



BUFFALO FISCAL STABILITY AUTHORITY

Third Annual Report
Fiscal Year 2005-06

September 2006

Buffalo Fiscal Stability Authority

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Alair Townsend, Vice Chair

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Deputy Director

Melinda Mulawka, MPA & MRP
Associate Analyst

Nathan D. Miller, BS
Executive Assistant/ Office Manager



BUFFALO FISCAL STABILITY AUTHORITY

September 28, 2006

To: Governor Pataki, Comptroller Hevesi, Members of the State Legislature
Mayor Brown, Comptroller SanFilippo, Members of the Common Council
Members of the Board of Education

This is the third Annual Report of the Buffalo Fiscal Stability Authority – BFSA, the Buffalo City Control Board. It is the first report to be submitted in compliance with the 2005 Public Authorities Accountability Act and the State Comptroller’s March 2006 Regulations, and, as such includes: the Authority’s Annual Report; Annual Audit; and Report on the City of Buffalo’s Financial Plan.

BFSA has been cost conscious in its operations, limiting spending to approximately \$1 million in each of its three fiscal years while maintaining its office in a City property. Since July 2003, together with the City, the Buffalo Control Board has enabled \$186.6 million in savings. The result has been maintenance of essential services to the citizens of Buffalo *without* a property tax increase since 2003 and a healthier fund balance to cushion against future challenges and uncertainties.

While progress has been made, disturbing trends have emerged. For example: the baseline gaps in the City and School District continue to grow – to a combined \$138 million in three years, even with BFSA-imposed hiring and wage freezes providing savings; the City has become increasingly dependent on State Aid, growing from 36 percent of revenues just three years ago to 53 percent today; the City’s ability to support the School District budget has declined from 10 percent to 9 percent of budget, despite an increase in actual dollars; and high rates of spending growth have developed in the current year – 9.1 percent in the City and 7.3 percent in the School District – driven overwhelmingly by the costs of employee and retiree benefits.

The Control Board’s investigation has shown that Buffalo’s public sector employees’ total compensation package (including time off, benefits such as free health insurance for life and defined benefit pension plans) exceeds local and national standards. BFSA has projected that the City might save more than \$100 million each year if contracts were brought in line with these standards.

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Moreover, economic trends in the region show little sign of vigor: out-migration continues (the City's population fell by 4.4 percent in five years; school enrollment declined by 18.7 percent in 4 years); job growth is stagnant; poverty plagues more than 26 percent of residents; and 20,000 residential units lie vacant. These statistics are a cautionary tale, showing fewer residents with the capacity to support an increasingly expensive government.

Excessive spending is impossible to justify, regardless of whether the funding comes from statewide or local sources. Again this year, BFSAs call upon the State to reform the laws that perpetuate unaffordable government, burden taxpayers and undermine fiscal stability.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lipke", with a long horizontal flourish extending to the right.

Brian J. Lipke, Chairman

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Introduction

This is the third annual report of the Buffalo Fiscal Stability Authority (BFSA), known locally as the City Control Board. It covers the third fiscal year in which the City of Buffalo and its covered organizations operated under the requirements of the Buffalo Fiscal Stability Authority Act. While the work of BFSA can most appropriately be viewed as a continuum, this report focuses mainly on the period from July 1, 2005 through June 30, 2006, adding to the actions and accomplishments cited in BFSA's first two annual reports.

The combined efforts of the City and its covered organizations, in cooperation with the City Control Board, have saved the City of Buffalo and its taxpayers more than \$186 million since it was created in July 2003. These essential savings were brought about through the exercise of extraordinary powers granted to the Board by the State, and through the cooperation of the City of Buffalo and its covered organizations.

Background

The Buffalo Fiscal Stability Authority Act was adopted in 2003 in response to a State Comptroller's assessment and report, and a determination by the State Legislature that the City of Buffalo was faced with a severe fiscal crisis that could not be resolved without State assistance. Declaring the maintenance of a balanced budget by the City of Buffalo a matter of overwhelming State concern, the Legislature passed, and Governor George E. Pataki signed, Chapter 122 of the Laws of 2003 – the Buffalo Fiscal Stability Authority Act. According to the BFSA Act and resolution of the BFSA Board, the City of Buffalo is understood to include certain "covered organizations," currently including: the City's fiscally dependent School District, the Joint Schools Construction Board (JSCB), the Buffalo Municipal Housing Authority (BMHA) and the Buffalo Urban Renewal Agency (BURA).

The BFSA Act, enacted with broad bipartisan support in the State Legislature, included the following provisions to return the City of Buffalo to fiscal stability:

- Established BFSA as a fiscal control agency over the City and its covered organizations;
- Required the annual development of a four-year Financial Plan for the City and its covered organizations, and vested BFSA with the power to ensure compliance with that plan;

- Granted BFSA the power to do deficit financing for the City and its covered organizations over a four-year period, provided that recurring actions are taken to close increasing percentages of the structural budget gap each year;
- Included significant powers over the City and covered organizations during a control period, such as imposing wage and hiring freezes and approving significant contracts;
- Established the legal basis for creation of a highly rated borrowing structure to reduce City borrowing costs and provide short-term budgetary assistance; and
- Empowered BFSA to impose financial control mechanisms if the City and its covered organizations are unable to adopt a balanced Financial Plan and/or to operate in accordance therewith.

By force of the BFSA Act, the Authority was granted “control powers” over the City and its covered organizations from its inception, including the power to: review and approve the four-year Financial Plan; limit spending of the City or any covered organization; impose a hiring and/or wage freeze; and review and approve any contract, obligation or collective bargaining agreement entered into by the City or any covered organization. The control period may be terminated after the BFSA Board has determined the City has adopted and adhered to three consecutive balanced budgets without any assistance from the Authority, such as cash proceeds from deficit financing or budgetary savings generated by a wage freeze. Once BFSA has made such a determination, and the State and City Comptrollers have certified current and future bond market access, the City would operate under an “advisory period.” However, if the BFSA Board determines that a fiscal crisis is imminent, or that the City is unable to adopt a balanced budget or Financial Plan, incurs a budget deficit or loses access to the financial markets, a control period could be reimposed by BFSA.

BFSA’s 2005-06 audited operating expenses totaled \$1,078,437. Of that total, \$263,278 was directly attributable to legal fees primarily associated with lawsuits challenging the BFSA-imposed wage freeze.

In its first three fiscal years, the Buffalo Fiscal Stability Authority, the City, and its covered organizations have produced an aggregate positive impact of \$186.6 million for the City and its covered organizations. This has contributed to upgrades in the City’s credit rating outlook by both Standard & Poor’s (in 2003) and Moody’s Investors Service (in 2006).

BFSA Governance

The Buffalo Fiscal Stability Authority is governed by a nine-member Board of Directors. Seven are appointed by the Governor, one of which is upon the recommendation of the

State Comptroller and another of which is upon the joint recommendation of the leaders of the State Assembly and the State Senate. The Mayor of the City of Buffalo and the County Executive of Erie County serve in *ex officio* capacities. The Governor designates the Chair and Vice Chair of the Authority.

As of June 30, 2006, the following individuals served on BFSA's Board of Directors:

- **Brian J. Lipke, Chairman**
Chairman and CEO of Gibraltar Industries
- **Alair Townsend, Vice Chair**
Publisher of Crain's New York Business
- **Rev. Richard A. Stenhouse, Secretary/Treasurer**
Pastor of Bethel AME Church and Executive Director of Bethel Head Start
- **John Giardino, Deputy Treasurer**
Partner at Lippes Mathias Wexler Friedman LLP
- **Robert G. Wilmers**
Chairman of M&T Bank Corporation
- **Hon. Byron W. Brown**
Mayor, City of Buffalo
- **Hon. Joel A. Giambra**
Erie County Executive

[Note: One Board vacancy was filled in September 2006 with the appointment of Anthony J. Colucci, Jr., Esq. Mr. Colucci is Senior Attorney at the law firm Block, Colucci, Botaro & Laing, P.C. After this appointment, the one remaining vacancy on the Board is the appointment to be made on the recommendation of the State Comptroller.]

In addition to the Directors noted above, the following individuals served on the BFSA Board for a portion of the 2005-06 fiscal year:

- **Hon. Anthony M. Masiello** (served through December 31, 2005)
- **Richard Tobe** (served through January 25, 2006)
- **H. Carl McCall** (served through May 4, 2006)
- **John J. Faso** (served through June 5, 2006)

As of June 30, 2006, BFSA had a staff of seven:

- **Dorothy A. Johnson, M.S., Executive Director**
Former Principal Budget Examiner for local government affairs in the State Division of the Budget, and former investment officer in the Office of the State Comptroller
- **Darryl McPherson, Esq., Chief Counsel**
Former Deputy Corporation Counsel for the City of Buffalo Department of Law
- **Nathan D. Miller, B.S., Executive Assistant/Office Manager**
Former Administrative Assistant with Child and Family Services

- **Bertha H. Mitchell, M.B.A., Chief Financial Officer**
Former Vice President and Senior Credit Officer for Corporate Banking at Citibank U.S. and Canada, and former Vice President of Credit Policy at Royal Trust, Toronto
- **Melinda Mulawka, M.P.A., M.R.P., Associate Analyst**
Former Economic Development Policy Analyst for the Office of the Albany County Executive
- **Joseph V. Stefko, Ph.D., Deputy Director**
Former Senior Research Associate in the government management and economic analysis practices of the Center for Governmental Research (CGR Inc.), a Rochester-based public sector management consulting firm
- **Robert M. Tocker, M.A., Senior Analyst**
Former Senate Finance and Fiscal Studies Fellow and Legislative Analyst with the New York State Senate Finance Committee

Summary of Accomplishments in 2005-06

In its third fiscal year of operation, BFSA continued to help the City, Buffalo Public Schools and covered organizations on the road to long-term structural budgetary balance. The significant financial oversight and monitoring actions taken by the Authority, the City and its covered organizations in the third year of BFSA's responsibilities fall into the following categories:

Multi-Year Financial Planning

The multi-year financial planning process required by the BFSA Act is one of the most critical components to Buffalo's fiscal future. With BFSA's assistance, the City and covered organizations have developed a comprehensive planning process that, over time, will help to address the current structural budget gaps as well as recognize and prepare for future fiscal challenges.

In 2005-06, BFSA monitored implementation of the third four-year Financial Plan for the City, School District, Urban Renewal Agency and Municipal Housing Authority. The plan covered fiscal years ending 2006 through 2009, and included gap-closing actions for the 2005-06 budget totaling \$30 million. BFSA also approved the fourth four-year Financial Plan for the City and its covered organizations, for fiscal years ending 2007 through 2010.

Monitoring Fiscal Health

Regular and aggressive monitoring of budgetary processes and cost-savings initiatives are essential to ensuring that Buffalo continues its progress towards fiscal stability. Under BFSA, the City and covered organizations have developed a reliable reporting process for revenues, expenditures, numbers of employees and the status of gap-closing initiatives. This process has yielded a more disciplined approach to fiscal monitoring, and enabled immediate budget modifications as needed during the fiscal year.

In 2005-06, BFSA continued the regular quarterly reporting process by the City and its covered organizations to review financials, monitor implementation of gap-closing measures and determine if modifications were required. The following actions were taken in 2005-06:

- BFSA approved a School District budget modification in August 2005 that realized savings from a single health carrier initiative, but created a contingency line to protect against the possibility of it being overturned in arbitration. A related Financial Plan modification was approved in October 2005.
- BFSA approved a School District food service budget modification in December 2005, to draw down a portion of fund balance in order to cover a projected \$345,000 shortfall.
- BFSA approved a City budget modification in January 2006, recognizing \$2.3 million in reserved fund balance, reengineering monies, franchise fees and auction proceeds. The additional funds were appropriated for demolition costs, capital costs, firehouse reconstruction and improvements to the City's Emergency Medical Services function.
- BFSA approved a second School District food service budget modification in April 2006, to cover a projected \$625,000 shortfall related to food prices and higher-than-expected numbers of students. The funds will be reimbursed by state monies after they are spent.
- BFSA approved a City budget modification in May 2006, which recognized \$6 million in State Aid spinup funds in the 2005-06 budget. The funds were appropriated to pay for significant increases in fire overtime, as well as prior year claims and a payment on the cash flow borrowing (an unbudgeted amount related to an audit adjustment in the prior fiscal year).

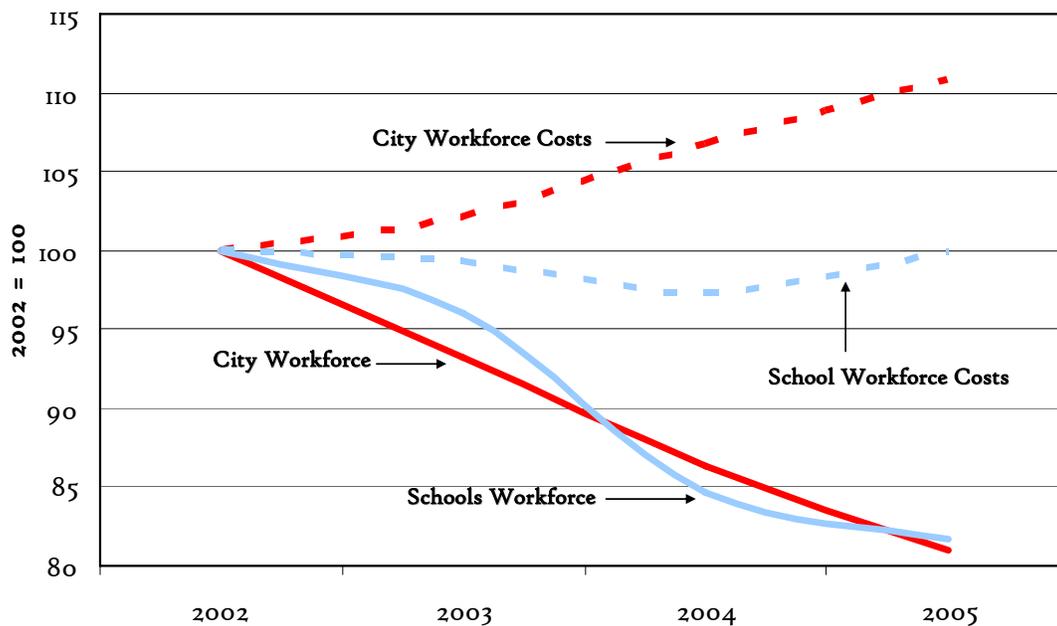
Workforce Summary and Trends

Workforce costs represent the single largest expenditure category in the City and its covered organizations. In the City and School District, the costs of employee salaries, pensions, health insurance (for active and retired employees) and other benefits accounted for nearly 70 percent of the combined budget in 2005-06. In addition, workforce costs are among the fastest-growing budget categories due to significant

recent growth in health insurance and pension rates. The City's long-term fiscal stability is directly tied to its ability to manage the size and cost of its workforce.

In 2005-06, under the BFSA's oversight, the City's reduced its workforce by 64 filled positions, to 2,428; the School District by 225 filled positions, to 5,221; and the Municipal Housing Authority by 62 filled positions, to 257. The Buffalo Urban Renewal Agency did not shrink its workforce in 2005-06, but its overall size is down from 101 in 2003-04 to 70 at the end of June 2006. Since the start of 2003-04, the municipal workforce has been reduced by 1,657 positions.

Workforce reductions alone have not solved cost problems, however. As the following graphic illustrates, workforce cost growth has outpaced cuts, and the City continues to pay more for fewer employees due largely to costly benefits.



Providing a More Cost-Effective Financing Framework

BFSA's structure affords financing to the City through a highly-rated credit that allows it to reduce borrowing costs, refund existing debt at more beneficial interest rates, and receive short-term budgetary relief through deficit financing (although the statutory power to undertake deficit financing expires at the end of the 2006-07 fiscal year).

Pursuant to the BFSA Act, all of the City's State Aid, along with both the City and School District's portions of the local sales tax, are legally revenues of BFSA. The first call on those revenues is to pay any debt service, so BFSA is able to achieve a credit

rating superior to the City's (AA-/Aa2 compared to BBB-). BFSA can therefore issue debt more cost effectively than the City itself, producing savings. These savings help to avoid more draconian cuts in services.

In 2005-06, BFSA took the following actions:

- BFSA sold \$90 million in premium short-term Bond Anticipation Notes (BAN), Series 2005 A-1 in July 2005 to cover City cash flow needs for 2005-06. The BAN received the highest rating from Moody's (MIG 1) and Fitch (F1+) and did not require letter of credit support, which cost the City in excess of \$800,000 in its 2003 cash flow borrowing. In all, BFSA's total costs of issuance were \$1.2 million less than the City's prior-year cash flow borrowing. A \$50,000,000 note matured on May 16, 2005 and \$40,000,000 note matured on August 15, 2005. Both maturities were paid from the Authority's revenues from State Aid to the City. Net interest cost of the issue was 2.98 percent. Issuance costs were \$247,750.
- BFSA also completed a refunding of \$47 million in outstanding City debt through Sales Tax and State Aid Secured Bonds, Series 2005B&C. The refunding, which closed in July 2005, provided present value savings of \$1.6 million, or 3.4 percent, to the City. The cash flow savings totaled \$1.8 million over the life of the bonds (net amount, after reducing for costs of issuance), with the City receiving savings of more than \$0.4 million in 2005-06. Net interest cost for the refunding was 3.91 percent. Issuance costs were \$836,855.
- BFSA completed a capital borrowing in the amount of \$27,270,000 for City and School District capital projects (20-year serial premium bonds, Series 2006A) in April 2006. Net interest cost of the issue was 4.42 percent. Issuance costs were \$458,005.
- BFSA bid out contracts to invest debt service set-asides for Series 2004A, 2005A and 2006A debt in order to guarantee cash savings to the City. The investment contracts were structured to ensure it would earn the maximum rate allowable (the arbitrage yield). The effect of these transactions is to maximize the allowable earnings on these funds without major rebate issues.
- BFSA transferred to the City \$646,043 in investment earnings from two sources: funds held in various bond and note related accounts; and funds in its own operating accounts. Additionally, BFSA earned \$368,741 on a fiduciary fund held for the benefit of the City, at its request.

The following calculations reflect the 2005-06 savings achieved on behalf of the City through BFSA's issuance as a AA- rated credit vs. the City's BBB- rating. It should be noted that the City of Buffalo issued a series of its own general obligation long term bonds (mirror bonds) which were privately placed with the Authority for each of the long-term debt issuances (including the refunding bonds). While this more complex structure

added to the cost of structuring the debt, the transaction enabled the City to maintain its tax capacity.

The more than \$3 million in debt-related savings in 2005-06 far exceeded the \$1,070,000 cost of Control Board operations in this fiscal year and, in fact, offset the cost for the Board's first three years of operation.

