imagination do you want this committee to
6 believe that Morgan Stanley, a big financial
7 company institution in the City of New York
8 and throughout the world, was going to
9 accept \$24,999 to do this particular
10 analysis for the county, you are not
11 expecting us to believe that?

12 MR. SULLIVAN: I didn't say I
13 was, sir.

14 LEGISLATOR ABRAHAMS: So what I'm
15 saying is, at the time when they did enter
16 that agreement, the intent was to do a lot
17 more. I believe that particular agreement
18 should have been forwarded to NIFA then, if
19 the county had intended to do more than
20 \$24,999. That's my point.

21 MR. SULLIVAN: Sir, we did
22 forward the agreement to NIFA. NIFA asked
23 us to reconsider and re-procure the
24 services, and that's what my testimony --

25 LEGISLATOR ABRAHAMS: Well,

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2 they're asking you to re-procure the
3 services because the bottom line is it
4 wasn't done appropriately the first time.

5 MR. SULLIVAN: I disagree, sir.

6 CHAIRMAN SCHMITT: This is a
7 point of order. If there is no contract
8 that is sent to the legislature for
9 approval, how then does the administration
10 forward a contract to NIFA?

11 LEGISLATOR ABRAHAMS: We did do
12 the contract earlier this year.

13 CHAIRMAN SCHMITT: But you are
14 saying that the \$24,000 contract, they
15 should have forwarded that to NIFA because
16 they knew full well, in your words, that
17 they were going to spend more than that.
18 But until the contract comes here and is
19 approved by this committee, it cannot leave
20 and go to NIFA.

21 LEGISLATOR ABRAHAMS: Mr.
22 Schmitt, earlier this year we approved
23 upwards of \$400,000 I believe.

24 CHAIRMAN SCHMITT: And that went
25 to NIFA.

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2 LEGISLATOR ABRAHAMS: What I'm
3 saying is, that there should have been
4 conversations with NIFA going back to August
5 2011 because we knew full well that the
6 \$24,999 was not sufficient.

7 CHAIRMAN SCHMITT: I understand.

8 LEGISLATOR ABRAHAMS: And for
9 NIFA now to make comments on March 22nd --

10 CHAIRMAN SCHMITT: Wait a minute.
11 What I'm suggesting to you, the process that
12 you are now suggesting would be a process
13 that circumvents this committee. They have
14 to come here first. That's my point.

15 LEGISLATOR ABRAHAMS: I'm not
16 saying it circumvents this committee at all.

17 CHAIRMAN SCHMITT: I too read the
18 opine of George Marlin and the rest of them.

19 LEGISLATOR ABRAHAMS: But,
20 Mr. Schmitt --

21 CHAIRMAN SCHMITT: And it's the
22 first time I've ever seen a so-called
23 conservative sing the praises of how the
24 public sector can do things better than the
25 private sector.

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2 LEGISLATOR ABRAHAMS: Mr.
3 Schmitt, let's be clear. I'm not just
4 citing a few members of the NIFA board. I
5 just cited four. I believe there are
6 actually more than that that actually feel
7 that way. But the bottom line is actually
8 very simple. Why would we be going forward
9 with a contract we know full well at the end
10 of the day, it sounds like the result of
11 this possible contract based on the
12 questioning with Mr. Kopel, it sounds like
13 we can go forward with a particular
14 privatization agreement? When the end
15 result we would be seeking from Morgan
16 Stanley's input can very well be to the
17 contrary of what NIFA is saying they would
18 support. And, to me, that doesn't seem --

19 MR. SULLIVAN: No, sir. This
20 contract would have to go back to NIFA for
21 their consideration, sir.

22 LEGISLATOR ABRAHAMS: But, do you
23 see my point, Mr. Sullivan? After what I
24 just shared with you, in regards to the
25 comments that were made by four NIFA board

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2 members, to me it seems a little illogical.

3 MR. SULLIVAN: But, sir --

4 LEGISLATOR ABRAHAMS: If I may?
5 To me it seems to be a bit illogical that
6 this very board that has to approve, not
7 only this contract but approve a sewer deal
8 to what Morgan Stanley is providing to the
9 county, it just seems to me to be a little
10 bit inappropriate. That we would even be
11 engaging in a particular request for
12 services. It's an exploration to nowhere.
13 We are going to fall off the map as if the
14 world was flat.

15 MR. SULLIVAN: NIFA opined that
16 absent any change in policy that there would
17 be significant rate increases. I think it's
18 incumbent upon the administration to seek
19 alternatives and that is something I'm
20 looking for. Their letter is in October
21 2009, page 35. Those are NIFA's words.

22 LEGISLATOR ABRAHAMS: I read
23 NIFA's words into the statement already and
24 it's cited from March 22nd. This sounds
25 very clear that they feel that this is a

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2 one-shot, and that they feel that this deal
3 should not go forward.

4 To me, it doesn't make any sense
5 why this legislature would approve a
6 contract so that we can give Morgan Stanley
7 at least 500 to \$700,000, when we know full
8 well at the end of the day, unless this deal
9 comes in some type of different form, we
10 know full well that NIFA is not going to
11 support.

12 MR. WALKER: Could I just say
13 something? First of all, there is no deal.
14 There is no deal that's been presented to
15 this legislature. You have NIFA issuing
16 opinions on something they haven't even seen
17 or witnessed, nor has the county procured.

18 The bottom line is, no one has
19 done anything about dealing with the deficit
20 in the sewer fund. No one. And I mean no
21 one other than not hiring people, about
22 letting the sewers fall to disrepair, no one
23 has taken one step to move forward in
24 building the sewer system back up than this
25 current county executive.

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2 This year alone, we are going to
3 have a \$31 million deficit. So I guess we
4 should all sit here and look at the clouds
5 and say do nothing and then hope that every
6 time you flush it's going to work. Because
7 at the end of the day it's not going to
8 work. So this contract, and the contract
9 before you, is not the sewer privatization
10 contract. It is not a public private
11 partnership before you.

12 LEGISLATOR ABRAHAMS: We
13 understand that, Mr. Walker.

14 MR. WALKER: But that's not
15 what's being said.

16 LEGISLATOR ABRAHAMS: I don't
17 know if you were here for the entire --

18 MR. WALKER: No, I heard the
19 whole thing.

20 LEGISLATOR ABRAHAMS: So are you
21 disagreeing with the comments that NIFA has
22 made?

23 MR. WALKER: Yes, because NIFA
24 doesn't have any contract to even comment
25 on. Let me finish --

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2 LEGISLATOR ABRAHAMS: Whether
3 they have the contract or not, they're
4 saying that -- that the parameters of the
5 deal is a one shot. Wouldn't you agree it's
6 a one shot?

7 MR. WALKER: There is no deal.
8 What are we talking about? We're talking in
9 hypotheticals.

10 LEGISLATOR ABRAHAMS: So let me
11 make sure I understand this correctly. We
12 haven't discussed or entered into any MOUs
13 or any discussions with any possible
14 vendors? Have we talked to anybody --

15 MR. WALKER: There is not one
16 conversation I had with any financial vendor
17 at all.

18 LEGISLATOR ABRAHAMS: No, no.
19 Not financial vendors, I'm asking --

20 CHAIRMAN SCHMITT: You asked a
21 question, let him answer.

22 MR. WALKER: Not one.

23 LEGISLATOR ABRAHAMS: We're
24 discussing. Let me make sure I understand
25 this correctly. We are spending \$700,000 on

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2 a hypothetical?

3 MR. WALKER: No, we're spending
4 \$700,000 to say, how are we going to deal
5 with a \$31 million a year problem that no
6 one has addressed? Because the sewer system
7 -- you know, George Marlin and his great
8 comments discuss that he didn't know that
9 the system, as we say, is going bankrupt.
10 And, obviously, you know what, we are not
11 that stupid. We know that the government is
12 not allowed to go bankrupt.

13 What we do know is that we're out
14 of money. In 2014 we're out of money. And
15 all George Marlin had to do is look at his
16 report in 2009 that was done by his staff,
17 not by ours, that says, and I'll actually
18 read it for you, it's page 35 from the
19 October NIFA report. Feel free to look at
20 it. "In 2003, at the request of Nassau
21 County, the New York State Legislature
22 created the Nassau County Sewer and Storm
23 Water Finance Authority, and a consolidated
24 county wide sewer and storm water resource
25 district. As a result of the consolidation,

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2 fund balance from 27 collection, and three
3 disposal districts, became available to the
4 county. The use of sewer fund balance has
5 helped the county balance its budget. In
6 fiscal year 2010, the county is raising the
7 sewer tax levy by \$6 million, and is using
8 almost \$25 million of remaining fund balance
9 to subsidize operations. By 2013,
10 substantially all of the fund balance will
11 be gone and significant tax increases in
12 that fund will be needed to close the large
13 mismatch that currently exists between
14 revenues and expenditures."

15 I listened to you so now you can
16 listen to me. No one has done anything to
17 deal with this issue. So why is Morgan
18 Stanley on board? Because the system is out
19 of balance. There is no more money left.
20 So what Morgan Stanley is going to be doing
21 is looking at all different possible
22 options. All possible options. If you read
23 the paper today, you listened to what the
24 county executive has said, there are several
25 out there to discuss. So why would we do

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2 it? It is a hypothetical because you don't
3 know the answer. NIFA is offering opinions
4 on a hypothetical. They're offering things
5 on the fact that we're going to sell the
6 sewer system. We are not selling the sewer
7 system, by the way. These are the things
8 that everybody is talking about. So let the
9 work --

10 LEGISLATOR ABRAHAMS: So what are
11 we doing, Mr. Walker? You can tell us what
12 we're not doing. But, then again, tell us
13 what we are doing.

14 MR. WALKER: Well, when we have a
15 full disclosure and we have all the analyses
16 done --

17 LEGISLATOR ABRAHAMS: How do you
18 know what we're not doing if you don't have
19 documents today?

20 MR. WALKER: Because the county
21 executive says we're not selling the sewer
22 system. There was never a desire to sell
23 the sewer system. I know, you don't like to
24 hear it.

25 LEGISLATOR ABRAHAMS: We like to

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2 hear it, but we like it straight too at the
3 same time. Let me also mention, you said
4 before that there weren't any MOUs or there
5 wasn't any potential discussions with any
6 vendors.

7 MR. WALKER: I didn't say there
8 was no discussions, I said there was MOUs.

9 LEGISLATOR ABRAHAMS: Because I
10 just wanted to remind, in your own contract
11 summary, and I will read it from this quote,
12 "pending approval of the contract, Morgan
13 Stanley will advise the county on phase one
14 of transaction which will include evaluating
15 the four responses to the RFQ to qualify
16 potential operators of the system. Issuing
17 an RFP to the three potential operators who
18 were deemed qualified and evaluating the RFP
19 responses from the three qualified operators
20 coordinating the due diligence conducted by
21 the qualified firms and drafting and
22 negotiating a nonbinding memorandum of
23 understanding with three qualified
24 operators."

25 Now, just based upon the first

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2 part of that, it sounds like we have already
3 done an RFQ and we have requested responses
4 and we have gotten four.

5 MR. WALKER: We have. I have not
6 said we didn't. You asked a question if we
7 entered into any MOA or MOUs, we have not.
8 We did an RFQ and an RFP. Pull the
9 documents. There has been no MOAs.

10 LEGISLATOR ABRAHAMS: Let me make
11 sure I understand this correctly. So it's
12 the county's practice to go forward with an
13 RFQ to request proposals from the vendors to
14 go through this big process but, at the same
15 time, there is a chance, after we spent 500
16 to \$700,000 of the county's money and
17 taxpayer's money to Morgan Stanley, there is
18 a chance we may not do this deal.

19 MR. WALKER: There's a chance,
20 yes.

21 LEGISLATOR ABRAHAMS: I don't
22 think that's going to happen.

23 MR. WALKER: Well, let me ask you
24 a question. We go out to the public. We go
25 out to an RFQ or RFP, and, all of sudden,

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2 what happens is, you have five companies
3 that respond. They say the five companies
4 say it's actually going to cost us double
5 than what it cost us today to run the
6 system. We wouldn't enter into a contract
7 for somebody that way.

8 But if you do have companies that
9 now come back and say, guess what, there is
10 some efficiencies you can have, some
11 improvements you can make. These are the
12 efficiencies that you can make, these are
13 the environmental improvements you can make,
14 wouldn't you want to see if that's actually
15 possible? You can't guess if it's going to
16 be possible without doing it. So the RFP
17 went out, the RFQ went out. We now have
18 three vendors, four vendors, and now we're
19 down to three vendors that are doing their
20 due diligence. They're going and visiting
21 both plants -- actually, three, because you
22 also have Glen Cove in the mix, which is
23 privately operated for those of you that
24 don't know, with very minimal problems,
25 which is one of the responders.

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2 So they're doing their dual
3 diligence. They're going to tell you the
4 amount of work that needs to be done in each
5 facility and they're going to tell you what
6 upgrades need to be done, and maybe upgrades
7 that we planned on doing they say you
8 shouldn't do because you should do something
9 else that's even more prudent. So these are
10 the types of things you need to do. You
11 need to have the information before you make
12 a decision.

13 So for somebody to be just
14 issuing opinions without having all the due
15 diligence and why Morgan Stanley has brought
16 on, so they can do the due diligence, and we
17 can get all the information, and then we can
18 make an educated decision. This legislative
19 body can make an educated decision.

20 Everybody wants this to be done
21 quick. They say it's not being transparent
22 and everything such as that. Believe me,
23 there are going to be hearings upon
24 hearings. The county executive has said
25 that we're going to go out and go into the

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2 field, but you need to have the information
3 first. Just get out there and give
4 misinformation is wrong. It happens all the
5 time around here. People love giving
6 misinformation out.

7 So we have nine months. The
8 first thing that was mentioned is nothing
9 would take place prior to January of 2013.
10 We are in April of 2012. A lot more due
11 diligence needs to be done, get the
12 information that's ready to be made and then
13 make a decision based upon that information.

14 LEGISLATOR ABRAHAMS: Mr. Walker,
15 we appreciate that, but the fact remains
16 that we requested that Morgan Stanley be
17 here so that this very misinformation you're
18 talking about gets clarified. I think it
19 would be best if we had Morgan Stanley here
20 to actually tell us exactly what they are
21 going to do in their evaluation process.

