BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes – May 11, 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, May 11, 2011, in the Buffalo Market Arcade Complex, 1st Floor Conference Room. The meeting was called to order at 1:05 PM.

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

Board Excused: Giardino & Floss

Staff Present: Link, Miller & Mongold

Additionally Present: A.V. Buzard, Esq., Harris Beach, PLLC

Opening Remarks

Chair Olsen called the meeting to order. He noted that the meeting would start with a motion to enter into Executive Session to discuss litigation matters.

Roll Call of Directors

Secretary Arthur noted that procedurally a roll call of attending Directors needed to be called in determine that a quorum is present.

Chair Olsen asked Director Arthur to perform a roll call of the attending Directors.

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

Erie County Commissioner of Parks, Recreation and Forestry, Mr. James Hornung, represented County Executive Chris Collins in accordance with Subdivision 1 of §3853 of the Buffalo Fiscal Stability Authority Act (the "BFSA Act").

City of Buffalo (the "City") Commissioner of Administration, Finance, Policy and Urban Affairs, Ms. Janet Penksa, represented City of Buffalo Mayor Byron W. Brown, in accordance with Subdivision 1 of §3853 of 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…"*

Executive Session

Chair Olsen asked for a motion to enter into Executive Session.

Director Arthur offered a motion to enter into Executive Session with the sole purpose of discussing litigation and legal matters. Chair Olsen seconded this motion.

The Board voted 7-0 to enter into Executive Session with the sole purpose of discussing litigation matters.

The Board exited into Executive Session at 1:10 PM.

BUFFALO FISCAL STABILITY AUTHORITY
Executive Session Minutes – May 11, 2011

The following are the minutes of the Executive Session of the Board of Directors of the Buffalo Fiscal Stability Authority ("BFSA" or the "Authority") held on Wednesday, May 11, 2011, in the Buffalo Market Arcade Complex, Suite #400. The meeting was called to order at 1:15 PM.

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

Board Excused: Giardino & Floss

Staff Present: Link & Mongold

Additionally Present: A.V. Buzard, Esq., Harris Beach, PLLC

Litigation Matters

The Board voted to convene in Executive Session at 1:15 PM to discuss proposed, pending and/or current litigation.

The Board discussed the draft Resolution No. 11-05 to be introduced as new business after entering back in the regular meeting portion of the Board meeting.

Motion by Townsend, second by Mesiah to exit Executive Session.

Approval 7-0 to exit Executive Session.

The Board exited from Executive Session at 1:42 PM.

Exit from Executive Session

The Board returned from Executive Session at 1:47 PM.

Motion by Arthur, second by Townsend. The Board voted 7-0 to return from Executive Session.

Opening Comments (continued)

Chair Olsen noted that the meeting's agenda was fairly broad and quite extensive and would include the following:

- New business – a draft resolution which was discussed in Executive Session;
- A review of the comments provided to the BFSA in connection with the May 9, 2011 Public Forum;
- BFSA staff's preliminary review of the proposed fiscal year ("FY") 2011-2012 Budgets and Four-year Financial Plans for the City of Buffalo and the Covered Organizations (the Buffalo School District or the "District," the Buffalo Municipal Housing Authority or the "BMHA, the Buffalo Urban Renewal Agency or "BURA");
- A review of the third quarter reports for the City of Buffalo and the Covered Organizations;
- Consideration of a proposed Memorandum of Agreement ("MOA") between the District and the Buffalo Teachers Federation ("BTF") regarding a retirement incentive;
- Consideration of a proposed collective bargaining agreement ("CBA") between the District and the Transportation Aides of Buffalo ("TAB");
- A resolution to honor former BFSA Comptroller, Ms. Margreta Mobley; and
- An extension of the "Privilege of the Floor" to any attending member of the public who wished to comment on any of the actions taken during the meeting.

New Business

Resolution No. 11-05

Chair Olsen introduced Resolution No. 11-05. He read the contents of the resolution aloud.

RESOLUTION NO. 11-05

Whereas, the Buffalo Fiscal Stability Authority on April 21, 2004 adopted Resolution No. 04 – 35 "Wage Freeze" freezing wage increases of City of Buffalo employees effective immediately; and

Whereas, the resolution specifically prohibited the payment of increases in wages which would take effect after the date of the wage freeze notwithstanding the fact that the increases related to work performed prior to the effective date of the wage freeze; and

Whereas, in 2004 the Buffalo Professional Firefighters Local 282 and the City commenced compulsory interest arbitration proceedings relating to the period July 1, 2002 through June 30, 2004; and

Whereas, the arbitration proceedings between the City and the Firefighters Union regarding the period from July 1, 2002 through June 30, 2004 were concluded with the issuance of an opinion and award dated February 16, 2011; and

Whereas, the opinion and award of the arbitration panel awards pay increases and other benefits which had not taken effect as of the time of the imposing of the wage freeze; and

Whereas, the wage freeze was lifted by the Authority on July 1, 2007; and

Whereas, the City's Corporation Counsel inquired of the Authority as to whether the wage increases provided in the opinion and award can be paid by the City for the period prior to July 1, 2007; and

Whereas, the Authority has the duty to protect the fiscal stability of the City of Buffalo and to insure compliance with the wage freeze;

Now therefore be it resolved as follows:

The Authority determines that the wage freeze adopted by the Authority effective April 21, 2004 and the Buffalo Fiscal Stability Authority Act suspends and prohibits payment of the wage increases and benefits awarded in the opinion and award dated February 16, 2011, because the increases were not in effect prior to the commencement of the wage freeze on April 21, 2004; and be it further

Resolved that pursuant to section 3858(2)(o) of the Act, the Buffalo Fiscal Stability Authority orders that any increase in wages or other benefits provided in the opinion and award to the Buffalo Professional Firefighters Association Inc. Local, 282 for the period beginning July 1, 2002 through June 30, 2004 not be paid for any period prior to July 1, 2007.

Motion to approve by Johnstone, second by Olsen.

Chair Olsen asked if any Directors wished to comment on the issue.

Director Arthur noted that there had been previous correspondence between a former Chair of the BFSA, and the New York State Commission on Public Integrity relative to his appointment to the BFSA Board of Directors, with respect to the fact that he has two sons who are Buffalo Firefighters. The conclusion was reached that both firefighters are emancipated; no conflict of interest exists and he is not required to recuse himself. Director Arthur noted that the City of Buffalo Corporation Counsel had also issued an opinion to this effect while he served on the Buffalo Common Council.

Chair Olsen noted that the Board accepted this explanation and conclusion.

Director Arthur noted that it was troubling that the BFSA has the authority, pursuant to §3858(2)(o) of the BFSA Act, to continue to enforce the wage freeze, as this power is only bestowed to BFSA during a Control Period. BFSA is currently in a Control Period but should be in an Advisory Period because there have been "games played" to prevent this transition.

