

**Minutes
Erie County Fiscal Stability Authority
September 6, 2006**

Note: the following is a draft copy of minutes of a meeting of the Erie County Fiscal Stability Authority (“ECFSA”), which was held September 6, 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 to order the meeting of the Erie County Fiscal Stability Authority (“ECFSA”) at 5:00 p.m. on Wednesday, September 6, 2006 in the Frank E. Merriweather, Jr. Library on Jefferson Avenue at East Utica Street in the City of Buffalo. 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; Stanley Keysa, Secretary; Kenneth Kruly, Treasurer; Joseph Goodell; Sheila Kee and John Johnson

Others Present: Kenneth Vetter, Executive Director

Opening Remarks

Chairman Baynes welcomed his fellow Board members and the public officials, interested members of the public and press and media in attendance to the Frank E. Merriweather, Jr. Library. He said that, when he became chair of the Stability Authority, he had pledged to bring our meetings to the community and this is the first such move.

“This library was named to honor the late Frank E. Merriweather, Jr. He was the publisher of the *Buffalo Criterion*, a weekly African American newspaper founded in 1925 by his father, Frank E. Merriweather, Sr. He was also a founding member of the Buffalo Urban League, and was active in the Buffalo Branch of the NAACP. A graduate of Tuskegee Institute in Tuskegee, Alabama where he earned a degree in journalism and printing operation, he began working with his father in 1935 and operating the business after his father died in 1959. He was very active in the community and in local politics. The *Buffalo Criterion* continues to be published by the Merriweather family.”

Chairman Baynes thanked everyone in attendance.

Approval of the Minutes

Chairman Baynes stated that the first order of business is to approve the minutes from the last meeting on August 23rd. They have been submitted by Secretary Stanley 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 Joyce seconded. Without further discussion the board voted unanimously to approve the resolution.

Resolution No. 06-39

APPROVING MINUTES AND RESOLUTIONS FROM AUGUST 23, 2006

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its meeting of August 23 2006 and ratifies and affirms 1 resolution numbered 6-38 that was approved on August 23, 2006.

This resolution shall take effect immediately.

Chairman Baynes stated that Comptroller Poloncarz had asked to address the Authority with regards to the County's 2005 annual financial report.

Comptroller Poloncarz stated that his office had released the 2005 comprehensive annual financial report for Erie County. He continued by stating that the County had a surplus at the end of 2005 in the amount of \$9.475 million. He stated that it resulted in a total fund balance of \$14.4 million at the end of the year 2005.

Comptroller Poloncarz stated that the Executive and Legislature had cut approximately \$80 million dollars in annualized expenses from the County budget, laid-off more than 1000 County employees, and increased the sales tax by 0.25 %.

Comptroller Poloncarz stated that there were some questions in regards to the impact of the refinancing of the tobacco settlement bonds. He continued that the cost of issuance contributed to an overall loss of approximately \$26 million as well as a long-term economic loss of \$31.4 million. He continued there were four options that the County faced at that point and as it was coming up with \$80 million deficit. One option was to do nothing, which would have left an \$80 million dollar hole. The second was to ask the Authority to deficit finance on behalf of Erie County the \$80 million. The third alternative was to ask New York State to give Erie County authority to deficit finance. The fourth was to do what the County did, was to re-mortgage the tobacco settlement over a longer life span.

Comptroller Poloncarz continued the net loss was \$ 31 million but it was not coming from the taxpayers' money. "They were able to advance refund the tobacco settlement money to receive the \$ 80 million to offset the 2005 deficit." The Comptroller stated his office ran calculations to see what would have happened if the County did borrow the \$80 million last year. "The numbers show that if Erie County did borrow through deficit financing at the rate of 5 percent, it would have resulted in over \$21 million in interest that would have to be paid by the taxpayers in the next ten years."

Director Kee asked Comptroller Poloncarz why was is so advantageous for the County to refinance the tobacco money. Mr. Poloncarz responded the he was not the Comptroller at the time, but that if the County had to deficit finance or borrow the money, the principal

and interest would have to have been paid by the taxpayers of Erie County. “The bond holders are holding the risk of paying and repaying the tobacco settlement.”

He continued by stating that Erie County transferred its right to the tobacco settlement to ETASC [Erie Tobacco Asset Securitization Corporation] which is a component of Erie County but a separate entity; that entity refunded it and drew it out to a larger time span.

