

ECFSA
Full Board Minutes
February 12, 2010

(Note: the following is a draft copy of minutes of a meeting of the Erie County Fiscal Stability Authority ("ECFSA"), which was held February 12, 2010 auditorium of the Buffalo and Erie County Library. These minutes will not become final until approved at a subsequent meeting of the ECFSA, and may be amended before approval.)

Present: Chairman Oliverio, Secretary Keysa, Director Kruly, Director Thomas

Chairman Oliverio: "Good Morning everyone. This is a meeting of the Erie County Fiscal Stability Authority February 12, 2010. I would like to welcome everybody, as you know this is my first meeting as chair of the board. I am pleased to be able to be appointed to this position. I would like to specifically mention my predecessor Robert Glaser who is not only a terrific guy but helped me understand how things occur, how this board works, county finances and a number of other things that are important for the Authority chairman. I would first like to turn this meeting over to Secretary Keysa to go over the minutes of the last meeting."

Secretary Keysa: "Thank you very much Mr. Chair and I want to note the presence here of yourself, myself,, Ken Kruly and via phone link we have Louis Thomas and he is visible to those who are in the audience. You have before you the board minutes from the full board meeting on December 4, 2009. Unless there are recommendations or changes to those, I would recommend approval at this time."

Secretary Keysa moved to approve, Director Kruly seconded and the Directors voted unanimously to approve the following resolution:

Resolution No. 10-01

**APPROVING MINUTES AND RESOLUTIONS FROM
THE DECEMBER 4, 2009 MEETING**

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its December 4, 2009 meeting and ratifies and affirms seven resolutions numbered 09-61, 09-62, 09-63 and 09-64 that were approved on December 4, 2009

This resolution shall take effect immediately.

Chairman Oliverio: “We have a number of items on the agenda regarding the Counties financial plan and the proposed capital borrowing. The first item involves this boards adversarial approval, as it must as an advisory board, of the Counties’ current long term plan to borrow \$173 million. I would like to have Dave McNamara come to the microphone and inform us a little on what happened before and what our obligations are here today with respect to our approval. Mr. McNamara I counsel to the board.”

Secretary Keysa: “Mr. Chairman while we are waiting for Mr. McNamara, I just want to make sure that for the recording, that each time we take a vote we ask Director Thomas specifically to indicate yay or nay.”

David McNamara: “Mr. Chairman, members of the board, Mr. Vetter, we revived an order of show cause on Tuesday of this week, requiring out attendance before Justice Neymeyer yesterday at 12:00pm. The release sought was an order to compel the ECFSA to issue its approval of the of the \$103 million county bond issuance. The proceeds of which would repay the BAN that was issued by the ECFSA last year; a mirror BAN by the ECFSA and the County. The terms of that ban required the ECFSA to render it approval upon the counties request in the event of certain triggering events. One of those triggering events was if the board reverted to advisory status. At the time that the BAN deal was done in 2009, the board was in a control period. As you know the board did subsequently revert to advisory status. Thus one of the triggers in the BAN was met. That trigger requires the ECFSA give its approval with respect to the \$103 million bond issuance that the county is contemplating for the purpose of repaying the 2009 BAN. We had not received a request prior to the order of show cause that we received on Tuesday for that approval. Had we received a request the court proceeding would not have been necessary but in any event we advised the court yesterday that the request hadn’t been made and the approval would be issued today. You have a resolution before you that issues that approval upon the written request of the County Attorney.”

Chairman Oliverio”: “Are there any questions for Mr. McNamara? Mr. Thomas do you have any questions?”

Director Thomas: “No Mr. Chairman.”

Secretary Keysa moved to approve, Director Kruly seconded and the Directors voted unanimously to approve the following resolution:

Resolution No. 10-02

COUNTY OF ERIE 2010 BOND SALE

WHEREAS, Section 2.06(iii) of the Financing Agreement between the Erie County Fiscal Stability Authority (“ECFSA”) and the County of Erie, New York (the “County”) dated May 1, 2009 provides that ECFSA shall approve the sale to the public credit markets and issuance by the County of its bonds to be sold at least 75 days prior, and funded at least 60 days prior to the May 19, 2010 maturity date of the Series 2009A Notes issued by ECFSA in May 2009 if a “Trigger Event” as defined in such Financing Agreement shall have occurred at least 120 days prior to such maturity date; and

