Erie County Fiscal Stability Authority

Resolution No. 07-04

IMPOSING A CONTROL PERIOD UPON THE COUNTY OF ERIE, AND DISAGREEING WITH ELEMENTS OF ERIE COUNTY'S REVISED 2007-2010 FINANCIAL PLAN

I. The Ability of the Erie County Fiscal Stability Authority to Review Erie County's 2007 Budget and Revised 2007-2010 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, New York State Public Authorities Law ("Public Authorities Law") section 3957(1) requires the Erie County Executive (the "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, the County Executive duly submitted his proposed budget for Erie County (the "County") 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, upon enacting Resolution 06-49 on November 3, 2006, the ECFSA determined that the 2007-2010 Plan did 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 each fiscal year," and thereby violated Public Authorities Law section 3957(1); and

WHEREAS, on December 12, 2006, the County adopted its fiscal year 2007 budget (the "2007 Budget"); and

WHEREAS, pursuant to Public Authorities Law section 3957(2)(c), the County submitted to the ECFSA its adopted 2007 Budget and a modified financial plan for fiscal years 2007-2010 (the "Revised 2007-2010 Plan") on December 28, 2006; 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, Public Authorities Law section 3957(2)(b) therefore instructs the ECFSA to determine whether the Revised 2007-2010 Plan complies with the provisions of section 3957 on or before January 12, 2007; and

WHEREAS, Public Authorities Law section 3957(2)(b) also necessarily instructs the ECFSA to review the 2007 Budget, which constitutes the first year of the Revised 2007-2010 Plan; and

WHEREAS, Public Authorities Law section 3957(2)(d) further instructs the ECFSA to "make a certification setting forth revenue estimates agreed to by the [ECFSA]," if it determines that the Revised 2007-2010 Plan "is complete and complies with the standards set forth in [section 3957(2)];" and

WHEREAS, Public Authorities Law section 3957(2)(e) alternatively instructs the ECFSA to provide notice of its disagreement with elements of the Revised 2007-2010 Plan "to the County, with copies to the [New York State] director of the budget, the state comptroller, the chair of the state assembly ways and means committee and the chair of the state senate finance committee if, in the judgment of the [ECFSA]," the Revised 2007-2010 Plan:

- (i) is incomplete;
- (ii) fails to contain projections of revenues and expenditures that are based on reasonable and appropriate assumptions and methods of estimations;
- (iii) fails to provide that operations of the county and the covered organizations will be conducted within the cash resources available; or
- (iv) fails to comply with the provisions of the ECFSA Act or other requirements of law;

II. <u>Structural Imbalance in the 2007 Budget</u>

WHEREAS, the 2007 Budget "assumes continuation of the 8.75% [sales tax] rate throughout" 2007; and

WHEREAS, the 8.75% sales tax rate consists of:

- (1) a 4% sales tax levied by New York State;
- (2) a 3% County sales tax that needs no further authorization;
- (3) an extra 1% sales tax ("extra 1% sales tax") levied by the County before 2005, and whose authorization will expire on February 28, 2008; and
- (4) an extra 0.75% sales tax ("extra 0.75% sales tax"), consisting of:
  - (a) a 0.25% sales tax, enacted by the County in 2005 upon New York State authorization, which will expire on November 30, 2007; and
  - (b) a 0.5% sales tax, enacted by the County in 2005 and authorized by New York State in 2006, and whose authorization will also expire on November 30, 2007; and

WHEREAS, the County may continue to levy the extra 0.75% sales tax beyond November 30, 2007, only after:

(1) the New York State Legislature introduces a bill to reauthorize the extra 0.75% 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 0.75% sales tax; and

WHEREAS, not all of the legislative actions necessary to re-enact the extra 0.75% sales tax have yet taken place; and

WHEREAS, continuing uncertainty concerning the prospects for completing the legislative actions necessary to re-enact the extra 0.75% sales tax at a time sufficient to ensure revenues therefrom for a full twelve months in 2007 renders the assumption of such revenues for a full twelve months in 2007 unreasonable and inappropriate; and

WHEREAS, if the County cannot continue to levy the extra 0.75% sales tax beyond November 30, 2007, Erie County will fail to realize approximately $10 million in revenue that it anticipates to receive in December 2007; and

