Erie County Fiscal Stability Authority

Resolution No. 08-60

REJECTING ERIE COUNTY'S FURTHER REVISED 2008-2011 FINANCIAL PLAN, AND CONTINUING THE CONTROL PERIOD UPON THE COUNTY

I. The Ability of the Erie County Fiscal Stability Authority to Review Erie County's Further Revised 2008-2011 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, then-County Executive Joel Giambra submitted his proposed budget for Erie County (the "County") 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, by Resolution 07-108 on November 2, 2007, the ECFSA determined that the 2008-2011 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 New York Public Authorities Law ("Public Authorities Law") section 3957(1); and

WHEREAS, Public Authorities Law section 3957(2) authorizes Erie County (the "County") to "modify . . . [its] four-year financial plan covering the county and [its] covered organizations . .;" and

WHEREAS, the County submitted to the ECFSA its adopted 2008 Budget and a modified financial plan for fiscal years 2008-2011 on December 21, 2007; and

WHEREAS, by Resolution 08-11 on January 4, 2008, the ECFSA determined that the financial plan modification similarly 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 also violated Public Authorities Law section 3957(1); and

WHEREAS, pursuant to Resolution 08-11, the ECFSA further determined that the modification relied upon "unreasonable and inappropriate assumptions and methods of estimations;" and

WHEREAS, on May 1, 2008, County Executive Christopher Collins submitted to the ECFSA a further revised financial plan for fiscal years 2008-2011 (the "May 2008 Plan"); and

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

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

WHEREAS, Public Authorities Law section 3957(2)(b) therefore instructs the ECFSA to determine on or before May 16, 2008, whether the May 2008 Plan complies with the provisions of section 3957;

II. Unsubstantiated Savings in the May 2008 Plan

WHEREAS, Public Authorities Law section 3957-a authorizes the ECFSA to provide to the County certain efficiency incentive grants ("efficiency grants"), subsidized by New York State, to fund implementation of "a plan for achieving recurring savings through innovations and reengineering;" and

WHEREAS, the May 2008 Plan assumes that the County will spend $21 million in efficiency grant funds to implement plans that will achieve $11.25 million in aggregate savings through 2011; and

WHEREAS, the ECFSA has only approximately $16.5 million in efficiency-grant funding at its disposal to release to the County; and

WHEREAS, given New York State's multi-billion dollar budget deficit, the ECFSA lacks reasonable assurance that the State will appropriate an additional $5 million in efficiency grant funding to the ECFSA over the next four years; and

WHEREAS, the County has submitted no detailed analysis to the ECFSA to support or explain how the County would achieve the $11.25 million in savings projected to result from the expenditure of $21 million in efficiency-grant funds; and

WHEREAS, the ECFSA consequently lacks reasonable assurance that the County will achieve any of the savings contemplated by the May 2008 Plan to result from the implementation of initiatives to be funded by efficiency grants; and

WHEREAS, the May 2008 Plan also projects that the County will save $22.1 million through 2011 as the result of the implementation of "Six Sigma" methodologies; and

WHEREAS, the County has provided insufficient information to provide reasonable assurance that Six Sigma initiatives will achieve such savings; and

WHEREAS, it appears likely that the May 2008 Plan "double counts" savings projected to result from the expenditure of efficiency grant funds, also as savings that would derive from the implementation of Six Sigma and/or other initiatives; and

WHEREAS, the ECFSA finds that the May 2008 Plan fails to provide reasonable assurance that the County would save $550,000 in 2008, and $12.45 million during the Out Years, as the result of implementation of Six Sigma initiatives; and

WHEREAS, the May 2008 Plan also contemplates the conversion of 200 positions per year in County government from full-time to "regular part time" ("RPT"), such that the County would employ 800 regular part-time workers by the end of 2011; and

WHEREAS, the County's general fund includes approximately 4,000 full-time employment positions, of which four to five percent turn over each year; and

WHEREAS, the County has indicated that certain positions are "not RPT eligible;" and

WHEREAS, the pool of persons interested in RPT positions, which require working only 39 hours per week at much lower benefits than full time employees receive, may prove limited; and

WHEREAS, the County has filled less than 60% of its available RPT positions; and

WHEREAS, the May 2008 Plan also fails to detail any plan for eliminating positions through attrition or for otherwise taking advantage of efficiencies; and

WHEREAS, the ECFSA consequently finds that the May 2008 Plan fails to provide reasonable assurance that the County would save $700,000 in 2008, and $6.3 million during the Out Years, as a result of the conversion of employment positions to RPT status; and

WHEREAS, the May 2008 Plan projects that the County will achieve savings due to anticipated outcomes of collective bargaining; and

WHEREAS, since December 2007, when the County first made this projection, it has realized no substantive progress in negotiations with labor unions representing County employees; and

WHEREAS, the ECFSA recognizes an opportunity for the County to achieve savings as the result of collective bargaining, but lacks reasonable assurance that such savings will materialize in 2008 as projected by the May 2008 Plan; and

