

**Minutes of the
Erie County Fiscal Stability Authority Meeting
October 20, 2010**

Present: Chairman Daniel Oliverio, Secretary Stanley Keysa, Director Louis Thomas,
Director Kenneth Kruly, Director Mark Walling, Director Catherine Creighton,
Executive Director Vetter

Guests: Budget Director Gregory Gach, Comptroller Mark Poloncarz

Chairman Oliverio: "Today is October 20th and this is a meeting of the full board of the ECFSA. The entire board is here with the exception of Mr. Johnson. We are here today to discuss the County budget. Mr. Poloncarz is here today from the Comptroller's Office; he is our Comptroller. I see Mr. Gach as well; he is the County Budget Director. I believe we are scheduled to first have some presentations and discussion and then we will work as an authority to determine on adopting a resolution as to how we are to proceed."

"Before doing that I would like to turn the meeting over to Mr. Keysa to process the minutes from our previous meeting."

Secretary Keysa: "Thank you, Mr. Chairman. We previously submitted via e-mail the edited minutes of the August 24th meeting and I believe you should have the hard copies of that in your packet. If there are no other changes, they are ready for adoption at this time."

Director Kruly moved approval, Director Creighton seconded and the Directors present votes unanimously to approve the following resolution. The vote was as follows:

Director Creighton	aye	Secretary Keysa	aye
Director Kruly	aye	Chairman Oliverio	aye
Director Thomas	aye	Director Walling	aye

**Resolution No. 10-29
APPROVING MINUTES AND RESOLUTIONS FROM
THE AUGUST 24, 2010 MEETING**

BE IT RESOLVED that the Erie County Fiscal Stability Authority approves the minutes of its August 24, 2010 meeting and ratifies and affirms two resolutions numbered 10-27 and 10-28 that were approved on August 24, 2010.

This resolution shall take effect immediately.

Chairman Oliverio: “Our first presentation is by the County Comptroller; Mr. Poloncarz?”

Mark Poloncarz: “Good afternoon. I believe in your packet is a copy of the budget report that my office issued. I’m going to also pass out but not go into great detail a report that is in reference to my department. This is a copy of a presentation that we presented to the Legislature on Monday with regard to the impact these cuts would have on my office as well as what the Comptrollers office does because I don’t think everyone understands to the degree of the services that we are performing on behalf of the taxpayers of Erie County especially as compared to other comptrollers across New York State.”

Mr. Poloncarz handed out a report

“I want to talk about the 2010 budget as it pertains to my office. I have 42 employees at this point. My office has more duties and responsibilities than any other comptroller in New York State. No other comptroller has as many powers and duties as my office does and on the first page of this report is a comparison of the duties of my office in New York State of the Charter compared to other comptrollers based on those county charters. You will see a whole listing of yes’s, there is nothing that my office doesn’t do that another comptroller does but you will see on this chart here what other comptrollers do not do that Erie County does compared to treasurers and commissioners of finance in other counties. As you will see on this my office does the most of any comptroller’s office.”

“On the second page, references a comparison of employees and costs in each county and how many employees they have to do the same amount of work. Right now we have 42 employees in the Comptroller’s office and the proposal is to cut the Comptroller’s office down to 27 employees. If you look at this and compare us to the Comptroller and Finance Commissioner in Ulster County, with a \$28 million budget, they would actually still have more employees; 33 in fact then what is proposed in this cut from the County Executive of 27.”

“The next page and this is something you would be interested in is the cuts per department in the 2010 budget. You will see that there is only one other department in this proposal for Erie County government from the County Executive’s that cuts as more than my office. That would be the office of public advocacy which cuts two jobs including one that has been vacant since July of 2009

cutting two jobs to one, so that is a 50% cut. There is no other department in Erie County that has received a larger cut than ours which would be about 36%. Those cuts would be 5 out of my 7 auditors, the entire real property unit, the hotel tax collection unit, my chief of staff Timothy Callan and my secretary, who I primarily use as a legislative liaison. My central staff would be myself, my deputy comptroller for audit and my deputy comptroller for accounting. Everyone else will be gone, the other few individuals that I primarily rely on to do the work of maintaining, as well as communicating with the Legislature. So, you will see the cuts here based on departments the saving and if you look at it, the County Executive said he was going to do 20% cut across the board at least on discretionary spending and it is not even close. My office got hit very hard, the Health Department got hit very hard, the Parks got some cuts: mostly in seasonal and part time workers but most of the other departments did not get cut. There were of course increases in some of these departments as well. For example, the road fund is funded through the transfer tax and that is anticipating a reduction of \$2 million. My office thought it was a reasonable estimation. It should go down based on the decrease in property sales. The road fund did not go down by \$2 million it actually went up by \$300,000 which means that they are using \$2.3 million of the operating budget to cover the cost of the road fund when in all likelihood they should have reduced it by \$2 million.”

“The next page and the pages following are in direct discretion of my audit staff. In 1987 the Comptroller’s office had 74 employees, before the red/green budget it had 72. We now have more duties and responsibilities under Erie County’s Charter. I submit to you that other comptrollers. Erie County’s Charter that was passed by the 2006, Charter amendments which Mr. Kruly is very familiar with because he was integral in the passage of those amendments, but we have identified millions of dollars, but for them to come out to say there is no cost value to that. The last page is a critique. We got some more bodies as a result of those changes as revenue recovery and tax collection services were placed in my office but the County Executive proposes cutting my office down to 27 individuals which is approximately 36%; 5 out of 7 auditors, the entire tax collection unit, most of my revenue recovery unit, my chief of staff and my secretary.”

