

**BUFFALO FISCAL STABILITY AUTHORITY**  
**Meeting Minutes**  
**September 25, 2017**

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The following are the minutes from the meeting of the Buffalo Fiscal Stability Authority (the “BFSA” or the “Authority”) held on Monday, September 25, 2017 in the first-floor conference room of the Buffalo Market Arcade Complex. The meeting was called to order at 1:05 PM.

**Board Members Present**

Interim Vice-Chair Jeanette T. Jurasek  
Secretary George K. Arthur  
Director Frederick G. Floss  
Director Dottie Gallagher-Cohen  
Director Frank Mesiah  
Mayor Byron W. Brown (proxy Estrich)  
County Executive Mark C. Poloncarz (proxy Cornell)

**Board Member(s) Excused**

Chair R. Nils Olsen, Jr.

**Staff Present**

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

**Additionally, Present**

Mr. James L. Magavern, Esq., Magavern Magavern & Grimm LLP  
Ms. Sara Dayton, Audit Partner, Lumsden & McCormick, LLP  
Ms. Tracey Keays, Managing Director, PFM Financial Advisors, LLC  
Ms. Mary Scarpine, Director of Employee Relations, City of Buffalo

**Opening Remarks**

Interim Vice-Chair Jurasek welcomed all attendees to the meeting and gave an overview of the meeting’s agenda and logistics. She stated the Governance Committee met earlier and compiled the Board’s annual self-evaluation and approved its submission to the New York State Authorities Budget Office; no Board action was needed as this is an informational item.

The draft BFSA 2018 Calendar was provided and Directors were instructed to advise Executive Director Ms. Jeanette Robe of any conflicts. The final 2018 schedule will be brought to the full Board for approval at the upcoming December meeting.

The Audit, Finance and Budget Committee met earlier and recommended full Board approval of two reports, the first being the independent annual audit and the second item was the BFSA’s Annual Report.

Interim Vice-Chair Jurasek stated that BFSA's financial advisor, Ms. Tracey Keays, was present to provide her advice as it relates to various matters discussed over the past several meetings involving the present practice of the City issuing debt. A proposed labor agreement with the City and the International Brotherhood of Teamsters Local 264T will also be reviewed.

### **Roll Call of the Directors**

Secretary Arthur called the roll noting that Chair Olsen was excused. A quorum being present, the meeting commenced.

Erie County Budget Analyst, Mr. Mark Cornell, represented County Executive Mark C. Poloncarz, while 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...."

Interim Vice-Chair Jurasek introduced Resolution No. 17-24, "Approving Minutes and Resolutions from August 15, 2017."

Director Floss made a motion to approve.

Secretary Arthur seconded the motion.

Interim Vice-Chair Jurasek requested the following be added to the minutes: "Dr. Cash indicated willingness to provide quarterly updates to the BFSA on anticipatory decisions and actions of the next fiscal year." Director Floss stated he took offense to Dr. Cash's statement that the request by the BFSA to be provided a gap-closing decision calendar with trigger dates was outside the scope of the BFSA and found his statement to be inaccurate. Secretary Arthur agreed with Director Floss. Director Gallagher-Cohen asked Mr. Magavern for his legal opinion. Mr. Magavern stated it is within the Authority's power to request information and the covered organizations are required by the statute to provide information requested by the Authority. Director Gallagher-Cohen suggested a letter be provided to the District to clarify the Authority's position. Interim Vice-Chair stated the Board will address this matter after the new business has been concluded.

Director Floss revised his motion to approve the minutes as amended.

Secretary Arthur seconded the motion.

The Board voted 7-0 to approve Resolution No. 17-24.

**BFSA Business**

***BFSA Fiscal Year (“FY”) 2017 Independent Audit & Annual Report***

Interim Vice-Chair Jurasek advanced the agenda and stated the Audit, Finance and Budget Committee recommended approval of the fiscal year 2016-2017 Independent Auditors’ Report by Lumsden & McCormick, LLP, earlier in the day, based on written material and an oral presentation. She introduced Resolution No. 17-25, “Approve Independent Audit Report & Annual Report for Fiscal Year 2016-17.”

