**BUFFALO FISCAL STABILITY AUTHORITY**
**Meeting Minutes**
**March 14, 2012**

The following are the minutes from the meeting of the Buffalo Fiscal Stability Authority (the "BFSA" or the "Authority") held on Wednesday, March 14, 2012, in the Buffalo Market Arcade Complex. The meeting was called to order at 1:03 PM.

**Board Members Present:** Arthur, Brown, Doherty, Floss, Jurasek, Mesiah, Olsen, Poloncarz

**Board Members Absent:** Giardino

**Staff Present:** Link, N. Miller, R. Miller, Mongold, Tyler

**Additionally Present**: Pietra Lettieri, Esq., Harris Beach, PLLC, Thomas P. Malecki, Drescher & Malecki LLP, and Barbara Smith, Buffalo Public Schools Chief Financial Officer

**Opening Remarks**

Chair Olsen called the meeting to order and opened by welcoming the new Directors to the Board including the County Executive Mark Poloncarz, Ms. Brigid Doherty and Dr. Richard Jurasek.

- Chair Olsen indicated that the Governance Committee had met earlier and had recommended that the following items be approved by the Authority: The 2012 and 2013 Minority and Women Business Enterprise ('MWBE") Master Goal Plans; and
- Authorization for the Authority to enter into banking agreements with local financial institutions.

Chair Olsen noted that the Audit, Finance and Budget Committee also met earlier and authorized the posting of BFSA's 2012-13 Preliminary Budget and related Four-Year Financial Plan. This preliminary budget as prepared by BFSA staff commences the public commentary period which will lead to the public hearing on May 7th. Directors were requested to forward any questions or comments to the Executive Director, Jeanette Mongold, and noted that updated versions of the budget would be distributed as necessary. Final approval of the budget and financial plan will be required at the June 4, 2012 Board meeting.

Chair Olsen advised that, due to the voluminous nature of the day's agenda, the following items will be reordered to accommodate individuals in the audience. The items are as follows:

- Review of the City's 2010-11 audited financial statements by Mr. Thomas Malecki, a partner from the firm Drescher and Malecki, LLP. Additional comments from BFSA staff will be provided following the presentation; and
- Review of the District's 2010 – 2011 audited financial statements by Buffalo School District ("District") Chief Financial Officer Barbara Smith. Additional comments from BFSA staff will be provided following the presentation.

Chair Olsen announced that, following these presentations, the Board would review various City of Buffalo ("City") issues, including:

- A brief discussion on fund balance matters and the preliminary calculation of the property tax levy limit in preparation of the review of the City's Financial Plan that will occur at the next scheduled meeting on May 14, 2012;
- A request for approval of the City's 2012 Capital Budget & Capital Improvement Plan with the related bond issuance.

The remaining items are also on the agenda including:

- A review of the Buffalo Urban Renewal Agency ("BURA") financial statements;
- A review of the City and Covered Organization's Second Quarter reports; and
- BFSA business.

Chair Olsen noted that the New York State Open Meetings Law had recently been expanded and now requires the online posting or advanced access to material to be used in open meetings prior to the meeting. The stated purpose of the law is to create more engagement and awareness of public meeting discussions, activities and actions. Board meeting materials reviewed in today's meeting are currently available on BFSA's website for download by any interested party.

Chair Olsen announced that, prior to the conclusion of the meeting, members of the audience would have the opportunity to address the Board of Directors regarding items discussed during the meeting.

**Roll Call of Directors**

Chair Olsen asked Secretary Arthur to call a roll of the members. Finding a quorum present, the meeting commenced.

**Approval of the December 7, 2011 Minutes**

Chair Olsen introduced Resolution No. 12-01, "Approving Minutes and Resolution from December 7, 2011."

Director Arthur offered a motion to approve the resolution.

Director Mesiah seconded the motion.

**RESOLUTION NO. 12-01**
**APPROVING MINUTES AND RESOLUTION FROM DECEMBER 7, 2011**

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on December 7, 2011.

BE IT FURTHUR RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution Nos. 12-01 through 12-08 that were approved on said date.

The Committee voted 6–0 to approve the resolution.

**City Issues**

***Review of 2010-11 Audited Financial Statements by Drescher and Malecki***

Chair Olsen advanced the agenda to the next item of business: the review of the City's 2010-11 audited Financial Statements. He noted the summary would be provided by Mr. Malecki from Dresher & Malecki. Deputy Comptroller Anne Forti-Sciarrino was additionally present to answer any questions.

Mayor Brown entered the proceedings at 1:11 PM.

Mr. Malecki introduced himself as the engagement partner for the City of Buffalo. He advised that he would focus on the opinion of Drescher & Malecki and provide financial highlights.

**The Opinion**

The audit opinion indicates the audit was performed in accordance with auditing standards generally accepted within the United States. The firm reviewed the internal control functions of the City through a series of inquiries, observations and related testing. No opinion on the internal controls was given; internal control measures offered by management were verified.

Based on the results of the audit and the reports of other auditors for the related Covered Organizations that are reported as component units, the conclusion was reached that the financial statements of the City present fairly, in all material respects, the respective financial position of the City, as well as the respective changes in financial position. The information contained in the financial statements can be relied upon to be "fairly stated" in all material respects; everything appears to be in line, compared to trends and analytical reviews.

**Financial Statement Highlights**

The financial statement highlights refer primarily the General Fund, which is the key fund where most of the activity of the City occurs and where the property tax rate resides.

The last eight years, prior to the 2010-2011 year, revenues and transfers in have exceeded expenditures and transfers out; in the FY 2010-11 there was a gap in that expenditures exceeded revenues. Fund balance was used to close the gap.

During the budget process for the 2010-2011 year, management set aside between $12 to $13 million of fund balance to use for geneal operations. There had been positive budgetary results in regards to revenues over expenditures until the 2010-2011 year. Expenditures exceeded revenues in FY 2010-11.

Mr. Malecki explained that the current gap was a result of the City keeping the tax levy flat, excluding the Star Exemption. As a result, this major revenue source has remained constant while expenses have been increased.

Director Jurasek entered the proceedings at 1:16 PM.

Mr. Malecki explained that the effective tax rate had actually decreased due to the assessment evaluation increases and a static tax levy. The statistical information is located in the financial reports and will indicate the revenue pattern has actually been very stable.

**The Fund Balance**

Mr. Malecki noted that the Fund Balance had increased to $143 million as of June 30, 2011. In June of 2002, the fund balance was $19 million. This indicates consistent growth.

The City's Fund Balance is broken down into the following groups as of June 30, 2011:

- Unavailable: items that are non-spendable such as real property that is held for resale, restrictions for debt reserves and a long-term receivable from another fund that can't be spent from the General Fund.
- Available: approximately $90 million of which a total of $85 million is assigned as follows:
    1. $35.5 million in the Rainy Day Fund which is available for unexpected expenditures,
    2. $12.3 million assigned for next year's budget,
    3. $5.0 million for encumbrances, and
    4. portions set aside as accruals and liabilities that management has recognized to become due in the future.

The Unassigned amount is approximately $5.6 million or 1% of the annual budget. Adding the Rainy Day Fund to the unassigned amount, increases resources to approximately 12% of the annual budget which is a more favorable percentage.

**Solid Waste and Recycling Fund**

The Solid Waste and Recycling Fund has reported a deficit from operations over the last five years, which has grown from $0.5 million to the current year deficit of $5.5 million, and is increasing. This is not an actual cash deficit because inter-fund transfers have been made from the General Fund over the past three to four years.

**Debt**

The most favorable highlight is the total government-wide primary debt, which includes the City, the District, and debt issued by the BFSA, and has declined from upwards of $680 million to below $580 million over the same five year trend.

Mr. Malecki concluded his presentation and opened the floor for questions.

Director Arthur remarked that Drescher & Malecki concluded their report on December 15, 2011. He inquired when they received their information and began their analysis.
Mr. Malecki responded the City finalized the reports in November. Field work was performed from September to November.

Director Floss asked if the opinion given was an unqualified opinion. Mr. Malecki affirmed that it was.

County Executive Poloncarz asked for clarification on what the Fund Balance designations were, specifically what is included within Assigned for Encumbrances.

Mr. Malecki responded the amount for encumbrances is approximately $5.0 million and is included in the Assigned Fund Balance. He also added there are pieces included for accruals, liabilities, Judgments and Claims that are valued at approximately $33.9 million dollars.

County Executive Poloncarz requested further clarification regarding the amount to be appropriated by the City.

Mr. Malecki responded it has been the normal process to reserve funds for the potential liabilities related to unfavorable court rulings in existing lawsuits. The City may or may not have to pay these funds depending on the rulings. Funds are set aside within Assigned Fund Balance as opposed to being recorded as a liability.

County Executive Poloncarz asked for further clarification regarding whether Judgments and Claims were actual liabilities or possible liabilities?

Mr. Malecki responded the funds are set aside in accordance with the requirements of Financial Accounting Standards No. 5, which is a technical directive from the Financial Accounting Standards Board ("FASB"). Based on the estimated value and probability of loss, those amounts have been set aside by management. The only thing that is not known is the timing when the liability will become due. It is possible the liability may not come due within the fiscal year.

County Executive Poloncarz noted that the summation of the City's Unassigned Fund Balance and Assigned Rainy Day Fund was equivalent to approximately 12% of total General Fund Expenditures. He asked for confirmation that reserves at this level were very significant, as municipalities typically have Unassigned Fund Balance of 6-7% of total expenditures.

Mr. Malecki concurred with this assessment with respect to large municipalities such as the City of Buffalo and the County of Erie. He added the caveat that smaller governmental entities should have large reserve percentages. The "rule of thumb" is to have the equivalent of 45 days of cash available but it generally contingent on management's tolerance for risk.

Director Jurasek noted that the usage of the term fund balance can be a misnomer or misleading as it is used for a variety of funds reserved for various purposes.

Mr. Malecki confirmed that the term Fund Balance in governmental accounting is a general term; there are different designations that fall within the umbrella of fund balance.

Director Jurasek asked for further clarification regarding the deficit of the Solid Waste and Recycling Fund.

Mr. Malecki indicated the Solid Waste and Recycling fund is considered an enterprise fund; a separate business with its own long term assets and liabilities, as it engages in business-type activities. The fund ended the fiscal year with larger liabilities than assets, or in a deficit.

Director Jurasek inquired if any other funds ended the fiscal year with a net asset deficit. Mr. Malecki confirmed that the Solid Waste and Recycling Fund was the only major fund where liabilities exceeded net assets.

Chair Olsen asked if there was Assigned Fund Balance for future liabilities for the settlement of Collective Bargaining Agreements ("CBAs"). Mr. Malecki responded that management has been made aware of the need to accrue for the future liability. There is an accrual for what the City believes to be the future liability for retroactive wages; the cumulative wages and benefits that would have to be addressed in the budget could be a significant number.

Chair Olsen stated the amount could be considerably more than what is available in the fund balance. Mr. Malecki responded that is up for discussion. Drescher & Malecki recommended the City obtain a grasp of that number, and analyze and document that number so that possible funding sources could be identified. It is a hidden liability when you look at it through the fund balance categories.