WHEREAS, on July 23, 2009 the ECFSA entered into an “advisory period” as contemplated by Section 3958 of the ECFSA enabling statute and such event constitutes a “Trigger Event” as defined in such Financing Agreement;

WHEREAS, the Comptroller of the County of Erie is seeking authorization to conduct a bond sale in order to provide proceeds sufficient for the redemption at maturity of the County’s \$103,534,867 Bond Anticipation Note for Public Improvements-2009, issued on May 20, 2009 and maturing on May 18, 2010 (the “2009 County Notes”); such bond sale to be conducted in accordance with and as contemplated by Section 2.06(iii) of such Financing Agreement in order to fund the redemption of the ECFSA Series 2009A Notes:

NOW, THEREFORE, BE IT RESOLVED, that the Erie County Fiscal Stability Authority shall, upon the written request of the County Attorney, approve and authorize the County to conduct a bond sale for 2010, in an amount not to exceed that which, together with original issue premium, if any, shall provide proceeds sufficient for the redemption at maturity of the 2009 County Notes; and

BE IT FURTHER RESOLVED, that the Chairman, Vice Chair or Executive Director of the Erie County Fiscal Stability Authority shall, upon the written request of the County Attorney, execute and deliver any agreements, certificates, documents, papers or other written instrument, to make any changes, modifications or amendments as he or she deems necessary, to do all other things and to take all other actions necessary and appropriate in their judgment, to consummate the transactions contemplated by this Resolution.

This Resolution shall take effect immediately.

Chairman Oliverio: “Thank you Mr. McNamara. The second issue relates to contracts with our vendors to continue this Authorities ability to borrow in the market. We have before us a number of resolutions including approval for our bond counsel, underwriter and our financial

advisors. If I could turn this over to Mr. Vetter, I would like him to comment on that.”

Executive Director Vetter: “Thank you Mr. Chairman, If I could and very briefly, we did issue RFP’s for financial advisor, bond counsel and our underwriters. Pursuant to public authorities law, we have met the bid requirements for them and for each of the categories, only our current vendors did forward bids to the authority. Therefore we have prepared motions to approve continued contractual relationships with each of our financial team. So Mr. Chairman, I would suggest that for our financial advisor, we have a resolution in your packet to continue the engagement with Capital Market Advisors for a period of up to three years. We will continue in that relationship to maintain the Authority’s ability to borrow in the market.”

Director Kruly moved to approve, seconded Secretary Keysa and the Directors voted unanimously to approve the following resolution:

Resolution No. 10 -03

APPROVING ENGAGEMENT OF FINANCIAL ADVISOR

WHEREAS, Chapter 182 of the New York Laws of 2005 created the Erie County Fiscal Stability Authority (“ECFSA”) to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to “oversee [Erie] 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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, the ECFSA issued a request for proposals for financial advisory services in September 2007 and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Capital Markets Advisors, LLC as the most capable of providing financial advisory services to the ECFSA on an as-needed basis for a period of one year; and

WHEREAS, Capital Markets Advisors, LLC has performed their duties to the full satisfaction of the ECFSA; and

WHEREAS, the one-year agreement with Capital Markets Advisors, LLC expired on October 22, 2009; and

WHEREAS, the ECFSA re-issued a request for proposals for financial advisory services in December 2009; and

WHEREAS, through Resolution 08-105 the ECFSA Board extended the agreement with Capital Markets Advisors for a reasonable period of time, but no later than December 31, 2009, in order to evaluate proposals received in response to its request for financial advisory services; and

WHEREAS, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Capital Markets Advisors to provide financial advisory services to the ECFSA on an as-needed basis for a period of three years;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA engage Capital Markets Advisors to provide financial advisory services on an as-needed basis as requested by the Chairman for a period not to exceed three year from December 31, 2009; and

BE IT FURTHER RESOLVED that such services shall be undertaken for such amounts and on such terms as agreed upon by the Chairman, or the Executive Director; and

BE IT FURTHER RESOLVED that this resolution shall supersede any previous resolutions of the ECFSA with regard to contracting for financial advisory services.

This resolution shall take effect immediately.

Executive Director Vetter: “Thank you Mr. Chairman, Phillips Lytle has been our bond counsel. They have done two transactions with us and have worked well and expeditiously, as have out financial advisors. There is a resolution before you to reup Phillips Lytle as our bond counsel for a period of up to three years.”