Director Kee observed that the dollars will not be available for future generations. Comptroller Poloncarz stated that the alternative was that Erie County taxpayers would have been paying for it now if the County did not refinance the monies.

Director Joyce asked Comptroller Poloncarz if the process of county administration was hampered when a thousand employees were laid off. Mr. Poloncarz responded that he could not speak for the County Administration, but for his department. “At the time of the fiscal crisis, there were 60 employees in the Comptrollers office and at one point it was reduced to 22 employees. At this time there are 34 individuals in my department and so the Comptroller’s office was almost cut in half.”

Comptroller Poloncarz stated they are doing as good as possible. “At this time, there is one person doing the bank reconciliation of Erie County. If that person becomes ill or if something else happens, I have to take a senior staff member and put them into that position, which is a general function.” He continued the cuts did have an impact on his department. Director Joyce stated they seem to be functioning very well despite the cuts. Comptroller Poloncarz credited his staff for that. He continued by stating he is trying to figure out a way to run the office better and one idea he has is cross-training his staff.

Comptroller Poloncarz stated that there are many aspects in his office that have to be done and that if his office shut down all of Erie County would shut down because it is the dollars and cents function of the County. The department pays the paychecks and pays the accounts receivable and does the daily handling of the budget for Erie County.

Director Joyce asked Comptroller Poloncarz if he had reengineered his department. Mr. Poloncarz said the staff had found ways to do more with less. However, he added: “When PFM came in last year, they had never made recommendations to hire people, but they made recommended that our department needed to hire more staff.”

Director Joyce asked Comptroller Poloncarz if he considered it part of the Comptroller’s responsibility to comment on whether other departments can cut back their staff and reengineer. Comptroller Poloncarz responded by stating: “The charter requires my office to look at the departments and that is one of the things we do with audits. Our office has that capability and our office is the fiscal watch dog of Erie County. We are in the process of completing two audits, one is jail management and the other is the use of Homeland Security money and these audits are going to take some time to be completed.”

“When they finish the audits they will have some recommendations on how we can do things better just like we did with the cell phone audit and the ECC audit and just as we did with the parks audit.” Comptroller Poloncarz then added: “I can say that we need to restore our fund balance.”

Director Johnson then commended Comptroller Poloncarz for how his office has been running with less staff and how efficiently it is running. Comptroller Poloncarz replied that his staff took on additional responsibilities and there are people in his office performing tasks they did not perform previously. “My office is an example of what happens when people come together to get the job done.”

Director Goodell commended Comptroller Poloncarz for reengineering his office and still getting the job done. Poloncarz responded that, since coming into office, he wanted to make sure it was the “inspector general’s office” of Erie County and be the fiscal watch dog. The charter doesn’t have such an office, but his office has the power to identify problems and make recommendations and that is something they will do.

Chairman Baynes then asked County Legislator Demone Smith to address the Authority. Mr. Smith stated that the Legislature reviewed the four-year plan and came to a number of conclusions. They looked at the overall plan. “There was no sincere conclusion that we could come to in regards to the \$24 million in the plan for the new plan.” He said: “It involves different governmental branches as well as other governmental bodies and Legislature. We still have a lot of questions in regards to the new plan. The plan will have to get agreements from different school boards and three different cities. If any of the cities don’t agree to the program, the program won’t work. We need to have conversations with different parties.” He said the Legislature will take a look at how taxes are done in other counties in the area.

Mr. Smith said he heard a variety of ideas and heard that a variety of people prefer an income tax instead of property tax and sales tax. He continued by stating they would like to study the plan more and that as of right now the legislators can not approve or disapprove the plan. He noted that the plan must eventually be approved by the State. “We still need more time to look at the plan and we did not approve or disapprove.”

Chairman Baynes asked Mr. Smith when they first looked at the plan and Mr. Smith responded that they met for three hours yesterday. Chairman Baynes stated that a request was made for the Legislators to look at the plan three weeks ago and asked if they met then. Mr. Smith responded no and noted that the Authority received the information on August 22nd. Chairman Baynes then stated: “So you waited until yesterday to review the plan - it wasn’t urgent?” He then asked if the legislators were full-time or part-time and Mr. Smith responded he was full-time.

Chairman Baynes then asked if all the legislators were full-time employees, and Mr. Smith responded that it depends on the constituents they serve. Chairman Baynes asked Mr. Smith what the legislators consider themselves, full-time or part-time, and Mr. Smith responded that the majority of the legislators consider themselves full-time.