WHEREAS, pursuant to the 2007 Budget, Erie County also will borrow $4.8 million in order to subsidize the Consolidated Local Streets and Highway Improvement Program ("CHIPS") fund, and to facilitate payment of operating expenses; and

WHEREAS, the County has overstated CHIPS revenues by including revenues from bond financing and from CHIPS reimbursement; and

WHEREAS, the Finance Committee has reviewed the 2007 Budget and determined that it also includes the following projections of revenues and expenditures that are based upon assumptions and methods of estimations that are not reasonable or appropriate:

(1) overstates expected interest earnings by $471,000;

(2) overstates expected revenue from fees charged by the County Clerk's Office by $300,000;

(3) states expected proceeds from the market-based revenue program by $150,000, which will not be realized;

(4) overstates expected revenue from greens fees charged by the County Parks Department by $110,807;

(5) overstates expected revenue from the County Youth Detention Facility by $400,000;

(6) understates the expected expenditure that the County Sheriff's Department's Jail Management Division will incur for employee overtime by $2.2 million;

(7) under-funds the County's risk retention fund by $2.5 million;

(8) overstates expected savings due to fleet consolidation and reduction by $268,500; and

(9) overstates expected savings due to purchasing initiatives by $735,000; and

WHEREAS, absent the sale of property tax liens through the Erie Tax Certificate Corporation ("ETCC"), the County also will not realize proceeds in the amount of $3.586 million; and

WHEREAS, even if the County may levy the extra 0.75% sales tax beyond November 30, 2007, the unreasonable and inappropriate assumptions identified above amount to a total deficit of $15,521,307 in the 2007 Budget; and

WHEREAS, the 2007 Budget is not balanced and, therefore, the County has failed to adopt a balanced budget for fiscal year 2007 within the time frames prescribed in the County Charter; and

WHEREAS, Public Authorities Law section 3959(1)(a) mandates the ECFSA to impose a control period upon the County's "[failure] to adopt a balanced budget within time frames prescribed in the county charter;"

III. <u>The Revised 2007-2010 Plan's Unreasonable and Inappropriate Assumptions of Revenues and Savings</u>

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

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

WHEREAS, the most recent version of the County's Summary of 2007 Matrix Initiatives, dated December 20, 2006, includes assumptions of the revenues or savings that each of these proposed actions will create over the duration of the Revised 2007-2010 Plan; and

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

WHEREAS, the County's Summary of 2007 Matrix Initiatives, to the extent that the Revised 2007-2010 Plan relies upon them, must nonetheless be based upon assumptions for revenues and savings that are reasonable, appropriate, and substantiated in fact; and

WHEREAS, the Finance Committee has reviewed the Revised 2007-2010 Plan and determined that it includes for fiscal years 2008-2010 (the "out years") the following projections of revenues and expenditures that are based upon assumptions and methods of estimations that are not reasonable or appropriate:

(1) states $300 million in proceeds from the extra 0.75% sales tax;
(2) overstates expected property tax revenue by $5,533,450, given the assumption of 2.5% annual growth in the assessed valuation of all properties in the County;
(3) overstates expected proceeds from the County sales tax by $10,151,669, regardless of continuation of the 8.75% sales tax rate;

(4) overstates expected interest earnings by $1,470,277;
(5) overstates expected revenue from fees charged by the County Clerk's Office by $900,000;
(6) overstates expected proceeds from the market-based revenue program by $300,000;
(7) overstates expected revenue from greens fees charged by the County Parks Department by $332,421;
(8) overstates expected revenue from forestry management by $810,000;
(9) overstates expected revenue from the County Youth Detention Facility by $750,000;
(10) overstates expected revenue from the establishment of a supervision fee for probationers by $1.044 million;
(11) understates expected replenishment of the County Road Fund by $7.808 million;
(12) under-funds the County's risk retention fund by $8.5 million;
(13) overstates expected savings due to managed attrition by $18,694,134;
(14) overstates expected savings due to collective bargaining by $19,784,654;
(15) overstates expected savings due to fleet consolidation and reduction by $805,500;
(16) overstates expected savings due to creation of a productivity bank by $3 million;
(17) overstates the expected reduction in expenditures at the County's residential treatment center by $2.756 million;
(18) overstates expected savings due to combating Medicaid fraud and abuse by $875,000;
(19) overstates expected savings due to the implementation of integrated case management and the Blueprint for Change by $7.2 million;
(20) overstates expected savings due to the development of a regional automated public health laboratory testing program by $352,500;
(21) overstates expected savings due to purchasing initiatives by $3.704 million;
(22) overstates expected savings due to pooled insurance bidding by $1.5 million;
(23) overstates expected savings due to limiting overtime through workforce realignment and targeted staffing by $3.6 million;
(24) overstates expected savings due to implementation of alternatives to incarceration by $9 million; and
(25) understates the expected expenditure to subsidize the County Sheriff's Department's Road Patrol by $11,481,378; and