22 MR. WALKER: You have the
23 contract. You know what they're going to
24 do.

25 LEGISLATOR ABRAHAMS: Well, the

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2 fact remains that we still need their
3 comments on the record just like you're
4 here. We have a contract summary which is
5 from the administration, which you are here
6 to explain it in greater detail. We would
7 request that Morgan Stanley be here too
8 before this legislature go forward with any
9 particular agreement in regard to Morgan
10 Stanley.

11 But the fact remains and it's
12 very simple. A vote today for the Morgan
13 Stanley agreement is a vote going forward
14 for the privatization. I cannot see the
15 county going forward and spending \$700,000
16 and going forward with the RFQ process and
17 not fulfill what we are talking about in
18 this Morgan Stanley contract in regard to
19 the privatization of our sewer system.

20 Just say it. I would say rather
21 than going with this back and forth and
22 hypotheticals and what we won't do, the
23 bottom line is very simple. You are going
24 to do it. I think every member of this
25 legislative body should be understanding of

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2 that.

3 MR. WALKER: Okay.

4 LEGISLATOR ABRAHAMS: That's it.

5 Thank you.

6 CHAIRMAN SCHMITT: I so
7 appreciate you telling us what we are going
8 to do. Legislator Jacobs, are you next?

9 LEGISLATOR JACOBS: I think I'm
10 going to yield my time to Mr. Wink and I
11 will follow him.

12 CHAIRMAN SCHMITT: Legislator
13 Wink.

14 LEGISLATOR WINK: Gentleman, good
15 afternoon. Just so we are clear on this
16 whole process. I want to take us through
17 the time line of how we got from there to
18 here and maybe to the extent we can talk
19 about where we're going from here, we'll do
20 that.

21 February 2010, as I understand
22 it, the county issued an RFP which was
23 effectively a traditional underwriting RFP,
24 fund writing services, but apparently it
25 also asked respondents to provide the county

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2 with alternative fund-raising ideas, is that
3 right, which may include --

4 MR. SULLIVAN: We asked for
5 different scenarios for privatization
6 efforts. It was a pretty broad based
7 request, sir.

8 LEGISLATOR WINK: Based on that,
9 we got about 24 responses as of what, March
10 8th, of 2010, 24 responses. Out of that,
11 seven firms selected, of which Morgan
12 Stanley was one.

13 MR. SULLIVAN: They were one of
14 them, that is correct, sir.

15 LEGISLATOR WINK: In those
16 responses, did Morgan Stanley provide us
17 with the idea of doing this?

18 MR. SULLIVAN: It was one of the
19 things they discussed in their proposal,
20 yes.

21 LEGISLATOR WINK: One of the
22 things. Did other firms discuss it as well?

23 MR. SULLIVAN: Not to my
24 recollection, no, sir.

25 LEGISLATOR WINK: So they were

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2 the only ones to offer it up?

3 MR. SULLIVAN: Apart from other
4 bankers, I meet with bankers periodically,
5 discuss similar type efforts, but they were
6 the only ones I believe at that time to put
7 that in the response.

8 LEGISLATOR WINK: Is it possible
9 that it was something that we thought up and
10 provided to them as an idea?

11 MR. SULLIVAN: No, sir. I would
12 not think at that time. Obviously we looked
13 to explore always to improve operations,
14 such as we did with the bus privatization,
15 so we are always on the look out for things.

16 LEGISLATOR WINK: So Morgan
17 Stanley gave us this idea back in 2010?

18 MR. SULLIVAN: I think it was
19 something that was put in their response and
20 something that the county has contemplated.
21 This has been -- probably the prior
22 administration had discussions on this.

23 LEGISLATOR WINK: I guess we'll
24 never know because it never came before this
25 legislature certainly, and it never got this

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2 far with anyone else.

3 MR. SULLIVAN: That's correct,
4 sir.

5 LEGISLATOR WINK: But of the 24
6 responses, it's your opinion that Morgan
7 Stanley may have been the only one who
8 provided this avenue.

9 MR. SULLIVAN: I believe they
10 were the only ones to address it in the
11 response.

12 LEGISLATOR WINK: They were the
13 only one of the seven that was selected
14 ultimately that provided the response as
15 well?

16 MR. SULLIVAN: They were selected
17 as part of the senior underwriting team.

18 LEGISLATOR WINK: Right, and
19 based on this process, the administration
20 decided to pursue this option and sought to
21 enter into a contract with Morgan Stanley to
22 conduct a preliminary strategic advisory
23 review of the system and assist the county
24 with the preparation of an RFQ for potential
25 operators of the system; is that right?

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2 MR. SULLIVAN: That I think was
3 about 16 months later, yes, sir.

4 LEGISLATOR WINK: That you said
5 was August of 2011.

6 MR. SULLIVAN: I believe so, yes,
7 sir.

8 LEGISLATOR WINK: So what
9 happened between March of 2010 when the idea
10 was first put out there, at our request the
11 idea was submitted to us, and August 2011
12 when we decided to move forward with Morgan
13 Stanley on it?

14 MR. SULLIVAN: When you said what
15 happened, sir, I think the idea was being
16 discussed internally with OMB. We were
17 quite busy doing other things as well and
18 this is something that has always been on
19 our radar.

20 LEGISLATOR WINK: Was it their
21 idea, for example, to charge not for profits
22 for use of the sewer system?

23 MR. SULLIVAN: No, sir. Not to
24 my understanding.

25 LEGISLATOR WINK: Yet in the

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2 2011 budget, we came up with that idea
3 apparently, we the collective county?

4 MR. SULLIVAN: I personally, in
5 discussions PFM we were the only entity in
6 the country, to my knowledge, that did not.
7 It's, again, pretty simple to the effect
8 they are not being charged, they are being
9 subsidized by residential homeowners and
10 class four property owners.

11 LEGISLATOR WINK: But the
12 simplicity is in the fact that we charge a
13 tax as opposed to usage fees?

14 CHAIRMAN SCHMITT: This is a
15 contract with Morgan Stanley, that's what
16 the questions are to pertain to.

17 LEGISLATOR WINK: Mr. Chairman,
18 I'm going through the time line here to have
19 an understanding of why -- Mr. Sullivan and
20 Mr. Walker both made the case that somehow
21 the sewer district is now bleeding money,
22 and I'm submitting that a big part of the
23 reason why it's bleeding money is because we
24 came up with a half-baked idea to charge not
25 for profits for sewer usage with no

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2 measurable means by which to actually charge
3 them. If that's part of the problem we are
4 dealing with here, let's make it clear and
5 put it on the table that that's part of the
6 problem we are dealing with.

7 MR. SULLIVAN: No, sir.

8 LEGISLATOR WINK: We relied \$20
9 million in the 2011 budget in not for
10 profits.

11 MR. SULLIVAN: Sir, I gave you a
12 \$25 million burn rate that NIFA annunciated
13 in that report in 2009. This has been going
14 on, when the sewers were consolidated, the
15 sewer districts, there was a substantial
16 fund balance that the county has been
17 running down every year. It was a fairly
18 straightforward analysis that NIFA saw that
19 would be broke in 2013. I think some things
20 went favorable to us which enabled us to
21 push it off to 2014, but, essentially, that
22 has remained unchanged for about a decade or
23 so.

24 LEGISLATOR WINK: Yet, in 2011,
25 we budgeted \$20 million with the revenues,

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2 to -- and \$40 million in 2012 to actually
3 charge not for profits for the use of
4 sewers.

5 MR. SULLIVAN: Correct, sir, but
6 that would be a gap closer. To the extent
7 there's TLO, an injunction that is
8 preventing us from doing that, sir, but that
9 is a gap closer. The operations to current
10 rates are not sufficient to cover the
11 expenses as laid out by NIFA. That remained
12 unchanged.

13 I took it as one of the ways to
14 close that gap somewhat was to charge the
15 not for profits. That was something that
16 was decided in 2010, but that would only
17 partially close the gap.

18 LEGISLATOR WINK: But point of
19 fact, that was budgeted for.

20 MR. SULLIVAN: We had not been --
21 there is an injunction put on it, as you
22 know, sir, so we have not been able to levy
23 that.

24 LEGISLATOR WINK: Well, my
25 understanding is, we are still no closer to

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2 actually figuring out how to go about doing
3 that usage.

4 MR. SULLIVAN: No, sir. I don't
5 believe so. I think --

6 LEGISLATOR WINK: Approximate it
7 based on water district charges?

8 MR. SULLIVAN: There is different
9 valuation methods that are applicable here.
10 We can do based on water. We can do, it
11 could be a hybrid. There are lots of
12 alternatives here.

13 LEGISLATOR WINK: And just as an
14 aside, if someone were to take over the
15 concession, they would not be able to avail
16 themselves of the tax revenues that Nassau
17 County currently collects; is that correct?

18 MR. SULLIVAN: You are posing a
19 hypothetical, if someone were to run the
20 system?

21 LEGISLATOR WINK: Yes.

22 MR. SULLIVAN: It would depend on
23 how they were structured. If they were
24 hired as like a managing agent, no, they
25 would not.

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2 LEGISLATOR WINK: But if the
3 county owns it --

4 MR. SULLIVAN: Well, then they
5 would be responsible, right, of course, they
6 would get the collections. If they were
7 running the system, yes.

8 LEGISLATOR WINK: Collections
9 based on a system that right now we have no
10 measurement for?

11 MR. SULLIVAN: Well, sir, I think
12 there's obviously, there is information out
13 there, some of the bids I have seen, which I
14 believe there is going to be efficiencies
15 and cost reductions from a privatization.

16 LEGISLATOR WINK: That's
17 certainly a prerogative, again, because we
18 don't have a plan in front of us. We can
19 make those claims.

20 MR. SULLIVAN: It's early on,
21 sir.

22 LEGISLATOR WINK: Let's get back
23 for a moment. We entered into a deal in
24 August of 2011 with Morgan Stanley to
25 provide advisory review of the system, a

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2 system which, by the way, under the contract
3 that's before us today, they're not
4 auditing, right? I'm trying to understand,
5 they're supposed to conduct a preliminary
6 strategic advisory review of the system.
7 I'm assuming that's the sewer collection
8 system; is that right?

9 MR. WALKER: Sir, what really --
10 the primary task for the \$24,000 number was
11 to assist us in drafting a RFQ and a
12 subsequent RFP to evaluate the marketplace
13 and if there was a possibility to engage a
14 private operator.

15 LEGISLATOR WINK: Right. And
16 they did that for the fee of \$24,750,
17 correct?

18 MR. SULLIVAN: That is correct,
19 sir.

20 LEGISLATOR WINK: And that fee
21 was conveniently below the threshold of the
22 required Rules Committee approval and NIFA
23 approval.

24 MR. SULLIVAN: Well, we are here,
25 sir, now.

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2 LEGISLATOR WINK: Right, now that
3 we are eight months into the process. And
4 since this was actually first proposed back
5 in March 2010, we're two years into that
6 process at this point. Nine years into this
7 process, okay, I'll take your word for that.

8 Now, at some point subsequent to
9 that, let's see, the county decided to
10 proceed with the transaction and negotiated
11 a further contract with Morgan Stanley; is
12 that correct?

13 MR. SULLIVAN: Yes, sir.

14 LEGISLATOR WINK: That was, once
15 the RFQs had been put out and once the
16 responses had been received?

17 MR. SULLIVAN: Yes, I believe the
18 RFP, it was back in December of '11, I
19 believe.

20 LEGISLATOR WINK: December of '11
21 was when the contract was brought before us
22 for consideration, right?

23 MR. SULLIVAN: Yes, sir.

24 LEGISLATOR WINK: And that was
25 for the amount of \$100,000 a quarter?

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2 MR. SULLIVAN: Yes, and a 1.100
3 basis points take down, the contract was
4 somewhat different.

5 LEGISLATOR WINK: That was, in
6 fact, approved in a four to three vote by
7 the Rules Committee back in December; is
8 that correct?

9 MR. SULLIVAN: Yes, sir.

10 LEGISLATOR WINK: And that was
11 the contract that was ultimately given over
12 to NIFA?

13 MR. SULLIVAN: Yes, sir.

14 LEGISLATOR WINK: And NIFA
15 expressed concerns about that?

16 MR. SULLIVAN: We had discussions
17 with NIFA and it was decided that we would
18 remove that contract from consideration and
19 rebid for the services.

20 LEGISLATOR WINK: Let me go back
21 one second. The preparation of the RFQ and
22 whatnot. Is that a normal -- to do that, is
23 it normally 24,750 on the part of Morgan
24 Stanley to do that? I have a feeling they
25 entered into very few transactions that are

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2 that inexpensive, or that make them that
3 little money.

4 MR. SULLIVAN: I think, sir,
5 it's a first phase --

6 LEGISLATOR WINK: With the
7 anticipation of more to come.

8 MR. SULLIVAN: Well, banks
9 approach us all the time with ideas as they
10 would any administration.

11 LEGISLATOR WINK: For less than
12 \$25,000 worth of fees?

13 MR. SULLIVAN: A lot of times
14 they approach with no dollars. They just
15 approach.

16 LEGISLATOR WINK: With the
17 anticipation they are going to get a bigger
18 payday down the road?

19 MR. SULLIVAN: It depends on the
20 actual transaction, sir. It's bonds,
21 obviously restructuring. There's lots of
22 things they can approach us on.

23 LEGISLATOR WINK: By the time the
24 December contract was considered by this
25 body, we had been told that there was an RFQ

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2 that was sent out and that four responses
3 had been issued by various contractors.

4 MR. SULLIVAN: Yes, sir.

5 LEGISLATOR WINK: As I recall at
6 the time, the three of them were mentioned
7 specifically, Sevren Trent (phonetic),
8 Veolia, and United Water; am I correct in
9 those three?

10 MR. SULLIVAN: Yes, sir. Those
11 were considered for an RFP.

12 LEGISLATOR WINK: And there was a
13 fourth that did respond to the RFQ, who was
14 that?

15 MR. SULLIVAN: I believe American
16 Water.

17 LEGISLATOR WINK: They were,
18 whatever the team was that did the scoring,
19 they were deemed not to be qualified.

20 MR. SULLIVAN: We were not
21 pleased with their response.

22 LEGISLATOR WINK: Now, the phase
23 one work was apparently done under, an under
24 \$25,000 contract; is that right?

25 MR. SULLIVAN: The assistance

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2 with the writing of the RFQ written, yes,
3 sir.

