

**ERIE COUNTY LEGISLATURE  
MEETING NO. 26  
DECEMBER 13, 2007**

The Legislature was called to order by Chairperson Marinelli.

All members present except Legislator Iannello.

An invocation was held led by Legislator Weinstein.

The Pledge of Allegiance was led by Legislator Kozub.

Item 1 – No tabled items.

Item 2 – No items for reconsideration from previous meetings.

Item 3 – MS. WHYTE moved to approve the minutes for meeting 23, 24 and 25 of 2007.  
MR. KOZUB seconded.

CARRIED UNANIMOUSLY.

Item 4 - No Public Hearings.

**MISCELLANEOUS RESOLUTIONS**

Item 5 – MS. MARINELLI presented a resolution Honoring the Public Service of Erie County Legislator Cynthia E. Locklear.

Item 6 – MS. MARINELLI presented a resolution Honoring the Public Service of Erie County Legislator Dr. Barry A. Weinstein.

Item 7 – MS. KONST presented a resolution Honoring Erie County Legislator Barry A. Weinstein, MD on his Contributions to Niagara Erie Regional Coalition.

Item 8 – MS. MARINELLI presented a resolution Honoring the Public Service of Retiring Erie County Clerk Employees Steve Meegan, Darla Schwanz and Bonnie Tolbert.

Item 9 – MR. KENNEDY presented a resolution Commending William Murphy For His 31 Years of Public Service and Congratulating Him On His Upcoming Retirement.

Item 10 - MR. KENNEDY presented a resolution Commemorating D'Youville College as They Celebrate Their Centennial Throughout 2008.

Item 11 - MR. KENNEDY presented a resolution Honoring Edward Tokasz For His 70 Years of Dedicated Service as a Volunteer Firefighter for the Doyle Fire District.

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Item 12 – MR. KOZUB presented a resolution Recognizing D. Mark Cavalcoli for His 24 Years of Service On The Hamburg Town Board.

Item 13 – MS. MARINELLI presented a resolution Honoring the Public Service of Erie County Executive Joel A. Giambra.

Item 14 – MS. MARINELLI presented a resolution Honoring the Public Services of Erie County Central Police Services, Emergency Services Commissioner Kevin J. Comerford.

Item 15 – MS. MARINELLI presented a resolution Honoring the Public Service of Erie County Parks Commissioner Angelo J. "Andy" Sedita.

Item 16 – MS. MARINELLI presented a resolution Honoring the Public Service of Warren K. Galloway Sr., Community Relations Assistant, Office of the Erie County Executive.

Item 17 – MILLS & LOCKLEAR presented a resolution Honoring William Krebs for Being Awarded the Educator of Excellence Award.

Item 18 – MR. REYNOLDS presented a resolution Honoring the Public Service of Town of Hamburg Councilman and Deputy Supervisor D. Mark Cavalcoli.

Item 19 – MS. MARINELLI presented a resolution Honoring the Public Service of Retiring Erie County Clerk's Office Employees Janice Pfohl and Joy Peterson.

MS. WHYTE presented the above fifteen items and moved for immediate consideration. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

MS. WHYTE moved to amend the above fifteen items for Et Al Sponsorship. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

MS. WHYTE moved to approve the above fifteen items as amended. MR. KENNEDY seconded.

**LOCAL LAWS**

Item 20 - CHAIRPERSON MARINELLI directed that Local Law No. 4 (Print #1) 2006 remain on the table and in the GOVERNMENT AFFAIRS COMMITTEE.

GRANTED.

Item 21 - CHAIRPERSON MARINELLI directed that Local Law No. 5 (Print #1) 2006 remain on the table and in the GOVERNMENT AFFAIRS COMMITTEE.

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GRANTED.

Item 22 - CHAIRPERSON MARINELLI directed that Local Law No. 6 (Print #1) 2006 remain on the table and in the GOVERNMENT AFFAIRS COMMITTEE.

GRANTED.

Item 23 - CHAIRPERSON MARINELLI directed that Local Law No. 8 (Print #1) 2006 remain on the table and in the ECONOMIC DEVELOPMENT COMMITTEE.

GRANTED.

Item 24 - CHAIRPERSON MARINELLI directed that Local Law No. 1 (Print #1) 2007 remain on the table and in the PERSONNEL COMMITTEE.

GRANTED.

Item 25 - CHAIRPERSON MARINELLI directed that Local Law No. 3 (Print #2) 2007 remain on the table and in the GOVERNMENT AFFAIRS COMMITTEE.

GRANTED.

Item 26 - CHAIRPERSON MARINELLI directed that Local Law No. 8 (Print #1) 2007 remain on the table and in the GOVERNMENT AFFAIRS COMMITTEE.

GRANTED.

Item 27 - CHAIRPERSON MARINELLI directed that Local Law No. 9 (Print #1) 2007 remain on the table and in the ECONOMIC DEVELOPMENT COMMITTEE.

GRANTED.

**COMMITTEE REPORTS**

None.

**LEGISLATOR RESOLUTIONS**

Item 28 – MR. RANZENHOFER presented the following resolution and moved for immediate consideration and approval. MS. WHYTE seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 297

RE: Support for the Clarence Flying Club's  
State Grant Request (INTRO 26-1)

**A RESOLUTION SUBMITTED BY**

**LEGISLATOR RANZENHOFER**

WHEREAS, The County of Erie has received a request from the Clarence Flying Club concerning their request for State grant funds under the New York State Transportation Bond Act, for the construction of a perimeter road and the installation of fencing, security lighting and cameras, and

WHEREAS, The New York State Department of Transportation, under Section 14-1 of the State Transportation Law, requires that project applications made by privately-owned airports be accompanied by a resolution from the governing body of the county in which the airport is located.

NOW, THEREFORE, BE IT

RESOLVED, that the County of Erie endorses the projects identified above at the Clarence Flying Club for the purpose of making the projects eligible for State funding; and be it further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary documents in connection with this project; and be it further

RESOLVED, that this resolution shall take effect immediately.

Item 29 – CHAIRPERSON MARINELLI directed that the following item be referred to the ECONOMIC DEVELOPMENT COMMITTEE.

GRANTED.

INTRO 26-2 from LEGISLATOR WEINSTEIN Re: Support for a "One-Stop-Shop" Approach to Economic Development.

Item 30 - CHAIRPERSON MARINELLI directed that the following item be referred to the ECONOMIC DEVELOPMENT COMMITTEE.

GRANTED.

INTRO 26-3 from LEGISLATOR WEINSTEIN Re: Support for a Regional Economic Development Strategy

Item 31 - CHAIRPERSON MARINELLI directed that the following item be referred to the ENERGY & ENVIRONMENT COMMITTEE.

GRANTED.

INTRO 26-4 from LEGISLATOR KOZUB Re: Re-Branding the Division of Sewerage Management to the Division of Water Quality Management.

Item 32 – MS. WHYTE presented the following resolution and moved for immediate consideration and approval. MR. KENNEDY seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 298

RE: Lease Agreement Between the County of Erie and the City of Buffalo Board of Education for School 84 (INTRO 26-5)

**A RESOLUTION SUBMITTED BY  
LEGISLATOR KENNEDY**

WHEREAS, in accordance with Local Law 3-2007, the County is authorized to lease New School 84, together with ancillary parking facilities, on the Grider Street Campus of the Erie County Medical Center, to the City of Buffalo Board of Education, without competitive bidding or public advertisement, on such terms and conditions as may be approved by the Erie County Legislature, for an original term of at least fifteen (15) years and for a total term, including renewals and extensions, of up to forty-nine (49) years; and

WHEREAS, the County and City of Buffalo Board of Education desire to enter into a Lease Agreement which provides for the lease of New School 84, which consists of one school building of approximately 106,769 square feet and the non-exclusive use of parking spaces adjacent to the property, for the rent of \$1.00 per year.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Executive is authorized to enter into a Lease Agreement with the City of Buffalo Board of Education for the lease of New School 84, which consists of one school building of approximately 106,769 square feet and the non-exclusive use of parking spaces adjacent to the property; and be it further

RESOLVED, that the Lease Agreement shall be for an initial term of fifteen (15) years, provided however that the County and the City of Buffalo Board of Education may agree in writing to renew the Lease Agreement for additional terms for a total term, including renewals and extensions, of up to forty-nine (49) years; and be it further

RESOLVED, that the City of Buffalo Board of Education shall pay the County rent in the sum of \$1.00 per year for the lease of New School 84; and be it further

RESOLVED, that the County Attorney shall prepare all necessary legal documents for the Lease Agreement that is acceptable to him to carry out the purposes hereof; and be it further

RESOLVED, that certified copies of this resolution shall be forwarded to the Erie County Executive, County Attorney, Division of Budget, Management and Finance, and the Office of the Comptroller.

MS. WHYTE moved to amend the item by adding Legislators Grant, Kozub, Miller-Williams and Whyte as co-sponsors and attaching the following Lease Agreement. MR. KENNEDY seconded.

CARRIED UNANIMOUSLY.

LEASE AGREEMENT

This Lease Agreement ("Agreement") is made effective as of June 1, 2007 (the "Effective Date") by and between the County of Erie, a municipal corporation of the State of New York, having its principal office at 95 Franklin Street, Buffalo, New York 14202 ("Lessor"), and the City of Buffalo Board of Education, a public school district of the State of New York, having its principal office at 65 Niagara Square, Buffalo, New York 14202 ("Tenant").

WHEREAS, the Lessor owns title to a building known as New School 84 ("Property"), which is located on the Erie County Medical Center Campus on Grider Street in the City of Buffalo; and

WHEREAS, Tenant has occupied the Property since it was built in the early 1970s and has used, and continues to use, this building as a public school, providing educational services primarily to children with disabilities residing in the City of Buffalo, but also accepting students from throughout Erie County; and

WHEREAS, Lessor and Tenant desire to formalize an agreement whereby Lessor leases the Property to Tenant for a term of years in accordance with the terms and conditions of this Agreement.

WHEREAS, Tenant is undertaking a plan to make substantial improvements to the Property with financial assistance to be provided by the New York State Education Department.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. RECITALS.