Issuance	Savings
Cash flow issue savings through cost of issuance savings and the use of BANs that required no credit enhancement	\$1,164,240
Savings derived from the capital borrowing 2006A issue	\$348,500
Saving derived from refunding of City of Buffalo bonds – 2005B&C issue	\$ 1,830,100
Total Savings to the City of Buffalo	\$3,342,840

The above numbers assume continuation of the City's credit rating which has been maintained in large measure due to the existence of BFSA, and cost comparisons have been calculated on that basis.

The City's Rating Outlook by Standard & Poor's Rating Agency (S&P) prior to May 2004 was BBB- (the lowest investment grade rating) with a negative outlook, reflecting "the persistent structural imbalances that were projected through 2007, a cumulative negative general fund balance, an expected ongoing reliance on the State for support, and the use of deficit borrowing to balance operations over the control board period." In May 2004, the City's rating outlook was changed from negative to stable. According to S&P, the outlook "reflects the fiscal discipline and progress toward achieving structurally balanced operations that the City has achieved under control board oversight." Moody's recently upgraded the City's outlook from negative to positive and stated that Moody's "considers the development of a multi-year plan and the oversight provided by BFSA to be credit strengths for the City." The savings impact of BFSA over a below-investment rated City of Buffalo would have been approximately \$5.0 million.

Buffalo Fiscal Stability Authority - Debt Table
As of June 30, 2006
In \$000's

<i>Issue</i>	<i>Issue Date</i>	<i>Bond Par Issued</i>	<i>Note (BAN) Par Issued</i>	<i>Bond Par Outstanding</i>	<i>Note Par Outstanding</i>
<i>Sales Tax and State Aid Secured Bonds, Series 2004A</i>	<i>June 2004</i>	<i>\$25,745</i>		<i>\$23,720</i>	
<i>Bond Antic. Notes Series 2004A-1</i>	<i>Sept 2004</i>		<i>\$84,000</i>		
<i>Sales Tax and State Aid Secured Bonds, Series 2005A</i>	<i>June 2005</i>	<i>\$28,030</i>		<i>\$28,030</i>	
<i>Sales Tax and State Aid Secured Bonds, Series 2005B&C (refunding bonds)</i>	<i>July 2005</i>	<i>\$47,065</i>		<i>\$47,065</i>	
<i>Bond Antic. Notes Series 2005A-1</i>	<i>July 2005</i>		<i>\$90,000</i>		<i>\$40,000</i>
<i>Sales Tax and State Aid Secured Bonds, Series 2005A</i>	<i>April 2006</i>	<i>\$27,270</i>		<i>\$27,270</i>	
Total		\$128,110	\$174,000	\$125,635	\$40,000

Pursuant to Section 2800 (2)(a)(5) of the Public Authorities Law, BFSA is managed by Dorothy A. Johnson, Executive Director. Her compensation is set forth as follows: salary, \$110,000; health benefits; \$4,943 paid by BFSA; pension contribution (to New York State and Local Retirement System, \$13,200.

BFSA Internal Controls

The BFSA has appointed its Chief Counsel as Internal Control Officer. The Internal Control Officer reviews internal control policies and procedures on a quarterly basis (or more often if required) and regularly meets with the BFSA staff to ensure internal control performance improvement recommendations are being executed. An Internal Management Committee consisting of the Executive Director, Chief Financial Officer and Chief Counsel provides accountability for internal control and operations. The Chief Financial Officer works closely with the BFSA's independent auditor, which also makes internal control and operational recommendations that are carefully reviewed and considered by the BFSA.

The BFSA also follows the Internal Controls Manual, which describes Internal Control standards, and contains information on procurement guidelines, investment guidelines,

purchasing and reimbursement policies, operational policies for financial transactions, the travel card reimbursement policy, as well as a copy of the BFSA's office technology and facilities management handbook. The Manual is modified as needed and the policies are reviewed annually as required by law.

The BFSA is satisfied that this structure and these procedures are sufficiently effective in monitoring the Authority's internal controls.

Implementing Structural Reform and Savings Opportunities

The BFSA Act requires the City and its covered organizations to implement new actions each year that produce recurring savings. By introducing new actions each year through the Financial Plan, the City is addressing its structural budgetary deficit.

In 2005-06, BFSA monitored financial plan actions that closed gaps of \$4.9 million in the City, \$21.6 million in the School District and \$4.0 million in the Municipal Housing Authority. The City eliminated 85 vacant positions in its 2005-06 budget to achieve these savings. The School District's actions included staff reductions, school facility closings and implementation of a single health insurance carrier program. Savings in the Municipal Housing Authority were achieved through workforce reductions, cuts in maintenance costs, and reductions in both tenant services and administrative costs. The Urban Renewal Agency continued its efforts to close a prior years' deficit through administrative cost caps and other initiatives.

BFSA also contributed to the identification of opportunities for reform and savings through a number of projects during the fiscal year. In particular, BFSA made presentations highlighting cost savings opportunities in: health insurance (for active employees and retirees); paid time off allocations given to employees; a single health insurance carrier in the School District; and eliminating costly provisions such as shorter summer hours and elective cosmetic surgery riders. In addition, BFSA worked with the City Administration, Council and Comptroller's Office to reduce the City's authorized-but-unissued debt level by \$27.7 million, removing a liability cited in previous rating agency reports.

BFSA's Legal Position Improves

Where 2004-05 saw a number of legal challenges arise against BFSA based on the wage freeze imposed in April 2004, 2005-06 allowed them to play out to relatively satisfactory conclusions. Though some decisions were appealed, the trend showed a string of court victories for the BFSA. Only one new action emerged in 2005-06, which involved the firefighters' union, Local 282, attempting to address an interest arbitration award granted in July 2005. The pending cases against BFSA proceeded as follows:

- Buffalo Teachers Federation (BTF) and seven other School District unions: The BFSA successfully argued a Motion for Summary Judgment with a ruling that concluded that the wage freeze was necessary and legal in federal court. That decision has been affirmed in the United States Court of Appeals Second Circuit..
- Police Benevolent Association (PBA): The New York State Appellate Division, Fourth Department and the New York Court of Appeals rejected attempts by the PBA to reverse the decision of the Appellate Division to reject the lower court ruling on the applicability of the wage freeze on the Police Department. As a result, the decision that the wage freeze was legal stands.
- AFSCME (covering five City and BMHA employee unions) and CSEA (representing BMHA Public Safety and BURA employees): In these federal actions, the two cases challenging the legality of the wage freeze were joined for the purposes of scheduling. Discovery was completed and Motions for Summary Judgment remain to be scheduled.
- Loncar, et al (Police Managers): Upon a Motion to Dismiss before Justice Siwek in State Supreme Court, BFSA prevailed and the case was dismissed. No appeal was ever filed. If successful, this could have resulted in a payout during the wage freeze.
- International Association of Fire Fighters: The Union has appealed Justice Fahey's dismissal of the firefighter union's challenge to the wage freeze on Statute of Limitations grounds to the New York State Appellate Division, Fourth Department.
- International Association of Fire Fighters: In reaction to an interest arbitration award, the fire union simultaneously sued the BFSA to prevent raises granted under the award from being frozen, and sued the City to vacate the award since it broke precedent in terms of parity with the Police contract. State Supreme Court Justice Michalek did vacate the award, which the City appealed to maintain the status quo and the savings associated with the single health insurance contract – a key component in the City's financial plan. The case continues.

Shortly after the close of 2005-06, the Police Benevolent Association (PBA) brought an action against the City in State Supreme Court, contending that the Taylor Law was invalidated by the application of the BFSA Act. By their reckoning, this would give the PBA (and other unions) the right to strike, an act specifically barred by the Taylor Law. BFSA was granted the right to intervene, as the Court recognized that BFSA was a necessary party.

Cumulative Financial impact of BFSA and the BFSA Act

BFSA Actions

Deficit Borrowing	\$26.9 million
Wage Freeze Savings	\$19.5 million
<i>Firefighter Arbitration Savings</i>	\$9.8 million
Savings on Debt Issuance Costs	\$4.1 million
Participation in JSCB Phase II Bond Pricing	\$1.0 million
Refinancing of City Debt	\$1.8 million
Subtotal	\$63.1 million

City and Covered Organization Actions

Fiscal Year 2003-04

SD Financial Plan Actions in 2003-04	\$37.4 million
City Financial Plan Actions in 2003-04	\$2.9 million
BURA Financial Plan Actions in 2003-04	\$2.4 million

Fiscal Year 2004-05

City Financial Plan Actions in 2004-05	\$22.9 million
Reduction of Proposed Capital Bond Sale	\$6.7 million
SD Financial Plan Actions in 2004-05	\$19.7 million
BMHA Financial Plan Actions in 2004-05	\$1.0 million

Fiscal Year 2005-06

City Financial Plan Actions in 2005-06	\$4.9 million
SD Financial Plan Actions in 2005-06	\$21.6 million
BMHA Financial Plan Actions in 2005-06	\$4.0 million

Subtotal **\$123.5 million**

Total Impact to Date **\$186.6 million**

Other Actions

Improved outlook on City debt from Moody's (2006)
 Reduced Authorized-Unissued City Debt by \$27.7 million (2005)
 Improved outlook on City debt from Standard & Poor's (2003)

**Review of Approved Four-Year Financial Plan
for Fiscal Years Ending 2007–2010**

Introduction

On June 6, 2006, by Resolution No. 06-40, the Buffalo Fiscal Stability Authority approved a new Financial Plan for the City of Buffalo and its covered organizations as being complete and compliant with the standards set forth in Sections 3857 and 3858 of the BFSA Act and certified the revenue estimates in that Plan. The Plan contains a strategy for addressing structural budget gaps in the City, School District and Buffalo Municipal Housing Authority through 2009-10, as well as an accumulated deficit from prior years in the Buffalo Urban Renewal Agency. It is the fourth such Plan approved since BFSA was created by New York State in 2003.

This section summarizes the Financial Plan for each organization and BFSA's response. It also details major components and assesses the risks to the Financial Plan in the context of the fiscal challenges still facing Buffalo.

The Financial Plan addresses combined baseline budgetary shortfalls ranging from \$93 million in 2006-07 to \$230 million in 2009-10. Through a combination of workforce reductions, significant increases in State Aid and anticipated new future revenues, the plan closes projected budget gaps each year as required by the State legislation that created BFSA.

The new four-year strategy does not rely upon any deficit financing assistance through BFSA, unlike the Financial Plans approved in 2003-04 and 2004-05. Those first two plans had relied on a combined \$26.9 million in deficit borrowing to close budgets.

While the plan does not rely on deficit financing assistance, it does continue to rely upon significant savings associated with the wage freeze imposed on the City and its covered organizations by BFSA in April 2004.

Status of the Wage Freeze

The City, School District and other covered organizations have assumed continuation of the wage freeze to achieve budgetary balance in the new Financial Plan. The freeze was initially imposed by BFSA on April 21, 2004, pursuant to Resolution 04-35 and consistent with Section 3858 of the BFSA Act. Given the major underlying structural problems, as well as the continuance of budgets that are not balanced except through annual, aggressive (and in some cases, highly speculative) budgetary actions and assumptions, BFSA considers the freeze essential to the adoption and maintenance of a balanced Financial Plan.

The wage freeze is a "control period" power under the BFSA Act. Pursuant to the Act, the control period shall remain in place until that point at which "for each of the three immediately preceding 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” (Section 3858, 1). The newly adopted Financial Plan, projects that the wage freeze – which BFSA determines to be a significant form of authority assistance – will be essential to maintaining balance through at least the completion of the 2009-10 fiscal year. As such, the Financial Plan would maintain the control period until at least after completion of the 2012-13 fiscal year.

In the two years covered by the wage freeze to date (2004-05 and 2005-06), the City saved an estimated \$9.1 million in steps, longevity payments and raises associated with the Police Benevolent Association contract signed in 2003. Further, the freeze has also prevented the payout of \$9.8 million in increases related to the interest arbitration of Local 282, the Firefighters’ union. In the School District, the freeze has saved at least \$9 million in annual steps and longevity payments.

There remains an opportunity for individual unions to negotiate an exemption to the wage freeze. Section 3858, 2 (C) (II) permits individual unions to be exempted from the wage freeze if they make “an acceptable and appropriate contribution toward alleviating the fiscal crisis.” BFSA has notified the City and covered organizations, and their respective collective bargaining units, of this provision, and remains open to reviewing new agreements that further budgetary stability.

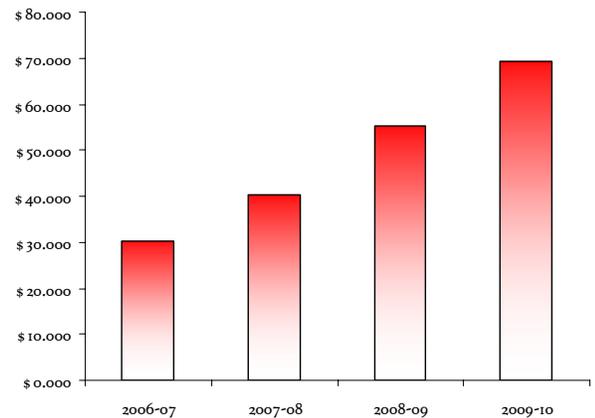
City Four-Year Financial Plan

The City’s Financial Plan continues to confront growing baseline budget gaps in each year. Before any new revenues or initiatives to close gaps are accounted for, baseline shortfalls grow from \$30.4 million in 2006-07 to nearly \$70 million in 2009-10. This structural gap assumes that the wage freeze remains in place.

The structural gap results from stagnant baseline revenue projections (i.e. no additional State aid can be projected into these baselines until it materializes) against continually growing costs. Over the next four years, the City’s baseline expenditures grow by a projected \$42.3 million, absent new management actions to address them.

Of that baseline cost growth, eighty-five percent is directly attributable to fringe benefits alone – most specifically, employee and retiree health insurance. As this starkly illustrates, the cost of employee fringe benefits (especially health insurance) remains the most pressing structural issue in the City’s long-term fiscal recovery.

Baseline Gaps Continue to Grow



Gap-Closing Actions and Revenues

The City’s Budget and Financial Plan, as originally proposed, modified and adopted by the Common Council, closes projected baseline gaps with a series of initiatives and assumed new revenues. The following is a summary of each action and their respective contributions to closing the annual budget gaps.

	2006-07	2007-08	2008-09	2009-10
<i>New Sales Tax Revenue</i>	\$5.9 m	\$5.9 m	\$14.6 m	\$14.6 m

The second-largest component of the City’s Financial Plan is additional sales tax revenue. The additional revenue sharing is being provided pursuant to an agreement associated with Erie County’s increasing of the sales tax by a quarter-percent (to 4.25%) in response to its own budget issues. That agreement will provide the City with approximately \$5.9 million of the County’s additional fourth cent in 2006-07. The City assumes that amount will recur through a combination of State and County actions in each year of the Financial Plan. In addition, the City’s plan also assumes that Buffalo’s share of the sales tax will grow further by 2008-09, driving an additional \$8.7 million (on top of the \$5.9 million) in revenues in each year that follows. A sales tax task force has been formed to review the current distribution formula, and the City’s assumption is based on its anticipation that the task force will recommend a change to the current sharing agreement.

	2006-07	2007-08	2008-09	2009-10
Use of Fund Balance	\$4.9 m	\$2.4 m	\$2.2 m	N/A

The Plan would draw down some of the City's unreserved, undesignated fund balance in each of the first three years. In total, \$9.5 million would be drawn out of the available fund balance. For the fiscal year ending June 30, 2005, the City had an available fund balance of \$39.2 million. The State Comptroller has recommended that Buffalo maintain an available fund balance of 8 to 10 percent of its operating budget. Drawing down \$9.5 million over the three years, without adding significantly to the fund balance, would leave Buffalo's reserves at or below the minimum amount recommended by the Comptroller.

	2006-07	2007-08	2008-09	2009-10
Savings from CitiStat	N/A	\$1.8 m	\$3.6 m	\$5.5 m

The Financial Plan assumes that the Mayor's CitiStat initiative to enhance accountability and efficiency in City services will begin yielding savings in the second year. The Plan projects savings of one percent of departmental appropriations annually, beginning in 2007-08. Savings of \$1.8 million are projected to compound to \$3.6 million and \$5.5 million in 2008-09 and 2009-10, respectively.

	2006-07	2007-08	2008-09	2009-10
Casino Revenue	N/A	N/A	\$5.0 m	\$5.0 m

The Financial Plan assumes that the Seneca Buffalo Casino will begin generating revenue for the City as early as 2008-09. In each of the last two years of the Plan, \$5.0 million in new revenue is assumed.

	2006-07	2007-08	2008-09	2009-10
Injured-on-Duty Initiative	\$0.7 m	\$0.9 m	\$1.2 m	\$4.9 m

The Financial Plan includes a new initiative targeted at reducing the number and duration of injured-on-duty claims in the City's Police and Fire Departments. The IOD case management initiative is projected to generate savings of \$0.7 million in the first year, growing to \$4.9 million in 2009-10.

	2006-07	2007-08	2008-09	2009-10
Savings from Staff Changes	\$0.6 m	\$0.6 m	\$0.6 m	\$0.6 m

The first year of the Financial Plan, the City eliminates 49 vacant positions, and adds 17 new filled titles. The net budgetary impact is a \$630,000 annual savings off of the baseline gaps.

	2006-07	2007-08	2008-09	2009-10
Retiree Health Care Savings	N/A	\$0.5 m	\$1.2 m	\$1.2 m

The Financial Plan includes savings related to an initiative to reduce retiree health insurance costs over the next several years. Working with consultants, the City has identified potential retiree savings by modifying benefit packages while adding spousal coverage. The savings are estimated at \$500,000 in 2007-08, growing to \$1.2 million.

	2006-	2007-	2008-	2009-
Utility Cost Savings				

	07	08	09	10
	\$1.3	\$1.4	\$1.6	\$1.7
	m	m	m	m

The Financial Plan assumes savings from the finalization of a new energy procurement contract for the City's energy pool. A total of \$12.4 million in savings is assumed across the four years of the Plan, beginning with \$1.3 million in 2006-07. These savings would mitigate – but not eliminate – what the Financial Plan projects to be 8 percent annual growth in utilities.

	2006-07	2007-08	2008-09	2009-10
Additional Property Taxes	N/A	N/A	N/A	\$8.4
				m

The Financial Plan assumes that increases in assessed value of residential and commercial property in the City (including new development projects) will yield additional property tax revenue in the out-years. Beginning in the final year of the Plan, additional tax revenues of \$8.4 million are assumed.

BFSA's Review of the Financial Plan

The approved Financial Plan incorporates City efforts to address a number of concerns raised by BFSA in its initial review, including rate of spending growth, risk of certain gap-closing actions and attrition assumptions. The City's responses to the primary concerns raised by BFSA are summarized below.

- **Rate of Growth:** The proposed budget for City spending in 2006-07 was up \$25.9 million from the previous year's budget, a jump of 9.1 percent. According to BFSA's analysis, this represented the largest year-to-year increase since at least 2000-01. After BFSA directed the City to revisit its 2006-07 spending assumptions, the City submitted a revised budget and Financial Plan that took steps to contain and control certain areas of spending in the Plan's first year through enhanced BFSA oversight.

