

BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes
December 7, 2016

The following are the minutes from the meeting of the Buffalo Fiscal Stability Authority (the “BFSA” or the “Authority”) held on Wednesday, December 7, 2016 in the first floor conference room of the Buffalo Market Arcade Complex. The meeting was called to order at 1:07 PM.

Board Members Present

Interim Vice-Chair Jeanette Jurasek
Secretary George K. Arthur
Director Frederick Floss
Director Frank Mesiah
Mayor Byron W. Brown (proxy Estrich)

Board Member(s) Excused

Chair R. Nils Olsen
Director Dottie Gallagher-Cohen
County Executive Mark C. Poloncarz

Staff Present

Executive Director Jeanette M. Robe
Principal Analyst/Media Liaison Bryce E. Link
Senior Analyst/Manager of Technology Nathan D. Miller
Administrative Assistant Nikita M. Fortune

Additionally Present

Mr. James L. Magavern, Esq., Magavern Magavern & Grimm LLP

Opening Remarks

Secretary Arthur served as Chair Pro Tem and welcomed everyone to the December Board meeting, thanked all who were in attendance, and reviewed the logistics and agenda of the meeting. He advised the Directors that the Governance Committee met earlier and recommended that the full Board approve several items.

Roll Call of the Directors

Director Floss called the roll noting the excused absence of Chair Olsen, County Executive and Director Dottie Gallagher-Cohen. A quorum being present, the meeting commenced.

City of Buffalo Commissioner of Finance, Administration, Policy, and Urban Affairs, Ms. Donna Estrich, represented Mayor Byron W. Brown, in accordance with Subdivision 1 of §3853 of the BFSA Act.

Subdivision 1 of §3853 of the BFSA Act reads: “...The Mayor and the County Executive shall serve as ex officio members. Every director, who is otherwise an elected official of the City or County, shall be entitled to designate a single representative to attend, in his or her place, meetings of the Authority and to vote or otherwise act in his or her behalf. Such designees shall

be residents of the City of Buffalo. Written notice of such designation shall be furnished prior to any participation by the signal designee....”

Chair Pro Tem Arthur introduced Resolution No. 16-25, “Approving Minutes and Resolutions from September 21, 2016.”

Director Floss made a motion to approve.

Director Mesiah seconded the motion.

The Board voted 5-0 to approve Resolution No. 16-25.

Buffalo City School District (“BCSD”)

Collective Bargaining Agreement (“CBA”) with the Buffalo Teachers’ Federation (“BTF”)

Chair Pro Tem Arthur advanced the agenda to the initial review of the labor agreement between the BCSD and the BTF which was ratified on October 17, 2016. It was noted the BFSA is required by statute to review any CBA entered into by the City of Buffalo (“City”) or any covered organization and to assess the financial impact of such agreements on the fiscal stability of the organization. The BFSA formally requested the final contract be submitted for review along with a financial analysis and a revised four-year fiscal plan as it became aware that the plan is out of balance. The District submitted the contract and financial analysis for review; however, a revised four-year financial plan has not been submitted and therefore the BFSA is not able to evaluate the funding for the additional costs at this time. A letter was received from Superintendent Cash noting a revised financial plan will be submitted in the near future. The BFSA will review the documents submitted by BCSD. The floor was turned over to Ms. Jeanette M. Robe, BFSA Executive Director and Mr. Nathan D. Miller, BFSA Senior Analyst for review.

Ms. Robe referenced Section 3859 of the BFSA Act which states the BFSA shall assess the impact of any bargaining agreement to be entered into by the City or any covered organization during an advisory period. The labor agreement was ratified on October 17, 2016, prior to the BFSA having an opportunity to review and assess the financial impact of the contract. Subsequently, a letter was sent to Superintendent Cash and other District officials reminding them BFSA is to review contracts prior to ratification. A copy of the final labor contract in addition to the financial analysis and a modified four-year financial plan was requested to be submitted to the BFSA. BFSA received the contract and the financial analysis, however a modified four-year financial plan has not been submitted to BFSA for review. It is required by the BFSA Act that each covered entity produce a four-year financial plan which is a key component of maintaining fiscal stability. It appears that a full cost evaluation was not performed prior to ratification of said contract in that the District failed to provide the requested financial plan. The Administrator Union contract also expired on June 30, 2004 and it is reasonable that similar terms would be extended to the Administrators. Once the revised financial plan is received, an analysis will be completed and forwarded to the BFSA Directors. The BFSA Board requested to meet with the Superintendent for a second time in September. Therefore, a Special Meeting will be held to address the Superintendent’s objectives for the District which hinged on having a new contract with BTF. Ms. Robe turned the floor over to Mr. Nathan Miller for further discussion of the contracts provisions.