The recital paragraphs set forth above are incorporated into this Agreement as material terms.

2. THE PREMISES.

Lessor hereby leases to Tenant, for the term and upon the terms and conditions set forth in this Agreement, the Property, which consists of one school building of approximately 106,769 square feet, and all easements for ingress and egress and all other appurtenances, rights, privileges and easements now or hereafter belonging thereto or which may be necessary or required for the use and operation of the Property. In addition, Tenant shall be entitled to the non-exclusive use of

parking spaces adjacent to the Property for its employees, guests and invitees for their reasonable use in connection with Tenant's use and occupancy of the Property and for no other purposes.

### 3. USE AND OCCUPANCY

- a. Tenant shall use and occupy the Property primarily in conjunction without educational activities for its students. The Tenant may determine the hours and times of operation of its business.
- b. Tenant acknowledges that the within Lease Agreement is subject to the terms and conditions of a ground lease, entered into between the Lessor and the Erie County Medical Center Corporation ("ECMCC"), dated as of January 28, 2004, as amended (the "Ground Lease"). Should there be a conflict in the provisions of this Lease Agreement and the Ground Lease, the provisions of the Ground Lease shall control in the first instance.
- c. Tenant represents and warrants that it will abide by the Lease Requirements, as may be modified or amended, as provided for herein, from time to time.

### 4. RENT

- a. The rent to be paid by Tenant shall be \$1.00 per year payable on the Effective Date and annually thereafter.
- b. Tenant shall be solely responsible to pay all telephone, internet/intranet and cable connection and service charges associated with the Property. Tenant shall be solely responsible for applying for such services. Tenant shall negotiate and contract separately, at its sole expense, with ECMCC or a third party for the provision of minor repairs, maintenance, cleaning, security, landscaping, yard work, and any other services.
- c. Any additional rent to be paid by Tenant under this Agreement shall be immediately due and payable upon Tenant's receipt of a bill for additional rent, and any overdue payment shall accrue interest at the rate of 1.5% per month until such amounts, plus interest are paid in full.
- d. Lessor shall cause to be provided at Lessor's expense reasonable water, heat, air conditioning and electricity for the Property in connection with Tenant's occupancy of the Property

### 5. IMPROVEMENTS

Tenant shall be responsible for making all improvements, additions, repairs, demolition replacements or other changes to the Property, inclusive of fixtures and improvements at the Property, now or hereafter existing, at no expense to Lessor. Tenant shall cause any contractors engaged by the Tenant in the course of such work to provide to the Landlord evidence of insurance

in connection with such engagement in form and content similar to the insurance required to be provided by Tenant to Landlord by this Lease.

#### 6. INSURANCE

At all times Tenant shall maintain general liability, automobile, workers' compensation and disability insurance and insurance on its personal property and contents (any or all of which may be satisfied by evidence of an appropriate program of risk management and self-insurance) evidencing the minimum insurance coverage with applicable limits as referenced under the Lessor's standard insurance requirements, attached to this Agreement as Exhibit A (column "D": "Property Leased to Others or Use of Facilities or Grounds".) Tenant agrees that Lessor shall be an additional insured on all policies of insurance, and upon demand, Tenant shall show proof that such insurance (or program of risk management and self-insurance) is adequate and in effect. Tenant shall immediately notify Lessor in the event any insurance (or program of risk management and self-insurance) required hereunder is terminated or materially changed. Tenant agrees that all such insurance policies shall include policy endorsements waiving rights of subrogation.

#### 7. INDEMNIFICATION/LIABILITY

Tenant shall defend, indemnify and hold harmless Lessor and its officers, employees and agents from and against any and all suits, costs, expenses, liabilities, losses, damages, injunctions, fines, penalties, claims and demands of every kind of nature, including but not limited to reasonable counsel fees and court costs, arising out of or related to Tenant's occupancy of the Property and/or this Agreement. Lessor shall not be liable for any damage, nor shall this Agreement be affected by reason of failure of water supply, gas supply, electricity, heat, air conditioning or utilities, provided that such failure is not due to Lessor's negligence.

#### 8. TERM, TERMINATION AND RENEWAL

- a. This Agreement shall be in effect for fifteen (15) years (the "Initial Lease Term") beginning as of the Effective Date and ending on March 31, 2022.
- b. This Agreement may be terminated by Lessor immediately in the event Tenant is in default under this Agreement. Any of the following events shall constitute a default of this Agreement by Tenant:
  - i. If Tenant fails or refuses to pay the annual rent within ten (10) days after its due date;
  - ii. If Tenant fails or refuses to immediately pay all or any portion of additional rent upon receipt of a bill therefor;
  - iii. If Tenant vacates or abandons the Property;
  - iv. If Tenant fails or refuses to perform, observe or comply with any term or condition of this Agreement (other than the payment of Rent or additional

rent), and fails to cure such defect to Lessor's reasonable satisfaction within ten (10) days of written notice from Lessor; or

- v. Any other breach of this Agreement.

Upon or at any time after the happening of anyone or more of the aforesaid events, Tenant shall be in default under this Agreement, and Lessor may, at its option, exercise any or all of its rights and remedies as provided in this Agreement or as otherwise provided by law or equity. In addition to the above, in the event this Agreement terminates due to default by Tenant, all Rent and additional rent and other charges due or which may become due during the entire Term of this Agreement shall be accelerated and shall be immediately due and payable in one lump sum to Lessor without offset or counterclaim of any kind, and Lessor may lawfully re-enter and re-possess the Demised Premises.

- c. This Agreement shall automatically terminate in the event Tenant has become insolvent, files for bankruptcy or is adjudicated bankrupt, or is in receivership, reorganization, dissolution, or liquidation or makes an assignment for the benefit of creditors.
- d. Prior to the expiration of the Initial Lease Term, as defined above, the Lessor and Tenant may agree in writing to renew this Lease Agreement for an additional term or terms (hereinafter "Additional Lease Terms"). Such Additional Lease Terms shall not exceed a cumulative total of thirty four (34) years. The total length of this Lease Agreement, including the sum of the Initial Lease Term and Additional Lease Terms, shall not exceed forty nine (49) years.
- e. In the event Tenant shall remain in the Property after the expiration or termination of this Agreement without having renewed this Lease Agreement or executing a new lease with Lessor, such holding over shall not constitute a renewal or extension of this Agreement. Lessor may, at its sole option, elect to exercise all remedies available at law to remove Tenant, or may treat Tenant as a month-to-month tenant subject to the terms and conditions of this Agreement.
- f. At termination or expiration of this Agreement, Tenant shall return the Property to Lessor in broom clean condition and in the same condition as it was at the commencement of this Agreement, approved improvements and reasonable wear and tear excepted.
- g. The Tenant may elect to terminate this lease in the event that the Erie County Medical Center ceases its operations at its current campus location on Grider Street in Buffalo, New York.

9. **PERSONAL PROPERTY AND FIXTURES**

Tenant assumes all risk of damage to or destruction, loss or pilferage of its fixtures, equipment, personal property, contents, fixtures or any improvements Tenant has made to the

Property or any loss suffered by Tenant's educational activities resulting from any cause whatsoever and Tenant agrees to hold harmless Lessor from all claims resulting therefrom. Any and all alterations, additions, improvements, fixtures and trade fixtures which may be installed at the Property either by Lessor or Tenant and which may be attached to the Property as of the last day of the Initial Lease Term of this Agreement or, if applicable, the Additional Lease Term of this Agreement, shall remain upon the Property and shall be surrendered to Lessor with the Property without disturbance, molestation or injury.

#### 10. ESTOPPEL CERTIFICATE

Within ten (10) days of Lessor's request, Tenant shall execute and deliver to Lessor a written agreement certifying that this Agreement is in full force and effect and has not been assigned, modified, supplemented or amended and that all covenants, conditions and agreements on the part of Lessor have been performed and that there are no defenses or offsets to the enforcement of this Agreement by Lessor.

#### 11. SUBORDINATION OF MORTGAGES

This Agreement shall be subject and subordinate to the lien of any mortgage or mortgages or deed or deed of trust, which at any time may be placed upon the Lessor's interest in the Demised Premises. At Lessor's request, Tenant agrees to promptly execute an instrument confirming such subordination.

#### 12. MECHANIC'S LIEN

Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law, or otherwise, to attach to or be placed upon the Property. In the event such a lien or encumbrance is placed upon the Property and remains for ten (10) or more days, this shall constitute a material breach under this Agreement and Lessor may terminate this Agreement in accordance with its terms. Lessor, in its sole discretion, may discharge any such lien and any amount expended by Lessor in doing so, including attorneys' fees, shall be paid by Tenant as additional rent hereunder.

#### 13. EMINENT DOMAIN

If the Property or any part thereof is taken by a public or quasi -public authority under any power of eminent domain or condemnation, this Agreement, at the sole option of Lessor, shall immediately terminate. In no event shall Tenant claim or have any right to claim any interest in or to any award of damages for such taking except to the extent of improvements made by Tenant after the Effective Date.

#### 14. REDEMPTION

Tenant expressly waives, forfeits, surrenders and releases the Lessor from the operation of any provision of law now in force or which may be hereafter enacted, giving Tenant the right under any conditions after default, to the redemption and repossession of the Property or any part thereof. Tenant expressly waives the provisions of New York Real Property Law §227.

**15. REPAIRS**

Tenant shall be responsible for Tenant's personal property, contents, equipment, furnishings and trade fixtures, and for routine maintenance and care of all interior walls, floors, ceilings, plumbing and lighting fixtures at the Property and shall make all repairs and replacements thereto at its own cost and expense. Tenant shall obtain Lessor's written approval of all such repairs prior to commencement of the work. All Tenant repairs shall be made in a good and workmanlike manner using quality materials. In the event Tenant fails to make any such repairs in a timely manner, Lessor, in its sole discretion and upon notice to the Tenant, may make such repairs and any amount expended by Lessor in doing so, including attorneys' fees, shall be paid by Tenant as additional rent hereunder.

