Minutes
Erie County Fiscal Stability Authority
August 23, 2006

Note: the following is a draft copy of minutes of a meeting of the Erie County Fiscal Stability Authority ("ECFSA"), which was held August 23, 2006. These minutes will not become final until approved at a subsequent meeting of ECFSA directors, and may be amended before approval.)

Chairman Anthony Baynes called the meeting of the Erie County Fiscal Stability Authority ("ECFSA") to order at 2:00 p.m. on Wednesday August 23, 2006 in the Buffalo Niagara Convention Center. Notice of the meeting had previously been distributed to all Directors by courier and announced to the public and press.

Directors Present: Anthony J. Baynes, Chair; William Joyce, Vice-Chair; Kenneth Kruly, Treasurer; Joseph Goodell; Sheila Kee and John Johnson

Others Present: Kenneth Vetter, Executive Director

Opening Remarks

Chairman Baynes stated that ECFSA had received an update to the financial plan the day before shortly before noon. "Before proceeding with the regular business of the Fiscal Stability Authority, I wanted to state, for the record, that the ECFSA is here for the long term interests of the people of Erie County. We take our charge very seriously and we look to work with elected officials throughout the county. In addition to working with administration, we have asked the Erie County Legislature to weigh in on the proposed modifications. We want to give the duly elected leaders of Erie County government their opportunity to review and approve, disapprove or amend this plan. The County is at a critical junction and we need help in protecting the interest of the people of Erie County. That is what we are here for. We are taking a thoughtful approach to county government with its "customers" – the residents & taxpayers - in mind and we look forward to the presentation by Mr. Hartman later in the meeting on the documents received yesterday."

Approval of the Minutes

Chairman Baynes stated the Director Keysa should be arriving momentarily. The next item on the agenda is to approve the minutes of the last meeting on July 26th. They have been submitted by Secretary Keysa and were circulated to the members in their briefing books prior to this meeting. Chairman Baynes asked for a motion to approve. Director Kee moved to approve and Director Johnson seconded. Without further discussion the resolution was unanimously approved.

Resolution No. 06-38

APPROVING MINUTES AND RESOLUTIONS FROM JULY 26, 2006

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its meeting of July 26 2006 and ratifies and affirms 5 resolutions numbered 6-33 through 6-37 that were approved on July 26, 2006.

This resolution shall take effect immediately.

At 2:06 p.m., Stanley J. Keysa, Secretary, arrived from Syracuse and joined the meeting.

Receipt of Erie County Financial Plan Revision

Chairman Baynes stated: "Yesterday morning, we received a series of revisions to the Erie County financial plan. Since May this board has been reviewing the plan and initiative items at its meetings and found that a significant number of initiatives included in the plan were not realizing anticipated savings. As a result, the Stability Authority passed a resolution at its last meeting looking for a revised plan from Erie County taking this and other factors into account." Chairman Baynes asked Mr. Hartman to present major elements of the new document.

Mr. Hartman began his presentation by summarizing a memo in regards to a fundamental change in the way Erie County provides financial assistant to the school districts. He stated that the County was giving more of the sales tax revenue to school districts than any other county in the State. He stated that members of the State delegation conveyed to him that, by doing this, the County was forgoing a considerable amount of State STAR aid that other counties were receiving. He continued by stating that they have done a calculation for each school district in the county using their 2004 and 2005 budget years. "In the case of Orchard Park, 2004 had a school tax levy of $34.4 million with STAR aid of $5.4 million which gave them a net levy of $29 million. The County provided $4.2 million of sales tax revenue."

Mr. Hartman continued by stating the question is: "What would have happened in Orchard Park if the County did not provide the revenue sharing of sales tax assistance? Orchard Park would have would have had to have a property tax levy of $38.6 million and the STAR aid would have been $6 million more. Orchard Park was deprived of over $6 million of potential STAR aid."

Mr. Hartman stated: "The summary of the program, when you aggregated it through the school districts county wide in the year 2004-2005, the County gave $108 million of revenue sharing to the districts, which means, in turn, that the County gave up $24.4 million in STAR aid."

