

BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes
May 29, 2012

The following are the minutes from the meeting of the Buffalo Fiscal Stability Authority (the “BFSA” or the “Authority”) held on Tuesday, May 29, 2012, in the Buffalo Market Arcade Complex. The meeting was called to order at 4:07 PM.

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

Board Members Absent: Giardino

Board Members Excused: Jurasek

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

Additionally Present: Pietra Lettieri, Esq., Harris Beach, PLLC

Opening Remarks

Chair Olsen called the meeting to order. He noted that the Special Meeting of the Board was called to act on a single item: the Board's final consideration related to the transition of this Authority from a control period to an advisory period.

Roll Call of Directors

Chair Olsen asked Secretary Arthur to call a roll of the Directors. Secretary Arthur noted that Director Jurasek was absent with notice. He noted that Director Giardino was absent without notice. Finding a quorum present, the meeting commenced.

BFSA Act

Chair Olsen stated to the Board that the BFSA Act includes provisions that the Board must determine have been met in order for the Authority to transition from a control period to an advisory period. These provisions are included in §3851.1 of the BFSA Act and state that an advisory period will begin after the Authority has determined that:

1. For each of the three immediately preceding City fiscal years, the City has adopted and adhered to budgets covering all expenditures, other than capital items; and
2. the results of which did not show a deficit, without the use of any Authority assistance, when reported in accordance with generally accepted accounting principles (“GAAP”); and
3. the City Comptroller and the State Comptroller jointly certify that securities were sold by the City during the immediately preceding City fiscal year in the general public market and that there is a substantial likelihood that such securities can be sold by the City in the general public market from such date through the end of the next succeeding City fiscal year.

The joint certification by the City and State Comptroller has been submitted to this Authority and meets the provisions of the BFSA Act.

Chair Olsen added that the Authority has conducted various discussions concerning the ambiguities in the remaining provisions as they relate to determining if such provisions have been met for the Authority to transition into an advisory period. One of the purposes of this meeting is to solidify the Board's approach and to make a final determination on the following items:

- What entities are to be included in the evaluation of the criteria itself, meaning is the City's General Fund to be solely examined or are the Covered Organizations to be examined as well?
- What elements will be evaluated? Will the criteria be applied to only the General Fund, all governmental funds, or on an entity-wide basis?
- Based upon the answers to the first two questions, a final determination as to whether the criteria has been met with respect to adopting and adhering to budgets over the last three years, the results of which do not show a deficit when reported in accordance with GAAP, need occur. This furthermore requires a determination on what types of balances to include or exclude, specifically with respect to Transfers In and Transfers Out.

Resolution No. 12-13 was drafted based on the discussions at the May 14, 2012 Board meeting and is based on the following determinations:

1. The Authority will evaluate the criteria to transition from a control period to an advisory period as applied solely to the City of Buffalo,
2. The Authority will furthermore evaluate the criteria solely on the City of Buffalo's General Fund, and
3. The Authority will exclude Transfers In and Transfers Out from revenues and expenditures in the determination of whether a deficit existed.

The City does not report a deficit under this interpretation. When excluding the net effect of transfers from the City of Buffalo's General Fund, the City reported a surplus in the amount of approximately \$13 million in fiscal year 2011-12.

The draft resolution furthermore indicates that the advisory period will commence on July 1, 2012.

Chair Olsen called for a motion to approve Resolution 12-13, "Authority Determination for the Transition into an Advisory Period."

Director Arthur offered a motion to approve the resolution.

Mayor Brown seconded the motion.

**BUFFALO FISCAL STABILITY AUTHORITY
RESOLUTION NO. 12-13
AUTHORITY DETERMINATION FOR THE TRANSITION INTO AN ADVISORY PERIOD**

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSA” or “Authority”) was created by Chapter 122 of the Laws of 2003, as amended (the “BFSA Act”), as a corporate governmental agency and instrumentality of New York State (the “State”) constituting a public benefit corporation with a broad range of financial control and oversight powers over the City of Buffalo, New York (the “City”) and certain non-exempted covered organizations; and