Interim Vice-Chair Jurasek also stated the 2017 BFSA Annual Report was reviewed during the Audit, Finance and Budget Committee and the Committee recommended the full Board approval of the item and delegated the Chair, Interim Vice-Chair, Executive Director, and Comptroller to make any necessary changes for accuracy and completion. Ms. Sara Dayton was present to answer questions of the Board. Hearing no questions, Interim Vice-Chair Jurasek thanked Ms. Dayton for staying.

Director Gallagher-Cohen congratulated the BFSA staff on obtaining a clean unqualified audit opinion.

Interim Vice-Chair Jurasek asked for a motion to accept and approve the BFSA FY 2017 Independent Audit and the Annual Report as recommended by the Audit, Finance and Budget Committee with any necessary changes for filing to be made by the Chair, the Interim Vice-Chair, Executive Director and/or Comptroller. The documents will be filed with various New York State officials as required by statute and made available on the BFSA website.

Director Gallagher-Cohen made a motion to accept the recommendations of the Audit, Finance and Budget Committee.

Director Floss seconded the motion.

Interim Vice-Chair Jurasek emphasized the BFSA received a clean management letter and no material weakness were identified.

The Board voted 7-0 to accept the recommendations from the Audit, Finance and Budget Committee and approved the Independent Audit and the Annual Report.

**BFSA Business**

***Discussion with Ms. Tracey Keays, BFSA Financial Advisor***

Interim Vice-Chair Jurasek advanced the agenda to the next item for consideration: a discussion with Ms. Tracey Keays, Managing Director, PFM Financial Advisors, LLC, to provide her expertise on various questions and other matters that have been discussed regarding the BFSA issuing debt on behalf of the City. Ms. Keays provided a memo addressing the City Comptroller’s concerns in addition to a municipal bond overview located in Tab 4 of the board book. A copy of the City Comptroller’s response to the BFSA’s initial inquiry dated May 30, 2017 was also provided to the Directors.

Ms. Keays began her presentation discussing the general tax-exempt debt issuance market stating that rates continue to be very low, and the issues themselves are highly regulated at the federal and state levels due to their tax-exempt nature which in turn makes them attractive to investors. Ms. Keays stated bond ratings are relative indicators of credit worthiness; BFSAs are rated Aa1 by Moody's and AAA by Fitch. The City is rated A1 by Moody's and AA- by Fitch. Ms. Keays provided a general overview of some of the federal and state regulations regarding bonds.

Interim Vice-Chair Jurasek asked Ms. Keays to provide her opinion regarding the BFSAs reinstating the practice of issuing bonds on behalf of the City. Ms. Keays stated the City's bond rating has improved dramatically since it began issuing debt on its own behalf in 2008; however, the BFSAs are still rated three notches higher than the City and therefore BFSAs will have less interest to pay because of the higher rating. The BFSAs do have restrictions as they cannot issue debt that matures beyond their sunset date in 2037. It was noted the City is issuing debt with twelve-year final maturities so under this maturity schedule the BFSAs could not issue bonds after 2025. Interim Vice-Chair Jurasek noted the BFSAs sunset is not a consideration for any bonds maturing under twenty years. The BFSAs are also restricted to \$145M of outstanding principal.

Ms. Keays addressed the Comptroller's reference to the City's development of relationships with rating agencies in his May 30, 2017 response letter by emphasizing that rating agencies are highly regulated and ratings are not based on relationships; they are based on economic and financial conditions, management, policies and procedures. Rating agencies routinely rotate analysts to ensure independent and unbiased reviews. The analysts' reviews are then sent to committee for evaluation and rating. Ms. Keays also addressed the Comptroller's assertion that the City is developing relationships with investor groups. Due to the availability of information it is highly unlikely that investor groups are investing because of relationships; they are investing to make a profit.