Tenant shall cause its equipment to be in complete conformity and compliance with all state and federal regulations, as they may apply, relating to the ownership, use and operation of its equipment including all appurtenances thereto. The failure or refusal of Tenant to comply with any applicable regulations or to comply with reasonable requests of Lessor relative to compliance with any such regulations may be deemed by Lessor a breach of this Agreement.

**16. ALTERATIONS**

Tenant shall not make any material alterations or renovations to the Property without Lessor's prior written consent, which shall not be unreasonably withheld. Any alterations or renovations to the Property by Tenant shall be at Tenant's sole cost and expense.

**17. COMPLIANCE WITH LAWS**

- a. Lessor and Tenant each represents and warrants to the other party that it will comply with all applicable laws, rules or regulations. Failure by either party to comply with any Applicable Law shall be considered a material breach of this Agreement.
- b. In the event any Applicable Laws or any interpretation thereof, at any time during the term of this Agreement, is modified, implemented, threatened to be implemented, or determined to prohibit, restrict or in any way materially change the material provisions under this Agreement, then the parties shall negotiate in good faith to amend this Agreement to conform to the changed requirements.
- c. If a circumstance set forth in subsection "b." arises, and this Agreement is not amended as set forth in this Section 17, then this Agreement may be terminated by Lessor in accordance with Section 8, unless otherwise agreed upon in writing by the parties.

**18. DAMAGE AND DESTRUCTION**

- a. If the Property is damaged by fire or any other cause to such extent that the cost of restoration, as estimated by Lessor, will equal or exceed a substantial portion of the replacement value of the Property as determined by Lessor, or if a substantial

portion of the Property is totally damaged or rendered wholly untenantable by fire or any other cause, as determined by Lessor, and the Property has not been repaired within one hundred twenty (120) days from the date of the damage, either party may give the other party notice of its election to terminate this Agreement. In the event either party makes such election, this Agreement shall terminate as of the date such party gives written notice to the other, provided tenant has vacated the property and any rent prepaid for any period beyond said date shall be repaid to Tenant.

- b. Unless this Agreement is terminated as provided in Section 18(a), Tenant shall repair and restore the Property with reasonable promptness and all due diligence, substantially to the condition existing immediately prior to the casualty and in compliance with all applicable laws, ordinances and building and fire codes.
- c. Tenant hereby waives any all rights to insurance and/or condemnation awards relating to the Property or Tenant's occupancy thereof which are attributable to improvements paid for by Lessor, and agrees that Lessor shall retain all such amounts.

19. ENVIRONMENTAL

- a. Tenant covenants that it shall not install, use, generate, store or dispose of, in or about the Property, any Hazardous Materials (hereafter defined) and that Tenant shall comply with all Environmental Laws (hereafter defined) then in effect. Tenant hereby agrees to protect, defend, indemnify and hold Lessor harmless from and against any claims, liabilities, penalties, fines, costs, damages and expenses, including but not limited to, costs and expenses which Lessor is obligated to incur, including but not limited to the costs of defending civil enforcement actions, the costs of participating in regulatory proceedings, or any other civil or administrative action, including without limitation, attorneys' and expert fees and disbursements, arising out of Tenant's installation, use, generation, storage or disposal of any Hazardous Materials or Tenant's violation of Environmental Laws.
- b. "Hazardous Materials" means (i) any hazardous substance or toxic substance as those terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA ") or the Hazardous Materials Transportation Act ("HMT A") as amended now or hereafter, (ii) hazardous wastes as defined by the Resource Conservation and Recovery Act ("RCRA") as amended now or hereafter, or any pollutant or contaminant or, hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement relating to or imposing liability to or standards of conduct. concerning any hazardous, toxic or dangerous waste substance or material ("Other Environmental Laws"), all as amended now or hereafter; (iii) crude oil or any fraction thereof, (iv) any radioactive material or asbestos, and (v) polychlorinated biphenyls or substances containing the same. "Environmental Laws" means CERCLA, HMTA, RCRA and Other Environmental Laws.

- c. The provisions of this section shall survive any expiration or other termination of this Agreement.

20. ACCESS TO THE PROPERTY

Upon reasonable notice to Tenant, Lessor shall have the right to enter upon the Property at any time during the Initial Lease Term or Additional Lease Terms of this Agreement to inspect the Property, make repairs, show the Property to prospective tenants and to otherwise enforce this Agreement.

21. SALE OF PROPERTY

A sale, transfer, conveyance or assignment of any or all of the Property or Lessor's rights in the Ground Lease will operate to release Lessor from any and all liability hereunder from and after the effective date of such transaction and Tenant agrees to look to Lessor's successor-in-interest.

22. SIGNAGE

All signage at the Property shall be subject to Lessor's prior reasonable approval.

23. NOTICES

All notices, demands and requests which may or are required to be given by either party to the other shall be in writing and either delivered personally, sent by certified mail, return receipt requested, postage prepaid or by overnight express delivery, addressed:

- (a) if to Lessor, at:

County Executive  
 Erie County  
 95 Franklin Street  
 Buffalo, New York 14202

With a copy to:  
 Erie County Attorney  
 69 Delaware Avenue, Suite 300  
 Buffalo, New York 14202

- (b) if to Tenant, at:

Buffalo Board of Education  
 65 Niagara Square  
 Buffalo, New York 14202  
 Attn: Superintendent

or at such other address as the party to receive such notice may from time to time indicate in writing to the other party under this paragraph. Notice shall be deemed to have been given as of the date it is delivered personally or, sent by certified mail, return receipt requested, postage prepaid or by overnight express delivery.

**24. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument.

**25. MISCELLANEOUS**

- a. **WAIVER; BREACH.** No waiver of any breach or default hereunder shall be considered valid unless contained in writing signed by the party to be charged, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
- b. **SEVERABILITY.** If any provisions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other severable provision of this Agreement~ and this Agreement shall be carried out as if such invalid or unenforceable provision were not contained herein.
- c. **BINDING EFFECT.** This Agreement shall not be construed as an offer to lease, even if so contemplated, unless and until it has been duly executed by an appropriate officer of Lessor. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties.
- d. **ASSIGNMENT.** Lessor may assign all or any portion of its interest in this Agreement at any time to any person or party upon notice to Tenant. Tenant shall not assign all or any portion of its interests in this Agreement to any person or party without the prior written consent, of Lessor, which may be withheld or delayed for any or no reason, in Lessor's sole discretion.
- e. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New York and shall be construed and enforced in accordance with the internal laws of New York State without regard to its principles of conflicts of law.
- f. **EXHIBIT AND SCHEDULES.** All exhibits annexed hereto shall be deemed to be a part of this Agreement as if fully set forth therein.
- g. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties and cannot be changed or terminated orally, but only by an instrument executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date rust written above.

LESSOR:  
COUNTY OF ERIE

TENANT:  
CITY OF BUFFALO  
BOARD OF EDUCATION

By: \_\_\_\_\_  
Joel A. Giambra  
County Executive

\_\_\_\_\_

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
Lawrence K. Rubin  
Erie County Attorney

\_\_\_\_\_

MS. WHYTE moved to approve the item as amended. MR. KENNEDY seconded.

CHAIRPERSON MARINELLI directed that a roll-call vote be taken.

AYES: MILLS, WEINSTEIN, GRANT, IANNELLO, KENNEDY, KONST, KOZUB, LOCKLEAR, MARINELLI, MAZUR, MILLER-WILLIAMS, REYNOLDS and WHYTE. NOES: RANZENHOFER and LOUGHRAN. (AYES: 13; NOES: 12)

CARRIED.

Item 33 - MS. WHYTE presented the following resolution and moved for immediate consideration. MR. KENNEDY seconded.

CARRIED UNANIMOUSLY.

RE: Requesting the County Executive to  
Appropriate Funds for Road Improvements in  
the City of Buffalo (INTRO 26-6)

**A RESOLUTION SUBMITTED BY LEGISLATOR KENNEDY**

WHEREAS, the County Executive will propose a capital projects budget for the 2008 fiscal year; and

WHEREAS, road and infrastructure improvements throughout Erie County are funded through the capital projects budget; and

WHEREAS, the City of Buffalo is the economic center of our county with over 1600 lane miles;

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**ERIE COUNTY LEGISLATURE**

WHEREAS, a disparity exists in funding for county road projects outside the city limits as compared to within;

WHEREAS, the City of Buffalo continues to invest in infrastructure improvements within the downtown corridor and throughout the City in general in an attempt to revive the urban core as a regional destination.

NOW, THEREFORE, BE IT

RESOLVED, that this honorable body, the Erie County Legislature goes on record requesting the Erie County Executive include an appropriation of at least \$500,000 in the Proposed 2008 Capital Projects Budget to be used for right of way and road improvements in the City of Buffalo, and be it further

RESOLVED, that these funds, upon inclusion in the 2008 Proposed Capital Projects Budget and approval by the Erie County Legislature, shall be utilized solely for right of way and road improvements in the City of Buffalo, with the location and specific projects to be determined by the City of Buffalo, and be it further

RESOLVED, that certified copies of this resolution be forwarded to Erie County Executive Joel Giambra, Erie County Executive-Elect Chris Collins, City of Buffalo Mayor Byron Brown, the Erie County Department of Public Works Commissioner and the City of Buffalo Public Works Commissioner.

MS. WHYTE moved to amend the item by adding Legislators Grant, Kozub, Locklear, Marinelli and Miller-Williams as Co-Sponsors. MR. KENNEDY seconded.

CARRIED UNANIMOUSLY.

MR. LOUGHRAN moved to send INTRO 26-6 to the ECONOMIC DEVELOPMENT COMMITTEE. MR. MAZUR seconded.

CHAIRPERSON MARINELLI directed that a roll-call vote be taken.

AYES: MILLS, RANZENHOFER, WEINSTEIN, KONST, LOCKLEAR, LOUGHRAN and MAZUR. NOES: GRANT, KENNEDY, KOZUB, MARINELLI, MILLER-WILLIAMS, REYNOLDS and WHYTE. (AYES: 7; NOES: 7)

FAILED.

MR. KENNEDY moved to approve the item. MS. WHYTE seconded.

CHAIRPERSON MARINELLI directed that the item be referred to the ECONOMIC DEVELOPMENT COMMITTEE.

