

# ULSTER COUNTY EXECUTIVE

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ULSTER COUNTY REGISTER

## VETO MESSAGE

**TO:** Victoria Fabella, Clerk of the Ulster County Legislature

**FROM:** Michael P. Hein, Ulster County Executive. 

**DATE:** December 23, 2015

**RE:** Resolution No. 445 of 2015 (Amending The 2015 Ulster County Budget To Reimburse The Town of Denning For Flood Mitigation Work Performed On Clair Road In The Wake of Hurricane Irene)

Pursuant to Ulster County Charter Section C-12, I am respectfully returning and vetoing Resolution No. 445, dated December 15, 2015 for the following reasons.

Contrary to the erroneous assertion in Resolution Number 445 of 2015's seventh "Whereas," the County of Ulster has not failed to facilitate the grant process. In fact, the County of Ulster has provided assistance to each and every municipality within this grant program. However, the County of Ulster cannot replace the towns when it is their responsibility to satisfy certain Federal or State requirements, nor can it certify that a town has satisfied these requirements if they have not. This would amount to a serious and fraudulent misrepresentation on the County's behalf.

Resolution Number 445 of 2015 is a well-intentioned, but inappropriate, budget amendment to require the County of Ulster to fund the Town of Denning's costs for damage done by Hurricane Irene that remain currently unreimbursed by New York State. The County of Ulster is, and has been, working with the requisite state agencies to assist the Town of Denning. Thus, the reimbursement process has not concluded, and the exchange of information is still ongoing.

This Resolution benefits one town to the exclusion of all others that are similarly situated. This Resolution also sets a dangerous precedent that puts Ulster County taxpayers at an unnecessary risk, as a result of state requirements.

In August 2011, Hurricane Irene seriously effected numerous Ulster County communities, including, but not limited to, the Town of Denning. Among the other Ulster County communities affected were Hardenburgh, Shandaken, Town of Ulster, Village of Ellenville, Wawarsing, Rochester, Lloyd, New Paltz, and others.

In response to the effects of Hurricane Irene, the United States Department of Agriculture, Natural Resources Conservation Service (hereinafter "NRCS"), and the Ulster County Soil and Water Conservation District (hereinafter "S&W") worked with numerous Ulster County communities to complete the required paperwork for reimbursement. The Federal government was to provide seventy-five percent (75%) reimbursement for the communities costs related to Hurricane Irene's damage, while New York State agreed to cover the remaining twenty-five percent (25%). In this instance the County of Ulster acted as the sponsor, and not a participant in the process.

For the last three (3) years, reimbursement has been held by New York State's Empire State Development Corp. Reimbursement to any community was dependent on that community meeting guidelines, such as procurement. Procurement is a guideline that must be satisfied for communities, such as Denning, Lloyd, and Ellenville, which contracted for the work to be done due to Hurricane Irene. The towns are responsible for meeting all applicable procurement requirements. The County of Ulster cannot satisfy these requirements for them. Part of the procurement guidelines for New York State's Empire State Development Corp. is verifying that a percentage of the work was contracted with Minority and Women-owned Business Enterprises (hereinafter "M/WBE"). In order to verify the M/WBE requirements, the County of Ulster, as the sponsor, has to attest to the fact that the town has met this requirement. As a signatory, and as a matter of fact, the County of Ulster cannot attest to this. In an attempt to assist, the County of Ulster is pursuing a possible M/WBE waiver given the unique circumstances caused by Hurricane Irene and its attendant damage. Thus, the reimbursement is still pending, and has not been denied.

What may not have been clear to the Legislature at the time of the vote was the fact that New York State has failed to recognize that the towns, under emergency conditions created by Hurricane Irene, had already completed the work that they are now seeking reimbursement for. Thus, the towns could not go back and satisfy the prerequisites in the grant, and the County of Ulster cannot certify that these prerequisites were met because there were not. Thus, the issue at hand here is between the towns and the State, and the County is functioning as an advocate for our Towns.

Although I recognize that this is a highly technical veto, I do share the desire of the Ulster County Legislature to assist the great people of Denning, and all Ulster County communities as they recover from this serious natural disaster. As an alternative, since this Legislative session draws to a close, I suggest that when the new County Legislature convenes, we meet to discuss a practical solution to this issue without placing the taxpayers of Ulster County at risk. Finally, if the state did not reimburse the County of Ulster, following this proposed action, the County of Ulster may well find itself in direct violation of the gift giving clause of the New York State Constitution.

As stated above, I cannot support Resolution Number 445 of 2015 for the following reasons:

1. The reimbursement process is still ongoing, and though Denning did not follow M/WBE requirements with their initial actions, the County of Ulster is now attempting to assist in obtaining a waiver for the Town of Denning from its M/WBE requirements due to this unique, emergency situation, which would in turn make State reimbursement possible; and
2. The County of Ulster cannot replace the towns when it is their responsibility to satisfy certain requirements (i.e. M/WBE), nor can it claim that a town has satisfied these requirements if they have not; and
3. We cannot set dangerous precedents that may harm Ulster County taxpayers now, or in the future.