Mr. Hartman stated that with the County's legal department and the Division of Real Property Services have had discussions with the State Department of Real Property Services and tried to figure out how they could formulate this differently and came up with a program. "The County would eliminate schools from the 3 percent sales tax revenue sharing formula." He continued by stating that they are in the process of trying to create a new program called the Erie STAR program which would work like the State program in that it would be a credit that every property owner would receive on their bill, both home owners and commercial property owners. It would offset the higher property tax levy. The County would provide a payment to the school districts on a quarterly basis "like we do with the sales tax revenue and it will grow annually."

Mr. Hartman stated that the program would not have an impact on an individual property tax owner. “They will not be paying a higher bill. The result is a retained financial benefit to the County.”

Director Kruly stated that it is not fair to continue to talk about the $24 million because the City of Buffalo can not participate in the program because of its limited tax margin and the unconstitutionally of breaching that limit.

Mr. Hartman responded the City of Buffalo is about $10 million away from their constitutional tax limit. He continued by stating that the County Executive will be submitting a home rule message for the Legislature that will go to the State Legislature. He added: “There is a possibility that what we providing to them in the way of our Erie STAR would be an exemption of the constitutional tax limit.” He stated that it is a question that needs to be resolved. Director Kruly stated that it was resolved a number of years of ago in the State of New York in the Hurd decision. “The matter is decided and a law you might propose will not amend the constitution.”

Mr. Hartman stated: “Without the City of Buffalo, the amount would be $17 million, which was previously stated to be $24 million.” Director Kruly stated: “The County would lose $15-$16 million under your plan and would have to make that up with something else in 2008-2009. Mr. Hartman responded: “Yes, if we can not work around the Buffalo situation” and stated it was an issue to be resolved.

Director Kee reminded Mr. Hartman that he had stated that the amount of STAR aid will grow annually as the sales tax revenue grows. She continued by stating that in the event of a negative sales tax growth, the County would still be responsible for growth in the amount of aid which would come out of an operating fund. “If you have a negative growth in sales tax how would you finance it?” Mr. Hartman stated it would work like the sales tax formula. “If we have negative growth the school districts get less.”

Mr. Hartman continued by stating they met with a number of school officials and they are receptive to the idea. “The number one concern is that what the County wants to do is taking away a guaranteed revenue stream and replacing it with something that would be an annual appropriation in the County budget.” He continued by raising the question of what would happen in two years if a new group of Legislators wanted to abolish this program that if that did happen it would do damage to the school districts. In regards to that, Mr. Hartman then referred to a memo from James Tuppen, Assistant County Attorney, which addresses the concern: “We will write in the Legislation which will authorize the Erie STAR program a provision that, in the future, if a County Legislature discontinues the program, we would revert automatically back to the current revenue formula.”

Director Joyce asked with regards to all the parties involved in the Erie STAR program, “Can the program be pulled off?” Mr. Hartman responded that they have had discussions with a group of County Legislators and have addressed the concerns from the school districts. We need to find sponsors in the State delegation that would move this as a home rule message. He continued by stating he believes the program could be implemented.

Chairman Baynes asked Mr. Hartman with regards to this STAR program: “Will school taxes increase for property owners that own several apartment building, business people, and office complexes?” Mr. Hartman responded that the initial rate will increase, but that through the Erie STAR program, they will get a credit on their tax bill.

Director Johnson commented that he could not be excited about the proposal itself just being focused on revenue-generating rather than giving savings back to the taxpayers. Mr. Hartman responded: “Erie County is forgoing a substantial amount of STAR aid so we are maximizing it to the extent possible. With the Erie STAR program, we would be avoiding a property tax increase for the next three years.”

Director Kruly stated that he believes the program is more of a tax-shift than a tax-savings. “It could be characterized as a bail-out by the County and you need co-operation from the school districts because you are looking at them to raise the taxes so the State provides you with more money.” Director Kruly stated that the STAR program was created for a tax savings, not as a resource for shifting taxes. “You are shifting taxes and not relieving anything in anyway.”

