Erie County Fiscal Stability Authority

Resolution No. 07-108

REJECTING THE 2008-2011 FINANCIAL PLAN, AND
CONTINUING THE CONTROL PERIOD UPON THE COUNTY OF ERIE

I. <u>The Erie County Fiscal Stability Authority's Original Imposition of a Control Period</u>

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, from its creation by enactment of Title 3 of Article 10-D of the New York Public Authorities Law (the "ECFSA Act") on July 12, 2005, through November 3, 2006, the ECFSA functioned in an advisory capacity; and

WHEREAS, on October 18, 2006, the County of Erie (the "County") submitted to the ECFSA its proposed budget for fiscal year 2007 and a proposed 2007-2010 four-year financial plan (the "2007-2010 Plan"); and

WHEREAS, the ECFSA determined that the 2007-2010 Plan violated Public Authorities Law section 3957(1), because such plan failed to "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 [would] not exceed annual aggregate operating revenues for such fiscal year;" and

WHEREAS, Public Authorities Law section 3959(1)(e) mandated imposition of a control period on November 3, 2006, because the County had violated Public Authorities Law section 3957(1), part of the ECFSA Act, upon submitting the 2007-2010 Plan to the ECFSA; and

WHEREAS, on November 3, 2006, the ECFSA adopted Resolution 06-49, and duly imposed a control period upon the County; and

WHEREAS, the County subsequently commenced an Article 78 proceeding in New York State Supreme Court, Erie County (the "Supreme Court"), to challenge the ECFSA's imposition of a control period; and

WHEREAS, after reviewing written submissions and hearing oral arguments by the County and the ECFSA, the Supreme Court (Hon. Diane Y. Devlin, J.) issued on January

26, 2007, an order (the "January 26 Order"), inter alia, upholding the ECFSA's imposition of the control period; and

WHEREAS, no appeal was taken from the Supreme Court's January 26 Order, and therefore that Order is final and binding; and

WHEREAS, the control period first imposed on November 3, 2006, remains in effect; and

WHEREAS, pursuant to Resolution 06-49, if this control period were to remain in effect as of November 3, 2007, the ECFSA would "determine the circumstances that [would] justify continuation of [the] control period, and enumerate those circumstances in writing," within sixty (60) days thereafter; and

WHEREAS, the ECFSA shall terminate a control period only when it ascertains, pursuant to Public Authorities Law section 3959(1), that "none of the conditions which would permit the [ECFSA] to impose a control period exist;"

II. Requirements for the Erie County Executive's Submission of a 2008-2011 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 County Executive duly submitted his proposed budget for fiscal year 2008, and a four-year financial plan ("Plan") for fiscal years 2008-2011, to the ECFSA on October 15, 2007; and

WHEREAS, fiscal years 2009 through 2011 constitute the "Out Years" of the 2008-2011 Plan; and

WHEREAS, Public Authorities Law section 3957(2)(b) therefore instructs the ECFSA to determine on or before November 4, 2007, whether the 2008-2011 Plan complies with the provisions of section 3957; and

WHEREAS, Public Authorities Law section 3957(1) requires that the 2008-2011 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;"

III. Overestimated Revenue Sources in the Out Years of the 2008-2011 Plan

WHEREAS, the 2008-2011 Plan also assumes that real property values in the County will grow at an annual rate of 4%; and

WHEREAS, the Office of the New York State Comptroller has noted a historical annual growth rate averaging only 2.5% for County real property values over a five-year period; and

WHEREAS, from 1998 through 2007, County real property values grew at an average annual rate of 2.36%; and

WHEREAS, assuming 2.5% annual growth in property values, the County would realize $17,818,808 less in property taxes than it has projected to collect during the Out Years; and

WHEREAS, the ECFSA consequently lacks reasonable assurance that the County will receive $17,818,808 in projected real property tax revenues during the Out Years; and

WHEREAS, the County has projected receiving $6 million in revenue during the Out Years from the lease of space on cellular phone towers situated on property owned by the County; and

WHEREAS, the County has failed to submit a marketing plan for generating such revenue; and

WHEREAS, in the absence of such a marketing plan, the ECFSA lacks reasonable assurance that the County will receive $6 million in revenue during the Out Years from the lease of space on cellular phone towers;

IV. Underestimated Expenses in the Out Years of the 2008-2011 Plan

WHEREAS, a Consent Decree issued by the New York State Supreme Court requires the County to make debt service payments on behalf of the Erie County Medical Center Corporation ("ECMC"); and

WHEREAS, the 2008-2011 Plan does not provide for the County's continuation of these debt service payments during the Out Years; and

WHEREAS, the 2008-2011 Plan would project such payments to equal a combined $35,155,000 during the Out Years; and

WHEREAS, the ECFSA consequently finds that the 2008-2011 Plan fails to account for $35,155,000 in County expenditures for ECMC debt service payments during the Out Years; and