WHEREAS, §3851.1 of the BFSA Act states an “Advisory Period means that period no earlier than July 1, 2006, after which the Authority has determined that (a) for each of the three immediately preceding City fiscal years, the City has adopted and adhered to budgets covering all expenditures, other than capital items, the results of which did not show a deficit, without the use of any Authority assistance..., when reported in accordance with generally accepted accounting principles and (b) the [City] Comptroller and the State Comptroller jointly certify that securities were sold by the City during the immediately preceding City fiscal year in the general public market and that there is a substantial likelihood that such securities can be sold by the City in the general public market from such date through the end of the next succeeding City fiscal year in amounts that will satisfy substantially all of the capital and cash flow requirements of the City during that period in accordance with the financial plan then in existence.”; and

WHEREAS, in accordance with §3851.1 of the BFSA Act, the determination of whether the Authority may enter into an Advisory Period is a determination to be made by the Authority, and the Authority so desires to make such a determination; and

WHEREAS, the Authority has determined to consider the results of operations contained solely within the City of Buffalo’s General Fund in applying the provisions of §3851.1 of the BFSA Act in the course of its deliberations to determine whether the requirements to enter an Advisory Period have been met, and has considered such results of operations; and

WHEREAS, the State Comptroller and City Comptroller have provided the BFSA a joint certification meeting the requirements of §3851.1(b), as signed by the State Comptroller on April 20, 2012 and by the City Comptroller on April 23, 2012; and

WHEREAS, the Authority has determined that for each of the three immediately preceding City fiscal years, the City has adopted and adhered to budgets covering all expenditures, other than capital items; and

WHEREAS, the Authority has determined that for each of the three immediately preceding fiscal years, the City’s General Fund’s results have not shown a deficit, excluding Other Financing Sources and Uses from the General Fund’s results of operations; and

WHEREAS, the Authority has determined that such results do not include the use of any Authority assistance; and

WHEREAS, the Authority has determined that all provisions of §3851.1 of the BFSA Act have been met with respect to transitioning into an Advisory Period.

NOW THEREFORE BE IT RESOLVED, in accordance with §3851.1 the Authority will enter into an Advisory Period effective July 1, 2012.

BE IT FURTHER RESOLVED that an Advisory Period shall continue through June 30, 2037, unless a Control Period is re-imposed in accordance with §3858 of the BFSFA Act.

Chair Olsen opened the floor for discussion.

Secretary Arthur stated that it was a banner day for the Authority. The City had financial problems that they worked through and is now on financially solid ground. A few weeks ago a discussion took place amongst a number of cities throughout the State of New York which resulted in the City of Buffalo as the only city to be upheld as a model. Credit can be given to the Mayor, his Administration, and to the BFSFA and its previous members.

Secretary Arthur noted that there remains certain financial concern with one Covered Organization, being the Buffalo School District (the "District"). The BFSFA Act does not allow for the bifurcation of the City from the Covered Organizations. When the Board transitions to an advisory period the staff will need to continue to work with the District to address their issues. The future of the District is an unknown especially because a new superintendent has not yet been selected. The issues facing the District are not insurmountable. BFSFA will continue to work in collaboration with the District to address these issues and to help keep the City of Buffalo the model for the State of New York.

Mayor Brown agreed this is a big day for the City of Buffalo and for the Buffalo community. The decision by the BFSFA Board to go into advisory status will send a clear message to the region, state and nation that Buffalo has its "fiscal house in order" and that Buffalo is a good place to invest. There is much public discourse regarding the Governor's billion dollar commitment to the region, downtown development, and the waterfront; however, there is also a lot of investment that has taken place in the neighborhoods. Often when speaking to investors across the state and across the nation, one of the concerns raised is the presence of the control board. Now, the City is able to send the powerful message that the City has been managed well, that its financial house is in order, and that the City is a good place to invest and do business.

Mayor Brown noted that, while listening to Chair Olsen read the legal requirements to move into advisory status, he believed the City had met all the legal requirements. All parties should be proud to achieve this monumental milestone. He requested the supporting vote of the Board to move into advisory status.

Mayor Brown thanked the Buffalo City Council for its cooperation since 2006. The City of Buffalo has been managed in a very fiscally conservative way. There are things individuals would have liked to spend additional money that the City was unable to do. There was a lot of pain in managing in this manner. Mayor Brown also thanked former City Comptroller Andrew SanFilippo and the present Comptroller, Mark Schroeder, the past and present members of the BFSFA, and the past and present staff members who have served on the Authority. He acknowledged that sometimes the work for the staff was not easy and acknowledged that the staff remained professional at all times when dealing with the City administration. He added that the present staff has been extremely helpful in working with the City in making suggestions and bringing attention to certain things. He thanked the current staff for working so closely with the financial staff of the City, under the leadership of Executive Director Jeanette Mongold.