Chairman Baynes asked “Are more savings in the STAR program, school district savings?” Mr. Hartman responded: “It is a way of giving more tax relief to school tax payers.”

Director Kee noted that the County will be using State dollars to provide rebates to commercial establishment to Erie County whereas Albany designed it as a homeowner-based program. She stated this was a Legislative issue that the County has to contend with. Mr. Hartman stated that the $84 million dollars that will be providing through the Erie STAR program which includes homeowners and commercial property owners is County money drawn from the sales tax.

Chairman Baynes asked whether the County will be rebating commercial property owners and thus will have a loss. Mr. Hartman stated Erie County will be rebating commercial owners and the money will come from revenue sharing.

Mr. Hartman asked Joseph Maciejewski, Director of Real Property Tax Services to describe the formula that was discussed with the State. “The sales tax aid coming off would cause the school districts to increase levies. The residential tax payers that qualify for STAR because the rates are higher would draw a larger STAR exemption for the State. The commercial owners would draw a larger tax bill from the school district. The school district will receive larger checks from the State for their STAR money. The difference between the larger check and what they would have had in sales tax is going to be the formula that will be using to determine the credit for each tax payer in that school district.”

Maciejewski continued by stating they will be taking the total school assessed value of each property in the school district, divide it by the difference, and it will create a tax rate and then calculate that on a spread sheet and calculate a fixed dollar credit.

Director Kee noted that the current tax formula has been in effect since 1977. “Have you thought carefully about the new issues that will emerge if you tamper with the formula?”

Mr. Maciejewski responded that Mr. Hartman would have to respond to the question.

Director Kruly asked "How much of the county tax basis is commercial property versus residential property?" Mr. Maciejewski responded it was 60-40.

Director Johnson asked: "What are the budgetary needs that the reviews from the STAR program are going to address?" He added that he sees the program as being a tax increase from one place to another, "putting more taxes on the tax payers of Erie County."

Mr. Hartman responded to Director Kee's previous question regarding the sales tax formula stating: "There are no other changes to any other feature of the revenue sharing program." He continued by stating all the other pieces of the formula will remain in place and essentially it is an agreement that has been entered into by three cities. "It would only apply to the school portion." He said the city councils would have to agree to the change.

Chairman Baynes asked Mr. Hartman how soon he thought the program would be implemented. Mr. Hartman responded that they would reach an agreement between the County and the three cities sometime in the fall. They would have the legislation that creates Erie STAR program adopted by the County Legislature sometime in the fall so that it can be submitted to the State for home rule action when they reconvene in January. He continued that they have to give the school districts an official notification of the change by January 30th. "Of course we will be briefing them" and he has already started far in advance but that would be the timetable be done by January 30th. It would affect some of the school districts for their fiscal year beginning July first and it would have a benefit to us in our 2008 fiscal year."

Director Keysa observed that if other areas were receiving more in terms of state aid, it would make sense to try to equalize ourselves to the others. "Having been involved in a number of inter-municipal efforts from revaluation in 1984, to the community development block-grant program, where we had twenty nine municipalities come together – it is my opinion it can be done – it is difficult to bring people together – but this is a very heavy lift in the time frame you have available. Having attended the Association of Town Governments the very change in allocation of state aid that has been proposed regarding the 1/8th percent of the sales tax has opened the eyes of a number of newer supervisors to the intricacies of that formula and they realize that there is a considerable shifting of wealth from the suburban areas to the city areas in that formula as it now stands and a number of them have asked that formula be changed. So I don't know how you are going to change one piece of that formula and think they are going to ignore the demographics which have changed dramatically. Several municipalities have homestead formulas in effect – the City of Buffalo, the City of Lackawanna, and a portion of Town of Tonawanda. How does this affect those areas?"