Mayor Brown noted that the audit depicts that the tax rate is declining. This has been by design to reduce homestead and non-homestead tax rates to encourage new investment within the City and create a more business-friendly climate. The tax rate has declined every year since 2006. The residential and commercial property tax rate is down by over 15%.

Mayor Brown added that the major funding for the Solid Waste and Recycling Fund is the garbage user fee. The City also has not raised the garbage user fee during the course of his administration. It was a very unpopular fee when initially imposed. While they have held the line on the fee, initiatives have occurred including the City's new recycling program which will positively impact the fund. The Green Card Recycling program is now exceeding the initial estimates of the savings and revenue that would be generated. The City also has a new e-waste recycling program that will generate revenue from the recycling of e-waste.

Chair Olsen added that when the BFSA was established, the City was right up against its constitutional tax levy; there was no ability to raise additional revenue. There has been an extraordinary improvement in the City's financial situation where the City has been able to maintain the current tax levy and potentially attract people to come into the City.

Mr. Malecki noted that the financial statements are a "snapshot" of the financial condition of the City at the close of the fiscal year. He concluded his presentation.

Chair Olsen asked Principal Analyst Bryce Link to present a summary of the City's financial statements. He noted that Mr. Link would also provide an update on the City's Other Postemployment Benefits ("OPEB") liability.

***Review of City of Buffalo Historic Trends***

Mr. Link noted that the presentation would be a follow up to the audit presentation provided by Mr. Malecki and would provide additional color and history to the overall financial statement review.

The financial statements are a snapshot of a point in time as to where operations ended as of June $30^{th}$ of each fiscal year. The presentation will focus on fiscal years 2002-03 through 2010-11.

He provided the following information:

**General Fund Revenue (FY 2003 - FY 2011)**

- Revenue increased by $65.5 million from $383.1 million in FY 2003 to a near high of $449 million in FY 2011;
- Revenue increased 17% from FY 2003 – FY 2011, and can be broken down into the following buckets:
    - The largest portion is New York State Aid which increased 41%;
    - Real Property Tax revenue increased 31%;
    - Erie County Sales Tax revenue represents 16% of the increase;
    - Operating Transfers are 2% of the increase;
    - Federal Aid represents 10% of the increase.

Mr. Link noted that, as Mayor Brown had mentioned earlier, the City does not anticipate increasing the property tax levy or increasing the various service fees.

**State Aid (FY 2002 - FY 2011)**

New York State Aid is revenue provided to the City for general operations, and includes State Aid and Incentives to Municipalities (AIM) and program specific funding.

- Between Fiscal Year 2001 and 2002, State aid increased from $120 million to $141 million, increasing to a high of $194.3 million in Fiscal Year 2010 before dropping down to $183.6 million in Fiscal Year 2011;
- There was a commitment at one point, State Fiscal Year 2007, for the State to expand aid to the City. However, the State itself ran into fiscal problems prohibiting the increase;
- While state aid has been trending upward, it has experienced a decrease between fiscal year 2010 and fiscal year 2011 of approximately $11 million.

**City Expenditures (FY 2002 - FY 2011)**

Expenditures grew from $363.9 million in FY 2003 to $461.4 million in FY 2011, an increase of $97.5 million, or 27% over that eight year period.

The major expenditures for FY 2010-11 are as follows:

- Public Safety - 30%;
- Fringe Benefits - 28% (employer taxes, pension costs, health insurance, and workers' compensation);
- Transfer to the Board of Education - 15%;
- General Government Support - 12%;
- Operating Transfers Out 8%; and
- All other expenditures comprise the remaining 7%.

The previous numbers discussed were broken down by expenditure type or department. To have a better understanding of what is driving the costs of City operations, we need to look at the single largest cost driver to the City, which is personal service costs which includes wages and fringe benefits such as contributions towards pension, and retiree and active health insurance contributions). In fiscal year 2011, personnel service costs were approximately $301 million;

- $173.3 million for salary/wages,
- $127.7 million for Fringe Benefits.

When compared to expenditures of $461.4 million that is 65% of City expenditures; but to gain a more accurate picture of what is occurring we will eliminate the $105M in transfers out for a revised City expenditure of $356 million, and employee costs represent 85% of expenses at that point. The two largest pieces of the transfers out are the Transfer to the District $70.3 M and Capital Debt Service at $28.8M

**Fund Balance (FY 2003 – FY 2011)**

- During the BFSA-imposed wage freeze from 2004 - 2007, Fund Balance increased by $63.4 million;
- Fund Balance has grown consistently over the last eight years until the most recent fiscal year where there was a decrease of $12.8 million compared to FY 2010.

**Rainy Day Fund Balance/ Unassigned Fund Balance**

- Rainy Day Fund
  - Established in FY 2008;
  - Unassigned Fund Balance was the only reserve for emergency funds prior to its creation;
  - Represents approximately 30 days of expenditures;
  - Increased from $30.2 million at FYE 2008 to $35.5 million at FYE 2011, an increase of $5.3 million
  - May be utilized in the event of unforeseen decrease in revenues or unanticipated expenditures.
- Unassigned Fund Balance
  - Increased from $8.3 million in FY 2003 to $76 million in FY 2007;
  - Decreased to a low of $5.6 million at FYE 2011.

**Other Postemployment Benefits**

New York State has not developed a funding structure to fund this liability. Other postemployment benefits are guaranteed through the City's collective bargaining agreements. .

Every two years there is a requirement for an actuary to revalue the liability. The following data used in generating the liability are evaluated as part of the actuarial evaluation:

- the participant population;
- trends in actual and projected costs for health insurance including pharmacy costs, and
- changes in negotiated terms as per the collective bargaining agreements.

At June 30, 2007, the total OPEB liability was projected at $946 million. Since that time, it has increased to $1.637 billion, an increase of 73%.

**Annual Retired Contribution ("ARC")**
The ARC is the annually required contribution to fully fund one single year's liability.
- The ARC has increased from $57 million in FY 2007 to $208 million as of June 30, 2011.

**Retiree vs. Active Employee Health Insurance**
- Retiree health insurance has increased by 65% FYE 2003 and FYE 2012;
- Active employee health insurance has increased by 46% between FYE 2003 and FYE 2012;
- Other factors impacting the estimated OPEB liability include a decrease in the discount rate to 4% from 5%, and an overall increase in the projected cost of future health insurance premiums resulting from a review of the City's recent historical experience.

**Solid Waste and Recycling Fund**
The Solid Waste and Recycling Fund had total net deficit is $20.3 million, representing the excess of liabilities over assets. The operating deficit for 2011 is $5.6 million before net operating transfers from the General Fund of $2.9 million, resulting in a net deficit of $2.8 million reported for 2011.

**Parking Fund**
The Parking Fund had total net assets of $46.2 million, representing the excess of assets over liabilities. The operating income for 2011 was $4.9 million before net operating transfers out to the General Fund of $4.4 million, resulting in a net surplus of $629,486.

Mr. Link concluded his presentation.

Mayor Brown noted that the City had worked diligently towards the lifting of the wage freeze which concluded on June 30, 2007. Since FY 2006-07, the City's actual budget growth has only been approximately 11%. The transfer out to the Board of Education of approximately $70 million represents approximately 50% of the City's total tax levy.

Director Floss revisited the OPEB summary with a few comments. He prefaced his questions by stating they had nothing to do with what Mr. Link had presented, but noted the actuaries were very careful to state that the key underlying assumptions were not the actuary's assumptions but were provided by the City. He also stated that his observation of the key assumptions that were used do not seem to be consistent in the following way:
- Some of the assumptions use short-term rates as opposed to long-term rates. A 30 year rate is used in one place whereas a spot rate is used in another. This has a dramatic impact on the $1.637 billion estimate of the liability. If the discount rate were the 30 year municipal bond rate, in his opinion a more appropriate rate to use for the City of Buffalo, the discount rate would be closer to 6%, which would have a significant impact on the ending results.
- The projected percentage increase for health insurance is suspect, in his opinion. Using the U.S. Bureau of Economic Analysis's average calculation on a long-term rate, a 5% growth rate instead of an 8% growth rate is appropriate. The 3% growth rate difference would also have a significant impact on the final calculated OPEB liability. He noted it

may be more appropriate to use the range of estimates utilized by the Keyser Foundation nationally or to look at the U.S. Bureau of Economic Analysis or the U.S. Bureau of Labor Statistics numbers.

Director Floss noted that the employment numbers utilized in the OPEB calculation were relatively constant. He recommended that the Board be cautious with the balance of the projected OPEB liability as this balance is performed accounting and actuarial perspective and not for making actual projections.

Mr. Link noted that many municipalities are struggling with their health insurance costs for both active and retired employees. The rate of increase in costs is difficult to estimate, with annual increases well above the Consumer Price Index ("CPI"). Recently, New York State returned to a pre-approval process that requires providers to submit their proposed increases to New York State for approval. Initial rates submitted to the State from health insurance providers for approval were in the range of 15% to 32%. New York State approved lower percentage increases of 10% to 12% that are much higher than CPI. It would appear that continual annual increases at these rates would be unsustainable; however it is an unknown what the increases will be in the future.

Director Floss emphasized that by utilizing a spot rate for the projected increase in health insurance costs, a one year change that is higher than normal would have a significant impact on the overall OPEB liability. In the next year, the rate of increase could be significantly lower resulting in a completely different picture.

Mr. Link added for clarification that the requirement to measure and report on the OPEB liability is a requirement under generally accepted accounting principles and is governed by Government Accounting Standards Board ("GASB") Statement No. 45.

Director Floss suggested that BFSA perform the actuarial assessment of the City's OPEB liability utilizing more realistic assumptions than those utilized by the actuarial firm that performed the analysis.

County Executive Poloncarz noted that with respect to Erie County, the initial calculation for the County's OPEB liability was significant higher than what was ultimately reported, due to challenges in some of the key underlying assumptions that were considered too aggressive. In his opinion the ARC calculation is irrelevant. He believes what is significant is the cost of active employee retiree health care costs in the current fiscal year as well as throughout the four-year financial plan. It would not be advisable to criticize the City of Buffalo for not fully funding its OPEB liability as no other entity in New York State is currently doing this and it is not required. He added that local governments are often attacked with respect to their OPEB liabilities. These attacks are disheartening. BFSA should not use the City's growing OPEB liability as an argument to remain in control status. No rating agency asks a local government how they intend to fully fund their respective OPEB liabilities because there is no method to fully fund them.

Mayor Brown added the City's municipal credit rating has increased multiple times since FY 2006 to the point where the City is in the "A" category with all of the municipal credit rating agencies. The budget growth since FY 2006 included two years of zero budget growth; and in the third year less than 1% budget growth was achieved.