GRANTED.

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Item 34 - CHAIRPERSON MARINELLI directed that the following item be referred to the HEALTH COMMITTEE.

GRANTED.

INTRO 26-7 from REYNOLDS Re: On the Issue of the Proposed Merger of ECMC and Kaleida Healthcare Systems, and the Resulting Privatization of ECMC

**COMMUNICATIONS DISCHARGED FROM COMMITTEE**

Item 35 – MS. WHYTE moved to discharge the ECONOMIC DEVELOPMENT COMMITTEE from further consideration of COMM. 22E-3. MR. KENNEDY seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 299

RE: Funding for Training in the Agribusiness Sector Through the Buffalo & Erie County Workforce Development Consortium (COMM. 22E-3)

WHEREAS, the County of Erie desires to assist in the training and upgrading of workers in the agribusiness sector; and

WHEREAS, the Buffalo and Erie County Workforce Investment Board (WIB) will be allocating \$20,000 in Federal Workforce Investment Act (WIA) funds for training in the agribusiness sector; and

WHEREAS, the WIB has requested the assistance of Erie County in this effort to train and upgrade workers; and

WHEREAS, the WIB has requested that the County match Federal WIA funds with County dollars, specifically dedicated to training in the agribusiness sector, in an amount not to exceed \$20,000, and

WHEREAS, the Erie County Department of Environment and Planning has identified sufficient resources in previously funded Workforce Development Consortium contracts which have been closed out and will be reprogrammed to supply matching funds for this training initiative.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Executive is authorized to enter into a contract with the Buffalo and Erie County Workforce Development Consortium in an amount not to exceed \$20,000 for the purpose of providing job skill training and upgrading of workers in the agribusiness sector; and be it further

RESOLVED, that the source of these funds shall be \$20,000 available in General Ledger Account No. 516000 Cost Center 1331010; and be it further

RESOLVED, that the Budget Office, Comptroller's Office, and Department of Environment and Planning are authorized to transfer \$20,000 from unspent funds from the Definity Health Corporation Training Project currently under contract to the Workforce Development Consortium and to create a new account of \$20,000 for training in the agribusiness sector; and be it further

RESOLVED, that certified copies of this resolution be sent to the County Executive; the Director of Budget, Management and Finance; Andrew M. Eszak, Commissioner of Environment and Planning; the County Comptroller; and the County Attorney.

MS. WHYTE moved to approve the item. MR. KENNEDY seconded. MR. RANZENHOFER voted in the negative.

CARRIED. (13-1)

Item 36 - MS. WHYTE moved to discharge the ECONOMIC DEVELOPMENT COMMITTEE from further consideration of COMM. 22E-4. MR. KENNEDY seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 300

RE: Funding for Training in the Biotechnology Sector Through the Buffalo & Erie County Workforce Development Consortium

WHEREAS, the County of Erie desires to assist in the training and upgrading of workers in the biotechnology sector; and

WHEREAS, the Buffalo and Erie County Workforce Investment Board (WIB) will be allocating \$35,000 in Federal Workforce Investment Act (WIA) funds for training in the biotechnology sector; and

WHEREAS, the WIB has requested the assistance of Erie County in this effort to train and upgrade workers; and

WHEREAS, the WIB has requested that the County match Federal WIA funds with County dollars, specifically dedicated to training in the biotechnology sector, in an amount not to exceed \$35,000, and

WHEREAS, the Erie County Department of Environment and Planning has identified sufficient resources in previously funded Workforce Development Consortium contracts which have been closed out and will be reprogrammed to supply matching funds for this training initiative.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Executive is authorized to enter into a contract with the Buffalo and Erie County Workforce Development Consortium in an amount not to exceed \$35,000

for the purpose of providing job skill training and upgrading of workers in the biotechnology sector; and be it further

RESOLVED, that the source of these funds shall be \$35,000 available in General Ledger Account No. 516000 Cost Center 1331010; and be it further

RESOLVED, that the Budget Office, Comptroller's Office, and Department of Environment and Planning are authorized to transfer \$32,406 from unspent funds from the Geico Training Project and \$2,594 from the Definity Health Corporation currently under contract to the Workforce Development Consortium and to create a new account of \$35,000 for training in the biotechnology sector; and be it further

RESOLVED, that certified copies of this resolution be sent to the County Executive; the Director of Budget, Management and Finance; Andrew M. Eszak, Commissioner of Environment and Planning; the County Comptroller; and the County Attorney.

MS. WHYTE moved to approve the item. MS. MILLER-WILLIAMS seconded. MR. RANZENHOFER voted in the negative.

CARRIED. (13-1)

Item 37 - MS. WHYTE moved to discharge the ECONOMIC DEVELOPMENT COMMITTEE from further consideration of COMM. 22E-5. MR. KENNEDY seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 301

RE: Funding for Training in the Manufacturing Sector Through the Buffalo & Erie County Workforce Development Consortium

WHEREAS, the County of Erie desires to assist in the training and upgrading of workers in the manufacturing sector; and

WHEREAS, the Buffalo and Erie County Workforce Investment Board (WIB) will be allocating \$45,000 in Federal Workforce Investment Act (WIA) funds for training in the manufacturing sector; and

WHEREAS, the WIB has requested the assistance of Erie County in this effort to train and upgrade workers; and

WHEREAS, the WIB has requested that the County match Federal WIA funds with County dollars, specifically dedicated to training in the manufacturing sector, in an amount not to exceed \$45,000, and

WHEREAS, the Erie County Department of Environment and Planning has identified sufficient resources in previously funded Workforce Development Consortium contracts which have been closed out and will be reprogrammed to supply matching funds for this training initiative.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Executive is authorized to enter into a contract with the Buffalo and Erie County Workforce Development Consortium in an amount not to exceed \$45,000 for the purpose of providing job skill training and upgrading of workers in the manufacturing sector; and be it further

RESOLVED, that the source of these funds shall be \$45,000 available in General Ledger Account No. 516000 Cost Center 1331010; and be it further

RESOLVED, that the Budget Office, Comptroller's Office, and Department of Environment and Planning are authorized to transfer \$45,000 from unspent funds from the Geico Training Project currently under contract to the Workforce Development Consortium and to create a new account of \$45,000 for training in the manufacturing sector; and be it further

RESOLVED, that certified copies of this resolution be sent to the County Executive; the Director of Budget, Management and Finance; Andrew M. Eszak, Commissioner of Environment and Planning; the County Comptroller; and the County Attorney.

MS. WHYTE moved to approve the item. MS. MILLER-WILLIAMS seconded. MR. RANZENHOFER voted in the negative.

CARRIED. (13-1)

Item 38 – MS. WHYTE moved to discharge the ENERGY & ENVIRONMENT COMMITTEE from further consideration of COMM. 22E-6. MR. LOUGHRAN seconded.

RESOLUTION NO. 302

RE: DEP - Sewerage Management - Shared  
Municipal Services Incentive Grant Application

WHEREAS, the Erie County Department of Environment and Planning – Division of Sewerage Management is considering pursuing several regional initiatives with other sewer service providers and municipalities; and

WHEREAS, implementation of these regional initiatives may allow for more efficient and effective sewer services for the residents of Erie County; and

WHEREAS, costs would be incurred to complete the evaluation and/or implementation of these regional initiatives; and

WHEREAS, the New York State Department of State has recognized the benefit of such regional efforts; and

WHEREAS the New York State Department of State has established the Shared Municipal Services Incentive (SMSI) Grant Program to fund up to 90% of the costs associated with similar regional initiatives; and

WHEREAS, the County must apply for grant funding and then execute Standard Cost Reimbursement Contract(s) between with the Department of State to secure SMSI grant funding.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Department of Environment and Planning – Division of Sewerage Management be authorized to apply as a lead applicant or co-applicant for SMSI grant funding; and be it further

RESOLVED, that upon notification of any award where the Erie County Department of Environment and Planning – Division of Sewerage Management is the lead applicant, the County Executive is authorized to execute Standard Cost Reimbursement Contract(s) between Erie County and the Department of State subject to approval as to content by the Commissioner of the Department of Environment and Planning, and approval as to form by the County Attorney; and be it further

RESOLVED, that one (1) certified copy of this resolution be sent to the County Executive, and two (2) certified copies of this resolution to Thomas J. Whetham, P.E., Deputy Commissioner, Department of Environment and Planning; and one (1) certified copy each to the County Comptroller; Gregory J. Dudek, Assistant County Attorney; and the County Director of Budget and Management.

MS. WHYTE moved to approve the item. MR. LOUGHRAN seconded.

CARRIED UNANIMOUSLY.

Item 39 - MS. WHYTE moved to discharge the ENERGY & ENVIRONMENT COMMITTEE from further consideration of COMM. 22E-8. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 303

RE: ECSD No. 3 - Transfer/Lease of the Town of Hamburg - Remaining Town Districts Sanitary Sewer Assets

WHEREAS, the County of Erie and the Town of Hamburg have investigated the most efficient and effective provisions for the future sanitary sewer services for the residents of the nine Town sewer districts referred to as the Remaining Town Districts (Sewer District 4 – Cloverbank; Sewer District 5 – Locksley Park; Sewer District 10 – Amsdell Heights; Sewer District 12 – Bethford Heights; Sewer District 13 – South Lyth; Sewer District 18 – Benz; Sewer District 19 – Sheldon Acres; Sewer District 21 – Hamburg Master; Sewer District 25 – Northeast); and

WHEREAS, the results of these investigations show that the most effective and efficient means of providing future sanitary sewer service to the ratepayers of the Remaining Town Districts entails a merger of the Remaining Town Districts' sanitary sewer systems into Erie County/Erie County Sewer District No. 3; and

WHEREAS, an intermunicipal agreement is necessary to allow for the merger of the Remaining Town Districts' sewer systems with Erie County Sewer District No. 3; and

WHEREAS, the Erie County Legislature desires to see Erie County Sewer District No. 3 have the ability to address the collection systems tributary to the County owned pumping stations, interceptor sewers, and treatment facility; and

WHEREAS, the Erie County Legislature desires to see the Remaining Town Districts' residents realize the most efficient and effective sanitary sewer service.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive be authorized and directed to immediately enter into negotiations with the Town of Hamburg for an intermunicipal agreement to lease the sanitary sewer assets of the Remaining Town Districts' to Erie County/Erie County Sewer District No. 3; and be it further

RESOLVED, that the County Executive be authorized to execute an intermunicipal agreement to lease the Remaining Town Districts' sanitary sewer assets to Erie County/Erie County Sewer District No. 3, subject to approval as to form by the County Attorney's office; and be it further

RESOLVED, that the Clerk of the Legislature be directed to send two (2) certified copies of the Resolution to Thomas J. Whetham, P.E., Deputy Commissioner, Department of Environment and Planning, and one (1) certified copy each to the County Executive; the County Comptroller; Gregory J. Dudek, Assistant County Attorney; and the County Director of Budget and Management.