Mr. Miller stated the BTF contract had been expired since 2004. The currently ratified contract covers July 1, 2004 through June 30, 2018. There are no retroactive salary increases. There are four “hold” steps that will be phased in over the lifetime of the contract. There is a one-time payment effective this year ranging between \$2,000 and \$9,000 depending on length of service. Retirees will receive a one-time payment of \$2,500 for those that retired since the contract expired.

Health Insurance Changes

The new contract requires healthcare contributions from active employees. The previous contract did not require employee contribution for healthcare coverage. There are several flat-rate contribution options which range from \$500 to \$1500.

The cosmetic surgery rider will be eliminated, effective 90 days after contract ratification on February 17, 2017.

Co-pays for doctor’s visits and prescriptions also increased. For supplemental benefits of vision and dental a one-time payment of \$350,000 will be made into BTF-managed fund.

Health Insurance for Retirees

There is no change for current retired teachers or those who retire prior to July 1, 2017. There will be flat rate contribution increases for new retirees:

- Under previous agreement \$475 (single)/\$900 (family)
- Retire between 7/1/17 and 6/30/18 \$600 (single)/\$1350 (family)
- Retire on or after 7/1/18 \$650 (single)/\$1500 (family)

Those who retire before 2/17/17 maintain the cosmetic surgery benefit. Those who retire after 7/1/17 have the option of enrolling in a Medicare Advantage Plan at age 65.

Work Rule Changes

- Class-Size Overages: adjusted class size enrollment to exclude registered students that have not been in attendance
- School Start and End Times: beginning with FY 2018-19 school year, the District may change the starting and ending time at schools which will allow for more efficient busing with an estimated cost savings of \$4 million
- Work Day: effective 9/1/17, a teacher’s work day will increase by 25 minutes from 6 hours and 50 minutes to 7 hours and 15 minutes
- Work Year: effective 7/1/17 teachers shall work a maximum of 188 days per school year. Two of the days will be used for professional development
- Retirement Notification: teachers who provide at least a 60-day notification prior to their retirement will receive an additional \$500 payment

Pending Legal Actions

Both the District and the BTF repeal their respective bad faith negotiation appeals. The BTF agrees to withdraw its litigation regarding the District's unilateral switch from multiple-provider healthcare plan to a single-carrier healthcare plan. All other litigations and/or grievances remain active.

Terms Unchanged

The residency requirement remains in effect; all employees must establish residency in Buffalo within six months of hire. Teachers receive a payout for unused sick leave time at retirement based on the years of service. Employees receive a waiver incentive of \$1200 annually in lieu of health insurance. Employees receive 13 paid holidays annually. Teachers have no scheduled work during the Winter and Spring recesses.

Cost/Benefit Analysis

The impact on all funds is \$41.5M for the current FY. The projected net cost is \$135.3M over the 2017-2020 Financial Plan.

Director Floss asked if the analysis is based on the flat filled amount. Ms. Robe responded to the affirmative.

Director Jurasek clarified that the net new cost of \$135.5M refers to the BTF contract does not take into account the remaining expired contracts that the District will have to settle in the future.

Ms. Robe ended the presentation by reiterating that District officials should use the four-year financial plan as the important tool that it is in order to evaluate how contract costs will be funded going forward. As of July 1, 2016 there was a set-aside in fund balance available for contract negotiations of approximately \$55M and the assumption is those monies will be used to settle the new BTF contract.

