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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

May 24, 2016

Honorable Members
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Re: Amendment to Comm. 7E-17 – 2015 Budget Balancing Amendments

Dear Honorable Legislators:

On May 12, 2016, your Honorable Body amended and approved Comm. 7E-17 – the 2015 Budget Balancing Amendments. The amendments were introduced by the majority caucus and approved, and a minority caucus amendment was not approved.

It is the intention of the Division of Budget and Management to see that the 2015 Budget Balancing Amendments are properly and accurately adopted and certified. The passage of proper and correct amendments is necessary to close-out the County's 2015 fiscal year, as well as to provide sources of funds for appropriations and initiatives in the 2016 fiscal year, such as highway and road work, addressing the opioid crisis, addressing the lead paint problem, providing needed funds for the annual in-rem sale, funding for the Risk Retention Fund, and many other priorities. For some reason, without explanation, many proposed 2015 rollovers and 2016 appropriation requests were deleted by the majority caucus amendment, which while unfortunate, is certainly within the prerogative of your Honorable Body. We hope you will reconsider these omissions from the amendment, as many of these rollovers for use in 2016 are needed to ensure a balanced budget or to fund important initiatives.

The Division of Budget and Management analyzed the majority caucus amendment and the budget balancing amendments resolution as approved by the Legislature. During our review, we discovered notable errors, omissions and mathematical errors in the amendment. The county executive and I notified the majority caucus of this error on a telephone conference call on May 16, 2016 and offered to work with your Honorable Body to fix the resolution.

We provided a written document to the majority caucus explaining the errors and omissions (a summary of the errors is attached). At the request of Chairman John Mills, I offered to personally explain the situation and to help correct the flawed resolution. Chairman Mills indicated that legislators or staff would contact me. As of today, I have not heard from any county legislator or their staff about this matter.

On May 23, 2016, the county executive's legislative liaison received a two-page email from Arthur Musarra of the majority caucus staff; that email was forwarded to me. A copy of that email is also attached.

Mr. Musarra's email makes various statements and comments, some of which require perusal. He acknowledges that the amendment to the Budget Balancing Amendments has mathematical errors and that the amendment has appropriations – expense – that exceeds revenue. This is important because we cannot adopt a budget balancing amendment that does not balance.

Several times Mr. Musarra stated that if the Legislature made errors, including mathematical errors, the intention of the Legislature "to pass properly balanced budget amendments is clear." I must respectfully disagree. First, the resolutions very clearly are not properly balanced. Expense exceeds revenue by \$949,597.96. Second, he may have understood the majority caucus' intent, but I cannot infer intent. I can only interpret what was actually written. Mr. Musarra concedes the point but tries to make it seem as if this is a non-issue by calling this, and other flaws in the resolution as "minor clerical errors." Again, I must disagree. The errors and omissions in the amendment, as noted in the attached document (see "error 3" and "error 4") are important.

Mr. Musarra also wrote that "it is standard practice of the budget office to correct clerical and mathematical errors to properly reflect legislative intentions" and referring to a resolve clause in the resolution allowing my office to "fix" any such errors. While it is true that a resolve clause contains language directing me to "make any required 2015 and 2016 budgetary adjustments to implement the budgetary amendments and re-appropriations contained in this resolution", the errors and flaws of the amendment far exceed such ministerial or technical authority. The resolve clause – which is always put into the Budget Balancing Amendments – exists for technical errors or small typos (such as a cost center number being erroneous or transposed, or some minor mathematical error) – not fundamentally unbalanced amendments.

I must wholeheartedly disagree with Mr. Musarra's statement that "the Budget Office is refusing to work with the Legislature and adhere to legislative intent." That is just not true. I have offered my assistance to the Legislature to address these problems and no one has contacted me or my staff. One week passed from the time we alerted the Legislature majority caucus to the problems and issues with their amendment until Mr. Musarra sent his email to the county executive's legislative liaison. I have offered to work with the Legislature and my offer still stands.

Mr. Musarra also referenced one out of two spending requests previously approved by your Honorable Body in 2015 and 2016 – a \$20,000 rollover for the County Clerk Registrar (he did not mention \$360,000 for a New York State Office of Court Administration project at the Family Court Building). He posed the question of "why are they included in the budget balancing amendments today if we already approved their rollover?" As my office has said repeatedly, and in writing, for these requests such as the \$5 million for highway work/heavy vehicle purchases (which was also separately approved by your Honorable Body in 2016), their approval within the Budget Balancing Amendments resolution is also required to identify and specify the source of funds from 2015 into the 2016 Budget. I will not belabor this point further.

In conclusion, the 2015 Budget Balancing Amendments (as amended) are unbalanced. They must be fixed through a motion to reconsider at your next meeting of the Legislature, otherwise my office will not be able to effectuate any of the actions contemplated therein. The Division of Budget and Management remains ready and willing to assist your Honorable Body with writing or reviewing an amendment for the reconsideration and approval of correct and proper 2015 Budget Balancing Amendments. I do hope that you will take me up on my offer to work with the Legislature concerning this matter. I can be reached at 858-8914 or Robert.Keating@erie.gov.