4 LEGISLATOR WINK: And even the
5 analysis that got us to the RFP process.

6 MR. SULLIVAN: Yes, sir.

7 LEGISLATOR WINK: So that was all
8 done for less than \$25,000?

9 MR. SULLIVAN: Yes, sir.

10 LEGISLATOR WINK: And the
11 contract that was submitted in December of
12 last year for \$100,000 a quarter was for
13 what then? If we had already gotten that
14 far without further assistance or without
15 further fees, what was the next step?

16 MR. SULLIVAN: We would proceed
17 with evaluating proposals for the operation
18 of the sewer system. Then if that was
19 agreed upon, there would be different
20 options for the county at that point. One
21 of the options would be to possibly look for
22 concessionaire and investors, and that's
23 what we are discussing here today, that that
24 is something that Morgan Stanley will be
25 evaluating over the next year or so and to

1 Rules Committee/4-16-12
2 give the county options on how to address
3 the current shortfall that the sewer
4 services are experiencing.

5 LEGISLATOR WINK: Now, I
6 understand that one of the things that
7 Morgan Stanley was requested to do is draft
8 and negotiate a nonbinding memorandum of
9 understanding with the three qualified
10 operators. Did that take place?

11 MR. SULLIVAN: There's no --
12 there is no signing -- - there is no
13 agreement that has been reached at this
14 time.

15 LEGISLATOR WINK: Was there
16 anything drafted by Morgan Stanley?

17 MR. SULLIVAN: I don't believe
18 so, sir. The contract, as I mentioned
19 before, in discussion with NIFA, it was
20 suggested that we remove the contract from
21 consideration and decided to go out and
22 re-procure the services.

23 LEGISLATOR WINK: So then that
24 hasn't been conducted yet, none of that?

25 MR. SULLIVAN: Not to my

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2 understanding, sir.

3 LEGISLATOR WINK: You were going
4 to say?

5 MR. SULLIVAN: Obviously, sir,
6 there was work done up front, but no signed
7 agreement or statement to work or anything
8 like that with regard to any agreements
9 going forward or entered into.

10 LEGISLATOR WINK: Okay. When
11 NIFA basically expressed concern you the
12 contract and you withdrew it from their
13 consideration after the December vote of
14 this Rules Committee, to date there have
15 been no payments made beyond the \$24,750 to
16 Morgan Stanley?

17 MR. SULLIVAN: No, sir.

18 LEGISLATOR WINK: So subsequent
19 then to NIFA expressing its concern and the
20 administration withdrawing that contract, in
21 February of this year, February 4th I
22 believe it was, a new RFP was issued, more
23 specific to this agreement, right?

24 MR. SULLIVAN: I think it was
25 later, but --

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2 LEGISLATOR WINK: Well, according
3 to the backup for E-97-12, it says that the
4 new RFP was issued on February 4th, 2012.
5 It continues on, potential proposers were
6 made aware of the RFP by advertising in
7 Newsday and posting of the RFP on
8 purchasing's website. Proposals are due on
9 March 8th, 2012.

10 MR. SULLIVAN: As inspected, sir,
11 actually, for the record, that is a typo, it
12 should be February 24th.

13 LEGISLATOR WINK: February 24th?

14 MR. SULLIVAN: Yes.

15 LEGISLATOR WINK: Is the March
16 8th return date correct then?

17 MR. SULLIVAN: I believe so.

18 LEGISLATOR WINK: So we gave two
19 weeks to come back?

20 MR. SULLIVAN: Yes, sir.

21 LEGISLATOR WINK: After we had
22 already tipped our hand and we wanted Morgan
23 Stanley to do this work, we then put it out
24 for two weeks?

25 MR. SULLIVAN: No, sir. I

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2 wouldn't say it was a tipping of the hand.

3 LEGISLATOR WINK: We went to NIFA
4 with a contract. We had this Rules
5 Committee approve a contract with Morgan
6 Stanley --

7 MR. SULLIVAN: And NIFA asked us
8 to re-procure the services, so you put a bid
9 out to the marketplace and that's what we
10 did.

11 LEGISLATOR WINK: Now, the first
12 time you put the bid out for the
13 underwriting team, you put it out in
14 February of 2010 and it was due back March
15 8th. So you gave almost a month, and you
16 got 24 responses. This time you gave,
17 sounds like less than two weeks, and how
18 many responses did you get to this one?

19 MR. SULLIVAN: Well, sir, they
20 were different scopes too. One was
21 obviously an underwriting service, so that
22 is for the sale of our bonds, restructuring,
23 things like that, so that is -- that
24 contract would be a radically different
25 contract as opposed to this.

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2 LEGISLATOR WINK: Yet we chose
3 over -- we gave a two week period for people
4 to respond to this. How many people
5 responded?

6 MR. SULLIVAN: Five vendors.

7 LEGISLATOR WINK: Five vendors,
8 and, what, three were considered to give
9 presentations?

10 MR. SULLIVAN: That is correct.

11 LEGISLATOR WINK: And then we
12 awarded the contract to Morgan Stanley
13 again?

14 MR. SULLIVAN: That's correct.

15 LEGISLATOR WINK: Who was on the
16 evaluation committee for this RFP?

17 MR. SULLIVAN: I know that I
18 personally sat on the committee. We had
19 representatives from OMB and public works.

20 LEGISLATOR WINK: What expertise
21 did any of the evaluation committee have
22 with respect to these public private
23 partnerships financial implications?

24 MR. SULLIVAN: I think in
25 reviewing the terms of the contract, there's

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2 always -- I feel quite confident that my
3 team, it's a very solid team, an expert
4 team, and I'm very confident that a very
5 thorough process was done, and the other
6 bids were reviewed very carefully, and,
7 again, sir, some of these firms did not
8 really have the expertise to go forward with
9 this.

10 LEGISLATOR WINK: That would be
11 clearly based upon the fact that two of the
12 five were not asked to do a presentation?

13 MR. SULLIVAN: Yes. They had not
14 done similar type arrangements going -- they
15 did not demonstrate that ability in their
16 responses.

17 LEGISLATOR WINK: Look, I'm
18 concerned, quite frankly, this is a two-week
19 window for something that's leading up to a
20 billion dollar deal potentially, and it just
21 strikes me as odd that we would give that
22 short of a window given the fact that we are
23 talking about such a major potential
24 undertaking here.

25 What factors were scored on?

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2 We've heard the last time we were here we
3 talked about, which deal was that, we were
4 given the scoring on what, the police
5 consolidation, no, there was a personal
6 services contract where we spent a great
7 deal of time -- excuse me, it was for the
8 private health insurance, the disability
9 insurance. We heard a lot about scoring.

10 Can you give us an idea of what
11 the criteria are and how scoring takes place
12 and all this? It seems to me a few points
13 means the difference between somebody being
14 selected and not selected, and I would like
15 to know what that process is and how certain
16 things weigh more than others and how the
17 scoring really takes place.

18 MR. SULLIVAN: Well, sir, on this
19 particular RFP we went out, a very large
20 part of the scoring would be based on the
21 firm's experience. When you proceed with
22 something of this magnitude, it would have
23 to be a firm that has demonstrated
24 experience in public private partnerships
25 and has done this in the past.

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2 LEGISLATOR WINK: Mr. Sullivan, I
3 apologize.

4 MR. SULLIVAN: It's quite all
5 right, sir.

6 LEGISLATOR WINK: Happens all the
7 time. If you could just repeat that.

8 MR. SULLIVAN: As I was saying,
9 going forward with the scoring with this
10 major component of the scoring, it was the
11 firm's -- basically the firm's history in
12 these types of transactions. This is,
13 again, if it were to proceed, it would be a
14 fairly large transaction. It would be a
15 firm that would have to a good deal,
16 considerable experience in this line of
17 work, public-private partnerships.

18 We feel very comfortable that
19 this is something that Morgan Stanley has
20 done in the past, is the leader in that
21 field and is something that would protect
22 the county ratepayers better than some of
23 the other firms.

24 LEGISLATOR WINK: Look, I
25 understand qualitatively what you're saying.

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2 What I'm questioning is the quantification
3 of this; in other words, how do we figure
4 out that extensive knowledge is worth a
5 certain number of points and passing
6 knowledge is worth another amount, and being
7 the leader in the field is worth a third
8 amount. That's what I'm trying to
9 understand here.

10 MR. SULLIVAN: Sir, price was
11 also factored into it, but the weight of it
12 would be more on the experience side. There
13 are certain firms that bid that did not have
14 the wherewithal to do this sort of
15 transaction.

16 LEGISLATOR WINK: Look, part of
17 the reason I'm a little confused and
18 concerned about this is, we actually
19 requested that the proposals be submitted to
20 us for review. We've requested information
21 about the scoring method and whatnot. We
22 have been denied.

23 That's concerning to me because,
24 quite frankly, it makes it sound like you
25 just whip something up in the back room and

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2 come out and say, this is how it ends up.
3 I'm not saying you've done that. I'm simply
4 saying that, what goes on behind the curtain
5 is a little concerning if it's a matter of
6 just a few points difference between point A
7 and some other choice.

8 MR. SULLIVAN: Yes, sir. This is
9 a qualitative assessment, sir, but my
10 understanding is that for all RFPs, the
11 other bids would not be scrutinized prior to
12 selection. That is county policy and good
13 measure for that.

14 LEGISLATOR WINK: Yet, we get
15 asked routinely here to basically just
16 ratify that which the common wisdom of the
17 administration I guess is putting forward
18 and they threw out numbers as we did last
19 time with 376 points versus 275 points.

20 MR. SULLIVAN: I wasn't here for
21 that, sir.

22 LEGISLATOR WINK: I know you
23 weren't. I don't know what any of that
24 means. And when we are told that we are not
25 allowed to have the information as to how

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2 you arrived at those numbers, that's what
3 concerns me a great deal.

4 MR. SULLIVAN: Sir, I would be
5 glad to discuss this with you.

6 LEGISLATOR WINK: All right.
7 Let's move on. April 9th, Morgan Stanley
8 assigned a contract; is that correct? And
9 from what it appears, given my history with
10 this county and my understanding of how this
11 lengthy procedure works for internal
12 verification, on the cover page of the back
13 up, it astounds me that every single
14 signature on here was procured on April 9th.

15 So, literally, as soon as we got
16 this, it seemed to make its way around the
17 county with lightening speed. There are a
18 lot of not-for-profits I think that would be
19 very pleased to see that kind of response
20 time on their small contracts. So I'm a
21 little concerned.

22 MR. SULLIVAN: Sir, as you
23 mentioned before, obviously Morgan Stanley
24 had, we had a previous contract with this,
25 so a lot of the terminology did not change.

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2 The pricing did change to be somewhat more
3 favorable to the county which is one of the
4 reasons I would suggest it was re-procured.
5 But, essentially, it was not a complex, it
6 was much more difficult to draft the first
7 time.

8 LEGISLATOR WINK: I'll take your
9 word for that. The contract asked Morgan
10 Stanley to act as a financial advisor to the
11 county which involved mainly two things it
12 looks like. One, to conduct a strategic,
13 advisory review of the county sewer system.

14 Again, I'm assuming based upon
15 the provision that Legislator Kopel raised,
16 that this is only a financial review and not
17 an infra-structural review; is that your
18 understanding as well?

19 MR. SULLIVAN: Yes. There would
20 be other vendors that the county will be
21 moving forward with as far as if we need an
22 outside expert to review the structure of
23 the system and things like that and to
24 verify findings related to the operations of
25 the system.

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2 LEGISLATOR WINK: And that review
3 may result in one of two things. Either
4 one, the concession lease or other similar
5 arrangement involving the system, or, two,
6 sale transfer, or other disposition of the
7 system; is that correct?

8 MR. SULLIVAN: That's what the
9 staff summary says, yes.

10 LEGISLATOR WINK: That's
11 collectively known as the monetization
12 transaction; is that correct?

13 The second element of what they
14 are being asked to do is provide financial
15 advice in connection with the monetization
16 transaction including advice and planning in
17 negotiating any monetization transaction.

18 So they're there to review the
19 potential for a deal and then to help make
20 that deal happen; is that effectively what
21 that means?

22 MR. SULLIVAN: Yes, sir, and I
23 think to explore other options as Chief
24 Deputy Walker said before. There is a
25 possibility that perhaps we do not engage in

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2 a monetization but we would have to look at
3 this and see how it would all play out which
4 is why the due diligence needs to be
5 performed up front.

6 LEGISLATOR WINK: Well, what
7 incentive does Morgan Stanley have not to
8 advocate a monetization transaction?

9 MR. SULLIVAN: Sir, it would be
10 at county's call at that point. It's -- it
11 would be us, it would be the county if we
12 decide on a monetization or not.

13 LEGISLATOR WINK: What does it
14 cost us if we do go forward with
15 monetization transaction?

16 MR. SULLIVAN: The contract
17 states that it would be 75 basis points.

18 LEGISLATOR WINK: 75 basis points
19 and no less than \$5 million?

20 MR. SULLIVAN: Correct.

21 LEGISLATOR WINK: What would it
22 cost if we do not go forward with the
23 monetization transaction?

24 MR. SULLIVAN: It would depend on
25 the time frame that we kept pursuing this.

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2 It would be \$200,000 for the first two
3 quarters and \$100,000 thereafter through
4 2013 June.

5 LEGISLATOR WINK: Are there
6 termination fees? Are there break-up fees?
7 Are there any other fees associated with
8 this?

9 MR. SULLIVAN: Not to my
10 knowledge, no.

11 LEGISLATOR WINK: Really?

12 MR. SULLIVAN: Yes.

13 LEGISLATOR WINK: I recall there
14 being a number of fees. I see the
15 calculations of a termination fee which
16 shall not exceed the transaction fee. The
17 transaction fee is the 75 basis points or \$5
18 million, whichever is more, right?

19 MR. SULLIVAN: Yes.

20 LEGISLATOR WINK: It looks as
21 though the termination fee would be equal to
22 15 percent of the break-up fee which will
23 not exceed the transaction fee.

24 MR. SULLIVAN: Sir, that is if we
25 would receive money for the system.

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2 LEGISLATOR WINK: That's if we
3 received money for the system in any way,
4 shape or form?

