

BUFFALO FISCAL STABILITY AUTHORITY

Meeting Minutes
September 29, 2010

The following are the minutes of the Board of Director's meeting of the Buffalo Fiscal Stability Authority ("BFSA") held on Wednesday, September 29, 2010, in the Buffalo & Erie County Central Public Library Auditorium. The meeting was called to order at 1:05 PM.

Board Present: Arthur, Collins, Floss, Johnstone, Messiah, Olsen, Townsend

Board Excused: Brown & Giardino

Staff Present: Kelly, Link, Miller, Mobley and Mongold

Additionally Present: Mr. Doron Bar-Levav Esq., Legal Counsel with Harris Beach, PLLC

Opening Remarks

Chair Olsen called the meeting to order. He noted that the BFSA's Governance Committee had met earlier in the day and had reviewed proposed revisions to the Code of Ethics, the Procurement Guidelines, and the By-Laws. Additionally, the Governance Committee reviewed a proposed holiday schedule for staff. Adoption of the proposed schedule would make staff holiday leave consistent with the New York State Department of Civil Service's holiday leave schedule for Management Confidential employees. The Committee voted to send all items reviewed to the full Board with recommendations for approval.

Chair Olsen noted that the Audit, Finance and Budget Committee (the "Audit Committee") had met following the adjournment of the Governance Committee. The Audit Committee reviewed the Independent Audit prepared and submitted by Lumsden & McCormick as well as BFSA's 2010 Annual Report in its substantially completed form. The Audit Committee voted to send both documents to the full Board with recommendations for approval.

Chair Olsen noted that the meeting's agenda also included reviewing a request to retroactively approve various City of Buffalo (the "City") contracts related to the acquisition of certain vehicles and equipment for the Parks Department. The standard contract approval process had not been followed and the City had entered into multiple contracts without prior BFSA Board approval.

He noted that a draft BFSA public meetings' schedule for calendar year 2011 was provided with the meeting material. He asked the Directors to review the proposed meeting dates and times and report any conflicts to Mr. Nathan D. Miller, the BFSA's Manager of Administration & Technology. A final 2011 meeting schedule will be provided for vote at the November 3, 2010 Board meeting.

Chair Olsen asked Secretary Arthur to call roll of the Directors. He called roll and found that a quorum was present. The meeting commenced.

Approval of the July 21, 2010 Meeting Minutes

Chair Olsen introduced Resolution No. 10-37, "Approving Minutes from July 21, 2010." He asked if any Director has any edits to the document. Hearing none, he requested a motion to approve the resolution.

Motion to approve by Johnstone, second by Mesiah.

RESOLUTION NO. 10-37 APPROVING MINUTES FROM JULY 21, 2010

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on July 21, 2010.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution Nos. 10-28 through 10-36 that were approved on July 21, 2010.

This resolution shall take effect immediately.

Approved September 29, 2010

The Board voted 7-0 to approve Resolution No. 10-37.

BFSA Issues

BFSA Fiscal Year 2010 Independent Audit

Chair Olsen advanced the agenda to the next item for consideration: a recommendation from the Audit Committee to approve the 2010 Independent Audit report. He noted that Ms. Donna Gonser, Audit Partner from the accounting firm of Lumsden & McCormick, was available to address any questions. He noted that the audit was "clean"; no issues had been reported.

Chair Olsen asked for a motion to approve the 2010 Independent Audit.

Director Arthur offered a motion to approve that was seconded by Vice-Chair Townsend.

The Board voted 7-0 to approve the 2010 Independent Audit.

BFSA's Fiscal Year 2010 Annual Report

Chair Olsen advanced the agenda to the next item for consideration: a recommendation from the Audit Committee to approve the BFSA 2010 Annual Report. He introduced Resolution No. 10-38, "Accept Audit Report and Approve Annual Report for Fiscal Year 2009-2010."