“The final pages are in reference to the audits that we have done, critiques on the audits that we have done and the savings that we have made. I submit to you that the Comptrollers’ audit staff but many departments in Erie County government based on the

savings that we identify. Erie County's Charter does not give me the power to effectuate those savings; that is put in the hand of the County Executive and the Legislature. We have identified millions of dollars; millions of dollars just on individual audits alone. It is in their hands to effectuate the changes. If they don't do that, I have no way to control that but for them to say that there is no cost value or cost benefit for the Comptroller's audit division, it is a lie, simple as that. In the final page as well, there is a critique of the efficiencies that we have made. It is a whole listing of the efficiencies that we have done on the accounting side to take advantage of the electronic nature of banking and government today. I think it is fair to say that the Comptroller's office has done more work and more efficiently than any Comptroller's office in the past. We have the smallest staff that any office has had in the past; we do the most work and do it on time. If these cuts go in to effect, it will be almost impossible for us to accomplish the work we have maintained to date."

"The 2010 budget on paper is balanced as we noted in our report, but we don't think it is structurally sound, we don't think it is reasonable. We do believe that they are hiding funds all across the budget, especially in the professional services fund accounts. When we looked at, not only what we spent in 2010 and in prior years, they have increased funding in the professional services accounts and other lines. Why do you do that? To hide funds. To say that you don't have enough money to continue the libraries, to continue the culturals or for that matter to fund the Comptroller's office. We identified over \$7 million in potential overspending throughout the 2010 budget. It is balanced on paper but, as Mr. Kruly stated, it doesn't necessarily mean it is balanced. I think you can balance anything on paper and I believe the Budget Director once told me when he was my Deputy Comptroller: "I can give you a balanced budget. It doesn't mean it is good." I think that is exactly what you have here."

"Now with regard to the four-year plan, in my eyes I think the four-year plan is a joke. It is a wish list. Any four-year plan that includes a proposal relying on the statements from the gubernatorial candidates to modify what has been happening to Medicaid. Have they been paying attention to what has been happening in Albany in the past few years? Have they been paying attention to what was happening during the last budget discussion when there was an attempt by the current Governor to cut health spending which didn't go anywhere, when there was an attempt by the Governor to make real substantive savings in education and it didn't go anywhere? I thought that if that if they were ever going

to do substantive changes in State government, it would have been this last budget when they were faced with a huge multi-billion dollar short fall. Truthfully they didn't; they made some changes and they made some cuts impacting County government but they didn't. They are still waiting for Wall Street to turn around. Maybe Wall Street will turn around in a year or two but in the mean time we need to come up with a balanced budget. I don't believe the four-year plan is balanced at all. I do agree with Mr. Keysa and Mr. Kruly, there are problems with it and I don't see how it can balance based on a wish list. Unlike prior four-year plans, and I recognize that there are new members here, there were prior four-year plans under Giambra and for that matter, Mr. Collins that did state how they were going to specifically address the shortfalls. They don't really say that here. They talk about savings from efficiency grants that are out there well as you know there are no more efficiency grants and even the money that hasn't been spent yet are not going to generate that amount of savings. To go from what was fairly large shortfalls in the out-years, really upwards of \$40-50 million per year, to now dropping to \$20 million when there really wasn't that much in cuts? County government spending from last year to this year really hasn't changed; it is basically the same; there may have been just a very slight increase. To say that we have cut a tremendous amount out of County government is not the case. The County Executive made some cuts in certain areas, including my office. I think they were vindictive cuts. I don't think they were based on any reasonable and rational decision making other than he values certain parts of government and doesn't value others. The budget itself in total did not drop and appreciable amount. To go out there and say we made a tremendous amount of cuts is not the case. They did make cuts, but they increased spending in other areas as well. I think that all offsets itself so, like I said, the budget on paper is balanced, it is not a reasonable budget; it is not a fair budget. Then the four-year plan, the Budget Director and I can disagree but this is the worst submitted four-year plan that I have ever seen since I have been in office. It really does not discuss how there is any attempt to offset what are the projected gaps. We think the projected gaps are really low. As Director Kruly just noted, there is no real attempt to say 15% with this method, 40% with this method, 50% with this method; it is a wish list and I could give you a wish list of a lot of things. I'd be glad to answer any questions."

Chairman Oliverio: "Thank you again for coming, Mr. Poloncarz. I am extraordinarily disturbed about the cuts of the auditors in your department. You and I discussed cuts with regard to the other folks who have other

duties but I am particularly disturbed by the cuts in the auditors. It seems to me that in an ideal situation we would have a Comptroller and a County Executive who could at least have some sort of working relationship so that both could take advantage of the audit staff and use it for the benefit of the tax-payers. I am no auditor, but I know where I would look if I needed to do some random to find some cost savings, which this board is all about, throughout the County. I encouraged the County Executive in no uncertain terms in a meeting I had with him on Monday to restore your auditing staff, if not in its entirety, substantially. It is very, very bothersome that the audit staff has been cut that way it has. I have confidence that with respect to the non audit function in your office, you can get along but I think that with your management skills you will get along but it may be a little difficult, there is no way about getting around that. I don't know however how you perform audits without auditors. That is a particular skill and particular kind of training and education. I again will urge the County Executive, and Mr. Gach is here and please tell him I said this, Mr. Collins needs to rethink this because this not good for this County, it is not good for this community and is upsetting to folks on the ECFSA. Put politics aside on certain things, and this is one of them, do the right thing. So I would urge that the audit staff be restored, if not in its entirety, substantially. I would also encourage the County Executive and the Comptroller to establish some sort of working relationship; I am not saying anything that is a secret here, so that things like audits can be done in cooperation and in cooperation with the commissioners. I would hope that would happen, not only as the Chair of this Authority but also as a tax payer in this county. To not have that type of cooperation is simple unacceptable as a tax payer and unacceptable as the Chair of this board.”

Director Thomas: “I am glad to here the Chair is disturbed by it because I am disturbed by it as well. Just a couple of questions, Mr. Poloncarz. Is there any other department that can self audit, other then your department?”