5 MR. SULLIVAN: Yes.

6 MR. CONKLIN: Steve Conklin
7 again. Just to address the termination fee,
8 what that refers to, if we hypothetically
9 entered into a transaction with an investor
10 but then they did not consummate the
11 transaction --

12 LEGISLATOR WINK: "They" being
13 who?

14 MR. CONKLIN: Whoever an investor
15 is. Someone is going to pay us X millions
16 of dollars for the system and then they back
17 out, they broke the contract. Typically
18 contracts would have a break-up fee where
19 they would have to pay us some amount of
20 money to get out of the transaction.

21 LEGISLATOR WINK: And then we
22 would have to pay Morgan Stanley?

23 MR. CONKLIN: Morgan Stanley a
24 percentage of that. That's not something we
25 anticipate, but, that again, is a standard

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2 term in investment banking contracts.

3 LEGISLATOR WINK: So how is that
4 different than from the termination fee?

5 MR. SULLIVAN: Well, sir, I look
6 at that fee, that's sort of like a real
7 estate transaction. If you put down 10
8 percent, the seller, then you would be
9 responsible. The buyer can bid 10 percent
10 and then he decided to walk away, not for
11 any sort of qualification, but walk away
12 from the deal, then you would void that 10
13 percent, so it's similar to that.

14 LEGISLATOR WINK: Believe me, I
15 understand that from my other life.

16 MR. SULLIVAN: I figured you
17 would.

18 LEGISLATOR WINK: But, again, how
19 is that different from the termination fee?

20 MR. CONKLIN: It's the same
21 thing. The break-up fee is what we're
22 calling it if we received the break-up fee.
23 It's the same concept.

24 LEGISLATOR WINK: So if we break
25 the deal --

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2 MR. CONKLIN: No, no. If the
3 investor breaks the deal, we get a break-up
4 fee, the county. And then Morgan Stanley
5 get a percentage of that. It's all the same
6 concept. It's just the way it's written.
7 It might be a little confusing. So if the
8 county receives --

9 LEGISLATOR WINK: So the
10 termination fee is between us and Morgan
11 Stanley and the break-up fee is between us
12 and the contractor?

13 MR. CONKLIN: Right.

14 LEGISLATOR WINK: And we hand
15 over a portion of the break-up fee as a
16 termination fee?

17 MR. CONKLIN: Correct.

18 LEGISLATOR WINK: Now what
19 happens if we back out of the deal or if we
20 don't consummate any deal? Are we only on
21 the hook then for the \$700,000 or so that
22 goes until June?

23 MR. SULLIVAN: That's my
24 understanding, yes.

25 LEGISLATOR WINK: So there are no

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2 additional fees involved with that
3 whatsoever?

4 MR. SULLIVAN: That is my
5 understanding.

6 LEGISLATOR WINK: You know, I
7 notice in the backup that there was a fairly
8 extensive list of about 55 different, it
9 looks like M&A deals that Morgan Stanley was
10 associated with.

11 To the best of your knowledge,
12 are any of these involving municipalities?

13 MR. SULLIVAN: I have to look at
14 the list, sir. I know there were certain
15 ones, and Indianapolis comes to mind, that
16 were involved with other municipalities.

17 LEGISLATOR WINK: They were
18 involved in other municipalities making
19 their deals?

20 MR. SULLIVAN: Yes, sir.

21 LEGISLATOR WINK: It's my
22 understanding that some time in 2010 they
23 were involved with the city of Indianapolis
24 in getting out of a deal with specifically
25 Veolia?

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2 MR. SULLIVAN: I have to -- I
3 don't have that answer right now.

4 LEGISLATOR WINK: I know one of
5 the provisions in here addresses the fact
6 that, on page 12, I guess it's under
7 Appendix A, the last line, the end of the
8 paragraph at the top of page 12 indicates
9 that during the term of this agreement, the
10 contractor will not accept any assignment to
11 provide financial advisory services to any
12 third party in connection with the
13 monetization transaction.

14 To the best of your knowledge, is
15 that specific to this transaction, or is
16 that any monetization transaction in the
17 country, I guess, or anywhere?

18 MR. SULLIVAN: It's this one. I
19 could not imagine that this would preclude
20 them from doing other work throughout the
21 country.

22 LEGISLATOR WINK: Okay. And,
23 truthfully, one of the reasons why I was
24 hoping Morgan Stanley would be here is
25 because I'd like to know, of the three

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2 remaining potential contractors, do they
3 currently have any business with of them,
4 with other municipalities in similar or even
5 dissimilar type deals?

6 MR. SULLIVAN: I can find out.

7 LEGISLATOR WINK: I don't know if
8 that's an answer you can give me. That's
9 one of the reasons I was hoping -- because
10 my concern is not that they start advising
11 the people that they are negotiating with,
12 because I think that that would be plainly
13 unethical and illegal on its face and I
14 don't think any firm would enter into that.

15 MR. SULLIVAN: I don't believe
16 so, sir.

17 LEGISLATOR WINK: But the
18 question becomes whether they are currently
19 engaged with any of these companies in
20 monetizing deals throughout the country, and
21 will that potentially have any kind of
22 effect on the deal that takes place here.

23 MR. SULLIVAN: I don't believe
24 so, sir. The monetization, if we were to go
25 that route, would be with a concessionaire,

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2 which is most likely not any one of the
3 three firms selected to operate this system.
4 We tried to open up to pension funds and
5 different funds that would be available to
6 provide the liquidity for the transaction.

7 LEGISLATOR WINK: Look, I hope
8 you're right, but until -- really, I would
9 like to hear that from their words.

10 If I could, just let me flip over
11 to Appendix B for a moment. Legislator
12 Kopel had referred to the indemnification
13 agreement which, clearly, to me, indicates
14 that it was drafted by Morgan Stanley with,
15 it looks like some amendments being made
16 in-house; is that correct, Connell?

17 MR. DENION: Yes. Connell
18 Denion, county attorney's office. Yes,
19 that's correct, legislator.

20 LEGISLATOR WINK: The fact that
21 it's being drafted, and I know is not
22 incredibly uncommon, but, at the same time,
23 gives me some pause because I'm noticing
24 that the only actions on the part of Morgan
25 Stanley that are not indemnified are either

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2 bad faith or gross negligence. That seems
3 to be a pretty high standard that covers
4 most forms of indemnification in favor of
5 Morgan Stanley. And I'm just wondering, is
6 that normally the language we would use in
7 an indemnification agreement?

8 MR. DENION: It's the language
9 that's used in these types of deals, and
10 typical to investment banks.

11 LEGISLATOR WINK: So investment
12 banks call the shots?

13 MR. DENION: I don't know if they
14 call the shots, but it's a negotiation
15 process and that's the way this one turned
16 out, and it often turns out, the standard
17 way it turns out. We checked into it, at
18 least one other example they provided to us
19 of other municipalities signing the same
20 type of indemnification.

21 LEGISLATOR WINK: Sounds like the
22 example of the Golden Rule, the bank has the
23 gold, the make the rules.

24 It just concerns me that it's a
25 pretty wide array of indemnification that

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2 doesn't seem to be necessarily common or
3 shouldn't be common for a municipality to
4 enter into.

5 MR. DENION: More common in these
6 types of transactions.

7 LEGISLATOR WINK: Mr. Sullivan, I
8 want to ask you a little bit about the
9 calculation of the transaction fee. The
10 term aggravate value is defined and it's
11 equal to the total value of the
12 consideration received by the county and/or
13 the system including the present value of
14 non-contingent and contingent payments based
15 on reasonable projections that the county
16 and the contractor agreed to and funds
17 received to the fee's debt in connection
18 with such monetization transaction. I get
19 to say indemnification and monetization over
20 and over again. I apologize.

21 The present value, this is the
22 question, the present value of any such
23 non-contingent and contingent payments shall
24 be discounted at a rate of five and a half
25 percent. Can you explain to me what that

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2 means?

3 MR. SULLIVAN: It basically means
4 that if you were doing a discount value
5 analysis, that you would be using five and a
6 half percent as the factor.

7 LEGISLATOR WINK: So give that to
8 me in layman's terms. The fact that someone
9 ultimately comes in and pays cash for this
10 deal, they get a five and a half percent
11 discount, is that effectively what we are
12 saying?

13 MR. SULLIVAN: No, sir. I think
14 that it's premature at this point. That
15 would be really contingent upon if there was
16 a phase two agreement with the
17 concessionaire which we would have to bring
18 back to the legislature here for their
19 consideration and approval, that it would be
20 talking about prospective revenues and
21 that's where the discounting factor would
22 come in. Essentially, that would be, again,
23 that's not really for consideration here.
24 What we are talking about here is a fee for
25 studying it. And Morgan Stanley the same.

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2 If it goes that route, that is the -- that
3 would be the second approval of this body
4 that that is the fee they would charge.

5 LEGISLATOR WINK: And if we go
6 that route, we're not getting a second bite
7 at this apple is my point. That's why I'm
8 asking the questions now.

9 I understand it may be
10 hypothetical based upon what may or may not
11 transpire in the future. But if it does go
12 the route it seems to be going, then we're
13 not going to be renegotiating this element,
14 I'm assuming?

15 MR. SULLIVAN: I mean, just to be
16 clear, if there was a concession agreement
17 reached, that would be coming back here
18 before this body.

19 LEGISLATOR WINK: So the fact
20 that we have established a discount rate of
21 five and a half percent here doesn't not
22 mean that that's ultimately what's going to
23 be paid upon, or --

24 MR. CONKLIN: If this is
25 approved, this is the agreement with Morgan

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2 Stanley.

3 LEGISLATOR WINK: Right.

4 MR. CONKLIN: That's correct. So
5 basically this will cover, if somebody pays
6 us X million up front, and they say we'll
7 pay you money down the road, Morgan Stanley
8 says, the aggregate value is going to be,
9 well, we get paid today, plus the future
10 payments discounted back of 5.5 percent,
11 that would give you the aggregate value on
12 which Morgan Stanley would receive their 75
13 basis points. If this is approved, this is
14 the deal with Morgan Stanley. This won't
15 change.

16 LEGISLATOR WINK: Okay. So no
17 matter how much or how little we get up
18 front, we're going to owe Morgan Stanley
19 based upon this aggregate value; is that
20 correct? Okay. All right.

21 And the discount of five and a
22 half percent, is that standard for the
23 industry or is that particularly lucrative
24 or is that strind or strict, or --

25 MR. SULLIVAN: No, sir. That's

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2 pretty much what basically the cost of our

3 money at this point in time.

4 LEGISLATOR WINK: That's the cost

5 of our money?

6 MR. SULLIVAN: Yes.

7 LEGISLATOR WINK: For those other

8 three who we narrowed this down to before we

9 awarded this to Morgan Stanley, was that

10 what they were seeking as well?

11 MR. SULLIVAN: I'm sorry. What

12 was your question?

13 LEGISLATOR WINK: Before we gave

14 Morgan Stanley this contract, we narrowed it

15 down to three companies.

16 MR. SULLIVAN: Those were the

17 operators, yes, for the operations of the

18 system.

19 LEGISLATOR WINK: Okay. Did we

20 get that far as to talk about aggregate

21 value with them?

22 MR. SULLIVAN: No, sir. That

23 would not be part of this with the operator.

24 LEGISLATOR WINK: So we don't

25 have a basis of whether to determine this is

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2 a good number or a particularly lucrative
3 number for Morgan Stanley?

4 MR. SULLIVAN: No, sir. I think
5 we're mixing up the issue here.

6 LEGISLATOR WINK: I'm talking
7 about the financial advisors that were in
8 the running. There were five responses to
9 the RFP for financial advisors.

10 MR. SULLIVAN: Correct.

11 LEGISLATOR WINK: Morgan Stanley
12 and two others were given the opportunity to
13 make presentations.

14 MR. SULLIVAN: Correct.

15 LEGISLATOR WINK: I'm asking if
16 those other two who made presentations, were
17 there discussions with respect to the
18 aggregate value that's defined here?

19 MR. SULLIVAN: Yes, sir. There
20 were.

21 LEGISLATOR WINK: There were.
22 Where were their numbers relative to Morgan
23 Stanley?

24 MR. SULLIVAN: Sir, I think we
25 spoke earlier. I would have to speak to the

1 Rules Committee/4-16-12
2 attorneys here, but I'm not to discuss the
3 parameters of the deal at this point.

4 MR. SULLIVAN: I guess it was all
5 part of the scoring though.

6 MR. SULLIVAN: Yes, sir.

7 LEGISLATOR WINK: All right. I
8 don't have any further questions at this
9 time. Thank you very much, Mr. Sullivan.

10 MR. SULLIVAN: Thank you
11 legislator.

12 LEGISLATOR WINK: I would just
13 make one point, that it's not just the
14 individual members of NIFA who have actually
15 raised issues with respect to this deal or
16 the deal that seems to be moving ahead.
17 Fitch, who had previously downgraded our
18 bonds just a few months ago, as I understand
19 it, they, in fact, in a recent statement
20 came out and expressed real concern about
21 the use of this potential deal as a way of
22 balancing the budget.

23 It just seems to me it's not just
24 a matter of NIFA board members opining but
25 in fact even the rating agencies seem to be

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2 paying very close attention to this and I
3 don't think based on those words, I don't
4 think they're pleased what they're hearing
5 right now either.

6 MR. SULLIVAN: No, sir. We spoke
7 with them recently and they just reaffirmed
8 our rating for an upcoming financing, but,
9 acknowledged.

10 LEGISLATOR WINK: They did
11 acknowledge that concern?

12 MR. SULLIVAN: It's always a
13 concern, sir, sure.

14 LEGISLATOR WINK: Thank you very
15 much.

16 CHAIRMAN SCHMITT: Legislator
17 Jacobs.

18 LEGISLATOR JACOBS: Yes. Tim, I
19 have just a few things to say. It seems to
20 me through the years that I have been on
21 this legislature, that the only reason we
22 would be ever considering something this
23 major \$700,000, and possibly up, is if we
24 went to privatization.

25 I can remember back in 2003 when

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2 Suozzi at the time wanted to put this into
3 his 2004 budget putting aside \$100,000 to
4 have a consultant possibly explore the
5 possibility of sewer privatization. We
6 absolutely refused to vote for that budget
7 and we said we would not consider putting it
8 in. We rejected it.

9 In fact, what ended up happening
10 after that, we formed the Sewer and Storm
11 Water Authority to deal with the situation
12 with the sewers in Nassau County.

13 So our stand that we're taking
14 now is nothing new for us, it's something
15 that we are very much aware of the fact that
16 there's figures to attest to the fact that
17 people that do go to private sewage, et
18 cetera, are paying on an average five times
19 more than people who have public sewers and
20 authorities taking care of their needs.