Chair Olsen explained the following:

- BFSA is required to file the Annual Report along with the results of the year-end audit and By-Laws in effect during the 2010 year. This filing is due no later than October 1st.
- The By-Laws have been previously affirmed by the Board.
- The draft Annual Report in substantially its final form has been provided to all of the Directors. The report details BFSA activities for the 2010 fiscal year and has been prepared following the format required by the New York State Office of the State Comptroller.

- This report is the seventh issued by the BFSA. All are readily available for download on BFSA’s website.
- The Annual report consists of two main sections:
 - A summary of accomplishments during 2010 (Board actions taken); and
 - A review of the City’s and the Covered Organizations’ budgets and four-year financial plans (reports received by BFSA).

Chair Olsen explained that Vice-Chair Townsend had requested certain changes to be made to page three of the Annual Report. A “marked” version of the changes has been provided to all of the Directors for review. The intent of the changes is to clarify the two events which must occur prior to the BFSA’s transition into an advisory board. These events include:

1. The receipt of the audited 2010 financial statements from the City and Covered Organizations; and
2. The certifications from both the State and City Comptroller relative to the City’s ability to access the bond market for the upcoming year.

Chair Olsen requested a motion to approve the BFSA 2010 Annual Report. He requested that authority be granted to the Chair, the Executive Director, and the Comptroller the right to make any necessary changes to the approved draft to ensure the accurate completion and timely submission of the report.

Director Arthur offered a motion to approve the 2010 Annual Report. Director Floss seconded the motion.

**RESOLUTION NO. 10-38
ACCEPT AUDIT REPORT AND APPROVE ANNUAL REPORT FOR FISCAL YEAR 2009-2010**

WHEREAS, Chapter 122 of the Laws of 2003, as amended, requires the Buffalo Fiscal Stability Authority (“BFSA”) to be subject to an annual financial audit performed by an independent certified public accountant selected by the BFSA; and

WHEREAS, the accounting firm of Lumsden and McCormick, P.C. was selected and they have conducted an audit of the BFSA’s general ledger; and

WHEREAS, Lumsden and McCormick, P.C. have presented their Independent Auditors Report on BFSA’s Financial Statements for the Year Ended June 30, 2010; and

WHEREAS, the Public Authorities Accountability Act of 2005 (specifically, Section 2800 of the Public Officers Law) requires state and local public authorities to file an annual report with the State, detailing its operations and activities and other budgetary and financial data; and

WHEREAS, the Public Authorities Accountability Act of 2009 maintained existing Annual Report requirements along with new additional requirements; and

WHEREAS, this report must be certified as accurate by the Executive Director of the BFSA; and

WHEREAS, much of this data and additional information is required by regulations promulgated by the State Comptroller; and

WHEREAS, the BFSa Staff has presented for approval a draft of the 2010 Annual Report in substantially its final form; and

WHEREAS, the deadline to submit an approved final version of the Annual Report and audited Financial Statements to the New York State Office of the State Comptroller is September 30, 2010.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby accept the Lumsden and McCormick, P.C. Independent Auditors' Report on BFSa's Financial Statements for the Year Ended June 30, 2010, and the BFSa's Annual Report for the Year Ended June 30, 2010, as prepared by the BFSa Staff; and

BE IT FURTHER RESOLVED that Chair, the Executive Director and the Comptroller are hereby authorized to make such changes to the 2010 Annual Report and audited Financial Statements for the year ended June 30, 2010 in the form presented, as they may deem necessary for its timely and accurate completion; and

BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized to release these Reports to the public and provide copies to the parties designated by Section 3871 of the BFSa Act and Section 2800 of the Public Authorities Law; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized to certify that financial statements filed with the above reports are accurate and correct.

This resolution shall take effect immediately.

The Board voted 7-0 to approve Resolution No. 10-38.