Mark Poloncarz: “My office by Charter is the chief auditor in Erie County government. One of the reasons why I provided this document was not only to show the powers of Erie County government but that red colored tag, shows the audit staff. You will note that in 1987 total audit staff was 23 and then 10 and 8 in the red/green fiscal crisis and we are basically back up to where we were before the red/green. Our outside auditor, Deloitte and Touche, has repeatedly said we do not have enough auditors for an entity our size; for a \$1.2 billion dollar entity we do not have enough auditors

for an entity our size. This proposal would cut us down to two, which is the lowest since World War II. The other thing this budget did was not even include enough funding for my independent audit. They have less money in there for my entire costs of bond counsel and professional fees. This board knows that I need these fees because I have to. They did not even include enough money to include my external auditor next year. It was a very vindictive cut. Erie Count's Charter mandates that my office uphold certain responsibilities. One of them is auditing. What the County Executive is trying to do is trying to go around Erie Count's Charter and the mandates that are required within through the power of the purse. He is trying to say: "I don't care if you have the power to do this; I will assure that no one will be able to do this by cutting your department. To address your issue with cooperation between the departments, I believe there is good cooperation. The County Executive and I don't have to like each other but we need to respect each other's offices."

Director Thomas: "What is Deloitte's involvement with your office? Do you and your staff meet with them? Can you explain to me how that process works?"

Mark Poloncarz: "When they are doing the review of the financial statements; the audit of the financial statements which is done once a year. These are the statements that should have been issued on June 30th but were not issued because of the delay from the County Executive, who would not sign the management letter. They were not issued until late September and we did not issue our audit to the federal government until late September, but we couldn't because the departments did not share information with regard to stimulus funding. Normally they will come in and start analyzing things in November. There is a time lag in which they are not heavily involved but come March/April, they are heavily involved so that they can complete the audit and have our financial statements by the end of June. They really don't play a role in the internal audits that my office does. Looking at the number of employees we have and the amount of our budget, they have advised that our staff is too small. We do have a peer review our financial statements from another accounting firm who will take a look at our audits to see if we are following GASB standards and we have passed our peer review every year. So when it comes to the internal audit option or reviews which are quite comprehensive, we have done a tremendous amount of work. We make a lot of recommendations. Take a look at the yellow page of the report. The Holding Center audit, for which we received an award, we found that there were \$2.1 million in overtime savings based on hiring 11 new

employees and allocating time better. For the quality of our work there \$1.2 million so we actually made a recommendation to just from our recommendation in our audit. I can't implement those recommendations. That would require the Sheriff and the County Executive to come to an agreement but he didn't do that, he didn't follow recommendations on how they can do things better."

Director Creighton: "I just want to echo what the Chairman and Director Thomas said. I also find it disturbing that they have cut the audit staff; I think we as the board and as taxpayers need to rely on a system of checks and balances."

Director Kruly: "Mr. Chairman, I think that we are dealing with something that is a major problem here, as I mentioned in the committee. I don't think we have a structurally-balanced budget and I think the law requires us to have a structurally-balanced budget. The only reason the County has been kept afloat for the past three years is because of \$95 million in FMAP funds that will run out shortly; not so different from Giambra using fund balance or selling the hospital or something. That doesn't work very well"

"We have plan that is not a plan. It does not provide for any closers, it is not structurally balanced and is not meeting the requirements of the law. The checks and balances concern me greatly. The Legislature is basically ineffective and basically controlled by the County Executive now. This budget that the County Executive has prepared has stripped the Comptroller of the staff that he needs to keep an eye on things. I hope the County Executive, the Legislature and the Comptroller can come up with some reasonable plan."

"However I would like to suggest something new here because I think you should always have a plan B. In my mind plan B is this: if the Legislature, the County Executive and the Comptroller can't work something out, then this Board has approximately \$125,000-150,000 left in unallocated efficiency grants funds. There is well over \$1 million in grant funding that never got off the ground. I think that for the County, if they can't come together, this board should consider this option. I strongly recommend to the Comptroller that you submit a proposal to us to provide efficiency money immediately. I think that is a good way to deal with it and if the powers that be can not solve their problems, maybe this board can at least help in the short term. I would strongly request to the Comptroller and this board that that be considered. I don't agree with the resolution that is in front of us, I don't believe that

the law is being followed, I don't believe legal and compliant plan and for that reason I will be voting against the resolution."

Secretary Keysa: "I have a few questions on the independent audit. In many cases you are receiving federal funds are those included in the audit?"

Mark Poloncarz: "There are two audits, one is the audit of our general accounting statements which is due on June 30th and would have been done if the County Executive would have signed the management letter; he refused. There is a second audit, a specific single audit that is in direct regard to federal funds that are received. That is due on September 30th. That would have been done earlier but because of failure to of the County Executive to sign the management letter until the last week in September. In the final week we received information from the Health department that they had misidentified funding As a result, Deloitte and Touche had to go back and identify it and they are still working on it. We were suppose to have done that by September 30th and we have since received letters from two federal agencies who said they were going to stop payment of any funds to Erie County until we get our audit in place. Right now we are not in compliance with federal guidelines and it has nothing to do with my office or Deloitte and Touche but it has everything to do with the Administration because they don't provide us the information we need. I am doing the best I can to get that done as soon as possible, but yes you are correct, there are two reviews that are done by the independent auditors."

Secretary Keysa: "In rough numbers, what are the total federal funds that we take in each year?"

Mark Poloncarz: "It is more now than it was a few years ago because of the federal stimulus money, but right now we are talking about hundreds of millions of dollars."

Director Walling: "I am impressed by the eloquence of the members of the board on this audit function. I think it is absolutely true that there is a unanimous belief that it is detrimental to the County to virtually eliminate the audit staff. I wonder if it would be a violation of our charter if we allow that to happen. As a new member that is certainly something I would look into. It is a unanimous feeling of this board that this is something that should not happen. I have questions for Mr. Gach on tax collection matters. I don't know how taxes will be collected because I understand that you have some staff that collects taxes. I am curious as what you plan to do if the current budget goes into effect?"