Director Floss asked if it would hurt the City's credit rating if the BFSAs borrowed on behalf of the City. Ms. Keays stated it is not likely to hurt the City's rating.

Director Gallagher-Cohen asked for clarification on the Comptroller's claim that the costs of issuance for a BFSAs sale are higher than those associated with a City only sale. Ms. Keays agreed that there are some higher costs associated with BFSAs issuing on behalf of the City; however, the available savings would continue to be noticeable and worthwhile.

Ms. Estrich asked if there is any legitimacy to the City losing its ability to sell bonds or lose its presence in the market if the BFSAs issued on behalf of the City. Ms. Keays stated competitive bids are an opportunity for investment banks to make money; therefore, the City's time in or out of the market is not taken into consideration. Ms. Keays suggested the City and BFSAs would be able to make a case jointly to the rating agencies that there is a willingness to work together to save money by having the BFSAs issue bonds on behalf of the City.

Ms. Estrich clarified that the City would receive a better interest rate by issuing through the BFSAs. Ms. Keays responded in the affirmative.

Secretary Arthur made a motion to accept the report and recommendations as provided by PFM.

Seconded by Director Floss.

Board voted 7-0 to approve.

The Board thanked Ms. Keays for her presentation.

Director Gallagher-Cohen stated the BFSAs cannot ignore the cost savings opportunity and a dialogue needs to be had with the City. Secretary Arthur agreed and stated that although there may be some pushback since the Authority is in an advisory period, the Mayor's Office, the Comptroller's Office and the BFSAs must openly communicate in an effort to save the City money which benefits everyone.

Secretary Arthur proposed a motion for Ms. Robe to schedule a meeting with the Comptroller to explore ways of working collaboratively in the best interest of the City finances.

Director Floss seconded the motion.

Director Gallagher-Cohen noted for the record that this type of collaboration is not unprecedented in that ECMC and Erie County Fiscal Stability Authority recently joined together for project financing and to ensure cost savings to the county.

Ms. Robe advised the Board that a formal recommendation can be submitted to the City for the BFSAs to issue debt on behalf of the City which would in turn require a public response from the City. This option can be considered if preliminary talks are not well received.

The Board voted 7-0 to approve.

### **Collective Bargaining Agreement with the City and Local 264 (Water Caulkers)**

Interim Vice-Chair Jurasek advanced the agenda to review the Memorandum of Agreement ("MOA") to be presented by Principal Analyst/Media Liaison Bryce Link. Mr. Link stated the water caulkers are funded out of the Water Enterprise Fund. There are 37 positions budgeted for all four years of the financial plan. As of August 22, 2017, 32 positions were filled creating a vacancy rate of 13%. Membership ratified the MOA on July 19, 2017 with a vote of 21-5. The Administration will forward the MOA to Common Council for their action after it has been reviewed by the BFSAs. The previous MOA expired June 30, 2017 and the approved MOA will be effective July 1, 2017 through June 30, 2022 which is one year beyond the current financial plan.

There are a series of 2% wage increases:

- July 1, 2017;
- July 1, 2018;
- July 1, 2019;
- July 1, 2020

There is a 3% wage increase scheduled for July 1, 2021. The total increase over the five years is 11.5%.

### *Health Insurance Changes:*

- There will be no retiree health insurance for new hires after ratification;
- Employees hired after July 1, 2013 are able to freeze their health insurance contribution:
  - Those with 1-2 years of service will give up one personal leave day;
  - Those with 3+ years of service will give up two personal leave days.
- Employees hired prior to July 1, 2013 do not contribute towards health insurance.
- Active employees:
  - Hired prior to July 1, 2013 have a choice between two plans;
  - Employees hired after July 1, 2013 only have one plan option and are required to contribute towards health insurance
    - Single Coverage: 25% contribution (total cost \$5,899 annually with an employee contribution of \$1,475);
    - Family Coverage: 15% contribution (total cost \$15,865 annually with an employee contribution of \$2,380).

