
BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes – July 20, 2011

The following are the minutes of the meeting of the Board of Directors of the Buffalo Fiscal Stability Authority (“BFSA” or the “Authority”) held on Wednesday, July 20, 2011, in the Buffalo Market Arcade Complex, 1st Floor Conference Room. The meeting was called to order at 1:00 PM.

Board Present: Arthur, Brown (proxy), Collins, Floss, Johnstone, & Mesiah

Board Excused: Giardino & Olsen

Staff Present: Link, Miller & Mongold

Additionally Present: Peter Spinelli, Esq., Harris Beach, PLLC

Opening Remarks

Secretary Arthur chaired the meeting at the request of Chair Olsen who was excused from the proceedings. He announced the meeting’s agenda as follows:

- A review of recommended actions from the Governance Committee regarding approval of the 2011 Procurement Report as well as various policies and guidelines which govern the BFSA;
- A review of a recommendation from the Governance Committee regarding a newly required policy for evaluation of the Board,
- Consideration of a resolution to reconstitute the Audit, Finance and Budget Committee (the “Audit Committee”), and
- Privilege of the Floor extended to any attending member of the public who wished to comment for the public record regarding actions taken during the meeting.

Roll Call of Directors

Director Arthur asked Director Johnstone to call a roll of the Board.

Director Johnstone called a roll of the Board and determined that a quorum was present. The meeting commenced.

City of Buffalo Commissioner of Administration, Finance, Policy and Urban Affairs, Ms. Janet Penksa, represented Mayor Byron W. Brown, in accordance with Subdivision 1 of §3853 of the Buffalo Fiscal Stability Authority Act (the “BFSA Act”).

Subdivision 1 of §3853 of the BFSA Act reads, “...*The Mayor and the County Executive shall serve as ex officio members. Every director, who is otherwise an elected official of the City or County, shall be entitled to designate a single representative to attend, in his or her place, meetings of the Authority and to vote or otherwise act in his or her behalf. Such designees shall be residents of the City of Buffalo. Written notice of such designation shall be furnished prior to any participation by the single designee...*”

Approval of the June 15, 2011 & June 27, 2011 Meeting Minutes

Director Arthur introduced Resolution No. 11-20, "Approving the Minutes from June 15, 2011 and June 27, 2011." He noted that the resolution included approval of the June 15, 2011 Regular Meeting of the Board, the June 27, 2011 Special Meeting of the Board, and the June 27, 2011 Executive Session. He asked for a motion to move the item.

Director Floss offered a motion to approve the resolution. Director Mesiah seconded the motion.

RESOLUTION NO. 11-20 APPROVING MINUTES FROM JUNE 15, 2011 & JUNE 27, 2011

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on June 15, 2011.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolutions No. 11-10 through 11-19 that were approved on June 15, 2011.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on June 27, 2011.

The Board voted 6-0 to approve Resolution No. 11-20.

BFSA Issues

Director Arthur moved the agenda to the next items for consideration: a series of recommendations from the Governance Committee to review and approve the 2011 Procurement Report and various policies and guidelines. He asked Executive Director Jeanette M. Mongold to provide a summary of the items.

Code of Ethics, Investment Guidelines, Prompt Payment Policy, Property Disposal Guidelines, and Whistleblower Policy

Ms. Mongold addressed the Board. She noted that the Governance Committee had met earlier in the day and recommended approval by the full Board of the Code of Ethics, the Investment Guidelines, the Prompt Payment Policy, the Property Disposal Guidelines, and the Whistleblower Policy. The various policies and guidelines contain no substantive changes from the versions previously approved with the exception of the Code of Ethics. The Code of Ethics previously contained Appendix C, "Executive Order No. 1: Establishment of Ethical Conduct Guidelines" and Appendix D, "Executive Order No. 2: Eliminating Politics from Government Decision Making." Both of these Executive Orders have been removed from the Code of Ethics as Governor Cuomo's Executive Order No. 2 rescinded both of these earlier Executive Orders. Governor Cuomo has since issued Executive Order No. 3, "Ethics Training." This particular Executive Order does not pertain to public authorities, as confirmed by legal counsel.

Mission Statement

Ms. Mongold noted that BFSA had been notified by the New York State Authorities Budget Office (the “ABO”) that the approved Mission Statement requires revision to conform to the requirements of Public Authorities Law. The Governance Committee approved the establishment of a working group to work collaboratively with the staff to review the current Mission Statement and draft new language to address the ABO’s findings. The working group directed the Executive Director to provide suggested amendments to the Governance Committee which will then submit a revised Mission Statement to the full Board for review and approval at the September 28, 2011 Regular Meeting of the Board.