WHEREAS, assuming that savings due to outcomes of collective bargaining will not materialize until 2009, the May 2008 Plan consequently fails to provide reasonable assurance of projected savings in the amount of another $4,990,784 during the Out Years; and

WHEREAS, the May 2008 Plan also projects that the County will achieve savings due to implementation of alternatives to incarceration; and

WHEREAS, such alternatives were contemplated to yield savings by reducing the inmate population in the County's jails, and by reducing the costs of overtime pay for employees in the County Sheriff's Department; and

WHEREAS, since 2006, the ECFSA has awarded $684,000 in efficiency grants to fund implementation of alternatives to incarceration; and

WHEREAS, for the first quarter of 2008, overtime costs in the County Sheriff's Department nonetheless have run over budget by $822,058; and

WHEREAS, the inmate population in the County's jails has not decreased in the past year, even though the County originally proposed alternatives to incarceration in September 2005; and

WHEREAS, the ECFSA recognizes an opportunity for the County to achieve savings due to alternatives to incarceration, but lacks reasonable assurance that such savings will materialize in 2008 as projected by the May 2008 Plan; and

WHEREAS, assuming that savings due to alternatives to incarceration will not materialize until 2009, the May 2008 Plan consequently fails to provide reasonable assurance of projected savings in the amount of another $2.19 million during the Out Years; and

WHEREAS, the May 2008 Plan also projects that the County would achieve over $4 million in savings due to information technology reform; and

WHEREAS, the County has not provided the ECFSA with reasonable assurance that it can realize such savings in 2008; and

WHEREAS, the County projects that such savings will result only from an additional capital expenditure of $2.5 million in 2008 and 2009; and

WHEREAS, assuming that savings due to information technology reform will not materialize until 2009, the May 2008 Plan consequently fails to provide reasonable assurance of projected savings in the amount of another $1,368,375 during the Out Years;

III. <u>Unsubstantiated Revenues in the May 2008 Plan</u>

WHEREAS, the May 2008 Plan assumes that the County will receive $2 million in revenue in 2010, and $3.5 million in 2011, from proceeds to be realized from the operation of a gambling casino by the Seneca Nation of Indians in the City of Buffalo (the "Seneca Buffalo Casino"); and

WHEREAS, no legislation presently in effect would entitle the County to such revenues; and

WHEREAS, the ECFSA lacks reasonable assurance that New York State would enact legislation so entitling the County; and

WHEREAS, New York State Senator William Stachowski and State Assemblywoman Crystal Peoples have co-sponsored legislation that would allocate any and all Seneca Buffalo Casino revenue available to local governments to the City of Buffalo; and

WHEREAS, the ECFSA consequently finds that the May 2008 Plan fails reasonably to project revenue in the amount of $5.5 million during the Out Years;

IV. Underestimated Expenses in the May 2008 Plan

WHEREAS, the May 2008 Plan 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, although the May 2008 Plan includes a February 2008 IGT payment to ECMC in the amount of $2,049,667 as an expenditure item, it fails to account for another $6,824,533 in IGT payments 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, the ECFSA Executive Director forwarded to the County on May 9, 2008, a letter requesting justification for the May 2008 Plan's failure to account for IGT payments to ECMC; and

WHEREAS, responding to this request on May 13, 2008, the County provided the ECFSA with a copy of the Final Report of the New York State Commission on Healthcare Facilities in the 21st Century, as well as a Westlaw printout concerning the IGT; and

WHEREAS, such submission does not constitute documentation providing the ECFSA reasonable assurance that the County need not make IGT payments to ECMC during the years covered by the May 2008 Plan; and

WHEREAS, the ECFSA consequently finds that the May 2008 Plan fails to account for IGT payments amounting to $6,824,533 in 2008, and $27,701,774 during the Out Years; and

WHEREAS, the May 2008 Plan also assumes that the County need not make $15.25 million in debt service payments on behalf of ECMC during the Out Years; and

WHEREAS, a Consent Decree issued by the New York State Supreme Court requires the County to make such debt service payments; and

WHEREAS, the May 2008 Plan consequently fails to account for debt service payments amounting to $15.25 million during the Out Years; and

WHEREAS, the May 2008 Plan also assumes that the County will save another $20 million through 2011, due to a partial freeze in discretionary spending; and

WHEREAS, the May 2008 Plan anticipates that the County will not spend $7.66 million in appropriate funds in 2008, and thereby realize net savings amounting to $5 million; and

WHEREAS, the ECFSA questions the reasonableness of this assumption, because the County failed to spend only $2.9 million in appropriated funds in 2007, and realized approximately $2 million in savings as a result; and

WHEREAS, the ECFSA has reasonable assurance only that the County would achieve similar annual savings, adjusted by an inflationary factor, in 2008 through 2011, as the result of failing to spend appropriated funds; and

WHEREAS, the ECFSA consequently discounts any savings that would materialize from the County's failure to spend appropriated funds, by $2.9 million in 2008, and by $8.2 million during the Out Years; and

WHEREAS, the unreasonable savings and revenues and underestimated expenses cited in sections II, III, and IV of this Resolution contribute to a deficit of over $90 million for the Out Years of the May 2008 Plan;