Mark Poloncarz: “Prior to the 2006 Charter amendments, it was a function of the Commissioner of Finance. As a result of these changes, they basically changed tax revenue recovery to my office. The cashiers that work on the first floor that not only work with the administrators but the town clerks, town collectors and receivers as well as the hotel property tax collectors; all those jobs would be eliminated.”

“I am sure that Mr. Gach is going to get up here and say that I submitted a budget that included those cuts. I submitted a budget that did not include that. I would have been silly to at least look and see in my office where we could cut 20%. I didn’t want those cuts and included a proposal with no new jobs. I don’t know truthfully how we are going to do this. If people want to pay their taxes with cash, they can’t because the cashiers are going to be closed.”

Executive Director Vetter: “Did you want me to go through the staff report at this point?”

Secretary Keysa: “I have one further question for Mr. Poloncarz. When we’re talking about the fund balance, included in that are the uncollected real property taxes based upon the history to collect those taxes. With the cuts in your staff and the real property staff, doesn’t that put that in jeopardy the ability to collect that money?”

Mark Poloncarz: “Yes, and we are no longer selling tax liens which is a decision made by the County Executive, but he has no money in the budget to foreclose on these properties, so they are just going to sit because there is no money. As we go through the year we usually collect over 90 - 93% throughout the year.”

Secretary Keysa: “In summation, if you don’t pay your taxes on time, then the County is going foreclose on your property?”

Mark Poloncarz: “You start incurring interest if it is not received by a specific date and it is usually a two-year process. How does he plan on instituting foreclosures when he not only cuts my office but cuts the County Attorney’s staff which would be charged with doing the foreclosures?”

“In regards to the fund balance, I agree with you totally and I agree with Mr. Kruly. The statement of the County Executive is wrong. It is not following GAAP or the principles initiated by the GAFB. Mr. Collins can say all he wants about reinstating fund balance but I think he is try to use it as a tool because next year when there is a

huge problem and he has no more FMAP he is going to try and use fund balance. If the \$17 million that is proposed to be used from fund balance is cut, we will be basically back to the 5% threshold. It took a long time to get to that point including the stimulus money. I can see it happening very easily to balance budgets because it does not seem to be the goal of this Administration to address the shortfalls and I don't think the Legislature is willing to do things as well to encourage change. We have gotten a lot of increases in out ratings but once we dip in to fund balance, don't be surprised to see that change."

Director Walling: "When was the last time Erie County had an *in rem* auction?"

Mark Poloncarz: "In Erie County, that would be quite a number of years."

Director Thomas: "To give counsel time to check this out, would it be in any violation of the County's ability to audit? I would like to be more comfortable if we chose to make the decision that this is allowed."

Craig Bucki, Esq.: "My name is Craig Bucki from Phillips Lytle, LLP. This is a question that Mr. Thomas raised immediately prior to our meeting. I carried with me a number of relevant portions of the law and decided to take a look at them during the discourse with the County Comptroller. The process of evaluating the budget and the four-year plan really is a two step process."

"The first step happens now and that is that on October 1st the County Executive presents to the Authority a budget and a four-year plan. This Authority has 20 days from October 1st to make a determination if they think the plan is complete and complies with the requirements of Public Authorities law Section 3957 and the other requirements of the ECFSA enabling legislation and the County Charter and so forth. This authority has taken a position in the past and that position has been endorsed by State Supreme Court in a lawsuit going back to 2007, that if in the estimation of this Authority, the financial plan does not provide that with respect to major operating funds, that major operating funds do not exceed revenues, then therefore the plan violates the ECFSA enabling legislation. The County has violated the legislation and therefore a control period needs to be imposed."

"Last year for example, this Authority decided that the plan was complete. Then some time in December the budget can go into a second round of adoption. If they are complete and comply with the law with respect to the fact that the budget and four-year plan are in compliance with the requirements of the law."

“With respect to that second step that takes place in December, I would like to read to you Public Authorities Law Section 3957, Paragraph 2, Subdivision E. This is again with respect to the second round of review in December or January.”

“The Authority shall, in the event that it disagrees with elements of the financial plan, provide notice thereof to the County, along with the Director of the Budget with a few other statutorily required people. If in the judgment of the Authority such plan...and it lists four criteria. If any of these are met then the Authority has the right to reject the budget and financial plan. The third of these is; if the judgment of the Authority, such that the plan fails to provide that operations of the County and the covered organizations will be conducted within the cash resources available.”

“So it would be possible in theory, and I think this would require further discussion, research and thought, but you can take a paragraph like that and say with respect to the County Comptrollers office’s budget, that it fails to provide the operations of that County and the County is mandated by the County charter, that it fails to provide that operation adopted within the cash resources available. So if this Authority wants to take the position that the audit function, theoretically, is not going to be met, then the Authority may be able to take that position. Again, that is not today’s discussion; that is potentially two months from now. So if you are looking for, perhaps, some provision in your enabling legislation that may be a provision that you may look at in the coming months but with respect to today, the question today is that if the budget and four-year plan are complete and compliant with the requirements of the ECFSA Act, not necessarily with respect to the Charter or the audit function. Mr. Poloncarz is correct the Charter provides for that audit function but in terms of how many employees there needs to be, it is silent on that matter. It just says that it needs to be done and so it is up to the judgment of the Authority to determine if you think the plan is complete and in compliance and whether there are no imbalances in the operating funds. Mr. Chairman?”

Chairman Oliverio: “Mr. Bucki, thank you. With respect to the paragraph you pulled out and read which you said we might be able to apply to resolve this issue, could you send that paragraph to everyone and I would also like to see some information on the legislative history of that provision because you are not going to find a case on it? Could you also look at it and read in the context of the entire statute? I am always concerned about pulling a paragraph out of a statute.”

Secretary Keysa: “The issue that everyone is debating here, is that if we do not find the plan to be complete and compliant, does this automatically trigger a hard control status? The reality is that this is not the final plan until such time as the Legislature and then I think the County Executive still has time to hold a public meeting and accept or reject it. So that if we were to find that it was not in compliance today, does that trigger us into a hard control status or does that trigger us into coming back in December after the regular process has gone through?”