The Administration modified its budget proposal to shift \$12.2 million into "freeze accounts" that would be accessible only with express written approval from BFSA. The \$12.2 million is comprised of four items: \$8.5 million in capital outlay spending, \$1.7 million in funded vacancies, \$1.3 million in utility savings and \$0.7 million in overtime savings related to updated injured-on-duty figures in the Fire Department. The establishment of the freeze accounts has the impact of limiting the Administration's ability to spend unilaterally by \$12.2 million, which, if fully actualized, would reduce year-to-year growth to 4.8 percent. BFSA will ensure that the expenditure of these freeze account funds is made gradually throughout the fiscal year, as protection against unforeseen events or negative budgetary trends.

- **Risk of Gap-Closing Actions:** The out-years of the Financial Plan as proposed by the City contained a series of initiatives that, in BFSA's judgment, are fraught with risk. While BFSA has previously allowed the inclusion of some risk in the

out-years of Financial Plans (to provide the City time to work on further developing those initiatives), it is important to identify the risk upfront.

BFSA noted that proposed gap closing actions were primarily revenue-based, rather than optimizing opportunities to reduce costs. Among the most risky proposals were: the assumption of \$29.3 million in new sales tax revenues; \$5.0 million in annual casino revenue starting in 2008-09; \$4.9 million in out-year savings from an injured-on-duty (IOD) case management approach that has not yet shown it can substantially reduce costs; \$8.4 million in increased property tax revenue generated by new development; and the draw down of \$9.5 million in Fund Balance, (thereby utilizing a one-shot revenue for recurring costs and reducing reserves to minimal acceptable levels).

To address BFSA's concerns, the Administration modified its four-year Financial Plan to include a contingency budget that identifies alternatives to balancing out-years in the event that increased sales tax and casino revenue do not materialize. The main alternatives include reducing the police force to 675 through attrition, consistent with the current contract; increasing property taxes by greater amounts; reducing capital outlay; and appropriating additional fund balance.

Summary and Trends (see charts following)

The Buffalo City General Fund Budget, without transfers, totals \$310.7 million. Since two of the City's largest revenue sources (property and sales taxes) have been relatively stagnant, the City has relied upon BFSA deficit borrowing (totaling \$26.9 million in 2003-04 and 2004-05); BFSA-imposed wage freeze savings (\$29.3 million) and increased State Aid (up from 36 percent of budget to 53 percent of budget in just three years) to balance its Financial Plan. At the same time, three categories of spending that have proven difficult to control – police, fire and fringe benefits – make up 70 percent of all costs.

While there have been some positive trends, all have clear downsides. For example:

- The City has finally achieved a minimal increase in tax margin associated with increased property values. However, this increase is *de minimis* when compared to the \$1.8 billion loss in value during the 1990s.
- The State has been generous with new aid, but the result has been a large jump in spending which may be difficult to control if these funds do not recur. (The State's largess has provided a double benefit, by enabling a reduction in cash flow borrowing to \$60 million for 2006-07, half the amount borrowed in 2003-04.)
- The City has downsized its workforce; unfortunately benefit costs continue to grow even as fewer employees are benefiting, and some commissioners have begun to say the reduced numbers are not sustainable.
- The City's available fund balance – enhanced to a large extent by deficit borrowing and the draw down of one-shot State Aid – has achieved a more appropriate level, but the Financial Plan would once again require drawing down these reserves to minimal levels.

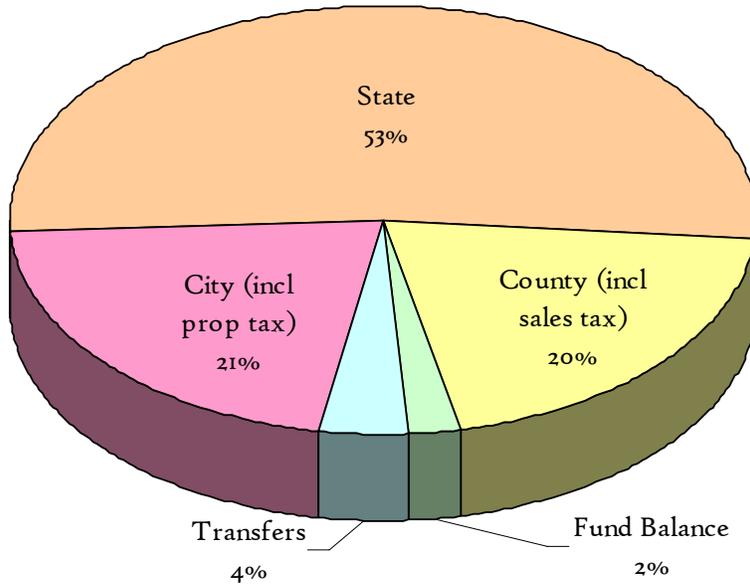
At the same time there have been some very negative economic trends which will inevitably play into the City's ability to recover from its ongoing fiscal crisis:

- The City's population continues to decline, down in 2005 to an estimated 279,745, a reduction of 4.4 percent from the 2000 Census.
- In the 1990's, 18 percent of the population aged 18-44 left the area.
- There has been little net job creation, with the job number virtually unchanged from eight years ago.
- More than 26 percent of residents live below the poverty line, sixth highest of any city in the United States with more than 250,000 population.
- More than 20,000 residential units lie vacant.

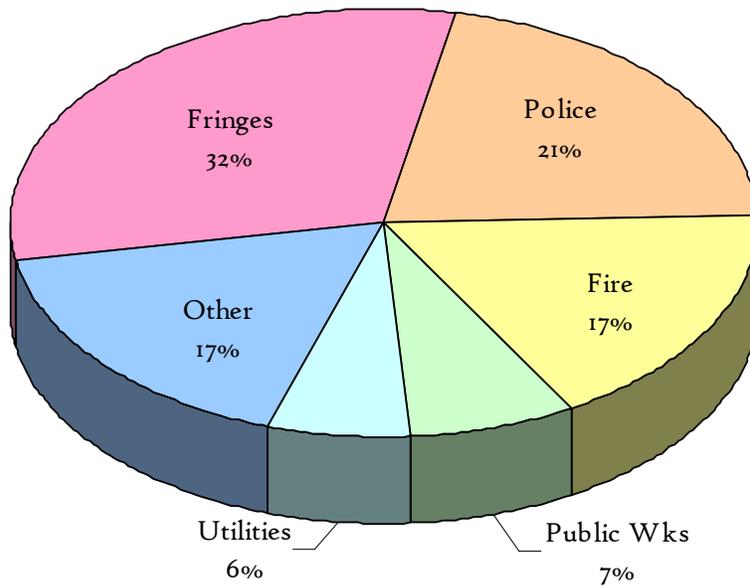
Given these trends, the Chairman of BFSA has called upon the State Legislature to make the necessary changes in the State's laws to enable the City administration to better manage its affairs or to commit to providing additional funds to ensure long-

term budgetary balance, maintain service levels and provide an impetus to local economic improvement.

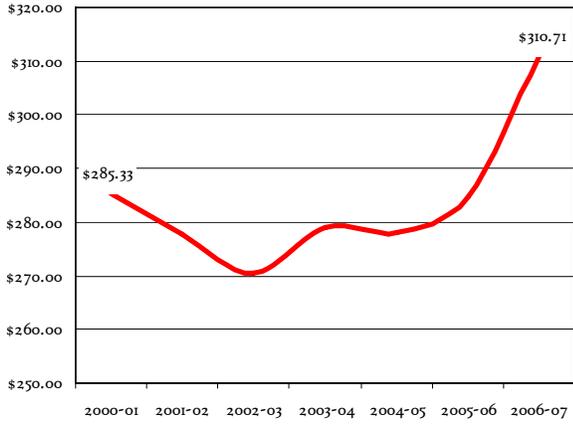
City 2006/07 Budget Revenues
Total Budget = \$310.7 million (w/o transfers)



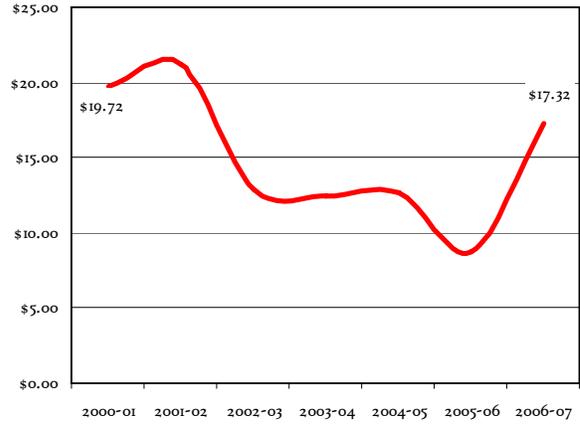
City 2006/07 Budget Proposed Spending
Total Budget = \$310.7 million (w/o transfers)



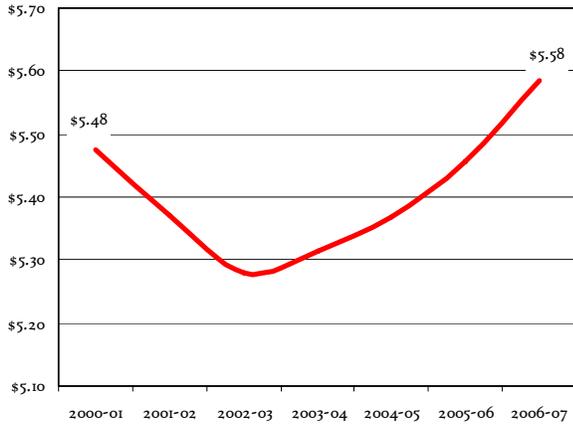
City Budget Size
(millions of \$)



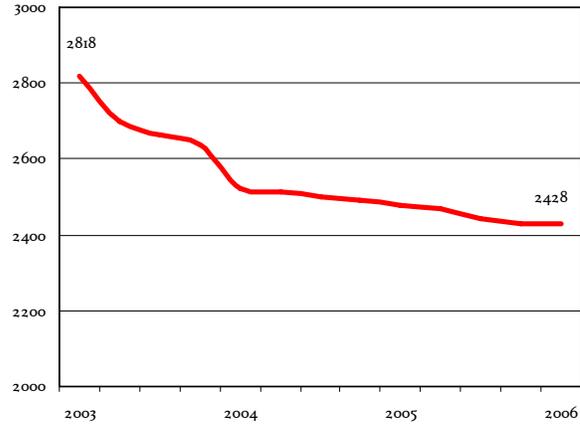
City Property Tax Margin
(millions of \$)



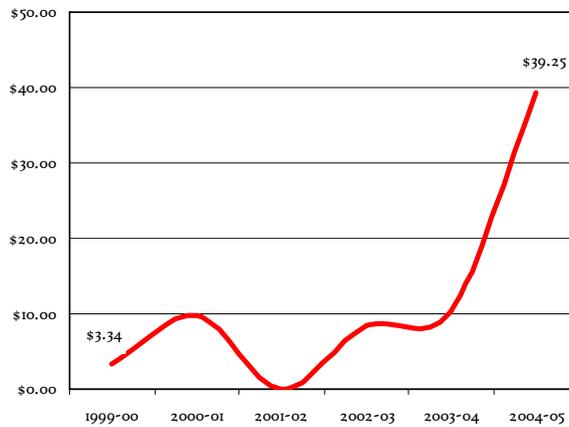
City Five-Year Avg Property Valuation
(billions of \$)



City Workforce Size
(number of FTEs)



City Unreserved, Undesignated Fund Balance
(millions of \$)



School District Four-Year Financial Plan

Like the City, the School District's Financial Plan faces baseline budget gaps that continue to grow each year. Before any new revenues or initiatives to close gaps are accounted for, baseline shortfalls grow from \$63.1 million in 2006-07 to \$161.7 million in 2009-10. This structural gap assumes that the wage freeze remains in place.

The structural gap is the result of stagnant baseline revenue projections (i.e. no additional funding can be projected into the baselines until it materializes) against continually growing costs. From 2006-07 to 2009-10, the District's projected baseline expenditures grow by \$102.9 million, or 17 percent, absent new management actions to address them.

Of that baseline cost growth, more than half (52 percent) is directly attributable to fringe benefits, specifically employee and retiree health insurance – and, to a lesser degree, growth in teacher retirement system (TRS) costs. The cost of fringe benefits remains a pressing structural issue in the District's fiscal recovery.

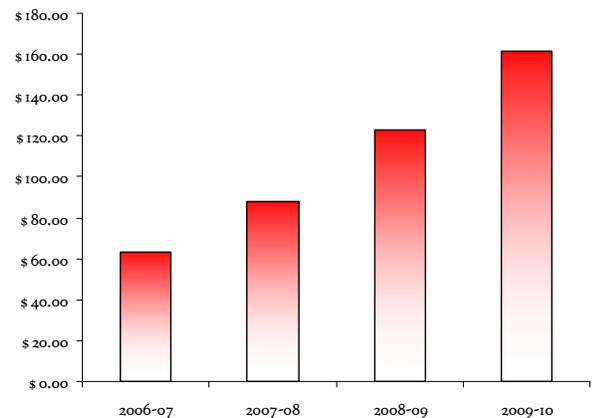
This projected cost growth occurs against a backdrop of a continuing and rapid decrease in enrollment. The 2006-07 budget is based on an assumed student population of 35,000, with subsequent years falling to 33,500, 31,500 and 30,000. Enrollment is projected down 18 percent just over the four-year Financial Plan. If that projection were to hold, it would mean an overall enrollment drop of nearly 16,000 students, or 35 percent, in the decade between 2000 and 2010. (The actual enrollment dropped by 18.7% from 2001-02 through 2006.)

Gap-Closing Actions and Revenues

The School District's Financial Plan closes its projected baseline gaps with a series of initiatives and assumed new revenues. The following is a summary of each action and its respective contribution to closing the annual budget gaps.

(Note: The following actions reflect the District's Financial Plan as approved by BFSA on June 6, 2006. The District subsequently submitted a modified budget for 2006-07 that was approved by BFSA on August 9, 2006. That modification, which is summarized in the following section, mitigated the need for significant staff cuts in the 2006-07 fiscal year.)

Baseline Gaps Continue to Grow
* Before New State Aid



	2006-07	2007-08	2008-09	2009-10
New State Aid	\$46.9	\$55.2	\$63.6	\$72.2
	m	m	m	m

New York State provided the School District with \$46.9 million in additional revenue for the 2006-07 fiscal year. Of that total, \$13.3 million is specifically for an increase in debt service costs related to Phase II of the Joint Schools Construction Project. The out-year assumption of additional aid is speculative at the present time, although the District has used a relatively conservative 2 percent annual growth factor in its projections, given the historic increases in state aid.

	2006-07	2007-08	2008-09	2009-10
Staff Reductions	\$16.2	\$31.8	\$57.4	\$86.1
	m	m	m	m

The District's Financial Plan relies heavily on staff reductions to balance out-year budgets. A total of 1,064 positions would be eliminated between fiscal years 2007 and 2010: 224 in the first year, 200 in the second, 312 in the third and 328 in the fourth. The magnitude of the projected cut would be significant, and represent 20 percent of the current workforce. (Note: As discussed below, changes made to the 2006-07 budget in a modification approved by BFSAs on August 9, 2006, mitigated the need for significant position cuts in 2006-07.)

	2006-07	2007-08	2008-09	2009-10
School Building Closures	n/a	\$1.0	\$2.1	\$3.3
		m	m	m

The District will continue its initiative to reduce the number of school buildings, closing three each year through 2009-10.

2006-07 Budget Modification

The District subsequently submitted to BFSAs a budget modification for the 2006-07 fiscal year. BFSAs approved that modification on August 9, 2006. The modification made significant changes to the District's gap-closing plan for 2006-07, particularly in the area of health insurance.

The District's original baseline gap projections had contained significant increases in health insurance costs due to ongoing union challenges to the single health insurance carrier initiative. Having lost two arbitration decisions on the matter, the District budgeted (and included in its baseline projections) health costs assuming multiple insurance carriers. As a result, projected health costs in the original proposed financial plan were expected to be significantly higher (23% overall) than what the District experienced in 2005-06, during which it had a single insurance carrier.

In the weeks immediately following BFSAs's approval of the Financial Plan, the District administration reevaluated its litigation/arbitration position regarding the ongoing Buffalo Teachers Federation challenge to the single carrier initiative. The District's legal team

advised it that current proceedings will not conclude until at least March 2007. As a result, the District recast its 2006-07 budget to assume nine months (three quarters) worth of savings from the single carrier initiative. This \$10.5 million in savings significantly mitigated the need for staff reductions in 2006-07.

In addition to revising its assumptions regarding health insurance costs, the District revised certain revenue and expenditure items to enable it to close the \$16 million gap for 2006-07. Among those items were freezing \$1.5 million in existing vacancies; increasing sales tax revenues based on current receipts and 2006-07 projections; reduced debt service expenses based on revised schedules from the City; reduced workers compensation and unemployment costs based on new projections; and lower substitute teacher costs based on projections and the implementation of a tighter system of controls in this area of the budget.

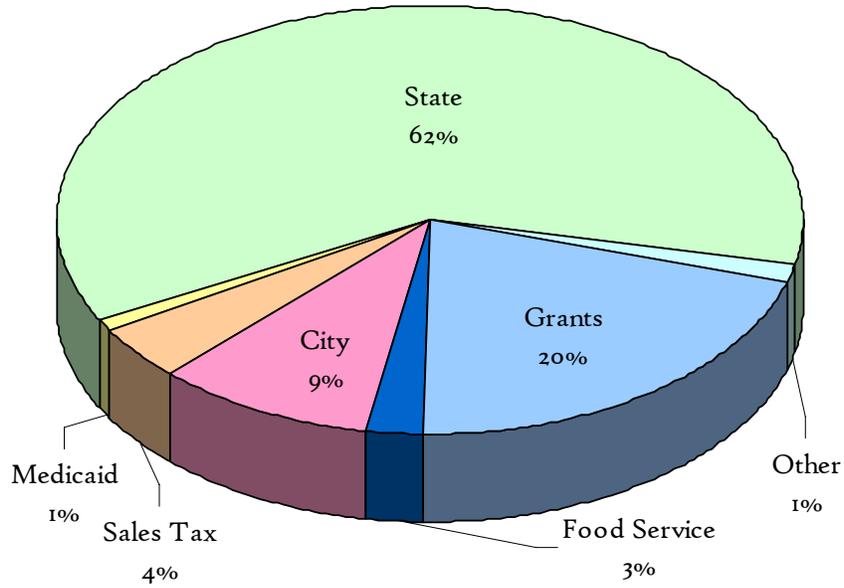
While this budget modification mitigated the need for dramatic staff cuts in 2006-07, the Financial Plan continues to project out-year staff reductions as a key item in the District's gap-closing plan over the remaining three years of the plan.