Director Arthur continued that the Buffalo Professional Firefighters Association, Local 282 ("Local 282") has been to binding arbitration twice. In the last instance the arbitrator ruled in favor of Local 282. He asked if it was correct that the BFSA Board was now being asked whether the back pay awarded by the arbitrator from 2002 to 2007 should not be paid as it would violate the provisions of the wage freeze.

Chair Olsen asked Harris Beach legal counsel, Mr. A.V. Buzard, Esq., to address the question.

Mr. Buzard sought further clarification from Director Arthur regarding the question.

Director Arthur replied that approval of the resolution would bar the City's payment of retroactive wages from the first year of the award in 2002 through the end of the wage freeze in July 2007. After the resolution is approved, Local 282 will have the ability to file a lawsuit contesting the BFSA's position with the New York State Supreme Court. Such a lawsuit could be decided, and furthermore appealed until the BFSA's position could reach the New York State Court of Appeals. This process could take up to two years.

Director Arthur added that he had not been convinced that approval of the resolution was the proper action to take and was uncertain whether the action would be reversed following litigation. If this were to occur, the City of Buffalo would not only owe the wages granted by the arbitrator's award, but also interest on these wages as well as legal expenses. Given this possibility, it is not prudent to pass this resolution. He stated that it was important for the City and/or other parties to work out a compromise and to move forward. Employee morale could suffer as a result of this action, which could adversely affect the quality of services offered. A more prudent approach would be to table the resolution and work with all of the parties involved to see if a compromise can be crafted.

Director Arthur noted that the resolution had been crafted in Executive Session and therefore the Directors did not have adequate time to consider the issue. He suggested the Board readdress the issue, at a future time. He opined that the media may have known about the item being on the agenda prior to the Board meeting while he had not. That is why the media is here. After the Directors are provided an opportunity to think about and understand the repercussions and understand the alternatives, he indicated the BFSA could call a special meeting if necessary. Given all of these issues, he expressed his intention to dissent in the approval of the resolution.

Director Mesiah asked Director Arthur if he were suggesting an amendment to the resolution to table the item.

Director Arthur affirmed his desire to table the item for further review.

Motion to table the item by Arthur, second by Mesiah. Vote 2-5 to table the item (Arthur & Mesiah – ayes; Brown, Collins, Johnstone, Olsen, & Townsend - nays). The motion did not carry.

Chair Olsen expressed that the resolution had been a result of the discussion in Executive Session. As to the question of whether or not the media had prior knowledge of the item, it does not seem likely. The Buffalo News Editorial staff had printed an editorial about a month ago regarding the arbitrator's award and had opined whether or not BFSA would address the enforceability of the award in light of the wage freeze. Addressing Director Arthur's concern whether or not there had been any breach of confidentiality, Chair Olsen replied that he did not think that this had occurred; there was no intention for this to occur.

Chair Olsen added that control boards typically are granted few tools to address significant structurally financial issues. The ability of the BFSA to use a wage freeze as a tool is one which requires careful consideration. The wage freeze needs to be defended.

Ms. Penksa replied that the way to avoid potential litigation is through negotiations and through collective bargaining. The City has managed to do this with various unions. Litigation was put aside and, equitable contracts were negotiated. In the past, the City has drafted two agreements with Local 282 that were agreed upon by the union's leadership as well as the leadership committee that were ultimately rejected by the "rank-and-file" members of Local 282. Often times, members of unions push for salary increases determined through litigation rather than through negotiations as there are no concessions associated with the increases. Ultimately, it is better to solve standing issues at the negotiating table.

Director Arthur stated that each union that had dropped lawsuits during contract negotiations had won rulings prior to an appeal. It may be possible to avoid litigation altogether and negotiate. BFSA may be able to help bring the sides together. Once BFSA has moved into an Advisory Period, it will be easier for negotiations to occur. By passing the standing resolution, BFSA risks further litigation which will be detrimental to the negotiation process.

Ms. Penksa stated that the City had met with Local 282 in the past few years and had negotiated very generous contracts. Had these contracts ultimately been approved, the City might now be in a more dire financial situation.

Chair Olsen stated that it was very important for the Authority to defend the wage freeze. Without this tool, BFSA has a more limited ability to help protect the financial stability of the City.

Director Arthur replied that the BFSA had lost cases relating to the Wage Freeze in the past.

Chair Olsen replied that the standing resolution was the Authority's first opportunity to defend the Wage Freeze with respect to an arbitrator's award.

Mr. Buzard interjected that BFSA had not lost any lawsuits brought by Local 282. Past lawsuits have been decided in favor of BFSA.

Director Arthur stated that the City of Buffalo had lost in arbitration to Local 282. Passing the standing resolution may invite new litigation which could take three or four more years to settle. It is not the proper way for BFSA to respond to the arbitrator's award. The point of binding arbitration is that impasses are solved through an impartial party.

Vice-Chair Townsend stated that if the members of the BFSA do not defend the BFSA Act, nobody will. She asked that the Chair to move the question, seconded by Director Johnstone.

Vote 6-1 to approve the resolution (Arthur dissents).

Approval of March 9, 2011 Meeting Minutes
Chair Olsen introduced Resolution No. 11-06, "Approving Minutes From March 9, 2011."

RESOLUTION NO. 11-06
APPROVING MINUTES FROM MARCH 9, 2011

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on March 9, 2011.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution No. 11-02 through 11-04 that were approved on March 9, 2011.

This resolution shall take effect immediately.

Motion to approve by Arthur, second by Mesiah. Vote 7-0 to approve.

<u>2011-2012 Public Forum</u>
Chair Olsen advanced the agenda to the next item for consideration: a summarization of comments solicited on the financial plans of the City and Covered Organizations. The BFSA Act requires that the Authority solicit public input on the proposed budgets and four-year financial plans for the City of Buffalo and the Covered Organizations within ten days of the receipt of said documents. The Public Forum was held Monday, May 9, 2011. BFSA additionally solicits public comments regarding its own proposed budget and financial plan, though this is not statutorily required.

Chair Olsen asked Principal Analyst Bryce E. Link, moderator of the Public Forum, to provide a summary of the public input received from the Public Forum.

Mr. Link addressed the Board and provided the following summary:

Introduction

- The Public Forum had seven attendees;
- BFSA Directors present were Chair Olsen, Secretary Arthur, and Director Johnstone;
- Along with the comments submitted in-person at the Public Forum, two additional comments were received telephonically;
- Two doctoral candidates from the University of Buffalo, Ms. Jackie Sievert and Mr. Josh Boston, were commissioned to perform as scribes at the Public Forum, consistent with the BFSA Act requirement for independent notetakers.

