

## COUNTY OF ERIE

LOCAL LAW INTRO NO. 2-2012

LOCAL LAW NO. \_\_\_\_-2012

A Local Law, amending Local Law No. 1-1959, as amended by Local Law No. 3-2006, known as the Erie County Charter, amending Article 26 Section 2604(b), Section 2605 and Section 2618 in relation to the designation of the finance and management committee chair as a member of the capital projects committee, the fund balance definitions and reservation and the composition and duties of the citizens' budget review commission respectively. This local law shall be known as the Budget Modernization Act of 2012.

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

Section 1: LEGISLATIVE INTENT

The purpose of the amendment to Article 26 of the Erie County Charter, Section 2604(b) is to designate the "chair of the finance and management committee" of the county Legislature in place of the "chairman of the capital improvements committee" on the county's capital projects committee. The amendment also designates the commissioner of the department of environment and planning as a representative on the committee instead of the former language denoting "the planning director," a position which has not existed for many years. The amendment also replaces the term "chairman" with "chair" where the term "chairman" was previously used.

The changes substitute "chair of the finance and management committee" in place of the "chairman of the capital improvements committee," "commissioner of the department of environment and planning" in place of "planning director" and "chair" in place of "chairman."

Currently, the Legislature's finance and management committee considers and oversees matters relating to capital improvements and the standing capital improvements committee has not been duplicating that oversight work. As a result, the chair of the Legislature's finance and management committee has been serving on the county's capital projects committee in the position currently designated for the chair of the Legislature's capital improvements committee. The Legislature intends to eliminate the separate capital improvements committee as a standing committee after this local law is adopted as no longer being necessary to carry out the Legislature's oversight duties.

The amendment to Article 26 of the Erie County Charter, Section 2605 is necessary for two reasons: (1) to comport with Government Accounting Standards Board fund balance definitions; and (2) to address an accounting prescription by the New York State Comptroller requiring that the county budget and recognize sales tax revenues that are shared with other local governments and school districts in the General Fund and record any expenditure of the sales tax revenue shared in the General Fund. Such sales tax distributions are pass-through expenditures and should not be included in the calculation

of the unassigned fund balance reservation required by the Charter. Accordingly, this restatement is also necessary to identify the proper reservation of fund balance to exclude those funds in the General Fund which are non-spendable, restricted, committed or assigned.

The purpose of the amendment to Article 26 of the Erie County Charter, Section 2618 is to change the composition and duties of the citizens' budget review Commission such that the Commission becomes a viable working group which can provide meaningful budget oversight.

## Section 2: AMENDMENT TO THE ERIE COUNTY CHARTER

Section 2604(b) of Article 26 of the Erie County Charter is hereby amended to read as follows:

b. Capital projects committee. To assist in the consideration of capital projects and the capital program, there shall be a capital projects committee consisting of the county executive, the comptroller, the budget director, ~~[the planning director]~~ the commissioner of the department of environment and planning, the county attorney and such other administrative heads as the county executive may designate, and the following members of the county Legislature; the chair~~[man]~~, the chair~~[man]~~ of the ~~[capital improvements committee]~~ finance and management committee, and the majority and minority leaders. The county executive shall be solely responsible for the capital program and budget as submitted to the county Legislature and no members of the latter body shall be obligated to support any project by reason of membership on the capital projects committee. The county executive shall be the chair~~[man]~~ and the budget director shall be the vice chair~~[man]~~ of this committee.

## Section 3: AMENDMENT TO THE ERIE COUNTY CHARTER

Section 2605 of Article 26 of the Erie County Charter is hereby amended to read as follows:

### Section 2605. Fund Balance

- a. In presenting the tentative budget, the county executive shall report on the amount of the balance contained in ~~[all funds in the budget]~~ the General Fund including ~~[unrestricted, restricted or designated]~~ non-spendable, restricted, committed, assigned or unrestricted funds. Such report for each fund shall be current as of ~~[September 1]~~ the county's last audited financial statements.
- b. The county ~~[executive]~~ shall maintain ~~[a]~~ an unassigned balance in ~~[all funds established in the budget]~~ the General Fund fund balance equal to or greater than five percent of the amount contained in the adopted budget of ~~[each fund in the immediately preceding fiscal year]~~ the General Fund of the county's last audited financial statements. For the purposes of this section, the total General Fund calculation shall not include sales and compensating use tax revenues shared with

local governments and school districts. Fund balance may be included as [a] revenue in an approved budget of [a fund] the General Fund provided that there shall remain an [unrestricted] unassigned balance of at least five percent as provided in the first sentence of this paragraph.