Mr. Maciejewski stated his staff would develop a formula and the commercial assessed value would be added to the residential portion to show one number which would be school-taxable assessed value regardless of homestead or non-homestead, which would be added together. The rate that they develop is going to be different for every school district because of equalization rates. The commercials would have a special benefit to hold them harmless. The dollar amount of being held harmless on an assessment that is $50,000 is obviously going to be different from that worth $250,000, but it is going to come from that same pot of Erie County sales tax dollars. He thinks it is do-able programmatically. "Can I do it? Can I balance the numbers if the budget office gives me a sales tax number and says this is the amount we are going to credit this school district? Can I take the total amount of the assessed value in that school district and tell us what the credit would be? Can we programmatically make that appear on a tax bill? Yes, we can do that in a model we've built."

Director Keysa noted that, in a homestead area, the amount of tax that is raised on the residential properties (single family or duplex dwellings) is separate from the percentage raised on multiple family or commercial or industrial properties, with two different tax rates would have be taken into consideration. "This is a very complex program in terms of the implications, and may turn out to be the accounting consultants' unemployment relief act."

Mr. Maciejewski stated that they had been reviewing the concept with an auditor accountant from Dresher & Malicki, who made the comment that the numbers appear to work.

Director Joyce remarked: "So far, the focus is on the advisability and probability of the STAR plan. On Page 6 and 8 of the revised four year plan regarding FY 08 & 09 there is a contingency for part of that under the presumption that if you wouldn't be able to do the STAR plan, you would reduce 200 people in head-count through managed attrition, operation and reengineering and then an additional 200 people in '09. Why not both? Let's suppose it was doable and everyone agreed it was advisable under STAR. I presume you are not proposing a contingency plan something that is going to wreak havoc on services for the County, why wouldn't we be pursuing this also and proposing a potential tax decrease in those years?"

Mr. Hartman said "That is a good plan and I actually agree with it. What we have done here is calculated it in a way that if the full potential benefit of the STAR program would be realized - and I realize the issues Mr. Kruly is raising – it would allow us to balance the budget and meet our fund goals, but you are correct that it doesn't mean that we would not also pursue in a form, actually a re-engineering program, that would allow a very managed program of head-count attrition. As we went forward we probably would do both even if the full benefit that we put there in STAR program were realized. If it isn't, that contingency would help to make up for the problem in the City of Buffalo, and if not, the thing we also need to consider is that in six weeks we need to figure out how we are going to close the gap in 2010. We are still in the process of actually calculating what that growth in gap will be – it could be $15 to $20 million. At that point, if this program succeeds, we will have met our fund balance goal but we would still then need additional actions that would close the 2010 gap. You are right, the change we are proposing in the method of school financing and the program of re-engineered management of attrition would probably go forward together."

Director Joyce asked Mr. Hartman if a 200-person reduction per year in the workforce of Erie County is manageable. Mr. Hartman responded that it would not be easy, given head-count levels, but he wouldn't be here if it wasn't doable. "It needs to be done not as the head-count reductions were done during the 2005 budget crisis - just random cutting. It needs to be done in a planned and strategic way so it wouldn't have a negative impact on services. Through the efficiency grant process, this should be pursued because it will probably be needed in 2010."

Mr. Hartman then reviewed other highlights of the plan. "The major revision of the plan is that rather than assuming $100 million of PFM matrix efficiencies by 2010, we have put that at $40 million. We have given detail in the matrix that is attached. That is a more realistic and achievable number and in fact goes really the heart of the issue, which is that we have all come to the recognition that $100 million [in initiatives] was probably too high a number and it is now pegged at a number that is more realistic. If the board accepts the prudence of this plan, it would want something scaled back from what it was. In addition to the creation of the County STAR program, there are two other major changes."