MS. WHYTE moved to approve the item. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

Item 40 – MS. WHYTE moved to discharge the ENERGY & ENVIRONMENT COMMITTEE from further consideration of COMM. 22E-12. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 304

RE: ECSD No. 3 - Proposed Transfer of the  
 Wanakah Sewer District Sanitary Sewer Assets

WHEREAS, the County of Erie and the Wanakah Sewer Commission have investigated the most efficient and effective provisions for the future sanitary sewer services for the residents of the Wanakah Sewer Commission; and

WHEREAS, the results of these investigations show that the most effective and efficient means of providing future sanitary sewer service to the ratepayers of the Wanakah Sewer District

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entails a merger of the Wanakah Sewer District's sewer system into Erie County/Erie County Sewer District No. 3; and

WHEREAS, to effectuate the merger, the sanitary sewer assets of the Wanakah Sewer District must be transferred to the County; and

WHEREAS, the Erie County Legislature desires to see Erie County Sewer District No. 3 realize economy of scale savings and to have the ability to address the collection systems tributary to the County owned pumping stations, interceptor sewers, and treatment facility; and

WHEREAS, the Erie County Legislature desires to see Wanakah Sewer District ratepayers realize the most efficient and effective sanitary sewer service.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive be authorized and directed to immediately enter into negotiations with the Wanakah Sewer District for an agreement to transfer said sanitary sewer assets to Erie County/Erie County Sewer District No. 3; and be it further

RESOLVED, that the County Executive be authorized to execute an agreement to transfer the Wanakah Sewer District's sanitary sewer assets to Erie County/Erie County Sewer District No. 3 subject to approval as to form by the County Attorney's office; and be it further

RESOLVED, that the Clerk of the Legislature be directed to send two (2) certified copies of the Resolution to Thomas J. Whetham, P.E., Deputy Commissioner, Department of Environment and Planning, and one (1) certified copy each to the County Executive; the County Comptroller; Gregory J. Dudek, Assistant County Attorney; and the County Director of Budget and Management.

MS. WHYTE moved to approve the item. MR. KOZUB seconded.

CARRIED UNANIMOUSLY.

Item 41 – MS. WHYTE moved to discharge the HEALTH COMMITTEE from further consideration of INTRO 5-4. MS. LOCKLEAR seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 305

RE: End the Practice of "File and Use" To  
 Increase Rates for Health Insurance Providers

**A RESOLUTION SUBMITTED BY**  
**LEGISLATOR KONST**

WHEREAS, increases in health insurance costs have outpaced increases in incomes in New York State resulting in health coverage becoming a heavier burden for Western New Yorkers, and

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WHEREAS, this year marked another year of double-digit rate increases - adding over 20% to many health care plans, and

WHEREAS, The State of the Region Project, which monitors Buffalo Niagara's regional performance in 11 key topic areas through more than 100 outcomes-based indicators, reports that in April of 2006, the least expensive HMO option in the WNY area rose 71% percent from August of 2002 for an individual's plan, and

WHEREAS, this same report shows that in August of 2002 the least costly family plan in our area was \$9,885 annually today for families, the least expensive HMO option costs \$15,415 annually, which is a 56% rise in costs, and

WHEREAS, data provided by insurers to the State Department of Insurance (SID) has revealed that HMO profits have seen a 93% percent increase between 2001 and 2005, and

WHEREAS, Health plans in 2005 have reported \$5 billion more in reserves than is statutorily required and approximately \$700 million of the \$5 billion was used to pay dividends to their shareholders, and

WHEREAS, HMOs claim that the rising premiums are a reflection of increased costs for prescription drugs and specialty providers, but the percent of funds used by insurers on these expenses has actually dropped, and

WHEREAS, Currently HMOs and non-profit insurance providers only need to submit to the State Department of Insurance a "file and use" to increase rates, and

WHEREAS, prior to 1996 the State Department of Insurance held public hearings on all requests for rate increase from HMOs and nonprofit insurers, and

WHEREAS, New York Assembly 02942 and Senate 02740 bills would re-establish for individuals and small businesses the same cost containment measures which NYS relies to control the growth of the premiums it pays for Family Health Plus, Child Health Plus and Medicaid Managed Care Programs, and

WHEREAS, this legislation would restore the public hearing requirements for rate increases which are in excess of 5%, and

WHEREAS, it is important for all health insurance plans to be governed by the same rules and A02942 and S02740 would eliminate many of discrepancies in the regulatory treatment of commercial and non-profit health plans and HMO, and

WHEREAS, A.02942 and S02740 are simply a first step towards addressing the underlying problems associated with the rising costs of healthcare in New York State, i.e. Prescription Drug costs, hospital costs related to contractual agreements and new technology developments.

NOW, THEREFORE, BE IT

RESOLVED, that the members of the Erie County Legislature support amendments to the Insurance law that require commercial insurers to seek the prior approval of the SID for rate increases that exceed 5 percent and that the SID is also required to hold public hearings on all rate increase requests by health insurance providers, and be it further

RESOLVED, that this honorable body urges the State Legislature and Governor Spitzer to adopt A02942 and S02740, during the current Legislative sessions, and be it further

RESOLVED, that certified copies of this resolution be distributed to all members of the W.N.Y. Delegation and Governor Spitzer.

MS. WHYTE moved to amend the item by including Et Al Sponsorship and with the following amendment. MS. KONST seconded.

CARRIED UNANIMOUSLY.

- DELETE the resolution in its entirety and REPLACE with the following:

WHEREAS, it is important for all health insurance plans to be governed by the same rules and A.07485 and S.02740 would eliminate many of discrepancies in the regulatory treatment of commercial and non-profit health plans and HMO, and

WHEREAS, A.07485 and S.02740 are simply a first step towards addressing the underlying problems associated with the rising costs of healthcare in New York State, i.e. Prescription Drug costs, hospital costs related to contractual agreements and new technology developments

NOW, THEREFORE, BE IT

RESOLVED, that the members of the Erie County Legislature support amendments to the Insurance Law that require commercial insurers to seek the prior approval of the SID for rate increases that exceed 5 percent and that the SID is also required to hold public hearings on all rate increase requests by health insurance providers, and be it further

RESOLVED, that this honorable body urges the State Legislature and Governor Spitzer to adopt A.07495 and S.02740, during the current Legislative sessions, and be it further

RESOLVED, that certified copies of this resolution be distributed to all members of the W.N.Y. Delegation and Governor Spitzer.

- ATTACH the following legislation:

STATE OF NEW YORK

I N S E N A T E

February 12, 2007

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Introduced by Sens. DeFRANCISCO, FARLEY, FUSCHILLO, LARKIN, LITTLE, MAZIARZ, MORAHAN, PADAVAN, RATH, SALAND, SKELOS, TRUNZO, VOLKER,

WRIGHT -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to review of health plan rate increases applications and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 2 of subsection (e) of section 3231 of the insurance law, as added by chapter 501 of the laws of 1992, is amended to read as follows:

2  
3  
4 (2) (A) Beginning October first, nineteen hundred ninety-four, as an alternate procedure to the requirements of paragraph one of this subsection, an insurer desiring to increase or decrease premiums for any policy form subject to this section may instead submit a rate filing or application to the superintendent and such application or filing shall be deemed approved, provided that (i) the anticipated minimum loss ratio for a policy form shall not be less than {seventy-five} EIGHTY-FIVE percent of the premium FOR A SMALL GROUP HEALTH INSURANCE POLICY FORM AND NINETY PERCENT FOR AN INDIVIDUAL HEALTH INSURANCE POLICY FORM,

13 INCLUDING MEDICARE SUPPLEMENTAL INSURANCE, (II) ANY RATE INCREASE BEING SOUGHT FOR A POLICY FORM IN A FILING OR AN APPLICATION, TOGETHER WITH ANY OTHER RATE INCREASES IMPOSED ON SUCH POLICY FORM, WOULD NOT CAUSE THE AGGREGATE RATE INCREASE FOR SUCH POLICY FORM TO EXCEED FIVE PERCENT DURING ANY TWELVE MONTH PERIOD, and {(ii)} (III) the insurer submits, as part of such filing, a certification by a member of the American Academy of Actuaries or other individual acceptable to the superintendent that the insurer is in compliance with the provisions of this paragraph, based upon that person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
 { } is old law to be omitted.

LBD02977-01-7

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1 insurer in establishing premium rates for policy forms subject to this  
 2 section.