City Issues

City Parks Equipment

Chair Olsen advanced the agenda to the next item for Board consideration: retroactive approval of various contracts related to the purchase of vehicles and equipment by the City's Department of Parks and Recreation. He asked Executive Director Mongold to provide a summary of the issue.

Ms. Mongold provided the following summary for the Board:

- BFSa approved a budget modification at a Special Meeting of the Board held on March 22, 2010, in the amount of \$2,000,000 for the purchase of vehicles and equipment in connection with the City's take-back of parks' management.
- The approval provided for the funding of the related contracts. The specific contracts themselves were still subject to BFSa's review and approval if they exceeded \$50,000.
- A misunderstanding of the approval process led to the execution of contracts in excess of \$50,000 without BFSa's approval. BFSa discovered that contacts had been entered into without the BFSa's review afterward.
- BFSa retroactively reviewed the contracts. The procedures performed included reviewing all contracts which were selected from the state bid listing to verify that they were in fact the approved vendors for the items purchased for a majority of the purchases.
- For those contracts which were not taken from the State bid list, the BFSa reviewed the bidding process and was able to gain comfort that the lowest bidder was selected.

- As the normal review and approval process had not been followed, BFSA reviewed all contracts including those under the \$50,000 threshold.
- BFSA staff recommends the retroactive approval of all of the contracts.

Director Arthur offered a motion to approve the resolution. Director Johnstone seconded the motion.

RESOLUTION NO. 10-39

RETROACTIVE APPROVAL OF VARIOUS CONTRACTS RELATED TO THE PURCHASE OF VARIOUS VEHICLES AND EQUIPMENT BY THE CITY OF BUFFALO'S DEPARTMENT OF PARKS AND RECREATION

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 authorizes the Buffalo Fiscal Stability Authority ("BFSA") to review and approve or disapprove contracts or other obligations binding or purporting to bind the City or any covered organization; and

WHEREAS, Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 permits the BFSA to review and approve or disapprove the terms of any proposed settlement of claims against the City or any covered organization in excess of \$50,000; and

WHEREAS, in order to carry out the mission of the BFSA, the BFSA reviews contracts or other obligations in excess of \$50,000, though the BFSA Act provides no limitation for contracts or obligations; and

WHEREAS, pursuant to BFSA Resolution No. 06-28, the BFSA provided for a contract review process in which "any contract, settlement or other obligation binding or purporting to bind the City or covered organization with a value of \$50,000 or more will be reviewed and approved by the BFSA before it becomes effective"; and

WHEREAS, on March 22, 2010, the BFSA approved a \$2,000,000 budget modification to the City's 2009-10 Adopted Budget via Resolution No. 10-09; and

WHEREAS, it subsequently came to the attention of BFSA Staff that the City did not follow the aforementioned guidelines related to BFSA contract approvals for certain acquisitions of various vehicles and equipment and vehicles purchased between April - June 2010, which individual contracts entered into exceeded \$50,000; and

WHEREAS, the City entered into contracts for the acquisition of various vehicles and equipment in the amount of \$1,993,212; and

WHEREAS, the City did not comply with the established contract review process and purchased \$1,101,844 of various vehicles and equipment without BFSA approval; and

WHEREAS, the BFSA Staff performed a subsequent review of the unapproved contracts for such purchases and found no material noncompliance with bidding requirements or purchasing procedures; and

WHEREAS, the BFSA Staff performed a review of such expenditures noting that sufficient funds were available within the City's 2009-10 Revised Budget; and

WHEREAS, in recognition of the BFSA Act and related requirement governing BFSA approval of all City contracts which equal or exceed \$50,000.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority hereby retroactively approves the procurement of various vehicles and equipment in the amount of \$1,101,844, as purchased by the City Department of Parks and Recreation.

This Resolution shall take effect immediately.

The Board voted 7-0 to approve Resolution No. 10-39.

BFSA Issues

Code of Ethics and Revised Procurement Policy

Chair Olsen advanced the agenda to the next items for consideration: adoption of the revised Code of Ethics and the revised Procurement Policy. All material had been reviewed by the Governance Committee, which recommended Board codification of all of the material.