WHEREAS, the County also will not realize expected proceeds in the amount of $4,118,203 from the sale of property tax liens through the ETCC; and

WHEREAS, even if the County may levy the extra 0.75% sales tax beyond November 30, 2007, the unreasonable and inappropriate assumptions identified above amount to a total deficit of $114,871,186 through the Revised 2007-2010 Plan's out years; and

WHEREAS, even though the Revised 2007-2010 Plan anticipates property tax increases to compensate for potential deficits during the out years, it is not reasonable or appropriate to assume, for purposes of financial planning, that the County will possess the political will necessary to enact sufficient property tax increases, aggregated over the three out years, to raise in excess of $114 million in revenue;

IV. Resolutions

NOW, THEREFORE, BE IT RESOLVED that the ECFSA adopts the report and findings of its Finance Committee concerning the 2007 Budget and the Revised 2007-2010 Plan; and

BE IT FURTHER RESOLVED that the County has failed to adopt a balanced budget within the time frames prescribed by the County Charter; and

BE IT FURTHER RESOLVED that, for the following reasons, the Revised 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 Revised 2007-2010 Plan does not reasonably assume that the Erie County Legislature and the New York State Legislature will reauthorize through December 31, 2010, the extra 0.75% sales tax;
>
> (2) Notwithstanding possible continuation of the extra 0.75% sales tax beyond November 30, 2007, the 2007 Budget contains a $15,521,307 deficit, which renders the first year of the Revised 2007-2010 Plan structurally imbalanced.
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> (3) Although the Revised 2007-2010 Plan contemplates property tax increases that would offset the failure to achieve projected revenues or savings, such property tax increases cannot correct the structural imbalance in the already adopted 2007 Budget, which constitutes the first year of the Revised 2007-2010 Plan, and it is unreasonable and inappropriate to assume that the County will effectuate property tax increases to the extent necessary to account for a $114,871,186 deficit, aggregated over the out years of 2008 through 2010.

BE IT FURTHER RESOLVED that, the County's December 28, 2006, submission of its 2007 Budget and the Revised 2007-2010 Plan is incomplete, because it does not include the quarterly expenditure or revenue projections required by Public Authorities Law section 3957(2)(c); and

BE IT FURTHER RESOLVED that, the ECFSA recommends to the County that a four-year financial plan for fiscal years 2007-2010 that would comply with the ECFSA Act would not rely upon the unreasonable and inappropriate assumptions and methods of estimations that are identified herein; and

BE IT FURTHER RESOLVED that, the ECFSA Executive Director, on behalf of the ECFSA, is hereby authorized and directed to send, via first-class mail, a copy of this resolution, in accordance with Public Authorities Law section 3957(2)(e), to:

> (a) the County,
> (b) the New York State Director of the Budget,
> (c) the Office of the New York State Comptroller,
> (d) the Chair of the New York State Assembly Ways and Means Committee, and
> (e) the Chair of the New York State Senate Finance Committee; and

BE IT FURTHER RESOLVED that, pursuant to Public Authorities Law section 3959(1)(a) and (1)(e), the ECFSA imposes a control period upon the County; and

BE IT FURTHER RESOLVED that, incident to and in furtherance of the imposition of a control period pursuant to the above resolution, the ECFSA hereby renews and continues the contract approval procedure and hiring freeze that it imposed prior hereto pursuant to ECFSA resolutions 06-51 and 06-56, respectively; and

BE IT FURTHER RESOLVED that, on account of the findings herein, and pursuant to Public Authorities Law section 3959(2)(a), the ECFSA disapproves the Revised 2007-2010 Plan; and

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

BE IT FURTHER RESOLVED that the ECFSA regards the imposition of a control period to be in the best interests of the citizens of the County; and

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

This resolution shall take effect immediately.

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Stanley J. Keysa
Secretary

Date: January 11, 2007

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