<u>**Buffalo School District Issues**</u>

***Review of 2010-11 Audited Financial Statements by Buffalo School District Chief Financial Officer***

Chair Olsen advanced the agenda to the next item for consideration: review of the District's FY 2010-11 financial statements by Ms. Smith, Chief Fiscal Officer of the District. Ms. Smith addressed the Board and provided the following presentation:

**Audited Financial Statements**

- The financial statements were issued in October 2011;
- They received an unqualified audit opinion, which is best opinion that can be received;
- The Government-Wide Net Assets at fiscal year-end were negative at $125.0 million, meaning net liabilities exceeded net assets by this amount. An example she provided for those not familiar with Government financial statements, is that if we were a business, the District would almost be bankrupt. In essence, by comparing all of the District's long-term liabilities and assets, there are inadequate long-term assets to cover all the long-term liabilities and therefore this view would represent that the District is unsustainable.

**General Fund**

The government-wide financial statements depict a different picture than the Statement of Net Assets. These statements reflect the annual operations of the District.

- At FYE 2011, the General Fund had $235.7 million in fund balance, an increase of $23.6 million over the prior fiscal year;
- The operating surplus resulted from the positive court ruling on the wage freeze litigation. On an annual basis, the potential liability from an unfavorable ruling on the wage freeze litigation was budgeted to pay for the entire liability. The FYE surplus of $23.6 million is largely the result of a favorable ruling on this litigation.

**Expenditure Freezes**

- During FY 2011, freezes were implemented over positions, supplies, contracts, etc…;
- Vacancies led to savings in employee compensation and fringe benefit costs;
- Fewer retirements than projected led to a decrease in anticipated retiree health insurance costs.

**New York State Aid Reduction**

- The District was impacted by a mid-year State Aid reduction of $4.1 million;
- The cap on Charter School Tuition payments was unexpectedly lifted during the fiscal year and increased overall payments to Charter Schools to over $85 million, representing a $14.1 million increase over the prior year.

**Federal Stabilization Funds**

- The American Recovery and Reinvestment Act ("ARRA") provided additional revenue of $9.4 million in the General Fund which represented the second and final installment of ARRA funds to the District;
- ARRA funds were used in the 2011-12 fiscal year to fund teaching positions. Additionally, $7.9 million in JOBS Fund money will expire at the end of FY 2011-12. Alternative funding will need to be identified in the 2012-13 Budget if these positions are to be maintained.

**Fund Balance**

Fund Balance reported in the 2010-11 financial statements is reported in accordance with new reporting requirements. For consistency purposes she will use the previous terminology.

- The 2010-11 fiscal year ended with $36.1 million in Reserved Fund Balance;
- There was $154.0 million in Unreserved, Designated funds;
- The "Rainy Day Fund" of $45.7 million represents 5% of total 2010-11 expenditures;
- The $154.0 million in Unreserved, Designated Fund Balance consists of the following:
    - $86.5 million for prior year claims with $80 million set aside to settle the CBAs that were part of the wage freeze litigation that have been outstanding since 2004. This included $5.7 million set aside for the Professional, Clerical, Technical Employees Association ("PCTEA") collective bargaining agreement ("CBA") that was recently settled;
    - $30.2 million appropriated for FY 2011-12, which includes $12.8 million related pertains to the New York State Chapter 105A retirement incentive, offered in FY 2010. The remaining $17.4 million was appropriated for FY 2011-12 operations;
    - $30.0 million represents a set-aside for the OPEB liability. It is viewed as a down payment toward the future liability, which has been viewed favorably by rating agencies;
    - $7.3 million was set aside for capital seed money for work that is beyond the scope of New York State Building Aid and related Joint Schools Construction Board ("JSCB") projects.

**GASB 54**

Reporting the fund balance with respect to the requirements of GASB 54 (requiring reclassification of fund balance categories shows the following:

- $0.8 million in Non-Spendable Fund Balance;
- $30 million in Restricted Fund Balance;
- $159.1 million in Assigned Fund Balance;
- $45.7 million in Unassigned Fund Balance.

**Four-Year Trend of Major Expenditures**

The General Fund is comprised of a number of categories including employee compensation, employee benefits, and utilities. These categories are somewhat controllable when it comes to balancing the budget. However, the additional categories, such as health insurance for retirees, charter school payments and debt service are not within the control of management and are considered to be the drivers of the District's structural budget deficit items.

- **Health Insurance for Retirees** costs up to $1,800 per student. This is projected to be $70 million in fiscal year 2012-13. The total for FY 2010-2011 was $56 million;
- **Payments to Charter Schools –** were $85 million in 2011 and are budgeted as $92.6 million for 2012. Payments to Charter Schools and Debt Service have grown a total of $105 million since 2000.
  - Payments to Charter Schools were $57 million in FY 2006-07. These payments are projected to increase to $97 million in FY 2012-13. Growth in the payments to Charter Schools is outside of the control of the District.
  - **Debt Service** was $58 million in FY 2006-2007 and will increase to $123 million in FY 2012-13. The increase in Debt Service was related to the JSCB projects.
- **Per Pupil Cost –** The District spends $23,000 per student. A large portion of the cost goes to debt service, charter schools and retiree health insurance. A review of true operations indicates the amount spent per student is a little over $13,000 per pupil.
- **Health Insurance Costs -** The costs of active employees versus retirees is expected to continue to increase. The disparity of having to cut employees will result in acquiring more retirees. The cost for retirees increases at a higher rate than for employees.
- **Full-time Employee ("FTE") Trends -** Approximately a total of 1,300 positions have been cut since 2001-2002. The percentage of teacher cuts has decreased. The focus has been to make necessary cuts outside the classroom. The total workforce in FY 2001-02 was comprised of 64% teachers; today the number of teachers is at 67%.

Ms. Smith concluded her presentation on the District's 2010-11 Financial Statements.

***Review of Buffalo School District Historic Trends by BFSA Staff***

Chair Olsen advanced the agenda to the next item of business: a summary of the BFSA's review of the District's financial statements and the District's OPEB liability by Financial Analyst/ Manager of Technology Nathan D. Miller.

Mr. Miller addressed the Board. He advised the presentation was designed to supplement the information in Ms. Smith's presentation by highlighting some of the historic trends in General Fund revenues and expenditures. He provided the following information:

**General Fund Revenue (2010-11 Budget-to-Actuals)**
The 2011 FY ended with an unfavorable budgetary variance of $5.4 million in revenues and a favorable budgetary variance of $107.3 million for expenditures, largely due to the $74.0 million favorable ruling on the wage freeze litigation.

**General Fund Revenue Variances**

- New York State Aid – ($11.5 million);
- Federal Aid - $7.0 million;
- Erie County Sales Tax - $0.8 million; and
- All Other – ($1.7 million);
- Total unfavorable variance = $5.4 million.

**General Fund Expenditure Variances**

- Fund Balance appropriated for the wage freeze litigation - $78.3 million;
- Employee Compensation - $12.6 million;
- Employee Benefits - $8.1 million;
- Other Expenditures - $8.3 million;
- Total favorable variance = $107.3 million

**Enrollment**

- District enrollment has decreased from 43,929 students in FY 2003 to 33,543 students in FY 2011. This decline is a result of both the transfer of students to area Charter Schools as well as the City's overall population decline.

**General Fund Revenues**

- Actual General Fund revenues exceeded General Fund expenditures in each fiscal year for 2003 to 2011;
- Total General Fund revenue has increased from $447.3 million in 2003 to $728.2 million in 2011, representing a 62.8% increase;
- State aid has increased 79.6% since 2003;
- Foundation Aid was $432.8 million in FY 2007-2008 and is being held static;
- New York State Building Aid has increased in recent fiscal years in direct correlation to the JSCB projects; and
- Contributions from the City of Buffalo have remained flat.

**General Fund Expenditures**

- Total General Fund expenditures have increased from $441.1 million in 2003 to $704.6 million in 2011, representing a 59.7% increase;
- Total Employee Compensation increased from $222.4 million in FY 2003 to $228.1 million in FY 2011, a 2.6% increase. The general lack of growth in Employee Compensation reflects the BFSA-imposed wage freeze from 2004 to 2007, the reduction in overall FTEs, and the lack of settled CBAs over the period. Step increases occurred in periods outside of the wage freeze;
- Total Employee Benefits increased from $76.2 million in FY 2003 to $150.6 million in FY 2011, a 97.5% increase;
- Payments to Charter Schools have grown from $26.4 million in FY 2003 to $85.1 million in FY 2011, representing a 450% increase.

**Fund Balance**

- District Fund Balance grew significantly after the "reset period" of the wage freeze from $42.2 million at June 30, 2006 to $235.7 million at June 30, 2011.

Mr. Miller concluded his presentation on the District's historic General Fund revenues and expenditures. He provided the following information regarding the District's OPEB liability.

**Other Post-employment Benefits**
Similar to the City's presentation, the District's Actuarial Accrued Liability ("AAL") as well as the annual required contribution ("ARC") was examined.

- **Key Assumptions**
  - The Discount Rate used was 4%. The prior rate used was 5%;
  - Upward adjustments were made for the expected future increases in health insurance costs;
  - Demographics – there was an increase of net participants;
  - Excise Tax – Projected costs associated with the new Excise Tax associated with the Affordable Healthcare Act of 2010 were provided for within the calculation.
- **OPEB Liabilities**
  - The AAL increased from $1.2 billion at June 30, 2009 to $1.68 billion at June 30, 2011;
  - The ARC increased from $121.4 million at June 30, 2009 to $158.9 million at June 30, 2011.

Director Floss asked if the School Improvement Grants ("SIG") currently suspended by the New York State Education Department ("NYSED") were represented in the presentation. Mr. Miller replied that the historic revenue and expenditure trends presented represented FY 2003-2011 results. As such, the impact of the suspended funds was not represented in the presentation. The suspended grant funds impact the FY 2011-12 Special Projects Fund.

Director Floss made reference to a newspaper article regarding the search for a new District Superintendent. He asked if BFSA had examined the funds used in the search process to see if there had been any conflicts of interest or associated with the search committee or the company assisting in the search process. Mr. Miller replied that BFSA had not examined the issue and referred the matter to District CFO Barbara Smith. Ms. Smith replied that, at the time the decision was made, there was a determination that no conflict existed as the hiring decision would be made by the Board of Education. She indicated Cascade Consulting has partnered with the District in the search process and has offered to pay a portion of the costs associated with candidates' travel expenses.

Director Floss inquired if there were any other funds donated. Ms. Smith replied that she knew of no donations. The search committee is the Board of Education itself, not a separate group. Cascade Consulting has held numerous focus groups to provide the search committee with community feedback on what qualifications a candidate should possess.

Director Floss then asked how the company who is assisting with the search for a new Superintendent was chosen. Ms. Smith responded they were selected through an RFP selection process. Companies that responded were interviewed by the Board of Education and ultimately chosen.

Director Jurasek referred to Director Floss's earlier question regarding the District's suspended SIG funds. He asked if the amounts frozen in the current fiscal year and following fiscal year were reflected in the presentation.

Mr. Miller affirmed that these funds were not reflected in the presentation, as it showed historic revenues and expenditures up to the 2011 FYE. If the funds were to remain suspended, it would impact the Special Projects Fund in the CFY as well as the ensuing FY.