Sincerely yours,



Robert W. Keating
Director of Budget and Management

Attachment

cc: Erie County Executive Mark C. Poloncarz
Erie County Comptroller Stefan I. Mychajliw

Comments on the Amendment to the 2015 Budget Balancing Amendments

The amendment to Comm. 7E-17 presented to, and adopted by the Legislature on May 12, 2016 was fatally flawed due to several material and significant errors.

Faults/Problems

Error 1

When the Legislature amendment deleted Comm.7E-17's fifth resolve clause, the amendment deleted the actual RESOLVE clause itself and just left an amended chart. That clause should have said "Resolved, that authorization is hereby provided to make the following 2015 budget adjustments in order to establish funding for the re-appropriations outlined in the preceding resolve:". The absence of that clause meant that the new chart showing the designations and re-appropriations was fatally flawed, as it had no written resolve clause authorizing said designations and re-appropriations.

Furthermore, after adopting the amendment with that error, when the Clerk of the Legislature certified the resolution, it appears that the clerk, as her name is on the certified copy, inserted the required resolve clause on her own. That is illegal and renders the entire resolution null and void.

Error 2

In the new fifth resolve clause, the amendment purports to sum the total designations expense as \$1,485,595. In reality, it is \$4,124,561.

In the same resolve clause, the amendment purports to sum the total designations revenue as \$3,174,561.00 when in reality it is \$3,174,963.04 (a \$402.04 error).

However, these errors are minor compared to the fundamental problem that the expense exceeds revenue by \$949,597.96. The amendment is fatally flawed. Expense cannot exceed revenue. The total designations expense and revenue must net to 0 (and the amendment purports to net to 0), when it is actually negative \$949,597.96.

Error 3

The amendment cut \$1,000,000 of designation and re-appropriation for the Risk Retention Fund in the fifth resolve clause (and only designated \$576,559 – not \$1,576,559). However, in the fourth resolve clause, the amendment completely eliminated the designation and re-appropriation for the Risk Retention Fund (now totaling \$576,559).

In short, by deleting the Risk Retention Fund language in total from the fourth resolve clause (instead of just cutting it by \$1,000,000), the amendment did not actually designate or re-appropriate the \$576,559 for the Risk Retention Fund.

Error 4

In the fourth resolve clause, the amendment deleted the purpose/name of the designation and re-appropriation of \$331,407 in the Countywide-Comptroller cost center for the purpose of RAN interest expense. The amendment just listed a dollar value, with no description. As such, it did not properly designate or re-appropriate the \$331,407 for this expense in 2016.

Error 5

The amendment eliminated a \$20,000 designation and re-appropriation for the County Clerk-Registrar Division. This is problematic because on March 17, 2016, the Legislature approved a County Clerk request (Comm. 4E-15 - which was sent by the County Clerk after consultation with the Division of Budget and Management) to designate, roll-over and re-appropriate that money from 2015 into 2016. See

http://www2.erie.gov/legislature/sites/www2.erie.gov.legislature/files/uploads/Session_Folders/2016/Session_7/Meeting%206%20from%202016%20minutes.pdf. By deleting this designation and re-appropriation from Comm. 7E-17, the Legislature has nullified the funding source for the County Clerk item and as such, has nullified the rollover.

Error 6

The amendment deleted a \$360,000 designation and re-appropriation request in Buildings and Grounds for a New York State Office of Court Administration (“OCA”)-directed project to improve security and access in the lobby of the Family Court building. This is problematic for two reasons. First, OCA has directed that this work is to be done, and the work is fully reimbursable. Second, the Legislature approved of the project on July 30, 2015 (see Comm. 14E-16 - http://www2.erie.gov/legislature/sites/www2.erie.gov.legislature/files/uploads/Friday_Uploads/2015/Session_15/Meeting%2015%20from%202015%20minutes.pdf). By deleting this designation and re-appropriation from Comm. 7E-17, the Legislature has nullified the funding source for the OCA item and as such, has nullified the rollover. This creates an immediate problem for the project, as it does not properly have a source of funds.

Designations and Appropriation Requests Deleted by the Amendment which the County Executive Wishes to Restore

The designation/roll-over and appropriation requests deleted by the amendment which the county executive seeks to restore are:

- County Clerk
 - \$20,000 for the Registrar Division for use in 2016
- Buildings and Grounds
 - \$360,000 for the Office of Courts Administration-directed security improvements project in the Family Court building
- Public Works- Fleet Services
 - \$61,000 for the automated vehicle locator project (new AVLs to be installed in all County vehicles, especially Highways vehicles, to track their exact location at any time). This is problematic because Verizon Wireless, the vendor for this project, is ready to go with the project – just waiting for this final source of funds and the resolution to be authorized.
 - The resolution for this contract and project is tabled in Finance and Management – Comm. 7E-16.
 - \$80,000 for the Gasboy security camera project (security cameras to be set up at Gasboy fueling sites with digital recording and storage to help deter fraud and abuse and to catch anyone engaging in abuse). This is problematic, because the vendor, U&S Services, is ready to go with the project – just waiting for this final source of funds and the resolution to be authorized.