The next issue he addressed. Which he said was the subject of some confusion and some disagreement is the inclusion of $9 million in efficiency grants in 2007. "What we are doing in the four-year plan is two things – restoring fund balance and closing gaps. The way we restore fund balance in a planned strategic way is by having surpluses planned and built into the budget so that when you look at the out-years, say in 2008, presuming that the STAR thing were not to happen, we are saying there that there would be an addition to reserve funds of $21.2 million. The way we would manage that is we would have $21.2 million of revenue in addition to the gap-closing needs that $21.2 million would be built into the budget as a contingent fund and in such an account – we have one in the 2006 budget – it would be there in the event that there were some unforeseen event in the budget – because we would not want to go back and raid from the reserve funds we have built in previous years – hopefully we would not need that – it would then go into fund balance. It is a planned surplus in each year's budget that moves to the goal of fund balance restoration. The question is how to accomplish it in 2007. 2007 is the most difficult year in this scenario. We would take half the $18 million and use it for this goal of restoring fund balance. Originally the efficiency grants as initially defined and as had been talked about, the estimate would be in the $7 to $10 million range each year."

"Last January, the former Chairman had some discussion with the Governor and budget office. The decision was made to give Erie County $18 million in just this year. We will not be getting that amount of money in efficiency grant money in future years." Hartman said he happens to know because he was part of those discussion, that the concern was "how would you intelligently spend $18 million of efficiency grants and that's why the appropriation language that designated that $18 million was different from the original authorization language in the efficiency grants and its what I quote here: "The concept was that 50% of the $18 million would be held by the Authority to match recurring savings achieved by Erie County through implementations of the initiatives contained in such plan." Unfortunately for all of us, this language, like legislation that created you, is delightfully ambiguous, but I believe that the intent of it was as follows: that, if we showed in 2007 that we had savings or enterprise revenues not counting state revenues but management initiatives that were producing savings or enterprise revenues in 2007 that reoccurred from 2006, that in sense we would earn that money on a matching basis."

"The question is then what is the appropriate use of that money and that is subject to our discussion. We would not want to use it to support a recurring expense and that is not is being proposing to do. I am proposing that an appropriate use of it is just that in future years to fund a contingent account which hopefully would be an end-of-year surplus that adds to reserve fund balance - that is the concept - given the way the language is written – something for us to discuss

- but it is an idea I am putting forward as I believe it appropriate in the context of the plan and within the spirit of what I believe was intended when this $18 million was appropriated with this particular language."

Mr. Joyce asked about the $9 million which he was discussing. Mr. Hartman said that "if you were to purpose to me, as the advisory board who has ownership of the office of management and productivity - which as we understand is responsible for defining the intelligent use of efficiency money - if you were to propose $18 million of brilliant ideas that in fact could produce recurring saving I would be interested in what you have to say - but in the total context I think we need to provide this $9 million in 2007 and we are working on the 2007 budget – its not easy – there are things that are going our way and there are some things that are difficult – some cost increases will have a billion dollars of mandated special needs expense from the state that we have nothing to do about it – probably have a million dollars of higher energy costs – nothing we can do about it – we have a very difficult situation with the Sheriff and the jail. I'd like to be able to say that what we are trying to do in addition to the high level numbers you see here we are trying to find savings within the budget that can offset some of those cost items to keep us balanced but I do not believe that we that we can generate sufficient savings to provide for any planned restoration of fund balance and therefore I am suggesting in the total context of what we are dealing with that this proposed use of $9 million is certainly worthy of consideration."

Mr. Joyce responded: "If I were to suggest what I think the best use for it is - not necessarily speaking for fellow board members, but I'm willing to bet they would support me – it is that we should be considered a bank and that when we had good ideas we would then have the funds to be able to implement them, as opposed to merely using it for an addition to the reserve this year which then becomes available as you go forward, and then it will be utilized as in the past.