Summary and Trends (see charts following)

The overall School District budget totals \$746 million. Of that amount, the City of Buffalo's property tax supports only 9 percent of spending, even with an additional \$2 million of shared levy in 2006-07. The District's spending has increased dramatically, even as it has reduced the number of schools and employees, and while spending increases have been mitigated by the BFSA-imposed wage freeze. Spending in 2006-07 is expected to be up by 7.3 percent over the prior year, and 11.3 percent since 2004-05.

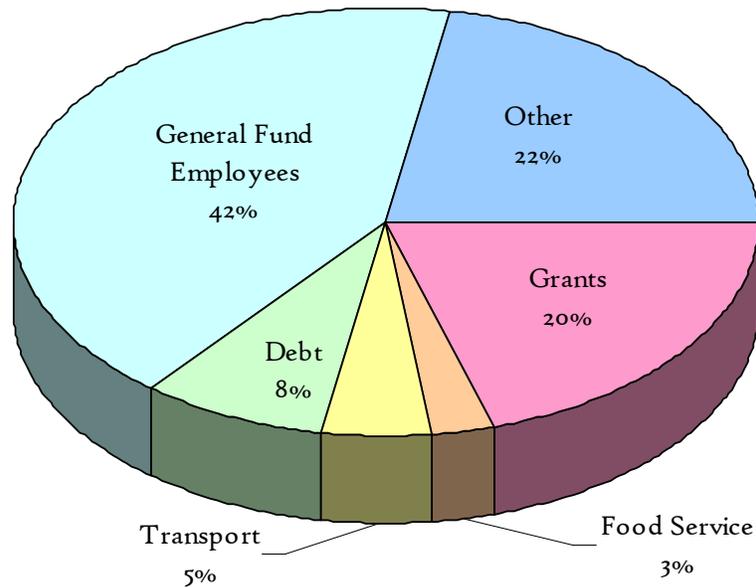
Schools 2006/07 Budget Revenues

Total Budget = \$746.0 million

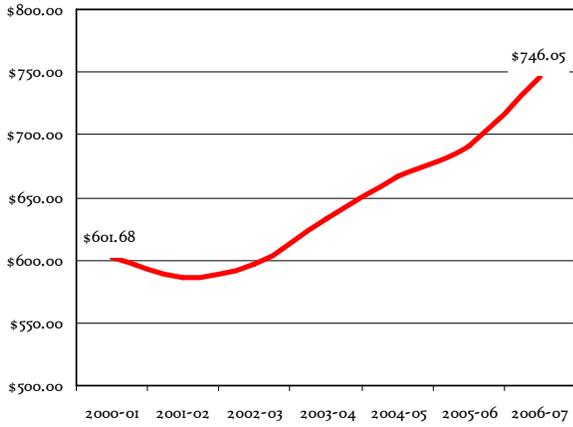


Schools 2006/07 Budget Spending

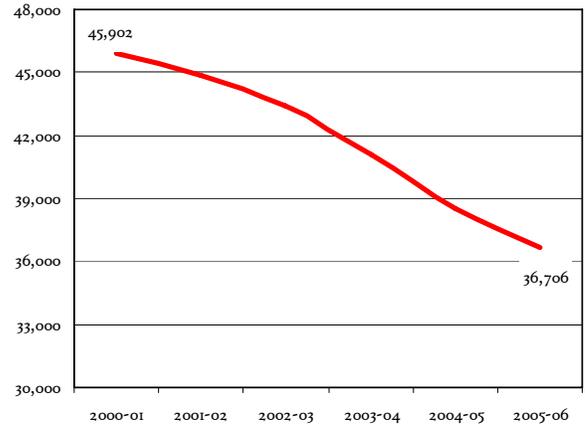
Total Budget = \$746.0 million



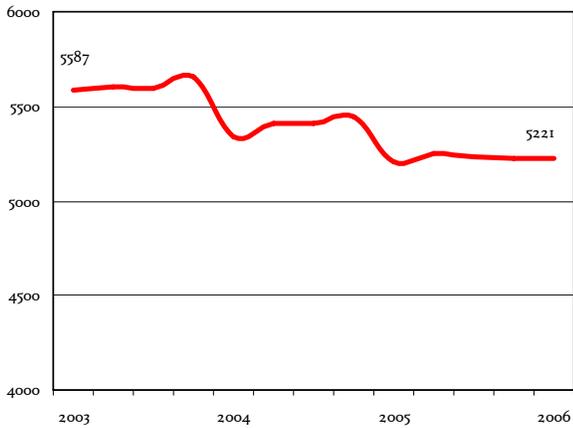
School District Budget Size
(millions of \$)



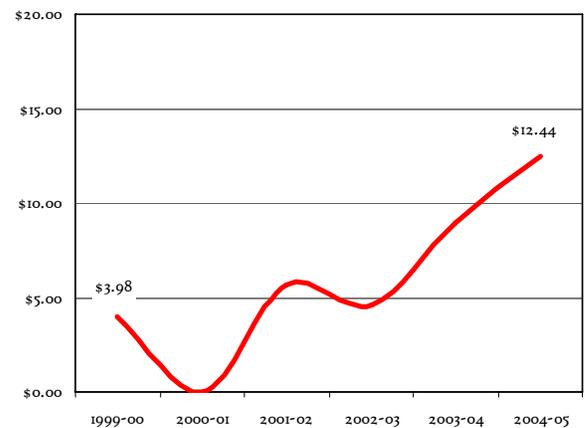
School District Enrollment



School District Workforce Size
(number of FTEs)



School Unreserved, Undesignated Fund Balance
(millions of \$)



Joint Schools Construction Board

Phase I

Because Phase I of JSCB pre-dated the creation of BFSA, the Authority had no official role in the approval of bonds for the projects. However, the work on nine schools and two District-wide projects which comprised Phase I is now complete. This Phase was financed by the issuance of \$197,057,091 of Erie County IDA (ECIDA) bonds payable through a lease-purchase contract by the School District and, in the event of default, by an intercept of State Aid. These projects are expected to be state-aid reimbursable at 93.7 percent of costs.

The Office of the State Comptroller (OSC) has conducted an audit of JSCB's Phase I construction, with the following objectives:

- To determine if the construction work was performed in conformance with the scope of the plans;
- To determine whether the work performed was of satisfactory quality; and
- To determine whether the District implemented appropriate management and monitoring controls during the construction period.

Relating to the first two objectives, OSC engaged outside consultants who tested four of the nine schools and concluded that the work performed was in substantial compliance with plans and specifications and was of good quality.

Relating to objective three, the report noted several findings and deficiencies in the District's oversight of the program. Those which are not yet cleared are under discussion between the District and the State Education Department (SED) as to remedies. The outcome may impact the amount of State Aid reimbursement which, if reduced, will have to be covered by local share. The District had expected to use excess local share from Phase I to cover contingencies in the subsequent phases.

Phase II

Phase II enabling legislation was signed into law by Governor Pataki on September 7, 2004 as Chapter 421 of the Laws of 2004. Phase II financing closed in December 2004 through ECIDA financing after SED and BFSA approved the transaction.

Phase II includes thirteen schools, an energy performance project, a District wide telecommunications project and the renovation of All-High Stadium.

A challenge in Phase II has been meeting SED's Maximum Cost Allowance (MCA – the dollar cap by project component). The District believes this is a result of rapidly increasing material prices; MCA automatically covers increases in labor costs. JSCB has requested an increase in the MCA from SED but there has been no decision to date.

**Phase II projects
in \$000's**

School	6	33	37	39	69	82
Project Cost	\$18,515	\$13,189	\$14,246	\$19,591	\$13,250	\$10,373
Spent to 6/30/06	\$13,387	\$ 2,225	\$11,850	\$ 2,927	\$12,427	\$ 9,631
% Completed	72.3	16.9	83.2	14.9	93.8	92.8
Anticipated Completion Date	3/07	9/07	8/06	9/07	11/06	8/06

School	90	91	94	95	192	200
Project Cost	\$ 8,854	\$13,724	\$16,072	\$26,900	\$32,656	\$33,385
Spent to 6/30/06	\$ 5,128	\$11,279	\$15,565	\$24,710	\$ 3,490	\$14,115
% Completed	57.2	82.2	96.9	91.9	12.1	42.3
Anticipated Completion Date	12/06	8/06	8/06	8/06	1/08	9/07

School	304	All High	Dist Wide Tech	Energy Perf	Totals
Project Cost	\$32,874	\$ 6,620	\$38,496	\$ 9,251	\$307,996
Spent to 6/30/06	\$11,566	\$3,464	\$16,863	\$ 8,774	\$167,401
% Completed	35.2	52.3	43.8	94.9	54.3
Anticipated Completion Date	9/07	8/07	12/06	12/06	

(All the schools anticipated to be completed by 8/06 are now operating)

Phase III

The State Legislature approved \$375 million for Phase III and it was signed into law as Chapter 283 of the Laws of 2006.

Design work for Phase III is considered preliminary since many targeted projects (e.g. auditoriums, swimming pools and other non-instructional projects) are state aid reimbursable in smaller percentages than classroom space. In addition, the rising cost of materials and the MCA continue to be factors. Overall, the District has calculated likely state aid reimbursement at 60 percent (compared to 93.7 percent of costs in Phase I), making local share unaffordable for the District. The District has slowed down all design work on Phase III (about \$750,000 have already been spent) pending resolution of the cost issues.

Buffalo Urban Renewal Agency Four-Year Financial Plan

The primary fiscal issue in the Buffalo Urban Renewal Agency (BURA) continues to be a prior-years' accumulated deficit. The shortfall is the result of planning and administrative spending that took place in 2003 and earlier, prior to the current BURA administration.

In BURA's first Financial Plan submitted in September 2003, the prior-years' shortfall was estimated at more than \$5 million. Today, based on actions BURA has taken to close-out prior year accounts and reallocate unused grant funds, the deficit figure stands at \$2.7 million. This figure is down from \$3.3 million a year ago.

BURA maintains that its accumulated deficit will be closed in 2006-07 through full implementation of the Agency's Financial Plan. The plan contains several strategies for closing the deficit:

- Recovering unused funds previously granted to, but unused by, block grant recipients;
- Using income generated by sub-recipients; and
- Generating operating savings from negotiated "cost caps" (i.e. using less grant revenue on BURA administrative costs) with the federal Department of Housing and Urban Development (HUD).

While HUD does not expressly permit funding a reserve to address deficits, it has allowed recovered balances to be applied to pay down prior-years' gaps. As a result, BURA continues to budget conservatively in an attempt to use budgetary savings to address the shortfall.

In general, BURA's revenues are comprised of federal grants, along with some income generated by grant sub-recipients. The Agency's Financial Plan projects its 2006-07 revenues at \$27.0 million, down from \$30.9 in the previous year's budget. The reduction reflects federal cuts in grant programs administered by BURA and other urban renewal agencies across the country. [Note: The reduction also reflects one-time federal HOME (Home Investment Partnership Program) funds which were released to BURA in 2005-06, but which do not recur.]

BURA Revenues						
(in \$ million)	'06 Budget	'06 Forecast	2007	2008	2009	2010
Grants & Related Income						
CDBG	\$18.058	\$18.058	\$16.547	\$16.547	\$16.547	\$16.547
HOME	\$5.053	\$8.053	\$4.763	\$4.763	\$4.763	\$4.763
American Dream Initiative	\$0.122	\$0.122	\$0.061	\$0.061	\$0.061	\$0.061
ESG	\$0.715	\$0.881	\$0.709	\$0.709	\$0.709	\$0.709
HOPWA	\$0.456	\$0.456	\$0.480	\$0.480	\$0.480	\$0.480
Econ Development Grant	\$0.549	\$0.549	\$1.000	-	-	-

CDBG Program Income	\$3.000	\$3.000	\$2.600	\$2.000	\$2.000	\$2.000
Loan recovery/asset sales	\$1.800	\$1.800	\$0.200	\$0.400	\$0.400	\$0.400
HOME Program Income	\$0.250	\$0.250	\$0.250	\$0.250	\$0.250	\$0.250
Lead Grant	\$0.200		\$0.400	\$0.450	\$0.450	-
Unused prior CDBG Grant	\$0.750	\$0.750				
Total	\$30.953	\$33.919	\$27.010	\$25.660	\$25.660	\$25.210

On the expenditure side, BURA continues to reduce its “cost cap” amounts as part of the agreement with HUD that freed up the one-time HOME funding for Buffalo. This effectively decreases the amount of federal funding available for program administration by BURA. Last year, this approach enabled a redirection of \$1 million in annual operating funds for one-time expenses approved by HUD, such as tree-trimming and demolitions.

BURA Expenditures						
(in \$ million)	'06 Budget	'06 Forecast	2007	2008	2009	2010
Grant Expenditures						
CDBG Public Svc Costs	\$2.167	\$2.167	\$1.986	\$2.482	\$2.482	\$2.482
Section 108 Loan Repayments	\$4.301	\$4.301	\$3.289	\$3.112	\$2.810	\$2.639
Fannie Mae Loan Repayment	-	-	\$1.500	\$1.500	\$1.500	\$1.500
CDBG Payroll Reimb to City	\$0.855	\$1.196	\$0.438	\$0.438	\$0.438	\$0.438
Indirect Cost Reimb to City	\$0.193	\$0.188	\$0.189	\$0.189	\$0.189	\$0.189
CDBG Program Costs	\$12.666	\$12.331	\$8.180	\$7.326	\$7.627	\$7.799
HOME CHDO Set Aside	\$0.758	\$3.758	\$0.715	\$0.715	\$0.715	\$0.715
HOME Program Costs	\$4.015	\$4.015	\$3.797	\$3.797	\$3.797	\$3.797
American Dream Initiative	\$0.122	\$0.122	\$0.061	\$0.061	\$0.061	\$0.061
Emergency Shelter Prog Costs	\$0.876	\$0.845	\$0.674	\$0.674	\$0.674	\$0.674
HOPWA Program Costs	\$0.442	\$0.442	\$0.466	\$0.466	\$0.466	\$0.466
Lead Grant	\$0.200	-	\$0.400	\$0.450	\$0.450	-
Environment Restoration Prog	-	-	\$1.000	-	-	-
Subtotal	\$26.398	\$29.365	\$22.695	\$21.210	\$21.209	\$20.760
Admin & Planning Costs						
CDBG Admin Costs	\$3.778	\$3.974	\$3.765	\$3.900	\$3.901	\$3.900
HOME Admin Costs	\$0.530	\$0.530	\$0.501	\$0.501	\$0.501	\$0.501
Emergency Shelter Admin	\$0.036	\$0.036	\$0.035	\$0.035	\$0.035	\$0.035
HOPWA Admin Costs	\$0.014	\$0.014	\$0.014	\$0.014	\$0.014	\$0.014
Subtotal	\$4.358	\$4.554	\$4.315	\$4.450	\$4.451	\$4.450
Total	\$30.953	\$33.919	\$27.010	\$25.660	\$25.660	\$25.210

BURA’s spending plan provides for 63 staff positions with salary costs of \$2.4 million. The agency is down 7 positions from last year (6 layoffs and 1 retirement).

BURA’s plan to close its accumulated deficit does contain some risk, both logistically and programmatically. First, any funds that are redirected from the current (or future) year to address the deficit will reduce funds available for programs on a dollar-for-dollar basis. Further, as a flow-through agency for federal block grants, BURA may experience future reductions in resources beyond 2006-07. The federal government continues to debate a restructuring of the block grant program, and any modification is likely to impact agencies like BURA.

Buffalo Municipal Housing Authority Four-Year Financial Plan

The Buffalo Municipal Housing Authority (BMHA) continues to struggle with significant fiscal and management issues. A major problem throughout fiscal year 2006 was the Authority's inability to ascertain the amount of subsidy it would receive from HUD for the year due to changes in HUD allocations. The BMHA amount was not confirmed until after the fiscal year end. The same problem will be present in fiscal 2007.

BMHA's utility costs were \$3.4 million higher than budgeted. The increased HUD subsidy covered \$2.1 million of the increase, with the excess cost covered by additional revenues of \$261,000 and other savings of \$1 million. Preliminary numbers indicate that BMHA will finish the year in balance. Year end results will be affected by the accrual of a NYSEDA grant covering the energy conservation program in one of their major housing developments, which will fall directly to the bottom line. The grant is expected to be accrued at about \$2.5 million.

The single most significant issue currently confronting BMHA is HUD's requirement that federal housing projects be move to a project management model by October 1, 2006. This major operating change will require major union cooperation in a very short time period. The consequences of not reaching the October 1 deadline would be a permanent loss of \$1.6 million in HUD subsidy. At this time there is no certainty that the federal requirement will be met within the established timeframe.

Financial Plan

BMHA submitted an abbreviated 2007 budget and 4-year plan based on the assumption that the operating subsidy from HUD would remain level with 2006. Under this (currently uncertain) scenario, the budget would be balanced.

Increases in expenditures for utilities in the budget and 4-year plan are primarily funded by further downsizing of the staff, with the resulting reduction in the growth in benefits, and reduced maintenance expenditures.

HUD has now approved subsidy levels through December 30th (assuming project-based compliance which is uncertain at this time). Subsidy announcements are now done on a calendar year basis, so BMHA will not know the amount of the subsidy for its last six months until close to calendar year end.

The plan submitted by BMHA in May was insufficient for full unconditional BFSA approval. A revised budget and four-year plan will be presented to the Board at the September 28 meeting.

Appendix A**PROCUREMENT REPORT FOR THE YEAR ENDED JUNE 30, 2006****BUFFALO FISCAL STABILITY AUTHORITY
BFSA PROCUREMENT REPORT FOR THE YEAR ENDED JUNE 30, 2006**

Section 2879 of the New York State Public Authorities Law requires State Authorities to “annually prepare and approve a report on procurement contracts which shall include the guidelines.”

Attached are the Procurement Guidelines which were reviewed and renewed without change by the Authority pursuant to Resolution No. 06-25 at its April 12, 2006 meeting. The Guidelines establish the means by which the Authority acquires goods or services and have been fully utilized since originally enacted on October 7, 2003

The following is BFSA’s Report on Procurement Contracts as required by Article X of the BFSA’s Procurement Guidelines. It summarizes procurement activity by the Authority for the 2005-06 fiscal year and includes a list of all contracts which have been entered into, the selection process utilized and the status.

Procurement Contracts Entered Into in FY 2006

Contracts greater than \$15,000.

