

**ERIE COUNTY LEGISLATURE**

92 Franklin Street - 4<sup>th</sup> Floor  
Buffalo, New York 14202

**Memorandum**

**Re:** Need for referendum on Local Law Intro 3-1 (2017)

**Date:** March 2, 2017

Dear Legislator Lorigo,

In reference to Local Law Intro. 3-1 (2017) I understand that there is a question regarding the propriety of an amendment to Erie County Charter §1101 requiring a two-thirds vote to allow the County Executive to pursue a non-professional engineer to be the Commissioner of Public Works. This is not the case. The amendment proposed by Local Law Intro 3-1 (2017), now Intro. 3-2 (2017), expands the current appointing authority of the County Executive to include non-professional engineers as candidates for Commissioner of Public Works.

The Department of Law offers three arguments in its memorandum dated February 26, 2017. Based on Municipal Home Rule Law §23(f), the implementation of Local Law Intro. 3-1 (2017) as written does not require a referendum.

The County Attorney's office contends that the County Executive's appointing authority is diminished by adding the requirement of legislative approval with a two-thirds vote before pursuing non-licensed professional engineers as candidates for Commissioner of Public Works. Since the Executive cannot currently consider non-professional engineers for the position of Commissioner of Public Works, this contention is incorrect.<sup>1</sup> Intro. 3-1 (2017), and now Intro. 3-2 (2017), is an expansion on the County Executive's current authority to appoint the Commissioner of Public Works, and as such, does not require a referendum.

The second contention made by the County Attorney's office claims that proposed Local Law Intro. 3-1, by changing the wording from "appointment" by the County Executive to "recommendation" by the County Executive could be seen as a diminution or curtailment of the County Executive's authority, or at least the "potential for confusion." Per our discussions this week, this issue was rectified with an amendment that changes the wording to "appointment" when Local Law Intro. 3-2 (2017) was introduced.

The County Attorney's office also contends that requiring a two-thirds vote to allow the County Executive to consider non-professional engineer candidates would curtail the authority of individual legislators. The County Attorney's office cites a 2007 opinion of the New York State Attorney General as authority. In the cited opinion, the Attorney General states that Municipal

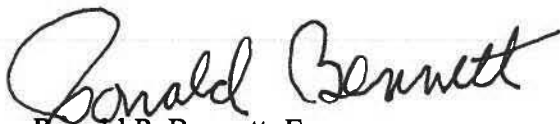
<sup>1</sup> Erie County Local Law 1 (1959), as amended, Section 1101.

Home Rule Law grants a local government the ability to pass local laws requiring a two-thirds supermajority vote for certain resolutions to which there is no argument. The Attorney General further opines that a law would require a referendum if it “requires more than the simple majority that would otherwise suffice to adopt a resolution.”<sup>2</sup> This portion of the opinion is distinguished from our present case in that the requirement of a two-thirds supermajority in Intro. 3-1 (2017) is not a limitation on current voting power of the Erie County Legislature. It is entirely new authority. There is no vote that would presently allow for the appointment of a non-professional engineer as the Commissioner of Public Works, and allowing for this change **expands** authority.

This Charter amendment clearly expands the ability of the County Executive to consider options in addition to those currently allowed, and does so by requiring a two-thirds supermajority vote of the Legislature. At present, nothing in Local Law Intro. 3-2 (2017) is a curtailment of any authority of any elected official. Therefore, Local Law Intro. 3-2 (2017) does not require a referendum under Municipal Home Rule Law.

If you have any further questions, please do not hesitate to ask.

Sincerely,

A handwritten signature in black ink that reads "Ronald P. Bennett". The signature is written in a cursive, flowing style.

Ronald P. Bennett, Esq.

Counsel Erie County Legislature Majority Caucus

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<sup>2</sup> Page 6, Op. Atty' Gen. No. (2007-5).