- The resolution for this contract and project is tabled in Finance and Management – Comm. 7E-16.
- Law
 - The full requested \$1,576,559 for the Risk Retention Fund
 - \$106,502 for the new Assistant County Attorney to handle ECC legal affairs
 - ECC deleted the EVP for Legal Affairs from its 2016-2017 budget and the County revoked ECC's authority to handle its own legal affairs. While the Legislature attempted to allocate \$1,000,000 for an ECC retirement incentive, no one at ECC can legally represent the college other than the Erie County Attorney's Office to prepare the necessary legal paperwork to effectuate the early retirement incentive. There are not enough attorneys in house to handle the current ECC work load, and assigning the work to outside counsel makes no sense as it would cost potentially hundreds of thousands of dollars more than to do the work in-house.
- Lead Program Positions
 - The Legislature did designate \$750,000 of the 2015 rollover in the fatally flawed budget balancing amendments and the county executive appreciates this action. However, the need to address the lead issue is now, and that requires creating the positions and new lead team in the Department of Health. The County Executive's office will be transmitting a new communication to the Legislature establishing the 8 positions and accounts for the new lead abatement/remediation program. The County Executive agrees to delete 8 positions in DSS this summer so there will be no net impact on the county's job count. While not formally included in the revised budget balancing amendment document, inclusion of this approval is sought as part of this joint effort between the Legislature and County Executive's Office to fix the fatally flawed budget amendments by passing such new lead resolution on the same date as new budget balancing amendments are passed at your next session.

The Budget Balancing Amendment passed by the Legislature on May 12, 2016 is null and void. Even if it was not determined to be null and void by a court of law it is fatally flawed due to the mathematical errors contained therein. Doing nothing is no option because the county's outside auditor would immediately recognize the errors and we could not close the 2015 fiscal year until a properly written budget balancing amendment has been passed by the Legislature and approved by the County Executive's Office. Action must be taken at the Legislature's next session to address this matter through a motion to reconsider the fatally flawed amended resolution passed at the Legislature's last session.

From: Musarra, Arthur
Sent: Monday, May 23, 2016 4:29 PM
To: Rivera, Jonathan
Cc: Whipple, Steven
Subject: FW: Budget Balancing amendments

Jon,

Thank you for your document regarding the 2015 Budget Balancing amendments the Legislature passed last session day. In response to your concerns please accept the following:

Error 1

Error 1 is not an error at all, merely a misunderstanding of the facts. The version your office was forwarded for review at 9 a.m. on May 12th, which then was forwarded to the budget office, was a draft. In the five hours before session we heard zero concerns raised about the 3 ½ page document from your office or the budget office.

We noticed the clause you are referring to was missing in the draft. It was included by the Legislature in the amendment that was distributed prior to the vote that passed the Legislature on Thursday, May 12. The Legislature properly approved the certified version you received.

Errors 2 – 4

None of these errors are fatal errors as the intent of the Legislature to pass properly balanced budget amendments is clear. Further, it is standard practice of the budget office to correct clerical and mathematical errors to properly reflect legislative intentions. In fact, the authorization to have the Director of Budget and Management make any further budget adjustments as required when working with the Comptroller or independent auditors to close out the 2015 budget accounts for any mathematical discrepancies.

With particular regards to Error Number 2, as you point out in your fact sheet, which leaves no room for doubt regarding the total designations expense, the appropriate number should have been \$4,124,561. In the revenue adjustments your office provided only one source of revenue, Social Services fund 120, was available to balance the expenses. This fund has three accounts which make a pro-rata share of all available revenue. This would mean the appropriate revenue numbers should be \$812,659.90 from FA-TANF FFFS (Account# 411490), \$863,493.91 from FA-Serve/Recipient (Account# 411610), and \$2,448,407.19, please feel free to check that math. This would leave a total revenue designation equaling the expense designation, which you calculated on your own. As you point out you cannot have expenses exceeding revenues and still have a balanced budget. These minor clerical errors are exactly why the ending RESOLVED clauses are included.

Just because you are choosing to ignore these clauses doesn't make the legislation null and void. It just means the Budget Office is refusing to work with the Legislature and adhere to legislative intent.

That being said, Error 2 is one item we will discuss further and possibly adjust on our own considering the Budget Offices refusal to make the necessary adjustments as directed by the legislation.

Error 5 and 6

The exclusion of these items are not done in error. We have indicated in our amendments that the items left out of the amendments were not being prejudiced against. We have questions as to why certain

expenses were included in the budget balancing amendments. For example, the \$20,000 designation and re-appropriation for the County Clerk-Registrar Division. Why are they included in the budget balancing amendments today if we already approved their rollover? The Director of Budget has previously stated these items can be approved outside the budget balancing process to expedite the expenditure, which is why we approved them previously. Approving the same thing twice seem redundant and unnecessary. We have already authorized the spending.

In regards to the additional spending requests you cite, those were intentionally left out of the amendments in a unanimous vote of the Legislature. If you wish for them to be reconsidered, as our amendment stated, please send them over on a case-by-case basis for further discussion and consideration.

Please let us know if you have any additional thoughts and we look forward to working with you and budget staff in the future.

Arthur

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