Erie County Fiscal Stability Authority

Resolution No. 08-101

REJECTING THE 2009-2012 FINANCIAL PLAN, FINDING STRUCTURAL IMBALANCE IN THE PROPOSED 2009 BUDGET, AND CONTINUING THE CONTROL PERIOD UPON THE COUNTY OF ERIE

I. The Erie County Fiscal Stability Authority's <u>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, 2007 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, 2007 Order, which is therefore final and binding; and

WHEREAS, on November 2, 2007, the ECFSA adopted Resolution 07-108, rejecting the County's four-year financial plan for fiscal years 2008-2011 (the "2008-2011 Plan") because it also 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, Resolution 07-108 continued the control period upon the County of Erie on this basis, pursuant to Public Authorities Law sections 3957(1) and 3959(1)(e); and

WHEREAS, on January 4, 2008, the ECFSA adopted Resolution 08-11, upon determining pursuant to Public Authorities Law section 3957(2)(e) that a revised version of the 2008-2011 Plan "fail[ed] to contain projections of revenues and expenditures that [were] based on reasonable and appropriate assumptions and methods of estimations;" and

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

WHEREAS, pursuant to Resolution 07-108, if this control period were to remain in effect as of November 2, 2008, 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. The Erie County Executive's Submission of a 2009-2012 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 2009, and a four-year financial plan for fiscal years 2009-2012 (the "2009-2012 Plan"), to the ECFSA on October 15, 2008; and

WHEREAS, fiscal years 2010 through 2012 constitute the "Out Years" of the 2009-2012 Plan; and

WHEREAS, Public Authorities Law section 3957(1) requires that the 2009-2012 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;"

WHEREAS, Public Authorities Law section 3957(2)(b) instructs the ECFSA to determine on or before November 4, 2008, whether the 2009-2012 Plan complies with the provisions of ECFSA Act, including section 3957; and

WHEREAS, pursuant to Public Authorities Law section 3959(2)(b), the ECFSA "shall approve or disapprove the financial plan and financial plan modifications of the county, . . . and shall formulate and adopt its own modifications to the financial plan, <u>as</u> <u>necessary</u>" (emphasis added); and

WHEREAS, during the present control period, the ECFSA must therefore formulate and adopt its own modifications to the 2009-2012 Plan, but only "<u>as</u> <u>necessary</u>" (emphasis added); and

WHEREAS, such necessity does not exist so long as the ECFSA lacks reasonable assurance of the political will of the County, the County Executive, and the County Legislature to propose and adopt County budgets that would conform to any modifications that the ECFSA would make to the 2009-2012 Plan; and

WHEREAS, in the absence of such political will, there is no necessity for the ECFSA to modify the County Executive's 2009-2012 Plan, and it need not do so;

III. Overestimated Revenue Sources in the Out Years of the 2009-2012 Plan

WHEREAS, the 2009-2012 Plan assumes that County sales tax revenues will increase by 3% in each of the Out Years; and

WHEREAS, the July 2008 County Budget Monitoring Report ("BMR") indicates that annual County sales tax revenues would increase by only approximately 1.5% from 2007 to 2008; and

WHEREAS, a four-year financial plan modification submitted by the County in May 2008 assumed only a 2.5% increase in sales tax revenue in each of 2009, 2010, and 2011; and

WHEREAS, the County Executive's proposed Budget for fiscal year 2009 assumes that annual sales tax revenue will increase by only 0.5% from 2008 to 2009; and

WHEREAS, the median annual growth rate in County sales tax revenues for the past ten years has been only 1.6%; and

WHEREAS, since 1993, every year in which County sales tax revenues have increased by more than 5% over the previous year has been followed by a decrease in sales tax revenues or a decrease in the rate of growth of sale tax revenues in each of the succeeding three years; and

WHEREAS, stock market declines in September and October 2008, coupled with the recent credit crunch in the American housing market, portend an economic slowdown that will lead to lower County sales tax revenues than projected; and

WHEREAS, the ECFSA deems it reasonable to assume that County sales tax revenues will increase by only the median growth rate of 1.6% in each of 2009, 2010, and 2011, rather than by 3% annually; and

WHEREAS, the ECFSA consequently lacks reasonable assurance that the County will receive \$16.59 million in sales tax revenues during the Out Years; and

WHEREAS, the 2009-2012 Plan further assumes that real property values in the County will grow at an annual rate of over 4.4%; and

WHEREAS, the historical annual growth rate of real property values in the County has averaged only 2.76% over the last ten years; and

WHEREAS, in eight of those ten years, real property values grew by less than 4.4%; and