3 (B) Each calendar year, an insurer shall return, in the form of aggre-  
 4 gate benefits for each policy form filed pursuant to the alternate  
 5 procedure set forth in this paragraph at least {seventy-five}  
 6 EIGHTY-FIVE percent of the aggregate premiums collected for the policy  
 7 form during that calendar year FOR A SMALL GROUP HEALTH INSURANCE POLICY  
 8 FORM AND NINETY PERCENT FOR AN INDIVIDUAL POLICY FORM. Insurers shall  
 9 annually report, no later than May first of each year, the loss ratio  
 10 calculated pursuant to this paragraph for each such policy form for the  
 11 previous calendar year. In each case where the loss ratio for a policy  
 12 form fails to comply with the {seventy-five} EIGHTY-FIVE percent OR  
 13 NINETY PERCENT loss ratio requirement, the insurer shall issue a divi-  
 14 dend or credit against future premiums for all policy holders with {that  
 15 policy form} THOSE POLICY FORMS in an amount sufficient to assure that  
 16 the aggregate benefits paid in the previous calendar year plus the  
 17 amount of the dividends and credits shall equal {seventy-five}  
 18 EIGHTY-FIVE percent of the aggregate premiums collected for the policy  
 19 form in the previous calendar year FOR SMALL GROUP HEALTH INSURANCE  
 20 POLICY FORMS, OR NINETY PERCENT FOR INDIVIDUAL HEALTH INSURANCE

POLICY

21 FORMS IN THE PREVIOUS CALENDAR YEAR. The dividend or credit shall be  
 22 issued to each policy which was in effect as of December thirty-first of  
 23 the applicable year and remains in effect as of the date the dividend or  
 24 credit is issued. All dividends and credits must be distributed by  
 25 September thirtieth of the year following the calendar year in which the  
 26 loss ratio requirements were not satisfied. The annual report required  
 27 by this paragraph shall include an insurer's calculation of the divi-  
 28 dends and credits, as well as an explanation of the insurer's plan to  
 29 issue dividends or credits. The instructions and format for calculating  
 30 and reporting loss ratios and issuing dividends or credits shall be  
 31 specified by the superintendent by regulation. Such regulations shall  
 32 include provisions for the distribution of a dividend or credit in the  
 33 event of cancellation or termination by a policy holder.

34 S 2. Subsections (g) and (h) of section 4308 of the insurance law, as  
 35 added by chapter 504 of the laws of 1995, are amended to read as  
 36 follows:

37 (g)(1) Beginning January first, nineteen hundred ninety-six, as an  
 38 alternate procedure to the requirements of subsection (c) of this  
 39 section, a corporation subject to the provisions of this article desir-

40 ing to increase or decrease premiums for any contract subject to this  
 41 section may instead submit a rate filing or application to the super-  
 42 intendent and such application or filing shall be deemed approved,  
 43 provided that (A) the anticipated incurred loss ratio for a contract  
 44 form shall not be less than {eighty-five} NINETY percent for individual  
 45 direct payment contracts or {seventy-five} EIGHTY-FIVE percent for small  
 46 group and small group remittance contracts, nor, except in the case of  
 47 individual direct payment contracts with a loss ratio of greater than  
 48 one hundred five percent during nineteen hundred ninety-four, shall the  
 49 loss ratio for any direct payment, group or group remittance contract be  
 50 more than one hundred five percent of the anticipated earned premium,  
 51 and (B) the corporation submits, as part of such filing, a certification  
 52 by a member of the American Academy of Actuaries or other individual  
 53 acceptable to the superintendent that that corporation is in compliance  
 54 with the provisions of this subsection, based upon that person's exam-  
 55 ination, including a review of the appropriate records and of the actu-  
 56 arial assumptions and methods used by the corporation in establishing

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1 premium rates for contracts subject to this section. For purposes of  
 2 this section, a small group is any group whose contract is subject to  
 3 the requirements of section forty-three hundred seventeen of this arti-  
 4 cle.

5 (2) {Prior to January first, two thousand, no} NO rate {increase or}  
 6 decrease may be deemed approved under this subsection if that {increase  
 7 or} decrease, together with any other rate {increases or} decreases  
 8 imposed on the same contract form, would cause the aggregate rate  
 9 {increase or} decrease for that contract form to exceed ten percent  
 10 during any continuous twelve month period. NO RATE INCREASE MAY BE  
 11 DEEMED APPROVED UNDER THIS SUBSECTION IF THAT INCREASE, TOGETHER  
 WITH

12 ANY OTHER RATE INCREASES IMPOSED ON THE SAME CONTRACT FORM,  
 WOULD CAUSE

13 THE AGGREGATE RATE INCREASE FOR THAT CONTRACT FORM TO EXCEED  
 FIVE

14 PERCENT DURING ANY CONTINUOUS TWELVE MONTH PERIOD. No rate increase  
 may

15 be imposed unless at least thirty days advance written notice of such  
 16 increase has been provided to each contract holder and subscriber.

17 (h)(1) Each calendar year, a corporation subject to the provisions of  
 18 this article shall return, in the form of aggregate benefits incurred  
 19 for each contract form filed pursuant to the alternate procedure set  
 20 forth in subsection (g) of this section, at least {eighty-five} NINETY  
 21 percent for individual direct payment contracts or {seventy-five} EIGHT-  
 22 Y-FIVE percent for small group and small group remittance contracts,  
 23 but, except in the case of individual direct payment contracts with a

24 loss ratio of greater than one hundred five percent in nineteen hundred  
 25 ninety-four, for any direct payment, group or group remittance contract,  
 26 not in excess of one hundred five percent of the aggregate premiums  
 27 earned for the contract form during that calendar year. Corporations  
 28 subject to the provisions of this article shall annually report, no  
 29 later than May first of each year, the loss ratio calculated pursuant to  
 30 this subsection for each such contract form for the previous calendar  
 31 year.

32 (2) In each case where the loss ratio for a contract form fails to  
 33 comply with the {eighty-five} NINETY percent minimum loss ratio require-  
 34 ment for individual direct payment contracts, or the {seventy-five}  
 35 EIGHTY-FIVE percent minimum loss ratio requirement for small group and  
 36 small group remittance contracts, as set forth in paragraph one of this  
 37 subsection, the corporation shall issue a dividend or credit against  
 38 future premiums for all contract holders with that contract form in an  
 39 amount sufficient to assure that the aggregate benefits incurred in the  
 40 previous calendar year plus the amount of the dividends and credits  
 41 shall equal no less than {eighty-five} NINETY percent for individual  
 42 direct payment contracts, or {seventy-five} EIGHTY-FIVE percent for  
 43 small group and small group remittance contracts, of the aggregate  
 44 premiums earned for the contract form in the previous calendar year. The  
 45 dividend or credit shall be issued to each contract that was in effect  
 46 as of December thirty-first of the applicable year and remains in effect  
 47 as of the date the dividend or credit is issued. All dividends and cred-  
 48 its must be distributed by September thirtieth of the year following the  
 49 calendar year in which the loss ratio requirements were not satisfied.  
 50 The annual report required by paragraph one of this subsection shall  
 51 include a corporation's calculation of the dividends and credits, as  
 52 well as an explanation of the corporation's plan to issue dividends or  
 53 credits. The instructions and format for calculating and reporting loss  
 54 ratios and issuing dividends or credits shall be specified by the super-  
 55 intendent by regulation. Such regulations shall include provisions for

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1 the distribution of a dividend or credit in the event of cancellation or  
 2 termination by a contract holder or subscriber.

3 (3) In each case where the loss ratio for a contract form fails to  
 4 comply with the one hundred five percent maximum loss ratio requirement  
 5 of paragraph one of this subsection, the corporation shall institute a  
 6 premium rate increase in an amount sufficient to assure that the aggre-  
 7 gate benefits incurred in the previous calendar year shall equal no more  
 8 than one hundred five percent of the sum of the aggregate premiums  
 9 earned for the contract form in the previous calendar year and the  
 10 aggregate premium rate increase. The rate increase shall be applied to  
 11 each contract that was in effect as of December thirty-first of the  
 12 applicable year and remains in effect as of the date the rate increase

13 is imposed. All rate increases must be imposed by September thirtieth of  
 14 the year following the calendar year in which the loss ratio require-  
 15 ments were not satisfied. The annual report required by paragraph one of  
 16 this subsection shall include a corporation`s calculation of the premium  
 17 rate increase, as well as an explanation of the corporation`s plan to  
 18 implement the rate increase. The instructions and format for calculating  
 19 and reporting loss ratios and implementing rate increases shall be spec-  
 20 ified by the superintendent by regulation.

21 S 3. Subsection (i) of section 4308 of the insurance law, as added by  
 22 chapter 504 of the laws of 1995, is amended to read as follows:

23 (i) The alternate procedure described in subsections (g) and (h) of  
 24 this section shall apply to individual direct payment contracts issued  
 25 pursuant to sections four thousand three hundred twenty-one and four  
 26 thousand three hundred twenty-two of this article on and after January  
 27 first, nineteen hundred ninety-seven AND TO INDIVIDUAL OR GROUP POLICIES  
 28 OF MEDICARE SUPPLEMENTAL INSURANCE ISSUED BY A CORPORATION OR  
 INSURER

29 ORGANIZED OR LICENSED PURSUANT TO THIS CHAPTER.

30 S 4. Subsection (j) of section 4308 of the insurance law is REPEALED.

31 S 5. This act shall take effect January 1, 2008.

MS. WHYTE moved to approve the item. MS. KONST seconded.

CARRIED UNANIMOUSLY.

### **SUSPENSION OF THE RULES**

Item 42 - MS. WHYTE moved for a Suspension of the Rules to include an item not on the agenda.

GRANTED.

COMM. 26M-9 from BUFFALO PUBLIC SCHOOLS Re: 300 Manhattan Manor

Received and filed.

Item 43 - MS. WHYTE moved for a Suspension of the Rules to include an item not on the agenda.

GRANTED.

COMM. 26M-10 from FAIR Re: 2007 Capital Programming

Received and referred to the ECONOMIC DEVELOPMENT COMMITTEE.