2011 Procurement Report

Ms. Mongold noted that the Governance Committee had reviewed the draft 2011 Procurement Report and recommended its approval by the full Board. The draft report merges the report on procurement contracts annually required of BFSA, pursuant to the Public Authorities Law, with the report on procurement contracts required annually pursuant to the approved BFSA Procurement Guidelines. The report includes a list of all contracts let or active during FY 2011 that meet and exceed \$5,000 in actual or estimable value that have been let in the 2010-2011 fiscal year.

Director Arthur asked for a motion to accept the recommendations of the Governance Committee and approve the 2011 Procurement Report, the Code of Ethics, the Investment Guidelines, the Prompt Payment Policy, the Property Disposal Guidelines, and the Whistleblower Policy.

County Executive Collins offered a motion to approve the items cumulatively. Director Floss seconded this motion.

RESOLUTION NO. 11-21 APPROVAL OF THE ANNUAL PROCUREMENT REPORT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA” or “Authority”) to provide financial oversight and budgetary control over the City of Buffalo and Covered Organizations; 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 is necessary for the BFSA to adopt and review at least annually its Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (“Procurement Policies”); and

WHEREAS, BFSA initially established its Procurement Policies through the adoption of Resolution 03-36, “Approving Procurement Policies For Certain Contracts”, on October 7, 2003; and

WHEREAS, BFSA most recently adopted Resolution 11-03, “Amending the Approved Procurement Policies”, on March 9, 2011; and

WHEREAS, the Procurement Policies define a Procurement Contract as “any written agreement of the Authority for the acquisition of goods or services of any kind in the actual or estimated amount of \$25,000, or more”; and

WHEREAS, the adopted Procurement Policies require that the BFSA, “shall annually prepare for approval by the Directors and public availability a report on Procurement Contracts as of the end of each fiscal year summarizing procurement activity by the Authority for the period of the report, including a listing of all contracts entered into, the selection process used to select such contractors and the status of existing Procurement Contracts.”

WHEREAS, BFSA staff have prepared a report titled “Report on Procurement Contracts for the Fiscal Year Ended June 30, 2011” in accordance with the aforementioned policies and laws; and

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby approve the attached Procurement Report for Fiscal Year Ended June 30, 2011.

**RESOLUTION NO. 11-22
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 06-50 at its meeting on August 9, 2006; and

WHEREAS, the BFSA amended and readopted a Code of Ethics by resolution 07-40 at its meeting on September 24, 2007; and

WHEREAS, the BFSA readopted its Code of Ethics by resolution 08-36 at its meeting on August 20, 2008; and

WHEREAS, the BFSA readopted its Code of Ethics by resolution 09-35 on July 29, 2009; and

WHEREAS, the BFSA readopted its Code of Ethics by resolution 10-39 on September 29, 2010; and

WHEREAS, a review of BFSA’s current Code of Ethics found that modification were required to update Section II L(1) in order to update references and information and to remain in compliance with paragraph (1) of §73-a of the Public Officers Law; 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, the review of BFSAs current Code of Ethics found the need to remove former Governor Spitzer’s Executive Order 1 and 2 which were rescinded by Governor Cuomo’s via Executive Order 2 as dated January 1, 2011; and

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

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

RESOLUTION NO. 11-23
APPROVING BFSAs INVESTMENT GUIDELINES

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSAs”) 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, Section 2925 of the Public Authorities Law requires public authorities to develop investment guidelines that establish a set of basic procedures to meet investment objectives, assure that investment assets are adequately safeguarded and collateralized, establish and maintain a system of internal controls including adequate accounts and records which reflect investment transactions and provide for accurate reporting and evaluation of investments in conformance with generally accepted accounting principles; and

WHEREAS, Section 3854 of the Buffalo Fiscal Stability Act directs BFSAs as to permissible investments of public funds not subject to provisions of contracts with bondholders; and

WHEREAS, in Resolution 04-02 adopted January 21, 2004, and in Resolution 10-35 reapproved July 21, 2010 the BFSAs adopted investment guidelines as required by law; and

WHEREAS, in order to further comply with State law, it is necessary for the BFSAs to review the adopted Investment Guidelines at least annually; and

WHEREAS, the BFSAs Governance Committee reviewed and approved the proposed Investment Guidelines on July 20, 2011; and

WHEREAS, upon a review of the current Investment Guidelines, the BFSAs determined that minor amendments were necessary to delete obsolete references, clarify phrases, and provide continuity among policy directives; and

WHEREAS, the amendments noted above do not change the content or subject matter of these Investment Guidelines.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority hereby approve the Investment Guidelines that are attached to this resolution.