Director Floss stated his continued objection to the single coverage contribution being higher than the family coverage contribution. Director Gallagher-Cohen stated the difference is an unfair burden to employees that are not members of a traditional family.

Director Mesiah asked for clarity on the effects of health insurance and an employee being charged, though not convicted, with a criminal offense while suspended indefinitely without pay. Directors Gallagher-Cohen and Floss agreed that some clarity is needed. Ms. Scarpine stated disciplinary matters are expected to be settled as quickly as possible; however, the employee would be responsible for their contribution if they are enrolled in a plan that requires the employee contribution. If the employee is convicted of a felony or misdemeanor related to their oath of office the position is vacated due to public officer's law. If there is a misdemeanor conviction not related to one's oath of office it is likely that there would be no separation from employment.

- Retirees:
  - Active Employees at retirement hired prior to July 1, 2013:
    - Contribute 0% with a minimum of 10 years of service;
    - Those with less than ten-years of service are not eligible for retiree health insurance through the City;
    - Responsible for Medicare Part B premium.
  - Active Employees at retirement hired after July 1, 2013 and prior to ratification:
    - Contributions are required and depend on length of service;
    - No coverage for those with less than 10 years of service;
    - Responsible for Medicare Part B premium.
  - Employees hired after ratification will not receive health insurance coverage in retirement.

*Miscellaneous Changes:*

- Implementation and standardization of the time-keeping system;
- The stand-by schedule was increased from \$25 per week per employee to \$100 per employee per week.

*Disciplinary and Discharge Changes:*

- The City may suspend an employee indefinitely without pay if the individual was suspended due to criminal conduct;
- Employees may only be suspended up to 30 days without pay without a formal disciplinary hearing for any other reason.

Director Gallagher-Cohen asked for the standard regarding criminal conduct charges and/or prosecution. Mr. Link deferred the question to Ms. Mary Scarpine, Director of Employee Relations, City of Buffalo. Ms. Scarpine replied that the MOA references alleged criminal conduct but it depends on how the disciplinary allegations are worded as violations of penal law.

Secretary Arthur asked if the charges referred to misdemeanors or felonies. Ms. Scarpine stated the action covers both misdemeanors and felonies. Secretary Arthur observed that anyone can make an accusation and the process does not seem fair. Ms. Scarpine stated there are provisions in the MOA to reimburse an employee if there is no finding of guilt. Secretary Arthur stated he knows of situations when employees have fought accusations and obtained reimbursement; however, those employees and families were unable to recover the assets that were lost in the process. Secretary Arthur stated the provision seems to be the antithesis of innocent until proven guilty.

Interim Vice-Chair Jurasek asked if this provision is standard in all City MOAs. Ms. Scarpine stated this is the first bargaining unit to agree to this language; therefore, the general provision in most contracts limits suspension to thirty days.

Director Floss asked if any side letters were drafted separate from the contract that limit the enforcement of the provision except in extreme situations. Ms. Scarpine stated no side letters exist.

Director Floss asked if an employee got a speeding ticket could that employee be suspended indefinitely without pay. Ms. Scarpine said it is possible depending on the crime. Director Floss stated there needs to be a clear understanding between the union and the City that the provision will not be used to target or punish individuals in different circumstances.

Secretary Arthur asked that the BFA recommendation of the MOA include the Board's dissatisfaction with the lack of definition and clarity as it relates to criminal conduct.

Director Gallagher-Cohen countered that management should be afforded the right to allow some leeway in judgement.

*Financial Impact:*

The total cost of the CBA for 2017-2022 is estimated at \$831,232. Current year costs have been adequately budgeted for; out-year costs are reflected in the previously submitted financial plan.