Summary of Comments

- Cost-saving measures will lead to greater efficiencies and effectiveness within City operations.
- The BFSA Board should use its limited, but substantial authority to guide the City to a new approach in addressing its financial responsibilities;
    - BFSA has not had a significant impact on how the City approaches its financial outlook to a longer term perspective,
    - BFSA should influence some of the broader policy goals, particularly with the development of Canal Side, because a public authority control board has never approved the final plan.
- There is concern over the way that strategic planning and fiscal planning are rolled together in the budget;
    - Strategic plans have a much longer time horizon whereas fiscal plans are one to four years,
    - The budgeting process shows a disconnect as the shorter-term budgets don't take into consideration longer-term plans.
- There has not been a long-term vision for the Canal Side project. The problem has been the lack of defined phases of operations for the program.
- The health of the Buffalo School District determines the health of the City of Buffalo. The BFSA Board should take a look at new technologies and newer ways of approaching some older problems, utilizing technology, specifically open source software in education.
- There are looming issues with Medicaid and open collective bargaining agreements, particularly with the Buffalo Teachers Federation.
- The City of Buffalo is a shrinking livable area. The City needs to right-size services provided.
- The BFSA has not challenged people to do things differently.

Ms. Penksa noted that the scope of the comments received during the Public Forum were not specific to the City of Buffalo's proposed budget and financial plan. The few attendees represent their own opinions, not the opinions of the City residents en masse. The Public Forum gives a very small group of people a disproportionate amount of time and attention.

Mr. Link replied that, while the number of attendees physically present at the Public Forum were few, he had met with a number of individuals at various locations throughout the City while advertising the Public Forum. Many City residents offered additional comments but were unwilling to codify this feedback for the public record.

Chair Olsen stated that both he and Director Arthur have had discussions relating to the effectiveness of the Public Forum, attempting to amend the process to solicit greater turnout as well as a greater focus on the topic of the Public Forum itself.

Director Arthur agreed with Chair Olsen and added that the timetable afforded by the BFSA Act is flawed because it requires that the Public Forum be held prior to the adoption of the budget. Citizens cannot comment on a final document but rather a proposed document that will receive various revisions by the various approving bodies prior to its official adoption.

Chair Olsen noted that BFSA will convey more clearly in the future that the intent of the Public Forum is to solicit feedback solely on the proposed budgets and four-year financial plans. The Public Forum was not well attended.

Summary of Comments (continued)

- Recently the City of Buffalo settled a lawsuit regarding mesothelioma. The City has established a precedent that may only exacerbate the City's fragile financial footing as additional claims arise.

Mr. Link concluded his summary of the comments received from the 2011-2012 Public Forum.

Chair Olsen sought further clarification on the final comment submitted. Mr. Link replied that a commenter had noted that the City of Buffalo had settled a lawsuit with a former police officer whose lawsuit claimed that he had developed mesothelioma as a result of exposure to on-site asbestos. The City had settled with the former officer. The commentator expressed dissatisfaction with this settlement as he believed that it could lead to similar, future litigation against the City.

Chair Olsen noted that awards of this nature are "almost formulaic in nature" after exposure has been documented.

Mr. Link noted that both Ms. Sievert and Mr. Boston were on hand to address any additional questions the Directors may have regarding the Public Forum.

Chair Olsen replied that no further questions remained and thanked them both for their efforts.

<u>Review of the Proposed 2011-2012 Budgets and Four-Year Financial Plans</u>
City of Buffalo

Chair Olsen advanced the agenda to the next item for consideration: review of the proposed 2011-2012 budgets and four-year financial plans. He asked Mr. Link to provide an overview of the City of Buffalo's proposed budget and financial plan.

Mr. Link provided the following overview of the City of Buffalo's proposed 2011-12 Budget and Four-Year Financial Plan:

2011-2012 Proposed Expenditures
The City of Buffalo's 2011-12 proposed spending is $462.3 million.

- The largest single expenditure is Fringe Benefits at 26%. This includes employee health insurance, FICA, and other employer contributions for the employee;
- Transfers constitute the second largest expenditure at 23%. This includes fund transfers to the Buffalo School District, the Debt Service Fund, and to the Solid Waste and Recycling Fund.
    - Fund transfers to the District have been held relatively flat at $70.3 million since FY 2006.
- Proposed expenditures for Police services are 17% of total proposed spending while proposed expenditures for Fire services are 12% of total proposed spending, for a total of 29% for protective services.
- Proposed expenditures for Public Works are 6% of total proposed expenditures while Utilities are 4%.
- All Other cumulative spending categories account for the remaining 12% of total proposed spending.

2011-2012 Proposed Revenue
The City of Buffalo's 2011-12 proposed revenue is $450.0 million.

- State Aid is the largest source of revenue, totaling 41.7% of total revenue. This includes State Aid reimbursements for services and grants;
- City sources account for 38% of total revenue and include: real property tax, PILOTs, licenses and fees, etc.;
- Contributions from Erie County account for 15.5% of total revenue. The largest single piece is the City's portion of sales tax revenues;
- All other revenue sources account for the remaining 4.5% of total anticipated revenue.

Projected Operating Deficit
The City of Buffalo's 2011-2012 Operating Deficit, or the difference between General Fund Revenues and General Fund Expenditures, total $12.3 million. The cumulative Operating Deficit is $49.7 million over the four years of the Financial Plan.

- The 2011-2012 Operating Deficit is closed through the use of $12.3 million of fund balance;
- The Operating Deficits in the three outyears of the Financial Plan are closed through similar use of Fund Balance along Programs to Eliminate the Gap ("PEG");
- The City of Buffalo currently has $49.9 million in undesignated, unreserved fund balance that could be used to eliminate the operational deficits. Such usage would nearly deplete these reserves.

Ms. Penksa stated that the operating deficit is misleading as the City has reserves set aside and will likely end the current fiscal year with a surplus which will be added to reserves.

Mr. Link replied that the operational deficit depicted in the presentation is based on the proposed 2011-2012 Budget and Four-Year Financial Plan. Fund Balance used to reduce operational deficits does not include the end of third quarter projected year end $1.1 million surplus.

Ms. Penksa expressed that it would be misleading to assume that the City would be drawing down its fund balance over the four year course of the Financial Plan. The City has shown the ability to maintain and increase fund balance reserves. Additionally, the City has available remaining restricted Aid and Incentives for Municipalities ("AIM").

Vice Chair Townsend noted that the current fiscal year fund balance was about $51.0 million. The projected use of fund balance in the Financial Plan would almost exhaust this fund. Ms. Penksa agreed but noted that the current year's budget had included usage of $12.0 million in fund balance. Current year expenditures are less than budgeted. Therefore the actual use of fund balance will be less than the amount in the Adopted Budget.

Vice Chair Townsend replied that the City has budgeted conservatively. It is concerning that the proposed Four-Year Financial Plan proposes a $48.8 million draw down in fund balance. This does not include the potential for any additional negative, unforeseen circumstances.

Ms. Penksa noted that projected growth in revenues was estimated conservatively. For example, the projected growth in Property Tax revenues was projected to increase modestly. Fund balance has been saved through prudent budgeting as well as the sacrifices of public employees.

Chair Olsen commented that, ideally, projected revenues would total projected expenditures. In reality, structural issues created projected deficits which need to be addressed, particularly unresolved collective bargaining agreements as well as the extraordinary increases in the cost of health benefits for both retired and active employees. While the amount of fund balance is significant, it is difficult to imagine that the fiscal demands the City faces will not place a serious demand on these funds. Large increases in current revenues are unlikely unless the City significantly increases taxes, an unfavorable prospect.