Chair Olsen expressed his concern that the District's structural budget deficit is estimated at approximately $30 million and has been carried over each year. This deficit puts stress on the District's ability to provide instruction and limits the District's ability to offer enrichment programs. The District cannot be viewed as a business and cut their way to solvency.
The District's core mission is to provide cost effective education to the children of Buffalo. The amount of money being spent on non-educational purposes sends a very mixed message. While the City is providing at least as many funds as are the suburbs, significant portions pay for services that don't directly relate to the education of the children. The future viability of the system is very concerning. The structural issues continue to multiply; for example the 'tie-up' of the SIG funds from the State.

Mayor Brown stated that his administration views public education as critical to the continuing future growth of the City. The City is dealing with its own budgetary concerns and stresses. With this in mind, the City increased its contribution to the District by an additional $2.0 million at the start of his administration. This results in a total increase of $12.0 million over the last six years. There is a desire to provide more funds; the portion provided has been significant, especially given the City's own financial challenges.

Chair Olsen replied that it was misleading to look at the City and the School District as separate entities. Education is an important public service provided within the City of Buffalo. When individuals continue to leave the City over a concern over the quality of education within the District, the City is impacted.

Mayor Brown noted that his administration is mindful of this and works to be supportive of the needs of the Board of Education, whether it is public safety by way of the police department, or cleaning the neighborhoods around the school buildings through the demolition program. Significant resources have been dedicated to infrastructure improvements. However, from a governmental prospective, the City administration has little direct ability to impact the District, as it is a separate entity unto itself.

County Executive Poloncarz added his understanding that the BFSA was instituted as a result of the financial crisis of the City, not because of the District. Every government in New York State has projected budgetary gaps going forward; any government that also has a dependent school district faces additional financial constraints. It is not in the best interest of the communities to have fiscal stability authorities and governments to have contribution limits especially for school districts because the vast majority of taxes paid in most municipalities are for school districts. As an associated government, it would be unwise to hold the City accountable for issues associated with the District as it has no control over. It would be equally unwise to continue a control period if the sole reason is because of issues associated with the District. BFSA is a governmental entity. Every dollar associated with the BFSA including the salaries, consultant fees, the attorney's fees, are funds that otherwise would be going to the citizens and taxpayers of the City of Buffalo. There is a cost associated with the BFSA. That cost is coming out of the

City of Buffalo's budget as intercepted sales tax. If BFSA were to hold the City accountable due to the issues of the District, then it is fair to say that the intention is to never take the Board out of a control status.

Chair Olsen responded by advising the County Executive that the statute governs what BFSA can and cannot do. While there may be policy judgments that need to be made to amend the statute or to reach different results, one of the problems public authorities have is that they make decisions by exercising their discretion and their own policy as an unelected body that is not directly subject to citizen oversight. The Board needs to look to the statute for guidance; the District is a Covered Organization per the statute.

He commended Mayor Brown for doing a wonderful job in addressing the issues that he is able to address regarding the District. He advised that the Board needs to follow the statute rather than personal policy. The criteria for establishing a control board is quite different from the criteria to become an advisory board. The Board needs to maintain its credibility to stay as close as possible to the dictates of the legislation of an elected body with fairly extensive powers.

County Executive Poloncarz responded that in his review of the statute, the focus of the statute is the City rather than the associated Covered Organizations. The language in the statute allows the control board to continue almost to perpetuity. It is not in the best interest of the community.

Director Floss noted that BFSA has compared the finances of the Buffalo School District with those of the other Big 5 Districts in the past. He requested a similar comparison at a future public meeting.

Director Doherty noted that there are some exciting things occurring in the City and the District that should provide optimism going forward, such as Say Yes and Promise Neighborhoods.

**City Issues (continued)**

***Use of Fund Balance in the Financial Plan***

Chair Olsen advanced the agenda to the next item of business: with respect to review of the City's Budget and Financial Plan at the meeting to be held May 14, 2012, a summary of the planned use of fund balance in the current financial plan taking in to consideration the decline in available resources will be discussed. The City has provided a preliminary calculation of the property tax cap for the upcoming budget year. He asked Executive Director Mongold to provide a summary relative to both items.

Ms. Mongold addressed the Board and provided the following summary:

**Introduction**

- The current plan is from FY 2012-2015 as was approved by the BFSA Board. The total Fund Balance utilization over the four year period is $37.8 million, as follows:
    - FY 2012 - $12.3 million;
    - FY 2013 - $11.5 million;
    - FY 2014 - $9.6 million; and

- FY 2015 - $4.4 million.

The planned use of Fund Balance in FY2012 is reported in Assigned Fund Balance at June 30, 2011. Unassigned Fund Balance represents amounts available for future years 2013-2015. Unassigned Fund Balance at June 30, 2011 is $5.7 million. The planned use of fund balance in the Financial Plan for years 2013 – 2015 is $25.5 million, with a shortfall of $19.9 million. At first glance it would appear there is a lack of compliance with the Financial Plan. However, there are several items that demonstrate compliance. The administration has indicated there are litigation matters that have been decided favorably for the City which would release funds previously Assigned in the amount of $21.5 million. There is also a set-aside amount associated with a debt covenant the City has entered related to the 2004A bond that has been reduced due to the passage of time and has resulted in approximately $2.0 million that is no longer required to be categorized in the Assigned Fund Balance category. These changes bring the estimated amount of available Unassigned Fund Balance for use in future years to $29.2 million; as noted $25.5 million has been included as a funding source in the out-years of the Financial Plan.

The City Administration is in the process of completing the 2013-2016 Financial Plan, and there are challenges the City is facing as revenues are expected to remain relatively flat and expenditures continue to rise. Continued reliance on Fund Balance to fund operations is unsustainable in the long-term.

**Preliminary Calculation of the Property Tax Margin Cap**

The City Comptroller has performed a preliminary calculation of the property tax margin cap in accordance with new State requirements. The preliminary property tax levy limit for FY 2013 is $149.2 million, which takes into consideration the 2% cap as well as various exclusions of approximately $3.1 million. The exclusions are driven by State mandates and are not within the control of the City's management. The estimated actual real property tax levy for 2012 is $143.3 million, which is in compliance with the requirements of the property tax cap. .

Ms. Mongold concluded her summary of the use of Fund Balance and the preliminary calculation of the property tax margin cap.

***Capital Improvement Budget and Plan***

Chair Olsen advanced the agenda to the next item of business: the proposed Capital Improvement Plan, submitted to the Board for approval by Mayor Brown. He asked Mr. Link to provide a summary.

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

- The City has been on a self-imposed debt diet since 2001 and has effectively decreased the total amount of annual borrowing as well as retiring total outstanding debt;
- The borrowing cap for 2012 is $27 million, $22 million of which is for City purposes, $5 million allocated for the School District;
- The single largest category is Public Works which represents 50% of the requested borrowing or $13.4 million;

  - Projects include citywide infrastructure repairs, citywide building repairs including community centers, bridge rehabilitation and other infrastructure improvements;
- The second largest piece is for the School District at $5 million or 18%;
  - Projects include general reconstruction and upkeep, technological upgrades and mechanical/electrical reconstruction;
- Economic Development consists of 14% and includes various projects including City-wide Demolitions, improvements to the Coca-Cola Field, and improvements to The Hatch restaurant.
- City Parks is the next category at 10% and includes City-wide park improvements, tree trimming and tree planting;
- Vehicles and projects for Cultural Groups represent approximately 4% each;
  - Projects for Cultural Groups include improvements at the Buffalo Zoo, specifically for the Polar Bear exhibit; restoration work on City monuments; and improvements related to access of the Buffalo River Park;
  - Vehicles include a new command vehicle for the Fire Department and additional vehicles for the Division of Streets.

**Projects to be Funded in the 2012 Capital Budget**
The following is a summary City projects funded within the 2012 Capital Budget:
- Citywide Infrastructure Repairs - $5.0 million;
- Demolitions - $2.7 million;
- City Owned Building Improvements - $2.7 million;
- Pearl Street Conversion and Streetscape - $1.5 million;
- Citywide Park Improvements - $1.3 million;
- Vehicles - $1.1 million;
- Coca-Cola Field Improvements - $0.8 million;
- Citywide Tree Removal and Plantings - $ 0.6 million;
- Buffalo Zoo Polar Bear Exhibit - $0.5 million;
- Various Bridge Rehabilitation - $0.5 million;
- Other Miscellaneous Items - <u>$5.3 million;</u>
- Total - $22.0 million.

The following is a summary of District projects funded in the 2012 Capital Budget:
- General Reconstruction of Schools - $2.7 million;
- Computers & Tech Upgrades - $1.2 million;
- Mechanical/Electrical Reconstruction - $1.1 million;
- Total - $5.0 million.

The District's capital improvements are separate from Joint School Construction Board reconstruction projects.

**Historic City of Buffalo Borrowing (FY 2004 - FY 2012)**
Annual capital borrowing has ranged from a low of $15.2 million in 2004 to a high of $31 million in 2008. As previously indicated, the 2012 amount is budgeted at $27 million.

County Executive Poloncarz asked what is the amount of debt being retired by the City in the current year. Ms. Mongold stated that the City will retire a total of $39.0 million in debt in the current fiscal year. County Executive Poloncarz noted that, barring some unlikely and unforeseen emergency, the City will continue the trend of reducing its overall debt load in the current fiscal year.

Mayor Brown noted that annual capital borrowing in the 1990’s was significantly higher, in the $40-$45 million range. The City has been very conservative as it relates to capital borrowing.

Chair Olsen emphasized that, since the inception of the BFSA, the City has managed to do everything it can to reduce costs, include reducing the number of employees. It has increased the tax levying margin available to the City, and has seriously addressed the problem of demolitions. These are all very exceptional accomplishments during very difficult times.

Chair Olsen requested a motion to approve the City of Buffalo’s 2012 Capital Improvement Plan and related five year capital plan.

County Executive Poloncarz offered the motion.

Mayor Brown seconded the motion.

**RESOLUTION NO. 12-02**
**APPROVAL OF CITY OF BUFFALO 2012 CAPITAL IMPROVEMENT BUDGET**

WHEREAS, Chapter 122 of the Laws of 2003, as amended by Chapter 86 of the Laws of 2004, authorizes the Buffalo Fiscal Stability Authority (“BFSA”) to approve the City of Buffalo’s four-year financial plan that encompasses the City of Buffalo, the Buffalo Public Schools and other covered organizations, and may include a capital budget; and

WHEREAS, the Charter of the City of Buffalo requires the Mayor to prepare and submit a capital budget and four-year recommended capital improvement program after receiving a recommendation from the Citizens Planning Council (“CPC”); and

WHEREAS, after receiving CPC’s recommendation, the Mayor submitted a capital budget to the Common Council for its consideration; and

WHEREAS, Common Council approved the 2012 Capital Plan on November 29, 2011; and

WHEREAS, the Mayor has submitted the capital budget to BFSA for its consideration; and

WHEREAS, the City Comptroller will request approval of the proposed terms of the bond issuance to finance the capital improvement program; and

WHEREAS, the City has included in its 2011-12 budget and related four-year financial plan the necessary resources to make the debt service payments required by this capital budget; and

WHEREAS, in approving last year's capital budget, BFSA noted the following caveat: "That the City of Buffalo continue to reduce its use of capital borrowing for short-term operating expenses that are not supported by a long-term physical asset with the goal of eliminating the practice;" and

WHEREAS, in approving last year's capital budget, BFSA also noted the following caveat: "That the City of Buffalo continue to rescind authorized but unissued debt whenever possible."

