

THE BUFFALO FINANCIAL CONTROL BOARD

I. ORIGINS OF THE CITY'S FISCAL CRISIS

The current fiscal crisis of the City of Buffalo arises from and exemplifies the failure of state and local government over many decades to respond adequately to the shift of population, and especially the disproportionate shift of wealth, from the old central cities to the ever growing urban fringe beyond their boundaries. For example, the Town of Amherst, with a population of 110,000 now has a larger real property tax base than the City of Buffalo, with a population of 293,000.

The State Constitution severely inhibits the use of annexation, intergovernmental agreement, and reorganization of local government to provide and finance services on a regional basis. Essentially, the Constitution entrenches 19th Century municipal boundaries and requires suburban consent to significant reform. See N.Y. Const. Art. IX I (d); Art. VIII 1; Art. IX 1 © ; and Art. IX 1 (h). See, generally, Magavern, *Fundamental Shifts Have Altered The Role of Local Governments*, 73 *Journal of New York State Bar Association* 52 (January 2001). More fundamentally, the shift of population from cities to suburbs has concentrated political power in the suburbs. The relatively prosperous suburbs, whose development has been subsidized by the federal and state governments, have had little incentive to consent to a more equitable sharing of regional obligations and resources.

In upstate New York, local services have been regionalized to a significant (though inadequate) extent through the formation of regional authorities and – more important and more promising – through the shifting of urban functions to county governments. However, the principal way in which the state has responded to the continuing impoverishment of the cities has been by increasing state financial assistance to the city governments and their school districts. The problem is that these increases have been ad hoc, unreliable, and in recent years inadequate. Consider the following table (Table A) showing levels of state assistance to Buffalo and the Buffalo School District since 1960:

TABLE A

State Aid to City and School District

1960 – 2001

Fiscal Year Ending June 30	CITY		SCHOOL DISTRICT	
	State Aid	Total Revenue	State Aid	Total Revenue
1960	\$4 million	\$52 million	\$11 million	\$31 million
1970	\$15 million	\$84 million	\$42 million	\$80 million
1981	\$50 million	\$228 million	\$85 million	\$169 million
1990	\$84 million	\$291 million	\$207 million	\$320 million
2000	\$96 million	\$362 million	\$386 million	\$554 million
2001	\$113 million	\$369 million	\$376 million	\$554 million

From 1960 to 2001, state financial assistance to the City and its School District increased from \$15 million to \$489 million, about 32 times. Buffalo was not unique in this respect. During the same period state assistance to the cities and school districts of Rochester and Syracuse increased by multiples of about 40 and 31, respectively. More generally, the state has been progressively increasing financial assistance to its local governments since World War II. There are good reasons for this. The former mainstay of municipal finance, the real property tax, is notoriously regressive. It lags economic growth, it is subject to state constitutional limits, and it has become grossly inadequate to finance even minimally acceptable levels of local services. The costs of local government are to a great extent driven by state mandates, and, more important than that, it is only through state assistance that disparities of wealth between richer and poorer communities can be alleviated. This is especially true of the old central cities, which have been locked into 19th Century boundaries as wealth has shifted to the suburbs. An implicit political consensus has evolved that it is fair, prudent and necessary to shift more and more of the costs of local services to the relatively progressive and elastic state income tax base. Given these conditions, the portrayal of the City of Buffalo as some kind of uniquely degenerate beggar, looking to the state government for handouts only because of the ineptitude of its politicians, is naïve, unfair and unjustifiably destructive of civic cohesion and morale.

Now consider what has happened to state assistance since 2001. Numbers comparable to those presented in Table A, which are drawn from State Comptroller reports and which aggregate various funds, are not available. Table B therefore presents numbers only for the City and School District general funds. It is sufficient, however, to demonstrate how the City has been thrown into crisis by an abrupt restriction of further increases of state assistance.

TABLE B

State Aid to City and School District

General Fund Only

2001 – 2004

Fiscal Year Ending June 30	CITY General Fund		SCHOOL DISTRICT General Fund	
	General Purpose State Aid	Total Revenue	State Aid	Total Revenue
2001	\$103 million	\$367 million	\$314 million	\$449 million
2002	\$103 million	\$358 million	\$330 million	\$433 million
2003	\$103 million	(budget) \$352 million	(budget) \$339 million	(budget) \$445 million
2004	\$103 million	\$369 million	\$360 million	?