Chairman Oliverio: “Right now we are operating under the 2010 budget; there is not 2011 budget in place. I don’t know how we can go into a control period on a budget that has not been approved yet or in effect.”

Secretary Keysa: “That is exactly what I am saying.”

Director Creighton: “...but if we are opining that this is incomplete then we are not making a decision to go into a control period? “

Craig Bucki, Esq.: “I think it is important to remember some history and going back to 2007 and 2008, what this Authority decided was when the four-year plan was submitted in early October under section 3957, that major operating fund expenses could not exceed revenues with respect to any of those four years. If the plan would not provide for that, then there would be a violation of the law and the ECFSA act.”

Director Kruly: “When we went into the control period in 2005, that was before the final vote of the Legislature and the County Executive.”

Director Creighton: “If we found it was incomplete and did not comply, then we would automatically trigger a hard control status?”

Craig Bucki, Esq.: “That was the position that the Director’s took on November 3, 2006 because Section 3957 sub 1, that expense can not exceed revenues, that needs to be satisfied during the initial submission of the plan that is made in October.”

Chairman Oliverio: “Thank you Mr. Bucki. Are there any other questions?”

“I think next, we should hear from Mr. Gach. Just a comment from me. As you heard what I said earlier, I will not micromanage your estimates but my concern is the gap closers. Last year we went through the same dance and depending on what is going on today. We just need more meat on the bone with respect to what

you intend to do in 2013 and 2014, this shortfall that you have identified. Again no one, I don't think, on this board is holding you accountable to what might happen in 2014. "

Gregory Gach:

"I would like to reply to your comment. Standing here with two former Budget Directors, I think they understand that there are only a few things that a Budget Director, the Legislature and the County Executive can do. The lack of specificity in the gap closers was not an oversight. Sales tax may go higher, it may go lower. Real estate assessments may go higher, they may go lower. Job cuts? I stood on this stage a year or so ago with a plan that showed gap-closers cutting roughly 50 jobs a year. I was told that was impossible, now I have in front of you a list that cuts nearly 410 jobs. I understand your concern. Every job is hard to cut, whether it is an auditor, a person in my office, a person in the County Executive's office or the Health Department; those are hard cuts. We're prepared, if we have to, to make more hard cuts."

"Fund balance: I heard your counsel up here quoting part of the law that said it has to be balanced within available resources, if I recall. We have over \$74 million in fund balance right now. Granted, there are a number of legal hoops we've had to jump through to utilize that \$74 million, but how do you come up with your 5%? 5%. No matter how hard you count the numbers, is less than \$74 million. So we don't have to jump through the hoop of a 2/3's vote to access that, but we could, with a 2/3 vote, utilize up to \$74 million. That is a resource that is available to the County to balance their budgets. The last thing is to raise taxes. Our constitutional tax limit, which is a 1% limit increase, is somewhere around \$100 million I believe. I believe if you go with the state budget tax cap, which is 1.5%, we are talking \$200 million in raising of taxes. Nobody wants to raise taxes, but what I am saying is that there are available resources that are on the books and available to the County without making Draconian cuts or anything else, \$74 million in the fund balance, almost \$200 million in property taxes increases. So the resources are there."

"We didn't raise the fund balance other than taking care of some one time issues which I explained to you the last time I was here. We don't want to raise the tax rate; it is very unpopular and that is why we cut 410 people. Next year, God-willing I am here, I will explain the 2012 budget based on the five things I just mentioned. If you are going to ask me today, how much of each, I can't tell you, but I will tell you this: I have been involved in the county government for 25 years. I have not been involved in putting together a budget that did not end in a surplus. When the

Giambra administration came in, myself and Mr. Kruly left willingly. I came back to work for Nancy Naples and then Mark Poloncarz. I did not work for any part of the Giambra budgets. The surplus that happened because of FMAP money, yes, but how many other county governments out there that got FMAP money ended in deficits. Look at Onondaga, Monroe and Nassau County; they are in a melt down. They had the same resources made available to them and they are melting, we are not. We are making the hard decisions to cut where it needs to be cut.”

Chairman Oliverio: “Mr. Gach, just two quick questions and you can answer them with two numbers. Projected surplus this year, could you comment? “

Gregory Gach: “It is totally dependent on sales tax but I think anywhere from \$10 -20 million”

Chairman Oliverio: “So your fund balance may go up? Second question is for 2011, do you view that to be a capable budget that may be earning a surplus as well or not?”

Gregory Gach: “If things go our way, yes. If the economy craters again and absent of the federal government bailing us out, who knows? I will say this: the County Executive and I are dedicated to having a balanced budget. If it becomes apparent that we are approaching a deficit we will put together a package to right the deficit. We don’t want to but if we have to we will. The important thing to remember is that we are in the third poorest city in America, we cannot raise taxes and we are dedicated to keep our tax rate the same.”

Chairman Oliverio: “Mr. Gach, if I were to extrapolate from what you have just said, you are prepared to tap in to fund balance, you are prepared to make more job cuts as needed and I think, because you are required to, statutorily raise taxes to cover this?”

Gregory Gach: “We are required to have a balanced budget and we will have a balanced budget”

Director Thomas: “I’m not going to get into an argument about whose crystal ball is better. Like you said, it is a crap shoot and you don’t know who is right. We all hope for the very best I also know how difficult it is when you are looking at a tough circumstance and you have to consider eliminating jobs. When you do that, you affect production, you affect quality, you affect service and you create a liability for yourself because you have to pay unemployment, you lose a consumer and generally every one seems to lose hope.