### **COMMUNICATIONS FROM ELECTED OFFICIALS**

FROM THE COUNTY EXECUTIVE

Item 44 - MS. WHYTE presented the following resolution and moved for immediate consideration and approval. MR. MAZUR seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 306

RE: Senior Services - Authorization to Revise the III-E Grant Budgets (COMM. 26E-1)

WHEREAS, the Erie County Legislature has already appropriated funds for the Elder Caregiver Support Grant (III-E) grant for the period January 1, 2007 through December 31, 2007, and

WHEREAS, the New York State Office for the Aging has notified the Department of Senior Services (Department) of the final federal funding allocation for the III-E grant, and

WHEREAS, the Department has reviewed the budget and actual cost of carrying out program objectives through the end of the year, and

WHEREAS, the III-E grant budget needs to be revised, and

WHEREAS, additional local match is not required.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive be and is hereby authorized to accept the additional III-E funds from New York State Office for Aging, and be it further

RESOLVED, that the III-E grant, 163III-E2007, be revised as follows:

		CURRENT		AMENDED
		BUDGET	CHANGES	BUDGET
<b>REVENUES</b>				
Account	Description			
414000	Federal Aid	\$691,079	<u>\$3,865</u>	\$694,944
	<b>TOTAL REVENUE</b>		<u><u>\$3,865</u></u>	
<b>APPROPRIATIONS</b>				
516020	Home Care Services	\$82,000	\$31,865	\$113,865
516020	Adult Day Care Services	202,000	-8,000	194,000
516020	Geriatric Counseling Services	30,000	<u>-20,000</u>	10,000
	<b>TOTAL APPROPRIATIONS</b>		<u><u>\$3,865</u></u>	

and be it further

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RESOLVED, that certified copies of this resolution be forwarded to the County Executive’s Office, the Division of Budget and Management, the Comptroller’s Office and the Department of Senior Services.

Item 45 – MS. WHYTE presented the following resolution and moved for immediate consideration and approval. MS. MILLER-WILLIAMS seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 307

RE: Senior Services - Authorization to Establish the POMP Grant Budget (COMM. 26E-2)

WHEREAS, the New York State Office for the Aging has notified the Department of Senior Services (Department) that the Department has been awarded a \$16,000 grant for the Performance Outcome Measures Project (POMP) program for the period September 30, 2007 to September 29, 2008, and

WHEREAS, the Department desires to use the POMP IX grant funds to maintain and support the case management system that will compile the POMP statistical results and to cover the cost of POMP-related meetings and conferences coordinated by the New York State Office for the Aging, and

WHEREAS, the POMP IX grant budget needs to be established, and

WHEREAS, local match is not required for the POMP IX grant.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive be and is hereby authorized to accept the POMP IX funds from New York State Office for Aging, and be it further

RESOLVED, that the budget for the POMP IX grant, 163POMP0708, be established as follows:

		INITIAL BUDGET
REVENUES		
Account	Description	
409000	State Aid	\$16,000
	TOTAL REVENUE	<u>\$16,000</u>
APPROPRIATIONS		
510100	Out of Area Travel	\$1,200
	Software Support &	
516020	Modifications	<u>14,800</u>
	TOTAL APPROPRIATIONS	<u>\$16,000</u>

and be it further

RESOLVED, that certified copies of this resolution be forwarded to the County Executive's Office, the Division of Budget, Management and Finance, the Comptroller's Office and the Department of Senior Services.

Item 46 – MS. WHYTE presented the following resolution and moved for immediate consideration and approval. MS. LOCKLEAR seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 308

RE: Health - Medical Examiner's Division –  
 Toxicology - Lab Testing Fee Schedule for  
 Jefferson County (COMM. 26E-3)

WHEREAS, the forensic toxicology laboratory within the Erie County Medical Examiner's Office division has been performing analytical testing of biofluids and tissues for drugs and other poisons for non-Erie County medical examiner offices and coroners for a number of years, and

WHEREAS, the costs of performing such tests have increased due to increases in personnel, instrumentation and supplies costs, and

WHEREAS, the existing fees have been in effect since 1999.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes entering into a revised contract with Jefferson County effective January 1, 2008 which includes a revised fee schedule, incorporated herein, for a period of one year, for forensic toxicology services provided by the toxicology laboratory of the Erie County Medical Examiner's Office:

**Fee Schedule Effective January 1, 2008**

- |  |       |
|--|-------|
| a) Blood (limited testing)   | \$200 |
| b) Body fluids and/or tissues (comprehensive and/or extensive testing) | \$400 |

and be it further

RESOLVED, that certified copies of this resolution be forwarded to the Office of the County Executive, the Department of Health, the Office of the Comptroller, the Division of Budget, Management and Finance, and the Department of Law.

Item 47 – MS. WHYTE presented the following resolution and moved for immediate consideration and approval. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 309

RE: ECSD No. 1 - Frank Lloyd Wright  
Boathouse Corporation (COMM. 26E-4)

WHEREAS, the County of Erie, in July 2005, entered into a lease agreement with Frank Lloyd Wright Rowing Boathouse Corporation (the "Boathouse Corp.") to construct a boathouse designed by Frank Lloyd Wright; and

WHEREAS, the County and Boathouse Corp. agreed to change the sanitary sewer service from on-site septic system to public sanitary sewer system; and

WHEREAS, all costs and expenses of operation, maintenance and treatment are to be paid by the Boathouse Corp. pursuant to provisions in amendment to the existing lease agreement requiring such repayment to Erie County Department of Environment and Planning; and

WHEREAS, when the system is completed Erie County Sewer District No. 1 will acquire and provide operation and maintenance; and

WHEREAS, the cost to acquire the sanitary sewer is in an amount not-to-exceed \$85,000.00; and

WHEREAS, there is adequate Fund Balance in Erie County Sewer District No. 1.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Department of Environment and Planning, Division of Sewerage Management be and is hereby authorized to acquire the sanitary sewer system in an amount not-to-exceed \$85,000.00; and be it further

RESOLVED, that the Erie County Sewer District No. 1 will provide operation and maintenance for the sanitary sewer system; and be it further

RESOLVED, that the Director of Budget and Management increase the estimated revenues use of Fund Balance, Fund 220 Business Area 1811010 and increase appropriation contractual services in Erie County Sewer District No. 1 \$85,000.00; Fund 220 Business Area 181 Account 516020; and be it further

RESOLVED, that the Clerk of the Legislature be directed to send one (1) certified copy of this resolution to the County Executive; Director of Budget and Management; Erie County Comptroller's Office; Gregory J. Dudek, Assistant County Attorney; Andrew M. Eszak, AICP, Commissioner of the Department of Environment and Planning and two (2) certified copies of this resolution to Thomas J. Whetham, P.E., Deputy Commissioner, Department of Environment and Planning, Division of Sewerage Management.

Item 48 – (COMM. 26E-5) ECSD No. 4 - Didion Bd. & Brunck Rd. Sewer Extension - Contract No. 37 - Contract Close Out

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**ERIE COUNTY LEGISLATURE**

Item 49 – (COMM. 26E-6) Fee Schedule for GIS Services and Data Provided by the Erie County Office of GIS

The above two items were received and referred to the ENERGY & ENVIRONMENT COMMITTEE.

Item 50 – MS. WHYTE presented the following resolution and moved for immediate consideration and approval. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 310

RE: Erie County/Niagara County Shared  
Municipal Services Incentive Grant Application  
(COMM. 26E-7)

WHEREAS, Erie County is a co-applicant with Niagara County on a New York State Department of State Shared Municipal Services Incentive Grant application; and

WHEREAS, Erie and Niagara County will use this funding to acquire hardware infrastructure necessary to implement and offer shared GIS web mapping applications to any interested municipality within each County. The web mapping tools will also include applications, for use by the public, to be used to prepare basic comparable property assessment reports; and

WHEREAS, the amount of this grant will be around \$250,000, with State reimbursements made for up to 90% of the actual cost; and

WHEREAS, sharing of these services will avoid duplication of services between the two counties and will promote cost savings in the provision of these services.

NOW, THEREFORE, BE IT

RESOLVED, that Erie County supports the application jointly submitted by Erie and Niagara Counties for a Shared Municipal Services Incentive Grant application; and be it further

RESOLVED, that certified copies of this resolution shall be forwarded to the County Executive; the Commissioner of the Department of Environment and Planning; the County Comptroller; and the Director of the Division of Budget and Management.

FROM LEGISLATOR IANNELLO

Item 51 – (COMM. 26E-8) Notice of Absence

Received, Filed and Printed.

December 10, 2007

Lynn Marinelli, Chairperson

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**ERIE COUNTY LEGISLATURE**

Erie County Legislature  
92 Franklin St. – 4th Floor  
Buffalo, New York 14202

Dear Chair Marinelli,

I am writing this letter to give you proper notice that I will not be in attendance at our Legislative Session this week, December 13, 2007.

I have a personal commitment that requires me to be out of town for the rest of the week. Please forgive my absence and understand that I would not be away without good reason.

Very truly yours,

Michele M. Iannello  
Erie County Legislature

FROM THE COUNTY EXECUTIVE

Item 52 – (COMM. 26E-9) Acceptance of the FY2008 Operating Budget

Received, Filed and Printed.

The Honorable  
Erie County Legislature  
92 Franklin Street  
Buffalo, New York 14202

Honorable Members:

This letter conveys my acceptance of the Fiscal year 2008 operating budget as adopted by Your Honorable Body on Tuesday, December, 4th. The Budget as amended reflects priorities which your members identified as important to their constituents – and we find these changes to be reasonable. Most important, the adopted budget is soundly balanced with recurring expenses paid by recurring revenues. We appreciate that your members preserved the structural integrity of the Recommended Executive Budget in making the changes to the Adopted Budget. Our ability to agree upon a soundly balanced 2008 budget is an important step in the County's ongoing fiscal recovery.

Sincerely,

JOEL A. GIAMBRA  
ERIE COUNTY EXECUTIVE

FROM LEGISLATOR MARINELLI

Item 53 – (COMM. 26E-10) Cancellation of Legislative "Override" Session Scheduled for Tuesday, 12/11/07

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**ERIE COUNTY LEGISLATURE**

Received, Filed and Printed.

DATE: December 10, 2007

FROM: Lynn M. Marinelli, Chair  
 Erie County Legislature

TO: Robert M. Graber, Clerk  
 Erie County Legislature

RE: CANCELLATION OF LEGISLATIVE "OVERRIDE" SESSION  
 SCHEDULED FOR TUESDAY, DECEMBER 11, 2007

Upon the reception of a communication from Erie County Executive Joel A. Giambra conveying his acceptance of the fiscal year 2008 operating budget as adopted by the Erie County Legislature at Meeting No. 24 held on December 4, 2007, the Legislative Session scheduled for Tuesday, December 11, 2007 is no longer necessary.

Therefore, in as much as there are no items to override, you are hereby directed to notify the member of the Legislature that the Tuesday, December 11, 2007 scheduled "Override" session of the Erie County Legislature is hereby cancelled.

