

## **Erie County Fiscal Stability Authority**

Resolution No. 09-50

FINDING THAT ERIE COUNTY'S REVISED 2009-2012 FINANCIAL PLAN IS COMPLETE AND COMPLIANT WITH NEW YORK PUBLIC AUTHORITIES LAW SECTION 3957, AND TERMINATING THE CONTROL PERIOD UPON ERIE COUNTY

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, County Executive Christopher Collins submitted his proposed budget for Erie County (the "County") for fiscal year 2009, and a four-year financial plan ("Plan") for fiscal years 2009-2012, to the ECFSA on October 15, 2008; and

WHEREAS, by Resolution 08-101 on November 3, 2008, the ECFSA determined that the 2009-2012 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 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; and

WHEREAS, by Resolution 08-101, the ECFSA consequently found that the County's violation of Public Authorities Law section 3957 ("Section 3957") in submitting its original 2009-2012 Plan to the ECFSA constituted a condition that would justify continuation of the control period that the ECFSA first imposed upon the County on November 3, 2006; 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 2009 Budget and a modified financial plan for fiscal years 2009-2012 on May 8, 2009; 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, pursuant to New York General Construction Law section 25-a(1), “[w]hen any period of time, computed from a certain day, within which or after which or before which an act is authorized or required to be done, ends on a Saturday, Sunday, or a public holiday, such act may be done on the next succeeding business day;” and

WHEREAS, Public Authorities Law section 3957(2)(b) therefore required the ECFSA to determine on or before May 26, 2009, whether the modified financial plan submitted on May 8, 2009, complied with the provisions of section 3957; and

WHEREAS, on May 26, 2009, Erie County Attorney Cheryl Green, Esq., on behalf of County Executive Christopher Collins, e-mailed ECFSA Executive Director Kenneth Vetter correspondence requesting that the ECFSA cancel its meeting scheduled for that day, because the County was making further modifications to its four-year financial plan; and

WHEREAS, by this correspondence, the County Attorney confirmed that the 15-day statutory period within which the ECFSA would need to approve or reject those further modifications would begin on May 27, 2009; and

WHEREAS, on May 27, 2009, the County submitted to the ECFSA a further revised financial plan for fiscal years 2009-2012 (the “Revised 2009-2012 Plan”); and

WHEREAS, the members of the ECFSA Board of Directors have reviewed the Revised 2009-2012 Plan, and determined that it contains actions sufficient to ensure with respect to the major operating funds for each fiscal year of the plan – including budget year 2009 and out-years 2010 through 2012 – that annual aggregate operating expenses for such fiscal year shall not exceed annual aggregate operating revenues for each fiscal year; and

WHEREAS, the Revised 2009-2012 Plan is complete and otherwise complies with the requirements of Section 3957 and the ECFSA Act; and

WHEREAS, Public Authorities Law section 3959(1) requires the ECFSA to terminate the control period upon Erie County when “it determines that none of the conditions which would permit the [ECFSA] to impose a control period exist;” and

NOW, THEREFORE, BE IT RESOLVED that the ECFSA finds that the Revised 2009-2012 Plan is complete and otherwise complies with the requirements of Section 3957 and the ECFSA Act; and

BE IT FURTHER RESOLVED that by virtue of its submission of the Revised 2009-2012 Plan to the ECFSA, the County is no longer in violation of Section 3957; and

BE IT FURTHER RESOLVED that the conditions that would have permitted the control period upon the County to continue – viz., the County’s violation of Section 3957 – no longer exist; and

BE IT FURTHER RESOLVED that the ECFSA hereby terminates the control period first imposed upon the County on November 3, 2006; and

BE IT FURTHER RESOLVED that the ECFSA immediately reverts to an advisory period, as described by Public Authorities Law section 3958; and

BE IT FURTHER RESOLVED that ECFSA shall re-impose the control period upon the County whenever the ECFSA determines that any one of the five circumstances listed in Public Authorities Law section 3959(1)(a) through 3959(1)(e) shall have arisen; and

BE IT FURTHER RESOLVED that the ECFSA shall evaluate these five circumstances, and adopt a resolution determining whether to re-impose the control period upon the County, no later than June 1, 2010; and

BE IT FURTHER RESOLVED, that the ECFSA directs the County to submit the following items to the ECFSA no later than June 15, 2009, in accordance with Public Authorities Law section 3957(c):

- (1) the County Executive's certification that the County's adopted 2009 budget and the Revised 2009-2012 Plan are consistent.

This resolution shall take effect immediately.

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Stanley J. Keysa  
Secretary

Date: June 2, 2009