Chair Olsen noted that the Code of Ethics had additional changes which had not been provided with the edition sent with the board books. For example, Appendix B & C included two Executive Orders issued by former Governor Spitzer. Both orders are archaic as they have since been rescinded by Governor Patterson. Additionally, the Code of Ethics includes a Certification Form that is required to be completed by all members of the Board. He requested that the Directors complete the form and submit it to Mr. Miller for records' retention purposes. Questions regarding the Code of Ethics should be directed to Ms. Mongold.

Chair Olsen explained that the Procurement Guidelines have been updated from the version reviewed and approved at the July Board meeting. The requirements of the recently approved bills relative to the procurement of services from Women and Minority-Owned businesses take effect on October 15, 2010. Article VI of the Procurement Guidelines has been updated to reflect such changes in New York State law. The Governance Committee passed a recommendation for approval of the revised Procurement Guidelines with the directive that the Executive Director addresses the remedy of non-compliance of the laws with legal counsel.

Chair Olsen asked for a motion to approve the amended Code of Ethics.

Director Arthur offered a motion to approve the item that was seconded by Director Floss.

RESOLUTION NO. 10-40 ADOPTING A CODE OF ETHICS

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority ("BFSA") to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, as a public authority, BFSA is subject to regulation by the State of New York, whether in the form of State law, the Governor's Executive Orders or rules and regulations promulgated by the State Comptroller; and

WHEREAS, the Public Authorities Accountability Act of 2005 ("PAAA") establishes a wide range of duties and responsibilities for state and local public authorities to promote the highest standards of ethical practices by authority staff and members, and thereby to engender public confidence in their activities; and

WHEREAS, one such requirement is the adoption of a Code of Ethics, that at a minimum, reflects the standards set forth in Sections 73 and 74 of the Public Officers Law; and

WHEREAS, the BFSA adopted a Code of Ethics by Resolution No 06-50 at its meeting on August 9, 2006; and

WHEREAS, the BFSA amended and reaffirmed a Code of Ethics by Resolution No. 07-40 at its meeting on September 24, 2007; and

WHEREAS, the BFSA reaffirmed its Code of Ethics by Resolution No. 08-36 at its meeting on August 20, 2008; and

WHEREAS, the BFSA reaffirmed its Code of Ethics by Resolution No. 09-35 on July 29, 2009; and

WHEREAS, the Code of Ethics Appendix A, “Public Officers Law, Section 73, Business or Professional Activities by State Officers and Employees and Party Officers” and Appendix B, “Public Officers Law, Section 74, Code of Ethics” were amended to reflect updates to these sections of the Public Officers Law; and

WHEREAS, a review of BFSA’s current Code of Ethics found that a change was needed to update Section II L (1) in order to remain in compliance with paragraph (1) of §73-a of the Public Officers Law; and

WHEREAS, the review of BFSA’s current Code of Ethics found the need to add a relationship chart detailing Consanguinity and Affinity; and

WHEREAS, the review also indicated a change to Appendix E “Policy Making Positions of the Buffalo Fiscal Stability Authority,” as directed in Section II L (2), to reflect the agency policymakers filed with the New York State Commission on Public Integrity on February 16, 2009; and

WHEREAS, the Governance Committee of the BFSA, has reviewed the attached Code of Ethics and has recommended its adoption by the BFSA Board.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby adopt the attached Code of Ethics applicable to all BFSA staff and Board Members to ensure the highest level of honesty, ethical conduct and public trust in all of the BFSA’s activities.

This Resolution shall take effect immediately.

The Board voted 7-0 to approve Resolution No. 10-40.

Chair Olsen asked for a motion to approve the amended Procurement Policies.

Director Arthur offered a motion to approve the item that was seconded by Director Floss.