WHEREAS, real property values in the County increased by 6.23% in 2007 and by 5.9% in 2008, but are projected by the County's own schedule to increase by only 3.66% in 2009;

WHEREAS, assuming 2.76% annual growth in property values, the County would realize \$21.43 million 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 \$21.43 million in projected real property tax revenues during the Out Years; and

WHEREAS, the 2009-2012 Plan further assumes that the County will collect new or increased fees for the use of shelters and camping lots in County parks, County golf courses, and primary care services, as well as other fees to be charged by the County Clerk and the County Department of Health; and

WHEREAS, an increase in fees charged by the County Clerk and the 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) 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) County legislators subsequently vote to enact the proposed fee increase; and

WHEREAS, the County has not provided reasonable assurance that ten County legislators plan to support an increase in fees charged by the County Clerk's Office or the County Department of Health; and

WHEREAS, a super majority of the County legislators must approve the other fee increases contemplated by the 2009-2012 Plan; and

WHEREAS, the County has not provided reasonable assurance that the County Legislature will approve these other fee increases; and

WHEREAS, the ECFSA consequently lacks reasonable assurance that the County will receive $577,000 in revenue in 2009, and $1,766,000 in revenue during the Out Years, due to the imposition of additional and increased fees;

IV. <u>Underestimated Expenses in the Out Years of the 2009-2012 Plan</u>

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

WHEREAS, the 2009-2012 Plan does not provide for the County's continuation of these debt service payments during the Out Years; and

WHEREAS, such payments would equal a combined $16.16 million during the Out Years; and

WHEREAS, the ECFSA consequently finds that the 2009-2012 Plan fails to account for $16.16 million in County expenditures for ECMC debt service payments during the Out Years; and

WHEREAS, the 2009-2012 Plan also does not provide for intergovernmental transfer ("IGT") payments by the County to ECMC, even though the County expects to make $16 million in IGT payments over three years, beginning in 2009; and

WHEREAS, this $16 million liability does not include additional Acute IGT Payments that the County owes ECMC;

WHEREAS, the ECFSA estimates that the County's aggregate IGT payments owing to ECMC will equal $11.71 million in 2009, as well as $12.01 million in 2010, $12.01 million in 2011, and $6.67 million in 2012, for a total of $30.69 million during the Out Years; and

WHEREAS, the ECFSA lacks reasonable assurance that the County will successfully dispute these IGT payments, or negotiate them downward;

WHEREAS, the ECFSA consequently finds that the 2009-2012 Plan fails to account for IGT payments amounting to $11.71 million in 2009, and $30.69 million during the Out Years; and

WHEREAS, each year of the 2009-2012 Plan also budgets only $11 million in overtime wages across all departments in County government; and

WHEREAS, total overtime costs amounted to over $17 million in 2007; and

WHEREAS, in the first seven months of 2008, the County spent nearly $9 million in overtime wages; and

WHEREAS, if the County continues its present trend, overtime will exceed $15 million for 2008; and

WHEREAS, the County has reported to the ECFSA that it plans to save overtime costs through "vacancy savings generated by departmental operations during the course of business;" and

WHEREAS, the County has not provided reasonable assurance that such vacancy savings, even if they materialize, will reduce the County's overtime costs; and

WHEREAS, the ECFSA estimates that the 2009-2012 Plan underestimates overtime expenditures by $4.04 million in 2009, and by $4.1 million in 2010, $4.16 million in 2011, and $4.23 million in 2012, for a total of $12.49 million 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 $99 million for the Out Years of the 2009-2012 Plan;

V. Structural Imbalance in the County Executive's Proposed 2009 Budget

WHEREAS, structural imbalance in the County's proposed 2009 budget ("2009 Budget"), which forms the basis for the first year of the 2009-2012 Plan, contributes to deficits greater than the 2009-2012 Plan expects in 2010, 2011, and 2012; and

WHEREAS, the 2009 Budget overestimates revenues from additional and increased fees in the amount of $577,000; and

WHEREAS, the 2009 Budget also fails to account for IGT payments of $11.71 million to ECMC; and

WHEREAS, the 2009 Budget further underestimates the cost of overtime wages by $4.04 million; and

WHEREAS, the overestimation of fee revenues, the failure to account for IGT payments to ECMC, and the underestimation of overtime costs combine to create a $10,987,000 deficit in the 2009 Budget;

VI. Additional Concerns Regarding the 2009-2012 Plan

WHEREAS, the impending American economic slowdown and New York State's multi-billion dollar budget deficit may yield cuts in State aid and financial support for programs and projects presently undertaken by County government; and