Contractor	Contract Description	Start Date	Completion Date	Total Contract Value	Current Year	No. of bids
Levitan & Associates	Energy consulting	4/17/06	11/1/06	\$110,000	\$44,490	6
NYSERDA	Energy Consulting Grant	4/7/06	11/30/06	(\$50,000)	(\$22,246)**	N/A
Bear Stearns	Forward delivery of securities for 2004A, 2005A bond series	8/15/05	8/15/12	*		5
Bear Stearns	Forward delivery of securities for 2005A bond series	8/15/05	6/15/19	*		5
Bear Stearns	Forward delivery of securities for 2006A bond series	5/15/06	6/15/20	*		6
			TOTALS	\$60,000	\$22,244	

* Forward delivery agreements cover monthly delivery of securities against cash payment for certain debt service set asides

** Accrued in fiscal year 2006

Status of Existing Contracts (entered into prior to July 1, 2005)

Vendor	Service	Status of Contract
Buffalo Economic Renaissance Corporation	Lease of BFSAs premises	Ongoing
Verizon	Communications	Ongoing
AT&T	Communications	Ongoing
Nextel	Communications	Ongoing
Adelphia	Communications	Ongoing
Xerox Capital Services	Copier Service	Ongoing
Brisbane Consulting	Accounting Software Training/maintenance	Ongoing
Harris Beach	General Counsel	Ongoing
Mintz Levin	Bond Counsel	Through 1/30/07
Public Financial Mgmt	Financial Advisor	Through 1/30/07
Lehman Brothers	Underwriter	Through 1/30/07
Bank of New York	Trustee	Ongoing
MBIA	Bond Insurance	Ongoing
Lumsden & McCormick	Independent Audit	Through 4/30/07
Wachovia Securities	Forward delivery of securities	Ongoing
Moody's Investor Services	Bond rating services	Ongoing
Fitch Ratings	Bond rating services	Ongoing

APPENDIX B

**BUFFALO FISCAL STABILITY AUTHORITY
GUIDELINES REGARDING THE USE, AWARDING, MONITORING
AND REPORTING OF PROCUREMENT CONTRACTS**

Effective October 7, 2003

ARTICLE I

STATEMENT OF PURPOSE

101. These Buffalo Fiscal Stability Authority Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts (“Guidelines”) are adopted pursuant to the provisions of the Act and Section 2879 of the Public Authorities Law and shall be reviewed and approved by a quorum of the Authority’s Directors at least annually.

ARTICLE II

DEFINITION OF TERMS

201. Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

“Act” shall mean Chapter 122 of the Laws of 2003, as amended or supplemented.

“Authority” or “BFSA” shall mean the Buffalo Fiscal Stability Authority.

“Officer” shall mean any person so designated by the Directors of the Authority.

“Procurement Contract” or “Contract” means any written agreement of the Authority for the acquisition of goods or services of any kind in the actual or estimated amount of \$15,000, or more.

ARTICLE III

TYPES OF SERVICES FOR PROCUREMENT

301. The areas of responsibility and oversight requiring Procurement Contracts for

personal services include, but are not limited to the performance of legal, accounting, management consulting, investment, banking, planning, training, statistical, research, public relations, architectural, engineering, construction, surveying, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of BFSA (“Personal Service(s)”).

302. The reasons for use of Procurement Contracts for Personal Service include, but are not limited to:

- a. *Requirements of special expertise or unusual qualifications;*
- b. Nature, magnitude complexity of services required;
- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Lower cost;
- e. Short term need for the services;
- f. Infrequent need for the services; and
- g. Distance of the location or locations where the services must be performed from the Authority offices or facilities.

302. Procurement Contracts for Goods

The types of goods requiring Procurement Contracts include:

- a. Goods needed in order to proceed with a project of BFSA; and
- b. Goods needed in order to support the administrative needs of BFSA.

ARTICLE IV

SELECTION OF PERSONAL SERVICE CONTRACTORS

400. Selection Criteria

Except as specifically waived in accordance with the provisions of these Guidelines, the Act, State law, rules or regulations, Procurement Contracts shall be awarded as follows:

1. General Policy

Procurement Contracts are to be awarded to persons/firms on a competitive basis to the maximum extent possible.

- a. Such awards are to be made after notice is published in the New York State Contract Reporter and after the solicitation of proposals obtained from at least three qualified persons/firms.
- b. Such BFSA requests for proposals shall be preceded, where possible, by the preparation of reasonable cost estimates for such Contracts. Such cost estimates shall be the responsibility of the BFSA staff members initiating such requests for proposals.
- c. All proposals should be received at one designated location within the initiating department, and immediately should be stamped with the date and time of receipt.
- d. When appropriate, written selection criteria shall be prepared for each Contract, which shall include price as an important factor to be considered in the selection process. Analysis of the proposals and/or bids submitted and the award of the Contract shall be documented in reasonable detail. Awards to other than the low bidder shall include in such documentation the reason the low bidder was not selected.
- e. The initiator shall ensure that documentation related to proposals and/or bids and awards are maintained for not less than two years after completion of the services contracted for.

401. Advertisement Requirements

The solicitation of bids, proposals or submissions of qualification data for Personal Service contracts shall be made by the Authority in a manner determined by an authorized Officer of the Authority to be the most cost effective for providing reasonable competition for the Authority's Personal Service contracts while also promoting State business enterprises where possible, practical, feasible and consistent with open bidding. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these Guidelines and as directed in section 2879 of

the Public Authorities Law. Notice of Procurement Contracts opportunities must also be advertised in the State's New York State Contract Reporter.

402. Term

All contracts for Personal Services shall be limited to a maximum of one year unless the Authority Directors by resolution determine that a longer period for a particular contract is in the best interest of the Authority. Contracts for legal services and financial advice services shall not be longer than five years, including the initial contract period and any contract extensions approved by the Directors of the Authority.

403. Waiver of Selection Criteria

Procurement Contracts may be awarded without notice being published in the New York State Contract Reporter to persons/firms on a sole source or single source basis only on the written approval of the Executive Director or the Directors of BFSA. That approval will only be granted where the initiator can demonstrate:

- a. Emergency or other extraordinary circumstances exist which make competition impracticable or inappropriate; or
- b. Only one source for the goods or services is available; or
- c. Specialized services are required for which a certain person/firm's expertise is unique or such person/firm has greatly superior qualifications to perform the services at a cost that is determined to be fair and reasonable.

The initiator shall ensure that documentation related to the reason for awarding the contract on a sole source or single source basis and for not publishing notice in the New York State Contract Reporter is maintained for not less than two years after completion of the services contracted for.

404. Approval Process

The BFSA Directors shall approve the award of all Procurement Contracts for Personnel Services, regardless of the amount of said contract.

ARTICLE V**SELECTION OF VENDORS AND SUPPLIERS FOR THE
PURCHASE OF GOODS**

501. Except as provided by the Act, State law, rules or regulations, in the procurement of furniture, equipment, supplies and other goods for the Authority, the Authority shall perform the following tasks:
- a. Establish a realistic furniture, equipment and supplies budget.
 - b. Place advertisements for goods and service in the same manner as described in 401 of these Guidelines.
 - c. Perform a comparative pricing and cost analysis for each item needed, including prices of those items, which are available through the State Office of General Service contracts.
 - d. Prepare contracts and/or purchase orders for the acquisition of all commodities. Use of State contracts is preferable when the items are available at lower costs.
 - e. Monitor vendors for quality control and timely deliveries.
 - f. Verify the quantities received and the quality of the products in light of the specifications, and monitor the vendor invoices for timely payments.
 - g. If the estimated cost of the goods exceeds \$15,000 or more, a competitive bidding procedure will be followed.

ARTICLE VI

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

601. The Authority shall, in order to promote the use of minority and women-owned enterprises in Procurement Contracts, solicit offers from minority and women-owned business enterprises known to have experience in the area of the goods or service to be provided, all in accordance with the BFSA Act and State and Federal laws and regulations.

ARTICLE VII

POLICIES TO PROMOTE THE PARTICIPATION BY NEW YORK BUSINESS ENTERPRISES AND NEW YORK STATE RESIDENTS IN PROCUREMENT CONTRACTS

701. The Authority shall comply with the Act and the State Omnibus Procurement Law when applicable.

ARTICLE VIII

PROVISIONS MADE A PART OF SERVICE CONTRACTS

801. Provisions to be contained in Personal Service contracts shall include but not be limited to:
- a. Scope of services;
 - b. Contract price or fee structure;
 - c. Method or basis of payment;
 - d. Use of the Authority's supplies;
 - e. Use of the Authority's personnel
 - f. Term of the contract; and
 - g. The Authority's Schedule A, "Conditions Applicable to BFSA Agreements with Law Firms and other Consultants" which Schedule is made a part of these Guidelines.

ARTICLE IX

PROCUREMENT CONTRACTS WITH FORMER OFFICERS OR
EMPLOYEES OF THE AUTHORITY

901. The Authority may not enter into Procurement Contracts with former Officers or employees of the Authority or former employees of New York State who provided services to the Authority, where such Contracts would be in contravention of law, would create a conflict of interest or may create the appearance of impropriety.

ARTICLE X

REPORTS TO THE DIRECTORS CONCERNING PROCUREMENT CONTRACTS

1001. The Authority shall annually prepare for approval by the Directors and public availability a report on Procurement Contracts as of the end of each fiscal year summarizing procurement activity by the Authority for the period of the report, including a listing of all Contracts entered into, the selection process used to select such Contractors and the status of existing Procurement Contracts.

BFSA's Executive Director shall also prepare, on an annual basis, a report for submission to:

- a. The Division of Budget;
- b. The Department of Audit and Control;
- c. The Senate Finance Committee;
- d. The Assembly Ways and Means Committee;
- e. The Department of Economic Development; and
- f. Members of the public (upon receipt of reasonable requests therefore),

which shall include the Guidelines, amendments thereto, and an explanation thereof.

ARTICLE XI

ANNUAL REVIEW AND APPROVAL OF GUIDELINES

1101. The Directors shall annually review and approve these Guidelines.

ARTICLE XII

AMENDMENT OF GUIDELINES

1201. The Authority may, from time to time, amend by resolution, these Guidelines.

ARTICLE XIII

EFFECT OF NONCOMPLIANCE WITH GUIDELINES

1301. Failure by the Authority to comply with provisions of these Guidelines shall not be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement for the procurement of goods or services.

Attachment: Schedule A

SCHEDULE A**CONDITIONS APPLICABLE TO BFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS (COLLECTIVELY, "CONSULTANT")****"BFSA" IS THE BUFFALO FISCAL STABILITY AUTHORITY****ARTICLE I****RELATION OF CONSULTANT TO BFSA**

1.1 SUPERVISION BY BFSA. The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of BFSA provided that neither BFSA's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act pursuant to this Agreement.

1.2 CONSULTANT'S PERSONNEL. The Consultant shall designate in writing to BFSA one individual, satisfactory to BFSA, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be BFSA's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon BFSA's written request.

1.3 APPROVAL OF SUBCONSULTANTS. The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of BFSA. The Consultant shall inform BFSA in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.

1.4 CONSULTANT AS INDEPENDENT CONTRACTOR. Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of BFSA. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of BFSA.

1.5 CONFLICT-OF-INTEREST. The Consultant represents that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of BFSA, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise here from.

(c) No officer, employee, agent or director of BFSA, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of BFSA, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

ARTICLE II

DOCUMENTS AND RECORDS

2.1 **MAINTENANCE OF RECORDS.** The Consultant shall, until three years after completion of its services hereunder or termination of this Agreement by BFSA, maintain and shall require each Subconsultant to maintain (a) complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make such books and records available to BFSA or its authorized representatives for review and audit at all such reasonable times as BFSA shall from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

2.2 **OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of BFSA, and BFSA shall have the right to

publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty, charge or other compensation to Consultant. Upon request of BFSA during any stage of the work, Consultant shall deliver all such material to BFSA.

The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of BFSA, except that Consultant may retain copies of such reports and other documents for general reference use.

ARTICLE III

TERMINATION

3.1 OPTIONAL TERMINATION BY BFSA. BFSA at anytime, in its sole discretion, may terminate this Agreement or postpone, delay, all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement, or delay, BFSA shall pay the Consultant for reasonable professional time and out-of-pocket expenses incurred by Consultant to the date notice of such action is received by Consultant. The Consultant agrees to cause any agreement or contract entered into by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provision of this Section 3.1.

ARTICLE IV

PROVISIONS REQUIRED BY LAW

4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 CONSULTANT TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by BFSA, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by BFSA or the Consultant in connection with this Agreement.

4.3 NON-DISCRIMINATION.

The Consultant during the performance of this Agreement, specifically agrees that the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

4.4 **NO ASSIGNMENT WITHOUT CONSENT.** The Consultant agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of BFSA;

(b) If the prohibition of Section 4.4(a) be violated, BFSA may revoke and annul this Agreement and BFSA shall be relieved from any and all liability and obligations thereunder to the Consultant and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Consultant and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

ARTICLE V

OTHER STANDARD PROVISIONS

5.1 **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

5.2 **ENTIRE AGREEMENT/AMENDMENT.** This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.3 **CONFIDENTIALITY.** Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and BFSA and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from BFSA, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as BFSA may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

5.4 **INDEMNIFICATION.** Notwithstanding anything to the contrary contained herein, Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or Subconsultants, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to this Agreement. Consultant agrees to defend, indemnify and hold the indemnitees (the State of New York and BFSA) harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage to property, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Subconsultants, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the indemnitees by reason of claims against Consultant or its Subconsultants, or their employees, agents, servants, independent contractors and subcontracts for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the indemnitees for reasonable attorneys' fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Subconsultants, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Subconsultants, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Subconsultants, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

5.5 **MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

ARTICLE VI

BILLING POLICY

6.1 **INVOICES.** The Consultant is required to submit detailed documentation in support of Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

Accounts Payable Department
Buffalo Fiscal Stability Authority

Invoices shall be made on the Consultants own invoice forms or letterhead and must include BFSA's contract and project numbers, if any. Consultant shall also include federal identification number with their first invoice, and a list of each individual who is expected regularly to bill time to this matter, his/her title and hourly billing rate. Invoices shall be in the form attached to this Schedule A. Time shall be billed on a 1/10th of an hour basis.

6.2 REIMBURSABLE EXPENSES.

Consultant's monthly invoices should present out-of-pocket expenses on a daily, itemized basis, grouped by general category. The Consultant must submit supporting documentation for each individual expense item over \$250. Out-of-pocket expenses will be reimbursed only in accordance with the attached **SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR BFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS.**

6.3 NON-REIMBURSABLES.

The following will not be reimbursed:

- a) Flight insurance
- b) Valet Services (except five or more consecutive days)
- c) Personal expenses of any type
- d) Expenses paid for BFSA employees
- e) Travel to any BFSA office to "deliver vouchers or pick up check".

6.4 NO REIMBURSEMENT FOR SALES TAX CHARGES

BFSA is a public benefit corporation and as such is exempt from all sales and use taxes in New York State. BFSA will not reimburse the Consultant for sales or use taxes over \$10.00 incurred in connection with the contract. If the Consultant will make purchases of goods or services that involve sales or use taxes in excess of that amount, the Consultant must, in advance of making such purchases, obtain a sales tax certification from BFSA so that no such taxes are incurred.

6.5 GENERAL.

(a) All receipts must be legible. Illegible receipts will not be reimbursed.

(b) Whenever possible original receipts should be presented for reimbursement.

At any time or times until three years after completion of Consultant's services or earlier termination of this Agreement by BFSA, BFSA may have the

vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher, which are found by BFSA on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

Attachment to Schedule A

[CONSULTANT LETTERHEAD]

Date
Bill # _____
BFSA Contract No: _____

To: Buffalo Fiscal Stability Authority

Attention: General Counsel and Chief Financial Officer

Matter Name/No.: _____

FOR PROFESSIONAL FEES

<u>Date</u>	<u>Hours*</u>	<u>Fees**</u>	<u>Description of Services</u>
-------------	---------------	---------------	--------------------------------

* Billing on 1/10th of an hour.
** # of hours x the applicable rate.

CHARGES AND DISBURSEMENTS (grouped by category):

<u>Date</u>	<u>Description</u>	<u>Amount</u>
-------------	--------------------	---------------

TOTAL CHARGES AND DISBURSEMENTS \$ _____

TOTAL FOR FEES AND CHARGES AND DISBURSEMENTS: \$

Certified as true and correct _____
Vendor/Title

BFSA internal approval _____

_____	Name	Title	Date
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Attachment to Schedule A

**SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR
BFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS**

Consultant will be reimbursed for the following types of expenses at the following maximum rates. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred:

<u>TYPE OF EXPENSE</u>	<u>RATE OF REIMBURSEMENT</u>
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to \$35/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to \$65; amounts over \$50 must be submitted for approval on a case-by-case basis. Mileage reimbursement for private cars is \$.36.5/mile.
<i>Meal Charges</i>	<i>Actual cost of evening or overtime meals in the office up to \$25 and reasonable cost of outside catering service for meetings. No reimbursements for breakfast or lunch.</i>
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
<i>Photocopying</i>	<i>Firm's standard rate, up to \$.25/page; Actual cost if out-sourced.</i>
Fax Transmission	None for incoming faxes; Firm's standard rate, up to \$1.00/page for outgoing faxes
Computer Research	Actual cost (no overhead) and only as needed and deemed cost effective.
Out-of-Town Travel	Reasonable expenses, to be submitted for approval, in advance, on a case-by-case basis.

APPENDIX C

INVESTMENT REPORT – FISCAL YEAR 2006

Section 2925 of the New York State Public Authorities Law requires State Authorities to “annually prepare and approve an investment report which shall include the investment guidelines, as specified in subdivision three of this section, amendments to the guidelines since the last investment report, an explanation of the investment guidelines and amendments, the result of the annual independent audit, the investment income record of the corporation, a list of total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and advisor rendering investment associated services to the corporation since the last investment report.”

Explanation of the Investment Guidelines

There were no amendments to the Guidelines during fiscal year 2006. BFSA Investment Guidelines in effect as of June 30, 2006 reflect the principles and precepts of investment safety and control contained in the BFSA Act Article 3854 (11) as well as the Office of the State Comptroller’s “Investment Guidelines for Public Authorities” as revised on January 2, 1998. The BFSA Guidelines set forth the Authority’s policy and objectives regarding the investment of Authority funds, in accordance with the BFSA statute and the bond indenture executed by BFSA and its Trustee for debt issuances, the Bank of New York.

The investment objectives of the Authority are set in the guidelines as follows:

“The Authority investment activities shall have as their first and foremost objective the safeguarding of the principal amount of the investment funds. Additional considerations regarding the Authority’s investment activities shall be liquidity of investments, realization of a reasonable return on investments and diversification of investments”

Investment Activity

BFSA received or accrued a total \$783,888 in interest on investments during the fiscal year ended June 30, 2006. Additionally the Authority received or accrued \$368,740 in earnings on funds that it invests on behalf of the City of Buffalo.

Market value of investments on hand at June 30, 2006 totaled \$55,031,696 of which all but \$121,967 matured within 90 days.

In the year ended June 30, 2006 BFSA had three principal types of investment accounts: 1) accounts held by the Bank of New York, Trustee under the Authority’s Bond Indenture, which contained debt service set asides (a. BFSA funds of 1/6 of interest and 1/12 of principal two months in advance of bond maturities; b. intercepted

State Aid in June for payment of cash flow borrowing in August, and c. a minimal amount of bond proceeds) 2) a BFSA operating fund account and 3) an account for funds BFSA invests at the request of the City of Buffalo, held by the Bank of New York in a custodial account.