**RESOLUTION NO. 10-41
AMENDING THE APPROVED PROCUREMENT POLICIES**

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSA”) was formed by Chapter 122 of the Laws of 2003 to “oversee the city’s budget, financial and capital plans; to issue bonds, notes or other obligations to achieve budgetary savings through debt restructuring; to finance short-term cash flow or capital needs; and if necessary, to develop financial plans on behalf of the city if the city is unwilling or unable to take the required steps toward fiscal stability and

WHEREAS, the BFSA requires professional assistance in performing its mission; and

WHEREAS, the BFSA is a public authority of the State of New York and as such is governed by certain state laws that specify the method for the procurement of certain services; and

WHEREAS, in order to comply with state law it was necessary for the BFSA to adopt Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, and

WHEREAS, BFSA adopted Resolution No. 03-36, "Approving Procurement Policies For Certain Contracts" on October 7, 2003; and

WHEREAS, BFSA adopted Resolution No. 05-18, "Approving Procurement Policies For Certain Contracts" on February 23, 2005; and

WHEREAS, BFSA adopted Resolution No. 06-25, "Approving Procurement Policies For Certain Contracts" on April 12, 2006; and

WHEREAS, BFSA adopted Resolution No. 07-24, "Approving Procurement Policies For Certain Contracts" on June 5, 2007; and

WHEREAS, BFSA adopted Resolution No. 08-32, "Approving Procurement Policies For Certain Contracts" on August 20, 2008; and

WHEREAS, BFSA adopted Resolution No. 09-31, "Approving Procurement Policies For Certain Contracts" on July 29, 2009; and

WHEREAS, BFSA adopted Resolution No. 10-31, "Approving Procurement Policies For Certain Contracts" on July 21, 2010; and

WHEREAS, in order to further comply with State law, it is necessary for the BFSA to review the adopted procurement guidelines at least annually; and

WHEREAS, New York State Governor signed various pieces of legislation on July 15, 2010, relative to the procurement of services from Women and Minority-owned Business Enterprises ("WMBEs"); and

WHEREAS, the enacted legislation shall take effect ninety days after the Governor signed the legislation into law; and

WHEREAS, the BFSA has determined that it is proper to revise the existing procurement policies prior to the annual review to reflect recent changes in state law; and

WHEREAS, the BFSA Governance Committee reviewed and approved the proposed procurement guidelines on September 29, 2010.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority hereby adopts the Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts.

This resolution shall take effect immediately.

The Board voted 7-0 to approve Resolution No. 10-41.

New York State Department of Civil Service Management Confidential Holiday Schedule Adoption

Chair Olsen advanced the agenda to the next item for consideration: formally adopting a holiday schedule for BFSA's staff. He noted that the holiday schedule was parallel to the schedule afforded the New York State Management Confidential employee group. The Governance Committee had issued a recommendation for approval of the holiday schedule.

Director Mesiah offered a motion to approve the holiday schedule. Director Arthur seconded the motion.

RESOLUTION NO. 10-42

ADOPTION OF STATE OF NEW YORK'S HOLIDAY LEAVE SCHEDULE

WHEREAS, the Buffalo Fiscal Stability Authority ("BFSA") was formed by Chapter 122 of the Laws of 2003 to (1) oversee the city's budget, financial and capital plans; (2) to issue bonds, notes or other obligations to achieve budgetary savings through debt restructuring; (3) to finance short-term cash flow or capital needs; and (4) if necessary, to develop financial plans on behalf of the city if the city is unwilling or unable to take the required steps toward fiscal stability; and

WHEREAS, Chapter 122 of the Laws of 2003, §3854. "General Powers of the Authority", item No. 12 states that BFSA has the authority "to appoint such officers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, and compensation"; and

WHEREAS, the BFSA desires to formally adopt a holiday schedule for BFSA Staff.