V. Structural Imbalance in the First Year of the May 2008 Plan

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

WHEREAS, pursuant to the 2008 Budget, Erie County would borrow $3.8 million in order to subsidize the Consolidated Local Streets and Highway Improvement Program ("CHIPS") fund, and to facilitate payment of operating expenses; and

WHEREAS, such borrowing renders the 2008 Budget structurally imbalanced, in that recurring CHIPS expenditures would exceed recurring CHIPS revenue; and

WHEREAS, the 2008 Budget also permits the County Road Fund to operate at a deficit, which now totals $8,443,000, according the County's Financial Report dated March 31, 2008; and

WHEREAS, the 2008 Budget also fails to account for IGT payments of $6,824,533 to ECMC; and

WHEREAS, the ECFSA has also determined that the first year of the May 2008 Plan fails to provide reasonable assurance of:

(1) savings due to the implementation of Six Sigma methodologies by $550,000,
(2) savings due to the conversion of employment positions to regular part-time status by $700,000, and
(3) savings due to a partial freeze in the County's discretionary spending, by $2.9 million; and

WHEREAS, because of (i) borrowing to subsidize CHIPS; (ii) the deficit in the County Road Fund; (iii) the failure to account for IGT payments to ECMC; and (iv) unreasonable projections of savings due to the implementation of Six Sigma methodologies, the conversion of employment positions to regular part-time status, and a partial freeze in discretionary spending, the first year of the May 2008 Plan is unbalanced;

VI. <u>Additional Concerns Regarding the May 2008 Plan</u>

WHEREAS, the May 2008 Plan mentions the possible sale of County tax liens as an "Other Item" for consideration; and

WHEREAS, any projected revenues that the County might realize from the sale of tax liens are speculative, given recent changes in the American housing market, and their impact upon tax lien purchasers; and

WHEREAS, for accounting purposes, the County may need to treat proceeds from the sale of tax liens as collateralized borrowing, pursuant to Governmental Accounting Standards Board Statement No. 48 ("Determining Whether a Transaction is a Sale or Collateralized Borrowing"); and

WHEREAS, the May 2008 Plan also notes $7 million in "chargeback" funds that it projects Erie Community College ("ECC") to receive; and

WHEREAS, ECC receives chargebacks as reimbursement for the cost of subsidizing the matriculation of County residents at community colleges outside the County; and

WHEREAS, such cost cancels any revenues that the County might realize due to chargebacks, because two years lapse between a County resident's matriculation at a community college outside the County, and ECC's receipt of the corresponding chargeback; and

WHEREAS, the County has also 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 May 2008 Plan does not anticipate;

VII. Resolutions

NOW, THEREFORE, BE IT RESOLVED that the ECFSA adopts the report and findings accepted by its Finance Committee concerning the May 2008 Plan; and

BE IT FURTHER RESOLVED that this Resolution and the Staff's report and findings constitute the ECFSA's comments concerning the May 2008 Plan as submitted; and

BE IT FURTHER RESOLVED that, for the following reasons, the May 2008 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 May 2008 Plan does not provide sufficient documentation or other reasonable assurance to substantiate the savings that it projects to result from the expenditure of efficiency grant funds, from the implementation of Six Sigma methodologies, or from the conversion of full-time employment positions to regular part-time status.

(2) The May 2008 Plan does not provide reasonable assurance to substantiate the entirety of the savings that it projects to result from collective bargaining, implementation of alternatives to incarceration, or improvements in risk management.

(3) The May 2008 Plan does not reasonably assume that the County will receive any revenue from proceeds of the operation of the Seneca Buffalo Casino.

(4) The May 2008 Plan does not reasonably assume that the County need not make IGT payments to ECMC, or debt service payments on ECMC's behalf.

(5) The May 2008 Plan does not reasonably assume that the County will realize the entirety of the savings projected to result from a partial freeze on discretionary expenditures.

(6) Bonding to subsidize the CHIPS fund, the deficit in the County Road Fund, the failure to account for IGT payments to ECMC, and unreasonable savings projections contribute to a structural imbalance in the 2008 Budget and in the first year of the May 2008 Plan.

BE IT FURTHER RESOLVED that the ECFSA recommends that any further revision of the County's four-year financial plan for 2008-2011 correct these enumerated deficiencies; and

BE IT FURTHER RESOLVED that the ECFSA hereby finds the following:

(1) Because Public Authorities Law section 3957(1) mandates that the May 2008 Plan "*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), it violates section 3957(1).

(2) In submitting the May 2008 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 the ECFSA finds that the County's violation of the ECFSA Act in submitting the May 2008 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 ECFSA rejects the May 2008 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 the ECFSA regards renewal and continuation of this control period, and the careful scrutiny of Erie County's finances that 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, on account of the findings herein, and pursuant to Public Authorities Law section 3959(2)(a), the ECFSA disapproves the May 2008 Plan.

This resolution shall take effect immediately.

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Stanley J. Keysa
Secretary

Date: May 15, 2008