Erie County Fiscal Stability Authority

Resolution No. 08-11

DISAGREEING WITH ELEMENTS OF ERIE COUNTY'S
REVISED 2008-2011 FINANCIAL PLAN

I. The Ability of the Erie County Fiscal Stability Authority to Review Erie County's 2008 Budget and the 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, New York 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 2008, and a four-year financial plan ("Plan") for fiscal years 2008-2011, to the ECFSA on October 15, 2007; and

WHEREAS, upon enacting 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 Public Authorities Law section 3957(1); and

WHEREAS, the County has adopted its fiscal year 2008 budget (the "2008 Budget"); and

WHEREAS, pursuant to Public Authorities Law section 3957(2)(c), the County submitted to the ECFSA its adopted 2008 Budget and a modified financial plan for fiscal years 2008-2011 (the "Revised 2008-2011 Plan") on December 21, 2007; and

WHEREAS, fiscal years 2009 through 2011 constitute the "Out Years" of the 2008-2011 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 whether the Revised 2008-2011 Plan complies with the provisions of section 3957 on or before January 5, 2008; and

WHEREAS, Public Authorities Law section 3957(2)(b) also necessarily instructs the ECFSA to review the 2008 Budget, which constitutes the first year of the Revised 2008-2011 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 2008-2011 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 2008-2011 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 2008-2011 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>Overestimated Revenue Sources in the Out Years of the Revised 2008-2011 Plan</u>

WHEREAS, the Revised 2008-2011 Plan 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;

III. Underestimated Expenses in the Out Years of the Revised 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 Revised 2008-2011 Plan does not provide for the County's continuation of these debt service payments during the Out Years; and

WHEREAS, the Revised 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 Revised 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 Revised 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 Revised 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 Revised 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 Revised 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 II and III of this Resolution contribute to a deficit of over $107 million for the Out Years of the Revised 2008-2011 Plan;

IV. Structural Imbalance in the 2008 Budget

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

WHEREAS, pursuant to the 2008 Budget, Erie County would 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 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 $6.9 million deficit; and

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

WHEREAS, in 2007, an arbitrator awarded certain County Sheriff's Department employees with a cost-of-living increase in their salaries, retroactive to 2005; and

WHEREAS, such cost-of-living increase raises the base pay for affected Sheriff's Department employees for future years; and

WHEREAS, the Out Years of the Revised 2008-2011 Plan account for such cost-of-living increase, but the 2008 Budget does not; and

WHEREAS, the 2008 Budget fails to account for cost-of-living increases amounting to $600,000 for Sheriff's Department employees;

WHEREAS, because of (i) borrowing to subsidize CHIPS, (ii) the deficit in the County Road Fund, and (iii) the failure to account for IGT payments to ECMC and cost-of-living increases for Sheriff's Department employees, the 2008 Budget contains a deficit of $13,596,812, despite its under-estimation of County sales tax revenues;

V. Additional Concerns Regarding the Revised 2008-2011 Plan

WHEREAS, the Revised 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) the Erie County Legislature approves 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 Revised 2008-2011 Plan;

VI. <u>Resolutions</u>

NOW, THEREFORE, BE IT RESOLVED that the ECFSA adopts the report and findings submitted by its Staff concerning the 2008 Budget and the Revised 2008-2011 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 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 Revised 2008-2011 Plan does not reasonably assume a 4% annual increase in real property values in the County.

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

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

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

(5) The Revised 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.

(6) Bonding to subsidize the CHIPS fund, the deficit in the County Road Fund, and the failure to account for IGT payments to ECMC and cost-of-living salary increases for certain Sheriff's Department employees contribute to a structural imbalance in the 2008 Budget and in the first year of the Revised 2008-2011 Plan.

BE IT FURTHER RESOLVED that the County's December 21, 2007, submission of its 2008 Budget and the Revised 2008-2011 Plan is incomplete, because it does not include the quarterly expenditure or revenue projections required by Public Authorities Law section 3957(2)(c), and because the County Executive has not certified that the 2008 Budget is consistent with the Revised 2008-2011 Plan; and

BE IT FURTHER RESOLVED that, the ECFSA recommends to the County that a four-year financial plan for fiscal years 2008-2011 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 continues the control period upon the County; 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 2008-2011 Plan.

This resolution shall take effect immediately.

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Stanley J. Keysa
Secretary

Date: January 4, 2008