As these figures show, the state has not increased general purpose aid to the city government since 2001, and it has increased aid to the Buffalo School District only at a fraction of previous rates. This shut-off of state aid came at a time when the City had experienced a reduction in its constitutional real property tax limit, exclusive of debt service, from \$162 million in FY 1999 to \$106 million for the current year. At the same time (as a result of three years of declining public securities markets) mandated contributions to the state and local employees retirement funds multiplied several times over, and health insurance costs for public employees and retirees resumed double digit growth after a respite during the 1990's. From 2001 to the current fiscal year the City's fringe benefit costs rose from \$61 million to \$94.5 million (budgeted) despite substantial

reduction in the number of City employees (more than 200 positions, perhaps more than 300). Under these circumstances, an abrupt and drastic slow down of state aid increases was bound to create a crisis in the finances of the City, no matter what the city government and Board of Education might do.

Another inaccurate and destructive myth is that the city government is bloated and has not reduced personnel in line with reductions of population. In 1972, when the City's population was 440,000, the city government (not including the School District) had 6,665 employees. Today, with a population of 293,000, it has fewer than 3,000 employees. The cities of Rochester and Syracuse have suffered somewhat less severe losses of population. Yet Syracuse's per capita cost of city government is about the same as Buffalo's and Rochester's is about 15% higher.

Finally, to counter the excessively harsh criticism the city government has been subjected to, it should be noted that unlike the local governments for which previous control boards were created, Buffalo's city government and Board of Education did not run up an accumulated operating deficit over a period of years. At fiscal year end, June 30, 2002, the City and School District both had positive, though modest, unreserved fund balances, and both operated at near break-even levels for FY 2003, leaving the City with a very small estimated negative fund balance at year end. A control board was required, not because of irresponsible budgeting in the past, but because the City and School District were able to balance their budgets for the current year without additional state assistance or unacceptable cuts in services.

II. OVERVIEW OF CONTROL BOARD LEGISLATION

The Buffalo Fiscal Stability Authority Act ("the BFSFA Act" or simply "the Act") was passed by the State Legislature in June and signed into law by the Governor on July 3, 2003. (Laws of 2003, Chapter 122). Based generally on the 1975 Financial Emergency Act for the City of New York and similar legislation for Yonkers, Troy and Nassau County, the Act creates the Buffalo Fiscal Stability Authority ("the Authority" or "BFSFA") with the combined functions of a financial control board and a municipal assistance corporation. As a control board it is empowered to monitor and regulate the City's financial planning, budgeting, borrowing and spending. As a municipal assistance corporation it is empowered to borrow against future City revenues to provide funds to balance the City's operating budget during a transitional period while the City's recurring expenditures and revenues are brought into balance. Beyond those core functions, the Authority has broad advisory powers, and it may be able to perform a crucial role in articulating issues and generating the consensus that will be needed to effect necessary reforms, not just within city government, but also in respect to inter-governmental fiscal relations between the city and county and, ideally, the city and the state.

The Act covers not only the City as a municipal corporation but also related agencies, referred to as "Covered Organizations," including the Buffalo School District, the Joint Schools Construction Board, the Buffalo Municipal Housing Authority, and the Buffalo Urban Renewal Agency.

In general terms, as described in greater detail below, the Authority is empowered:

1. to approve or if necessary create and adopt its own four-year Financial Plan (and subsequent modifications thereof) for the City and Covered Organizations, designed to bring their budgets into structural balance over a four-year transitional period starting with the current fiscal year;
2. to review their budgets, aggregate expenditures, borrowing, collective bargaining agreements, and contracts for consistency with the Financial Plan, and to approve, disapprove or require modification of such actions;
3. to issue debt on behalf of the City, to be repaid from future City sales tax and state aid revenues, to finance, not only cash flow needs and capital investments, but also operating deficits during the four year transitional period;
4. to review the operations of the City and Covered Organizations and make recommendations to enhance their efficiency and fiscal stability.

The Authority and its powers and duties are created by Section 2 of Chapter 122 of the Laws of 2003, which adds to Article 10-D of the Public Authorities Law a new Title 2, Sections 3850-3873, entitled the Buffalo Fiscal Stability Authority Act. Except as otherwise noted, citations in this paper are to the Act as codified in those sections of the Public Authorities Law. The chapter law also sets forth legislative findings and amends the state Tax Law to provide for diversion of the City's share of County sales tax revenues to the Authority to the extent necessary to pay principal and interest on notes and bonds issued by the Authority.