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby approve the City of Buffalo's 2012-2016 Capital Improvement Program Budget as submitted by the Mayor on February 29, 2012; and

BE IT FURTHER RESOLVED, that BFSA does hereby reaffirm the caveats it included in its approval of last year's capital budget, "That the City of Buffalo continue to reduce its use of capital borrowing for short-term operating expenses that are not supported by a long-term physical asset with the goal of eliminating the practice," and "That the City of Buffalo continue to rescind authorized but unissued debt whenever possible."

The Board voted 8-0 to approve the 2012-2016 Capital Improvement Plan for the City of Buffalo.

***The General Obligation Borrowing***

Chair Olsen advanced the agenda to the next item of business: a request from the City Comptroller to approve the 2012 general obligation borrowing for the cost of the capital improvements for the City and District as well as the related bond issuance costs. He asked Ms. Mongold to present the details of the bond offering.

Ms. Mongold stated the bond offering is related to the Capital Improvement Plan that was just approved. The total bond issue is not-to-exceed $27.0 million for new money borrowing which is broken down as follows:

- Series 2012A - $22.0 million by the City of Buffalo;
- Series 2012B - $5.0 million by the School District.

She noted there is also a refunding component of an estimated $19.5 million; the BFSA Board does not approve refunding's as per the BFSA Act. From a structural standpoint the sale will be an open competitive market sale, which is expected to allow the City to obtain more favorable interest rates as opposed to a negotiated sale. The expected bond ratings are as follows:

- S&P – A;
- Moody's - A2;
- Fitch - A+.

The bonds are premium, tax-exempt bonds with level debt service amortization provided during the period of repayment. The average life is 6.2 years for the City and 8.5 years for the District with final maturity in the years 2023 and 2027, respectively.

The estimated cost of issuance is approximately $122,000. Similar to all debt of the City, the repayment source is property taxes. Principal payments are scheduled on April 1st, with interest payments due on April 1st and October 1st.

**Alternate Financing Comparison**
Ms. Mongold reviewed the report from the BFSA's financial advisors, PFM, which indicates that if the BFSA were to issue the bonds on behalf of the City, the cost savings would be $866,000 over the life of the bond with an average annual debt service savings of $58,000. The total net present value savings would be $773,000. In contemplation of this Board transitioning into an advisory role, the Authority permitted the City to issue debt beginning in 2008.

Ms. Mongold concluded her summary.

Chair Olsen requested a motion to approve the 2012 general obligation borrowing for the cost of the capital improvements for the City and District.

Director Arthur offered a motion to approve the item.

Director Floss seconded the motion.

**RESOLUTION NO. 12-03**
**APPROVING BOND ISSUANCE BY THE CITY OF BUFFALO NOT TO EXCEED $22.0 MILLION OF CITY OF BUFFALO GENERAL IMPROVEMENT SERIAL BONDS AND $5.0 MILLION OF SCHOOL SERIAL BONDS**

WHEREAS, §3858 of Chapter 122 of the Laws of 2003 ("Chapter 122"), as amended, requires that the Buffalo Fiscal Stability Authority ("BFSA" or the "Authority") "shall, with respect to any proposed borrowing by or on behalf of the City or any Covered Organization on or after July first, two thousand three, review the terms of and comment, within thirty days after notification by the city or covered organization of a proposed borrowing, on the prudence of each proposed issuance of bonds or notes to be issued by the City or covered organization…"; and

WHEREAS, Chapter 122, as amended, further provides that "…no such borrowing shall be made unless first reviewed, commented upon and approved by the Authority;" and

WHEREAS, Chapter 122, as amended, permits BFSA to review and approve or disapprove contracts or other obligations of the City of Buffalo ("City") or any Covered Organization; and

WHEREAS, the City Comptroller has requested BFSA approval to borrow in the public markets up to $27.0 million for City and Buffalo School District ("District") projects; and

WHEREAS, the City Comptroller's correspondence indicates a plan to borrow for capital projects on a level debt payment basis, with a final maturity for Series 2012A of 2023 which reflects the weighted average of the projects' period of probable usefulness of 6.2 years and final maturity for Series 2012B of 2027 which reflect the average of the projects' period of probable usefulness of 8.5 years; and

WHEREAS, the City Comptroller identifies the source of repayment as being property taxes collected by the City of Buffalo and deposited in advance with the Trustee to cover upcoming maturities; and

WHEREAS, debt service costs have been included in the 2012-2015 Financial Plans of both the City and District; and

WHEREAS, BFSA has utilized the services of its financial advisor, The PFM Group, in its review of the structure and pricing of the issue.

NOW THEREFORE BE IT RESOLVED, that the Authority approves the borrowing as proposed by the City Comptroller to address the City and School District of Buffalo's capital needs, provided that (i) the aggregate amount of the borrowing shall not exceed $27.0 million for capital purposes, and (ii) the Chair, the Vice Chair, the Secretary or the Executive Director of the Buffalo Fiscal Stability Authority shall approve the final terms and pricing of the borrowing in writing.

BE IT FURTHER RESOLVED that the Authority authorizes the City to enter into necessary and appropriate contracts in connection with this borrowing.

BE IT FURTHER RESOLVED that the City shall continue to submit contracts and other obligations in excess of $50,000 for review and approval or disapproval.

BE IT FURTHER RESOLVED, that the Chair, the Vice Chair, the Secretary or the Executive Director of the BFSA are hereby authorized and directed to approve, execute and deliver any agreements, certificates, documents, papers or other written instrument, to make any changes, modifications or amendments as he or she deems necessary, to do all other things and to take all other actions necessary and appropriate in their judgment, to consummate the transaction contemplated by this Resolution.

The Board voted 8-0 to approve the 2012 general obligation borrowing for the cost of the capital improvements for the City and District.

**BURA Issues**
***Review of the 2010-11 Financial Statements***

Chair Olsen advanced the agenda to the next item of business: a review of the 2010-2011 BURA financial statements.

County Executive Poloncarz announced his departure to attend to a county matter. He exited the proceedings at 2:51 PM.
Chair Olsen advised a representative from BURA was unavailable to present the financial statements. He asked Mr. Link to provide a brief summary of the material.

Mr. Link provided the following summary of BURA's 2010-11 Financial Statements:

**Introduction**

- BURA is a component unit of the City and receives most of its funding from the Department of Housing and Urban Development ("HUD");
- The auditors, Dansa & D'Arata, provided an Unqualified Opinion and did not identify any significant deficiencies in the reporting of the Financial Statements or over the internal controls of the Federal awards or programs;
- As of June 30, 2011 General Fund Balance was $4.1 million;
- Community Development Block Grant fund balance was $7.9 million. All fund balances were reserved.

He added that BURA is unique in that prior year awards from the federal government can be rolled to future years for the various designated purposes.

- 2011 expenditures totaled $64.1 million. Federal grant dollars expended comprised 98%, or $62.9 million;
- The OPEB liability was estimated at $28.7 million at June 30, 2011;
- Single Audit Findings - two significant adjusting journal entries were noted and were identified as a material impact on BURA's financial results. The entries involved the accounting for accounts payable, revenues and expenses.
- A recommendation was made to develop formal journal entry procedures and management is in the process of developing internal control processes and procedures with year-end close out and reporting module.

Director Doherty asked if the audit finding with respect to the significant adjusting journal entries was a first-year finding, or if it was a recurring finding. Mr. Link provided that this finding was cited both last year and with the most recent audit. Management had discussions with the auditors as to how they plan to formulate and implement an internal controls policy to address the reporting.

Ms. Doherty asked if it was the expectation of BURA management to not have this finding repeated in the future. Mr. Link replied that this was the intent of BURA management.

**<u>City & Covered Organization's Second Quarter Reporting</u>**
***City of Buffalo***

Chair Olsen advanced the agenda to the next item of business: the review of the second quarter reports for the City and Covered Organizations. He asked Mr. Link to provide a summary of the City's second quarter report.

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

**City Quarterly Report**
Mr. Link began with a comparison of the City's operating revenues and expenditures at the time of the adopted budget and current FYE projections as of December 31, 2011. Operating revenues do not include the use of fund balance of $12.3 million included in the 2011-12 Adopted Budget; actual projected use of fund balance is projected to be $6.6 million.

**Current FY Revenue Projections**
The City is projecting a *net* increase in revenue in the amount of $1.7 million, over the adopted budget. The only projected decrease compared to the budget is under intergovernmental funds and is driven by the delayed receipt of the $1.2 million from the Tribal State Compact Agreement. This is offset by increased Sales Tax revenue in the amount of $725,000. Interest earnings are projected to come in $600,000 higher than initially budgeted. Miscellaneous revenue is projected to be $1.1 million over budget, resulting from higher than expected rent collections at the Broadway Market and other locations.

**Current FY Expenditure Projections**
The City is currently projecting budgetary savings in 14 of 15 departments in the amount of $4.4 million which is largely driven by personnel vacancies. Overall, the City is currently projected to be $4.6 million under budget.

As of December 31, 2011, there were 275 vacancies which represent a vacancy rate of 10.5%. That vacancy rate should have decreased since December the City has brought on a new class of police recruits and cell block attendants for a total of 62 new hires revising the projected vacancy rate to 213 FTE's, or 8%.

The single department projected to be over budget is the Fire Department, which is currently over budget by $55,000. This amount could increase based on retirements throughout the year, resulting from minimal manning requirements.

The Police Department is projecting a FYE budgetary savings of $1.6 million. The Department of Public Works is projected to be $800,000 under budget. Administration and Finance is projected to be $600,000 under budget.

The remaining eleven departments and general service charges are combing to provide an additional $1.5 million in budgetary savings.

**Fiscal Risks/Considerations**
The City is currently out-of-contract with many of its collective bargaining units including the Firefighter Union and the Police Union, both of which have the ability to utilize binding arbitration.

Fire and Police overtime are currently trending under budget. Costs can escalate quickly due to minimal manning requirements, retirements, seasonal events, or in the event of an emergency.

Unfunded OPEB liabilities have increased to $1.6 billion. The only way to begin addressing those increasing costs is to settle some of the outstanding CBAs and negotiate healthcare contributions from future retirees.

**State Aid to Municipalities ("AIM")**
AIM is operating revenue that is non-committed and flows to the City's General Fund for general operations. There was a decrease of $3.3 million between FY2010-11 and FY 2011-12,

from $164.6 million to $161.3 million. Per the Governor's proposed budget, AIM would be held flat between FY 2011-12 and FY 2012-13.

Chair Olsen congratulated the Mayor addressing overtime expenditures as this had been a concern. Additionally, he noted that the City has achieved savings through leaving vacant positions unfilled over the past few years. The City's workforce has increased its productivity level, affording this level of vacancy and the associated savings.