WHEREAS, the 2008-2011 Plan also does not provide for intergovernmental transfer ("IGT") payments by the County to ECMC; and

WHEREAS, the County's May 2007 Budget Monitoring Report indicates that IGT payments to ECMC would equal $8,874,200 in 2008; and

WHEREAS, assuming annual 2% growth in the County's IGT payments to ECMC, they would equal $9,051,684 in 2009, $9,232,718 in 2010, and $9,417,372 in 2011, for a total of $27,701,774 during the Out Years; and

WHEREAS, a letter dated October 26, 2007, from the ECFSA Executive Director to the County Director of Budget, Management and Finance (the "October 26 letter"), requested a rationale for the County's failure to account for IGT payments to ECMC in the 2008-2011 Plan; and

WHEREAS, in response, the County cited its pursuit of litigation to terminate its obligation to make IGT payments to ECMC; and

WHEREAS, the ECFSA lacks reasonable assurance that such litigation would be pursued, or that it would achieve the projected savings; and

WHEREAS, the ECFSA consequently finds that the 2008-2011 Plan fails to account for IGT payments amounting to $8,874,200 in 2008, and $27,701,774 during the Out Years; and

WHEREAS, the 2008-2011 Plan has also estimated that the continuation of road patrols by the County Sheriff's Department in certain municipalities would cost $12,961,542 during the Out Years; and

WHEREAS, the 2008-2011 Plan assumes that municipalities would reimburse the County for such cost; and

WHEREAS, the County Legislature, and both the Democratic and Republican candidates for County Executive, have supported the continuation of Sheriff's Department road patrols as subsidized by the County; and

WHEREAS, the ECFSA lacks reasonable assurance that the County will not subsidize Sheriff's Department road patrols during the Out Years; and

WHEREAS, the ECFSA consequently finds that the 2008-2011 Plan fails to account for an expenditure of $12,961,542 for County Sheriff's Department road patrols during the Out Years; and

WHEREAS, the 2008-2011 Plan has also estimated savings of $7,200,000 during the Out Years, due to implementation of integrated case management; and

WHEREAS, the October 26 letter requested the County to substantiate such projected savings; and

WHEREAS, the County has not provided any models by which other counties have achieved such savings due to integrated case management; and

WHEREAS, the ECFSA still lacks reasonable assurance that the County will achieve those savings; and

WHEREAS, the 2008-2011 Plan also projects the following savings for the County during the Out Years:

(a) $19,747,123, due to anticipated outcomes of collective bargaining;
(b) $8,760,000, due to implementation of alternatives to incarceration;
(c) $4,078,294, due to information technology reform; and
(d) $2,304,630, due to improvements in risk management; and

WHEREAS, the ECFSA regards these projections as speculative, and lacks reasonable assurance that the savings will materialize; and

WHEREAS, assuming a 50% discount of those speculative projections, the 2008-2011 Plan consequently underestimates expenditures by another $17,445,024 during the Out Years; and

WHEREAS, the overestimated revenues and underestimated expenses cited in sections III and IV of this Resolution contribute to a deficit of over $118 million for the Out Years of the 2008-2011 Plan;

V. <u>Structural Imbalance in the County Executive's Proposed 2008 Budget</u>

WHEREAS, structural imbalance in the County's proposed 2008 budget, which forms the basis for the first year of the 2008-2011 Plan, contributes to deficits greater than the 2008-2011 Plan expects in 2009, 2010, and 2011; and

WHEREAS, on September 28, 2007, the ECFSA adopted Resolution 07-90, by which it approved a Purchase and Sale Agreement for the sale of County property tax liens to Plymouth Tax Services, LLC, subject to several conditions; and

WHEREAS, those conditions included the following:

(a) that only the portion of the tax lien sale budgeted in the County's 2007 general operating fund budget (and related financial plan) remain in the general fund, and that any excess be transferred to the capital fund to be used as pay-as-you-go revenue for 2007 capital projects currently designated for bonding;

(b) that capital borrowing for fiscal year 2007 be reduced by the amount of the tax lien sale dollars transferred to the capital fund;

(c) that a consistent accounting of the current amount budgeted for the tax lien sale in the 2007 County budget and in the 2008 County financial plan be completed jointly by the County Comptroller and by the County Division of Budget, Management and Finance, and be forwarded to the ECFSA prior to final execution of the Purchase and Sale Agreement;

(d) that the County Executive propose, and the County Legislature approve, appropriate legislation to authorize the transfer of excess tax lien sale proceeds from the operating fund to the capital fund; and

(e) that the County Executive propose, and the County Legislature approve, appropriate legislation requesting that the ECFSA perform capital borrowing on behalf of the County for fiscal year 2007; and

WHEREAS, pursuant to Resolution 07-90, the County may not execute the Purchase and Sale Agreement, unless and until it satisfies all five of these conditions; and

WHEREAS, to date, the County has not satisfied the conditions, and has not executed the Purchase and Sale Agreement; and

