Erie County Fiscal Stability Authority

Resolution No. 09-11

CALLING UPON ERIE COUNTY TO REQUEST THE ECFSA TO ISSUE BONDS TO FUND THE COUNTY'S 2007 AND 2008 CAPITAL EXPENDITURES

A. The Need to Finance Erie County's Capital Expenditures

WHEREAS, Chapter 182 of the New York Laws of 2005 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, section 3961 of the New York Public Authorities Law ("Section 3961") permits Erie County (the "County"), pursuant to a request made by and through the County Executive after approval by the County Legislature, to "undertake a financing of costs" through the ECFSA; and

WHEREAS, section 3962 of the Public Authorities Law empowers the ECFSA "to issue bonds, notes or other obligations . . . to pay any [such] financeable costs;" and

WHEREAS, financing of the County's 2007 and 2008 capital expenditures (the "Capital Expenditures") would cost a total of $89,000,000; and

WHEREAS, the County Legislature has not yet approved, and the present County Executive has not yet issued, a current request for the ECFSA to finance such costs; and

WHEREAS, the County may issue bonds during a control period, but only upon advance review, comment, and approval by the ECFSA, pursuant to Public Authorities Law section 3959(2)(i);

B. Erie County's Dismal Bond Rating

WHEREAS, Fitch Ratings ("Fitch") and Moody's Investors Service ("Moody's") have assigned the ECFSA bond ratings of AA and Aa2, respectively; and

WHEREAS, the bond ratings assigned by Fitch and Moody's to the ECFSA are six grades higher than the bonds ratings assigned to Erie County; and

WHEREAS, on account of its significantly higher bond rating, the ECFSA can issue new debt at a lower cost and interest rate than the County can -- current estimates for the bond total $20 million over the life of the bond -- and thereby reduce the County's cost of borrowing and save taxpayer dollars; and

WHEREAS, Public Authorities Law section 3952(3) ("Section 3952(3)") provides that the ECFSA "shall continue until its control, advisory or other responsibilities, and its liabilities have been met or otherwise discharged, which in no event shall be later than December thirty-first, two thousand thirty nine;" and

WHEREAS, only the New York State Legislature may act to amend Section 3952(3), and thereby to extend the life of the ECFSA beyond December 31, 2039; and

WHEREAS, notwithstanding Section 3952(3), some elected officials have argued that ECFSA bonding would guarantee the ECFSA's existence, potentially as a "hard" control board, for as long as such ECFSA bonds remain outstanding; and

WHEREAS, in reality, no provision in Title 3 of Article 10-D of the Public Authorities Law (the "ECFSA Act") requires such an outcome; and

WHEREAS, pursuant to Public Authorities Law section 3959(1), the ECFSA shall terminate the control period presently in effect over Erie County, "when it determines that none of the conditions which would permit the [ECFSA] to impose a control period exist;" and

WHEREAS, once the ECFSA makes such a determination, it must end the control period, even if bonds previously issued by the ECFSA have not yet been refunded, discharged, or otherwise defeased; and

WHEREAS, in previous public comments before the ECFSA, County Comptroller Mark Poloncarz has cited the continued existence of the New York City Municipal Assistance Corporation ("MAC") in an attempt to demonstrate how the ECFSA could exist beyond December 31, 2039, provided that ECFSA-issued bonds have not yet been refunded, discharged, or defeased as of that date; and

WHEREAS, Public Authorities Law section 3033(1) requires the MAC to "continue for a term ending the <u>later</u> <u>of</u> July first, two thousand eight <u>or</u> <u>one</u> <u>year</u> <u>after</u> <u>all</u> <u>its</u> <u>liabilities</u> <u>have</u> <u>been</u> <u>fully</u> <u>paid</u> <u>and</u> <u>discharged</u>" (emphasis added); and

WHEREAS, because the MAC has not yet fully paid and discharged its outstanding debt service obligations, the Public Authorities Law mandates that it continue to exist beyond July 1, 2008; and

WHEREAS, by contrast, the ECFSA Act contains no similar provision that would require the ECFSA's existence after payment and discharge of all its liabilities; and

WHEREAS, any concern that ECFSA bonding to finance the Capital Expenditures would necessitate the ECFSA's existence beyond December 31, 2039, is therefore unsubstantiated; and

WHEREAS, the County Comptroller has also contended that ECFSA bonding will require the ECFSA's expenditure of funds to retain professional services and to employ personnel to oversee the service of its debt; and

WHEREAS, if the County were to issue bonds to fund its capital projects, the County would incur such expenditure regardless; and

WHEREAS, by requesting the ECFSA to issue bonds to fund such projects instead, the County would still reap approximately $20 million in savings for County taxpayers in connection with bonding for the Capital Expenditures, and additional savings could be achieved through the subsequent issuance of ECFSA bonds;

NOW, THEREFORE, BE IT RESOLVED that the ECFSA again recommends that the County request the ECFSA, pursuant to Section 3961, to issue bonds to fund the Capital Expenditures; and

BE IT FURTHER RESOLVED that the ECFSA would consider approval of the County's issuance of bonds to finance the Capital Expenditures, provided the County Comptroller can provide reasonable assurance to the ECFSA that the County's All-In Total Interest Cost ("All-In TIC"), which includes the costs of issuance, the underwriter's discount, and bond insurance, associated with a bond issue to fund the Capital Expenditures would not exceed the ECFSA's All-In TIC; and

BE IT FURTHER RESOLVED that the ECFSA would be inclined to reject any proposed County bond issuance that would not satisfy this criterion; and

BE IT FURTHER RESOLVED that certified copies of this resolution be forwarded to the Governor, the Director of the State Division of the Budget, the New York State Comptroller, each member of the New York State Assembly and New York State Senate who represents a portion of the County, the County Executive, the County Comptroller and the County Legislature.

This resolution shall take effect immediately.

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Stanley J. Keysa
Secretary

Date: February 4, 2009