Chair Olsen continued that, when the BFSA was created, the City was almost at its constitutional property tax limit. One of the positive developments that have occurred since BFSA's inception is the increase in taxing margin while the amount of fund balance has increased. In the long run, these factors will play a significant factor in the revitalization of the City. While the City has a significant level of fund balance, there is a call on these funds.

When evaluating financial plans, there are two perspectives. The first view is that, while the City has a significant level of reserves, there are encumbrances in the financial plan to draw down these funds. The second view is, while the City has faced significant financial challenges in the past, it has been able to create and grow a healthy level of fund balance. It is concerning to see a high call on fund balance in the financial plan. The City needs to return to "the old ways" where fund balance is not budgeted for use and projected expenditures meet projected revenues.

Mr. Link stressed that the Operational Deficits are merely projections that will be affected by a myriad of factors in the near future. For example, in the recent past, actual revenues have come short of projected revenues as the State has reduced anticipated AIM payments. Annually, budgets are adjusted to recognize these changing variables.

Major Revenue Sources
The three major revenue sources for the City are: New York State Aid, the City's property tax levy, and the City's share of Erie County sales tax.

- These three sources account for an annual average of 82% of total tax revenues over the course of the financial plan;
- New York State Aid has increased by $39.4 million, or 32%., since FY 2006;
- Sales tax has increased by $6.2 million, or 10%, since FY 2006;

- Real Property Taxes have remained relatively flat with a slight decrease of $600,000, or 0.5%, between FY 2006 and the FY 2012 projection.
    - The City has been able to increase its taxing capacity under its constitutional taxing limitations. Currently, the City is at 79% of capacity.
- There is no major growth or variations in the other revenue sources outside of the use of restricted AIM and Fund Balance, both of which are held flat over the course of the Financial Plan.

Employee Costs
Total employee costs, including wage and salaries as well as fringe benefits total $300.2 million in the proposed FY 2012 budget. This constitutes 84% of the total proposed budget, and does include retiree health care costs for which the City is responsible for on an annual basis.

City Personnel Costs

- Total City Personnel Costs have increased from $228.9 million in FY 2005-2006 to $300.2 million in the Proposed 2011-2012 Budget, an increase of $71.0 million or 31%;
- Total annual salaries have started to decrease as a percentage of total personnel costs as the rate of increase in the rate of health insurance costs, pension costs, and other fringe benefits have outpaced the rate in growth in salary cost.

Average Cost Per Employee

- Total employee compensation has increased from $80,300 in FY 2006 to $101,300 in FY 2012, an increase of $21,000 or 26% per employee.

Ms. Penksa asked whether the average employee compensation included overtime payments for both Police and Firefighters. Mr. Link replied that it did. It includes total employee compensation including the cost of benefits along with wages and salaries. The mean average of $101,300 does not reflect the typical compensation per City employee but rather the total employee compensation paid divided by the number of employees. The total employee compensation figure does not include retiree health insurance costs.

Chair Olsen commented that the total cost of retiree health insurance within the Buffalo School District is roughly 2/3 of total employee health insurance costs. If this were not such a large expenditure, funds could be used productively in various other ways such as for instruction.

City of Buffalo Budgeted Workforce

- The proposed FY 2012 level of 2,612 full time equivalent ("FTE") employees reflects a 6% decrease from FY 2004;
- City workforce levels have shown a 4% increase from FY 2007 to FY 2012. This is reflective of the City's taking back management of parks in FY 2010 from Erie County, the expected resumption of City holding center operations, as well as new incoming Police Officers and Firefighters, although it is expected that some of these new employees will replace those employees who are retiring or leaving City service.

Chair Olsen noted that the projected FTE numbers contradict the erroneous assumption that many individuals have that the City's workforce is bloated and filled with patronage positions. The City has done a great deal to right-size its workforce. State mandates have hampered this process.

City of Buffalo Four-Year Financial Plan Considerations
The City's proposed FY 2011-2012 budget anticipates $450.0 million in total revenues, $462.3 in total expenditures, resulting in a deficit of $12.3 million. General Fund revenues are less than General Fund expenditures in each outyear of the Financial Plan. The Financial Plan eliminates this disparity through the use of Fund Balance as well a number of PEG actions.

- The total four year Operational Deficit is $49.7 million, prior to the use of AIM funds of $48.8 million;
- The four-year plan relies on $14.4 million of restricted AIM funds;
- There are minimal increases over the Plan in pay-as-you-go capital outlays, supplies and services which may not be sustainable;
- Overtime costs are budgeted at relatively flat levels for Police and Fire in the three outyears of the Financial Plan;
- Personnel costs are held flat and benefit costs continue to rise;
- New York State's economic climate is a risk to revenues; there is no appetite for increased taxes;
- There are no resources included in the Financial Plan for new CBAs or arbitration awards;
- Other Post-Employment Benefits ("OPEB") liabilities were last estimated at $1.2 billion with an annual required contribution ("ARC") of $83.7 million.

Mr. Link concluded his presentation.

Executive Director Jeanette M. Mongold commended the efforts of the City officials who developed the proposed budget and four-year plan. The budget was developed in a challenging fiscal environment. The City is heavily reliant on State Aid and will continue to be so. Actions by the State of New York have a direct effect on the City budgets.

Ms. Mongold provided the following additional comments regarding the proposed Budget and Four-Year Financial Plan:

- With respect to the usage of restricted AIM in the Financial Plan, such funds are available to the City and are to be used to offset increases in City property taxes and/or potential reductions in services. The City is clearly using these funds appropriately. However, usage of AIM funds along with an increasing reliance on the use of fund balance to eliminate Operational Deficits may be an early indicator of an operational imbalance. This will need to be monitored closely.
- It should be noted the current level of fund balance was created during a period of significantly increase in State Aid as well as during the period of the imposed wage freeze. Therefore, close monitoring of the usage of fund balance is tantamount.

Ms. Mongold concluded her comments.

Review of the Buffalo School District 2011-2012 Budget and Four-Year Financial Plan

Chair Olsen advanced the agenda to the next item for consideration: a review of the Buffalo School District's 2011-2012 Budget and Four-Year Financial Plan. He introduced Mr. Nathan D. Miller as BFSA's new Financial Analyst and asked him to provide a summary for the Board.

Mr. Miller addressed the Board and provided the following information:

General Fund Revenues

General Fund Revenues are proposed at $726.65 million in FY 2011-2012. They are projected to increase to $756.57 million in FY 2014-2015, a modest increase of 4.12% over the course of the Financial Plan.