WHEREAS, the County has not commenced concrete discussions with labor unions representing County workers to achieve savings in collective bargaining; and

WHEREAS, the 2009-2012 Plan calls for no retroactive or prospective salary increases for County employees, beyond the 1.5% raises allocated for step increases and longevity pay; and

WHEREAS, settlement of collective bargaining disputes with bargaining units representing County employees could create further expenditures that the County does not anticipate in the 2009-2012 Plan;

WHEREAS, the 2009-2012 Plan also assumes that the County will achieve significant savings through the elimination of 150 full-time positions – 4% of the County's workforce – without specifying which jobs will be cut, or a method of eliminating services or allocating workload among remaining employees; and

WHEREAS, a decrease in 300 full-time positions in County government, assuing regular state and federal position reimbursements would reduce the County's full-time staff to approximately3,925, below the 3,988 full-time employees working for the County immediately after budget cuts that resulted from the County's 2005 fiscal crisis; and

WHEREAS, the 2009-2012 Plan also assumes continuation of an 8.75% sales tax rate in the County throughout the four-year period; and

WHEREAS, this 8.75% sales tax includes an extra 0.75% sales tax enacted by the County in 2005 upon New York State authorization; and

WHEREAS, the County may continue to levy this extra 0.75% sales tax beyond November 30, 2009, only after:

(1) the New York State Legislature introduces a bill to reauthorize the extra 0.75% sales tax;
(2) ten (10) 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) County legislators subsequently vote to enact the extra 0.75% sales tax; and

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

WHEREAS, the 2009-2012 Plan further assumes that County pension costs will increase by 1% from 2009 to 2010, and by another 5% for 2011 and 2012; and

WHEREAS, it has recently reported that the New York State pension fund has lost 20% of its market value in the last year; and

WHEREAS, the impending American economic slowdown and continued stock market declines may cause County pension costs to increase even more than projected over the life of the 2009-2012 Plan; and

WHEREAS, the 2009-2012 Plan also assumes that health insurance costs for covered County employees will increase by 10% each year, whereas prior four-year financial plans have estimated that such costs would increase by 12.5% each year; 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 $736 million, as of December 31, 2007; and

WHEREAS, in recent fiscal years, the County has borrowed millions of dollars to subsidize the Consolidated Local Streets and Highway Improvement Program ("CHIPS") fund, and to facilitate payment of operating expenses; and

WHEREAS, such borrowing has rendered prior County budgets structurally imbalanced as a result, in that recurring CHIPS expenditures would exceed recurring CHIPS revenue; and

WHEREAS, the ECFSA renews its call for the County to end this practice;

VII. <u>Resolutions</u>

NOW, THEREFORE, BE IT RESOLVED that, having reviewed the 2009-2012 Plan submitted by the Erie County Executive, the Erie County Fiscal Stability Authority hereby finds, for the following reasons, that the 2009-2012 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 2009-2012 Plan does not reasonably assume that County sales tax revenues will increase by 3% during each of the Out Years.

(2) The 2009-2012 Plan does not reasonably assume a 4.4% annual increase in real property values in the County.

(3) The 2009-2012 Plan does not reasonably assume that the County Legislature will approve new and increased fees as an added source of revenue.

(4) The 2009-2012 Plan does not reasonably assume that the County need not make debt service payments on behalf of ECMC.

(5) The 2009-2012 Plan does not reasonably assume that the County need not make IGT payments to ECMC.

(6) The 2009-2012 Plan does not reasonably assume that the County needs to budget less than $11 million annually for the cost of overtime wages.

(7) Overestimation of revenues from additional and increased fees not yet adopted, the failure to account for IGT payments to ECMC, and the underestimation of overtime costs would contribute to a structural imbalance in the County Executive's proposed 2009 budget and in the first year of the 2009-2012 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 2009-2012 Plan, as submitted by the County Executive to the ECFSA on October 15, 2008, "*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 2009-2012 Plan violates section 3957(1).

(2) In submitting the 2009-2012 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 07-108, the ECFSA finds that the County's violation of the ECFSA Act in submitting its 2009-2012 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 2009-2012 Plan as submitted, because it violates Public Authorities Law section 3957(1); and

BE IT FURTHER RESOLVED that it is not necessary for the ECFSA to modify the 2009-2012 Plan, because the ECFSA lacks reasonable assurance that the County possesses sufficient political will to implement any such modifications in its fiscal policy; 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 and recommendations concerning the 2009-2012 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 November 1, 2009, 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, 2008