Director Floss stated the BFSA has been warning about the use of fund balance for this very reason. The District should not telegraph what their deficits will be with respect to this settled contract in light of the fact that there are several expired contracts within the District to be negotiated. Director Floss emphasized that the District needs to make one unified request for financial assistance to New York State as opposed to resubmitting after every contract is being negotiated.

Director Jurasek emphasized that the revised Financial Plan to be submitted to the BFSA must not include any speculative revenues that cannot be supported independently. Ms. Robe stated she will send a follow-up communication to stress that point.

Chair Pro-Tem Arthur asked if the School Board and Superintendent Cash were aware that the CBA was to be submitted to the BFSA prior to the vote by the Board of Education and is there a possibility to challenge the agreement and avoid this happening in the future. Ms. Robe responded in the affirmative that the Board and Superintendent were made aware that the CBA needed to be presented to the BFSA board prior to any vote or ratification.

Mr. Magavern, BFSA Legal Counsel, gave his opinion that it wasn't likely that the CBA would be considered invalid given that the BFSA is in an advisory period. The remedies are difficult due to the way in which the two bodies, BCSD and BTF, need to act simultaneously for fear that any agreement will become undone. The thought was submitting the CBA to the BFSA was more than likely overshadowed by the fear of losing the benefit to ratify the agreement quickly.

Chair Pro Temp Arthur stated for the record that the BCSD was out of order in not following the statute and is concerned that not acknowledging that fact sets a dangerous precedent for other covered organizations.

Director Floss stated the BFSA is open to keeping sensitive CBA information confidential until a more appropriate time to have remarks on the record and that should alleviate any fears of negotiations.

Chair Pro Tem Arthur agreed with Director Floss and opened the floor for comments; hearing none he advanced the agenda to reviewing the BFSA items.

BFSA Items

Chair Pro Tem Arthur stated the Governance Committee met earlier in the day and recommended the approval of the following items:

1. 2017 BFSA Board Meeting Calendar
2. 2017-2018 Minority -and Women-Owned Business Enterprise ("MWBE") Goals
3. 2017-2018 Service-Disabled Veteran-Owned Business Development ("SDVOB") Goals

Director Mesiah made a motion to approve the 2017 BFSA Board Meeting Calendar.

Ms. Estrich seconded the motion.

The Board voted 5 to 0 to approve.

Director Floss made a motion to approve the 2017-2018 MWBE Goals plan.

Director Mesiah seconded the motion.

The Board voted 5 to 0 to approve.

Director Floss made a motion to approve the 2017-2018 SDVOB Goal plan.

Director Mesiah seconded the motion.

The Board voted 5 to 0 to approve.

Chair Pro Tem Arthur presented a resolution to honor the numerous contributions made by BFSA Board Chair R. Nils Olsen, Jr. Ms. Robe read a few excerpts from the BFSA RES 16-26 Honoring Chair Olsen.

Director Mesiah made a motion to approve RES 16-26 Honoring Chair R. Nils, Olsen, Jr..

Director Floss seconded the motion.

The Board voted 5 to 0 to approve.

Chair Pro Tem Arthur deferred to Director Floss to bring an item to the floor.

Director Floss presented a resolution to honor the many contributions of BFSA Board Secretary

George K. Arthur. Director Floss read several excerpts from RES 16-27 Honoring Secretary Arthur.

Director Mesiah made a motion to approve RES 16-27 Honoring Secretary George K. Arthur. Director Estrich seconded the motion. The Board voted 5 to 0 to approve.

City of Buffalo (“City”)

Chair Pro Tem advanced the agenda to the City of Buffalo items and turned the floor over to Mr. Link for his presentation.

Proposed Collective Bargaining Agreement with Crossing Guards

Mr. Link thanked the Board for the opportunity to present his analysis. There are approximately 115 active employees in this union that work 4 hours per day for 182 days per year. The previous agreement expired on June 30, 2015 and this agreement will cover July 1, 2015 through August 31, 2019. The City has a living wage ordinance and therefore these employees are receiving minimally \$11.63 per hour with health insurance; without health insurance crossing guards receive \$13.06 per hour. The new hourly rate will be \$11.64 and \$13.07 respectively beginning January 1, 2017. The out years will be adjusted annually to the published living wage. The wage increase is estimated to cost less than \$1,000 for FY 2017.

