

## Erie County Fiscal Stability Authority

Resolution No. 06-49

### IMPOSING A CONTROL PERIOD UPON THE COUNTY OF ERIE

#### **I. The Authority of the Erie County Fiscal Stability Authority to Impose a Control Period**

WHEREAS, Chapter 182 of the New York Laws of 2005, 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 financial stability”; and

WHEREAS, the ECFSA has functioned in an advisory capacity since its creation on July 12, 2005; and

WHEREAS, New York Public Authorities Law (“Public Authorities Law”) section 3959 enumerates circumstances that mandate the ECFSA to impose a control period upon the County of Erie; and

WHEREAS, pursuant to Public Authorities Law section 3959(1)(e), the ECFSA “*shall* impose a control period” (emphasis added) in the event that Erie County has “violated any provision” of the Erie County Fiscal Stability Authority Act (“ECFSA Act”);

#### **II. Requirements for the Erie County Executive’s Submission of a 2007-2010 Financial Plan**

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, the Erie County Executive duly submitted his proposed budget for fiscal year 2007, and a four-year financial plan (“Plan”) for fiscal years 2007-2010, to the ECFSA on October 18, 2006; and

WHEREAS, Public Authorities Law section 3957(2)(b) therefore instructs the ECFSA to determine whether the 2007-2010 Plan complies with the provisions of section 3957 on or before November 7, 2006; and

WHEREAS, Public Authorities Law section 3957(1) requires that the 2007-2010 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 each fiscal year”;

### **III. The 2007-2010 Plan’s Unreasonable Projections of Revenues Assuming an 8.75% Sales Tax Rate**

WHEREAS, the 2007-2010 Plan’s operating revenue projection “assumes continuation of the 8.75% [sales tax] rate throughout the four-year period”; and

WHEREAS, the 8.75% sales tax rate consists of:

- (1) a 4% sales tax levied by New York State;
- (2) a 3% Erie County sales tax that needs no further authorization;
- (3) an extra 1% sales tax (“extra 1% sales tax”) levied by Erie County before 2005, and whose authorization shall expire on February 28, 2007;
- (4) an extra 0.25% sales tax (“extra 0.25% sales tax”), enacted by Erie County in 2005 upon New York State authorization, which shall expire on November 30, 2007; and
- (5) an extra 0.5% sales tax (“extra 0.5% sales tax”), enacted by Erie County in 2005 and authorized by New York State in 2006, and whose authorization shall also expire on November 30, 2007; and

WHEREAS, Erie County may continue to levy the extra 1% sales tax beyond February 28, 2007, only after:

- (1) the New York State Legislature introduces a bill to reauthorize the extra 1% sales tax;
- (2) ten (10) Erie County legislators approve a home-rule message requesting the bill’s enactment;
- (3) the New York State Legislature votes in favor of the reauthorization bill already introduced; and
- (4) ten (10) Erie County legislators subsequently vote to enact the extra 1% sales tax; and

WHEREAS, Erie County may continue to levy the extra 0.25% sales tax and the extra 0.5% sales tax beyond November 30, 2007, only after:

- (1) the New York State Legislature introduces a bill to reauthorize the extra 0.25% sales tax and the extra 0.5% sales tax;
- (2) ten (10) Erie County legislators approve a home-rule message requesting the bill's enactment;
- (3) the New York State Legislature votes in favor of the reauthorization bill already introduced; and
- (4) ten (10) Erie County legislators subsequently vote to enact the extra 0.25% sales tax and the extra 0.5% sales tax; and

WHEREAS, the legislative actions necessary to re-enact the extra 1% sales tax, the extra 0.25% sales tax, and the extra 0.5% sales tax have not yet taken place;

#### **IV. The 2007-2010 Plan's Unreasonable Projections of Revenues from New Fees**

WHEREAS, the 2007-2010 Plan has also budgeted growth in revenue "because of proposed fee increase [sic] in the Clerk's Office, Parks, and Health"; and

WHEREAS, an increase in fees charged by the Erie County Clerk and the Erie County Department of Health may take effect only after:

- (1) the New York State Legislature introduces a bill to authorize the increase in fees;
- (2) ten (10) Erie County legislators approve a home-rule message requesting the bill's enactment;
- (3) the New York State Legislature votes in favor of the authorization bill already introduced; and
- (4) ten (10) Erie County legislators subsequently vote to enact the proposed fee increase; and

