

MINUTES  
Erie County Fiscal Stability Authority  
August 1, 2005

The meeting of the Erie County Fiscal Stability Authority was called to order at 2:03pm. The meeting was convened by a Notice of Meeting sent to the Directors by Chairman Regan and announced to the public and press.

Directors Present: Campbell, Johnson, Kee, Keysa, Penksa, and Regan

Directors Absent: Stone

Others Present:

Ed Durivage, Ed Ingoldsby, Barbara VanEpps – New York State Division of the Budget, Richard Sigal – Hawkins, Delafield and Wood LPP, and Scott Quehl – Public Financial Management

**Opening Remarks:**

Chairman Ned Regan welcomed all attendees and introduced the Board members and staff from Division of the Budget, Hawkins, Delafield and Wood LPP (Hawkins) and Public Financial Management (PFM). He also acknowledged certain people in the audience from the City of Buffalo, Erie County and the County Legislature. Chairman Regan voiced his concerns about the anger and resentment among County residents. He stated that Erie County taxpayers were “taking the hit” and that the focus should be on helping them. He added that he hoped the Authority could help to change the morale of the citizens and the community.

**Overview of Erie County Fiscal Stability Authority (ECFSA) Act**

Ed Durivage from the Division of the Budget provided the Board with an overview of the ECFSA legislation.

Director Keysa asked for clarification on the mechanics of the sales tax intercept. Mr. Durivage reviewed the process for the Board. Director Campbell asked Mr. Durivage to explain the criteria associated with the efficiency grants. Mr. Durivage and Mr. Ingoldsby explained that the criteria would be developed as part of the 2006-07 budget process. Director Penksa asked if suggestions from the Board about the criteria would be considered; Mr. Ingoldsby indicated that they would.

Director Kee asked for clarification on how the County’s 2005 gap would be determined. Mr. Ingoldsby noted that an amendment to the ECFSA Act states that the 2005 gap is the \$118 million gap identified by the State Comptroller in his June 2005 report. Director Penksa asked how the gap would be determined in future years. Mr. Ingoldsby explained that the County would identify future year gaps in the context of the four-year plan.

Director Johnson asked if the Board would have any input in determining how certain Federal and State grant money is used. Mr. Ingoldsby responded that the Board's review of the four-year plan would provide them with the opportunity to comment on the use of such funds.

### **Adoption of By-Laws**

Chairman Regan initiated a discussion of the proposed By-laws. Director Keysa suggested that the By-laws clearly state that the ECFSA Board meetings are subject to the Open Meetings Law and requested that the amended By-laws be distributed prior to the Board's next meeting. Director Penksa also wanted to clarify that Section 5 under Directors and Officers of the By-laws relating to removal and vacancies apply only to Board staff and not the Directors of the Board.

The Directors then voted to approve the By-laws with the requested changes. Motion by Regan, Second by Johnson. Vote 6-0.

Resolution 05-01

### **APPROVING THE BYLAWS OF THE ERIE COUNTY FISCAL STABILITY AUTHORITY**

WHEREAS, the Erie County Fiscal Stability Authority ("ECFSA") was created by Chapter 182 of the Laws of 2005, as amended, to be a corporate governmental agency and instrumentality of the State of New York constituting a public benefit corporation to "oversee the county's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the county if the county is unwilling or unable to take the required steps toward fiscal stability."

WHEREAS, it is necessary for the ECFSA to adopt By-Laws to conduct its business.

NOW THEREFORE BE IT RESOLVED, that the ECFSA approves the adoption of the By-Laws attached and dated August 1, 2005.

### **Banking Agreements with HSBC Bank**

The Chairman then made a motion to adopt resolutions to open a bank account and enter into a banking agreement. Director Keysa asked to clarify that the resolution, along with the resolutions for legal counsel and the financial advisor, were being approved on an interim basis. He requested that Division of the Budget and Hawkins staff prepare sample resolutions to retain legal counsel and a financial advisor that reflect the statutory procurement guidelines. He also wanted to ensure that the banking agreement meets the collateralization and independent trustee requirements. Director Kee reiterated that the resolutions for the bank, legal counsel and PFM should be approved on an interim basis.

The Directors then voted to approve the opening of the bank account and the banking agreement with HSBC. Motion by Regan, Second by Keysa. Vote 6-0.