The additional paid holiday, Veteran’s Day, will give crossing guards seven paid holidays for the school year. The cost of the additional holiday is approximately \$7,000 for FY 2017.

Any new employees hired after ratification of the CBA will not be entitled to retirement health insurance.

The out year costs are unknown at this time due to the living wage ordinance. Buffalo's current living wage ordinance is higher than the state's minimum wage. However, it is expected that the state minimum wage will exceed the living wage in 2019.

Hearing no questions Chair Pro Tem Arthur advanced the agenda.

City 2017 Capital Budget and 2017-2021 Capital Improvement Plan

Mayor Brown submitted the administration’s capital budget request to the Common Council and requested approval. Mr. Link gave the presentation.

The recommended 2017 Capital Budget totals \$23.2M and the Mayor is requesting to finance \$20.8M and requesting to have the additional \$2.4M authorized and unissued for use during a future fiscal year.

Engineering and streets will receive the largest amount of funding \$7.3M or 32% of the budget;
City Buildings and Maintenance \$5M, 22% of the budget;
Vehicles including fire trucks and street vehicles \$3.3M, 14% of the budget;
Investment in City Parks \$3.1M, 13% of the budget;

Demolitions \$2M and Tree Management \$600,000 or 11% of the budget
Economic Development and cultural organizations \$1.9M, 8% of the budget.

Director Floss asked if any of the percentages have changed since last year. Mr. Link advised the distribution has been constant over the past few years and the Administration takes the recommendations of the Citizens Planning Commission into consideration when formulating the Capital Budget and the five year Capital Improvement Plan. The budget is currently with Common Council and they have until December 15, 2016 to take action on the budget.

Currently the Comptroller has limited borrowing to \$20.8M; in previous years the Mayor has requested additional authorizations to borrow and this budget reflects the usage of prior year authorizations totaling \$5.9M.

The City has not borrowed on behalf of the BCSD since 2012 which was approximately \$5.0M per year.

The City utilized a bond anticipation note twice for short-term borrowing in 2013 and 2014.

The City Comptroller has been aggressive in spending down prior year bond proceeds; as of June 30, 2016 there were \$23.6M in proceeds to be spent down, of which \$18.2M was from 2016.

Ms. Robe stated the BFSA has repeatedly recommended that demolitions and tree management not be a bonded expenditure but built into the general fund, as they are not infrastructure expenses.

Audited Financial Statements

Chair Pro Tem Arthur advanced the agenda to review of the City financial statements given by Mr. Link. The adopted budget revenues were \$478.2M and expenditures were \$493.2M, leaving a projected deficit of \$15M which was to be covered by Assigned Fund Balance.

Revenues were under budget by \$15.7M and expenditures were under budget by \$33.1M for a net positive variance of \$17.4M. When the budget was adopted there was an expected deficit of \$15M instead there was a year-end actual deficit of \$1.7M.

Total operating revenues decreased by \$17.8M on a year-to-year basis, largely due to one-time revenues recognized in FY 2015 with the settlement of the PBA contract. Other financing sources decreased by \$4.9 million, for a total revenue decrease of \$22.7M; the year-to-year decrease is directly attributed to the one-time revenue received in FY 2015.

The 2015-16 Tax Levy totaled \$137M, of which, homestead was valued at \$76.1M and non-homestead at \$60.9M. The property tax levy has decreased from \$146.3 in FY 2006 to \$137M in FY 2016 a decrease of \$9.3M or 6.5%.

Total fund balance decreased \$1.7M in 2015-16 as compared to 2014-15.

Other Postemployment Benefits (“OPEB”) are estimated at \$1.4B as of June 30, 2016 which represents the total unfunded actuarial accrued liability. OPEB represents future healthcare costs of current employees only; between 2007 and 2016 there has been a 56% increase in cost.

Solid Waste & Recycling Fund continues operating at a loss; during FY 2015-2016 there was a decrease in the operating loss by \$1.2M. The total net deficit of the fund is \$34.8M and the General Fund is obligated for \$16.8M of the deficit. The operating loss for 2016 was \$4.4M and transfers from the General Fund were \$3.2M, making the 2015-16 net deficit \$1.2M.