- c. [A fund balance in any fund contained in the county budget and included as revenue shall only be reduced to an amount less than that permitted in the second paragraph of this subsection upon a resolution separately presented and approved by the county Legislature at the time of the approval of the annual budget.] If the proposed county budget appropriates unassigned fund balance in the General Fund reducing the unassigned General Fund fund balance below five percent as described in subsection (b), the county executive shall present a separate resolution to the county Legislature parallel with the proposed county budget requesting approval of the appropriation. The county may only appropriate unassigned General Fund fund balance below the five percent level upon a majority vote of the county Legislature. A budget that is approved without a vote of the county Legislature shall not appropriate any fund balance revenue in the General Fund in excess of the amount provided in this subsection. The county executive's tentative budget shall indicate equivalent deletions in the tentative budget that shall be executed if the use of fund balance permitted by this paragraph is not approved by the county Legislature.
- d. Following approval of the annual budget, no additional unassigned General Fund fund balance shall be appropriated as [a] revenue [of the county] during the fiscal year without the affirmative vote of at least two-thirds of the total membership of the county Legislature.

#### Section 4: AMENDMENT TO THE ERIE COUNTY CHARTER

Section 2618 of Article 26 of the Erie County Charter is hereby amended to read as follows:

##### Section 2618 (a). The Citizens' Budget Review Commission.

The [C]citizens' [B]budget [R]review Commission shall be established to assist and advise the [E]erie [C]county Legislature in the oversight of the [C]county's [B]budget and to monitor [C]county finances, ensure the long-term fiscal stability of [E]erie [C]county, prevent the concealment of [C]county deficits, and to help provide the Legislature with enough time and information to respond to budgetary problems.

##### Section 2618 (b). Commission Purview and Reporting.

The [C]citizens' [B]budget [R]review Commission shall study the fiscal operations of the [C]county of [E]erie in their full scope. The Commission shall provide regular reports to the Legislature and shall submit an annual report, which shall include its findings, conclusions, and recommendations for appropriate budgetary action to the [C]county Legislature. The Commission shall file its annual report with the [E]erie [C]county Legislature annually on or before October 15.

Section 2618 (c). Membership; Terms; Vacancies.

The [C]citizens' [B]budget [R]review Commission shall be composed of eleven (11) voting members, who shall be residents of [E]erie [C]county. ~~[Such members shall be appointed by the Erie County Legislature upon recommendation from the following entities:]~~ Except for the Commission member appointed by the county executive, the Legislature shall appoint, or confirm the recommendation for appointment, of the various Commission members as listed below:

- A. One (1) member shall be appointed by the [E]erie [C]county Executive.
- B. One (1) member shall be recommended annually by the [C]chair of the [E]erie [C]county Legislature and confirmed by the Legislature.
- C. One (1) member shall be recommended annually by the [M]majority [L]leader on behalf of the majority members of the [E]erie [C]county Legislature and confirmed by the Legislature.
- D. One (1) member shall be recommended annually by the [M]minority [L]leader on behalf of the minority members of the [E]erie [C]county Legislature and confirmed by the Legislature.
- E. One (1) member shall be appointed who has professional experience as a certified public accountant. ~~[After receiving a list of at least three qualified candidates who have been recommended by the Western New York chapter of the New York State Association of Certified Public Accountants, the Legislature shall then appoint one individual from this list to the Commission.]~~
- F. One (1) member shall be appointed who has professional experience in the banking and finance industry. ~~[After receiving a list of at least three qualified candidates who have been recommended by banking institutions and credit unions located within Erie County, the Legislature shall then appoint one individual from this list to the Commission.]~~
- G. One (1) member shall be appointed who is an attorney-at-law, particularly with experience in local government law and/or finance. ~~[After receiving a list of at least three qualified candidates who have been recommended by the Bar Association of Erie County, the Legislature shall then appoint one individual from this list to the Commission.]~~
- H. One (1) member shall be appointed who has professional experience with organized labor. ~~[After receiving a list of at least three qualified candidates who have been recommended by Buffalo AFL-CIO Central Labor Council, the Legislature shall then appoint one individual from this list to the Commission.]~~
- I. One (1) member shall be appointed from the Erie County business community. ~~[After receiving a list of at least three qualified candidates who have been recommended by the Buffalo Niagara Partnership, the Legislature shall then appoint one individual from this list to the Commission.]~~
- J. Two (2) members shall be appointed by the [E]erie [C]county Legislature based upon recommendations from the public and shall be construed to represent a cross-section of the [C]county's diverse population and have a depth of appropriate experience and expertise.