**Amending The 2015 Ulster County Budget To Reimburse The Town Of Denning For Flood Mitigation Work Performed On Clair Road In The Wake Of Hurricane Irene**

Referred to: The Public Works and Capital Projects Committee (Chairman Fabiano and Legislators Archer, Greene, Loughran, and Roberts), and The Ways and Means Committee (Chairman Gerentine and Legislators Allen, Belfiglio, Briggs, Gregorius, Maio, Maloney, and R. Parete)

Legislator John R Parete offers the following:

WHEREAS, Hurricane Irene devastated Ulster County leaving in its wake considerable property damage; and

WHEREAS, Clair Road in the Town of Denning was rendered impassable by the storm and required extensive repair; and

WHEREAS, through consultation with the County of Ulster and Empire State Development of New York State, the Town of Denning applied for and was approved to receive certain grants from the State of New York through the New York Works Program to help remediate, mitigate and reduce flooding in Ulster County; and

WHEREAS, as part of the New York State grant process, the County of Ulster is required to undertake efforts to facilitate the release of grant funding approved through the New York Works Program; and

WHEREAS, the Town of Denning, in reliance upon its approval for a grant through the New York Works Program, completed necessary steps to contract with Kingston Equipment Rental/Baker Brothers to remediate flood damage and help mitigate future flooding on Clair Road; and

WHEREAS, work was completed in November 2012; and

WHEREAS, the County of Ulster has failed to complete the required steps to facilitate the grant process and, as a result, the sum of \$25,300.80 has not been released to the Town of Denning to cover its flood remediation and mitigation costs; and

WHEREAS, the Town of Denning has paid in full the reimbursable \$25,300.88 due to Kingston Equipment Rental/Baker Brothers; and

WHEREAS, the Town of Denning continues to suffer financial hardship as a result of the flood remediation and mitigation costs; now, therefore, be it

**Resolution No. 445      December 15, 2015**

**Amending The 2015 Ulster County Budget To Reimburse The Town Of Denning For Flood Mitigation Work Performed On Clair Road In The Wake Of Hurricane Irene**

RESOLVED, that the 2015 Ulster County Budget is hereby amended as follows:

	<u>DECREASE</u>	<u>AMOUNT</u>
AA.1990.1331-4600.4660 (Appr.#)	Contingency	\$25,300.88

and be it further,

**RESOLVED, that no County money shall be paid to the Town of Denning until a Memorandum of Receipt signed by the Supervisor of the Town of Denning, providing for the County of Ulster's full reimbursement in the event the Town receives flood remediation monies from the State of New York and/or the New York Works Program, is delivered to the Commissioner of Finance; and, be it further**

RESOLVED, that upon delivery of the Memorandum of Receipt the Commissioner of Finance is authorized and directed to issue payment in the amount of \$25,300.88 to the Town of Denning for flood remediation and mitigation costs stemming from Hurricane Irene,

and moves its adoption.

ADOPTED AS AMENDED BY THE FOLLOWING VOTE:

AYES: 23      NOES: 0

Postponed in Committee: Public Works and Capital Projects on November 5, 2015

Passed Committee: Public Works and Capital Projects on December 3, 2015

Passed Committee: Ways and Means as amended on December 15, 2015

FINANCIAL IMPACT:  
\$25,300.88 – COUNTY DOLLARS

Resolution No. 445      December 15, 2015

**Amending The 2015 Ulster County Budget To Reimburse The Town Of Denning For Flood Mitigation Work Performed On Clair Road In The Wake Of Hurricane Irene**

Legislator Gerentine motioned, seconded by Legislator Briggs, to amend the resolution by inserting an additional RESOLVED, as well as adding language to the final RESOLVED, as indicated above in bold font.

MOTION ADOPTED BY THE FOLLOWING VOTE:

AYES: 23      NOES: 0

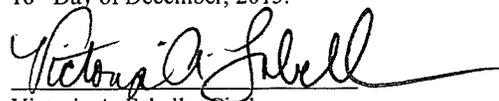
STATE OF NEW YORK  
ss:  
COUNTY OF ULSTER

I, the undersigned Clerk of the Legislature of the County of Ulster, hereby certify that the foregoing resolution is the original resolution adopted by the Ulster County Legislature on the 15<sup>th</sup> Day of December in the year Two Thousand and Fifteen, and said resolution shall remain on file in the office of said clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 16<sup>th</sup> Day of December in the year Two Thousand and Fifteen.

  
Victoria A. Fabella, Clerk  
Ulster County Legislature

Submitted to the County Executive this  
16<sup>th</sup> Day of December, 2015.

  
Victoria A. Fabella, Clerk  
Ulster County Legislature

Approved by the County Executive this  
Day of December, 2015.

**VETO**  
  
Michael P. Hein, County Executive  
Ulster County Executive      Date      12.23.15