The following is a list of the unsettled labor contracts for the City as of June 30, 2016:

1. Operating Engineers – 20 FTE's, expired since 6/30/13
2. Pipe Caulkers – 30 FTE's, expired since 6/30/16

Ms. Robe stated all of the large unions settled their contracts and have been reflected in the numbers. Therefore, the audited statements are reflective of normal recurring revenues and expenditures.

Hearing no additional comments or questions Chair Pro Tem Arthur advanced the agenda.

BCSD Audited Financial Statements

Mr. Nathan Miller began his presentation on the BCSD FY 2016 year end results by stating the 2015-16 Final Budget had a \$10.8M operating deficit, however, 2015-16 ended with a \$12.2M surplus which is the first surplus the District has had in the last five fiscal years. There was a \$30.1M variance in expenditures and other financing uses. Actual revenues were 99.4%, 84.7% of which is received by the District as NYS aid and aid is adjusted based on student enrollment.

Actual expenditures were 96.4% of final budget with a favorable variance of \$30.1M and an additional \$4.3M has been encumbered. Significant variances include general support at \$7.0M, instruction – regular schools at \$12.6M and employee benefits at \$6.9M.

Final fund balance for FYE 2016 was \$203.2M.

Assigned fund balance grew \$8.7M from FY 2015 to FY 2016. Total revenue increased \$25.1M, or 3.2%, of which NYS Aid increased \$19.7M.

Expenditures increased by 1.3% to \$10.3M from FY 2015 to FY 2016. Expenditures were less than total revenues which allowed for the budgetary surplus.

OPEB costs for the District total \$2.2B.

Chair Pro Tem Arthur opened the floor for questions from the Directors, hearing none he gave Ms. Robe the floor.

BMHA Quarterly Report

Ms. Robe stated Mr. Nathan Miller is the new analyst for BMHA and Mr. Miller began the presentation.

The expenses and revenues were consistent with budgeted amounts. Revenues had a variance of \$0.4M for dwelling income assuming a rent increase at Marine Drive which has not been implemented. Expenditures reflect a favorable variance for employee compensation and employee benefits, as the current number of employees does not mirror the staffing plan of the budget.

Mr. Miller stated it is too early to predict what the variances will be at the end of the FY.

Interim Vice Chair Jurasek asked for confirmation that utilities will cost less than budgeted. Mr. Miller stated the amount spent will depend on the severity of the winter. Director Jurasek then directed a question to BMHA assistant executive director Mr. Modesto Candelario about what is done with monies that are not spent on utilities. Mr. Candelario stated BMHA completes an analysis midway through the fiscal year and if expenses are trending less than budgeted they would use the monies for non-recurring expenses and capital improvements.

Director Floss questioned if vacancy rates have declined since the last BMHA presentation. Mr. Candelario advised the vacancy rate has remained flat, however the pilot program to screen applicants and complete intake at the site management office has shown positive results.

Director Floss questioned the unit turnaround time. Mr. Candelario stated it is improving but BMHA is looking to outsource that component due to the decreased staffing levels.

Director Mesiah asked if BMHA does any planning relative to the medical campus and the impending displacement of people currently living in that area due to the tremendous increase in rent and their possible impact on the demand for public housing. Mr. Candelario stated BMHA plans annually for all of their properties and will assist with the City's affordable housing plan. BMHA has reached out to some private developers to blend public housing units into their transactions. BMHA recognizes the increased need for more a public housing.

Interim Vice Chair Jurasek asked for clarification on the number of units needing new roofs and how that expense is funded. Mr. Candelario stated BMHA receives a capital fund grant from HUD of approximately \$8M that is separate from the operating budget in order to handle those type of expenses which are big ticket items. Windfalls or surplus will be steered toward smaller projects. Mr. Candelario also stated BMHA is attempting to increase their operating reserves in order to obtain a higher score on the financial indicator on the PHAS.

Hearing no additional questions Chair Pro Tem Arthur advanced the agenda.