County Executive Mark Poloncarz stated for the record his experience as an attorney and as Comptroller of Erie County. In his analysis of the three aspects necessary for the Board to move from a control period to an advisory period, the requirements have been met. He further added that the Authority will continue to exist in an advisory status and, if it appears the City is headed in the wrong direction, the Board has the power to go back into control status. The financial problems that arise in government happen very quickly, like "falling down a flight of stairs." Getting back up from the fall may take a long time depending on the injuries incurred as a result of the fall. The City of Buffalo is a perfect example. When the BFSFA was created, there were significant issues that needed to be addressed; it took time and as

a result the City is in a good financial position. He echoed Mayor Brown's thanks in reaching the point for the Board to vote on the resolution today.

Chair Olsen offered the following comments in connection with his vote against moving into advisory status:

- He concurs with the comments made by his colleagues, specifically those made by Mayor Brown, and is confident that the Mayor will continue to administer the City in a most responsible manner without control oversight of the BFSA.
- While the Board has the clear authority to interpret the definition of a deficit in multiple ways, each of which are considered reasonable as based on the advice of the accounting expert, he accepts the consummate public accounting interpretation that a deficit occurs when an outflow exceeds an inflow.
- The City will face many challenges in the near future, particularly due to the out-of-contract status of the police and fire unions and the history of the terms of binding arbitration for the City, as well as achieving the projected savings from the planned efficiency initiatives.
- He indicated he is concerned by recent suggestions that the BFSA has frustrated City management and indicated that since his tenure, the BFSA has never frustrated, delayed or compromised public policy or the governance of the City.
- The City's current financial position has been achieved in collaboration with, and under the oversight of, the BFSA during the control period. When BFSA was created in 2003, the available tax levy margin to the City was approximately \$12.9 million while today it is \$41.6 million. In 2003, the available fund balance of the City was \$9.7 million; most importantly none of these funds were undesignated or available. This is compared to \$92.7 million in available fund balance at the end of 2011, of which \$35.5 million has been set aside in a "Rainy Day Fund" established by the City in 2008. In 2003, the City was at risk of losing access to the bond market with a bond rating of BBB- with a negative outlook, which is the lowest rating before bonds are considered non-investment grade or commonly referred to as "junk bonds". The State has assisted in the recovery of the City by annually increasing State Aid, which was \$123 million in 2003 and had increased to \$161 million in 2011.

The BFSA has acted under its authority while in a control period to provide significant financial assistance. The BFSA established a wage freeze that essentially provided a reset period for the City and Covered Organizations, resulting in \$150 million of savings, most importantly to the School District which has a carryover savings on \$18.5 million annually.

Savings between \$12.5 million and \$14.5 million was obtained from the wage freeze being applied to the most recent firefighters arbitration award, which has provided for budgetary relief in the interim while being litigated.

\$9.1 million of savings was achieved through financing activities, most significantly by financing on behalf of the City.

The City implemented conservative budgeting practices by reducing the number of positions and has carefully managed its operations.

- Significant challenges continue to exist: collective bargaining agreements have yet to be reached with the police and fire unions while all other collective bargaining agreements have expired or will shortly expire; while the City has set aside funds for the retroactive pieces of future settled labor contracts, there likely will be additional costs in future years that will require additional funding sources to be identified; and the City has limited abilities to raise revenue.
- Chair Olsen stated it is his firm belief that in all likelihood it will be appropriate and necessary for this Board to consider returning to a control status under a clear reading of the BFSA's enabling legislation, based upon the imminent fiscal and performance crisis illustrated within the Buffalo Public School's four-year financial plan. This plan demonstrates a deficit of more than \$100 million which is proposed to be closed by essentially dismantling the system with respect to all non-mandated services. While this is a positive day for the City, continued oversight of the School District is critical.

Chair Olsen called for a vote on Resolution No. 12-13.

The Board voted 6-1 (Olsen dissent) to approve the resolution.

Adjournment

Chair Olsen requested a motion to adjourn the meeting.

Director Arthur offered a motion to adjourn.

Director Poloncarz seconded the motion.

The Board voted 7-0 to adjourn.

The meeting adjourned at 4:29 PM.