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ERIE COUNTY LEGISLATURE

92 Franklin Street - 4th Floor
Buffalo, New York 14202

October 11, 2013

Hon. Betty Jean Grant
92 Franklin Street, 4th Floor
Buffalo, NY 14202

Dear Chairperson Grant,

I write to you today in my capacity as Chair of the Erie County Citizens' Budget Review Commission, which was created by Local Law No. 3-2006 and amended by Local Law No. 2-2012. Beginning in 2013, the Commission was convened and held the first meetings of record of which we are aware.

Pursuant to Section 2618(e) of the Erie County Charter, the Commission "shall hold quarterly meetings to review the County's finances and budget." We conducted four of those meetings thus far, on March 6, 2013, July 10, 2013, and September 18, 2013, as well as an additional meeting in the third quarter of the year, on October 9, 2013. Minutes of these meetings were clocked in with the Legislature upon their formal approval by the members of the Commission.

The Commission is currently composed of 11 voting members and three ex-officio members, who were appointed pursuant to Section 2618(c), as follows:

1. Scott Bylewski, Chair
2. Willie Price, Vice Chair
3. Jennifer Diagostino, Secretary
4. Gregory Olma
5. Laythanette Shine
6. Edward Kumrow
7. Joseph Winter
8. Michael Otto
9. Thomas Earl Webb, Jr.
10. Michael McFarlane
11. Robert Mueller
12. Jeremy Toth, Erie County Attorney's Office (ex-officio)
13. Timothy Callan, Erie County Office of Budget & Management (ex-officio)
14. Gregory Gach, Erie County Comptroller's Office (ex-officio)

Our charge as a Commission is to "assist and advise the Erie County Legislature in the oversight of the county's budget" (Section 2618(a)). The intent of this letter is to serve as the Commission's 2013 annual report, in accordance with the charge in Section 2618(b), which states that the Commission "shall submit an annual report, which shall include its findings, conclusions, and recommendations for appropriate budgetary action to the County Legislature."

The following is that report, which we are submitting to your Honorable Body before the October 15th deadline defined by the Charter.

Our recommendations are as follows:

1. **Change the deadline for the County Executive's proposed budget** – In the 2013 budget, 27.78% of Erie County budget revenues came from sales tax, in comparison to 16.85% in property taxes. Because of this reliance on sales tax, which is highly volatile, where more than one quarter of all budgeted revenues comes from sales tax, a balanced County budget demands an accurate estimate of sales tax rates. The County receives sales tax revenues for the third quarter from New York State each year on the second Thursday of October; however, the County Executive is required by Local Law 6-2005 to submit his/her proposed budget to the Legislature by October 15th. This does not allow adequate time for the administration to prepare and submit a budget based on the latest data. Instead of working from three (of four) real sales tax revenue points to estimate the subsequent year's projections, the administration is forced to use reconciled numbers from just the first two quarters. Additional points of real data would allow the budget to have more realistic predictions given the highly volatile sales tax. The deadlines are not realistic. We strongly recommend that the Legislature reevaluate the date of submission for the County Executive's annual proposed budget to allow adequate time to review and analyze the third quarter sales tax real revenue numbers. We also recommend the Legislature move back the deadline for the County Budget Director's major submission of revenue and expenditure estimates to the Comptroller. The Commission discussed eliminating that requirement entirely, but no recommendation was reached.

2. **Settle contracts with County employees** – Having unsettled contracts with County workers makes it difficult to budget for the upcoming year. The following County unions currently have expired contracts or are currently under contract negotiations:
   - **ECC Faculty Federation** – Expired August 31, 2009 – Continued bargaining (numbers in bargaining unit not available at time of report)
   - **ECC Administrator's Association** – Expired August 31, 2011 – Continued bargaining (numbers in bargaining unit not available at time of report)
   - **Librarians Association of the Buffalo and Erie County Public Library** – Expired December 31, 2006 – Continued bargaining (numbers in bargaining unit not available at time of report)
   - **CSEA County Unit** – Expired December 31, 2006 – Currently at Impasse – Awaiting mediation – 2,780 members (approximate)

   In addition, uncertainty around any retroactive payments that may be included in these to-be-negotiated contracts can be detrimental to the predictability of future budgets and is an increased risk the longer the contract is outstanding. Under the Commission's charge to "ensure long-term fiscal stability of Erie County" and "prevent concealment of County deficits" under section 2618(a) of the County Charter, we encourage the Legislature to work with the administration to negotiate and settle all outstanding or expired County contracts with all due haste.

