County of Erie
MARK C. POLONCARZ
COMPTROLLER

December 17, 2008

Honorable Members
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Comptroller's Preliminary Review of Proposed 2009-2010 New York State Executive Budget

Dear Honorable Members:

Please find attached this office's preliminary review of the potential negative impact of Governor David Paterson's 2009-2010 New York State Executive Budget on Erie County. While this report identifies a number of significant items of concern for Erie County in the Governor's proposed budget, due to the complexity of the Social Service and Public Welfare programs, and the limited resources of our office, we defer to the County Administration and its Department of Social Services to analyze the potential impact of the proposals on those programs.

If you have any questions please feel free to contact my office and we will be pleased to assist you during your review.

Sincerely yours,

Mark E Poloncarz

Mark C. Poloncarz, Esq.
Erie County Comptroller

MCP/dt
Encl.

cc: Hon. Christopher C. Collins, County Executive
Erie County Fiscal Stability Authority

COUNTY OF ERIE, NEW YORK
OFFICE OF THE COMPTROLLER

COMPTROLLER'S PRELIMINARY REVIEW OF THE PROPOSED 2009-2010 NEW YORK STATE EXECUTIVE BUDGET

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On December 16, New York State Governor David A. Paterson released his proposed 2009-2010 State Budget ("Executive Budget"). A copy of Governor Paterson's budget proposal, presentation and accompanying documents can be found on the Internet at http://publications.budget.state.ny.us/eBudget0910/ExecutiveBudget.html. The release of the budget proposal is the earliest any governor has released his executive budget in decades. The early release is due to the unprecedented budget deficit the state faces for the current 2008-2009 ($1.7 billion) and the future 2009-2010, 2010-2011 and 2011-2012 state fiscal years. The Governor's Division of Budget forecasts a 2009-2010 budget deficit of $13.7 billion, and $17.1 billion in 2010-2011 and $18.6 billion in 2011-2012.

The Office of Erie County Comptroller has conducted a preliminary analysis of the Executive Budget for its potential financial impact on Erie County ("County") and is pleased to provide this report to the Erie County Legislature.

This report highlights noteworthy changes in Governor Paterson's proposed 2009-2010 Executive Budget that are likely or have the potential to *negatively* impact or affect the County. However, as noted, this is the Governor's proposed budget, and as we have seen in the past, the adopted state budget is often radically altered by the time it has been fully adopted by the New York State Assembly and Senate. Therefore, it is difficult to say whether any of these proposals will be included in the final adopted state budget.

Medicaid

The Executive Budget continues the Medicaid Cap initiative which took effect in the County's 2007 fiscal year. This limits the growth in Medicaid expense, but does not change or shift the mandate.

However, the Executive Budget includes provisions that may negatively affect counties that operate nursing homes. These nursing home provisions include reductions in certain State payments and a new pricing model developed to significantly reduce State Medicaid spending. The impact of these changes on the County is not clear, as the Erie County Home ("Home") is a subsidiary of the Erie County Medical Center Corporation ("ECMCC"), which operates the Home as a public benefit corporation. While the consent decree entered into by the County and ECMCC on February 24, 2006 details the operating subsidies the County is to provide to ECMCC through 2009, starting in 2010 the original statutory formula is controlling. Therefore, any lessening of aid to ECMCC for its operation of the Home could have a negative impact on the County through an increased operating subsidy to ECMCC starting in 2010.

Hospital/Healthcare Funding

Healthcare providers are projected to lose $1.4 billion in the Executive Budget that reduces overall healthcare spending by $3.5 billion. $700 million in savings would occur from hospitals and $420 million from nursing homes. While we cannot determine at this time the financial impact on ECMCC and the Erie County Home, given the legal requirements to the County to provide financial subsidies to ECMCC in amounts representing the difference between profits and losses, there is likely to be a negative financial impact to the County in 2010 if the hospital loses state aid.

IGT/Disproportionate Share

The Executive Budget contains no provision to terminate the County's required intergovernmental transfer/disproportionate share ("IGT/DSH") payments to ECMCC. These payments are not included in the formula that determines each county's Medicaid Cap, are mandated and cannot be predicted or budgeted for, and continue to be a negative financial factor against the County. For example, in 2006 the County was required to provide an additional subsidy to ECMCC of approximately $5 million (though $3 million of which was returned to the County by ECMCC at the end of that fiscal year). In 2007 the County was mandated to pay $8.8 million to ECMCC. In February 2008 the County was mandated to pay $2 million and we were subsequently notified in late October 2008, with confirmation arriving today from the State that the County will be required to pay $6.23 million on December 30, 2008. As such, the County will continue to see a multi-million dollar negative variance on an annual basis.

Public Assistance/Welfare

There are a number of proposals in the Executive Budget addressing public assistance programs, including reductions in State aid and increases in welfare spending/payments. Due to the complexity of these programs and limited resources, we defer to the County Administration and its Department of Social Services to analyze the potential impact of these programs.

Education

Community College State Aid

The Executive Budget reduces State full time equivalent base aid for community colleges based on the size of the full time equivalent student population at the college. Based on Erie Community College's ("ECC") current enrollment of approximately 5,302 full-time equivalent students this fall, ECC would lose $230 per student in state aid for the 2009-10 academic year. Any reduction in State aid to ECC, while not directly affecting the County, could result in ECC raising tuition or calling for another increase in the County's sponsor contribution and/or capital contribution pursuant to State Education Law.

Preschool Special Education

The Executive Budget proposes significant reductions in funding for education. Most of these programs are unrelated to County services. However, the Executive Budget proposes reducing the County's share of expense for the Preschool Special Education program from 40.5% to 38% and the State share from 59.5% to 47% by shifting a 15% cost share onto local school districts. Given minimal details available at this time from the State, this program will require close monitoring.