Unfortunately, I lived through a lot of years of that and most of that happened here in WNY. I know how difficult that is when you are going through a budget and when you make decisions like that, you take that really seriously. What I find a little hard to believe is what happened to the Comptroller's office. It was blatant and it was cavalier and it made no sense to me. I did not understand that. That whole group of people that were charged with what is what we are here to discuss. To me, that was the one thing in the budget that I looked at and just shook my head and said how can that happen? I think more time needed to be spent on that and at least more discussion. That is one thing in this budget, although there are many things that are unsettling, that I feel very strongly about. I don't think the County can function under those circumstances."

Gregory Gach: "Are we talking about the overall cuts or simply the audit cuts?"

Director Thomas: "The audit cuts, because you can't sit down with the employer who knows the operation better than everyone else. This is an oversight group that is accountable to the County. They are the ones who are going to feed us information as to whether or not what is occurring really works. That was taken away from us and I don't think that is right"

Gregory Gach: "As I have said many times as I have addressed many of groups, we looked at the audit function we did not see the return for the money; \$2.5 million spent over the last 5 years, we did not see the results. I know Mr. Poloncarz handed out his schedules stating this and that showing savings but there was no political will to implement those savings. Some of his audits are what I call "me too" audits. That has been stated and debated over the years and he is correct, there is no political will. As far as the Sheriff's office, the Holding Center and the changes there, again the Sheriff is in charge of the jail and he handles it the way he see's fit. We have made adjustments in his budget to hopefully keep it in budget. If you start looking, as far as his entire staff goes. If you start looking at the rest of those audits, we did not see the return for the buck and that is why we did what we did. As far as his entire staff, quite frankly if the Comptroller feels he can not perform his duties and collections, I invite him to invoke a Charter change and move those responsibilities to the staff that I have right now. No question about it. It may not be the staff that is in there, but I will stay within the dollar amount budgeted and do the tax collections."

“The other question was how do you do the tax collections? It will get done. It can get done. We can do foreclosures. Xspand has showed us to target the 200 properties that are worth something and will get you a bid at an auction and will be put on the County tax rolls. We will not be wasting money. Audit; that is a different question.”

Director Thomas: “Audit is the big thing for me.”

Gregory Gach: “Audit is a good question. I have sat through three days of discussion with the Legislature and it is a big question. Our opinion was that \$2.5 million for 20 audits is not worth the tax payer investment. That is our position. If the Authority wishes to finance an efficiency grant to come back to you as you do the Six Sigma Director, I think that is a good experiment.”

Director Thomas: “I, for one, am not thinking that is a good idea. That is my preliminary opinion on that.”

Director Creighton: “It doesn’t seem that you have any dispute that the auditors have identified millions of dollars in savings.”

Gregory Gach: “Not a new identification of savings. What I am saying is that it has been identified in the past. If there is no political will to do it why should we waste more funds to study something if we do it but we know it can’t be done?”

Director Creighton: “These audits though are identifying cost savings over various periods of time. I think that is a false logical conclusion, because there is no will to implant his savings, where there should be some consideration of his suggestions.”

“I think the budget has also ignored some pent-up demands from union contracts and part time savings. It just seems like some point these labor contracts have to come to fruition and that these liabilities are building and the budget completely ignores these items.”

Gregory Gach: “The administration has consistently taken the attitude in labor relations with the unions that any contract that we sign will be a cost to the County taxpayers. We put together a contract with CSEA, offering them 3% raises up until 2015 with some give backs on health insurance. It was rejected. Subsequently the PBA arbitration is coming down implementing 2% raises and also implementing across the board 15% employee contribution toward health insurance not only for current employees but retirees which

is different from CSEA and they rejected it. That becomes the new milestone. Those types of contract, when you look at the cost of them, are pay backs and that is what they are looking for.”

Director Kruly: “Just one question. I just want to confirm that the County Legislature was asked to perform 20% cuts just like all the other departments: is that correct?”

Gregory Gach: “They were.”

Director Kruly: “Were they asked more than once?”

Gregory Gach: “There were a number of discussions going on between myself; both the majority and minority staff and I believe our chief of staff in the Administrations’ office has a number of conversations with the Legislators.

Director Kruly: “They offered no necessity to cut any on in the Legislative staff. I see Mr. Davis in the back representing the County Legislature. Could you carry back a message, Mr. Davis, that this is not something that we find acceptable, to the Legislature? This is a major deficiency.”

Secretary Keysa: “I was just curious on sales tax. The last update showed us that we were just a hair under a half a percent above where we were last year. When is the next up date due?”

Gregory Gach: “November 5th, I think it is.”

Director Walling: “I am new to this board; however I learning things as I go along and reading these documents I see the County has terminated its contract with Xspand. How are property taxes specifically, not generally, are they going to be collected and by whom and why was the contract with Xspand terminated?”

Gregory Gach: “Xspand was terminated by this board from 2006 and forward. The County has been collecting back taxes; the County does collect current taxes. We use a variety of methods to do this. We have set up a website where Buffalo tax payers can go and pay there taxes with credit card or debit card. We have also set up kiosks on the first floor, as well as drop box and we will mail a receipt back to them. As the Comptroller stated, elimination of the cashiers will result in a difficulty for taxpayers to make a cash payment; that is going to be a problem. He did submit a proposal to cut his cashiers and his tax group although it may not have been his intention. I had a discussion with him and his Deputy Director

Lorne Steinhart who said it was a good idea to eliminate the cashiers. They at that time were taking about the ability of people to go up to the 11th floor. He is now saying that he is not willing to do that. I have asked our County Attorney to look into the legality of that and the requirements by law and if we can't reach some sort of agreement about collecting cash payments."

Director Walling: "Well that seems to be the problem for me. That seems kind of absurd to me that the County Executive and the Comptroller can't come so any agreement about collecting payments by cash. The consequence is that if someone wants to pay by cash, they can't? That is absurd, it is ridiculous that your Administration and the Comptroller can not come to agreement, rather the going to lawyers for God's sake, to figure out payments by cash. The other thing I want to say is that your answer did not say anything about what the County would be doing to collect payments. Mr. Poloncarz says that there hasn't been a county wide *in rem* since he has been Comptroller. I think you are saying that Xspan did target *in rems*. I would like to know what staff is out there to collect delinquent tax payments under this budget and how that will actually happen. If not today, in some sort of detail, not with generalities. It doesn't make sense to me that in your budget you have a very optimistic estimate of what future property tax payments will be without that kind of detail and I think that information needs to be provided to us as an authority."