21 Now, I mean, this is nothing I'm
22 making up. I'm not an expert on sewers,
23 whether they be private or not. I'm just
24 speaking from what I have been reading and
25 what notes I have been taking. So I think

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2 that that's one of my major concerns.

3 Number two would be the history
4 of this county with one shots. I have been
5 here through the worst of them. I have been
6 here through the Plainview property year in
7 and year out being put into a budget at \$23
8 million as a one shot per year. I have been
9 here with the MTA, with the deal with the
10 MTA, where we borrowed \$75 million and had
11 to pay back 250 plus interest.

12 I have seen the worst of the one
13 shots and I'm considering this a one shot.
14 It may be one year. But I'm considering
15 this a three year one shot, which, I don't
16 know what we are doing to the county at the
17 end of that.

18 I think we have a responsibility
19 right now to never forget the past. You
20 have to move to the future, but you can't
21 make decisions in the present that literally
22 push the past aside.

23 The one shots have never served
24 us well. We were on the verge of bankruptcy
25 at one point because of them and, the bottom

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2 line is, and I will just quote one more
3 thing that I don't believe Kevan mentioned,
4 and that was Chris Wright who is on the NIFA
5 board, and he said, "it has the look and the
6 feel of a one shot with potentially negative
7 consequences, and, as such, would eclipse
8 all other county one shots both in magnitude
9 and dubious merit." And I would say to you
10 that that's one of my largest concerns after
11 all these years of seeing us go down and up
12 and down and up.

13 I'm just saying that no one wants
14 to see the county fail, but I don't see what
15 we gain from the repetition of past
16 mistakes. I said I was making a statement.

17 MR. WALKER: First, I would agree
18 with what you're saying. Unfortunately, the
19 creation of the Sewer Authority created one
20 shots. That exactly is what transpired.
21 You took all the fund balance and each year
22 more fund balance was used to balance the
23 budget. Nothing was ever dealt with. There
24 was no one ever looking at the expenses. No
25 one ever looked at the revenue. So that was

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2 exactly what it was. It was a one-shot.
3 The creation of this sewer authority, the
4 finance authority, took all the fund balance
5 that was available from all those other
6 collection districts, sanitary districts,
7 and basically used them to balance the
8 bucket.

9 So for those seven years of
10 complete mismanagement is why we are where
11 we are today. It is a complete and utter
12 nonsense to say that anybody wants to ruin
13 things or make it worse. Bottom line, it
14 was a one shot for the last -- since 2003.
15 You can no longer have one shots. That's
16 why the investment is \$700,000, to look at a
17 way so we can streamline this and fix this
18 for once and for all where the revenue will
19 meet expenses is why we are doing this. So
20 that's what took place. We have to go in a
21 different direction.

22 LEGISLATOR JACOBS: Rob, with all
23 due respect, I think you have your
24 historical facts wrong. I will tell you
25 that there was \$90 million in that fund at

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2 the end of Suozzi's term.

3 MR. WALKER: Do you know what it
4 started with?

5 LEGISLATOR JACOBS: I'm not
6 talking about. I'm talking about the fact
7 that it was not where it is now. All right?
8 So I'm saying to you --

9 MR. WALKER: You are completely
10 inaccurate.

11 LEGISLATOR JACOBS: Well, I'm
12 saying you're inaccurate. So we have a
13 stalemate.

14 MR. WALKER: I will be glad to
15 pull the numbers up. You can look each year
16 where the fund balance has gone. This year
17 alone, 2012, \$31 million of fund balance
18 will be used. That will take the fund from
19 72 down to 41. Next year you're going to
20 need another \$35 million, that will take it
21 down.

22 It's exactly what was predicted
23 by NIFA, only a year later. It's exactly
24 what transpired. We can compare those
25 numbers to numbers. We don't have to have

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2 an argument here. All you have to do is
3 look on the Excel spread sheet and see your
4 expenses and revenue and you can see exactly
5 what transpired.

6 LEGISLATOR JACOBS: I'm not
7 arguing with you. I think we're both
8 talking about past facts. You budgeted \$40
9 million towards your tax on the sewers and
10 it never came through. You have been
11 running at a deficit and that's why it's
12 been tapped into. That's why it's down
13 where it is.

14 MR. WALKER: No, no. I don't
15 know how you see it because that would
16 actually put more revenue in, not take
17 revenue out. That would actually -- what
18 you're talking about would have actually
19 helped it.

20 LEGISLATOR JACOBS: You counted
21 on a \$40 million tax which became known as
22 "the toilet tax," which never could be
23 imposed.

24 MR. WALKER: And it was revenue.

25 CHAIRMAN SCHMITT: Fee.

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2 MR. WALKER: That would have just
3 helped the situation. If you take that \$40
4 million because we are not receiving it,
5 that's why you have to use more fund
6 balance. You can only do two things. We
7 are all smart enough to realize that you can
8 only do two things. You can put more money
9 in or you could reduce expenses.

10 So this so-called fee that the
11 not for profits which are some of the
12 hospitals that do tremendously well, make a
13 lot of money, would be paying, would have
14 helped this, because you wouldn't have had
15 to use the fund balance. You're using the
16 fund balance because you have no -- that's a
17 fact.

18 LEGISLATOR JACOBS: That's your
19 fact. I'm telling you, I think that the
20 creation in this budget in this county has
21 created these holes year after year
22 recently, and is what's resulting in so many
23 of these surplus funds going down to
24 nothing.

25 MR. WALKER: I would go back to

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2 Math 101.

3 LEGISLATOR JACOBS: Well, I would
4 suggest you do.

5 CHAIRMAN SCHMITT: Legislator
6 Muscarella.

7 LEGISLATOR MUSCARELLA: Yes. Mr.
8 Walker, just a couple of questions. I think
9 that basically you said a number of things
10 that I wanted clarified and I think when you
11 get to be my age, the greater perspective
12 really is telling, and Mr. Wink's timeline
13 perhaps is very telling but I would like to
14 go back to 2003.

15 If you can just answer a couple
16 of questions. When the Sewer and Storm
17 Water Authority was created, this took all
18 these expenses off the county's budget, is
19 that correct? And while I'm not going to
20 call it bail out of Glen Cove, this
21 certainly, the 2003 action certainly helped
22 the city of Glen Cove; is not correct?

23 MR. WALKER: Tremendously.

24 LEGISLATOR MUSCARELLA: And since
25 that time, since 2003, before the Mangano

1 Rules Committee/4-16-12
2 Administration came into effect, the county
3 has basically bled the county reserves to
4 the tune of 25 million or 30 million, \$35
5 million every year?

6 MR. WALKER: Yes. It's roughly
7 on average, right now you're talking about
8 12, about \$31 million escalating each year.

9 LEGISLATOR MUSCARELLA: Out of
10 the county reserves?

11 MR. WALKER: Out of the reserves.

12 LEGISLATOR MUSCARELLA: And this
13 didn't just happen and start during the
14 Mangano Administration, this was well before
15 and back through the Suozzi Administration?

16 MR. WALKER: Correct. It was
17 noted -- I take the 2009 NIFA report right
18 from their own calculations, which they
19 talked about using of the fund balance that
20 had held the county at the time and, again,
21 was dwindling to the point of zero. They
22 noted it to be 2013. I think because of the
23 management under Tim Sullivan, we were able
24 to get to 2014. That being said, 2014,
25 there is no more left.

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2 LEGISLATOR MUSCARELLA: And when
3 the Mangano Administration took over, what
4 was the state of the county's sewer
5 facilities?

6 MR. WALKER: Well, I would say
7 they were in disrepair. I think that's
8 something that everybody would agree to.
9 There was the lack of hiring, the lack of
10 continually to look on other plants,
11 construction things of that nature. I think
12 a lot of work was done in 2010. Then again
13 in 2011.

14 We, unfortunately, are faced with
15 two problems. We have employees that were
16 hired that do not want to stay there. They
17 make a very low salary, so they're not
18 staying. There are issues with the
19 operation. You do have issues with some
20 employment that you do not have people that
21 have the requirements, the DEC requirements,
22 the Department of Health requirements to
23 actually hold certain positions. It's come
24 as a problem to us. We have done a
25 tremendous amount of work.

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2 LEGISLATOR MUSCARELLA: There was
3 substantial problems with the redundancies
4 and the equipment in case there was an
5 emergency, if equipment went down, we did
6 not have the redundancies in place to --

7 MR. WALKER: Absolutely not.

8 LEGISLATOR MUSCARELLA: And since
9 the administration took over, were there not
10 10s of millions of dollars in capital
11 expenditures at those facilities?

12 MR. WALKER: I think we were over
13 \$40 million worth of work currently being
14 conducted at the two facilities.

15 LEGISLATOR MUSCARELLA: And if
16 this contract were to go into effect, this
17 is merely to explore the possibilities going
18 forward as to how to address some of these
19 problems?

20 MR. WALKER: 100 percent.

21 LEGISLATOR MUSCARELLA: Thank
22 you.

23 CHAIRMAN SCHMITT: Legislator
24 Wink.

25 LEGISLATOR WINK: Thank you, Mr.

1 Rules Committee/4-16-12
2 Chairman. I apologize, in our dissertation,
3 I did not get the opportunity to submit a
4 letter from the Glenwood, Glenhead Civic
5 Association. It's actually the Glenhead
6 Glenwood Civic Council, which is a group of
7 eight civic associations in the Glenwood
8 Glenhead area which Legislator Whitton and I
9 share.

10 I'll just highlight the important
11 parts. I will quote, "people in the
12 Glenwood Glenhead area are particularly well
13 positioned to provide input about the impact
14 of privatization because of our experience
15 with two corporations that provide utility
16 services, National Grid, which operates
17 several facilities on the Glenwood Landing
18 waterfront, and Aqua America, which provides
19 water in neighborhoods that were once served
20 by Sea Cliff water. We urge you to table
21 consideration of further expenditures
22 regarding sewer treatment plant
23 privatization pending the creation of a
24 meaningful Citizen Advisory Committee and
25 the scheduling of public meetings to both

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2 convey and collect information. In
3 addition, please note the eight civic
4 associations in Glenwood Landing and
5 Glenhead are organized into a local civic
6 council to share information and sometimes
7 take action on issues of mutual concern."

8 They asked because Patrice
9 Benaward, the president, and George Pambar,
10 who are, I guess, they're the president and
11 vice president of the civic council. Mr.
12 Pambar is the president of the civic council
13 and Ms. Benaward is the vice president.
14 They could not be here today so they asked
15 that I submit this for the record.

16 CHAIRMAN SCHMITT: Please give a
17 copy to the clerk and it will be so noted.

18 We have some people from the
19 public who have indicated a desire to speak
20 on this contract. I apologize ahead of time
21 if I mangle anybody's name. Jim Ruocco of
22 Surf & Splash.

23 MR. RUOCCO: This is my first
24 time at one of these hearings. I had a
25 couple of predisposed questions, but I think

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2 this meeting brought up a whole lot more.

3 From a personal standpoint, I
4 have a business in Nassau County. I have
5 resided in Nassau County my whole life. I
6 have a large consideration for the
7 environment.

8 I'm objective. I'm not one of
9 those environmentalists that just say no to
10 everything. There is a lot of blinders on
11 the environmental side and the government
12 side.

13 Speaking on behalf of taxpayers
14 and citizens, we can't get enough
15 information regarding what the intentions
16 are here. Sitting in on a meeting like
17 this, it's very evident that there's a lot
18 of finger pointing, and from a resident
19 side, a taxpayer side, just listening to two
20 bodies battling back and forth. It doesn't
21 seem like our consideration here for the
22 environment and health and welfare of Nassau
23 County residents are always foremost in
24 these discussions.

25 So in lieu of the fact that I had

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2 other questions, it seems like there's still
3 a long way off, but I just wanted to make
4 that point very, very clear from somebody
5 outside your fishbowl.

6 It's really hard to hear this
7 back and forth. It appears as if there is a
8 lot of information that's not even being
9 equally addressed across both parties. You
10 can imagine from what it's like from our
11 standpoint here. If you people can't get on
12 the same page on something like this, and
13 accuse each other of having a lack of
14 information and transparency, boy, you ought
15 to see it from this side of the podium.
16 That's all I have to say right now. Thank
17 you.

18 LEGISLATOR KOPEL: I just want to
19 tell you, Mr. Ruocco, just understand, the
20 environmental concerns are not yet being
21 addressed. To the extent that people in the
22 audience have these concerns, we all do as
23 well. They are going to be addressed in the
24 process that goes forward.

25 Just so you understand, I

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2 represent East Rockaway. If I'm not
3 satisfied that this makes sense and, more
4 importantly, if the community is not
5 satisfied, I'm not going to vote for it
6 either. I know I speak for many of my
7 colleagues also.

8 So all we're doing here today,
9 just so everybody understands, is we are
10 working on the financial advisor and nothing
11 else.

12 MR. RUOCCO: I can appreciate
13 that.

14 LEGISLATOR KOPEL: Nobody is
15 talking about the merits of any particular
16 proposal. We haven't seen the proposals.
17 They may be wonderful. They may be
18 terrible. We just don't know yet. We
19 haven't seen them. We will look at them and
20 we will want to hear from all of you at that
21 point. So thank you.

22 MR. RUOCCO: Thank you.

23 LEGISLATOR JACOBS: I just wanted
24 to say one thing to you, Mr. Ruocco. We are
25 doing something here right now. We are

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2 spending, we are about to approve, I assume,
3 the spending of \$700,000. So it's not like
4 we're not doing anything here today on this.

5 Secondly, thanks to David
6 Denenberg, I know something about you and I
7 want to thank you for the efforts you make
8 in your community, and the money you've
9 raised to help various causes. It doesn't
10 go unnoticed. You may see us disagreeing up
11 here, but we all agree when somebody can be
12 recognized for their ability to give to
13 others within our community to help
14 everyone. So thank you.

15 MR. RUOCCO: I thank you for
16 recognizing me. I just want to make one
17 more point. As a taxpayer, we always love
18 to see -- we want our bills to be as low as
19 possible. But when it comes to issues with
20 the environment, which this will evolve
21 into, if it doesn't evolve at that dais
22 here, it's definitely going to be very, very
23 involved with our community. We can't put a
24 price on our environment.