Resolution 05-02 and 05-03

Resolution No. 05-02

#### CHECKING ACCOUNT AT HSBC BANK

WHEREAS, In order to efficiently carry out the requirements of Chapter 182 of the laws of 2005, as amended, it is necessary for the Erie County Fiscal Stability Authority (“ECFSA”) to obtain banking services.

NOW THEREFORE BE IT RESOLVED, that the ECFSA open a regular or special checking account at HSBC bank for the purpose of signing checks and notes, drafts and other forms of indebtedness on behalf of the ECFSA, and

BE IT FURTHER RESOLVED, that the ECFSA appoint any number of directors or other authorized persons who shall be granted authority to sign any or all such forms of indebtedness.

Resolution No. 05-03

#### BANKING AGREEMENT WITH HSBC BANK

WHEREAS, In order to efficiently carry out the requirements of Chapter 182 of the laws of 2005, as amended, it is necessary for the Erie County Fiscal Stability Authority (“ECFSA”) to obtain banking services.

WHEREAS, it has been determined that it is in the best interests of the ECFSA to enter into an agreement with the HSBC Bank, USA, individually and as custodian (the “Bank”), in order to maintain or continue to maintain deposits with the Bank and to have the same secured by the Bank (the “Agreement” that is attached to this resolution)

NOW THEREFORE BE IT RESOLVED, that the entering into of the Agreement by and between the Bank and ECFSA be, and hereby is, authorized and approved in all respects; and

BE IT FURTHER RESOLVED, that the form, terms and conditions of the Agreement as previously presented to the ECFSA for its review is approved in all respects including, any such changes, modifications, additions or deletions which may be made thereto at the discretion of the Chairperson, Vice Chairperson or Executive Director of the ECFSA; and

BE IT FURTHER RESOLVED, that any Chairperson, Vice Chairperson, Executive Director or other authorized person of the ECFSA be and hereby is, authorized and

directed to execute and deliver any other agreement, certificate, document, paper or other written instrument, and to do all other things and to take all other actions necessary or appropriate in their judgment, to consummate the transactions contemplated in the Agreement.

### **Short-term and Long-term Staffing**

Chairman Regan thanked Division of the Budget and Buffalo Fiscal Stability Authority (BFSA) staff for their assistance in getting the ECFSA up and running. Director Keysa thanked Regan for agreeing to serve as Chairman. Chairman Regan proposed that Hawkins, Delafield and Wood, LPP be retained as the Board's interim counsel. Director Keysa made a motion to retain Hawkins as legal counsel on an interim basis. Director Kee asked that we clarify the meaning of interim and ensure that the actions taken to retain services on a permanent basis are consistent with the procurement plan and competitive bidding requirements under Public Authorities Law. Director Johnson reiterated the need to abide by State procurement law.

The Directors then voted to approve Hawkins Delafield, and Wood, LPP as interim legal counsel. Motion by Keysa, Second by Regan. Vote 6-0.

Resolution 05-04

### **APPROVING ENGAGEMENT OF HAWKINS DELAFIELD & WOOD LLP AS LEGAL COUNSEL**

WHEREAS, the Erie County Fiscal Stability Authority ("ECFSA") was formed by Chapter 182 of the Laws of 2005, as amended, to "oversee the county's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the county if the county is unwilling or unable to take the required steps toward fiscal stability;" and

WHEREAS, the ECFSA will require professional assistance in performing its mission; and

WHEREAS, the ECFSA is required by Chapter 182 of the Laws of 2005, as amended, to commence operations immediately and to receive a four year financial plan for the County of Erie not later than October 1, 2005 and act upon such plan not later than 15 days after its submission by the County, and to receive and act upon a four-year financial plan submitted with the County Executive's 2006 fiscal year budget proposal and any revisions thereto; and

WHEREAS, it is necessary that the ECFSA immediately obtain legal services regarding its formation and activities, the immediacy of such need constituting extraordinary circumstances which make competition impracticable or inappropriate within the meaning of the procurement guidelines adopted by this Authority;

NOW THEREFORE BE IT RESOLVED, that the ECFSA engage the firm Hawkins Delafield & Wood LLP to provide such legal services as requested by the Chairman until such time as the Authority shall have a reasonable opportunity to procure such legal services in accordance with a competitive selection process undertaken in accordance with its procurement guidelines. Such services shall be conditioned upon the Chairman signing and receiving appropriate letter from the County Executive of the County of Erie as required regarding consent of said official to this representation and shall be undertaken for such amounts and on such terms as shall be determined by the Chairman or Vice Chairman of the Authority.