Director Doherty asked Mayor Brown if the City expected future budgeted FTEs to decline.

Mayor Brown affirmed this. He noted that the City would be adding cell block attendants in addition to hiring report technicians, and a new class of police officers and firefighters. The number of vacancies will decline as some positions are filled and as the budgeted level of positions is decreased.

Director Jurasek revisited the County Executive Poloncarz's previous question regarding the City's declining debt load. He asked if this could be considered a downward dynamic.

Mr. Link affirmed this on an overall basis. The annual commitment for new debt is $28-$30 million annually while the overall debt burden has decreased.

***Buffalo Urban Renewal Agency***
Mr. Link concluded his summary of the City's second quarter report. He continued with a summary of BURA's second quarter report, as follows:

**BURA Quarterly Report**
BURA is a unique entity in that most of its expenditures will equal revenues. BURA is primarily funded through the U. S. Department of Housing and Urban Development ("HUD") and the annual budget is dependent on what BURA expects to receive from HUD. BURA contracts out with service providers, mainly not-for-profits, to deliver a mix of services. Funds allocated by HUD to BURA can be rolled from year to year if they are not expended in the year they are awarded.

Compared to FY 2011, operating revenues have decreased by $4.1 million. There was a delay in HUD's award of funds to BURA. The delay was carried over to BURA entering into contracts with service providers and releasing funds. This lag will continue throughout the FY and will be reported as a variance between the budgeted amounts and actuals.

BURA currently owes nearly $7 million in default Section 108 loan guarantees. Of this $7.0 million, $5.7 million is principal and $1.2 million is for interest.

BURA's OPEB liability is now estimated at $28.7 million.

Mr. Link concluded his review of BURA's second quarter report.

Mayor Brown noted the $6.9 million liability for default section 108 loan guarantees existed prior to his first mayoral term.

***Buffalo School District Quarterly Report***

Chair Olsen asked Mr. Miller to provide a summary of the District's second quarter report.

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

**2011-12 Modified Budget**
In the 2011-12 Modified Budget, General Fund revenues total $726.6 million and expenditures total $767.6 million. The difference between the excess of expenditures over revenues is to be funded from fund balance, $25 million of which is Assigned Fund Balance and $16.0 million for operations.

Director Floss asked if the $25 million in Assigned Fund Balance was for appropriated expenses leaving the real operating deficit as the utilization of Unassigned Fund Balance of $16 million. Mr. Miller confirmed this and cited that that the retroactive payment for the recently approved PCTEA (i.e., white collar union) contract of $5.7 million is a portion of the $25 million of Assigned Fund Balance.

**Current FY Revenue Projections**
As of the end of the second quarter, revenues are projected to be $724.4 million, representing an unfavorable budgetary variance of $2.3 million which offset by the favorable expenditure variance of $2.8 million; actual expenditures are projected to be $764.9 million. There is an associated minor reduction in the anticipated use of fund balance at FYE of $40.5 million of which the Unassigned is $15.5 million.

There is a favorable budgetary variance in Federal Medicaid reimbursement of $1.2 million and unfavorable budgetary variance of New York State Aid of $3.6 million projecting a total unfavorable budgetary variance of $2.3 million.

**Current FY Expenditure Projections**
General Fund expenditures exhibit three significant budget variances. They are:

- Employee compensation - ($1.9 million);
- Employee benefits - $2.2 million; and
- All other - $2.6 million.

**Expenditures – Employee Compensation & FTEs**
The District is projecting an unfavorable budgetary variance of $1.9 million at FYE in Employee Compensation. This is attributed largely to the $2.7 million unfavorable budgetary variance in teachers' compensation. At the end of the second quarter, the District exceeded the budgeted level of FTEs for teachers. The District made a conscious effort to protect the classroom size as a primary goal. The 31.5 FTEs over the budgeted level of FTEs constitute Special Education teachers and teachers for English Language Learners. Other significant variances include

members of PCTEA, which is under the budgeted level of FTEs by 32, and exempt employees, which show 5.7 FTEs less than budgeted.

**Expenditures – Employee Benefits**
Health insurance for active employees as well as for retired employees constitutes major components of the total employee benefit cost. The cost of retiree health insurance is projecting a favorable variance of $1.7 million. Other benefits are projecting a FYE positive variance of $0.5 million due to fewer layoffs and the correlated lower than budgeted unemployment costs.

**Expenditures – All Other**
All other expenditures are projected to result in a $2.6 million favorable budgetary variance at FYE. Transportation expenses are projected to be $1.8 million less than budgeted due to fewer requested services. Payments to Charter Schools are projecting to be $750,000 less than budgeted as fewer than anticipated students were enrolled in area Charter Schools.

**Executive Budget**
The 2011-12 Adopted Budget includes New York State Aid totaling $598.9 million, of which $432.8 million was for Foundation Aid. Proposed Building Aid totaled $101.0 million. There was a Gap Elimination Adjustment of $33 million which reduces the District's State Aid.

The 2012-13 Executive Budget includes total New York State Aid of $640.5 million. It holds Foundation Aid at the 2007-08 level of $432.8 million and includes a Gap Elimination Adjustment of $24.8 million.

The proposed increase in State Aid represents a total increase of $31.6 million or 69% over the CFY, of which operating aid represents $8.3 million of the increase

Mr. Miller concluded his presentation of the District's second quarter report.

***Buffalo Municipal Housing Authority***

Chair Olsen asked Comptroller Robert Miller to summarize BMHA's second quarter report.

**BMHA Second Quarter Report**
Mr. Miller addressed the Board and provided the following information:

- The quarterly report encompasses the first six months of the fiscal year;
- Revenues are at 45% of budget;
- Expenditures at 44% of budget;
  - The difference is due to utilities which historically a higher percentage is spent during the second half of the year. Utility costs represent a substantial amount of the budget, averaging 25% of expenditures.
- For the first six months, revenues exceeded expenditures by $455,000;
- Central office revenues and expenditures both exceeded the budget and are approximately 54% of budget;
- Other significant items include:

- The anticipated reduction in HUD funding with the impact currently estimated at $2.7 million;
- Operating subsidy for 2012 set by HUD at 93%;
- A pending waiver request to offset required operating requirements;
- ARRA Stimulus Funds totaling $14.5 million which will be fully spent in the next quarter;
- The discussion of major construction at various locations; and
- The June 30, 2011 independent audit is still under review by HUD and will be released upon HUD approval.

Mr. Robert Miller concluded his presentation of the second quarter report for the BMHA.

**BFSA Issues**

Chair Olsen advanced the agenda to the next item of business: BFSA issues. He informed the Board that the Governance Committee had met and recommended various items for approval by the full Board. Those items include:

- Approval of the 2012 and 2013 MWBE Master Goal Plans; and
- The authorization to enter into additional banking agreements with local financial institutions.

He asked Ms. Mongold to briefly discuss the above mentioned items.

Ms. Mongold summarized the various BFSA issues as follows:

***2012 & 2013 MWBE Master Goal Plans***

The Governance Committee recommended approval of the 2012 and the 2013 MWBE Master Goal Plans, which were a direct result of a new requirement by the State of New York. The new fiscal year for the State begins April 1st. The established goal for MWBE's is 12% utilization for FY2012 and 20% utilization for FY 2013. All State agencies, including Public Authorities, are required to formally approve and adopt MWBE goals.

***Authorization to Enter into Banking Agreements***

The Governance Committee recommended approval of a resolution allowing BFSA to explore other financial institutions for investments in order to acquire the highest yield available. In addition, the Governance Committee recommended Board approval to allow the Secretary to be added as an authorized check signer, since the position of Vice Chair has been vacant for a period of time.

Chair Olsen requested a motion to accept the recommendations of the Governance Committee to approve all three items: the 2012 MWBE Master Goal Plan, the 2013 Master Goal Plan, and the Agreement to Enter into Banking Agreements with Local Financial Institutions.

Director Floss offered a motion to consider and approve all three items simultaneously.

Director Arthur seconded the motion.

**RESOLUTION NO. 12-04**
**AUTHORIZATION TO ENTER INTO BANKING AGREEMENTS WITH LOCAL FINANCIAL INSTITUTIONS AND AUTHORIZED SIGNATURES AND SIGNING RESTRICTIONS FOR SUCH ACCOUNTS**

WHEREAS, the Legislature of the State of New York, pursuant to Chapter 122 of the Laws of 2003 as amended by Chapter 86 of the Laws of 2004 authorizes the Buffalo Fiscal Stability Authority ("BFSA") to invest any funds held in reserve or sinking funds, or any funds not required for immediate use; and

WHEREAS, BFSA maintains depository and money market accounts with HSBC BANK, USA, as a means of optimizing returns on funds that are held in reserve or are not of immediate use; and

WHEREAS, in 2011 HSBC Bank, USA divested many of its operations and sold both local bank branches and related operations to First Niagara Bank, N.A.; and

WHEREAS, the Board of Directors (the "Board") has previously approved the ability of the BFSA to enter into banking relationships with HSBC Bank, USA, First Niagara Bank N.A. and M&T Bank Corporation; and

WHEREAS, it is the desire of the Board to maximize investment earnings to the extent possible under the provisions of the BFSA's Investment Guidelines; and

WHEREAS, the recent transition of the BFSA's banking relationship to First Niagara Bank, N.A. precipitated a desire to research interest rates provided by all local financial institutions in order to determine which interest rates would be most beneficial to the BFSA.

NOW THEREFORE BE IT RESOLVED, that the BFSA staff is directed to contact local financial institutions regarding interest rates offered for deposits and associated costs.

BE IT FURTHER RESOLVED, that the BFSA staff is directed to enter into respective banking agreements in order to invest the funds held by the BFSA with such local financial institution that provides the highest rate of return, in accordance with the BFSA's Investment Guidelines.

BE IT FURTHER RESOLVED, that in connection with the signing of checks, drafts, funds transfers or other order for the payment of money issued in the name and on behalf of BFSA against any funds deposited in the Accounts, the following restrictions will apply to all transactions:

1. The Chair, Vice Chair, Secretary, Executive Director, and the Treasurer are each authorized as a sole signer for any payment up to and including $25,000; and

2. Two of the above-listed signatories of the BFSA are required to jointly sign for any payment over $25,000.

**RESOLUTION NO. 12-05**
**APPROVAL OF THE 2012 MINORITY AND WOMEN BUSINESS ENTERPRISES MASTER GOAL PLAN**

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

WHEREAS, the BFSA 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 accordance with the 2010 Business Diversification Act, which amended Article 15-A of New York State Executive Law, state agencies are required to prepare a Master Goal Plan to submit to the Empire State Development's Division of Minority and Women's Business Development; and

WHEREAS, the BFSA revised the procurement guidelines to include relevant provisions of Article 15-A of the New York Executive Law as approved by the BFSA on March 9, 2011; and

WHEREAS, the Division of Minority and Women's Business Development communicated the need for the BFSA to establish and file a 2012 MWBE Master Goal Plan; and

WHEREAS, the Division of Minority and Women's Business Development provided state agencies a prescribed format for the MWBE Master Goal Plan, which format was used in the development of the BFSA's 2012 MWBE Master Goal Plan; and

WHEREAS, the Governor of New York State has issued a directive that all state agencies should establish a minimum goal of 20% participation for procurements with qualified Minority and Women Business Enterprises (MWBE's); and

WHEREAS, after consultation with the Division of Minority and Women's Business Development, it was noted that the 20% participation goal was not required or reasonable for 2012 due to timing constraints; and

WHEREAS, after consultation with the Division of Minority and Women's Business Development, it was determined that a 12% participation goal was appropriate in meeting the state-wide goal and keeping with the spirit of the Act; and

WHEREAS, the 12% goal is split evenly with 6% participation by Minority Business Enterprises and 6% participation by Women Business Enterprises; and

WHEREAS, the BFSA will continue to seek procurement opportunities with qualified MWBE's; and

WHEREAS, the BFSA Governance Committee reviewed the 2012 Master Goal Plan and approved a recommendation for the BFSA Board of Directors on March 14, 2012 to approve the Proposed 2012 Master Goal Plan.