Gregory Gach: "I will give you an answer and if you want more detail after, I can provide you more detail. As I stated before, the Comptroller and the Deputy Comptroller submitted a proposal to eliminate the two cashiers as well as an accountant. At the time, I was told that if cash transactions were to be made they could come up to the 11th floor. As the Comptroller just stated, he is not going to be excepting that cash. I was under the impression that he is running cashier operation up there on trust accounts that he would continue to take in cash payments on tax. Now he is telling me he is not. That is why I am going to my attorneys to find out what my options are if the Comptroller is not wiling to take cash payments."

Director Walling: "I am saying these branches of government should get together and work it out and not go to lawyers to do so."

Gregory Gach: "When I spoke to him, he said he was not going to do it so; unfortunately personalities get in the way, but I will find out what the options are so that it is taken care of. If worst comes to worst, I have a junior clerk in Mr. Maciejewski's office and we can look at that when I find out what my legal options are."

“As far as the *in rem* foreclosures, under the legal agreement when the County sold the tax liens to the ETCC, who then contracted with Xspand to manage those liens, the County was precluded from foreclosing any property that was owned by ETCC. That is why we stopped doing foreclosures. I am not aware of any property that the County owned that was ripe for foreclosure that Xspand was not servicing for ETCC that had first right for foreclosure. That is why they did the foreclosures. Now that we will be ending that relationship, the County will be taking over all the liens. We will then start the clock again on when the liens will be ripe for foreclosure and instead of spending hundreds of thousands of dollars that are wasted; we are going to follow what Xspand did by determining what is out there and determining which liens are ripe for foreclosure but to be sold. The County does not want to own property; we do not want to foreclose on a property; we want to sell it”

Chairman Oliverio: “What is the percentage of real estate taxes that are levied, do we collect in this county? “

Gregory Gach: “In a current year, we collect 97-98% in a current year. So we are talking about 2-3% of the liens that are not collected in the first year.”

Secretary Keysa: “So about \$6-7 million.”

Gregory Gach: “At that point we continue to chase them down and the property has value, I guess what you have is over 100%? We have actually seen an uptake in collections because people want to retain their homes.”

“We are now collecting over 100% on our liens and we have money in the County Attorney’s budget to finance a foreclosure process through an outside vendor.”

Secretary Keysa: “I have two points with regard to this subject. One is that one of the reasons that this board opposed the contract with Xspand is that Xspand was cherry-picking liens and was leaving various municipalities out there complaining that the result of that cherry-picking was leaving properties out there that had back taxes on them and a result were not being foreclosed the were being avoided. They were not going back on the market and were creating a much higher potential for blight on the community. The foreclosure process is the way that you keep blight from happening to the community.”

“The second point that I wanted to make was that, when you do real property sales or transactions, I don’t know the exact number that have County taxes, have back taxes, those are typically paid by walking over and paying by cash at that time. If that is not available, that is going to impact on the ability to make a sale on time.”

Executive Director Vetter: “Is there a significant cost to collect certain foreclosure costs? Have you accounted for that in this budget?”

Gregory Gach: “The last that I have heard of it, that both houses have signed it but I am not sure whether the Governor has signed it yet, but those costs will allow us to pursue more foreclosures costs more dramatically because what will happen then is, we will be able to recoup our cost on foreclosures.”

Chairman Oliverio: “Thank you, Mr. Gach.

Secretary Keysa: “I would like to reiterate what I said before. While we may disagree with the Budget Director, this one is better than what we have seen before.”

Chairman Oliverio: “We have a resolution that has been proposed, Mr. Vetter?”

Executive Director Vetter: “This is a resolution maintaining the advisory status of the Authority. Yet it is espousing concerns about certain assumptions in the budget and the plan that we talked about in the finance committee meeting and this is calling upon the County at a subsequent date to have them come back and respond to these issues. At this point we will remain advisory status but at that point our status will be revisited upon receipt of that information.”

Chairman Oliverio: “It is my view, looking at the budget that is balanced within the meaning of the statute for 2011 that mandates our charge. I also think that, when I look at the four-year plan, that I am satisfied now that the County has ample resources in the out-years to manage the plan successfully. We all hope that year 2013-2014 see a change. However I am looking at a County government that has shown a surplus, including 2010 and that there is an anticipated surplus in 2011 if things break right. They have managed to accumulate a fund surplus over the past three years with the help of our borrowing, they cut 410 jobs. I recall that was one of the recommendations we made last year and that has been made. I assume there are other job cuts that can be made. This is not an easy problem. The out-years will create a problem but I don’t

think this Administration had been so reckless with the taxpayers in mind and the 2011 budget, not its plans going forward as outlined here by Mr. Gach that I am uncomfortable in believing a control period should be imposed. I believe that we should stay advisory and approve the plan that is currently in front of us. Once it is finalized, I hope that we would have some additional information from Mr. Gach to inform us on what is going to happen in the out-years. Then we will be in a position as we did last year to consider our status. Last year and I would remind the members of this board that our board can revert to a control status anytime during the year. Last year, I believe we would take a look at how things were going in May or June and we were satisfied with how things were going. That does not mean that we able to be visual and this collective group. I will look back at our Authority's history and say this with the exception of the two people who are new, we have accomplished more than a hard control board has accomplished over the years."

Director Kruly: "I am voting against this resolution."