NOW THEREFORE BE IT RESOLVED, that the BFSA hereby adopts the paid holiday schedule last amended on January 3, 1987, offered to Management Confidential employees of the State of New York, as outlined in the New York State Office of Civil Service "Attendance and Leave Manual."

This resolution shall take effect immediately.

The Board voted 7-0 to approve Resolution No. 10-42.

Amended By-Laws

Chair Olsen advanced the agenda to the next item for consideration: a recommendation from the Governance Committee to approve revisions to the By-Laws. He noted that the revisions relate to both the scheduling and announcement of a special meeting, and the postponement or cancellation of a board meeting. The revised language clarifies that a special meeting may be called for a specific purpose or purposes. Any actions taken by the Board are limited to such specific purpose or purposes as set forth in the notice to the meeting. Additionally, the new language clarifies that any board meeting may be canceled or postponed by the Chair for a stated reason or by a request by a majority of the Director. He added that the revisions addresses both the full board meetings as well as committee meetings.

Director Floss offered a motion to approve the item. Director Arthur seconded the motion.

RESOLUTION NO. 10-43
APPROVING THE REVISED BY-LAWS OF THE BUFFALO FISCAL STABILITY
AUTHORITY

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSA”) was created by Chapter 122 of the Laws of 2003 to be a corporate governmental agency and instrumentality of the State of New York constituting a public benefit corporation to oversee the City of Buffalo’s budget, financial and capital plans; to issue bonds, notes and other obligations, as defined in the Act; and to develop and implement financial plans on behalf of the City of Buffalo as necessary.

WHEREAS, it was necessary for the BFSA to adopt By-Laws to conduct its business; and

WHEREAS, the BFSA approved the adoption of the By-Laws by Resolution No. 03-01 adopted July 15, 2003; and

WHEREAS, the BFSA approved the adoption of revised By-Laws by Resolution No. 07-47 adopted September 24, 2007, by Resolution No. 08-45 adopted on September 19, 2008; and by Resolution No. 10-07 on March 11, 2010; and

WHEREAS, the BFSA has further revised its By-Laws with respect to Article III “Meetings of the Authority,” Section 3 “Notices,” to clarify that special meetings may be called only for a specific purpose or purposes, and such action(s) at such special meeting shall be limited to the single purpose(s) set forth in the notice; and

WHEREAS, the BFSA has further revised its By-Laws with respect to Article III “Meetings of the Authority,” Section 5 “Cancellation and Rescheduling of Meetings,” to revise policies to include that meetings may be canceled or postponed by the Chairperson, or in the Chairperson’s absence the Vice Chairperson, by providing a notice which such notice must contain the reason for the cancellation of such meeting or by request from a majority of the Directors, but in no case fewer than five Directors; and

WHEREAS, the BFSA has further revised its By-Laws with respect to Article IV “Committees,” Section 4 “Meetings,” to clarify that special meetings of any committee may be called only for a specific purpose or purposes; and

WHEREAS, the BFSA has further revised its By-Laws with respect to Article IV “Committees”, Section 6 “Cancellation and Rescheduling of Committee Meetings,” to revise policies to include that committee meetings may be canceled or postponed by the Chairperson of a committee, or if the Chairperson is absent , by the member of the committee with the longest period of membership on the Authority, by providing a notice which such notice must contain the reason for the cancellation of such meeting or by a request from the majority of the committee members, but in no case fewer than two committee members.

NOW THEREFORE BE IT RESOLVED that the BFSA approves the adoption of the revised By-Laws dated September 29, 2010.

This resolution shall take effect immediately.

The Board vote 7-0 to approve Resolution No. 10-43.

Privilege of the Floor

Chair Olsen extended the “Privilege of the Floor” to any member of the public who wished to publicly comment on any item discussed at the day’s meeting. Hearing none, he asked for a motion to adjourn.

Adjournment

Director Arthur offered a motion to adjourn the meeting. The motion was unanimously seconded. The Board voted 7-0 to adjourn.

The Board adjourned at 1:22 PM.