NOW THEREFORE BE IT RESOLVED that the Board of Directors of the Buffalo Fiscal Stability Authority hereby adopts the 2012 Master MWBE Goal Plan; and

BE IT FURTHER RESOLVED that BFSA staff is hereby authorized to file the 2012 MWBE Master Goal Plan with the required parties.

**RESOLUTION NO. 12-06**
**APPROVAL OF THE 2013 MINORITY AND WOMEN BUSINESS ENTERPRISES MASTER GOAL PLAN**

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

WHEREAS, the BFSA 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 accordance with the 2010 Business Diversification Act, which amended Article 15-A of New York State Executive Law, state agencies are required to prepare a Master Goal Plan to submit to the Empire State Development's Division of Minority and Women's Business Development; and

WHEREAS, the BFSA revised the procurement guidelines to include relevant provisions of Article 15-A of the New York Executive Law as approved by the BFSA on March 9, 2011; and

WHEREAS, the Division of Minority and Women's Business Development communicated the need for the BFSA to establish and file a 2013 MWBE Master Goal Plan; and

WHEREAS, the Division of Minority and Women's Business Development provided state agencies a prescribed format for the MWBE Master Goal Plan, which format was used in the development of the BFSA's 2013 MWBE Master Goal Plan; and

WHEREAS, the Governor of New York State has issued a directive that all state agencies should establish a minimum goal of 20% participation for procurements with qualified Minority and Women Business Enterprises (MWBE's); and

WHEREAS, the BFSA has deemed it appropriate to adopt the Governor's directive of a 20% goal as split evenly with 10% participation by Minority Business Enterprises and 10% participation by Women Business Enterprises; and

WHEREAS, the BFSA will continue to seek procurement opportunities with qualified MWBE's; and

WHEREAS, the BFSA Governance Committee reviewed the 2013 Master Goal Plan and approved a recommendation for the BFSA Board of Directors on March 14, 2012 to approve the Proposed 2013 Master Goal Plan.

NOW THEREFORE BE IT RESOLVED that the Board of Directors of the Buffalo Fiscal Stability Authority hereby adopts the 2013 Master MWBE Goal Plan; and

BE IT FURTHER RESOLVED that BFSA staff is hereby authorized to file the 2013 MWBE Master Goal Plan with the required parties.

The Board voted 7-0 to approve the 2012 and the 2013 MWBE Master Goal Plans as well as the Agreement to Enter into Banking Agreements with Local Financial Institutions.

***Lobbying Policy Legal Memo***

Chair Olsen advanced the agenda to the next item of business: discussion of two memos provided by Harris Beach to clarify BFSA requirement under the New York State Lobbying Law. He asked Ms. Pietra Lettieri to provide a summary of the two memos.

Ms. Letteri addressed the Board and provided the following summary:

- The clarification in the memos relates to what statutes pertain to BFSA for the purposes of compliance with procurement and lobbying laws;
- 
- Item one discusses the New York State Public Authorities Reform Act ("PARA") requirements, which were amended in 2009. The amendment requires organizations to maintain records of contacts made in an attempt to influence adoption or reject any rule or regulation by BFSA or effect the outcome of any rate making proceeding. The BFSA does not perform these functions; therefore this particular provision is not applicable to the BFSA. The only issue that is applicable is that the BFSA must adopt a lobbying policy, which has been adopted
- Item two discusses the New York State Finance Law requirements. Due to the broad definition of a governmental entity within the procurement lobbying law, which restricts contact by an offering party when there is a solicitation involving procurement, certain requirements must be meet regarding public solicitations and the certifications the responding party need to adhere to. Contact is limited to only approved parties and must be described in the written Request for Proposal. Any contact by a potential vendor would require an investigation to determine if there was an attempt to influence the process, and if such influence was intended the vendor would be disqualified from the procurement process. The investigation is required to be documented by the officer as identified in the Lobbying Policy.

Chair Olsen requested a motion to accept the Lobbying Policy legal memos provided by Harris Beach, PLLC.

Director Doherty offered a motion to accept the material.

Secretary Arthur seconded the motion.

The Board voted 7-0 to accept the Lobbying Policy legal memo provided by Harris Beach, LLC.

***Reappointment of Board Secretary***
Chair Olsen advanced the agenda to the next item of business: the reappointment of Director Arthur as Board Secretary. He added that Director Arthur had served with great distinction in the past and requested a motion to reappoint him as Secretary.

Mayor Brown offered the motion to reappoint Director Arthur as Board Secretary.

Director Floss seconded the motion.

**RESOLUTION NO. 12-07**
**APPOINTMENT OF BFSA SECRETARY**

WHEREAS, Chapter 122 of the Laws of 2003, as amended, that created the Buffalo Fiscal Stability Authority ("BFSA") provides that the Directors shall appoint officers and agents as may be required; and

WHEREAS, former New York State Governor Eliot L. Spitzer appointed Mr. George K. Arthur to the BFSA on August 9, 2007; and

WHEREAS, the BFSA Board of Directors unanimously appointed Director Arthur to the role of Secretary on November 7, 2007; and

WHEREAS, Governor Andrew M. Cuomo reappointed Secretary George K. Arthur on January 24, 2012 to a new term as a Director of the BFSA; and

WHEREAS, Secretary George K. Arthur has served the Board of the BFSA as in the role of Secretary with a high level of professionalism and dedication; and

WHEREAS, it is the desire of the BFSA's Board of Director's for Director George K. Arthur to continue in his role as Secretary to the Board.

NOW THEREFORE BE IT RESOLVED, that the BFSA does hereby reappoint Director George K. Arthur as Secretary to serve until the earlier of the expiration of his term, his resignation, or removal.

The Board voted 7-0 to reappoint Director Arthur as Secretary.

*Honoring Former Director Gail E. Johnstone*

Chair Olsen advanced the agenda to the next item of business: a resolution to recognize and honor the contributions to the City by former BFSA Director Gail Johnstone. He noted that Ms. Johnstone was appointed as Director in October 2007 and brought a wealth of experience to the Board. After four years of service Ms. Johnstone resigned to focus on her many other commitments. He read aloud certain pertinent clauses of the resolution.

Chair Olsen requested a motion to approve the resolution to honor former BFSA Director Gail Johnstone.

Mayor Brown offered a motion to move the item.

Director Mesiah seconded the motion.

**RESOLUTION NO. 12-08**
**HONORING FORMER BFSA DIRECTOR GAIL E. JOHNSTONE**

WHEREAS, on July 3, 2003, former New York State Governor George E. Pataki signed into law Chapter 122 of the Laws of 2003, also known as the Buffalo Fiscal Stability Authority Act, which created the Buffalo Fiscal Stability Authority ("BFSA"), in order to assist in the restoration of fiscal stability in the City of Buffalo and within its Covered Organizations; and

WHEREAS, former Governor Elliot L. Spitzer appointed Mrs. Gail E. Johnstone as a Director of the BFSA on October 25, 2007; and

WHEREAS, Mrs. Johnstone brought a wealth of experience to the BFSA during her tenure based on her related experiences ranging from her time as Director of Planning for the City of Buffalo, to Vice President of Planning at Roswell Park, to her tenure as President and Chief Executive Officer of the Community Foundation for Greater Buffalo; and

WHEREAS, during her tenure as Director, Mrs. Johnstone oversaw the adoption of four financial plans, the establishment of a significant Rainy Day Fund, and the agreement of several affordable collective bargaining agreements with numerous employee groups; and
WHEREAS, after more than four years of tireless service as an active board member of BFSA, Mrs. Johnstone has resigned as Director in order to more fully focus on her many other commitments; and

WHEREAS, Mrs. Johnston's commitment to the community will continue in many capacities including her work with the Western New York Women's Fund; and

WHEREAS, Mrs. Johnstone has been tireless in working to promote the mission of BFSA to help restore long-term fiscal stability to the City of Buffalo and its Covered Organizations; and

WHEREAS, despite her resignation from the BFSA Board of Directors, Mrs. Johnstone's contributions to BFSA and the City of Buffalo will endure.

NOW THEREFORE BE IT RESOLVED that the Buffalo Fiscal Stability Authority does hereby honor and appreciate Mrs. Gail E. Johnstone for her outstanding contributions to the Buffalo Fiscal Stability Authority, and to the betterment of the City of Buffalo, its citizens and the Western New York community.

The Board voted 7-0 to approve the resolution to honor former BFSA Director Johnstone.

***Harris Beach Privileged Legal Memorandum***

Chair Olsen advanced the agenda to the final item of business: the Harris Beach memorandum regarding the BFSA statute and analysis of conditions to move into an Advisory Period. He advised that the Harris Beach memorandum was a privileged document and, as such, it would be appropriate to discuss the item in an Executive Session.

Secretary Arthur offered a motion to waive the attorney/client privilege and discuss the matter in open session.

Mayor Brown seconded the motion.

The Board voted 5-2 to waive the attorney/client privilege and discuss the matter in an open session (Doherty and Olsen dissented).

Ms. Lettieri began by stating that Harris Beach was asked to review the provisions of the enabling legislation, specifically sections 3850-3873. The terms of the Act provide a mechanism for which BFSA is authorized to move from a Control Period to an Advisory Period. Harris Beach examined whether a basis existed for BFSA to make a determination and whether or not the conditions for a transition had been met. In this research, the BFSA Act and its legislative history were examined as well as the City's 2010 and 2011 Comprehensive Annual Financial Reports ("CAFR"), the GASB No. 54 publication, and the BFSA's FY 2010-11 Annual Report. Comparable New York State control board statutes were examined.

Harris Beach examined whether or not the conditions, as set forth in the statute for the commencement of an Advisory Period, had been satisfied. Also examined was whether or not the BFSA Act required submission and evaluation of GAAP-based financial reports by all non-exempted Covered Organizations in order to transition into an Advisory Period.

