

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County of LIVINGSTON

Local Law No. 4 of the year 19 86

A local law Providing for the Defense and Indemnification of County Officers and Employees (Insert title)

Be it enacted by the Board of Supervisors of the County of LIVINGSTON as follows:

LOCAL LAW NO. 4 - 1986

COUNTY OF LIVINGSTON - STATE OF NEW YORK

A LOCAL LAW PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF COUNTY OFFICERS AND EMPLOYEES.

Be it enacted by the Board of Supervisors of the County of Livingston, as follows:

SECTION 1. As used in this local law, unless the context otherwise requires:

- (a) "County" shall mean the County of Livingston;
- (b) "Board of Supervisors" shall mean the Board of Supervisors of the County of Livingston;
- (c) "County Attorney" shall mean the County Attorney of the County of Livingston;
- (d) "Employee" shall mean any person holding a position by election, appointment, or employment in the service of the County, whether or not compensated, or a volunteer expressly authorized to participate in a County-sponsored volunteer program, but shall not include the sheriff of the County or an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

SECTION 2. (a) Upon compliance by the employee with the provisions of section four of this local law, the County shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the County.

(If additional space is needed, please attach sheets of the same size as this and number each)

(b) Subject to the provisions set forth in paragraph (a) of this section, the employee shall be entitled to be represented by the County Attorney, except that the employee shall be entitled to be represented by private counsel in any civil judicial proceeding as follows:

(i) Whenever the County Attorney determines based upon an investigation and review of the facts and circumstances of the case, that representation by the County Attorney would be inappropriate; or

(ii) Whenever the County Attorney determines based upon an investigation and review of the facts and circumstances of the case, that representation by the County Attorney would be inadvisable due to the unavailability of resources in the County Attorney's Office; or

(iii) Whenever a court of competent jurisdiction, upon proper motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel; or

(iv) Where such representative by private counsel is approved by act of the Board of Supervisors.

(c) Where an employee is entitled to representation by private counsel pursuant to Subparagraph (i), (ii) or (iii) hereof, the County Attorney shall notify the employee in writing of such determination and shall so certify in a communication to the Board of Supervisors. Where the Board approves such representation, it shall designate the private counsel to be retained. Upon approval by the Board of Supervisors, the Clerk of the Board shall notify the employee in writing of such determination. Reasonable attorneys' fees and litigation expenses shall be paid by the County to such private counsel from time to time during the pendency of the civil action or proceeding, subject to audit and approval by the Board of Supervisors. The County Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel.

(d) Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(e) Where the employee delivers process and a written request for a defense to the County Attorney in accordance with section four of this local law, the County Attorney shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

SECTION 3. (a) The County shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his public employment or duties; provided further that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the review and approval of the form and amount of the settlement by the Board of Supervisors. Nothing in this local law shall be construed to authorize or require the County to indemnify and save harmless an employee with respect to a settlement not so reviewed and approved by the Board of Supervisors.

(b) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this local law shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

(c) Nothing in this local law shall authorize the County to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to Section 51 of the General Municipal Law; provided, however, that the County shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any state or federal court.

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the County Attorney; and if not inconsistent with the provisions of this local law, the amount of such judgment or settlement shall be paid by the County upon audit and approval by the Board of Supervisors.

SECTION 4. The duty to defend or indemnify and save harmless prescribed by this local law shall be conditioned upon: (i) delivery by the employee to the County Attorney of written request to provide the employee's defense together with the original or a copy of any summons, complaint, process, notice demand or pleading within five (5) days after the employee is served with such document, and (ii) the full cooperation and in defense of any action or proceeding against the County based upon the same act or omission, and in the prosecution of any appeal.

SECTION 5. The benefits of this local law shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal and provision of the Workers' Compensation Law.

SECTION 6. This local law shall not in any way affect the obligation of any claimant to give notice to the County under Section 50-e of the General Municipal Law, Section 52 of the County Law, or any other provision of law.

SECTION 7. The provisions of this local law shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

SECTION 8. Except as otherwise specifically provided in this local law, the provisions of this local law shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any employee or any right to defense or indemnification provided for any employee by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

SECTION 9. If any provision of this local law or the application thereof to any person or circumstance by held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this local law or the application of any such provision to any other person or circumstance.

SECTION 10. The provisions of this local law shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

SECTION 11. This local law shall take effect upon filing in the office of the Secretary of State as provided by Section 27 of the Municipal Home Rule Law of the State of New York.

(Complete the certification in the paragraph which applies to the filing of this local law and strike out the matter therein which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 4 of 1986.  
County  
of the Livingston was duly passed by the Board of Supervisors  
(Name of Legislative Body)  
on June 25, 1986 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval or no disapproval by Elective Chief Executive Officer,\* or repassage after disapproval.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_\_  
County  
of the City of \_\_\_\_\_ was duly passed by the \_\_\_\_\_  
Town (Name of Legislative Body)  
Village  
on \_\_\_\_\_ 19\_\_\_\_\_, not disapproved and was approved by the \_\_\_\_\_  
repassed after disapproval Elective Chief Executive Officer \*  
and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_\_, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_\_  
County  
of the City of \_\_\_\_\_ was duly passed by the \_\_\_\_\_  
Town (Name of Legislative Body)  
Village  
on \_\_\_\_\_ 19\_\_\_\_\_, not disapproved and was approved by the \_\_\_\_\_  
repassed after disapproval Elective Chief Executive Officer \*  
on \_\_\_\_\_ 19\_\_\_\_\_. Such local law was submitted to the people by reason of a  
mandatory referendum, and received the affirmative vote of a majority of the qualified electors voting  
permissive general  
thereon at the special election held on \_\_\_\_\_ 19\_\_\_\_\_, in accordance with the appli-  
annual  
cable provisions of law.

4. (Subject to permissive referendum, and final adoption because no valid petition filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_\_  
County  
of the City of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on  
Town (Name of Legislative Body)  
Village  
\_\_\_\_\_ 19\_\_\_\_\_, not disapproved and was approved by the \_\_\_\_\_ on  
repassed after disapproval Elective Chief Executive Officer \*  
\_\_\_\_\_ 19\_\_\_\_\_. Such local law being subject to a permissive referendum and no  
valid petition requesting such referendum having been filed, said local law was deemed duly adopted on  
\_\_\_\_\_ 19\_\_\_\_\_, in accordance with the applicable provisions of law.

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village or the supervisor of a town, where such officer is vested with power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. .... of 19..... of the City of..... having been submitted to referendum pursuant to the provisions of § 36 § 37 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the special general election held on ..... 19 ..... became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as Local Law No. .... of 19..... of the County of ....., State of New York, having been submitted to the Electors at the General Election of November ....., 19 ....., pursuant to subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph ..... 1 ..... above.

*Joseph G. Kenedy*  
Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: June 26, 1986

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK  
COUNTY OF .....Livingston.....

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

*Richard J. ...*  
Signature  
County Attorney  
Title

Date: June 26, 1986

County  
of .....Livingston.....