- Total New York State Aid grows modestly from $602.5 million in FY 2012 to $629.89 million in FY 2014-2015, an increase of 4.55%. The main source of New York State Aid is Foundation Aid, which constitutes 59% of total General Fund Revenues in FY 2011-2012;
- Property Tax Revenues are projected to be flat at $70.3 million. This constitutes 10% of total FY 2011-2012 General Fund Revenues;
- The District's portion of the City of Buffalo's Sales Tax Revenues increases modestly from $34.0 million in FY 2011-2012 to $36.08 million in FY 2014-2015, consistent with other General Fund Revenues. This constitutes 5% of total FY 2011-2012 General Fund Revenues;
- All Other General Fund Revenues are budgeted at $19.8 million in FY 2011-2012, increasing a total of 2.27% to $20.27 million in FY 2014-2015. These General Fund Revenues constitute 3% of total FY 2011-2012 General Fund Revenues.

General Fund Expenditures

General Fund Expenditures are proposed at $756.85 million in FY 2011-2012 and increase to $834.65 million in FY 2014-2015, a 10.28% increase of the course of the Financial Plan.

- Significant is the total expenditures for Employee Compensation which includes wages and salaries, health insurance for active employees, and all fringe benefits. It cumulatively totals $339.5 million in the proposed FY 2011-2012 budget and is projected to increase 5.95% to $359.7 million over the course of the Financial Plan. Total Employee Compensation for active employees represents 45% of total FY 2011-2012 General Fund Expenditures;
- Health Insurance Expenditures for Retirees is proposed at $63.4 million in FY 2011-2012 and is projected to increase to $91.0 million in FY 2014-2015, a 29.81% increase over the course of the Financial Plan. Total Health Insurance costs for retirees represents 8% of total FY 2011-2012 General Fund Expenditures;
- Payments to Charter Schools constitutes a significant expenditure and are proposed at $92.6 million in FY 2011-2012 and are projected to increase to $120.2 million in FY 2014-2015, a 29.81% increase over the course of the Financial Plan. Payments to Charter Schools represent 12% of total proposed FY 2011-2012 General Fund Expenditures.

Operational Deficit

The District's Operational Deficit, representing General Fund Revenues less its General Fund Expenditures, totals $30.2 million in the proposed FY 2011-2012 Budget. The Operational Deficit is projected to widen to $78.08 million in FY 2014-2015, and cumulatively totals $225.47 million over the course of the Financial Plan.

- The District eliminates the Operational Deficit in the proposed FY 2011-2012 Budget through the usage of fund balance, including both Reserved, Designated and Unreserved, Undesignated Fund Balances;
- Similar usage of Fund Balance is proposed in the three outyears of the Financial Plan to reduce the Operational Deficits. A series of PEG actions are also proposed to eliminate the remaining deficits.

Director Arthur noted that the BFSA Act requires that financial plans be balanced in order to be approved. As projected General Fund Expenditures exceed projected General Fund Revenues, the Financial Plan is not balanced.

Chair Olsen replied that approval of the Financial Plan is complicated and must also take into consideration the delivery of services. Budgets have been balanced in years past through the closure of facilities and through layoffs. Similar to the City of Buffalo's Proposed Budget and Four-year Financial Plan, the District has a plan to eliminate these gaps. It is incumbent on the BFSA to verify that these PEG actions do not have a deleterious effect on the District's delivery of services.

Director Arthur concurred and noted that the Payments to Charter Schools are quite significant and direct resources away from the District. It contributes to the Operational Deficit and is creating a segregated school system.

Key General Fund Expenditures

- Health insurance expenditures for both active and retired employees represent significant General Fund Expenditures.
    - Combined health insurance expenditures totaled $74.5 million in FY 2007-2008. They are projected to total $143.4 million in FY 2014-2015. This represents a 92.61% increase over this time period, and furthermore are budgeted to increase 42.5% increase over the course of the Four-year Financial Plan.
- Payments to Charter Schools represent another significant General Fund Expenditure.
    - Charter School Payments are proposed at $92.6 million in FY 2011-2012 and increase to $120.2 million in FY 2014-2015, a 29.81% increase over the course of the Financial Plan.

District Enrollment

- School District enrollment has shown a gradual decline in recent years and is projected to continue to do so;
- Enrollment in area Charter Schools show a converse increase in enrollment and is projected to continue to do so;
- Combined School District and Charter School enrollment in the City of Buffalo reflects an overall decline. This recent year decline is projected to continue throughout the four years of the Financial Plan.

Proposed Elimination of the Gap Action (PEG Actions)

PEG actions are used along with planned use of Fund Balance to eliminate Operational Deficits in the outyears of the Financial Plan. These potential gap eliminating actions are often options of last resort and, if implemented, would diminish the quality of services in the District. Proposed PEG Actions include:

- Staff Reductions – up to 100 positions eliminated in each of the three outyears of the Financial Plan for a potential budgetary savings of up to $30.0 million;
- Closure of Administrative, Alternative, and/or Swing Sites for a potential budgetary savings of up to $11.3 million;

Chair Olsen asked for clarification regarding "Swing Schools." Mr. Miller replied that these are temporary schools used to house students during the JSCB project.

Proposed Elimination of the Gap Action (PEG Actions) – continued

- Forced Reductions – Layoffs of active employees rather than simply the elimination of vacant positions through attrition which could have a combined budgetary savings of $77.43 million;

- Other Reductions to Close the Gap – Further layoffs including Transportation Aides, reductions in non-mandated services, etcetera, which could have a combined budgetary savings of $15.99 million;
- Additional Revenue –Increased Federal and/or New York State Aid over what is currently projected due to an improved economic climate both nationally and locally. Additional revenues are projected modestly at $8.6 million combined in the three outyears of the Financial Plan.
- Consolidation of administrative functions with the City of Buffalo. This sharing of services is a minor PEG action and could provide a potential savings of up to $1.5 million combined in the three outyears of the Financial Plan.

Net PEG Actions
The cumulative Operational Deficit over the course of the Financial Plan totals $225.5 million. After the anticipated use of Fund Balance, including Reserved, Designated, and Unreserved, Undesignated Fund Balances, the remaining cumulative gap is $143.37 million. PEG actions of up to $143.37 million are used to eliminate these gaps.

District 2011-2012 Budget and Four-year Financial Plan Risks

- The District is a "dependent" school district and is therefore heavily reliant on State Aid. New York State's own budgetary issues are a risk to the District;
- PEG actions, if implemented, could have a significantly negative impact on the District;
- The District is using $64.0 million in Unreserved, Undesignated Fund Balance as an option to decrease the Operational Deficit within the Four-year Financial Plan. Usage at this level would essentially deplete these funds;
- All major District unions are out-of-contract. There are no estimates incorporated within the Financial Plan for settled CBAs;
- OPEB liabilities loom large and were last estimated at $1.2 billion. The ARC is currently $121 million and is subject to adjustment.

Mr. Miller concluded his presentation.

Director Johnstone noted that the District is a dependent district and asked what the City's responsibility is toward the District's Operational Deficits.

Director Arthur replied that the District is a State dependent district, not of the City. Rumors have circulated that the New York State Legislature intends to make the Buffalo School District independent. These rumors are unfounded as this move would first require an amendment to the New York State constitution.

Director Johnstone noted that City property owners pay property taxes which are collected by the City. The City forwards a portion of these funds to the District. If the District is in a dire financial situation, what is the City's responsibility to the District?