RESOLUTION NO. 11-24
READOPTING THE PROMPT PAYMENT POLICY STATEMENT

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, the BFSA is subject to regulation by the State of New York, either in the form of rules and regulations promulgated by the State Comptroller or legislation approved by the State Legislature and signed into law by the Governor; and

WHEREAS, §2880 of the Public Authorities Law requires public authorities to promulgate rules and regulations detailing its prompt payment policy and to periodically review the same; and

WHEREAS, the BFSA has developed and implemented a Prompt Payment Policy statement to comply with this requirement; and

WHEREAS, the BFSA adopted its Prompt Payment Policy statement on September 28, 2006 by resolution 06-61; and

WHEREAS, the BFSA readopted its Prompt Payment Policy statement on September 24, 2007 by resolution 07-45; and

WHEREAS, the BFSA readopted its Prompt Payment Policy statement on August 20, 2008 by resolution 08-33; and

WHEREAS, the BFSA readopted its Prompt Payment Policy statement on July 29, 2009 by resolution 09-32; and

WHEREAS, the BFSA readopted its Prompt Payment Policy statement on July 21, 2010 by resolution 10-32; and

WHEREAS, upon reviewing the Prompt Payment Policy, BFSA determined that minor modifications were necessary to update to current information; and

WHEREAS, the amendments noted above do not change the content or subject matter of this Prompt Payment Policy.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm its Prompt Payment Policy statement.

RESOLUTION NO. 11-25
REAFFIRMING PROPERTY DISPOSAL GUIDELINES

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, §2896 of the Public Authorities Law requires public authorities to adopt comprehensive guidelines which detail the authority’s operative policy on the disposal of personal property valued in excess of five thousand dollars; and

WHEREAS, the BFSA has developed and implemented property disposal guidelines to comply with this requirement; and

WHEREAS, the BFSA Board of Directors approved the property disposal guidelines by resolution No. 06-69 on November 9, 2006; and

WHEREAS, the BFSA Board of Directors readopted the property disposal guidelines by resolution No. 07-34 on September 24, 2007; and

WHEREAS, the BFSA Board of Directors readopted the property disposal guidelines by resolution No. 08-34 on August 20, 2008; and

WHEREAS, the BFSA Board of Directors readopted its property disposal guidelines by resolution No. 09-33 on July 29, 2009; and

WHEREAS, the BFSA Board of Directors readopted its property disposal guidelines by resolution No. 10-33 on July 20, 2010; and

WHEREAS, upon reviewing the Property Disposal Policy, BFSA determined that no amendments or changes were necessary at this time.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm the attached property disposal guidelines as required by §2896 of the Public Authorities Law.

BE IT FURTHER RESOLVED, that the Executive Director is affirmed as the “contracting officer” who shall be responsible for the disposition of property is hereby affirmed.

RESOLUTION NO. 11-26
REVIEW AND APPROVAL OF WHISTLEBLOWER POLICY

WHEREAS, as a State public authority, the Buffalo Fiscal Stability Authority (“BFSA”) is subject to the provisions and requirements of the Public Authorities Accountability Act of 2005 (“PAAA”); and

WHEREAS, the PAAA requires that all public authorities “establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services”; and

WHEREAS, BFSA already has established and adopted a Code of Ethics; and

WHEREAS, BFSA originally adopted a Whistleblower Policy on January 28, 2008; and

WHEREAS, BFSA reaffirmed the Whistleblower Policy on August 28, 2008, July 29, 2009, and July 21, 2010; and

WHEREAS, it is desired to have the BFSA’s Board of Directors review and approve the Whistleblower Policy annually as it represents a significant internal control method; and

WHEREAS, such policy was reviewed by BFSA staff and no modifications were required to update the policy.

NOW THEREFORE BE IT RESOLVED, that the BFSA hereby approves the Whistleblower Policy.

Director Arthur noted that the 2011 Procurement Report included the contract activity for BFSA’s outside legal counsel, Harris Beach, PLLC. A portion of these expenses are to reimburse the firm for travel expenditures to and from Pittsford, New York to attend BFSA Board meetings. However, there is the potential for a cost-avoidance if counsel could come from the Harris Beach branch located in Buffalo rather than Pittsford. Counsel from the Buffalo branch could be provided for Board meetings which do not involve certain issues such as litigation. In these instances, it continues to be prudent for Harris Beach attorney A.V. Buzard, Esq., to travel from Pittsford, as he has been the chief litigator on the behalf of the BFSA.

Director Arthur called for a vote on the items. Vote 6-0 to approve the 2011 Procurement Report, the Code of Ethics, the Investment Guidelines, the Prompt Payment Policy, the Property Disposal Guidelines, and the Whistleblower Policy.