The BFSA Trust Indenture requires the Authority to retain out of the first payment of sales taxes each month an amount equal to 1/6 of the next interest payment and 1/12 of the next principal payment. The full amount of the next payment must be fully funded two months in advance of the maturity. These set asides are deposited into each bond account upon receipt of the funds (usually the 6th or 7th of each month) and invested in A1/P1 commercial paper until the 15th of the same month. After a bidding process, the Authority has entered into various Forward Delivery Agreements for delivery of securities against the cash set asides. These agreements are structured to yield investment earnings within the parameters of the yield restrictions imposed by the federal government's requirements for tax-exempt bonds. In order to avoid potential yield problems, some set asides are invested in 0% SLGS. All securities mature before or on the next required payment date, so the longest maturity possible (although not common) is approximately 13 months. All transactions take place within the trustee accounts.

Interest earned in the year ended June 30, 2006 from these accounts was as follows:

Type of Account	Total Interest Earnings
Bond and Note related, held by Trustee	\$ 779,037
BFSA Operating funds	<u>\$ 4,851</u>
Subtotal	\$ 783,888
City of Buffalo funds	<u>\$ 368,740</u>
Total earnings (cash and accrued)	\$1,152,628

As of June 30, 2006 the Authority held cash and collateralized Certificates of Deposit, Treasury Bills, Treasury SLGS, Federal National Mortgage Association Discount Notes, Federal Home Loan Mortgage Corporation Discount Notes Federal Home Loan Bank and commercial paper of the General Electric Credit Corporation and Citigroup Funding Corporation.

All bank deposits of Authority funds are required to be fully collateralized. Collateral is held by a custodian in the Authority's account and consisted of US Government and agency obligations.

Fees

During the 2006 fiscal year BFSA issued three requests for proposals for forward delivery agreements covering three bond issues. Payment of fees to the Authority's

financial advisor for assistance in the structuring and bidding out of the three agreements was specified in the RFP to be for the account of the winning provider for each transaction. Total fees paid for the three transactions were \$40,000.

BFSA pays its Trustee an annual fee of \$2,000 for each bond transaction covering all trustee services, including the operational aspects of the investments in each bond account.

The cost of operating funds bank accounts are covered through compensating balances.

<p>APPENDIX D</p> <p>BUFFALO FISCAL STABILITY AUTHORITY</p> <p>INVESTMENT GUIDELINES</p>

Introduction

These investment guidelines ("Guidelines") are adopted as required by Section 2925 of the New York Public Authorities Law.

ARTICLE ONE

Definitions

As used herein the terms set forth below are defined as follows:

- 1.1 "Authority" or "" means the Buffalo Fiscal Stability Authority, a corporate governmental agency and instrumentality of the State of New York, constituting a public benefit Corporation, established pursuant to Chapter 122 of the Laws of 2003 of the State of New York.
- 1.2 "Comptroller" means the State Comptroller.
- 1.3 "Investment Funds" means all monies and financial resources available for investment by the Authority, other than proceeds of bonds issued by the Authority.
- 1.4 "Repurchase Agreement" means a repurchase agreement satisfying the requirements set forth in Article 4 herein.
- 1.5 "Securities" means any or all of the investment obligations of the categories described in Section 4.1 of Article 4 herein.
- 1.6 "State" means the State of New York.

ARTICLE TWO

Scope

These guidelines shall govern the investment and reinvestment of Investment Funds and the sale and liquidation of investments, as well as the monitoring, maintenance, accounting, reporting and internal controls by and of the Authority with respect to such investment, sale, reinvestment and liquidation.

ARTICLE THREE

Investment Objectives

The Authority's investment activities shall have as their first and foremost objective the safeguarding of the principal amount of the Investment Funds. Additional considerations regarding the Authority's investment activities shall be liquidity of investments, realization of a reasonable return on investments and diversification of investments.

ARTICLE FOUR

Permissible Investments

- 4.1 The Authority may invest its Investment Funds in any and all of the following, if and to the extent permitted by statutes, regulations and bond resolutions applicable at the time of investment of such Investment Funds:
- a. obligations of the State or the United States government;
 - b. obligations the principal and interest of which are guaranteed by the State or the United States government;
 - c. certificates of deposit, whether negotiable or non-negotiable, and banker's acceptances (1) of any of the fifty largest banks in the United States which bank, at the time of investment, has an outstanding unsecured, uninsured and unguaranteed debt issue ranked by two nationally recognized independent rating agencies at a rating category that is no lower than the then current rating of the Authority's bonds, notes or other obligations and; or (2) the certificates of deposit are fully collateralized by obligations of the United States government or obligations the principal and interest of which are guaranteed by the United States government;

- d. commercial paper of any bank or corporation created under the laws of either the United States or any state of the United States which commercial paper, at the time of the investment, has received the highest rating of two nationally recognized independent rating agencies;
- e. bonds, debentures, or other evidences of indebtedness, issued or guaranteed at the time of the investment by the Federal National Mortgage Association, Federal Home Loan Mortgage Authority, Student Loan Marketing Association, Federal Farm Credit system, or any other United States government sponsored agency, provided that at the time of the investment such agency receives, or its obligations receive, any of the three highest rating categories of two nationally recognized independent rating agencies;
- f. any bonds or other obligations of any state, or the United States of America or of any political subdivision thereof or any agency, instrumentality or local government unit of any such state or political subdivision which bonds or other obligations, at the time of the investment, have received any of the three highest ratings of two nationally recognized independent rating agencies;
- g. any repurchase agreement with any bank or trust company organized under the laws of any state of the United States of America or any national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in paragraph (a), (b), or (e) of this subdivision, which securities shall at all times have a market value of not less than the full amount of the repurchase agreement and be delivered to another bank or trust company organized under the laws of New York State or any national banking association domiciled in New York State, as custodian;
- h. reverse repurchase agreements with any bank or trust company organized under the laws of any state of the United States of America or any national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in paragraph (a), (b) or (e) of this subdivision which securities shall at all times have a market value of not less than the full amount of the repurchase agreement and be delivered to another bank or trust company organized under the laws of New York State or any national banking association domiciled in New York State, as custodian.

4.2 Specific Requirements Regarding Certificates of Deposit

- 4.2.1 Collateral for a Certificate of Deposit. If a certificate of deposit is required to be collateralized pursuant to Section 2 of paragraph (c) of section 4.1 of these Guidelines, the collateral must be reviewed weekly to determine if the market value of the collateral equals or exceeds the principal amount of the uninsured portion of the certificate of deposit plus accrued interest. If the market value of the collateral is insufficient, the issuer of the certificate of deposit must exchange or add to the amount of collateral to bring its market value equal to or in excess of the uninsured portion of the principal amount of the certificate of deposit plus accrued interest.
- 4.2.2 Standard Terms for Certificate of Deposit Collateral Agreement. The Authority shall negotiate and enter into a written agreement with each bank (and custodian) from which it has obtained a certificate of deposit. Such written agreement shall, at a minimum, address the following concerns:
- (a) The frequency of the valuation of the collateral to market, as set forth above (such valuation shall be done at least weekly);
 - (b) The right and ability of the bank to substitute like Investment Securities as collateral;
 - (c) Description of events of default which would permit the Authority or its custodian to liquidate or purchase the underlying Investment Securities;
 - (d) Description of the party who is to have title to the underlying Investment Securities during the term of the agreement; and
 - (e) With respect to the custodial bank, the agreement shall also provide that the custodial bank takes possession of the Investment Securities as agent of the Authority and that the claims of the custodial bank are subordinate to those of the Authority.
- 4.3 Specific Requirements Governing Repurchase Agreements. Notwithstanding Section 4.1 hereof, the following shall also apply to Repurchase Agreements.
- 4.3.1 Placement. The placement of Repurchase Agreements may be distributed among several authorized firms as appropriate to reduce the level of risk. The investment limit set for each such firm shall not be exceeded unless the Executive Director of the Authority makes a written finding that sufficient Securities are not available from other eligible firms. Not less frequently than once each year, the Chief Financial Officer shall review and, if appropriate, recommend adjustment of the investment limit for each eligible seller in light of such firm's current capitalization. All investment limit adjustments shall require the approval of the Chief Financial Officer and Executive Director.
- 4.3.2 Eligible Custodian Banks. To be eligible to hold the Securities which are the subject of a Repurchase Agreement, a custodial bank should be a member of the Federal Reserve Bank or maintain accounts with member banks to accomplish book-entry transfer of Securities to the credit of the Authority. Transfer of Securities, whether by book entry or physical delivery, should be confirmed in

writing to the Authority by the custodial bank. The custodian should not be the same party that is selling the Securities. The Authority's Directors or their designee(s) must affirmatively find that a proposed custodial bank is financially sound before such bank may be eligible to perform custodial services for the Authority.

4.3.3 Maximum Maturity of Repurchase Agreements. Repurchase Agreements shall be limited to a maturity not to exceed thirty (30) days, or the Trustee will value the collateral securities no less frequently than monthly and will liquidate the collateral if any deficiency is not restored within five (5) business days of such valuation. Collateral securities shall have maturities not exceeding twenty (20) years.

4.3.4 Standard Terms for Repurchase Agreements. The Authority shall execute a master Repurchase Agreement with each broker-dealer which outlines the basic rights of both buyer and seller including:

- (a) The events of default which would permit the Authority to liquidate or purchase the underlying Securities;
- (b) The relationship between parties to the agreement, which should ordinarily be purchaser and seller;

(c) A requirement that there be a written contract with the custodial bank outlining the responsibilities of the bank and the parties to the agreement. Such an agreement must provide, among other things, that the custodial bank will not make payment for the Securities until the bank actually receives them and that the custodial bank takes possession of the Securities exclusively for the Authority and that any claims of the custodial bank are subordinate to those of the Authority;

- (d) Procedures which ensure that the Authority obtains a perfected security interest in the underlying Securities. The Authority or its custodian must take possession of the Securities being purchased by physical delivery or book entry. Furthermore, the written agreement shall contain a provision that, in the event a court of final jurisdiction construes the specific Repurchase Agreement to be a loan, the seller shall be deemed to have granted the Authority a perfected security interest in the purchased Securities;

(e) The market value of the Securities purchased under a repurchase transaction must be at least equal to the purchase price. The value of the Securities must be monitored and marked to market on a daily basis. Additional Securities shall be required if market fluctuations cause the market value of the purchased Securities to become less than the purchase price.

ARTICLE FIVEOperating Procedures

- 5.1 Authorized Officers and Employees. Only the following persons shall be authorized to make investment decisions on behalf of the Authority: the Chairman of the Authority's Directors; the Executive Director; and other designated members of the Board. The implementation of such investment decisions by placement of purchase or sale orders or otherwise shall be effected only by the foregoing officers and by such employees as may from time to time be designated in writing by the Chairman of the Board and the Executive Director.
- 5.2 Standards for the Qualification of Brokers, Dealers and Agents. Any bank or trust company organized under the laws of any state of the United States of America or any national banking association or government bond dealer which is authorized to do business in the State may become qualified by the Authority to transact purchases and sales of Securities (other than Repurchase Agreements) with the Authority. Factors to be considered in determining the qualification of such firms shall include the firm's capitalization, quality, size and reliability, the Authority's prior experience with the firm, the firm's level of expertise and prior experience with respect to the contemplated transaction. The determination of qualification shall be made by the Chief Financial Officer and the Executive Director, who shall maintain a list of all such qualified firms.
- 5.3 Standards for the Qualification of Investment Advisors. For the purpose of rendering investment advice to the Authority, the Authority may qualify any bank or trust company organized under the laws of any state of the United States of America, any national banking association, and any partnership, authority, or person which is authorized to do business in the State.

The Authority also shall consider the additional criteria (other than capitalization) enumerated in the preceding paragraph.

- 5.4 Standards for the Qualification of Custodial Banks. To be eligible to hold Securities as collateral for an investment made by the Authority, a custodial bank should be a member of the Federal Reserve Bank or maintain accounts with member banks to accomplish book-entry transfer of Securities to the credit of the Authority. Transfer of Securities, whether by book entry or physical delivery, should be confirmed to in writing to the Authority by the custodial bank. The custodian should not be the same party that is selling the Securities. To be eligible to perform custodial services, the Authority's Directors or their designee(s) must affirmatively find that the proposed custodial bank is financially sound.

- 5.5 Competitive Bids; Negotiated Prices. In connection with the purchase and sale of Securities, for each transaction in excess of two and one-half million dollars (\$2,500,000.00) (or such other threshold dollar amount as the Board of the Authority may specify in writing), the Authority shall utilize competitive quotations. For each transaction which is equal to or less than two and one-half million dollars (\$2,500,000.00) (or such other threshold dollar amount as the Board of the Authority may specify in writing), the Authority may utilize either competitive quotations or negotiated prices. The foregoing shall not apply to the purchase of government securities at initial auction. A complete and continuous record of all quotes, solicited and received, shall be maintained by the Chief Financial Officer.

For each transaction (other than the purchase of governmental securities at initial auction) in excess of two and one-half million dollars (or such other threshold dollar amount as the Chief Financial Officer may specify in writing), a minimum of three separate solicitations will be made on each direct purchase or sale of a Security (including a Repurchase Agreement). The transaction shall be awarded to the dealer(s) offering the highest yield or return, provided that, with respect to Repurchase Agreements, the amount of the investment with each individual firm does not exceed the investment limit referred to in Section 4.2.1 above.

- 5.6 Written Contracts and Confirmations. A written contract and/or a written confirmation shall be a required for each investment transaction. With respect to the purchase or sale of Securities other than Repurchase Agreements, the Authority shall not be required to enter into a formal written contract, provided that the Authority's oral instructions to its broker, dealer, agent, investment advisor or custodian with respect to such transactions are confirmed in writing at the earliest practicable moment. A written contract shall be required for each purchase and sale of a Repurchase Agreement.
- 5.7 Payment. Payment for investments shall be made only upon written confirmation of presentation of the physical Security, or in the case of book-entry form Securities, when credited for the custodian's account, which shall be segregated for 's sole use. The custodian may act on oral instructions from an authorized officer of the Authority, such instructions to be confirmed in writing immediately by an authorized officer of the Custodian. Such collateral shall, on the date of purchase, be at least equal in market value to the amount of the investment.
- 5.8 Collateral. Except as specifically otherwise provided herein, the Authority's financial interest in its investments shall be fully secured or collateralized at all times in an amount not less than the original amount invested plus accrued, unpaid interest thereon. Only Securities permissible for investment by the Authority pursuant to these Guidelines (other than Repurchase Agreements) may be accepted as collateral. Pledges of proportionate interests in pooled collateral shall not constitute acceptable collateral. In the case of certificates of deposit and demand and time deposits, collateral shall be provided for amounts in

excess of the applicable limit of coverage provided by the Federal Deposit Insurance Authority. Collateral shall be maintained in the custody of the Authority or an approved third party custodian at all times. To assure that, at all times, the market value of said collateral is at least equal to the original amount invested plus all accrued, unpaid interest, collateral shall be marked to market at the time the investment is made and thereafter daily with respect to Repurchase Agreements and weekly with respect to certificates of deposit.

5.9 Operating Procedure Manual. The Authority's Chief Financial Officer shall prepare a Standard Operating Procedure Manual for placing, controlling and reporting of all investment activity which shall be consistent with these guidelines, be approved by the Authority's Executive Director and shall be consistent with the following:

- (a) Each disbursement of funds (and corresponding receipt of Securities) or delivery of Securities (and corresponding receipt of funds) should be based upon proper written authorization. If the authorization is initially given orally, there should be written or telegraphic confirmation from the Authority's authorized officer to the custodian;
- (b) The process of initiating, reviewing and approving requests to buy and sell Securities should be documented and retained for audit purposes. Dealer limits should be established and reviewed regularly;
- (c) Custodians must have prior authorization from the Authority to deliver obligations and collateral. All transactions must be confirmed in writing to the authority. Delivery of obligations sold should only be made upon receipt of funds;
- (d) Custodial banks should be required to report whenever activity has occurred in the Authority's custodial account;
- (e) There should be at least monthly verifications of both the principal amount and the market values of all investments and collateral. Appropriate listings should be obtained from the custodian and compared against the Authority's records;
- (f) A record of investments shall be maintained by the Authority's Chief Financial Officer. The records should identify the Security, the fund for which held, the place where kept, date of disposition and amount realized and the market value and custodian of collateral;
- (g) The establishment and maintenance of a system of internal controls;

- (h) Methods for adding, changing or deleting information contained in the investment record, including a description of the documents to be created and verification tests to be conducted;
- (i) A data base or record incorporating descriptions and amounts of investments, transaction dates, interest rates, maturities, bond ratings, market prices and related information necessary to manage the portfolio; and
- (j) Requirements for periodic reporting and a satisfactory level of accountability.

ARTICLE SIX

Reports and Audits

The following reports and audits shall be prepared in connection with the Authority's investment program.

- 6.1 Annual Investment Report. Within ninety (90) days after the close of each fiscal year of the Authority, the Chairman shall submit to the Directors and the Authority shall file with the State Division of the Budget, Comptroller, State Senate Finance Committee and Assembly Ways and Means Committee an annual investment report, prepared with the assistance of the Chief Financial Officer, which shall include the following:
- 1) The Investment Guidelines required by Section 2925(3) of the Public Authorities Law and any amendments to such guidelines since the last investment report;
 - 2) An explanation of the Investment Guidelines and amendments;
 - 3) The results of the Annual Investment Audit (described below);
 - 4) The investment income record of the Authority; and
 - 5) A list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and advisor rendering investment associated services to the Authority since the date of the last investment report.
- 6.2 Annual Investment Audit. Each year, the Authority shall cause its independent auditors to conduct an audit (the "Annual Investment Audit") regarding the

Authority's investments. (The Authority's financial statements with respect to investments, which are required to be prepared in conformance with generally accepted auditing standards for governments, should contain all of the note disclosures on deposits with financial institutions and investments required by the Governmental Accounting Standards Board Statements No. 3 "Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements" dated April 1986), as amended or supplemented. The Annual Investment Audit:

- 1) Shall determine whether: the Authority complies with its own investment policies; investment assets are adequately safeguarded; adequate accounts and records are maintained which accurately reflect all transactions and report on the disposition of the Authority's assets; and a system of adequate internal controls is maintained.
- 2) Shall determine whether the Authority has complied with applicable laws, regulations and State Comptroller's Investment Guidelines; and
- 3) Should be designed to the extent practical to satisfy both the common interest of the Authority and the public officials accountable to others.

6.3 Annual Investment Audit Report. The results of the Annual Investment Audit shall be set forth in a report (the "Annual Investment Audit Report") which shall include without limitation:

- 1) verification of collateral;
- 2) a description of the scope and objectives of the audit;
- 3) a statement that the audit was made in accordance with generally accepted government auditing standards;
- 4) a description of any material weaknesses found in the internal controls;
- 5) a description of all non-compliance with the Authority's investment policies as well as applicable laws, regulations and the State Comptroller's Investment Guidelines;
- 6) a statement of positive assurance of compliance on the items tested and negative assurance on those items not tested;
- 7) a statement on any other material deficiency or finding identified during the audit not covered in (6) above; and
- 8) recommendations, if any, with respect to amendment of these Guidelines.