Ms. Penksa replied that the City of Buffalo has maintained the amount of the property tax levy, the proportional sharing of which has increased to the District during a period while the constitutional tax limit has increased. As a result, the District has received a higher percentage of the levy. The City of Buffalo does not have representation on the Buffalo Board of Education and is neither involved in the budget development process nor the administration of the District. The City has maintained the level of funds forwarded while practicing tight fiscal controls within its own budget. The District has different fiscal and spending practices which are not as severe as the City's.

Vice Chair Townsend commented the there is a moral obligation of the community to preserve the integrity of the District. The remaining Operational Deficit of $143.0 million after the usage of Fund Balance is very concerning. Costs such as retiree health insurance are very concerning. Even with an unparalleled level of New York State Aid, these gaps persist. All of the concerned parties need to come together to address these significant issues.

Chair Olsen concurred and noted that the resources available to the District to address the outyear deficits are not appropriate, especially given that the City is under a Control Period. Increases in City Property Taxes could not eliminate these deficits and would impoverish the City. The District's Administration has done an admirable job addressing the issues facing the District, yet the actions that may be required would have a deleterious effect on the District. Even though enrollment is decreasing, there is a greater need for teachers within the District to address performance issues. Balancing the budget through the use of cuts is the opposite of what needs to occur. More and more, District funds are going to areas other than instruction. This is a serious problem which needs to be addressed.

Director Arthur sought confirmation that Sales Tax revenue had decreased for the City and the District and that this recent reduction in anticipated revenue was partly attributed to the 2010 US Census which showed that the region had a lower percentage of total State residents. Ms. Penksa confirmed this.

At 2:30 PM Director Mesiah exited the proceedings.

Review of the Buffalo Municipal Housing Authority 2011-2012 Budget and Four-year Financial Plan

Chair Olsen advanced the agenda to the next item for consideration: a review of the BMHA 2011-2012 Budget and Four-year Financial Plan. He noted the time constraints of attending members of the District and suggested that the consideration of the proposed CBA with the Transportation Aides of Buffalo ("TAB") be moved up in the agenda. He asked Ms. Mongold to begin the summary of the BMHA's 2011-2012 Budget and Four-year Financial Plan in the interim as several Directors had momentarily left the proceedings and a quorum was temporarily not available to vote on the proposed CBA.

Ms. Mongold provided the following summary:

Review of Four-year Financial Plan

- The Financial Plan is consistent with the prior years' plan;
- There were no changes in assumptions for revenues and expenses.

<u>Buffalo School District</u>

Proposed Collective Bargaining Agreement with the Transportation Aides of Buffalo

Chair Olsen noted that a quorum of Directors was now present and advanced the agenda to the consideration of the proposed collective bargaining agreement between the District and the TAB. He noted that members of this collective bargaining union do not receive paid healthcare benefits. He asked Ms. Mongold to provide a summary of the proposed CBA.

Motion to approve by Arthur, second by Brown [Penksa].

RESOLUTION NO. 11-07

APPROVAL OF COLLECTIVE BARGAINING AGREEMENT BETWEEN THE BUFFALO SCHOOL DISTRICT AND THE TRANSPORTATION AIDES OF BUFFALO

WHEREAS, Chapter 122 of the Laws of 2003, Section 3858(2)(e), requires that during a Control period the Buffalo Fiscal Stability Authority ("BFSA") shall approve or disapprove any collective bargaining agreements binding or purporting to bind the Buffalo Public School District ("District"); and

WHEREAS, the BFSA is required to promptly review a collective bargaining agreement that is submitted to it and shall disapprove any collective bargaining agreement that is not in compliance with the approved financial plan; and

WHEREAS, the District and the Transportation Aides of Buffalo ("TAB") have fully and completely bargained with respect to the terms and conditions of employment of union members; and

WHEREAS, on April 16, 2011 the members of TAB approved a Collective Bargaining Agreement ("CBA") between the District and TAB; and

WHEREAS, on April 27, 2011, the Buffalo Board of Education ratified the CBA; and

WHEREAS, the District submitted such CBA with supporting materials to the BFSA for approval under Section 3858(2)(e) of the Act, and has fully and promptly complied with all information requests of the BFSA; and

WHEREAS, the CBA provides for the terms and conditions of employment for the period from July 1, 2009 through June 30, 2014; and

WHEREAS, the CBA does not provide for any retroactive wage increases; and

WHEREAS, the CBA includes wage increases for a three year period, including fiscal year 2011-12, 2012-13, and 2013-14; and

WHEREAS, the proposed CBA is in accordance with the approved 2011 – 2014 financial plan as approved by the BFSA on June 22, 2010; and

WHEREAS, the District will pay for the increased costs of this MOA through the use of existing resources in the current budget and four-year financial plan.

NOW THEREFORE BE IT RESOLVED, that the BFSA does hereby approve the aforementioned agreement between the District and TAB, which is to be effective for the period from July 1, 2009 through June 30, 2014.

Ms. Mongold provided the following summary of the proposed CBA:

Introduction
TAB is a unique collective bargaining unit within the District. The current CBA does not include many benefits. Therefore, there are few concessions which can be negotiated. Members of the collective bargaining unit are covered by the District's Living Wage policy. All of the negotiating parties including the District's administration and the leadership of TAB came to a consensus to include regular

hourly wages as well as holiday pay and perfect attendance pay when calculating compliance with the Living Wage Policy.

- The previous agreement covered the period of July 1, 2004 to June 30, 2009;
- This CBA covers the period of July 1, 2011 through June 30, 2014;
- TAB currently has 549 employees on 549 bus routes.

Salary Increase Details

- Increases range from $0.25 to $0.50 an hour per employee;
- Perfect attendance is paid at $65 for Step I & II employees and $80 for Step III & IV employees for each 6 week school year period of perfect attendance.

Vice Chair Townsend asked for further clarification regarding the Perfect Attendance incentive. Ms. Mongold replied that it was an attendance bonus given to members of TAB for not missing work during six week set intervals. Transportation Aides have historically had high rates of absenteeism; the Perfect Attendance incentive attempts to mitigate this. The incentive also assists the District in meeting the Living Wage provision.

Chair Olsen noted that members of the collective bargaining unit are among the lowest paid within the District.

Potential CBA Savings

There are a limited amount of concessions available from TAB employees. Potential CBA savings include:

- Consolidation of salary steps from five to four, with a longer period for each step, as well as more than six years to reach Step IV;
- Potential savings by requiring TAB employees to utilize an electronic time-keeping system;
- Additional savings by utilizing direct deposit for payroll purposes.

Miscellaneous Contract Notes

- Employees have the option of enrolling in the District health insurance plan but are required to pay 100% of the premium;
- Employees are eligible to opt into the New York State Retirement System. Approximately 30 participate.

Vice Chair Townsend asked how long the tenure period was to enroll in the NYS Retirement System. Ms. Mongold deferred the question to attending members of the District.