Director Kruly asked Hartman: "About the $9 million you are talking about, I can see some sense to some of what you are discussing but what I would be concerned about is - just because something is a reoccurring savings because it has been placed in two budgets doesn't mean it is a reoccurring savings - it just means it was placed in two budgets. We might want to see some sort of proof of the savings – and I'm not disputing that you might be able to produce that – but that is something to keep in mind." Kruly said one thing that he thinks is a practical issue is that the law that created this fund of money says that it is for recurring savings. "When I look at the $11 million that you talk about that goes from '06 into '07 budget, the majority of that money is in new fees or other revenues. The actual savings portion, in terms of reduced costs, is about $4.5 million so I'm not sure what we could do legally even if we wanted to, to get passed the $4.5 million unless the law is changed. Talking about the $9 million, if that was available to you, you are going to put it into some kind of contingent account, is that correct?"

Mr. Hartman answered: "Yes." Kruly continued, "If that is the case, and if, as things develop during the year, there might be some need for it, there is nothing to prevent us from doling it out as we choose during the year as a contingent account coming from us rather than coming as a lump sum to you and being dispersed as the County chooses.

Mr. Hartman interjected: "We are now talking cooperatively and creatively, thank you…because one thing people would think it is a slush fund and frankly I don't want to police that as budget director. I want it fairly protected. Because here is the concern, is that we will have a very tightly constructed ’07 budget that will have some risk and I believe we can avoid a tax increase and despite all the objections we can pull off this change in the STAR program and I think this carries us through ’08/’09, it would be foolish to have to have a one-year tax increase to make sure we had a securely balanced budget so if we could fashion something along the lines of what you are talking about that would protect against risk or slippage in the budget and that could be made along the way.”

Director Keysa said he had the same concern over how that money would be used, that it might be treated as a slush fund, and he said he had had conversations thirty years ago with former County Executive Regan over what the appropriated size of the reserve fund should be. At that time, Regan was of the opinion there should be no reserve fund whatsoever. Keysa said his own opinion was that the size of a reserve depended upon the size of the government and that he was pleased to hear that all parties seem to agree the County should hold 5% in reserve. “This should be plugged into the County charter - that there should be a 5% reserve. The limits on use you discussed with Mr. Kruly is something that could be crafted between your office and this board and should not be something that could be easily raided by the Legislature or the Executive’s office, nor should the existence of a surplus be the source of a major political attack as it was against a previous administration.”

Mr. Hartman said that it is imperative to restore fund balance and he is trying to figure out what the most appropriate way to do that is. “This is an issue we can explore more fully as the 2007 budget comes together.”

Director Johnson concurred that initiatives monies should not be utilized as a slush fund. “In 2005, the Partnership’s initiatives and PFM’s came through with a major re-engineering of human service delivery called a Blueprint for Change – this is an area that would bring savings, but when looking at some of the August 17th proposals, the Blueprint for Change was not in that – where are you with that proposal?”

Mr. Hartman replied: “The social services integrated case management is quite integral to the whole blueprint strategy.” Mr. Johnson responded: “It wasn’t just integration of social services; we had health, probation, youth and detention services and it probably will take some spending to help put that re-engineering piece together and the initiatives monies could be helpful there but if it is not on the radar screen as a major re-engineering piece that could save money. Where are we with this? At the state level they were much in favor of the Blueprint for Change and three major state agencies want to go for it.”

Mr. Hartman continued that the Blueprint for Change has several dimensions to it – the actual organizational change in the structure of county government and that is something that was proposed as part of the charter revision - it is a piece that the Legislature decided will not be on the ballot but which they will deal with legislatively. “What they have given us in the social services integration initiative is the first piece of that as part of a three year program of efficiency grants, starting with the core social service programs first but then expanding to the other services including in the entire blueprint strategy.”

Chairman Baynes thanked Mr. Hartman and Mr. Maciejewski for their presentation and informed them that the board will be reviewing plan and will get back to the members of the administration regarding the revisions. Mr. Baynes asked Mr. Hartman and other senior members to be available for any questions or reviews the board or staff may have.

Chairman Baynes then asked if there was any other business. There being none, at 3:20 p.m., Chairman Baynes asked for a motion to adjourn. The motion was made by Director Goodell, seconded by Director Johnson, and unanimously approved.

Respectfully submitted,

Stanley Jay Keysa
Secretary