Director Joyce asked Mr. Smith: “Did the legislative body come to a conclusion as to the probability that the plan could be pulled out?” Mr. Smith responded: “We put together a series of steps of which we would like to meet again on this issue and to get feed back on different governmental issues.” He continued by stating they should take their time reviewing the plan and not to rush into any sudden judgment. “We have not received anything official from any governmental bodies stating that this is not what we want to do and I am sure they have questions about the four-year plan.”

Director Goodell asked Mr. Smith if they submitted a formal request to the three cities involved for them to respond to the new plan and Mr. Smith stated that it would be their next step. Director Goodell asked: “In that period of time since the plan was issued on August 22nd, you have not sent out a formal request to the cities involved for them to comment to you?” Smith replied “No.” Director Goodell asked that a copy of the letter the Legislature is going to send out be shared with all parties involved, including ECFSA.

Director Goodell asked: “As far as cost savings, have they looked at anything else besides what PFM and also the Erie County Stabilization Committee recommended? “You talked about how many of those wouldn’t work; do you believe those two lists are complete and there is no other cost savings to be identified?” Mr. Smith responded that the departments are run by commissioners and they report to the County Executive as far as cost savings.

Chairman Bayne again stated to Mr. Smith: “You are full time employees and you received a letter on August 22nd regarding the plan asking for the Legislative body to review the plan. Why did they wait so long for the review? Was it not important?” He added: “We are in a fiscal crisis; did they feel the review of the plan was not important?”

Mr. Smith replied that the plan talks about changing an entire tax system and they did not want to rush to any conclusions in regards to the plan. The sales tax formula would have to be reopened. Chairman Baynes asked Mr. Smith if he was in favor of re-opening the sales tax agreement, and Mr. Smith responded that he is in favor of doing what it takes to help the County in the fiscal situation it is in as long as it does not affect the people of Erie County.

Chairman Baynes asked Mr. Smith were he stood on the road patrol and Mr. Smith responded that they have to make a decision regarding that within the Legislature He also stated he has his own opinion and stated it is in the budget.

Director Kee asked: “If there is no support for the plan, and there is a \$24 million hole, what would the Legislature do at that point?” Mr. Smith responded: “We would have a \$24 million hole and we would have to look for more cost-saving opportunities. If there is no desire to follow through with the program, we will have to fill the \$24 million dollar hole.”

Mr. Smith stated the County is making progress in reducing spending and by laying-off 1000 employees and that they are doing more with less. "If we do have a \$24 million we have to find a way to plug that whole."

Chairman Baynes asked if the Legislature would be increasing taxes again to fill the hole and Mr. Smith stated that was not his desire. Chairman Baynes stated that last year a \$58 million tax increase filled the hole and Mr. Smith responded that the reason that happened is because there was an adjustment [several years before] in the tax system, taxes were cut 30 percent and the active reserve went down.

Chairman Baynes asked who approved the 30 percent cut and Mr. Smith stated the Executive and the Legislature, and Erie County residents are paying fewer taxes then they did 8-9 years ago. Mr. Smith continued by stating that Erie County has one of the lowest property tax rates in the State.

Director Joyce asked: "You made a comment that there was consideration with regards to implementing a county income tax - did you say that?" Mr. Smith responded that people are looking at how the County's tax system works and he stated he had heard from people that they would like an income tax instead of sales tax and property tax.

Director Kruly stated that, over the 30 years since the sales tax [distribution formula] was last amended, the towns, villages and school districts that share in the 3 percent, have been vocal about asking for a larger share. "As you proceed with your meetings and conversations, are you going to involve the town, villages and school districts?" Mr. Smith responded that they will be because it takes everybody to go along with it and that they are taking a look at true structural reform.

Director Kruly continued: "I recall, earlier in the year when the sales tax was approved, there was a task force set up to review the distribution of the sales tax. Has the committee ever met?" Mr. Smith stated Chairwoman Marinelli was trying to put that force together but is having a hard time getting in touch with a couple of the members of the task force.

Director Keysa that that some information regarding the County Executive's sales tax plan had gone out to school districts in BOCES I, and then pointed out that there are a significant amount of school districts that are associated with BOCES II and they were not part of that information sharing. Mr. Hartman stated that the statement was not true. Director Keysa said his statement came from a school district superintendent from BOCES II and asked that the information be shared with both BOCES I and BOCES II.

Chairman Baynes thanked Mr. Smith for addressing the board.