District Chief Financial Officer, Ms. Barb Smith responded that employees may enroll at any point in the retirement system. A ten year vesting period is required to receive a benefit from enrollment.

Unchanged Employee Benefits

- Employees receive five paid holidays per school year;
- Employees receive unlimited snow and emergency closing days during the school year;
- Sick leave is available for hospitalization of up to five days for Step II employees or higher;
- Employees may receive three days of bereavement leave.

CBA Costs

The proposed CBA has the following incremental costs:

- FY 2011-2012 = $590,850;

- FY 2012-2013 = $796,857;
- FY 2013-2014 = $1,031,770;
- Total cumulative cost of the CBA = $2,419,207.

Director Arthur called the question.

Vote 6-0 to approve.

Retirement Incentive

Chair Olsen advanced the agenda to the next item for consideration: the District's retirement incentive. He asked Ms. Mongold to provide a summary for the Board.

Ms. Mongold provided the following summary:

School District Retirement Incentive
The Buffalo School District has agreed to a Memorandum of Agreement ("MOA") with the Buffalo Teachers Federation ("BTF") to offer a retirement incentive to teachers who are no longer eligible for the contractual early retirement incentive, and who did not participate in Part A of the New York State's early retirement incentive offered this past year. The additional retirements will afford the District greater flexibility to restructure.

- The deadline to notify the District of retirement was April 30, 2011. Of the 402 eligible, 66 filed for retirement. The notification may not be rescinded;
- Savings are projected to be $1.2 million in FY 2011-2012;
- The incentive is $10,000 per employee totaling a net payment of $660,000;
- The incentive will increase the current number of vacancies;
- Positions filled will be done so with lower average cost employees.

Motion to approve by Arthur, second by Johnstone.

RESOLUTION NO. 11-08
APPROVAL OF MEMORANDUM OF AGREEMENT BETWEEN THE BUFFALO SCHOOL DISTRICT AND THE BUFFALO TEACHERS FEDERATION

WHEREAS, Chapter 122 of the Laws of 2003, Section 3858(2)(e), requires that during a Control period the Buffalo Fiscal Stability Authority ("BFSA") shall approve or disapprove any collective bargaining agreements ("CBA") binding or purporting to bind the Buffalo Public School District ("District"); and

WHEREAS, the BFSA is required to promptly review a collective bargaining agreement that is submitted to it and shall disapprove any collective bargaining agreement that is not in compliance with the approved financial plan; and
WHEREAS, on March 30, 2011, the Buffalo Board of Education passed a resolution authorizing the Superintendent to enter into Memorandum of Agreement ("MOA") with the Buffalo Teachers Federation (the "BTF") to offer a retirement incentive to qualified individuals; and

WHEREAS, the MOA is effectively a modification to the pre-existing CBA and as such, the above criteria are applicable; and

WHEREAS, the agreement required individuals to notify the District by April 30, 2011, of their intent to retire prior to July 1, 2011; and

WHEREAS, sixty-six members of the BTF have notified the District of their intention to accept the early retirement incentive; and

WHEREAS, the District submitted such agreement with supporting materials to the BFSA for approval under Section 3858(2)(e) and Section 3858(2)(h) of the Act, and has complied with all information requests of the BFSA; and

WHEREAS, the cost of the incentive totals $660,000, or $10,000 per employee, who accepted the early retirement incentive; and

WHEREAS, the District anticipates that the early retirement incentive will allow the number of full time equivalent positions to be reduced through attrition; and

WHEREAS the District anticipates that the retirement incentive will allow vacated positions, that are in high demand fields, to be filled with teachers on lower steps; and

WHEREAS, the District will pay for the increased costs of this MOA through the use of existing resources in the current year budget.

NOW THEREFORE BE IT RESOLVED that the BFSA does hereby approve the aforementioned Memorandum of Agreement between the Buffalo School District and the Buffalo Teachers Federation. This Resolution shall take effect immediately.

Approval 6-0.

At 3:27 PM Ms. Penksa exited the proceedings.

Review of the Buffalo Municipal Housing Authority 2011-2012 Budget and Four-year Financial Plan (continued)

Ms. Mongold continued the overview of the BMHA's 2011-2012 Budget and Four-year Financial Plan. She noted that BMHA has essentially resubmitted the same plan from the prior year. There are serious outstanding questions that have not been answered by BMHA's management regarding the Financial Plan. The presentation of the material will be condensed due to time constraints.

Ongoing Programs

Ongoing programs are essentially the same as the prior year with the exception of Marine Drive, which BMHA took over management of in February 2011. The potential impact on BMHA, if any, has not been determined.

<u>General Fund Revenues</u>

- The Operating Subsidy constitutes 92% of total General Fund Revenues and is projected to increase 3% through the Financial Plan. Given the uncertainty at the Federal level, this level of subsidy is precarious.

Director Johnstone noted that, given the magnitude and severity of outstanding questions that need redress by the BMHA management, along with the time constrains of the remaining members of the Board, that the review be tabled until the next meeting.

Chair Olsen agreed and commented that, given the changes which are occurring, BMHA's submittal of essentially the same plan may not be appropriate.

Ms. Mongold noted the importance of conveying to the BFSA Board the number of concerns that staff has with the Financial Plan.

Review of the Buffalo Urban Renewal Agency's 2011-2012 Budget and Four-year Financial Plan

Chair Olsen advanced the agenda to the next item for consideration: Review of the BURA 2011-2012 Budget and Four-year Financial Plan. He asked Ms. Mongold to provide a brief summary of the material.

Ms. Mongold provided the following summary:

General Fund Revenues

- Revenues are primarily from the U.S. Housing and Urban Development ("HUD") Community Development and Block Grant ("CDBG") programs;
- Funding is approved by Congress and is formulaic; it will likely be impacted by the 2010 Census results;
- Total grant revenue is decreasing $4.2 million in FY 2012;
- CDBG funds account for 56% of all revenues in FY 2011-2012 and are projected to represent 68% in FY 2014-2015;
- HOME Program funds have been reduced by HUD by $600,000 and projected consistently through the remainder of the Financial Plan;
- ESG is budgeted at $1.0 million annually. ESG for Homeless Prevention terminates after the current year;
- Remaining General Fund Revenues are consistent with the current year.

Review of Third Quarter Reports

Chair Olsen recommended that the presentations of the individual third quarter reports be deferred given the time constraints and the resources given to the reviews of the 2011-2012 Budgets and Four-year Financial Plans. The BFSA staff reports are included in the Board book, and if any Director has further questions, these may be provided to the BFSA staff.

Additional New Business – Joint Certification from the New York State and City of Buffalo Comptrollers

Director Arthur noted that Chair Olsen had remitted a letter on the behalf of the BFSA Board to the New York State Comptroller and the City of Buffalo Comptroller, as he had requested at the March 9, 2011, Board Meeting. He thanked the Chair and commended him on the content of the document.

Chair Olsen indicated that the letter would be incorporated into the meeting's minutes. <Appendix A>

Director Arthur noted that neither party had provided a written communication, per the letter's request. Ms. Mongold replied that the New York State Office of the State Comptroller had responded telephonically and had communicated several items but had indicated that they would not be remitting a written communication.