Harris Beach has determined that three conditions are required to be met for a transition into an Advisory Period. The first is that there has been an absence of BFSA assistance, as defined by the BFSA Act, within the last three fiscal years, FY's 2009, 2010, and 2011. Harris Beach is of the opinion that this first requirement has been met.

The second statutorily required action is a certification by both the City Comptroller and the State Comptroller that the City sold securities in the prior fiscal year and that securities may continue to be sold. The conditions to meet this requirement have been met. The joint certifications will be needed for the requirement to be fully met.

The third statutorily required action is for the Board to make a determination whether or not a deficit has occurred in any of the immediately preceding three fiscal years, when “reported in accordance with generally accepted accounting principles (“GAAP”) without including “capital items.” This third and final determination involves a determination of the application of financial accounting concepts and GAAP-based accounting rules. As such, it is not strictly a legal determination. It is therefore not possible to offer a legal opinion whether or not a deficit exists under GAAP; no legal opinion can be rendered.

For the purposes of the deficit analysis, the BFSA Act does not specifically indicate whether only the review be performed on the City or of all the Covered Organizations. The BFSA Act does not specifically designate which funds should be considered in the analysis. The BFSA Act states that, “the City has adopted and adhered to budgets,” as part of the transitory language. As such, Harris Beach has focused their memorandum of the deficit analysis on the City of Buffalo’s General Fund.

Chair Olsen stated the one thing that is missing from the opinion is to suggest that BFSA receive a third-party opinion from a governmental accounting expert whether or not a deficit exists, as defined under GAAP.

Ms. Lettieri responded by stating the express terms of the statute are a result of the legislative history and deliberations. The Board has the authority to request this opinion. It is the opinion of Harris Beach that the Board should take whatever due diligence actions it sees fit to make the determination. There is no reference specifically to the Governmental Accounting Standards Board (“GASB”) in the BFSA Act. It is pointed out in the analysis that GASB is the organization that implements GAAP for purposes of governmental fund accounting. It is obviously relevant but is not specifically stated in the statute.

Director Floss stated that the GASB definition of fund balance designations has changed since the BFSA Act was drafted. GASB could not have foreseen that definitions were presumably going to change. He asked for Ms. Lettieri’s opinion in looking at these changes. He asked if BFSA should examine the language of the Act by the definitions GASB had in place at the time of its passage or the definitions that are in place currently. It would not be logical to utilize definitions that are now outdated.
Ms. Lettieri responded that the GASB rules being discussed happen to be in revision within these three years. The information provided regarding GASB in the legal memorandum may or may not impact whether the Board determines that a deficit exists. It was important to bring it to the attention of the Board. It would be draconian to state if there is a $1.00 deficit existed, it would automatically trigger an extended Control Period. In Harris Beach’s view, this would be an arbitrary result.

Chair Olsen noted his exception to this example as it was hyperbolic. The City would not report a non-substantive deficit as a deficit. A $20.0 million deficit would be a more concrete deficit and far more serious.

Director Floss asked for Chair Olsen's thoughts on a scenario where the City could have rearranged their accounting if they had known that GASB standards were going to change. If the City could retroactively make adjustments in prior years' accounting and change the amount listed in what is now Unassigned Fund Balance, would these adjustments be acceptable?

Chair Olsen replied that it was not a persuasive argument that if an immaterial deficit of $1.00 existed, this would be a significant enough argument for BFSA to remain in a Control Period.

Director Floss stated the concern over the change in Fund Balance accounting, per the old and new GASB standards. Would the new designations have allowed the City to present their financial statements in another manner that would not demonstrate or show a deficit?

Ms. Lettieri noted another area of consideration not yet discussed is the language that excludes capital items in the review if the City has a deficit. There is, unfortunately, no guidance or legal statute providing direction of how this would be applied. This could have an impact on determining if a deficit exists or not.

Director Jurasek noted the level of deliberation regarding the issue between the Directors and asked if it was prudent to remain in an open session. Chair Olsen replied that the Board had waived the client/attorney privilege. The contents of Harris Beach's memorandum had already been openly discussed. A move into closed session would therefore be moot.

Director Jurasek noted that the first half of the memorandum which discusses the language of the Act concerning the objective and subjective requirements for BFSA to transition into an Advisory Period is succinct and analytical. The second half of the memorandum includes accounting information that BFSA may wish to consider in its determination of whether or not a deficit existed. He asked if this were the reason that Harris Beach took the position that it cannot render an opinion because the firm was unclear how the accountancy relates to the intent of the BFSA Act as well as being unclear of the matter of GAAP and GASB.

Ms. Lettieri noted that the memorandum prepared was intended to offer a legal opinion regarding the statutory requirements to transition into an Advisory Period. The language in the memorandum regarding the GASB 54 publication are not intended as legal opinion, but rather as material that BFSA could consider when making this accounting decision. Additionally, the Act is silent on the definition of "Capital Items." There is a need to address some of the unclear provisions of the BFSA Act. The opinion clearly states that the Board must make a determination on these issues that lack clarity.

Director Jurasek noted that some of the requirements for BFSA to transition into an Advisory Period are very easily determined while other requirements are less clear. He asked if guidance could be gleaned from similar transitions by other control boards. Ms. Lettieri noted that other control board legislations are summarily different that the BFSA Act regarding a transition into an Advisory Period and therefore would not be an effective guide. There is no precedent for the conditions to trigger an Advisory Period. It is unclear from a legal perspective whether those conditions have been met; the determination is for the Board to make.

Mayor Brown noted that the memorandum outlined three conditions which need to be met for BFSA to transition into an Advisory Period. The first criterion has been met. The conditions for the second criterion have been met and will be met, pending the actions of the City and State Comptrollers. There is some interpretation whether or not the third criterion has been met. The City's budget has been in balance for the last three fiscal years. In reviewing the legal opinion, it is apparent that all three conditions have been met for a transition into an Advisory Period.
Mayor Brown noted that Harris Beach had represented the City Yonkers. He asked Ms. Lettieri how the determination was to allow the emergency financial control board to transition into an Advisory Period.

Ms. Lettieri advised that she did not have that information readily available as she was not a part of client services for Yonkers. The City of Yonkers was cited in the memorandum as an example of a municipality that had control board oversight. This oversight is currently in an advisory capacity.

Mayor Brown noted that even in their advisory period, the control board provides important monitoring and oversight. This would remain in effect for BFSA while in an advisory capacity.

Chair Olsen stated that public authorities tend to act with their own discretion. There are no perfectly written statutes. However, as it relates to the opinion provided, there is too much discretion expecting the Board to do what it thinks is right as opposed to applying the conditions the legislature laid out in creating the Board. The focus needs to be on what guidance can be gained from the legislative statute.

Director Arthur referred to the certification from the City Comptroller. He requested that BFSA forward a communication to the Comptroller requesting a timeline as when to expect the certification related to the borrowing aspect. He noted it may be advisable to reach out to the City Comptroller and extend an invitation to him to discuss this matter with the Board.

Director Jurasek concurred that this would be useful. He noted that, without further direction, the Board was stuck in a paralysis of ambiguity. Although there is clarity with the checklist provided in the legal memorandum, as Mayor Brown had cited, there are still gray areas that need to be clarified. It would be beneficial to have a deeper understanding of technical definitions and instruction on deficits.
Director Doherty revisited the criterion of the deficit. She noted that the Board needs to determine if a deficit existed and, if so, how long it had existed. Additionally, the Board needs to determine what funds are to be examined and determine what effect, if any, GASB affects these determinations.

Ms. Lettieri pointed out the GASB connection because GASB is the body that governs GAAP for purposes of governmental accounting. She indicated that Harris Beach felt it important to reference in the memo, but that the Statute does not specifically require a check-in with GASB. The determinations that are necessary include what funds are covered, what organizations are covered, if any other than the City, and what ultimately would be considered in terms of accounts and organizations for purposes of looking at if there is a deficit in regards to GAAP; that is what the board needs to determine.

Director Doherty requested a public finance expert to present to the Board the definition of a deficit. She noted that, in private sector accounting, an income statement showing costs exceeding receipts constitute a deficit. A clear understanding regarding the various Fund Balance categories, per GASB 54 is would be beneficial.

Director Jurasek asked if the City Comptroller would be sufficient to provide a definition and instruction. Director Doherty expressed her opinion that the definition should come from an impartial, third party accounting firm with expertise in municipal finance.

Mayor Brown noted for the record that, in his opinion, the City has not been in a deficit position over the last few years. It is important for the Board and the public to know that, in his opinion as a former member of the New York State Senate who served in the Senate when the BFSA Act was enacted, no legislation is perfect. There is ambiguity in some areas. At the time of the BFSA Act's passage, the City was in a financial crisis. There was a need for expediency to address the situation. Mayor Brown added that the Board will need to make a decision. In his opinion, the decision is clear but will respect the process. Mayor Brown noted his confidence that the Board will ultimately agree that the requirements have been met to transition into an Advisory Period. He thanked the Board for deciding to have the discussion in open session and noted that transparency in governmental affairs was beneficial to the citizenry.

Director Floss asked for clarification of a timeline when BFSA would make an ultimate decision regarding a transition into an Advisory Period, following the receipt of the joint Comptroller certifications. He asked if the Board should hold a public forum to solicit public feedback on the matter. Chair Olsen responded it is appropriate for the Board to decide what the process would entail. He advised he would defer to the decision of the majority.

Director Arthur replied that it would be key to hear from the City and State Comptroller prior to beginning this process.

Director Jurasek inquired if there was a statutory timeline that would have to be met at this time. He was informed by Chair Olsen that the BFSA has not been in receipt of any documents, so there is no timeline and once the process is started the timeline will be determined by the Directors.

**Privilege of the Floor**

Chair Olsen noted that the Board had no further agenda items for discussion. He extended the Privilege of the Floor to any attending member of the public who wished to comment publically on any item discussed during the meeting.

Ms. Samantha Colon addressed the Board. She noted that she was a resident of the City of Buffalo. She thanked Director Arthur for his motion to waive the client/attorney privilege and have the memorandum discussed in open session.

Ms. Colon noted that BFSA had passed a resolution to allow for investments to be held with additional local financial institutions. She expressed that BFSA should consider how the financial institute treats the residents of the City along with any rate of return offered. BFSA should not invest taxpayer funds with financial institutions who are not “good neighbors” and are either engaging in foreclosures on homes in the City or denying loan modifications. BFSA should consider foreclosure rates within the City because foreclosures not only affect those foreclosed on, but also the neighborhood where the house resides.

Ms. Colon noted her disappointment that BFSA had not examined whether or not any conflict of interest was involved with the District’s letting of a contract with Cascade Consulting regarding a search for a new Superintendent, as this should be within the power and discretion of a control board. Additionally, the District explanation regarding the issue was lacking.

Ms. Colon opined that it may be time for the BFSA to transition into an Advisory Period and shift fiduciary responsibility to the City Administration.

**Adjournment**

Chair Olsen requested a motion to adjourn the meeting.

Director Arthur offered a motion to adjourn.

Director Floss seconded the motion.

The Board voted 7-0 to adjourn.

The meeting adjourned at 4:28 PM.