BE IT FURTHER RESOLVED that this resolution shall supersede the resolution of the Authority adopted August 1, 2005 appointing Hawkins Delafield & Wood LLP to provide such legal services.

This resolution shall take effect immediately.

### **Erie County's Four-year Financial Plan**

Scott Quehl from PFM made a presentation to the Board on the County's required four-year financial plan (Plan). He emphasized that the numbers and gap projections included in the Plan will be determined by the County and that PFM's role will be to provide technical assistance to the County in the development of the Plan. He stated that the development of the Plan would be an open and transparent process.

Mr. Quehl asserted that the gap-closing actions would include cost recovery and expenditure reduction initiatives, and emphasized the importance of credibility with respect to the Plan's numbers and initiatives.

Chairman Regan asked about Mr. Quehl's meeting with the County Executive earlier in the day. Mr. Quehl indicated that the meeting went very well, that PFM offices would be close to the County Executive's and that work is already underway in developing the Plan.

Director Campbell questioned whether information would be provided to the Board on an ongoing basis during the development of the Plan. Mr. Quehl indicated that he recommended to the County Executive that this be the process so that approval of the plan by the Board is not delayed.

Director Johnson asked about the status of other four-year plans developed by local governments. Mr. Quehl indicated that these plans are still working documents and are referenced frequently.

Mr. Quehl answered additional questions posed by Directors Penksa and Kee on the model plan and how expenditures are calculated. Director Penksa asked if the planning process would include an analysis of service levels and the impact of reductions to certain programs. Mr. Quehl stated that the 2005 plan would focus on addressing the gap but the 2006 plan would look more at the programmatic issues. Director Penksa asked whether

the Plan could be revised after introduction. Mr. Quehl stated that he recommends that the initial Plan be referred to as an interim plan so that it can be revised after adoption of the Budget. As a point of clarification, Bruce Fisher Deputy County Executive stood at the podium and stated that the County amended its charter requiring that the County Budget be submitted to the Legislature on October 15<sup>th</sup> instead of November 10<sup>th</sup>.

Chairman Regan pointed out that one of PFM's former clients, Mayor Rendell of Philadelphia, went on to become Governor of Pennsylvania, stating that he hopes that Erie County's experience is as successful.

Director Keysa noted that the State Comptroller's report was critical of the County's past budgetary practices and questioned whether PFM would have the ability to assess the reliability of the County's numbers. Mr. Quehl was confident that PFM could do that, reiterating the need to immediately begin their analysis. Chairman Regan thanked Mr. Quehl for his presentation and commended PFM on the work they have accomplished thus far.

Following a public comment session (detailed below) the Directors then voted to approve the engagement of PFM as interim financial advisor.

Motion by Keysa, Second by Campbell. Vote 6-0.

Resolution 05-05

#### APPROVING ENGAGEMENT OF THE PFM GROUP AS FINANCIAL ADVISOR

WHEREAS, the Erie County Fiscal Stability Authority ("ECFSA") was formed by Chapter 182 of the Laws of 2005, as amended, to "oversee the county's budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings and to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the county if the county is unwilling or unable to take the required steps toward fiscal stability"; and

WHEREAS, the ECFSA will require professional assistance in performing its mission; and

WHEREAS, the ECFSA is required by Chapter 182 of the Laws of 2005, as amended, to commence operations immediately and to receive a four year financial plan for the County of Erie not later than October 1, 2005 and act upon such plan not later than 15 days after its submission by the County, and to receive and act upon a four-year financial plan submitted with the County Executive's 2006 fiscal year budget proposal and any revisions thereto; and

WHEREAS, it is necessary that the ECFSA immediately obtain services of a financial advisor regarding its formation and activities, the immediacy of such need constituting extraordinary circumstances which make competition impracticable or inappropriate within the meaning of the procurement guidelines adopted by this Authority;

NOW THEREFORE BE IT RESOLVED, that the ECFSA engage the PFM Group to provide such financial advisor services as requested by the Chairman until such time as the Authority shall have a reasonable opportunity to procure such financial advisor services in accordance with a competitive selection process undertaken in accordance with its procurement guidelines. Such services shall be undertaken for such amounts and on such terms as shall be determined by the Chairman or Vice Chairman of the Authority.