WHEREAS, in a letter to the Erie County Budget Director dated October 26, 2006 (the "Finance Committee Letter"), ECFSA Finance Committee Chairman Joseph Goodell asked "whether the opinion of any of the members of the Erie County Legislature concerning whether to increase registrar fees in the Erie County Clerk's Office [had] been sought and obtained"; and

WHEREAS, the Finance Committee Letter sought a response to the inquiries therein on or before October 30, 2006; and

WHEREAS, in response to the Finance Committee Letter, Erie County could not indicate whether ten (10) Erie County legislators planned to support a fee increase in the Erie County Clerk's Office; and

WHEREAS, in response to the Finance Committee Letter, Erie County could not indicate whether any members of the New York State Legislature favor this fee increase; and

WHEREAS, absent the support of ten (10) Erie County legislators, the 2007-2010 Plan does not reasonably assume an increase in registrar fees charged by the Erie County Clerk's Office or the Erie County Department of Health; and

WHEREAS, a majority of Erie County legislators also must approve the imposition of parking fees upon patrons to Erie County parks; and

WHEREAS, the Finance Committee Letter also asked "whether the opinion of any of the members of the Erie County Legislature concerning whether to impose parking fees upon visitors to Erie County parks [had] been sought and obtained"; and

WHEREAS, Erie County has failed to answer the Finance Committee Letter's request whether a majority of Erie County legislators planned to support the imposition of parking fees upon visitors to Erie County parks; and

WHEREAS, Erie County has failed to address whether visitors to Erie County parks would leave their vehicles along nearby streets, and thereby purposely avoid paying the proposed parking fees; and

WHEREAS, absent the support of a majority of Erie County legislators, the 2007-2010 Plan does not reasonably assume the imposition of new parking fees at Erie County parks;

**V. The 2007-2010 Plan's Unreasonable Matrix Initiative Projections**

WHEREAS, the 2007-2010 Plan also includes "proposed actions to close the [Erie County] budget gaps as forecast for fiscal years 2008, 2009, and 2010"; and

WHEREAS, the Summary of 2007 Matrix Initiatives includes projections of the revenues or savings that each of these proposed actions shall create over the duration of the Plan; and

WHEREAS, the ECFSA has encouraged and supported Erie County's development of the Matrix Initiatives as tools for reducing projected deficits and re-engineering governance; and

WHEREAS, the Summary of 2007 Matrix Initiatives must nonetheless base its projections for revenues and savings upon reasonable and appropriate fiscal projections substantiated in fact; and

WHEREAS, the Finance Committee Letter sought fiscal data, trends, and supporting documentation underlying the budgeted revenues for 2007, and the projected revenues in 2008, 2009, and 2010, that shall result from implementing the following Matrix Initiatives:

- (a) a supervision fee for probationers (Item 12),
- (b) a fee for probationer drug testing (Item 13),
- (c) an electronic monitoring fee (Item 15),
- (d) an increase in the DWI supervision fee (Item 16),

- (e) an increase in the revenue potential of the Erie County Youth Detention Facility (Item 19),
- (f) development of a regional automated public health laboratory testing program (Item 52),
- (g) a \$0.30 wireless surcharge to offset 911 costs (Item 68), and
- (h) development of a market-based revenue program (Item 90); and

WHEREAS, the Finance Committee Letter also sought fiscal data, trends, and supporting documentation underlying the budgeted savings for 2007, and the projected savings in 2008, 2009, and 2010, that shall purportedly result from implementing the following Matrix Initiatives:

- (a) reform of the retiree drug program (Item 32),
- (b) improvement of attendance monitoring and payroll controls (Item 33),
- (c) improvements at the residential treatment center (Item 50),
- (d) a reduction in Medicaid fraud (Item 56),
- (e) a comprehensive risk management program (Item 85),
- (f) pooled insurance bidding (Item 86),
- (g) establishment of a productivity bank (Item 89),
- (h) enhancement of contract competition (Item 115),
- (i) strategic sourcing (Item 116),
- (j) an increase in other government purchasing on Erie County contracts (Item 117),
- (k) resumption of the use of procurement cards (Item 118), and
- (l) integrated case management (Item 159); and

WHEREAS, the Finance Committee Letter sought disclosure of a purported plan by which Erie County intends to reduce expenses as a result of DISS or fleet management; and