Secretary Keysa moved to approve, Director Kruly seconded and the Directors voted unanimously to approve the following resolution:

Resolution No. 10-04

APPROVING ENGAGEMENT OF BOND COUNSEL

WHEREAS, Chapter 182 of the New York Laws of 2005 created the Erie County Fiscal Stability Authority (“ECFSA”) to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to “oversee [Erie] 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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, the ECFSA issued a request for proposals for bond counsel in September 2006 and, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and selected Phillips Lytle, LLC as the most capable of providing bond counsel to the ECFSA on an as-needed basis for a period of one year; and

WHEREAS, Phillips Lytle, LLC has performed their duties to the full satisfaction of the ECFSA; and

WHEREAS, the one-year agreement with Phillips Lytle, LLC expired on October 22, 2009; and

WHEREAS, the ECFSA Board extended the agreement with Phillips Lytle LLP for a reasonable period of time, but no later than December 31, 2009, in order to evaluate proposals received in response to its request for financial advisory services; and

WHEREAS, the ECFSA re-issued a request for proposals for bond counsel in December 2009; and

WHEREAS, upon receiving responses to the request, a selection committee of ECFSA Directors and staff evaluated proposals received and has selected Phillips Lytle, LLC to provide financial advisory services to the ECFSA on an as-needed basis for a period of three years;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA engage Phillips Lytle, LLC to act as bond counsel on an as-needed basis as requested by the Chairman for a period not to exceed three years from December 31, 2009; and

BE IT FURTHER RESOLVED that such services shall be undertaken for such amounts and on such terms as agreed upon by the Chairman, or the Executive Director; and

BE IT FURTHER RESOLVED that this resolution shall supersede any previous resolutions of the ECFSA with regard to contracting for bond counsel.

This resolution shall take effect immediately.

Executive Director Vetter: “Mr. Chairman, as with the others, our current vendor Roosevelt and Cross was the only respondent for underwriters. The resolution is a continuation of a previous resolution from 2009 that assumes that Roosevelt and Cross will be a senior on any bond authorization that occurs on behalf of the ECFSA but this resolution also give the authority to bring in other underwriting services as necessary, for instance in one of our borrowings last year, it was seen because of the market and because we needed to reach certain groups within the market, that M&T would be brought along as an underwriter as well. This resolution give the authority to bring along other underwriters as necessary and then official for a particular transaction.”

Secretary Keysa moved to approve, Director Kruly seconded and the Directors voted unanimously to approve the following resolution:

Resolution No. 10-05

SELECTING AN UNDERWRITER

WHEREAS, Chapter 182 of the New York Laws of 2005 created the Erie County Fiscal Stability Authority (“ECFSA”) to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to “oversee [Erie] 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, Section 3954(4) of New York Public Authorities Law grants the ECFSA the power to make and execute contracts or agreements necessary or convenient to carry out its purposes; and

WHEREAS, the ECFSA has issued a Request for Proposals for firms to serve as Senior Managing Underwriter and/or Co-managing Underwriter for the ECFSA’s financing program for three years,

WHEREAS, this RFP requested the submission of any proposals no later than December 18, 2009; and

WHEREAS, only one firm, Roosevelt and Cross, responded to this RFP; and

WHEREAS, Public Authorities Law section 2879(3) requires the ECFSA to select contractors on a competitive basis, but authorizes the ECFSA to waive such competition by resolution as necessary; and

BE IT FURTHER RESOLVED that the ECFSA in 2010 shall select in its best business judgment firm(s) able to perform underwriting services as necessary at a cost that is fair, reasonable, and most advantageous at the time when such services may become necessary.

This resolution shall take effect immediately.

Chairman Oliverio: “The next item on our agenda involves the ECFSA ability to borrow more cheaply, long term on behalf of Erie County. This is not a new topic and I am sure that most of you are acquainted with it. I will turn it over to Mr. Vetter to outline the resolution and the facts and details regarding that.”

Executive Director Vetter: “Mr. Chairman, thank you very much. There is a resolution in you packet which would allow the Authority to bond for just over \$174 million for county capital projects left over from the years 2007 – 2009 and new capital projects that have been approved by the county in addition to taking out the ECFSA’s own \$103 million BAN at this point. At our finance committee meeting last Friday and we have Mr. Neumeister here who provided an analysis indicated that over a 13 year period, that the ECFSA could save over \$21 million over that period of time and in particular over the period of the financial plan that the Authority could save \$2 million a year. This resolution gives the ECFSA the authority for itself to bond up to that \$174 million figure.”