Thank you for your prompt attation to this matter.

FROM THE COUNTY EXECUTIVE

Item 54 – MS. WHYTE presented the following item and moved for immediate consideration. MR. MAZUR seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 311

RE: Continued Imposition and Sharing of  
 Additional 1% Sales Tax; Need for Introduction  
 and Enactment of State Authorization  
 Legislation (COMM. 26E-11)

MS. WHYTE moved to amend the item by attaching the following resolution. MR. REYNOLDS seconded.

CARRIED UNANIMOUSLY.

WHEREAS, the 2008 Erie County Budget, as submitted, explicitly contemplates that Erie County, during 2008, will receive approximately \$135 million in net sales tax collections revenue on account of Erie County's continued imposition of additional 1% sales tax rate; and

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**ERIE COUNTY LEGISLATURE**

WHEREAS, the 2008 Erie County Budget further explicitly contemplates that the first \$12.5 million of said net sales tax collections will be shared among Erie County's cities, towns and villages; and

WHEREAS, Erie County derives all of its tax imposing authority directly from State law; and

WHEREAS, Erie County's authority to impose its additional 1% sales tax rate will expire at midnight on February 29, 2008 absent enactment of new State authorizing legislation.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby memorializes the NYS Assembly and Senate, particularly those lawmakers who serve as Western New York's delegation in Albany, that immediate introduction of new State authorizing legislation is needed so that Erie County can continue to impose its additional 1% sales tax rate during the period from March 1, 2008 to November 30, 2010, and be it further

RESOLVED, that the County Attorney is hereby directed to prepare the necessary State authorizing legislation and to immediately transmit same to the Honorable Robin Schimminger of the NYS Assembly and the Honorable Dale M. Volker of the NYS Senate for introduction in Albany, and be it further

RESOLVED, that certified copies of this resolution be transmitted to the Honorable Robin Schimminger of the NYS Assembly and the Honorable Dale M. Volker of the NYS Senate, together with the Division of Budget, Management and Finance, the County Attorney and the County Comptroller.

MS. WHYTE moved to approve the item. MR. MAZUR seconded.

CHAIRPERSON MARINELLI directed that a roll-call vote be taken.

AYES: WEINSTEIN, GRANT, KENNEDY, KONST, KOZUB, LOCKLEAR, LOUGHRAN, MARINELLI, MAZUR, MILLER-WILLIAMS, REYNOLDS and WHYTE. NOES: MILLS and RANZENHOFER. (AYES: 12; NOES: 2)

CARRIED.

Item 55 – (COMM. 26E-12) Highway Projects

Received and referred to the ECONOMIC DEVELOPMENT COMMITTEE.

Item 56 – (COMM. 26E-13) ECSD No. 1 - Contract No. 32 - Broadway West Pump Station Elimination Project

Received and referred to the ENERGY & ENVIRONMENT COMMITTEE.

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**ERIE COUNTY LEGISLATURE**

Item 57 – (COMM. 26E-14) CPS - Proposed Resolution to Amend Resolution 14E-9 - Forensic Laboratory 2007-2008 Project Impact Grant

Received and referred to the PUBLIC SAFETY COMMITTEE.

Item 58 – (COMM. 26E-15) ECSD No. 3 - Engineering Agreement Dated 8/22/05 - Parsons Engineering - Change Order No. 1

Item 59 – (COMM. 26E-16) Authorization for County Executive to Negotiate and Enter into a Development and Funding Agreement for the Frank Lloyd Wright Rowing Boat House

The above two items were received and referred to the ENERGY & ENVIRONMENT COMMITTEE.

Item 60 – MS. WHYTE presented the following resolution and moved for immediate consideration and approval. MR. MAZUR seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 312

RE: City of Buffalo Acquisition of 300 Manhattan Street for School Purposes; Cancellation/Waiver of 2006 & 2007 Erie County Taxes (COMM. 26E-17)

WHEREAS, the City of Buffalo is in the process of acquiring title to the blighted, former nursing home property at 300 Manhattan Street [SBL# 90.22-5-1], located in close proximity to All-High Stadium and McCarthy Park; and

WHEREAS, the City of Buffalo intends to take the property in lieu of \$500,000 in delinquent City of Buffalo taxes, to clear the site and to convert the property to Buffalo School District athletic and related park and public uses; and

WHEREAS, in connection with the foregoing, the County of Erie has been asked by the City of Buffalo to cancel the property's 2006 and 2007 Erie County tax delinquencies of approximately \$20,000; and

WHEREAS, City of Buffalo acquisition of the property and clearance of the site will enhance Buffalo School District athletic and related public park improvements already underway at McCarthy Park and All-High Stadium, including Medaille College's expanded athletic program, and will otherwise enhance the neighborhood and its quality of life.

NOW, THEREFORE, BE IT

RESOLVED, that the Director of the Department of Real Property Tax Services is hereby directed to cancel the delinquent Erie County taxes affecting the property at 300 Manhattan Street, and be it further

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**ERIE COUNTY LEGISLATURE**

RESOLVED, that certified copies of this resolution be transmitted to the Honorable Byron W. Brown, Mayor of the City of Buffalo, and Dr. James Williams, Superintendent of Buffalo Schools.

FROM LEGISLATOR MARINELLI

Item 61 – (COMM. 26E-18) 2008 Schedule of Legislative Sessions

Received, Filed and Printed.

To: Robert M. Graber, Clerk

From: Lynn M. Marinelli, Chairperson

**Subject: 2008 SCHEDULE OF LEGISLATIVE SESSIONS**

**JANUARY**

8  
17

**JULY**

10  
17

**FEBRUARY**

7  
21

**AUGUST**

Recess

**MARCH**

6  
20

**SEPTEMBER**

11  
25

**APRIL**

3  
24

**OCTOBER**

9  
23

**MAY**

8  
29

**NOVEMBER**

6  
20

**JUNE**

12  
26

**DECEMBER**

2 *Budget*  
4  
9 *Budget Override*  
18

**COMMUNICATIONS FROM THE DEPARTMENTS**

**MEETING NO. 26**  
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**ERIE COUNTY LEGISLATURE**

FROM LABOR RELATIONS

Item 62 – (COMM. 26D-1) Opinion and Award; Compulsory Interest Arbitration between Erie County and the Sheriff of Erie County and Erie County Sheriff's Police Benevolent Assn.

Received and referred to the PERSONNEL COMMITTEE.

FROM THE CLERK OF THE LEGISLATURE

Item 63 – (COMM. 26D-2) Cancellation of Legislative "Override" Session Scheduled for Tuesday, 12/11/07

Received, Filed and Printed.

December 10, 2007

To: All Members of the Erie County Legislature  
 From: Robert M. Graber, Clerk  
 Subject: CANCELLATION OF LEGISLATIVE "OVERRIDE" SESSION  
 SCHEDULED FOR TUESDAY, DECEMBER 11, 2007

PLEASE TAKE NOTICE that upon the reception of a communication from Erie County Executive Joel A. Giambra conveying his acceptance of the fiscal year 2008 operating budget as adopted by the Erie County Legislature at Meeting No. 24 held on December 4, 2007, the Legislative Session scheduled for Tuesday, December 11, 2007 is no longer necessary.

Therefore, in as much as there are no items to override, the Tuesday, December 11, 2007 scheduled "Override" session of the Erie County Legislature is hereby cancelled.

Thank you.

FROM THE DEPARTMENT OF PUBLIC WORKS

Item 64 – (COMM. 26D-3) Bond Sale/Potential to Lose Approx. \$25 Million In Federal Highway Funds

Received and referred to the ECONOMIC DEVELOPMENT COMMITTEE.

**COMMUNICATIONS FROM THE PEOPLE AND OTHER AGENCIES**

FROM THE OFFICE OF THE GOVERNOR

Item 65 – (COMM. 26M-1) Receipt of Certified Resolutions

Received and filed.

**FROM THE NFTA**

Item 66 – (COMM. 26M-2) Minutes of Board of Directors Meeting Held 10/22/07

Received and filed.

**FROM THE NIAGARA ERIE REGIONAL COALITION**

Item 67 – (COMM. 26M-3) Agenda for 12/7/07 Meeting

Received and filed.

**FROM THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

Item 68 – (COMM. 26M-4) Notice for Board of Directors Meeting Held 11/28/07

Received and filed.

**FROM THE NYS STATE COMPTROLLER**

Item 69 – (COMM. 26M-5) 2008 Schedule of Real Property Taxes and Assessments Levied by the County Board of Supervisors

Received and filed.

**FROM NYS SENATOR MARY LOU RATH**

Item 70 – (COMM. 26M-6) Receipt of Certified Resolutions

Received and filed.

**FROM LEGAL AID BUREAU**

Item 71 – (COMM. 26M-7) Monthly Report for 11/07

Received and filed.

**FROM THE TOWN OF BOSTON**

Item 72 – (COMM. 26M-8) In Support of the Renegotiation of the County Sales Tax Agreement

Received and filed.

**MEMORIAL RESOLUTIONS**

**MEETING NO. 26**  
**DECEMBER 13, 2007**

**ERIE COUNTY LEGISLATURE**

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Item 73 - Legislator Marinelli requested that when the Legislature adjourns, it do so in memory of Henry J. Wojtowicz.

Item 74 - Legislator Kennedy requested that when the Legislature adjourns, it do so in memory of James N. Leary

Item 75 - Legislator Reynolds requested that when the Legislature adjourns, it keep in mind the men and women serving in Iraq, including his son-in-law.

**ADJOURNMENT**

Item 76 - At this time, there being no further business to transact, Chairperson Marinelli announced that the Chair would entertain a Motion to Adjourn.

MR. KOZUB moved that the Legislature adjourn until Thursday, January 8, 2008 at 2 p.m. Eastern Standard Time. MR. MAZUR seconded.

CARRIED UNANIMOUSLY.

Chairperson Marinelli declared the Legislature adjourned until Thursday, January 8, 2008 at 2 p.m. Eastern Standard Time.

**ROBERT M. GRABER**  
**CLERK OF THE LEGISLATURE**