25 This whole sewage issue is 80

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2 years old. The problems that we are facing
3 now came before boards just like this one
4 here in the 30s and 40s. The problems that
5 exist right here, right now, they were
6 advised like persons like myself and other
7 people here, these issues that we are
8 encountering right now, existed then and the
9 whole master plan went forward and all of
10 them came from true. From the environmental
11 impacts, salt water intrusion, aquifer
12 problems, it's all part of this artificial
13 planet that we created here. Sooner or
14 later we're going to have to own up to it.
15 It's not a question of dollars and cents.
16 If we have to take donations we should be
17 doing it.

18 This is owned by the government.
19 This is not -- I believe privatization does
20 a whole lot better job in government. But
21 when it comes to infrastructure, health,
22 safety and welfare, you government officials
23 own this. And to even consider
24 privatization at this point in time right
25 now is a get out of jail free card for

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2 anybody and nobody does end up in jail here.
3 There are people right in that sewage
4 treatment plant that should be in jail right
5 now. I look forward to future meetings.

6 LEGISLATOR JACOBS: Believe it or
7 not, you may not believe it, but my whole
8 background way before I ever sat here, for
9 over 30 years, was based on the environment
10 and civic association work. So, believe me,
11 it may not sound that way when we are up
12 here, believe me I understand where you are
13 coming. I understand the purpose of the
14 reason we were elected to serve. And it
15 really never goes far in my mind from what
16 I'm doing.

17 MR. RUACCO: You did make one
18 good points, and there were great points on
19 both sides. The one point you made is going
20 backwards to go forwards. I suggest that we
21 all go back to Robert Moses, 1930, 1940 New
22 York Times archives, look at how those
23 hearings were held. Look at the questions
24 that came up. Look at the answers that were
25 given. The approach that was taken. We

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2 followed through with a sewage master plan
3 that we knew when we got to Suffolk was not
4 even going to be able to be completed, and
5 in the '70s that was proven to be true; the
6 saltwater intrusion, the contamination of
7 the bays. They're not flush toilets. All
8 of that, we need to go backwards to go
9 forwards before we call somebody in here
10 privately, go back to the Democrats and
11 Republicans for the past 70 and 80 years and
12 you'll find your answers right there. Thank
13 you.

14 LEGISLATOR KOPEL: Thank you.
15 Mr. Jerry Laricchiuta.

16 MR. LARICCHIUTA: Good afternoon.
17 Thank you. Thank you for giving CSEA an
18 opportunity to meet and speak with you in
19 front of the public and in front of this
20 committee.

21 Let me start off by saying, my
22 name is Jerry Laricchiuta. I'm the
23 president of the largest public union in
24 Nassau County. We have close to 10,000
25 members, all public workers.

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2 So, as the leader of a public
3 union, I cannot and will not ever come and
4 endorse and support the privatization of any
5 of our public jobs. That being said, I want
6 to make this clear, I'm expecting the due
7 diligence of this board, this committee,
8 civic leaders like we just heard from, and
9 other interested parties to come up. This
10 is the very, very beginning of this process.
11 This is about a contract to hire Morgan
12 Stanley in order to analyze this project.

13 So there's plenty of time for
14 open and public debate and, believe me, we
15 will be part of that public debate.
16 However, I have been in talks with the
17 Mangano Administration and, quite frankly,
18 this union has suffered over 300 job losses
19 through layoffs. It's been a very, very
20 difficult year for public workers across the
21 country, across the state, and specifically
22 right here in Nassau County. It's the
23 saddest and absolute worst fear of a union
24 leader to know that there are members out
25 there that are losing their homes to

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2 foreclosure, that cannot afford to send
3 their children to college, that have lost
4 their ability to own a vehicle. This is
5 happening today, as we speak, as a result of
6 budget woes here in Nassau County in the
7 past 12 months.

8 My main concern as the leader of
9 the largest local public service union here
10 is to protect jobs. I am in negotiations
11 with the Mangano Administration doing the
12 best we can to first guarantee that, in
13 fact, there will be no job loss, regardless
14 of the outcome of this contract.

15 So there will be plenty of time
16 for debate on the actual contract and how it
17 does go forward and the question of rates,
18 if they'll be higher or not, I don't believe
19 that's for today anyway. I think today is
20 more about this contract with Morgan Stanley
21 and I think both sides did a good job of
22 presenting their positions. We will take a
23 back seat today. We don't intend to
24 disappear. We appreciate the fact that, and
25 I would hope that all legislators, not just

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2 the Rules Committee, all legislators, will
3 take what CSEA, because we are the union
4 that's involved in this deal, we will take
5 what we do eventually come out and say
6 seriously.

7 But, like I said, today we just
8 wanted everyone to understand that we have
9 been it talks about with the county
10 executive and his administration, and we
11 have been assured that job protection, which
12 is my main concern, because I don't think I
13 can face another person, another family's
14 life destroyed because they lost their jobs
15 or their careers here in Nassau County.

16 So with that in mind, our number
17 one concern is preserving jobs. I just
18 wanted to make that statement public today.
19 As I said, there will be plenty of time for
20 debate down the road. Thank you.

21 CHAIRMAN SCHMITT: Okay. Ralph
22 Spagnolo.

23 MR. SPAGNOLO: I'm a retired
24 Nassau County employee. I worked in sewage
25 treatment plants for 40 years. I'm retired

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2 15 years. I worked in Bay Park, I worked in
3 Cedar Creek. I finished my career in Cedar
4 Creek. When I left that plant in charge of
5 maintenance, which my job was, maintenance
6 and pump stations, we were 100 percent an
7 operation.

8 What's been going on for the last
9 15 years, since I retired, was deterioration
10 of the plant by administration. What the
11 administration did was, they stopped funding
12 the plant's operation and the maintenance of
13 people. If you don't have maintenance
14 people working, you can't have anything
15 repaired.

16 Besides that, I know through
17 experience that we have never had a
18 contractor that ever came in and did the job
19 right and that we had to finish up their
20 work always. Including the building of the,
21 what they call the S building, which is
22 where they drain the water out the sewage.
23 They came in and they did a whole operation
24 and it took our people to repair the work
25 that the contractor did building a new

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2 building.

3 I don't think that it's going to
4 be in the best interests of the taxpayers of
5 Nassau County for this to happen. If you
6 bring in a contractor, the contractor has no
7 benefit on this project except making money.
8 That's all they're going to care about. And
9 in talking about money, I pay \$158 a year
10 now for my sewer tax. What's it going to
11 cost me as a retired taxpayer to run my
12 house. I can pay \$180 a month for the water
13 tax, and you're still going to bill me my
14 \$185 tax on my sewers. So how do I benefit
15 by what you're doing?

16 If you would raise the taxes
17 reasonably, then it would be an equal burden
18 for everybody. But, now, if I had a
19 swimming pool and I filled my swimming pool
20 up and the way it appears that we're going
21 to be billed for our sewage is based on how
22 much water we use. So if I fill my swimming
23 pool up or water my garden, what happens
24 then? I have to then turn around and pay
25 \$1,000 a year more in sewage tax or fee?

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2 This is not in the best interest of Nassau
3 County.

4 Again, I said, I've walked
5 through the plant with a few of you. Judy,
6 if you remember, we've talked through the
7 plant. And, Peter, last time was about four
8 months ago, you told me that you were going
9 to open you a valve and I said, you can't
10 open up a valve if the plant should ever
11 shut down, and that is a major concern of
12 mine, that a union can come in and close
13 that plant and if that plant shuts down,
14 what happens to the sewage that goes on in
15 it? And when I heard, well, we can get an
16 injunction or we can do this or do that or
17 the other thing, if that plant shuts down on
18 Christmas Day at 2 o'clock in the afternoon,
19 what injunction are you going to get? If it
20 shuts down at 2 o'clock in the afternoon on
21 any day, how long will it take to get an
22 injunction if the plant is shut down, two
23 hours, three hours?

24 In the mean time, what is going
25 to happen is the plant is going to flood.

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2 Now, I've told this to you before and I'll
3 tell you this again. You were going to tell
4 me, Mr. Schmitt, when you reviewed it, what
5 was the answer to my question. What is
6 going to happen if the plant shuts down?

7 CHAIRMAN SCHMITT: You mean if
8 the union shuts the plant down?

9 MR. SPAGNOLO:

10 CHAIRMAN SCHMITT: If an outside
11 union, private contractor shuts the plant
12 down?

13 CHAIRMAN SCHMITT: What's going
14 to happen if they engage and commit a
15 criminal act, as I expect, the appropriate
16 law enforcement authorities would handle
17 that.

18 MR. SPAGNOLO: And what happens
19 when the plant floods and you can't run the
20 plant because the plant is flooded?

21 CHAIRMAN SCHMITT: You are
22 assuming that local law enforcement would
23 not respond to a criminal act.

24 MR. SPAGNOLO: How can they make
25 them go back to work?

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2 CHAIRMAN SCHMITT: Shutting down
3 the plant --

4 MR. SPAGNOLO: If they go on
5 strike, they go on strike, that's it.

6 CHAIRMAN SCHMITT: First of all,
7 we're getting way ahead of ourselves. This
8 is a contract to hire Morgan Stanley to
9 advise the county executive and the
10 administration on which one of the three
11 respondents should be chosen to hammer out
12 details in a contract.

13 MR. SPAGNOLO: If you took the
14 money that you are investing in Morgan
15 Stanley and invest it --

16 CLERK WEISS: Your three minutes
17 are up.

18 MR. SPAGNOLO: -- in the plant,
19 you get the plant to work better. Thank
20 you.

21 CHAIRMAN SCHMITT: Thank you.
22 Helene Manas.

23 MS. MANAS: Good afternoon. My
24 name is Helene Manas. I'm a resident of
25 Merrick. I also think that the money that

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2 you are planning on using for the contract
3 with Morgan Stanley would better be used to
4 fix our sewer plants.

5 According to the informational
6 sheet, the condition of the plants have
7 improved dramatically by spending \$70
8 million on it during the Mangano time. Why
9 not continue to spend the money?

10 According to what I understand,
11 there was a bond issue where you had \$220
12 million in order to maintain the sewer
13 plants. \$70 million was already used so
14 there should be \$150 million left from that
15 bond.

16 If you put that money in and
17 continue to improve the conditions of the
18 sewage plants, they would be in good
19 condition and then we wouldn't have to worry
20 about having a private company come in and
21 improve the condition.

22 Then, instead of having a private
23 company end up charging us \$185 a month
24 instead of \$185 a year, you could maybe
25 raise our taxes a small amount to make up

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2 what you need in the deficit that we have in
3 it, and then we would still own the sewage
4 plants. It's one of our greatest assets.

5 I also went to an informational
6 meeting sponsored by Operation Splash last
7 week. He explained how the sewage treatment
8 plants work. It really opened up my eyes as
9 to how dangerous sewage plants can be if
10 they aren't managed correctly. They can
11 pollute our bays where many Long Island
12 people fish and swim. If you sell or lease
13 these plants, we will lose some transparency
14 and the private companies can put sewage or
15 sludge into our waters and we won't be able
16 to do anything about it.

17 You really need to think about
18 this and the people you represent because
19 Long Islanders come here because of how
20 beautiful it is, how beautiful the bays are.
21 They want to fish. They want to swim in the
22 waters. A lot of them can go into the
23 waters that have sewage in it and then it's
24 going to affect the people's health.

25 CHAIRMAN SCHMITT: When you say

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2 that you went to a meeting and he made you
3 aware of how dangerous sewage treatment
4 plants could be, who he?

5 MS. MANAS: I don't remember his
6 name, somebody from Operation Splash.

7 CHAIRMAN SCHMITT: You're aware
8 of the fact that the sewage treatment plants
9 operate under the Department of
10 Environmental Conservation permit, and that
11 no matter who is running the plant, they're
12 not allowed to put sewage into the waterway,
13 and if there is an accident and there's some
14 unintentional spillage, that the reports
15 must be filed and the situations must be
16 corrected, and there's substantial fines
17 that can be imposed.

18 I don't know where you get the
19 information of \$189 a month instead of a
20 year. We have no deal. We have no
21 contract. We have no details. I don't know
22 who is spreading this misinformation.

23 MS. MANAS: But the truth is, a
24 private company is going to buy it to make a
25 profit.

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2 CLERK WEISS: Your three minutes
3 are up.

4 CHAIRMAN SCHMITT: There will be
5 no sale.

6 MS. MANAS: Even if they lease
7 it, they're only doing it to make a profit.

8 CHAIRMAN SCHMITT: Profit is not
9 a dirty word.

10 MS. MANAS: It is when you're
11 using something that is important for the
12 residents of Long Island.

13 CHAIRMAN SCHMITT: If I can go
14 in, just for argument's sake, if I can go in
15 as a private company, and run that sewage
16 treatment plant, and generate savings in the
17 operation of the plant without sacrificing
18 any of the quality of the plant operation,
19 and use some of that savings to pay the
20 county and use some of that savings for that
21 horrible word profit, and everything
22 continues as before, and the plant is run in
23 a safe and efficient manner, what's wrong
24 with that?

25 MS. MANAS: There's nothing wrong

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2 with it, but if a private company could do
3 that with a profit, then the county should
4 be able to do it for less money.

5 CHAIRMAN SCHMITT: The county
6 can't --

7 MS. MANAS: And you shouldn't
8 have to hire a private company. What are
9 they geniuses? You don't think there are
10 intelligent people that work in the sewer
11 systems -- the man that I was talking to
12 that worked in the sewer systems for 40
13 years, he could probably tell you exactly
14 what to do, how to do it, and better than
15 Morgan Stanley and the people they are going
16 to talk to, these private companies, because
17 they only care about the bottom line. They
18 only care about making money. We care about
19 the residents of Long Island, their health,
20 the water, the beauty of Long Island
21 because, if you let it go to crap, you're
22 going to lose all your residents in Long
23 Island and you won't have anybody to
24 legislate over. Thank you.

25 CHAIRMAN SCHMITT: Thank you.

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2 But you are the second speaker to mention
3 that if we would just raise taxes a little
4 bit, we could still maintain the plant. We
5 are not raising taxes in the middle of a
6 recession, so let me just make that clear.

7 MS. MANAS: But you realize that
8 if you lease it to a private company, we're
9 going to end up paying anyway. Unless you
10 could give us a written signed agreement --

11 CHAIRMAN SCHMITT: Just like
12 you're getting increases in the price of
13 gas, the county would face increases. There
14 will be increases going forward. I don't
15 know what the contract is going to say
16 relative to rates. I don't know how long
17 the rates are going to be stabilized at the
18 current level. I don't know what the
19 mechanism will be for increases. I don't
20 know any of that information and neither
21 does anybody else.