WHEREAS, Erie County has failed to provide sufficient fiscal data, trends, or supporting documentation to substantiate the purported budgeted revenues and savings for 2007, and the purported projected revenues and savings for 2008-2010, as requested in the Finance Committee Letter; and

WHEREAS, Erie County has also failed to provide any plan for the reduction of Erie County's expenses via DISS or fleet management;

## **VI. The 2007-2010 Plan's Depletion of Erie County's Fund Balance Reserves**

WHEREAS, the 2007-2010 Plan acknowledges Erie County's "objective of reaching \$75 million of fund balance reserves"; and

WHEREAS, the 2007-2010 Plan nonetheless anticipates that Erie County "will have cumulative fund balance reserves" of only \$42 million upon completion of the audit of Erie County's 2006 finances; and

WHEREAS, Erie County cannot ascertain the accuracy of this \$42 million projection until completion of the audit in September 2007; and

WHEREAS, funding to subsidize replenishment of Erie County's risk retention fund and a likely contribution to the Buffalo Niagara Convention and Visitors' Bureau shall derive from Erie County's fund balance reserves; and

WHEREAS, Erie County's inability to realize the revenues and savings that the 2007-2010 Plan projects to result from implementation of the Matrix Initiatives shall further compromise the size of Erie County's fund balance reserves; and

WHEREAS, on November 7, 2006, Erie County voters shall decide whether to adopt Erie County Charter revisions that the Erie County Legislature unanimously approved, and that the Erie County Executive signed; and

WHEREAS, one of the recommended revisions to the Erie County Charter mandates the fund balance reserves to equal five percent (5%) of the budget for a given fiscal year; and

WHEREAS, the proposed 2007 Erie County budget plans for total revenues and total expenditures each to equal \$1,233,864,711, five percent of which amounts to \$61,693,235.55; and

WHEREAS, the 2007-2010 Plan merely expects the fund balance reserves to total "over \$50 million" at the end of 2007; and

WHEREAS, this \$50 million estimate falls well short of the over \$61 million that the fund balance reserves must contain at the end of 2007, provided that Erie County voters adopt on November 7, 2006, the proposed amendments to the Erie County Charter;

## **VII. Structural Imbalance in the Proposed Erie County Budget for Fiscal Year 2007**

WHEREAS, structural imbalance in Erie County's proposed fiscal year 2007 budget ("proposed 2007 budget"), which forms the basis for the first year of the 2007-2010 Plan, contributes to deficits greater than the 2007-2010 Plan expects in 2008, 2009, and 2010; and

WHEREAS, the proposed 2007 budget "assumes continuation of the 8.75% [sales tax] rate throughout" 2007, yet authorization for the extra 1% sales tax shall expire on February 28, 2007, while authorization for the extra 0.25% sales tax and the extra 0.5% sales tax shall expire on November 30, 2007; and

WHEREAS, if Erie County cannot continue to levy the extra 0.25% sales tax and the extra 0.5% sales tax beyond November 30, 2007, Erie County shall fail to realize approximately \$10 million in revenue that it anticipates to receive in December 2007; and

WHEREAS, pursuant to the proposed 2007 budget, Erie County also shall borrow \$6 million in order to subsidize the Consolidated Local Streets and Highway Improvement Program ("CHIPS") fund, and to facilitate payment of operating expenses; and

WHEREAS, such borrowing renders the proposed 2007 budget structurally imbalanced, in that recurring CHIPS expenditures shall exceed recurring CHIPS revenue; and

WHEREAS, the proposed 2007 budget also presumes that the imposition of new fees by the Erie County Clerk, the Erie County Department of Parks, and the Erie County Department of Health, as well as charging new fees to probationers, shall yield Erie County \$2,808,000 in revenue; and

WHEREAS, the 2007-2010 Plan does not reasonably assume the establishment of these fees, and does not reasonably project the revenue that they shall allegedly produce; and

WHEREAS, the proposed 2007 budget allots only \$8.6 million for overtime in the Erie County Sheriff's Department, even though actual expenditures for Sheriff's Department overtime exceeded \$10 million in 2005; and

WHEREAS, in response to the Finance Committee Letter, Erie County declared that it would seek greater reimbursement from New York State for overtime expenditures incurred by the Sheriff's Department's Jail Management Division; and

WHEREAS, given the uncertainty with respect to the New York State Legislature's approval for such enhanced reimbursement, it is unreasonable for Erie County to rely upon such approval in its projection in the proposed 2007 budget; and