Chairman Oliverio: “Mr. Vetter, this resolution is contingent upon a request from the Erie County.”

Executive Director Vetter: “Yes it is. We need a dually approved request from the County and approval through the Legislature.”

Chairman Oliverio: “Are there any other questions for Mr. Vetter on the approval of this resolution?”

Director Kruly: “The process involves the Executive recommending to the Legislature that the Authority be authorized to borrow and the legislature then approving a resolution to that effect?”

Executive Director Vetter: “Yes.”

Director Kruly moves and Secretary Keysa seconds the board votes unanimously to approve the following resolution:

Resolution No. 10 - 06

**AUTHORIZING THE ISSUANCE OF BONDS AND/OR BOND
ANTICIPATION NOTES TO FUND ERIE COUNTY'S CAPITAL PROJECTS**

WHEREAS, Chapter 182 of the New York Laws of 2005 (the "ECFSA Act"), as amended, created the Erie County Fiscal Stability Authority ("ECFSA"), to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to "oversee [Erie County's] budget, financial and capital plans; to issue bonds, notes and 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, New York Public Authorities Law ("Public Authorities Law") section 3961 provides circumstances under which the ECFSA may finance the County of Erie, New York's (the "County") costs, including the costs of capital projects; and

WHEREAS, pursuant to Public Authorities Law section 3961(1), the ECFSA may commence such financing only upon a request "made by and through the county executive after approval by the [county] legislature;" and

WHEREAS, Section 2.06(iii) of the Financing Agreement between the ECFSA and the County dated May 1, 2009 provides that ECFSA shall approve the sale to the public credit markets and issuance by the County of its bonds to be sold at least 75 days prior, and funded at least 60 days prior to the May 19, 2010 maturity date of the Series 2009A Notes issued by ECFSA in May 2009 if a "Trigger Event" as defined in such Financing Agreement shall have occurred at least 120 days prior to such maturity date; and

WHEREAS, on July 23, 2009 the ECFSA entered into an "advisory period" as contemplated by Section 3958 of the ECFSA enabling statute and such event constitutes a "Trigger Event" as defined in such Financing Agreement;

WHEREAS, the Comptroller of the County of Erie is seeking authorization to conduct a bond sale in order to provide proceeds sufficient for the redemption at maturity of the County's \$103,534,867 Bond Anticipation Note for Public Improvements-2009, issued on May 20, 2009 and maturing on May 18, 2010 (the "2009 County Notes"); such bond sale to be conducted in accordance with and as contemplated by Section 2.06(iii) of such Financing Agreement in order to fund the redemption of the ECFSA Series 2009A Notes; and

WHEREAS, in addition to the County's contemplated bond sale to repay the 2009 County Notes, the County desires to issue bonds or notes to fund approximately \$70,000,000 in projects in the County's capital program; and

WHEREAS, the ECFSA can achieve no less than \$21,000,000 in savings for the taxpayers of the County by issuing bonds on notes totaling approximately \$174,000,000 on the County's behalf;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA is hereby authorized, if so requested by the County, to sell and issue up to \$174,014,673 in bonds, and/or notes in anticipation thereof, to fund the repayment of the 2009 County Notes and the County's capital programs, which bonds and/or bond anticipation notes may be secured by the County's sales tax revenues.

This Resolution shall take effect immediately.

Chairman Oliverio: "The last item on our agenda relates to the approval by this Authority of the 2010 budget that was submitted from the County. A review was taken over the past several months of that budget and there has been information that has gone back and forth between this Authority, the County and the County Executive regarding certain questions and issues we had with that four year plan which terminates through 2013; that is the fourth year. I would like to turn this over to Mr. Kruly and today we are going to address approval of that plan or not."

Director Kruly: "Thank you Mr. Chairman we put a lot of effort into this over the last few months, actually it started in the spring of last year. We have gone through various versions of the four year plan. The objective was to try and get a more realistic plan that is tied into the seriousness of the issues that face the County and that leads to help solve the problems, if you admit to what they might be. I think we have made some significant achievements on that and I thank the County Executive and the Budget Director for their cooperation in working on this. We haven't agreed on everything and we still don't agree on everything but we are making progress through a plan that really means something for the residents of the county. There are a lot of difficult issues facing the legislature and the Executive. We have not learned what the legislature is planning to on this. Hopefully they will be on board for making those tough decisions but there is an opportunity here to move this forward. The action that needs to be taken, assuming the Executive and the Legislature comply on the borrowing is a substantial win for the taxpayers of Erie County; \$21 million is a very, very major achievement for the County and this Board and

everyone involved should be pleased with their work on this. With that in mind, I'd like to make a motion that we approve the four year plan that is presently in front of us."