22 So whoever it is that's telling
23 you these details is spinning out a hole
24 cloth.

25 MS. MANAS: But you don't think

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2 that it's a lie to say you don't want to
3 raise our taxes, but we're going to have
4 some fees. What is the difference what you
5 call it? It's still money coming out of our
6 pockets.

7 CHAIRMAN SCHMITT: The
8 difference, ma'am, is that we have brought
9 in, this administration has brought in and
10 privatized health care at the jail saving \$7
11 million a year. We brought in a private
12 operator to operate the Long Island Bus.
13 And I don't know if you've noticed, but I've
14 certainly have, he's operating better,
15 cleaner, I see more buses than I've ever
16 seen before at a savings of \$35 million a
17 year. So it can be done.

18 What this contract says, as I
19 understand it, and as been testified to, is
20 that we are going to hire Morgan Stanley to
21 provide the financial expertise to enable us
22 to explore whether this can also be done at
23 the sewage treatment plants. That's where
24 we are.

25 Everybody who is talking about

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2 all the details of what it's going to be
3 like and what's going to happen, they don't
4 know what they're talking about. Nothing is
5 done yet.

6 LEGISLATOR JACOBS: Can I say
7 something, Mr. Schmitt.

8 CHAIRMAN SCHMITT: Certainly.

9 LEGISLATOR JACOBS: Bottom line
10 in life, you don't get something for
11 nothing. Whether it's from the right hand
12 or from the left hand, whether you call it a
13 fee or a tax, you cannot, like in your own
14 house, continue to take in your bills and
15 not have revenue to match it. That's why
16 there are foreclosures and that's why a
17 county can go bankrupt.

18 I don't care what name you give
19 it, but I agree with you that be very
20 careful what you get rid of that you own,
21 because you never know what you can be
22 getting in its place.

23 MS. MANAS: Exactly. Thank you.

24 CHAIRMAN SCHMITT: Thank you.

25 Michael Mulhall.

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2 MR. MULHALL: Good afternoon,
3 Presiding Officer and members of the
4 legislature, fellow citizens. I just want
5 to make my comments known which is the fact
6 that the county, which continues to
7 hemorrhage money, this is not a done deal.
8 This is merely an exploration. While it's
9 an expense to be incurred, I agree with what
10 Legislator Jacobs said earlier, which is,
11 it's very important to have context of the
12 past, the recent history, and how it should
13 inform our decision making going forward
14 today.

15 The question is, this question is
16 in a financial hole. As Newsday pointed out
17 yesterday in its editorial, which I thought
18 was excellent, municipalities are veering
19 towards the red with labor and health costs
20 sky rocketing. It's tough choices time.

21 This county is out of options.
22 The only options left for the county is to
23 raise taxes to pay for this. It's amazing
24 how, I listened to Legislator Abrahams lead
25 the line of questions earlier. And I would

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2 say, was there anybody here from the City of
3 Glen Cove present when the former presiding
4 officer authorized the payment of \$6 million
5 to bail out the county committed for 15
6 consecutive years of Nassau County taxpayer
7 money, of which many members on the right
8 side of this legislature approved, without
9 question. That was Nassau County taxpayer
10 money.

11 The county is in a tremendous
12 hole. Now the county is facing costs of
13 somewhere around \$120 million a year to \$140
14 a year to make up for pension shortfalls as
15 a result of market declines to make New York
16 state or the county employees whole as part
17 of their pension.

18 The costs that the county is
19 facing are escalating beyond just a simple
20 tax hike. By my estimate, if the county is
21 truly facing deficits in excess of \$200
22 million, how much do we have to raise taxes
23 to offset?

24 So the question becomes, a gain
25 was received by the county as a result of

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2 spinning off the sewer and storm water
3 system nine years ago. That money has been
4 used. As you heard a gentleman speak
5 earlier, he pointed out that in his opinion,
6 having worked for one of the water treatment
7 facilities, that the systems have been
8 harvested. Essentially there's been little
9 or no reinvestment over those 15 years
10 except for recently.

11 So the question becomes, the
12 costs are going to go up whether a private
13 enterprise owns it or whether the county
14 owns it. It's that simple. Whether people
15 want to make a question of whether it's
16 mismanagement or not, I have to leave that
17 to you.

18 But the question is, the county
19 is facing a severe series of shortfalls that
20 start not only in this year, but I believe
21 go on for the next five years, structural
22 deficits.

23 As it relates to NIFA, and with
24 all due respect to the members of the board
25 of NIFA, they have a massive conflict of

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2 interest. If this deal should go forward
3 and raise hundreds of millions of dollars,
4 possibly as much as a billion dollars --

5 CLERK WEISS: Your three minutes
6 are up.

7 MR. MULHALL: -- with a large
8 amount of that money set aside to retired
9 debt service, that will leave the county
10 with a flush surplus to retired debt and
11 begin restructuring further to gain
12 efficiencies without having to raise taxes.

13 I think this is well worth going
14 forward. As its highlighted here, Long
15 Island doesn't suffer from not enough
16 government. Long Island suffers from too
17 much government, a government it can no
18 longer afford. As it relates, with all due
19 respect to the union leader of the CSEA,
20 it's not just people in the union that are
21 going through foreclosure. It's all the
22 people of Nassau County, 1.4 million people
23 are facing this horrible economy. This
24 horrible economy where nothing has been done
25 other than to blindly support union labor

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2 while one in five people on average are out
3 of work.

4 We have to take a look at this in
5 the context of today's economy. To me, it
6 makes total sense to want to review this.
7 The idea though that the amount of amnesia
8 that's being demonstrated by Legislator
9 Abrahams, Legislator Wink, Legislator
10 Jacobs, et al, is just shocking to me and
11 it's hideous and it's reprehensible.

12 The Nassau County bus system is a
13 great example. It costs somewhere between
14 100 and \$130 million a year to run, yet, the
15 previous county executive only left \$8
16 million aligned to pay for its services.

17 What we forget is, the woman who
18 heads the MTA is a former deputy county
19 executive under County Executive Suozzi.
20 Amazing how quickly she forgot when she left
21 Nassau County where her roots were. Then
22 you wonder why we have to go to private
23 service, why we have to privatize the
24 service that was previously held by the
25 county.

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2 No, I say we can't get rid of
3 these things fast enough. We should make
4 good decisions, we should evaluate the
5 people who are doing these deals but, where
6 they make sense, the Nassau County taxpayers
7 are amongst the highest taxpayers in the
8 country. How much more can they suffer
9 with?

10 CHAIRMAN SCHMITT: Michael, you
11 have to wrap up, please.

12 MR. MULHALL: I'm going to finish
13 there, Mr. Presiding Officer. And I thank
14 you for your time.

15 CHAIRMAN SCHMITT: Thank you.
16 Philip Franco.

17 MR. FRANCO: Good afternoon
18 legislators. My name is Philip Franco. I
19 was a Seaford Harbor representative for the
20 Cedar Creek Health Risk Assessment Committee
21 for 13 years. The committee is now known as
22 the Cedar Creek Oversight Committee which I
23 cochair. I am also on the board of the
24 Wantagh Seaford Homeowners Association,
25 among other civic groups. In fact, I'm soon

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2 to be installed as a director on the Nassau
3 County Coalition of Civic Associations.

4 Many county executives ago, the
5 Cedar Creek Water Pollution Control Plant
6 was a blue ribbon, award winning plant that
7 was recognized as one of the best in the
8 county and the country. That's right. Not
9 the county, but the country.

10 During that time, the plant was
11 run, staffed, maintained, and funded the way
12 it was designed to be. Since then, the
13 legislature has done a good job to fully
14 fund the plant. However, I believe the
15 record would show that since that time, the
16 last three county executives, including the
17 current one, has deliberately and
18 intentionally understaffed the maintenance
19 crew to the point where Cedar Creek was
20 rated as a C and Bay Park a D.

21 This loophole, that recent county
22 executives exploit, will continue, and
23 continue to exploit unless they are held
24 accountable.

25 In 2005, there was a legislative

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2 hearing and it was testified at Cedar Creek
3 that the plant used to have 144 employees,
4 and at that time was down to 88. Currently,
5 employees are under 100, even though the
6 plant has increased in size.

7 In 2010, legislative hearings
8 showed that out of 12,000 hours of required
9 preventive maintenance, there were only
10 eight done. The recent oversight meetings
11 has shown that not much has changed in that
12 area. What that does is make the equipment
13 bad and then you have to bring in
14 contractors and it cost -- you have to
15 replace the engine instead of changing the
16 oil, something like that.

17 I believe a new investigative
18 hearing will show that tax money is being
19 drastically overspent on contractors while
20 basic maintenance has been ignored.

21 CLERK WEISS: Your three minutes
22 are up.

23 MR. FRANCO: Really? You know
24 what? What about Mr. Ruocco, he was up here
25 for ten minutes and going back and forth and

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2 I can't finish my statement.

3 CHAIRMAN SCHMITT: Mr. Who?

4 MR. FRANCO: I'm sorry.

5 CHAIRMAN SCHMITT: You can take
6 additional time to finish up your statement.

7 MR. FRANCO: I believe a new
8 investigative hearing will show that money
9 is being drastically overspent on
10 contractors while basic maintenance has been
11 ignored over a decade.

12 The county has hired three
13 separate contractors to manage three
14 separate plants at the cost of millions,
15 while the same functions could be carried
16 out by qualified county workers for much
17 less. They spend \$2,800 a day on safety
18 contractors when that money can be spent on
19 our own employees that could perform those
20 functions for much less. Many say that they
21 would use comp time instead of overtime.
22 The county is throwing money down the
23 toilet. We have a payroll ripe for
24 corruption, and their contractor friends are
25 getting fat and the taxpayer is footing the

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2 bill.

3 Now we want the ultimate
4 contractor. The county executive implies
5 that we have to hire the ultimate contractor
6 or raise taxes. There is another choice.
7 Run the plants the way they were designed to
8 run. It has been shown locally and across
9 the country that once a profit driven entity
10 takes over a revenue neutral municipal
11 service, fees eventually skyrocket and to
12 negatively impact residents.

13 CHAIRMAN SCHMITT: Can you wrap
14 this up?

15 MR. FRANCO: NIFA stated that the
16 P3 is the largest one-shot in county history
17 and whether it's good public policy does not
18 appear to be part of the equation and that
19 it would be extremely skeptical of such a
20 transaction.

21 In December, Finch downgraded the
22 bond rating and stated that they were also
23 concerned with parts of the deal. It seems
24 to me that these red flags that the
25 legislature should investigate their other

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2 options before committing three quarters of
3 a million dollars to a deal with so many
4 concerns.

5 The state has just made the LIPA
6 Oversight Accountability Act where the state
7 consumer protective regulators are empowered
8 to investigate complaints. I believe this
9 should be done at the sewage treatment
10 plants.

11 Also, there is a new word that's
12 making the buzz around. It's called
13 insourcing. That's municipalities that are
14 bringing services back in after they have
15 outsourced. One of those such insourcings
16 was actually Morgan Stanley did it for
17 Indianapolis which the county states in its
18 multiyear budget. That deal was insourcing.
19 The municipality was bringing back in
20 service from Veolia, and they wound up
21 saving \$69 million a year bringing it back
22 in-house.

23 So we should really look into
24 this and the sewage treatment plants can be
25 run much more efficiently than they're run

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2 now, which is not something that they're
3 bringing up. They're saying it's going to
4 cost this much to run it and there's much
5 more efficient ways to run it with our
6 people and qualified people instead of
7 always having these contractors get millions
8 of dollars. Thank you.

9 CHAIRMAN SCHMITT: Thank you, Mr.
10 Franco. That's what this contract will do.
11 You say we should look into these matters.
12 That's exactly what this contract will do,
13 is give the county executive and the
14 administration the ability to look at the
15 three proposals and to get expert financial
16 advice on just what you're talking about.

17 MR. FRANCO: And I'm saying,
18 instead of spending the \$700 million, we
19 should be having our own workers in there
20 for much less money and actually fix the
21 problems that are going on. Take the
22 contractors that are in there now out.

23 CHAIRMAN SCHMITT: All we got to
24 do is raise taxes to do it.

25 MR. FRANCO: No, I never said

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2 anything about raising taxes. I said about
3 cutting costs. Then you wouldn't have a
4 deficit because you could cut the costs to
5 offset that.

6 CHAIRMAN SCHMITT: All right.
7 Paul Federman.

8 MR. FEDERMAN: My name is Paul
9 Federman. I'm a lifetime resident of Valley
10 Stream. What I've been hearing today seems
11 to be a conflict of interest. When you guys
12 are hiring a company to vet a process where
13 they have a vested interest in only one
14 outcome. That outcome is for it to go
15 forward. They're not going to put the
16 brakes if they see anything wrong. All
17 they're going to look at is that \$5 million
18 bump at the end.

19 So I think that you guys should
20 find someone who is a disinterested party to
21 figure out whether it's worth doing this and
22 then hire Morgan Stanley to do the financing
23 for you guys. I would not use the same
24 people that are going to vet the process to
25 continue the process afterwards. I feel

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2 it's a big conflict of interest and it's
3 corrupt. That's basically all I have to say
4 and I bet it's on point.

5 CHAIRMAN SCHMITT: Thank you.

6 LEGISLATOR ABRAHAMS: Thank you
7 for coming, Mr. Federman.

8 CHAIRMAN SCHMITT: Amy Ullo.

9 MS. ULLO: Hi. Good afternoon.
10 My name is Amy Ullo, and I'm here on behalf
11 of the Long Island Federation of Labor.

12 The Long Island Federation of
13 Labor has several concerns with the proposed
14 contract with Morgan Stanley related to the
15 privatization of the county's sewage
16 treatment plants.

17 We believe this is the first stop
18 in privatizing the facilities, and we still
19 have very little information about the
20 impact on the workforce and the cost to the
21 taxpayers.

22 The jobs of 260 workers, members
23 of CSEA, are in jeopardy. These are good
24 union jobs with decent pay and benefits.
25 It's unclear whether these county employees

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2 will receive other jobs with the county or
3 whether they will be guaranteed jobs with a
4 private operator. It is unknown whether the
5 private operator would offer the same or
6 comparable level of salaries and benefits.
7 Maintaining good jobs ought to be the top
8 priority of policy makers as we attempt to
9 emerge from the current recession.