The Annual Investment Audit Report shall be filed within ninety (90) days after the close of the Authority's fiscal year with the Coordinator of Public Authority Programs, Office of the State Comptroller, 110 State Street, Albany, NY 12236.

ARTICLE SEVEN

Affirmative Action

A program of Affirmative Action shall apply with respect to BFSA's corporate investment activities. BFSA shall seek to encourage participation by minority and women-owned financial services firms in the conduct of BFSA's corporate investment activities.

ARTICLE EIGHT

Miscellaneous

- 8.1 In connection with the Annual Investment Audit, each year the Authority shall review these Guidelines to determine whether the Authority shall amend or otherwise update these Guidelines.
- 8.2 The Authority's policy regarding conflicts of interest shall be followed regarding the investment of funds.

APPENDIX E

**CODE OF ETHICS
OF THE
BUFFALO FISCAL STABILITY AUTHORITY**

August 9, 2006

Buffalo Fiscal Stability Authority
617 Main Street, Suite 400
Buffalo, New York 14203

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BUFFALO FISCAL STABILITY AUTHORITY

CODE OF ETHICS

I. Introduction

The Buffalo Fiscal Stability Authority (the "Authority"), as a public entity, has a responsibility for maintaining the highest level of honesty, ethical conduct and public trust in all of its activities. To meet this responsibility the Authority is adopting this Code of Ethics to address important aspects of ethical conduct.

Authority Employees are entitled to privacy in their personal affairs. At the same time, as employees of a public entity, Authority Employees are responsible for conducting Authority business solely in the public interest.

This Code of Ethics applies to the Authority's Employees, including Directors, and Former Employees. This Code of Ethics is divided into the following areas: (1) introduction (2) definitions used in this Code of Ethics, (3) standards of ethical conduct, (4) use of material, nonpublic and confidential information (5) restrictions on post-employment activities, (6) certification of absence of conflict of interest, (7) requests for interpretation, clarification and waiver of this Code of Ethics, and (8) remedies for breaches of this Code of Ethics.

This Code of Ethics states in specific form the Authority's position on conflicts of interest. Personal integrity is the cornerstone of this Code of Ethics. Each Employee has the primary responsibility for avoiding Financial Interests and Other Interests, which create a conflict with his or her job.

In a case where any Employee, regardless of level or job assignment, believes his or her Financial Interest or involvement in a Transaction might present a conflict of interest, the Employee must immediately notify the Executive Director and disqualify himself or herself from involvement in the Transaction until advised in writing that he or she may continue to be involved in the Transaction.

Upon the request of the Executive Director, the Chief Counsel of the Authority may advise the Executive Director whether an existing or prospective Transaction involving the Employee would create a possible conflict of interest.

Any person, who has a question as to whether a prospective personal or business Transaction or assumption of a position of responsibility or trust would be a violation of this Code of Ethics, may request in writing an advance determination on the matter from the Authority's Chief Counsel pursuant to Section VII of this Code of Ethics.

This Code will be reviewed and updated as necessary with a copy distributed to each Employee.

II. Definitions

The following definitions apply to this Code of Ethics.

A. "Authority" means the Buffalo Fiscal Stability Authority.

B. "Benefit" means any gain or advantage to, or reduction in the liabilities of, the beneficiary and includes any gain or advantage to, or reduction in the liabilities of, a third person pursuant to the desire or consent of the beneficiary.

C. "Confidential Information" means information which is available to an Employee only because of his or her status as an Employee of the Authority and is not a matter of public knowledge.

D. "County" means Erie County, New York.

E. "Dependent Child" means a son, daughter, stepson or stepdaughter of an Employee, who is either: (1) unmarried, under age 21, and is living in the household of the Employee or (2) a "dependent" of the Employee within the meaning of section 152 of the Internal Revenue Code of 1954.

F. "Employee" means, for the purpose of this Code of Ethics, any person employed by the Authority, and any Director.

G. "Employee's Independent Business" means, for the purposes of Section III (B) (6) of this Code of Ethics, a firm or association of which an (1) Employee, or an Employee's Spouse or Dependent Child is a member, or (2) a corporation, 10% or more of the stock of which is owned or controlled directly or indirectly by such Employee or an Employee's Spouse or Dependent Child. This definition shall exclude any employee of a governmental public entity.

H. "Financial Interest" means:

1. Ownership of an interest, either active or passive (e.g., stock ownership), or involvement in a relationship from which or as a result of which there has been received within the past 12 months, or there is an entitlement to receive in any future year, more than \$1,000 or its equivalent;

2. Ownership of an interest in a business or real property which interest (a) has a market value in excess of \$5,000, (b) reflects a 10 percent ownership of the business, or (c) in the case of an Employee or an Employee's Spouse or Dependent Child, constitutes 25 percent of the net worth of the person owning such interest, or the combined net worth of the Employee and his or her Spouse and Dependent Child. This excludes an interest in the Employee's primary personal residence. In determining the value of an interest, debts, mortgages, liens or other encumbrances thereon are to be disregarded; or

3. Liability or indebtedness to a person or business in excess of \$5,000, excluding liabilities owed to relatives and excluding mortgages, liens or other encumbrances on or secured by real property which is the Employee's primary personal residence or furniture or appliances therein. *Any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments or any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances and normal credit card debt shall also be excluded.*

I. "Former Employee" means persons other than Directors who are no longer Employees of the Authority but were Employees in the time period following the effective date of this Code of Ethics.

J. "Gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless the donor receives consideration of equal or greater value.

K. "Key Employee" means any Employee who (1) receives annual compensation in excess of the filing rate established by paragraph (1) of § 73-a of the Public Officers Law,* or (2) holds a policy-making position as determined annually by the Authority and filed with the State Ethics Commission.**

L. "Other Interest" means holding a position in a business such as an officer, director, trustee, partner, proprietor, executor, employee, or a position of management, or acting as a consultant, agent or representative therefore in any capacity.

M. "Spouse" means the married partner of an Employee (1) who has not received a decree of permanent separation from such Employee or (2) who is not living separate and apart from the reporting Employee with the intention of terminating the marriage or providing for permanent separation.

N. "Trading" means, in reference to securities, the buying and selling of securities (including bonds or notes), or the buying and selling of options, calls, puts, or any other right relating to a security.

O. "Transaction" means buying, selling, renting (as lessor or lessee), or otherwise acquiring or disposing of services, materials, supplies, equipment, or property having a value of one hundred dollars or more or an interest having a value of one hundred dollars or more in such services, materials, supplies, equipment or property; borrowing or investment of money; preparing, requisitioning, ordering, approving, advising on, administering or otherwise acting in reference to the performance of a contract having a value of one hundred dollars or more; or the promulgation of rules and regulations affecting such activities.

- * As of the adopted date of this Code, the level is \$74,621;
- ** A list of the Employees who hold policy making positions at the Authority is attached hereto as Appendix C.

III. Standards and Principles of Conduct

The following standards and principles of conduct are to be followed to assure compliance with this Code of Ethics. A breach of these standards and principles constitutes a violation of this Code of Ethics.

A. General Standards and Principles

1. An Employee shall not have any interest or incur any obligation, financial or otherwise, direct or indirect, or engage in any business or Transaction or professional activity, which is in conflict with the proper discharge of his or her duties in the public interest.

2. An Employee shall avoid any action, whether or not specifically prohibited by this Code of Ethics, which might result in or create the appearance of:

- (a) using his or her official position for private gain;
- (b) giving preferential treatment to any person, including himself or herself;
- (c) lacking independence or impartiality;
- (d) affecting adversely the confidence of the public in the integrity of the Authority; or
- (e) violating any provision of this Code of Ethics.

3. No Employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

4. An Employee shall not by his or her conduct give reasonable basis for the impression that any person may improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

B. Specific Standards and Principles

1. No Employee shall be involved in any Transaction as representative or agent of the Authority with, or be involved in any evaluation of, any business entity in which the Employee, the Employee's Spouse or Dependent Child has a direct or indirect Financial Interest that might reasonably tend to conflict with the proper discharge of his or her official duties. Prior to becoming involved in any Transaction as representative or agent of the Authority with, or becoming involved in any evaluation of, a business entity in which the Employee, the Employee's Spouse or Dependent Child holds a Financial Interest, the Employee, the Employee's Spouse or Dependent Child must sell or transfer such Financial Interest.

2. No Employee, Employee's Spouse or Dependent Child shall acquire, except by Gift, inheritance or the dissolution of a trust, any Financial Interest in any business entity which the Employee has reason to believe may be directly involved in decisions to be

made by him or her which will create conflict between his or her duty in the public interest and his or her private interest. If an Employee, an Employee's Spouse or Dependent Child receives such a Financial Interest by Gift, inheritance, operation of an automatic dividend reinvestment plan or the dissolution of a trust, the interest shall be promptly sold or transferred. If an Employee's Spouse or Dependent Child receives or retains such a Financial Interest in violation of the foregoing provisions, it will be deemed to be a violation by the Employee of this provision.

3. No Employee shall (1) accept employment which will impair his or her independence of judgment in the exercise of his or her official duties, including employment by the City of Buffalo or any Covered Organization under the BFSA Act, or which involves a matter in which the Authority has a substantial interest, or (2) receive or enter into any agreement for any compensation for the appearance or rendition of services against the interest of the Authority in relation to any case, proceeding, or matter.

4. No Employee shall accept employment or engage in any business, which will require him or her to disclose Confidential Information which he or she has gained by reason of his or her official position or authority.

5. No Employee shall disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.

6. No Employee, Employee's Spouse or Dependent Child, or an Employee's Independent Business shall (1) sell any goods or services having a value in excess of twenty-five dollars to the Authority, or (2) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by the Authority or any of its officers, unless such goods or services are provided pursuant to an award of contract let after public notice and competitive bidding. If an Employee's Spouse or Dependent Child engages in the conduct described in the preceding sentence, it will be deemed to be a violation by the Employee of this provision.

7. (a) No Employee, Employee's Spouse or Dependent Child shall, directly or indirectly, solicit, accept or receive any Gift having a value of \$75 or more, whether in the form of money, service, loan, meal payment, travel, entertainment, hospitality, thing, or promise, or in any other form, from any person or entity:

(1) which is regulated by, negotiates with, appears before on other than a ministerial matter, does business with or seeks to do business with or has contracts with the Authority (including, but not limited to, vendors, bidders, proposers, contractors, subcontractors or consultants), as well as anyone, whether or not a registered lobbyist, who attempts to influence the Authority's decisions; or

(2) under circumstances in which it could reasonably be inferred that the Gift was intended to influence the Employee, or could reasonably be expected to influence the Employee in the performance of the Employee's official duties, or was intended as a reward for any official action on the Employee's part.

(a) An Employee, and an Employee's Spouse or Dependent Child may not receive within a single calendar year, two or more Gifts of the type identified in paragraph (a) above, which individually are worth less than \$75 but in the aggregate equal or exceed \$75.

(b) An Employee may not solicit, accept or receive a gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest.

(c) If an Employee's Spouse or Dependent Child engages in the conduct prohibited by paragraph (a) or (b) above, it will be deemed to be a violation by the Employee of such provisions.

C. Applicable New York Law

These standards do not replace and are in addition to the requirements of law, particularly Sections 73 and 74 of the New York Public Officers Law, which, among other things, govern the business activities of Authority Employees and set forth the State Code of Ethics.

Copies of Sections 73 and 74 of the Public Officers Law are attached to and made a part of this Code of Ethics as Appendices A and B, respectively.

IV Use of Material, Nonpublic and Confidential Information

It is the policy of the Authority to prohibit all Employees from (1) trading in securities (which includes municipal bonds or notes) based on material, nonpublic information derived from or relating to Authority activities and (2) disclosing confidential information to unauthorized third parties

A. Trading of Securities Based on Material, Nonpublic Information

1. Employees shall not trade in bonds or other securities issued by the Authority based on material, nonpublic information derived from any source or from disclosing such information for the purpose of allowing third parties to profit from trading in Authority securities.
2. Employees shall not trade in stocks, bonds or other securities issued by other business entities based on material, nonpublic information obtained in the course

of their duties for the Authority and shall not disclose such information for the purpose of allowing others to profit from trading in securities issued by other business entities based on such information.

Information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making his or her investment decision concerning the securities in question.

Information is nonpublic if, in the case of Authority securities, it has not been publicly disseminated by the Authority. Information is nonpublic if, in the case of securities issued by other business entities, it has not been publicly disseminated by those business entities.

B. Disclosure or Use of Confidential Information

Employees shall not disclose confidential information obtained in the course of their duties at the Authority to any third party not authorized to receive such information and shall not profit from the use of such information.

Information is confidential if it has been expressly designated as confidential or should be treated as confidential because of the nature of, or circumstances surrounding, such information. If an Employee has a question concerning the confidential status of any information, he or she should consult with Chief Counsel regarding such information.

Employees who violate the provisions of this section may be subject to civil and criminal penalties under Federal and state laws, including fines and/or imprisonment. In addition, Employees who violate the provisions of this section may be subject to disciplinary action by the Authority, including termination of employment.

VI. Restrictions on Post-Employment Activities of Former Employees

The post-employment activities of persons who are Former Employees are governed by the restrictions set forth in Section 73 of the Public Officers Law, attached hereto as Appendix A.

VII. Certification of Absence of Conflict of Interest

All Employees are required to certify that they have read this Code of Ethics and that they have no conflict of interest. The Certification Form is attached hereto as Appendix D. These certifications shall be submitted to the Chief Counsel.

Any Employee who knowingly fails to complete, sign and submit the required Certification Form violates this Code of Ethics and may be subject to disciplinary action.

VIII. Requests for Interpretation, Clarification or Waiver of This Code of Ethics

A. Interpretation and Clarification

An Employee may submit a written request to the Chief Counsel for an interpretation or clarification of the provisions of this Code of Ethics.

B. Waivers

An Employee may submit a written request to the Chairman of the Authority for a waiver of any restriction contained in this Code of Ethics. All waiver requests shall include a description of the nature of the restriction or prohibition for which waiver is sought; the nature of the Employee's interest involved; the effect on the Employee or the Authority of the restriction or prohibition for which the waiver is sought; and the reasons why the waiver should be granted.

IX. Remedies for Breaches of This Code of Ethics

In addition to any other remedies, civil or otherwise, which the Authority may have, an Employee or Former Employee who violates this Code of Ethics may be disciplined under this Code of Ethics. Remedies or disciplinary action may be imposed only upon the basis of a written statement of findings and recommendations by the Chief Counsel, and may include one or more of the following:

1. Issuance of written warnings;
2. Direction of corrective action to eliminate the conflict of interest;
3. Restitution;
4. Changes in assigned duties or suspension or termination of employment; provided, however, that only the Chairman shall impose said remedies.

A Former Employee found to have violated this Code of Ethics is subject to one or more of the following: written warnings; termination of existing Transactions involving the individual in question to the extent permitted by law; disqualification or suspension from future Transactions of the Former Employee and/or the person on whose behalf he or she is participating in Transactions with the Authority; and notification to appropriate persons that a conflict exists.

Appendix A PUBLIC OFFICERS LAW Section 73.

Business or professional activities by state officers and employees and party officers.

1. As used in this section:

(a) The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered. With regard to matters undertaken by a firm, corporation or association, compensation shall mean net revenues, as defined in accordance with generally accepted accounting principles as defined by the state ethics commission or legislative ethics committee in relation to persons subject to their respective jurisdictions.

(b) The term "licensing" shall mean any state agency activity, other than before the division of corporations and state records in the department of state, respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency as defined herein, which in the absence of such license, permit or other form of permission would be prohibited.

(c) The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

(d) The term "ministerial matter" shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(e) The term "regulatory agency" shall mean the banking department, insurance department, state liquor authority, department of agriculture and markets, department of education, department of environmental conservation, department of health, division of housing and community renewal, department of state, other than the division of corporations and state records, department of public service, the industrial board of appeals in the department of labor and the department of law, other than when the attorney general or his agents or employees are performing duties specified in section sixty-three of the executive law.

(f) The term "representative capacity" shall mean the presentation of the interests of a client or other person pursuant to an agreement, express or implied, for compensation for services.

(g) The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the governor, or the state university of New York or the city university of New York, including all their constituent units except community colleges of the state university of New York and the independent institutions operating statutory or contract colleges on behalf of the state.

(h) The term "statewide elected official" shall mean the governor, lieutenant governor, comptroller or attorney general.

(i) The term "state officer or employee" shall mean:

(i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis;

(ii) officers and employees of statewide elected officials;

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

(iv) members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

(j) The term "city agency" shall mean a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include the board of education, the board of higher education, school boards, city and community colleges, community boards, the New York city transit authority, the New York city housing authority and the Triborough bridge and tunnel authority, but shall not include any court or corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

(k) The term "political party chairman" shall mean:

(i) the chairman of the state committee of a party elected as provided in section 2-112 of the election law and his or her successor in office;

(ii) the chairman of a county committee elected as provided in section 2-112 of the election law and his or her successor in office from a county having a population of three hundred thousand or more or who receives compensation or expenses, or both, during the calendar year aggregating thirty thousand dollars or more; and

(iii) that person (usually designated by the rules of a county committee as the "county leader" or "chairman of the executive committee") by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person was elected from a county having a population of three hundred thousand or more or was a person who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(A) the principal political, executive and administrative officer of the county committee;

(B) the power of general management over the affairs of the county committee;

(C) the power to exercise the powers of the chairman of the county committee as provided for in the rules of the county committee;

(D) the power to preside at all meetings of the county executive committee, if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(E) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law; or

(F) the power to direct the treasurer of the party to expend funds of the county committee.

The terms "constituted committee" and "political committee", as used in this paragraph (k), shall have the same meanings as those contained in section 14-100 of the election law.

2. In addition to the prohibitions contained in subdivision seven hereof, no statewide elected official, state officer or employee, member of the legislature or legislative employee shall receive, or enter into any agreement express or implied for, compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any state agency, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit; provided, however, that nothing in this subdivision shall be deemed to prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

3. (a) No statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

(b) No state officer or employee who is required to file an annual statement of financial disclosure pursuant to the provisions of section seventy-three-a of this article, and is not otherwise subject to the provisions of this section, shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the appearance or rendition of services by himself or another against the interest of the state agency

by which he is employed or affiliated in relation to any case, proceeding, application or other matter before, or the transaction of business by himself or another with, the court of claims.

4. (a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(b) No political party chairman of a county wholly included in a city with a population of more than one million, or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any city agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised directly or indirectly, by a city agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(c) For purposes of this subdivision, the term "services" shall not include employment as an employee.