New Policy: Annual Board of Directors Evaluation

Director Arthur advanced the agenda to the next item for consideration: a new policy regarding an annual evaluation of the Board by the Directors. The impetus of the new policy is a new requirement from the Public Authorities Law for annual evaluations of public authority board of directors. As a result of the new requirement, the ABO issued Policy Guidance No. 10-05, “Annual Board of Directors Evaluation,” which explains the new requirements and includes a template to be used by each member

of a board to evaluate their respective board as a whole. Also included is a template to be used to compile all of the confidential responses of the members for submission to the ABO.

Director Arthur read the following passage from ABO Policy Guidance No. 10-05, “Board members must be committed to the highest standards of corporate governance. The board must hold itself accountable to the mission of the authority and the public interest. This annual assessment is a reminder to each board member of his or her duties, why those responsibilities are important, and whether they are performing those duties appropriately. The evaluation provides an opportunity for board members to measure their individual and collective effectiveness, determine if they are following their own policies and procedures, identify areas for board improvement, and to compare how their evaluation of the board’s performance compares to that of other board members.”

Director Arthur noted that this is the first year that the BFSA Board is required to perform an assessment. The results of the assessment are required to be submitted to the ABO by September 30, 2011. The evaluation process falls under the responsibility of the Governance Committee which will compile the results and reviewing the results at the September 28, 2011 Governance Committee meeting. The process needs to remain confidential to conform to the requirements of the Public Authorities Law.

Director Arthur asked that the evaluations be completed and confidentially submitted. He noted that pre-addressed and pre-stamped envelopes had been provided to the Directors for ease of submittal.

Reconstitute the Audit, Finance & Budget Committee

Director Arthur advanced the agenda to the final item for consideration: a resolution to reconstitute the Audit Committee. The Audit Committee is traditionally comprised of three Directors. With the recent resignation of former-Vice Chair Alair Townsend, there exists a vacant seat on the Committee. It is recommended that the Board appoint Director Messiah to the Audit Committee. There is no further change in the current compliment of the Audit Committee which includes Director Floss and is chaired by Chair Olsen.

Director Arthur asked for a motion to move the item.

Director Johnstone offered a motion that was seconded by Director Floss.

RESOLUTION NO. 11-27

RECONSTITUTE AUDIT, FINANCE AND BUDGET COMMITTEE

WHEREAS, the Board of Directors (“Board”) of the Buffalo Fiscal Stability Authority (“BFSA”) approved Resolution No. 03-55 establishing an Audit, Finance and Budget Committee (“Committee”) on October 21, 2003; and

WHEREAS, the Board of the BFSA approved Resolution No. 07-32 reconstituting the Committee on August 8, 2007; and

WHEREAS, the Board approved Resolution No. 07-55 reconstituting the Committee on November 7, 2007; and

WHEREAS, the Board approved Resolution No. 10-05 reconstituting the Committee on February 10, 2010; and

WHEREAS, the Board approved Resolution No. 10-36 reconstituting the Committee on July 21, 2010; and

WHEREAS, the current composition of the Committee is Board Chair R. Nils Olsen, Jr. who serves as Committee Chair, Board Vice-Chair Alair Townsend, and Director Fredrick Floss; and

WHEREAS, Vice-Chair Alair Townsend no longer serves as a Director of the Board creating a vacancy on the Audit, Finance and Budget Committee.

NOW THEREFORE BE IT RESOLVED, that in the interest of the ongoing operation and continued efficiency of the Committee, the Committee is hereby reconstituted to include Director Frank Mesiah as a committee member.

BE IT FURTHER RESOLVED, that Board Chair R. Nils Olsen, Jr. will continue to serve as Committee Chair and Director Fredrick G. Floss will continue to serve in the capacity of a Committee member.

The Board voted 6-0 to approve the resolution.

Code of Ethics – Certification Form

Principal Analyst Bryce E. Link noted that the Directors had been furnished with a certification form under Appendix E of the Code of Ethics. These forms need to be signed and submitted to Mr. Link, BFSAs Internal Control's Officer.

Ms. Mongold added that the forms are required to be submitted by those Directors appointed by the Governor. Ex-officio members of the Board are not required to sign and submit the certification.

Director Arthur requested that the attending members of the Board review and sign the certification at the conclusion of the meeting to expedite the processing of the forms.

Privilege of the Floor

Director Arthur extended the Privilege of the Floor to any attending member of the public who wished to comment regarding any actions taken during the meeting. Hearing none, he requested a motion to adjourn the meeting.

Adjournment

Director Floss offered a motion to adjourn the meeting.

Director Arthur seconded the motion.

The Board voted 6-0 to adjourn.

The meeting adjourned at 1:14 PM.