BURA 2016 Financial Statements

BURA is a component unit of the City with a sub-recipient agreement regarding federal entitlement grant funds. The current agreement expires on June 30, 2017 however there is an extension option that would allow the agreement to be extended to September 2018.

The Fund Balance as of June 30, 2016 was \$4.6M. The 2016 total expenditures were \$52.9M, of which \$30.3M or 59% was for Section 8 Housing. The total expenditures for 2015 were \$47.2M, of which \$30M or 64% was for Section 8 Housing. Total revenues increased by \$6.5M from FY 2015 to FY 2016. Total expenses increased \$4.3M from FY 2015 to FY 2016. There has been a substantial decrease to OPEB from \$28.7M in FY 2013 to \$16.5M in FY 2015, a decrease of 43% or \$12.2M. The decrease is attributed to the decrease in staff and increase in contributions of retirees.

There has been an increased collection of program loans by \$4.0M. Full retirement of Section 108 Loan debt of \$3.8M; \$2.3M via proceeds of property and \$1.6M contributed by the City. There has been a year-to-year increase of \$6.7M in rehabilitation and preservation activity. All prior year findings have been addressed and there are no new findings.

City of Buffalo First Quarter 2016-17

At the end of the first quarter the City is projecting \$479.0M in revenues and expected expenditures are \$488.3. The projected deficit prior to the use of fund balance totals \$9.3M at the end of the first quarter. The adopted budget included planned use of fund balance of \$10.7M, which has been reduced by \$1.4M. The adopted budget revenues were \$483.2M, decreasing to projected \$479.0M. The adopted budget projected expenditures were \$493.9M, and projections have been reduced to \$488.3M.

As of September 30, 2016 the City had 277 vacancies or 10.3% of the budgeted workforce. The Police department had 112 vacancies, or 14.0% of their budgeted workforce. The number of retirees has increased and new classes are being brought on board. The Fire department had 15 vacancies, or 2.0% of their budgeted workforce, which is the lowest vacancy rate the fire department has had in recent years. Chair Pro Tem Arthur asked how the low vacancy rate of the fire department has affected their overtime. Ms. Estrich stated the overtime is not affected for police or fire as the training process on for both organizations lasts for months and on the job training must be done as well with seasoned officers and firefighters.

Interim Vice-Chair Jurasek asked if there is a correlation in the recently negotiated fire contract and the low vacancy rate. Mr. Link stated there could be three to four years between exam time and class selection, so it is not likely that the contract had much impact on the vacancy rate. Ms. Estrich stated people are also hired to create the exams which must be approved by the Department of Justice which adds to the amount of time it takes to compile a training class.

This is the first full year of traffic adjudication and it is trending below budget by \$800,000.

BURA First Quarter 2016-17

Total allocation for program year 42 which began on October 1, 2016 was \$16.6M, of which, \$7.2M will be utilized by BURA and the remaining \$9.4M will be administered through the City. There are no significant variances to expenditures through the first quarter. Prior year funds utilized to fund current year expenditures to date due to the lag in funds being released. There are currently two vacancies. Salaries and fringe benefits total \$900,000 through the end of the first quarter.

BCSD First Quarter 2016-17

Mr. Miller gave a review of the District's financial results. The BTF contract has been factored into the analysis. The modified budget deficit was \$14.1M and is expected to be \$54.4M due to the settlement of the BTF contract. Employee compensation accounts for \$40.8M of general fund expenditures. As of the meeting date, the District's budget has not been modified and is out of balance. The District will be submitting both a budget modification and financial plan modification to the BFSAs.

Director Floss asked if assumptions were changed regarding sales tax. Ms. Robe stated sales tax has been flat and the cause is unclear. Dir. Floss stressed the importance of continuing to monitor this issue. Mr. Miller stated the District is conservative with respect to sales tax.

Privilege of the Floor

Chair Pro Tem Arthur extended the Privilege of the Floor to any member of the attending public who wished to comment for the public record on any actions taken by the Board at the day's meeting.

Hearing none, he asked for a motion to adjourn.

Adjournment

Director Mesiah made a motion to adjourn.

Director Floss seconded the motion.

The Board voted 5-0 to approve.

The Board adjourned at 2:57 pm.