Lynda Stephens then approached the podium and stated she was a member of the Coalition for Economic Justice. She continued by stating that she grew up during the cold war and she is a child of the sixty's. She stated she graduated with a political science degree from Syracuse University. She continued: "Today is the day to put away political correctness. Nowhere in the US Constitution do I see "control boards"

mentioned. In fact, control boards have a similarity to the big brother I was told was they had in the Soviet Union. Here and now we have adult supervision. Why? Is democracy too messy? Erie County was no where near its taxing limit when George Pataki and the State Legislature imposed a control board on the county. Buffalo did not have a deficit when George Pataki and the State Legislature imposed a control board over the city. The State created the Buffalo fiscal crisis by redrawing promised state aid. Control boards are not democracy. This is not the representative government we were promised by our founding fathers. We did not elect you to the control board. I have witnessed social and economic safety nets torn away by ill-advised elected officials. I have seen destruction of programs that promote equal opportunity and justice for all. Today we are meeting in a Buffalo library. How cynical of you to stage this meeting in a city where neighborhood libraries have been decimated. Several of Buffalo libraries are now gone. How cynical for you to stage a meeting in Buffalo where special and social programs serving vulnerable youth, senior citizens and the poor have been eliminated by government officials. We are meeting in a neighborhood that in 2006 had suffered 40 murders within a two mile radius of this library. I look around this room for my friends from Clarence, Amherst, Hamburg and Brant and I do not see them. What were you thinking? The people of Western New York are the most dissatisfied in all of New York with our state government. Reforms are needed and we must get it right. Control boards have no place in a representative democracy. Does George Pataki really think he can campaign around the country without the good people of Iowa and New Hampshire every finding out about the mess he has created in Erie County?"

Director Kee asked to respond, and said that she had been in government all her adult life. "The control board notion is something that none of us like. The reason we are here is because our elected officials let us down and it is unfortunate it happened. When you talk about the elimination of libraries and services in the City of Buffalo, do you now how we can restore those services? By having good government, efficient government, so they can get back to the job of serving the people. That is what I am all about, that is what this board is all about and that is what I want to see the County do."

Chairman Baynes stated that, since he was appointed to this Fiscal Stability Authority, he has heard, and sometimes participated in, discussions about whether or not this body should enter a "control period," or in other words, become a "hard control board." "I need to be quite clear – I do not want Erie County to have to be under a hard control board. I do not want the practices and conditions that necessitated the State's creation of this panel in 2005 to continue to exist. Indeed, I took this appointment to help end those practices and conditions. I think I speak for my colleagues as well."

Chairman Baynes stated that since this board was created, there have been hopeful signs. "The County Legislature passed what appears to be a balanced budget for 2006, the first in many years. The Legislature acted with prudence earlier this year in reducing the borrowing package sent to them by the administration. At the same time, sales tax revenues appear to exceed expectations, the full impact of the State Legislature's 2005 Medicaid reform turned out to be much better than anticipated. We even learned that the County ended 2005 with a small surplus." He continued by stating that fiscal stability is

nowhere near being achieved. “Fiscal stability is not being achieved with the balancing of a single year’s budget, or even two or three in a row. Between 2000 and 2005, budgets were balanced on paper by the use of one-shot revenue and extra borrowing. Those same tactics were employed this year, with the added component of a new, “this-time-we-really-mean-temporary” temporary sales tax increase.”

Chairman Baynes said the County Comptroller reported this week that a principal reason for the “surplus” were last year’s actions of the Erie Tobacco Asset Securitization Corporation, were like so many other one-shot gimmicks before it, a costly way of generating short-term revenues. “According to the Comptroller, the cost of this scheme was \$26 million. The \$9.4 million “surplus” resulted from tobacco refinancing. During our past several meetings, we have learned that the County’s four-year plan, approved last October and amended in January, was not fully coming to fruition. In accordance with state law, we requested that the administration submit a revised plan by August 22nd. We also asked that the Legislature to approve, reject or amend those revisions. The original plan is roughly 400 pages in length. It contains a vast array of proposals to reduce costs and generate new revenues for the county. Indeed, it is not only a plan to balance the books; it also is a plan to restructure the way Erie County delivers government services.”

He continued by stating: “At our last meeting, we were presented with a 13-page revision to this 400 page plan - a “high level” summary, in the County Budget Director’s words. The legislature has chosen not to approve, reject or amend the plan, as we formally asked them to do. The cornerstone of the 13-page revision is the proposed Erie County Star Program, which is not a new way to restructure county government, but a scheme to shift the taxpayers’ existing burden and the revenues which flow from it in such a way that merely results in more money for Erie County government. Two weeks after the plan was presented, there have been no statements made, much less actions taken to support it by member of the Legislature nor the three affected city councils. And those four legislative bodies must act, as the first step in the process, to amend the current sales tax distribution agreement. Their silence is deafening.”