10 We understand that privatization
11 of county owned facilities is intended to
12 bring in a one-shot injection of revenues.
13 As in the Veolia deal, the privatizing of
14 the Nassau County bus system, there was an
15 initial savings, in this case, there is a
16 large upfront payment to the county. The
17 service cuts and bus service have already
18 started as has been predicted.

19 In the case of the sewage
20 treatment plant, the county is essentially
21 receiving a loan which will likely have to
22 be repaid by the public through higher sewer
23 bills. In reality, this is a back-door tax
24 on all of Nassau County residents.

25 We urge you to reject this

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2 management contract with Morgan Stanley and
3 other moves towards privatization until the
4 public can be fully informed of the benefits
5 and costs of a private operator. It has
6 been our experience, that when there's
7 little transparency in the move towards
8 privatization, the public and the workforce
9 are ultimately disadvantaged.

10 We hope you take these
11 considerations into account before voting on
12 the contract. Thank you very much.

13 CHAIRMAN SCHMITT: Claudia
14 Borecky.

15 MS. BORECKY: I'm here to, of
16 course, address the Morgan Stanley contract.
17 I would like to let you know that I wrote a
18 letter to the Attorney General, the New York
19 State Comptroller's Office, and NIFA
20 requesting a full investigation into the
21 bidding process that got them to pick up
22 Morgan Stanley for the second time.

23 When I met with the Deputy County
24 Attorney Rob Walker, I was told that the
25 county executive never executed the contract

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2 with Morgan Stanley for \$100,000 per quarter
3 for \$500,000. I knew that the first quarter
4 of the contract started October 1 of 2011,
5 and it wasn't approved until December 19th,
6 2011. When I questioned why Morgan Stanley
7 did not sue the county for doing \$125,000
8 worth of work and not getting paid for it, I
9 was told that they did it on speculation. I
10 told them I couldn't believe that any
11 company would do all that work and not get
12 paid for it. I was told that they work on
13 speculation all the time.

14 I wrote NIFA and I asked them to
15 investigate the Morgan Stanley contract. I
16 learned that NIFA then rejected it partly
17 because it never went through the correct
18 bidding process in the first place. So it
19 didn't surprise me that the county put out
20 bids again to find a new financial advisor,
21 but it did surprise me that it again chose
22 Morgan Stanley as a financial advisor, only
23 this time, not \$100,000 per quarter, but
24 \$200,000 per quarter. Doesn't it seem
25 strange to you that the new bid came in

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2 higher than the first bid by \$200,000? Or
3 is just a back-room deal to make sure that
4 Morgan Stanley gets paid for the work that
5 they did from February 2010 until December
6 2011?

7 I also find it hard to believe
8 that \$700,000 was the lowest possible bid.
9 If I were JP Morgan or any other company and
10 I knew that Morgan Stanley's old contract
11 was \$500,000, wouldn't I want to low-ball
12 that amount knowing that I would get a
13 minimum of \$5 million at the end? I
14 certainly wouldn't submit a bid for \$700,000
15 or more. So how can this possibly be the
16 lowest bid? I just don't believe that.

17 So, like I said, I'm submitting a
18 letter to the Attorney General, the State
19 Comptroller.

20 CLERK WEISS: Your three minutes
21 are up.

22 MS. BORECKY: I'll be asking for
23 an investigation into the process that's
24 used by the county executive in determining
25 Morgan Stanley as the best possible bidder.

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2 This reeks of back-door deals, and, at the
3 very least, hints at corruption at the
4 highest level. Thank you.

5 LEGISLATOR KOPEL: Thank you.
6 Are we done? Okay. We'll get to both of
7 you.

8 MR. POLAK: My name is Bernard
9 Polak. I'm a retired attorney formerly with
10 the New York Attorney General's Office, 33
11 and nine months. It was I guess the members
12 of the legislature and the presiding officer
13 to suggest that a contract to deal with
14 sewage services is out of order. In my long
15 experience and knowledge, it is an essential
16 public function.

17 There are services that could be
18 provided by private entities, perhaps better
19 transportation services being among them,
20 and perhaps even the collection of garbage.
21 I know upstate where I have been looking at
22 property, garbage collection is a private
23 function. Some companies are very proud of
24 the work they do, and they compete to get
25 it, and some of them do very well at it.

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2 Sewage perhaps is not in the same
3 category. Of course you can privatize all
4 of government if you want to. You can sell
5 the police department, that's a marvelous
6 idea. Sell the police department and the
7 police can get paid on the basis on what
8 they can collect out of the people they
9 arrest. It is a very good system and it's
10 tried in third world countries and other
11 places in this world and some places in
12 western Europe in our history.

13 Talking about western Europe, if
14 you go to Rome, you look at the covers of
15 the sewers and it says SPQR, Sonato Pogway
16 Qi Roma (phonetic), from 2,500 years till
17 now, it's been a municipal function and
18 still is. That is the nature of sewage and,
19 therefore, I suggest that a contract with
20 Morgan Stanley or anybody else is out of
21 order because the objective is one that is
22 completely unsuitable for private
23 contracting. The only way that it can be
24 financially feasible is if the capital cost
25 of doing it is then made into a capital

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2 number that is paid off in a number of years
3 by charges to the users, the various
4 homeowners in Nassau County including
5 myself.

6 I suggest rather that we suggest
7 to other experts, perhaps other consultants
8 to find ways of making it more efficient,
9 perhaps a government corporation, perhaps an
10 independent agency of the government would
11 be able to function like a private company,
12 but not have the capital costs on it. This
13 was a brilliant idea. We have unpaid costs
14 of the improvements made in the system after
15 it literally sank --

16 CLERK WEISS: Your three minutes
17 are up.

18 MR. POLAK: Thank you very, very
19 much. I suggest that we go for a government
20 corporation or private public agency and not
21 lease out the system to a private
22 contractor. Thank you.

23 CHAIRMAN SCHMITT: You're
24 welcome.

25 LEGISLATOR WINK: Mr. Polak, if I

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2 could, and, Mr. Chairman, I just have a
3 quick question of Mr. Polak. With respect
4 specifically to the police, I'm going to ask
5 you to give for the record, just to clarify,
6 was that tongue in cheek, or what that --

7 CHAIRMAN SCHMITT: Come on, let's
8 not waste our time here with that.

9 LEGISLATOR WINK: The fact of the
10 matter is, this record --

11 CHAIRMAN SCHMITT: It's 20 after
12 3:00. We have the Full Legislative meeting
13 to go on --

14 LEGISLATOR WINK: You know what,
15 Mr. Schmitt, that's fine, but, Mr. Polak, I
16 got the impression that you were speaking
17 tongue in cheek about the police operating
18 completely privately.

19 MR. POLAK: It is absolutely
20 serious and it has happened many times in
21 areas of the third world and Latin America
22 and in Africa it goes on today.

23 LEGISLATOR WINK: Is that what
24 you want Nassau County to do though?

25 MR. POLAK: No, it isn't.

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2 LEGISLATOR WINK: That's my
3 point.

4 MR. POLAK: I really don't want
5 Nassau County to do it and the absurdity of
6 it was what was on my mind.

7 LEGISLATOR WINK: I understand
8 that. It's just that the record could be
9 spun in different directions depending on
10 how people want to read your comments.

11 MR. POLAK: Thank you for asking
12 me a question.

13 LEGISLATOR WINK: Thank you.

14 CHAIRMAN SCHMITT: Sir, would you
15 please identify yourself for the record.

16 MR. HABER: I'm Adam Haber. I've
17 been coming to meetings for about a year.
18 This is the biggest decision you're going to
19 face I think since I've been coming to these
20 meetings. It's very disappointing for me as
21 somebody who sits on several boards and I'm
22 an elected official that seven of the
23 legislators aren't here for the hearing.

24 CHAIRMAN SCHMITT: No, no. This
25 is a Rule Committee here.

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2 MR. HABER: On the calendar it
3 says Full Legislative meeting.

4 CHAIRMAN SCHMITT: There is
5 supposed to be a Full Legislative meeting.
6 That's what I just indicated to Mr. Wink
7 with his nonsense. So we have the Full
8 Legislative meeting to do as well. It was
9 supposed to be at 1:00. Both meetings were
10 called for one o'clock. I have no idea that
11 this would take three and a half hours, but
12 here we are.

13 MR. HABER: Okay.

14 CHAIRMAN SCHMITT: There's only
15 seven members of the Rules Committee.

16 MR. HABER: So you will have a
17 full slate?

18 CHAIRMAN SCHMITT: Yes.

19 MR. HABER: Fair enough. So I
20 was at a meeting last week run by
21 Legislators Denenberg, Solages and Whitton.
22 It was an informational meeting. In
23 attendance with Sheila Shah and our second
24 command, so there was an interesting
25 discourse back and forth about the pros and

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2 cons and the conceptions and misconceptions
3 going on.

4 I listened to everything
5 presented here today including the public
6 comment. I'm not going to tell you whether
7 I'm pro or con on this. But as a 22 year
8 Wall Street vet, I'm going to give you some
9 thoughts about what I think might be prudent
10 as you proceed.

11 Merrill Lynch wants this deal
12 done or they don't get compensated, that's
13 plain and simple. I've seen this done
14 dozens of times. Their interests lie not
15 with the interests in the county, it's in
16 the interest of self compensation, which is
17 fine. Everybody has to make a profit, and
18 they are the best available people to give
19 you counsel on the matter.

20 But, that being said, I implore
21 you before you vet the three people who are
22 interested in giving you bids, get three
23 private appraisals as to what the actual
24 sewage system is worth. The bids may be
25 substantially below the actual value, and,

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2 yes, you might get a billion dollars which
3 the county desperately needs, but it could
4 be worth a lot more. And three possible
5 presentations in an RFP is not enough of a
6 sample to get what might be full value for a
7 valuable asset we have. Make the appraisals
8 public and you'll force the hand of the
9 people purchasing the possible works and you
10 might get a better price. That's my first
11 observation.

12 CHAIRMAN SCHMITT: Sir, just for
13 the record, there's going to be no sale.

14 MR. HABER: Well, that's my
15 second observation. There's a lot of
16 semantics going on; fee, lease, sale, not
17 sale. You know, when you do -- I'm
18 commercial real estate also. I own
19 properties on Long Island --

20 CLERK WEISS: Your three minutes
21 are up.

22 MR. HABER: When you do a long
23 term lease of 25 years or more, it's the
24 equivalent of a sale. Money 26 years out,
25 discounted at five and a half percent, which

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2 the gentleman said they would be using as a
3 number to discount back from that timeframe
4 is de minimus. It's almost worthless. 25
5 years from now there could be completely new
6 and cutting edge treatments for sewage. We
7 don't know what's going to happen 25 years
8 from now. So a lease, a sale, it's
9 essentially the same thing. Please keep
10 that in mind when you correct everybody that
11 you're giving up a revenue stream to run an
12 asset.

13

When I was at this meeting,
14 Sheila Shah gave out a piece of paper
15 called, "The Real Truth About Nassau
16 County's treatment plant" from County
17 Executive Ed Mangano. It's his obvious side
18 of the story and I read it and I quickly saw
19 some things that I found puzzling.

20

It says here that the same 260
21 employees will still be at work, there will
22 not be a tax raise. It seems odd to me that
23 we're supposed to be hiring the best to run
24 our public works, yet, The Real Truth also
25 goes on to state that -- I'm going to read

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2 it straight from here actually, "that
3 private operators have imposed to implement
4 both purchasing, cut energy costs, shut down
5 obsolete equipment, and make other operating
6 improvements." They're giving you their
7 playbook. It seems pretty simple that
8 there's probably -- I know with
9 superintendents of business, when someone
10 retires, they rehire them and they got 40
11 years of experience in education. You can
12 probably find a top top notch guy to come
13 and do what you're going to hire a private
14 operator to do, give an incentive fee, hold
15 the asset and keep the cost down.

16 I'm concerned that we need the
17 money. I'm aware of that, the budgetary
18 concerns about that. But there are other
19 ways to possibly look at this.

20 So, just in summary, please get
21 some appraisals. A lease is the same thing
22 as a sale, and possibly bringing in an
23 outside manager with experience would be
24 just as good as bringing in someone who runs
25 a private enterprise, because the profit

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2 that they would be making would be money
3 that would be in the county's treasury if we
4 had somebody running it efficiently.

5 I still don't understand why
6 Sheila Shah, who is head of public works
7 isn't making these changes. If they're
8 keeping the same employees, and they're not
9 going to raise taxes, the only thing that
10 makes sense to me is fees, whatever that fee
11 may be. As a taxpayer, fee means tax. If
12 I'm paying more in fees, it's really more
13 money out of my pocket.

14 Good luck. You have your hands
15 full. I know this is just a hearing for
16 hiring Merrill Lynch, but just please
17 remember that their interests are not your
18 interests. Your interests are protecting
19 the county. Their interests are making \$5
20 million, which might be more than that
21 because it's 75 basis points of the sale.
22 Good luck. Did I say Merrill Lynch, Morgan
23 Stanley. Potato-Potata.

24 CHAIRMAN SCHMITT: I hope that,
25 Mr. Sullivan, you heard the admonition. I

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2 kind of agree with it. I hope the
3 administration keeps that in mind.

4 CHAIRMAN SCHMITT: I'm going to
5 call the question. All those in favor of
6 the contract, please say aye.

7 (Aye.)

8 Anybody opposed?

9 (Nay.)

10 That's all three of you. Let the
11 record show that the item passes by a vote
12 of four to three with four votes of the
13 majority in favor and three votes of the
14 minority in opposition. I'll take a motion
15 to adjourn.

16 LEGISLATOR MUSCARELLA: So moved.

17 LEGISLATOR WALKER: Second.

18 CHAIRMAN SCHMITT: Moved by
19 Legislator Muscarella, seconded by
20 Legislator Walker. All those in favor
21 please say aye.

22 (Aye.)

23 We stand adjourned.

24 (Whereupon, the Rules Committee
25 adjourned at 3:28 p.m.)

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C E R T I F I C A T E

I, FRANK GRAY, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby stated:

THAT I attended at the time and place above mentioned and took stenographic record of the proceedings in the above-entitled matter;

THAT the foregoing transcript is a true and accurate transcript of the same and the whole thereof, according to the best of my ability and belief.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of April, 2012.

FRANK GRAY