BE IT FURTHER RESOLVED that this resolution shall supersede the resolution of the Authority adopted August 1, 2005 appointing the PFM Group to provide such financial advisor services.

This resolution shall take effect immediately.

### **Public Comments**

The Chairman then opened the floor to questions or comments from the audience.

The first speaker expressed concern over the inequity with respect to how County revenues are distributed among municipalities and asked that the Board look carefully at this issue.

Erie County Legislator, Demone Smith, Chairman of the Legislature's Finance Committee for the County Legislature asked a number of technical questions about the Act related to the Board's role in approving contracts and the criteria of the efficiency grants. Mr. Smith also asked if the Erie County Medical Center was a covered organization; Mr. Sigal indicated that it was. He then asked if a budget modification has to be approved by the Board, and whether the Board could disapprove a budget if it does not agree with the expenditure assumptions. Chairman Regan invited Dorothy Johnson of BFSA to remark on the topic. Ms. Johnson stated that any modifications to the City of Buffalo's budget or Financial Plan are approved by the BFSA. Director Campbell added that he believed the Board had a responsibility to review modifications to the budget/Plan. Mr. Sigal stated that as long as the assumptions are rational and reasonable, the Board would not second guess the elements of the County's Plan.

Richard Pawarski (Candidate for Erie County Comptroller) questioned the rationale for intercepting the County's sales tax, given the cash crisis the County is facing. Mr. Durivage clarified that if the Board does not need the sales tax revenue to pay for operating expenses or debt service the revenue would be passed on to the County as soon as possible.

Harry Konst from Lancaster requested that the Plan be made available on the Internet. The Chairman agreed. Mr. Konst questioned whether a control period acts as an incentive for the County Legislature. The Chairman remarked that his question was difficult to answer but that the Board had control powers at its disposal and would use them if necessary.

Michael Young, president of the Erie County Medical Center, asked whether the Board would provide examples of prudent spending practices that the County could use as a benchmark. Mr. Quehl responded that they would look at debt management policies to determine if spending was appropriate, and that such information would be provided to county for its use in decision-making.

Director Kee stated the need for a strategic plan, including goals, options and objectives. Mr. Quehl agreed with this noting that the four year plan would provide those elements. Director Campbell added that the four year plan would have to provide enough information for the board to be comfortable.

Mr. Young asked about the level of control the Board has over covered organizations. Mr. Sigal remarked that the Board would have to take a close look at the Medical Center given its fiscal relationship with the County. Mr. Young then requested that the Board speak as one voice, noting that recent comments made by a Board Member had a negative impact on recruitment efforts at the hospital. The Chairman remarked that the Board presence could also assist in recruitment efforts since people will know there is an informed and interested entity in place. Mr. Young ended his remarks by saying that fiscal parameters and targets will help avoid confusion and establish expectations.

### **Tobacco Revenue Securitization**

Chairman Regan stated that the County was proceeding with a tobacco revenue securitization that was discussed with only some of the Board members due to timing constraints. He noted that given the County's needs and the current market for tobacco bonds, it appears that the tobacco transaction is a good option for the County at this time. He acknowledged that the Board has no legal power to stop the transaction but noted that if the Board had concerns, they would have been made public. He added that the Board would need to be assured that the disposition of revenues from the transaction will be used in a way that is in the best interest of Erie County's taxpayers. The Chairman stated that they Board planned to continue to work with the County on this issue.

Director Kee requested a briefing on the tobacco securitization transaction, and asked whether the proceeds from the transaction could be used for cash flow purposes as well as closing the gap. Chairman Regan said that was still being discussed.

Chairman Regan said the next meeting would likely be held on August 18<sup>th</sup>. Director Campbell said the Board would continue working with the County to formalize the disposition of the tobacco proceeds.

### **Closing Remarks**

Director Johnson asked Mr. Quehl to consider whether there were other sources of revenue that should be brought to the attention of the board.

Director Keysa asked if the Division of the Budget could develop a budget for the Board prior to the next meeting.

The Chairman thanked the Board members and staff for their assistance and stated that he looks forward to having a positive working relationship with the County.

The meeting adjourned at 4:02.