3. **Sheriff's overtime** – Overtime in the Sheriff's Office, particularly the Jail Management Division, is routinely much higher than budgeted for. We also recommend that the

Legislature reevaluate the Sheriff's Office and Correctional Facility merger results and look at whether the two entities should again be separate and distinct.

4. **Require written fiscal impact statements for budget variances** – We recommend that any budget lines found within the proposed executive budget that deviates from the previous adopted budget (a minimum change of $100,000 or 1%, whichever is greater, is recommended) be accompanied by a statement explaining the variance. Similarly, any legislative amendment to the proposed executive budget that has a variance should also be accompanied by a statement explaining that variance. We believe that through understanding the reasons why department budgets and other expenditures deviate from the annual projected budget, we can better plan for realistic future costs. For example, did the County cut an item on paper to give the appearance of a balanced budget, when in practice that is not the case?

5. **On-time Budget Monitoring Reports** – Per Local Law No. 2-2012, Section 2618(f), Budget Monitoring Reports (BMRs) should be submitted "before the last calendar day of the subsequent calendar month." Of the last 12 reports, five (5) were late, five (5) were not available, and only two (2) were submitted on time (September 2012 and June 2013). These BMRs are necessary for our County's elected representatives and this Commission to understand where actual revenues and expenditures match with the projected annual budget. That work cannot take place without accurate, complete, and timely reporting. We recommend that the Legislature hold the Budget Office accountable for producing BMRs on time or develop an alternative reporting period or method.

6. **Investigate sources of sales tax revenue** – As mentioned above in our first recommendation, Erie County's budget is heavily skewed by sales tax revenues. The County receives these funds in a lump sum from New York State, with little information about how or from whom that sales tax was collected. Our heavy reliance on sales tax is unfortunate because it makes our budget revenues very difficult to predict from one year to the next. We recommend that the Legislature request a study be commissioned with more detail as to where the sales tax is collected from so that we are better able to understand our revenues to predict their patterns and make decisions about promoting sales in the region. For example, understanding how much of the sales tax at the Galleria Mall or other retail establishments comes from Canadian customers would be helpful to how the County and Visit Buffalo Niagara can market the region to more strategically increase sales tax revenues.

7. **Revisit property tax rates** – We believe the Erie County Legislature must be cognizant of the increasing gap between sales (2013 budgeted: $426.03 million) and property tax revenues (2013 actual: $215.1 million). We are further concerned that the top 10 commercial property owners in the County are currently in the process of disputing their most recent tax assessments. While these challenges are ongoing, the disputants are not obligated to pay. Given the high assessed value of those properties, if all or some of these challenges stand, the Legislature may need to increase tax or reduce expenses or a combination thereof. We recommend that the Legislature should be proactive by taking the issue of property taxes under advisement early, with public discourse, and including all relevant information. We also believe that the County Real Property Tax Office should

continue to work with local assessors to ensure accurate valuation of taxable property value.

8. Other Commission concerns

a. The County's ability in the Department of Social Services to provide for state-mandated programs relies on adequate staffing that we are required to provide (*see Martin v. Weiner*, Docket No. O6-cv-0094E), whether or not the Legislature cuts the budget on paper. We need to be realistic about the costs that we must budget for in the upcoming year.
b. Industrial Development Agencies (IDAs) and other Local Development Corporations (LDCs) continue to provide inducements to private companies in the form of sales tax waivers, Payment In Lieu of Taxes (PILOTs), and other programs that result in much lower revenues than would have been collected without those subsidies. These decisions are made with little transparency and accountability at the County level and County government is not directly involved in the granting of these inducements, but is directly impacted by them, often without regard for the quality of the projects. We recommend that the Legislature look at additional reporting information to be provided to them regarding the scheduling of PILOT payments.
c. The Commission was disappointed to see such poor attendance at the 2013 Mid-Year Budget Hearings by members of the Erie County Legislature. We believe that, at minimum, Legislators should attend hearings that are relevant to the committees on which they serve. In addition, we recommend that more detailed minutes be taken at the budget hearings, though a full transcript is not necessary. Currently, the minutes consist of a list of speakers and lack any detail about the major topics that were discussed. Providing more information about what takes place at budget hearings would be beneficial for Legislators, members of this Commission, and the public at large.

The above noted recommendations were unanimously approved by the Commission in a vote of 9-0, with no abstentions, on Wednesday, October 9, 2013.

Sincerely,

Scott A. Bylewski, Chair
Erie County Citizens' Budget Review Commission

CC:
Erie County Legislature
Hon. Mark Poloncarz
Hon. Stefan Mychajliw
Erie County Fiscal Stability Authority