5. No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

6. (a) Every legislative employee not subject to the provisions of section seventy-three-a of this chapter shall, on and after December fifteenth and before the following January fifteenth, in each year, file with the legislative ethics committee established by section eighty of the legislative law a financial disclosure statement of

(1) each financial interest, direct or indirect of himself, his spouse and his unemancipated children under the age of eighteen years in any activity which is subject to the jurisdiction of a regulatory agency or name of the entity in which the interest is had and whether such interest is over or under five thousand dollars in value.

(2) every office and directorship held by him in any corporation, firm or enterprise which is subject to the jurisdiction of a regulatory agency, including the name of such corporation, firm or enterprise.

(3) any other interest or relationship which he determines in his discretion might reasonably be expected to be particularly affected by legislative action or in the public interest should be disclosed.

(b) Copies of such statements shall be open to public inspection.

(c) Any such legislative employee who knowingly and wilfully with intent to deceive makes a false statement or gives information which he knows to be false in any written statement required to be filed pursuant to this subdivision, shall be assessed a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty shall be made by the legislative ethics committee in accordance with the provisions of subdivision twelve of section eighty of the legislative law. For a violation of this subdivision, the committee may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

7. (a) No statewide elected official, or state officer or employee, other than in the proper discharge of official state or local governmental duties, or member of the legislature or legislative employee, or political party chairman shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter before a state agency where such appearance or rendition of services is in connection with:

(i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;

(ii) any proceeding relating to rate making;

(iii) the adoption or repeal of any rule or regulation having the force and effect of law;

(iv) the obtaining of grants of money or loans;

(v) licensing; or

(vi) any proceeding relating to a franchise provided for in the public service law.

(b) No political party chairman in a county wholly included in a city having a population of one million or more shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by himself or another in relation to any case, proceeding, application or other matter before any city agency where such appearance or rendition of services is in connection with:

(i) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with any such agency;

(ii) any proceeding relating to ratemaking;

(iii) the adoption or repeal of any rule or regulation having the force and effect of law;

(iv) the obtaining of grants of money or loans;

(v) licensing. For purposes of this paragraph, the term "licensing" shall mean any city agency activity respecting the grant, denial, renewal, revocation, enforcement, suspension, annulment, withdrawal, recall, cancellation or amendment of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation or (ii) any business or activity regulated by a regulatory agency of a city agency which in the absence of such license, permit or other form of permission would be prohibited; and

(vi) any proceeding relating to a franchise.

(c) Nothing contained in this subdivision shall prohibit a statewide elected official, or a state officer or employee, unless otherwise prohibited, or a member of the legislature or legislative employee, or political party chairman, from appearing before a state agency in a representative capacity if such appearance in a representative capacity is in connection with a ministerial matter.

(d) Nothing contained in this subdivision shall prohibit a member of the legislature, or a legislative employee on behalf of such member, from participating in or advocating any position in any matter in an official or legislative capacity, including, but not limited to, acting as a public advocate whether or not on behalf of a constituent. Nothing in this paragraph shall be construed to limit the application of the provisions of section seventy-seven of this chapter.

(e) Nothing contained in this subdivision shall prohibit a state officer or employee from appearing before a state agency in a representative capacity on behalf of an employee organization in any matter where such appearance is duly authorized by an employee organization.

(f) Nothing contained in this subdivision shall prohibit a political party chairman from participating in or advocating any matter in an official capacity.

(g) Nothing contained in this subdivision shall prohibit internal research or discussion of a matter, provided, however, that the time is not charged to the client and the person does not share in the net revenues generated or produced by the matter.

8. (a) (i) No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.

(ii) No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration.

(iii) No person who has served as a member of the legislature shall within a period of two years after the termination of such service receive compensation for any services on behalf of any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature. No legislative employee who is required to file an annual statement of financial disclosure pursuant to the provisions of section seventy-three-a of this chapter shall during the term of office of the legislature in which he or she was so employed, receive compensation at any time during the remainder of such term after leaving the employ of the legislature for any services on behalf of any person, firm, corporation or association to promote or oppose, directly or indirectly, the passage of bills or resolutions by either house of the legislature in relation to any matter with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment. A legislative employee who acted primarily in a supervisory capacity in such matter and who was not personally involved in the development, negotiation or implementation of the matter to an important and material degree, may, with the approval of the legislative ethics committee, receive such compensation and perform such services.

(b) (i) The provisions of subparagraph (i) of paragraph (a) of this subdivision shall not apply to any state officer or employee whose employment was terminated on or after January first, nineteen hundred ninety-five and before April first, nineteen hundred ninety-nine because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force. On or before the date of such termination of employment, the state agency shall provide to the terminated employee a written certification that the employee has been terminated because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force, and that such employee is covered by the provisions of this paragraph. The written certification shall also contain a notice describing the rights and responsibilities of the employee pursuant to the provisions of this section. The certification and notice shall contain the information and shall be in the form set forth below:

CERTIFICATION AND NOTICE

TO: Employee's Name: _____
 State agency: _____
 Date of Termination: _____

I, (name and title) of (state agency), hereby certify that your termination from State service is because of economy, consolidation or abolition of functions, curtailment of activities or other reduction in the State work force. Therefore, you are covered by the provisions of paragraph (b) of subdivision eight of section seventy-three of the Public Officers Law.

You were designated as a policy maker: YES ____ NO ____

 (TITLE)

TO THE EMPLOYEE:

This certification affects your right to engage in certain activities after you leave state service.

Ordinarily, employees who leave State service may not, for two years, appear or practice before their former agency or receive compensation for rendering services on a matter before their former agency. However, because of this certification, you may be exempt from this restriction.

If you were not designated as a Policymaker by your agency, you are automatically exempt. You may, upon leaving State service, immediately appear, practice or receive compensation for services rendered before your former agency.

If you were designated as a Policymaker by your agency, you are eligible to apply for an exemption to the State Ethics Commission at 39 Columbia Street, Albany, New York 12207.

Even if you are or become exempt from the two year bar, the lifetime bar of the revolving door statute will continue to apply to you. You may not appear, practice, communicate or otherwise render services before any State agency in relation to any case, proceeding, application or transaction with respect to which you were directly concerned and in which you personally participated during your State service, or which was under your active consideration.

If you have any questions about the application of the post-employment restrictions to your circumstances, you may contact the State Ethics Commission at (518) 432-8207 or 1-800-87ETHIC (1-800-873-8442).

(ii) The provisions of subparagraph (i) of this paragraph shall not apply to any such officer or employee who at the time of or prior to such termination had served in a policymaking position as determined by the appointing authority, which determination had been filed with the state ethics commission, provided that such officer or employee may so appear or practice or receive such compensation with the prior approval of the state ethics commission. In determining whether to grant such approval the state ethics commission shall consider:

A. whether the employee's prior job duties involved substantial decision-making authority over policies, rule or contracts;

B. the nature of the duties to be performed by the employee for the prospective employer;

C. whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee;

D. whether the prospective employment may be beneficial to the state or the public; and

E. the extent of economic hardship to the employee if the application is denied.

(c) The provisions of paragraph (b) of this subdivision shall not apply to employees whose employment has been discontinued as a result of retirement or to employees who, prior to termination, have declined to exercise a right to another position with a state agency unless such position would require the employee to travel more than thirty-five miles in each direction to the new position or accept a reduction in base salary of more than ten per centum.

(d) Nothing contained in this subdivision shall prohibit any state agency from adopting rules concerning practice before it by former officers or employees more restrictive than the requirements of this subdivision.

(e) This subdivision shall not apply to any appearance, practice, communication or rendition of services before any state agency, or either house of the legislature, or to the receipt of compensation for any such services, rendered by a former state officer or employee or former member of the legislature or legislative employee, which is made while carrying out official duties as an elected official or employee of a federal, state or local government or one of its agencies.

(f) Nothing in this subdivision shall be deemed to prevent a former state officer or employee who was employed on a temporary basis to perform routine clerical services, mail services, data entry services or other similar ministerial tasks, from subsequently being employed by a person, firm, corporation or association under contract to a state agency to perform such routine clerical services, mail services, data entry services or other similar ministerial tasks; provided however, this paragraph shall in no event apply to any such state officer or employee who was required to file an annual statement of financial disclosure pursuant to section seventy-three-a of this article.

(g) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the state ethics commission that the services of such former officer or employee are required in connection with the agency's efforts to address the state's year 2000 compliance problem.

(h) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the state ethics commission that the services of such former officer or employee are required in connection with the agency's response to a disaster emergency declared by the governor pursuant to section twenty-eight of the executive law.

8-a. The provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section shall not apply to any such former state officer or employee engaged in any of the specific permitted activities defined in this subdivision that are related to any civil action or proceeding in any state or federal court, provided that the attorney general has certified in writing to the state ethics commission, with a copy to such former state officer or employee, that the services are rendered on behalf of the state, a state agency, state officer or employee, or other person or entity represented by the attorney general, and that such former state officer or employee has expertise, knowledge or experience which is unique or outstanding in a field or in a particular matter or which would otherwise be generally unavailable at a comparable cost to the state, a state agency, state officer or employee, or other person or entity represented by the attorney general in such civil action or proceeding. In those instances where a state agency is not represented by the attorney general in a civil action or proceeding in state or federal court, a former state officer or employee may engage in permitted activities provided that the general counsel of the state agency, after consultation with the state ethics commission, provides to the state ethics commission a written certification which meets the requirements of this subdivision. For purposes of this subdivision the term "permitted activities" shall mean generally any activity performed at the request of the attorney general or the attorney general's designee, or in cases where the state agency is not represented by the attorney general, the general counsel of such state agency, including without limitation:

- (a) preparing or giving testimony or executing one or more affidavits;
- (b) gathering, reviewing or analyzing information, including documentary or oral information concerning facts or opinions, attending depositions or participating in document review or discovery;
- (c) performing investigations, examinations, inspections or tests of persons, documents or things;
- (d) performing audits, appraisals, compilations or computations, or reporting about them;
- (e) identifying information to be sought concerning facts or opinions; or
- (f) otherwise assisting in the preparation for, or conduct of, such litigation.

Nothing in this subdivision shall apply to the provision of legal representation by any former state officer or employee.

*8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee may contract individually, or as a

member or employee of a firm, corporation or association, to render services to any state agency if, prior to engaging in such service, the agency head certifies in writing to the state ethics commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost. Where approval of the contract is required under section one hundred twelve of the state finance law, the comptroller shall review and consider the reasons for such certification. The state ethics commission must review and approve all certifications made pursuant to this subdivision.

* NB There are 2 subdivisions 8-b.

* 8-b. Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of subdivision eight of this section, a former state officer or employee who, prior to his or her separation from state service, was employed as a health care professional and, in conjunction with his or her state duties, provided treatment and/or medical services to individuals residing in or served by a state-operated facility is not barred from rendering services to such individuals in their care prior to leaving state service, at the state-operated facility which employed the former state officer or employee.

* NB There are 2 subdivisions 8-b.

9. No party officer while serving as such shall be eligible to serve as a judge of any court of record, attorney-general or deputy or assistant attorney-general or solicitor general, district attorney or assistant district attorney. As used in this subdivision, the term "party officer" shall mean a member of a national committee, an officer or member of a state committee or a county chairman of any political party.

10. Nothing contained in this section, the judiciary law, the education law or any other law or disciplinary rule shall be construed or applied to prohibit any firm, association or corporation, in which any present or former statewide elected official, state officer or employee, or political party chairman, member of the legislature or legislative employee is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with a state agency, or a city agency with respect to a political party chairman in a county wholly included in a city with a population of more than one million, otherwise proscribed by this section, the judiciary law, the education law or any other law or disciplinary rule with respect to such official, member of the legislature or officer or employee, or political party chairman, where such statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the state ethics commission or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined; nor shall anything contained in this section, the judiciary law, the education law or any other law or disciplinary rule be construed to prohibit any firm, association or corporation in which any present or former statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject

to the provisions of section seventy-three-a of this chapter is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, the court of claims, where such statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this chapter does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the state ethics commission or by the legislative ethics committee in relation to persons subject to their respective jurisdictions, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined.

11. Notwithstanding any provision of the judiciary law, the education law or any other law or disciplinary rule to the contrary:

(a) Conduct authorized pursuant to subdivision eight of this section by a person who has served as a member of the legislature or as a legislative employee shall not constitute professional misconduct or grounds for disciplinary action of any kind;

(b) No member of the legislature or former member of the legislature shall be prohibited from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, any state agency solely by reason of any vote or other action by such member or former member in respect to the confirmation or election of any member, commissioner, director or other person affiliated with such state agency, but nothing in this paragraph shall limit the prohibition contained in subdivision eight of this section;

(c) The appearance, practice, communication or rendition of services in relation to any matter before, or transaction of business with a state agency, or with the court of claims, or the promotion or opposition to the passage of bills or resolutions by either house of the legislature, by a member, associate, retired member, of counsel or shareholder of a firm, association or corporation, in accordance with subdivision ten of this section, is hereby authorized and shall not constitute professional misconduct or grounds for disciplinary action of any kind solely by reason of the professional relationship between the statewide elected official, state officer or employee, political party chairman, member of the legislature, or legislative employee and any firm, association, corporation or any member, associate, retired member, of counsel, or shareholder thereof, or by reason of the appearance created by any such professional relationship.

12. A statewide elected official, state officer or employee, or a member of the legislature or legislative employee, or political party chairman, who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation which is appearing or rendering services in connection with any case, proceeding, application or other matter listed in paragraph (a) or (b) of subdivision seven of this section shall not orally communicate, with or without compensation, as to the merits of such cause with an officer or an employee of the agency concerned with the matter.

13. For the purposes of this section, a statewide elected official or state officer or employee or member of the legislature or legislative employee or political party chairman who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation shall not be deemed to have made an appearance under the provisions of this section solely by the submission to a state agency or city agency of any printed material or document bearing his or her name, but unsigned by him or her, such as by limited illustrations the name of the firm, association or corporation or the letterhead of any stationery, which pro forma serves only as an indication that he or she is such a member, associate, retired member, of counsel to, or shareholder.

14. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of subdivisions two through five or subdivision seven, eight or twelve of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty hereunder shall be made by the state ethics commission or the legislative ethics committee, as the case may be, with respect to persons subject to their respective jurisdictions. The state ethics commission acting pursuant to subdivision thirteen of section ninety-four of the executive law, or the legislative ethics committee acting pursuant to subdivision twelve of section eighty of the legislative law, as the case may be, may, in lieu of a civil penalty, with respect to a violation of subdivisions two through five or subdivision seven or eight of this section, refer a violation of any such subdivision to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

Appendix B PUBLIC OFFICERS LAW Section 74. Code of ethics.

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

j. If any officer or employee of a state agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

APPENDIX C

Policy Making Positions of the Buffalo Fiscal Stability Authority

Executive Director

Deputy Director

Chief Counsel

Chief Financial Officer

APPENDIX D

Certification Form

Please sign & return a copy of this Certification Form to the Chief Counsel.

RECEIPT FOR CERTIFICATION FORM

This is to acknowledge that I have received a copy of the Code of Ethics and understand that it contains important information on the Authority's policy and on my obligations as an employee.

I acknowledge that I have read the Code of Ethics and that it is intended to give me information about the Code of Ethics policy of the Authority.

I have read and understand the contents of the Code of Ethics. I agree to abide by the conditions specified in this policy and by other rules, practices or procedures that the Authority adopts.

Please sign and date this receipt and return it to the Chief Counsel.

Print Name

Dated

Signature

APPENDIX F**PROMPT PAYMENT POLICY STATEMENT OF THE
BUFFALO FISCAL STABILITY AUTHORITY**

Pursuant to Section 2880 of the Public Authorities Law

It is the policy of the Buffalo Fiscal Stability Authority to promptly pay any valid outstanding obligation of the Authority as soon as is practicable within proscribed timeframes. It is further the policy of the Authority to seek and utilize discounts offered by vendors as an incentive for early payment.

Any vendor seeking payment from the Authority for goods or services provided to the Authority must submit an acceptable invoice to the Authority, which will be processed by the Office Manager. The appropriate Authority staff will verify the validity of the invoice.

Payment will be made within 30 calendar days, excluding legal holidays, after the receipt of an acceptable invoice. Contracts with pre-determined payment dates will be paid on or before such designated date.

Payment may be delayed or tolled based on legally proscribed reasons identified in this Policy.

If the Authority fails to meet the prompt payment schedule as described above, the Authority will pay interest at the rate no greater than that set by the New York State Tax Commission for corporate taxes.

The Authority will pay penalties with funds drawn from the Authority's operating accounts, which funds most contracts entered into by the Authority.

The following facts or conditions constitute legal exceptions to the prompt payment schedule:

- a. statutory or contract provisions requiring an inspection or an audit prior to payment;
- b. a requirement for state appropriation to authorize payment;
- c. a requirement for federal government examination of an acceptable invoice prior to payment;
- d. extraordinary delay between the provision of goods or services by a vendor and the receipt of an acceptable invoice by the Authority;
- e. failure by a vendor to submit documents required by agreement prior to payment.

The following facts or conditions justify tolling the prompt payment schedule:

- a. the existence of defects in the goods or services supplied;
- b. the existence of defects in the invoice;
- c. suspected improprieties of any kind.

In order to toll the prompt payment schedule without penalty, the Authority has fifteen days after receipt of an invoice to send a vendor notification of defects or improprieties. Authority notification shall be in writing to the vendor. In the event that the Authority fails to act within fifteen days, once the defect or impropriety has been corrected, the number of days allowed for payment is reduced by the number of days between the fifteenth day and the date of notification. In the event that the Authority's contentions are proven unreasonable, the date by which payment shall be made is calculated from the date of receipt of the invoice. For contracts which provide pre-determined payment dates without an invoice, the same fifteen day regulations apply.

This Prompt Payment Policy may be amended by the Authority at any time.

The Authority is under no liability to pay interest pursuant to Section 2880 of the Public Authorities Law after a vendor has filed a claim or given notice of an intention to file a claim or commenced legal action for payment of interest.

Any applicable matters not otherwise addressed by this Policy shall be interpreted consistently with Section 2880 of the Public Authorities Law.

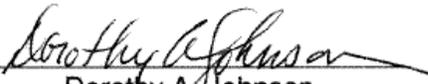


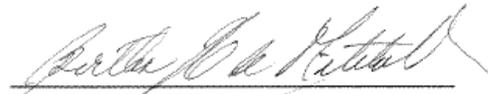
BUFFALO FISCAL STABILITY AUTHORITY

Financial Reports Certification *(Section 2800(3) of the Public Authorities Law)*

As required by law, the undersigned do hereby certify that based on our respective knowledge:

- (a) the information contained herein is accurate, correct and does not contain any untrue statement of material fact;
- (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and
- (c) fairly presents in all material respects the financial condition of the Authority as of, and for, the periods presented in the financial statements.


Dorothy A. Johnson
Executive Director


Bertha H. Mitchell
Chief Financial Officer

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