*Recommendations and Conclusions:*

- MOA provides predictability of employee costs beyond the end of the current financial plan to June 30, 2022;
- No significant healthcare changes for those hired prior to 2013 as they continue to not contribute to health insurance; there are approximately 20 employees that qualify for this benefit;
- Elimination of retiree healthcare for new hires is a significant change; the savings will not materialize for 25-35 years;
- It is recommendation that the City compile a single comprehensive CBA with Local 264T, reflective of the current terms;
- The ability to freeze health insurance increases in exchange for a personal leave day should not be extended to other employee groups without further evaluating the potential financial impact.

Director Floss asked if the trade-off of the personal day to freeze premiums is an attempt to compensate this unit for the lower salaries they receive in comparison to other bargaining units. Mr. Link responded in the affirmative. Director Floss asked if the City could draft a general MOA to all unions listing a salary cap for employees being able to make the aforementioned trade-off. Mr. Link stated it may be possible, but not likely. Director Gallagher-Cohen stated the trade-off does not appear to balance the cost and therefore does not appear to be a good practice. Mr. Link stated the City's health insurance premiums have remained fairly flat since it began being self-insured; although, there has been an increase on prescription drugs. It is a concern based on the historical growth of the industry. Director Gallagher-Cohen stressed the increased risk involved with the City being self-insured.

Interim Vice-Chair Jurasek stated the BFSAs are mandated to review contracts and provide comments and subsequently asked if the Directors would like their concerns regarding the provision on health insurance cost sharing, as well the provision on discipline and dismissal forwarded to the City.

Secretary Arthur stated while he is fully aware that the contract will not be altered, he would like the concerns forwarded to the Common Council to make them aware of the issue regarding convictions with respect to dismissal and discipline as a point of reference for future contracts.

Director Floss stated his support of the contract and felt it appropriate for Ms. Robe to send a letter stating the Board's concerns and recommendations. Ms. Robe will draft the correspondence on behalf of the Board. Ms. Estrich stated the City and union worked together and agreed on the MOA. Director Floss agreed that the City and the union did a good job on the MOA and contributes to the stability of the City going forward. Director Floss emphasized that the Board's recommendations are to be applied for future contracts and not solely for this one.

Director Gallagher-Cohen exited the meeting at 2:28PM.



Secretary Arthur made a motion that Ms. Robe will draft a letter to the City and Common Council with the Board's recommendations and concerns regarding the labor agreement between the City and Local 264T.

Director Floss seconded the motion.

The Board voted 6-0 to approve.

### **BFSA Business**

Interim Vice-Chair Jurasek advanced the agenda to BFSA business to discuss two covered agency communication letters. The first letter reviewed was to the Buffalo Municipal Housing Authority ("BMHA") regarding their lack of past accountability.

Secretary Arthur made a motion for Ms. Robe to finalize and forward the letter to BMHA.

Director Floss seconded the motion.

The Board voted 6-0 to approve.

The second letter to be reviewed was to the Buffalo City School District (the "District") referencing the BFSA Board meetings on August 15, 2017 and September 13, 2017 with the primary focus being the planned implementation of the PEG plan. The letter requested the District submit a prospective report on the PEG plan implementation to the BFSA to be received ten days after the District's financial quarterly reports are due to begin with the first 2017-18 first quarter. Ms. Robe stated she has not received a response from the District.

Director Floss stated the District's relationship with the community may be in peril if the District is not able to finance the new plan because of lack of transparency in the past. The requested reports will provide an opportunity for the BFSA to assist the District.

### **Public Comment**

Interim Vice-Chair Jurasek advanced the agenda to the public comment portion of the meeting.

Hearing no comments Interim Vice-Chair Jurasek requested a motion to adjourn.

### **Adjournment**

Secretary Arthur made a motion to adjourn the meeting.

Director Floss seconded the motion.

The Board voted 6 to 0 to approve.

The meeting ended at 2:39 PM.