Director Kruly moves and Director Thomas seconds the board votes unanimously to approve the following resolution:

Resolution No. 10-07

**ACCEPTING THE COUNTY'S FISCAL YEAR 2010
BUDGET AND 2010-2013 FINANCIAL PLAN**

WHEREAS, Chapter 182 of the New York Laws of 2005 (the "ECFSA Act"), as amended, created the Erie County Fiscal Stability Authority ("ECFSA"), to serve as a corporate governmental agency and instrumentality of the State of New York, and as a public benefit corporation to "oversee [Erie 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, on October 2, 2009, Erie County (the "County") submitted to the ECFSA its proposed financial plan for fiscal years 2010-2013 (the "2010-2013 Plan"); and

WHEREAS, upon reviewing the 2010-2013 Plan, the ECFSA adopted Resolution 09-60 on October 16, 2009; and

WHEREAS, pursuant to Resolution 09-60, the ECFSA provisionally found that the 2010-2013 Plan was complete and otherwise satisfied the requirements of the ECFSA Act, but also requested additional information in writing to substantiate the reasonableness of fifteen (15) assumptions underlying the Plan; and

WHEREAS, pursuant to Public Authorities Law Section 3957(2)(c), the County Executive shall, upon the approval by the County of a budget in accordance with the provisions of the County Charter, submit such approved budget and financial plan to the ECFSA accompanied by expenditure, revenue and cash flow projections on a quarterly basis and certify to the authority ECFSA that such budget is consistent with the financial plan; and

WHEREAS, the County submitted to the ECFSA on January 29, 2010, the County's approved budget for fiscal year 2010 and a revised financial plan for fiscal years 2010-2013 ("Revised 2010-2013 Plan"), which modified the original 2010-2013 Plan; and

WHEREAS, pursuant to Public Authorities Law section 3957(2)(b), “[n]ot . . . more than fifteen days after submission of a financial plan modification, the [ECFSA] shall determine whether the . . . financial plan modification is complete and complies with the provisions of [section 3957] and the other requirements of [the ECFSA Act] . . .;” and

WHEREAS, the members of the ECFSA Board of Directors have reviewed the Revised 2010-2013 Plan, and determined that it contains actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan – including budget year 2010 and out-years 2011 through 2013 – that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for each fiscal year; and

NOW, THEREFORE, BE IT RESOLVED the ECFSA accepts the 2010-2013 Plan and remains in advisory status, as described by Public Authorities Law section 3958; and

BE IT FURTHER RESOLVED that the ECFSA will continue to monitor the County’s progress in implementing the initiatives and achieving the objectives that serve as a basis for the assumptions in the Revised 2010-2013 Plan and may, at any time the ECFSA deems necessary and appropriate, require the County to modify the Revised 2010-2013 Plan, in such detail as the ECFSA may require, pursuant to Public Authorities Law section 3957(2)(f); and

BE IT FURTHER RESOLVED that the ECFSA shall impose a control period upon the County whenever the ECFSA determines that any one of the five circumstances listed in Public Authorities Law section 3959(1)(a) through 3959(1)(e) shall have arisen; and

BE IT FURTHER RESOLVED that the ECFSA shall evaluate these five circumstances and that the ECFSA shall cooperatively work with the county to monitor the county’s finances.

This resolution shall take effect immediately.

Chairman Oliverio: “Therefore this board will remain in advisory status and the plan for 2010 has been approved. We will, as Mr. Kruly said remain our vigilance over the county’s progress in executing its plan. I think more importantly in cooperating to assist the county in making sure its plan moves forward and is executed for the benefit of all tax payers.”

Director Thomas: “I just wanted to applaud the efforts of our new chairman and thank him for the hard work that I know he has been involved with in the last couple of days.”

Chairman Oliverio: “Thank you very much Mr. Thomas.”

“If there being no other business, could I have a motion to adjourn?”

Director Kruly moves and Secretary Keysa seconds the board votes unanimously to adjourn the meeting.

Respectfully Submitted:

Stanley J. Keysa, Secretary

March 19, 2010