Chairman Baynes continued: “Instead of looking to save taxpayers money, the County administration has submitted to us a scheme to shift tax revenues of various local governments to the benefit of the County. Not only is there no benefit to the taxpayer; there may be increased burden on taxpayer categories. This is not a game! The responsibility of the County administration is not only to meet technical compliance with the law, but also and importantly to produce a structurally-balanced budget and a workable four-year plan. The responsibility of the County Legislature is not to sit back and wait for someone else to make things better or for someone else to take the heat. So, we will follow the rules established in state law. We are attempting to do our due diligence. We are attempting to give every opportunity to the people who were duly elected to forge a fiscally-responsible four-year plan and a truly balanced budget while delivering needed services both efficiently *and* effectively to the citizens of Erie County.

Chairman Baynes added that fiscal stability will not be achieved by a series of *ad hoc* maneuvers - a revised revenue estimate here, an extended temporary tax there, maybe some extra borrowing and a little creative financing, plus a press release favorably comparing Erie to other counties. "In the midst of them, Erie County remains in a state of fiscal crisis. Whether it be a proposal for a 12 month police service study; deferred repayment of borrowings, or a financing scheme that only Rube Goldberg could love, County administration efforts seem directly aimed at avoiding the real issues underlying fiscal stability that will not go away by themselves."

Chairman Baynes continued: "In accordance with New York State law, I propose we move to reject the proposed four-year plan revisions submitted by Erie County and charge the County with coming back to us with a substantive, reasonable and workable plan to structurally balance the county budget. Given that a new 2007 budget is due by October 15, along with a new four-year plan extending through 2010, we will wait one more - final - time for fiscal reality. Our next proposed meeting date is on October 18th in which we will review that budget and plan. In the meantime, we will continue our analysis of the county's fiscal situation, and will report our findings as they become available. We are here today because county government must begin to look farther ahead than tomorrow. We are here to continue to insist on a realistic budget and a four-year plan that works. Taxpayers deserve no less."

Chairman Baynes asked for a motion to reject and send back the proposed four-year plan. The motion was made by Director Kee, seconded by Director Johnson, and unanimously approved.

Resolution No. 06-40

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"; and

WHEREAS, the county provided this Authority with a four-year financial plan in the fall of 2005, covering the years 2006-2009, and

WHEREAS, Section 3957.2(f) of Chapter 182 mandates that the County's "financial plan shall be regularly reexamined by authority in consultation with the County," and

WHEREAS, Section 3957.2(f) of Chapter 182 of the Laws of 2005 states that "the County Executive shall provide a modified financial plan in such detail and within such time periods as the authority may require," and

WHEREAS, the ECFSA is concerned that the four-year financial plan submitted last fall for 2006 is becoming unbalanced for future years, and required the Erie County Executive to submit a plan to rebalance said four-year financial plan, and

WHEREAS, the Erie County Executive provided a summary submission on August 22, 2006 which the ECFSA has now reviewed and found to lack realistically achievable revenues, and

WHEREAS, the ECFSA is becoming concerned that the County is unwilling or unable to submit a substantive and informative plan, thereby potentially invoking a control period,

THEREFORE, BE IT RESOLVED that the ECFSA does hereby reject the submission by Erie County received on August 22, 2006, and

BE IT FURTHER RESOLVED, that the County is required to provide a detailed, substantive and informative revised financial plan to this Authority by no later than noon on Monday, October 16, 2006 by delivery to the offices of the Authority; and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the County Executive, the County Comptroller, the Chair, Majority Leader, Minority Leader and Clerk of the Erie County Legislature; and to the Governor, the State Comptroller; the Senate Majority Leader and the Speaker of the Assembly.

This resolution shall take effect immediately.

Chairman Baynes then asked if there was any other business. Director Keysa noted that revisions to the By-Laws had been sent to members of the Governance Committee, and that there would be a report to the full board shortly.

There being no other business, at 6:15 p.m. Chairman Baynes asked for a motion to adjourn. The motion was made by Director Goodell, seconded by Director Kee, and unanimously approved.

Respectfully submitted,

Stanley Jay Keysa
Secretary