WHEREAS, even if Erie County may levy the extra 0.25% sales tax and the extra 0.5% sales tax beyond November 30, 2007, the combination of \$6 million of borrowing to subsidize the CHIPS fund, the unreasonable projection of \$2.808 million in revenue from the establishment of new fees, and a potential \$2 million underestimation of overtime expenditures in the Erie County Sheriff's Department would amount to a deficit of \$10.808 million in the proposed 2007 budget; and

WHEREAS, the proposed 2007 budget also permits the Erie County Road Fund to operate at an \$8.6 million deficit;

### **VIII. Resolutions**

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Erie County Fiscal Stability Authority accepts the report of its Finance Committee concerning the 2007-2010 Plan; and

BE IT FURTHER RESOLVED that, having reviewed the 2007-2010 Plan submitted by the Erie County Executive, the Erie County Fiscal Stability Authority hereby finds, for the following reasons, that the 2007-2010 Plan does not "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":

(1) The 2007-2010 Plan does not reasonably assume that the Erie County Legislature and the New York State Legislature shall reauthorize through December 31, 2010, the extra 0.25% sales tax and the extra 0.5% sales tax originally levied in 2005.

(2) The 2007-2010 Plan does not reasonably assume that the Erie County Legislature and the New York State Legislature shall authorize the Erie County Clerk's Office and the Erie County Department of Health to increase fees as an added source of revenue.

(3) The 2007-2010 Plan does not reasonably assume that the Erie County Legislature shall impose, as an added source of revenue, parking fees upon patrons at Erie County parks.

(4) The 2007-2010 Plan does not provide sufficient fiscal data, trends, comparisons with other counties or municipalities, or other reasonable and appropriate assumptions based in documentary evidence to justify the revenues and savings that it projects to result from implementation of the 2007 Matrix Initiatives.

(5) The 2007-2010 Plan does not provide for adequate fund balance reserves, particularly in the event that voters adopt the Erie County Charter revisions that the Erie County Legislature and the Erie County Executive have unanimously endorsed.

(6) Notwithstanding possible continuation of the extra 0.25% sales tax and the extra 0.5% sales tax in Erie County beyond November 30, 2007, bonding to subsidize the CHIPS fund, the unreasonable projection of revenue from new fees, and inadequate funding for overtime in the Sheriff's Department create a structural imbalance in the proposed 2007 budget and in the first year of the 2007-2010 Plan.

BE IT FURTHER RESOLVED that, as a consequence, the Erie County Fiscal Stability Authority hereby finds the following:

(1) Because Public Authorities Law section 3957(1) mandates that Erie County's 2007-2010 Plan, as submitted by the Erie County Executive to the ECFSA on October 18, 2006, "*shall . . . 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*" (emphasis added), the 2007-2010 Plan violates section 3957(1), and hence does not comply with the provisions of section 3957.

(2) In submitting the 2007-2010 Plan, which violates Public Authorities Law section 3957(1), Erie County has violated a provision of the ECFSA Act, as codified by Title 3 of Article 10-D of the Public Authorities Law.

(3) Because Public Authorities Law section 3959(1)(e) mandates the ECFSA to impose a control period at any time that Erie County "shall have violated any provision" of Title 3 of Article 10-D of the Public Authorities Law, the ECFSA must impose a control period upon the County of Erie.

BE IT FURTHER RESOLVED that the Erie County Fiscal Stability Authority imposes a control period upon the County of Erie, as Public Authorities Law section 3959(1)(e) requires; and

BE IT FURTHER RESOLVED that the ECFSA regards imposition of this control period, and the careful scrutiny of Erie County's finances that shall result, to be in the best interests of the citizens of Erie County; and

BE IT FURTHER RESOLVED that the ECFSA pledges to work cooperatively with Erie County's elected officials toward returning fiscal stability to Erie County government; and

BE IT FURTHER RESOLVED that the ECFSA shall terminate this control period when it ascertains under Public Authorities Law section 3959 that "none of the conditions which would permit the [ECFSA] to impose a control period exist"; and

BE IT FURTHER RESOLVED that, if this control period remains in effect as of one year from the date of this resolution, then within sixty (60) days thereof, the ECFSA shall determine the circumstances that justify continuation of a control period, and enumerate those circumstances in writing.

This resolution shall take effect immediately.

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Stanley J. Keysa  
Secretary

Date: November 3, 2006