WHEREAS, the ECFSA consequently lacks reasonable assurance that the County will realize $4,646,827 in budgeted revenue in fiscal year 2008 from the sale of property tax liens; and

WHEREAS, pursuant to the proposed 2008 budget, Erie County would also borrow $3.6 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 2008 budget structurally imbalanced, in that recurring CHIPS expenditures would exceed recurring CHIPS revenue; and

WHEREAS, the proposed 2008 budget also permits the County Road Fund to operate at a $6.9 million deficit; and

WHEREAS, the proposed 2008 budget also fails to account for IGT payments of $8,874,200 to ECMC; and

VI. Additional Concerns Regarding the 2008-2011 Plan

WHEREAS, the 2008-2011 Plan also assumes continuation of an 8.75% sales tax rate in the County throughout the four-year period; and

WHEREAS, the overall 8.75% sales tax rate includes a 1% sales tax (the "extra 1% sales tax") levied by Erie County, and whose authorization shall expire on February 29, 2008;

WHEREAS, the County may continue to levy the extra 1% sales tax beyond February 29, 2008, only after:

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

(b) ten (10) Erie County legislators approve a home-rule message requesting the bill's enactment;

(c) the New York State Legislature votes in favor of the reauthorization bill already introduced; and

(d) ten (10) Erie County legislators subsequently vote to enact the extra 1% sales tax; and

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

WHEREAS, failure to re-enact the extra 1% sales tax would create a deficit of over $426 million in the Out Years of the 2008-2011 Plan; and

WHEREAS, the County also has commissioned an actuarial report, which evaluated the cost of supplying medical and dental benefits for retired County employees; and

WHEREAS, that report estimated the present value of such benefits at over $981 million, as of December 31, 2006; and

WHEREAS, retroactive settlement of collective bargaining disputes with bargaining units representing County employees could create further expenditures that the County does not anticipate in the 2008-2011 Plan;

VII. Resolutions

NOW, THEREFORE, BE IT RESOLVED that, having reviewed the 2008-2011 Plan submitted by the Erie County Executive, the Erie County Fiscal Stability Authority hereby finds, for the following reasons, that the 2008-2011 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 2008-2011 Plan does not reasonably assume the County's collection of revenues from the sale of property tax liens via a Purchase and Sale Agreement with Plymouth Tax Services, LLC.

(2) The 2008-2011 Plan does not reasonably assume a 4% annual increase in real property values in the County.

(3) The 2008-2011 Plan does not reasonably assume the County's realization of revenue from the lease of space on cellular phone towers.

(4) The 2008-2011 Plan does not reasonably assume that the County need not make debt service payments on behalf of ECMC.

(5) The 2008-2011 Plan does not reasonably assume that the County need not make IGT payments to ECMC.

(6) The 2008-2011 Plan does not reasonably assume that the County need not subsidize Sheriff's Department road patrols in certain municipalities.

(7) The 2008-2011 Plan does not provide sufficient fiscal data, trends, or other reasonable and appropriate assumptions based in documentary evidence to justify the savings that it projects to result from the implementation of integrated case management.

(8) Bonding to subsidize the CHIPS fund, the deficit in the County Road Fund, the unreasonable assumption of the County's collection of revenues from the sale of property tax liens, and the failure to account for IGT payments to ECMC would contribute to a structural imbalance in the proposed 2008 budget and in the first year of the 2008-2011 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 the County's 2008-2011 Plan, as submitted by the County Executive to the ECFSA on October 15, 2007, "*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 2008-2011 Plan violates section 3957(1).

(2) In submitting the 2008-2011 Plan, the County has violated a provision of the ECFSA Act.

(3) Public Authorities Law section 3959(1)(e) mandates the ECFSA to impose a control period at any time that the County "shall have violated any provision" of the ECFSA Act.

BE IT FURTHER RESOLVED that, pursuant to Resolution 06-49, the ECFSA finds that the County's violation of the ECFSA Act in submitting its 2008-2011 Plan constitutes a condition that justifies continuation of the control period that the ECFSA originally imposed upon the County on November 3, 2006; and

BE IT FURTHER RESOLVED that the Erie County Fiscal Stability Authority rejects the 2008-2011 Plan as submitted, because it violates Public Authorities Law section 3957(1); and

BE IT FURTHER RESOLVED that the ECFSA renews and continues the control period upon the County, as Public Authorities Law section 3959(1) requires; and

BE IT FURTHER RESOLVED that this Resolution constitutes the ECFSA's comments concerning the 2008-2011 Plan as submitted; and

BE IT FURTHER RESOLVED that the ECFSA regards renewal and continuation of this control period, and the careful scrutiny of Erie County's finances has resulted since its imposition, to be in the best interests of the citizens of Erie 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; and

BE IT FURTHER RESOLVED that the ECFSA shall terminate this control period when it ascertains pursuant to 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 2, 2007