Library Assistance

Additionally, the Executive Budget proposes reducing funding for aid to local Public Library operations by $13 million. Considering the Buffalo and Erie County Public Library system will in all likelihood receive less assistance than in previous years, this will have a negative impact on its budget and could require additional assistance from the County to keep them at current budgeted levels.

Consolidated Highway Improvement Program

The Executive Budget reduces Consolidated Highway Improvement Program ("CHIPs") funding for counties by $59 million state-wide, resulting in a reduction of approximately 20%. Based on 2008 budgeted County CHIPs revenue of $7.5 million, the County could lose as much as $1.5 million in CHIPs revenue if such reduction is enacted.

Public Safety

Detainees/State-Ready Prisoners

The County faces continuing space and financial constraints and pressures at the Erie County Holding Center and, to a lesser degree, at the Erie County Correctional Facility, and has long feared that the New York State Commission of Correction might revoke variances at each facility. This could lead to the need to house county and state prisoners at non-County facilities at significant County expense.

In recent years, the State Budget has not provided for any increase in the daily per diem rate the State pays counties for holding state-ready prisoners. The differential between the State payment of $37.60 per inmate per day and Erie County's cost is more than $70 and is a major and often unbudgeted negative variance for the County in the Sheriff's Division of Jail Management. An audit by this office of the County Holding Center, released in January 2007 found that in 2005, the County incurred $1.2 million in additional expense for state-ready inmates and parole violators due to the difference in payment between the state rate and actual County cost.

The audit also found that in 2005 the County lost $1,187,397 for housing state-ready prisoners (not including parole violators) because the State does not reimburse the County for the days between the sentence and notification dates and for any days less than five between the notification and removal dates.

In the 2009-2010 Executive Budget, not only is there no increase in the per diem reimbursement, but the Governor would actually eliminate the State reimbursement for state-ready inmates and parole violators. While the proposal requires the State Department of Correctional Services to place state-ready inmates in state facilities within 10 business days or face a daily payment to the County of $100 per inmate, the Executive Budget does not provide for that 10-day period. This proposal has the very real potential for a significant negative fiscal impact to the County.

Probation Aid

The Executive Budget cuts probation aid to counties by 6%, and ostensibly replaces that revenue with an option for a $25 probation user fee. However, Erie County already assesses a number of probation user fees which are routinely not paid, waived, or the County is unable to collect, resulting in financial negative variances.

ECFSA Efficiency Grant Funds

The Executive Budget reduces unreleased State-funded efficiency grant funds for the Erie County Fiscal Stability Authority ("ECFSA") by 50%. We calculate the cost of this loss of such grants at approximately $7 million, leaving only $7 million available for future County applications for, or actual use upon ECFSA approval.

New Sales Tax Revenues

The Executive Budget proposes closing a number of exemptions on sales tax on clothing and footwear, gasoline, Internet purchases, and closing a loophole on digital media downloads – all to generate additional tax revenues. However, reestablishing sales tax collection on clothing and footwear and gasoline will not impact the County, as Erie County never opted into those exemption mechanisms. A more aggressive State collection of Internet-based and digital media download sales tax would obviously benefit the County, but its impact cannot be quantified.

The Executive Budget also proposes imposing or increasing sales tax on services such as non-diet soft drinks, beer and wine, cable and satellite television, satellite radio, haircuts, pedicures, massages, health salon services, gym memberships, motion picture attendance, sporting event attendance, taxi, limousine and private bus services, and others. Once again, while collection of sales taxes on such items would have a positive financial impact on the County, there is no way to quantify such revenues at this time.

Collection of Sales Taxes on Native American Sales

Similar to the 2008-2009 Executive Budget, the 2009-2010 Executive Budget projects the State collecting state and local sales tax from Native American Indians who are selling gasoline and tobacco products to non-Native Americans. As noted by recent media reports, Governor Paterson signed into law this week a new sales tax law that mandates the collection of sales taxes from non-Native Americans that purchase tobacco products on sovereign Native American lands. However, given past troubles and difficulties involving the State's two prior attempts to collect said taxes on the Seneca Nation of Indians sovereign land in Erie County, this office believes that this revenue stream is not likely to materialize in 2009.

Economic Development

Empire Zone Alterations

While not directly impacting the County's budget, the 2009-2010 Executive Budget proposes significant changes to the State's Empire Zone Program. These changes could have a significant impact on economic redevelopment efforts in Erie County. The proposed change would hold recipients more accountable and require all new program participants to demonstrate that they are producing at least $20 in actual investment and wages for every $1 in State tax incentives. Participants certified from 2005 to 2008 had to meet a 15:1 benefit/cost standard, and those certified prior to 2005 do not have to meet any set benefit-cost standard. Of additional concern, the new Empire Zone program will continue until its sunset date of June 30, 2011. It is uncertain what impact the ending of the program will have on major area projects like Canalside, which are heavily dependent on Empire Zone Program benefits as well as County capital investment.

Reduced Tourism and Marketing Funding

While not directly impacting the County's budget, the Executive Budget proposes reducing or eliminating funding for tourism and marketing programs by almost 40%, including local tourism matching grants. It is unknown what impact this reduction could have on the Buffalo Niagara Convention and Visitors Bureau ("CVB"), but it could result in the CVB seeking additional assistance from the County to fund it at current budgeted levels.

Changes in Public Employee Benefits

The Executive Budget proposes creating a new Tier 5 pension plan that would change the benefit structure for new employees and require that employees contribute three percent (3%) towards their pension past ten years of service and increasing the retirement age from 55 to 62. While this is a good development and will reduce the long-term costs of the County, the benefit from such a new pension tier would not be seen for some time, and that assumes such a new pension tier is authorized by the state legislature.