Director Arthur replied that not remitting a written communication as had been requested was a dereliction of duty. It is the respective Comptrollers' duties, per the BFSA Act, to determine whether or not the criteria have been met for BFSA to transition into an Advisory Period. Such a determination needs to be submitted in the form of a written communication. Further, the assumption is that the State Comptroller may not act until the City Comptroller has codified its determination.

Ms. Mongold summarized that the BFSA Act contains a provision requiring joint certification from both the City Comptroller as well as the State Comptroller whether or not the City of Buffalo accessed the bond market in three consecutive years. The New York State Comptroller's position is that the BFSA Act does not contain a provision for non-certification.

Director Arthur replied that it was inappropriate for the Office of the State Comptroller to correspond with the Executive Director of BFSA rather than the Chair as the Chair had issued the request.

Chair Olsen replied that he had not been available to take the call from the Office of the State Comptroller and had asked Ms. Mongold to correspond on his behalf.

Director Arthur recommended that BFSA pass a resolution to enter into an Advisory Period. If this action is deemed inappropriate by either the City of Buffalo Interim Comptroller or the New York State Comptroller, either entity may then submit their position that the action is inappropriate. BFSA's outside legal counsel has offered the opinion that the objective criteria have not been met for BFSA to transition into an Advisory Period. While he is well respected by the Board, his opinion is that of an employee of the Board; the Board ultimately decides what action to take.

Chair Olsen replied that he would find it difficult to vote to enter into an Advisory Period because, as a professional lawyer, he agrees that the statutory requirements needed to do so have not been met. He suggested that he could contact both entities and explain why BFSA had asked for the written statement. The entities would not be asked to certify a "non-event" but rather to explain why they were not in a position to certify.

Director Arthur commented that a provision exists within Public Authorities Law which requires both entities to respond to the request.

Chair Olsen noted that he would draft a letter noting that BFSA had anticipated entering into an Advisory Period and had expected the Comptrollers to provide the respective certifications.

Director Arthur noted that the letter should also request that the Comptrollers explain what actions are needed for BFSA to enter into an Advisory Period. Additionally, he directed BFSA's legal counsel to examine what legal recourse would be available if the Comptrollers do not respond as requested.

Privilege of the Floor

Chair Olsen noted that no additional business was to be addressed. He extended the Privilege of the Floor to any members of the attending audience who wished to comment on actions taken at the Board meeting.

City of Buffalo Department of Audit and Control Chief Auditor, Mr. Darryl McPherson, Esq., addressed the Board. Mr. McPherson noted that the City of Buffalo Office of the Comptroller had received the letter submitted and would remit a response. There was no intent to undermine BFSA's authority.

Chair Olsen expressed that the written correspondence he would author would therefore be remitted to the State Comptroller as there was no need to issue correspondence to the City Comptroller.

Director Arthur concurred with this assessment.

Ms. Marilyn Gallivan, resident of Marine Drive Apartments addressed the Board and concurred that such a written correspondence from the Office of the State Comptroller is more appropriate.

Mr. John Priore, resident of the Town of Amherst, addressed the Board and asked if the resolution regarding Local 282 would be on the agenda at the next Board meeting. Chair Olsen explained that the resolution had been approved earlier in the meeting.

Adjournment
Motion to adjourn by Arthur, second by Townsend.

The Board adjourned at 3:39 PM.

April 25, 2011

Ms. Darby Fishkin
City of Buffalo Interim Comptroller
1225 City Hall
Buffalo, NY 14202

Subject: Joint Certification

Dear Comptroller Fishkin:

The Buffalo Fiscal Stability Authority (BFSA) is currently operating under a Control Period with regard to the City of Buffalo as provided by the Buffalo Fiscal Stability Authority Act (Act).

Under section 3851(1) of the Act, the earliest time the Control Period could end was after the City's fiscal year ending June 30, 2010. The BFSA Act includes various requirements which must be fulfilled in order for the Control Period to end and an Advisory Period to begin. One such requirement as set forth in section 3851(1) of the Act and is provided as follows:

> "Advisory period means that period no earlier than July 1, 2006, after which the authority has determined that….(B) the [City] Comptroller and the State Comptroller jointly certify that securities were sold by the City during the immediately preceding City fiscal year in the general public market and that there is a substantial likelihood that such securities can be sold by the City in the general public market from such date through the end of the next succeeding fiscal year in amounts that will satisfy substantially all of the capital and cash flow requirements of the City during that period in accordance with the financial plan then in existence…."

The BFSA has not received the joint certificate required by the statute and thus cannot make the determination required for an Advisory Period to begin. The BFSA respectfully requests a written response concerning whether or not you are able to certify the matters set forth in section 3851(1) and the reasons therefore.

Additionally, we respectfully request a meeting with you and the BFSA Board of Directors to address these matters as they relate to the aforementioned provision of the BFSA Act. Please contact the Executive Director, Jeanette Mongold, at Jeanette.Mongold@bfsa.state.ny.us or (716) 853-0907 to coordinate such a meeting.

Thank you in advance for your response.

Sincerely,

R. Nils Olsen, Jr.
Chair

cc: BFSA Board of Directors
Honorable Thomas P. DiNapoli, New York State Comptroller

April 25, 2011

Honorable Thomas P. DiNapoli
New York State Comptroller
Office of the State Comptroller
110 State Street
Albany, NY 12236

Subject: Joint Certification

Dear Comptroller DiNapoli:

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Under section 3851(1) of the Act, the earliest time the Control Period could end was after the City's fiscal year ending June 30, 2010. The BFSA Act includes various requirements which must be fulfilled in order for the Control Period to end and an Advisory Period to begin. One such requirement as set forth in section 3851(1) of the Act and is provided as follows:

> "Advisory period means that period no earlier than July 1, 2006, after which the authority has determined that….(B) the [City] Comptroller and the State Comptroller jointly certify that securities were sold by the City during the immediately preceding City fiscal year in the general public market and that there is a substantial likelihood that such securities can be sold by the City in the general public market from such date through the end of the next succeeding fiscal year in amounts that will satisfy substantially all of the capital and cash flow requirements of the City during that period in accordance with the financial plan then in existence…."

The BFSA has not received the joint certificate required by the statute and thus cannot make the determination required for an Advisory Period to begin. The BFSA respectfully requests a written response concerning whether or not you are able to certify the matters set forth in section 3851(1) and the reasons therefore.

Additionally, we respectfully request a meeting with you and the BFSA Board of Directors to address these matters as they relate to the aforementioned provision of the BFSA Act. Please contact the Executive Director, Jeanette Mongold, at Jeanette.Mongold@bfsa.state.ny.us or (716) 853-0907 to coordinate such a meeting.

Thank you in advance for your response.

Sincerely,

R. Nils Olsen, Jr.
Chair

cc: BFSA Board of Directors
Ms. Darby Fishkin, Acting City of Buffalo Comptroller