Director Walling: "I am also concerned about the increase in the debt service. That is something that really hasn't been talked about all that much however there seems to be a tendency to increase it going forward and I don't think that is a good thing for government. I am also concerned that they are not in violation of the Erie County Charter section 2605 (b) and it's limitation on the use of fund balance I would not like to see a situation where the legislature had to pass a law that would allow that to happen. I think the law is in place for a good reason. I think Mr. Kruly who wrote the law certainly understands that and I think the rest of us do as well. There is an anomaly here. Even though we are uncomfortable with some of the things that are going on, we by statute either have to go into a control status or say that things are okay which seems odd to me and still learning as I go along. I do not think we need to go into a hard control status however I agree with what several people have including the Chairman who states that our role is significant no matter what role status we are in said."

Director Thomas moved to approve the following resolution; Director Walling seconded and the Directors present duly voted to approve the following resolution with four ayes, two nays and one absence. The vote was as follows:

Director Creighton	aye	Secretary Keysa	nay
Director Kruly	nay	Chairman Oliverio	aye
Director Thomas	aye	Director Walling	aye

Resolution No. 10-30

PROVISIONALLY FINDING THAT ERIE COUNTY'S 2011-2014 FINANCIAL PLAN IS COMPLETE AND COMPLIANT WITH NEW YORK PUBLIC AUTHORITIES LAW SECTION 3957, AND CONTINUING THE ADVISORY PERIOD UPON ERIE COUNTY

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, Public Authorities Law section 3957(1) requires the Erie County Executive to "prepare and submit to the [ECFSA] a four-year financial plan and the county executive's proposed county budget, not later than the date required for submission of such budget to the [Erie County] legislature pursuant to the county charter;" and

WHEREAS, the four-year financial plan, as defined by Public Authorities Law section 3951(14), is a "financial plan of [Erie County] and [its] covered organizations"; and

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

WHEREAS, County Executive Christopher Collins duly submitted his proposed budget for Erie County (the "County") for fiscal year 2011, and a four-year financial plan ("Plan") for fiscal years 2011-2014, to the ECFSA on October 1, 2010 (the "2011-2014 Plan"); and

WHEREAS, fiscal years 2012 through 2014 constitute the "Out Years" of the 2011-2014 Plan; and

WHEREAS, Public Authorities Law section 3957(1) requires that the 2011-2014 Plan "contain actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year;" and

WHEREAS, Public Authorities Law section 3957(2)(b) instructs the ECFSA to determine on or before October 21, 2010, whether the 2011-2014 Plan complies with the provisions of the ECFSA Act, including section 3957; and

WHEREAS, the members of the ECFSA Board of Directors have reviewed the 2011-2014 Plan, and have provisionally 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 2011 and Out Years 2012 through 2014 – that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for such fiscal year; and

WHEREAS, the 2011-2014 Plan is complete and otherwise complies with the requirements of Public Authorities Law Section 3957 (“Section 3957”) and the ECFSA Act; and

WHEREAS, the ECFSA has nonetheless developed concerns regarding the reasonableness of the following assumptions underlying the Plan:

- (1) That sales tax revenues will increase by 3.1% in 2011 and by 3% during each of the Out Years, despite recent weaker growth;
- (2) That the County’s proceeds from the collection of real property taxes will increase by 2% in 2012 and by 3% during 2013 and 2014;
- (3) That overtime expenses will decrease during the Out Years;
- (4) That the County will not need to increase its annual financial contribution to Erie Community College (“ECC”), even though ECC has assumed that the County’s contribution will increase by \$500,000 during each of its next four fiscal years;
- (5) That the County will not need to budget for salary increases for labor unions that do not have contracts that are currently in effect;
- (6) That the County will not bear liability for any legal challenge made to the designation and use of regular part-time (“RPT”) employees;
- (7) That the County will have adequate fund balance to close budget gaps during fiscal year 2011 and during the Out Years, without violating the requirement of Erie County Charter Section 2605(b) that the “county executive shall maintain a balance in all funds established in the budget equal to or greater than five percent of the amount contained in the budget of each fund in the immediately preceding fiscal year;” and without detrimentally impacting the County’s credit rating, borrowing costs, or realization of revenue from investments;
- (8) That the County Executive and a supermajority of the County Legislature will support a “home rule” request to extend the extra 1% and extra 0.75% sales tax beyond November 30, 2011, that the New York

State Legislature will adopt the extension and that the Governor will sign it into law; and

(9) That the County will have continued access to ECFSA efficiency grants and will realize substantial savings from implementation of Six Sigma initiatives, even though all ECFSA efficiency grants have been allocated and the County has yet to realize significant Six Sigma savings; and

WHEREAS, the ECFSA registers its objection to the virtual elimination of funds sufficient for the County Comptroller's Office to perform its statutorily required audit functions; and

WHEREAS, the ECFSA requires additional information and plans of action substantiating the reasonableness of the 2011-2014 Plan's assumptions;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA provisionally finds that the 2011-2014 Plan is complete and otherwise complies with the requirements of Section 3957 and the ECFSA Act; and

BE IT FURTHER RESOLVED that the ECFSA remains in advisory status, as described by Public Authorities Law section 3958; and

BE IT FURTHER RESOLVED that the ECFSA requests the County to submit in writing, no later than February 1, 2011, additional information, action plans, or other documentation demonstrating the reasonableness of the assumptions enumerated above; and

BE IT FURTHER RESOLVED that, in the absence of sufficient information substantiating those assumptions, or for any other reason, the ECFSA reserves the right to require the County to modify the 2011-2014 Plan subsequent to February 1, 2011, 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 adopt a resolution determining whether to re-impose the control period upon the County, no later than March 1, 2011.

This resolution shall take effect immediately.

Chairman Oliverio: "I'd like to close with the thought that minds can differ and I think a collective body can benefit from spirited debate."

Director Creighton moved to adjourn, Director Walling seconded and the Directors present voted unanimously to adjourn. The vote was as follows:

Director Creighton	aye	Secretary Keysa	aye
Director Kruly	aye	Chairman Oliverio	aye
Director Thomas	aye	Director Walling	aye

Respectfully submitted,

Stanley J. Keysa

October 20, 2010