- K. The [C]comptroller of the [C]county of [E]erie or his or her representative shall be an ex-officio, non-voting member of the Commission. ~~[Only the Comptroller, not a designee, shall be seated on the Commission.]~~
- L. The [D]director of [B]budget and [M]management or his or her representative shall be an ex-officio, non-voting member of the Commission. ~~[Only the Director of Budget and Management, not a designee, shall be seated on the Commission.]~~
- M. The [E]erie [C]county [A]attorney or his or her representative shall be an ex-officio, non-voting member of the Commission. ~~[Only the Erie County Attorney, not a designee, shall be seated on the Commission.]~~

With the exception of ex-officio members of the Commission, no member of the Commission shall hold public office, political office, be an employee of the [C]county, nor be a member of another [C]county [B]board or [C]commission during the term of his/her appointment to the [C]citizens' [B]budget [R]review Commission of [E]erie [C]county.

The term of office for all members of the Commission, with the exception of ex-officio members, shall be one (1) year. Such appointments may be renewed annually for up to five (5) years. Any vacancy resulting from a cause other than the expiration of a term shall be filled only for the unexpired portion of the term.

Members shall serve without compensation. Staff support shall be provided by the staff of the [E]erie [C]county Legislature under the direction of the [C]clerk of the [E]erie [C]county Legislature. Additional technical or professional services support and assistance may be provided without compensation by volunteers and/or firms or organizations with appropriate expertise and knowledge. Only through and after a majority vote of the Commission's voting membership may such volunteers or organizations assist the Commission.

#### Section 2618 (d). Officers.

The Commission shall elect, from its membership (excluding ex-officio members), its own chair[person] for a term of one year. The Commission shall also elect from its membership (excluding ex-officio members), a vice-chair[person], who shall serve as chair[person] in the chair[person]'s absence. Finally, the Commission shall elect from its membership (excluding ex-officio members), a secretary, who shall serve to record the minutes of the Commission's proceedings.

#### Section 2618 (e). Meetings.

The Commission shall hold [monthly] quarterly public meetings to review the [C]county's finances and the [C]county [B]budget. In addition to these [monthly] quarterly public meetings, the [C]citizens' [B]budget [R]review Commission shall meet as needed to carry out its mission as established in this local law, as well as to carry out guidelines and work assignments subsequently requested by the [E]erie [C]county Legislature. All meetings of the Commission shall be subject to the [O]open [M]meetings [L]law. However, nothing herein shall be construed to limit the ability of

the Commission from meeting in executive session. Meetings shall be announced to the public through the media. Minutes of the proceedings and records of the Commission shall be clocked-in to the [E]rie [C]ounty Legislature and are to be made available to the public for inspection during regular business hours.

Section 2618 (f). Powers of the Commission and Information Available to Commission.

The Commission shall have the power to make such studies and investigations into the [C]ounty's budget and finances as it deems to be in the best interest of the county. In connection therewith, the Commission shall have the power to obtain technical information, including monthly budget reports, relating to the [C]ounty's budget and finances from the [C]omptroller of the [C]ounty, the [C]ounty [E]xecutive, and his or her appointed [D]irector of [B]udget and [M]anagement, as well as to request witnesses and the production of books, papers and other evidence, deemed necessary or material to the study or inquiry of the [C]ounty's finances.

In addition to any other information requested by the Commission, the [D]irector of [B]udget and [M]anagement shall submit to the Commission monthly budget monitoring reports. Such reports shall be due on or before the last calendar day of the subsequent calendar month, and shall include a detailed report of budgeted or projected revenues and expenditures with actual and accrued revenues and expenditures, a comprehensive narrative commentary to explain and justify variances in budgeted and actual revenues and expenditures, and a year-end forecast showing projected gains and losses for the year, including the use of fund balance.

Section 2618 (g). Failure to Provide Timely Information.

Should the [C]ounty [E]xecutive, his or her appointed [D]irector of [B]udget and [M]anagement, or anyone fail to provide information including but not limited to the budget reports requested in sub-section (f) above, the [C]hair of the Commission shall notify the [C]lerk of the [E]rie [C]ounty Legislature and the [C]hair of the [E]rie [C]ounty Legislature, in writing, and the [C]hair of the Legislature shall compel that such information be provided to the Commission by exercising the powers available to the Legislature, in particular those powers to subpoena and require the production of evidence as outlined in article 2, section 202, paragraph h of Local Law No. 1-1959, as amended, constituting the Erie County Charter.

Section 5: REFERENDUM

The local law does not change the powers of any elected officer or elective office and no referendum is required.

Section 6: EFFECTIVE DATE

This local law shall take effect immediately.

Section 5: SEVERABILITY

If any clause, sentence, paragraph, subdivision, section or part of this [L]local [L]law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this [L]local [L]law or its application to the person, individual, corporation, firm, partnership, entity, or circumstances directly involved in the controversy in which such judgment or order shall be rendered.

Betty Jean Grant

Thomas J. Mazur

Lynn M. Marinelli

Thomas A. Loughran

Terrence D. McCracken

Timothy R. Hogues