Although the powers of the Authority have been described as stronger than those of previous control boards, this is more a matter of form than substance. In all cases the powers of the control board have been essentially negative. The control board has been authorized to require a financial plan to achieve structural fiscal balance over a transitional period, to review and approve or disapprove budgets, borrowings, collective bargaining agreements and other contracts, to impose a wage freeze, and to restrict aggregate expenditures, all as necessary to assure consistency with the financial plan. In all cases, the legislation has reserved to the municipality the power to determine the purpose and amount of expenditures within aggregate limits. In no case has the control board or associated municipal assistance corporation been empowered to bring new revenue to the municipality (although an acceleration or increase in state aid has in some instances been granted in conjunction with the control board legislation). In no case has the control board been empowered to take affirmative actions, such as raising or cutting taxes, imposing terms of a collective bargaining agreement, imposing particular measures to enhance efficiency, or creating economic development programs. And, at least unless the municipality were unwilling or unable to submit a Plan or modification keeping

expenditures within revenues, in no case has the control board been empowered to select particular positions or programs to be cut.

The legislative findings of the chapter law (L 2003, ch. 122 1) describe the fiscal difficulty of the City as having resulted from underlying economic conditions, leading to a structural imbalance between revenues and expenditures, combined with a limited ability to increase taxes. The findings state that the budget must be balanced, economic recovery enhanced, essential services preserved, and taxes remain affordable. The legislative declaration of the purpose for the BFSA Act states that the City has relied on repeated extraordinary increases in State aid to balance its budget, that the State cannot continue to grant such increases, and that State intervention is necessary to enable the City to maintain a balanced budget and thereby to assure long term fiscal stability, preserve the confidence of investors in the City's bonds and notes, and protect the economy of the region and the State. (3850-a). Despite the references to economic weakness as a cause of the problem and economic recovery as a goal of the legislation, the Act is operationally concentrated on fiscal stability and does not substantively address broader economic development issues.

III. THE AUTHORITY

The Buffalo Fiscal Stability Authority is a public benefit corporation with a governing body of nine Directors: the Mayor, the County Executive, and seven Directors appointed by the Governor – one on recommendation of the State Comptroller, and one on the joint recommendation of the Majority Leader of the Senate and the Speaker of the Assembly. At least one of the seven must be a resident of the City. Any Director who is an elected official of the City or County is entitled to designate a single representative to attend meetings and vote in his or her place. The Governor's appointments are for a term of four years, except that initial appointments of four Directors are to serve until June 30, 2007 and the three others until June 30, 2009. (3853(1)). The Governor designates a chairperson and vice-chairperson. (3853(2)).

The Directors serve without compensation except reimbursement of expenses. (3853(3)). The affirmative vote of at least five Directors is required to take any action. (3853(5)). The Authority is required to appoint a Treasurer and authorized to appoint such other officers, employees, counsel, accountants, consultants, and agents as it sees fit. (3854(12), 3853(6)).

The Authority is to continue in existence until June 30, 2037, with binding powers during control periods and advisory powers during advisory periods, as described below. A control period was commenced immediately upon the Governor's approval of the BFSA Act. It will continue at least until July 1, 2006, and thereafter until the City has achieved balanced budgets without Authority assistance for three consecutive years, together with assurance of a substantial likelihood of adequate access to the public credit market through the following fiscal year. (3851 (1) and (10)). At that time an advisory period will begin. A control period may be reimposed by the Authority at any time

thereafter if the Authority determines that a fiscal crisis is imminent or that the City has failed to maintain certain standards of fiscal stability. (3858).

IV. THE FINANCIAL PLAN

The Financial Plan (or simply “Plan”) is at the center of the Authority’s control functions. The objective of the Plan is to achieve structural balance between the City’s revenues and expenditures within four years, Fiscal Years 2003-2004 (“FY 04”) through 2006-2007 (“FY 07”). Consistency with the Plan is the criterion for approval by the Authority of the City’s budgets, borrowing, collective bargaining agreements, and other contracts.

The Act provides separately for the initial Plan, to be adopted during the current fiscal year (FY 04), and for subsequent Plans, to be adopted in conjunction with the City budget in future years. (3856, 3857). Not later than September 1 this year, the City is required to submit a Plan to the Authority. (3856(1)). The Plan may reflect a Declaration of Need which constitutes a request to the Authority to issue bonds to finance a deficit in the current budget. (3861). The current budget was based on the assumption that the City would receive \$29.3 million of deficit financing. Under the Plan recently accepted by the Authority, it will receive bond financing in the amount of \$7.8 million. As a condition of such financial assistance by the Authority, the City is required to take actions sufficient to reduce its projected gap between revenues and expenditures by 35-40%. (3857(1), 3851(20)). The Declaration of Need must be consistent with the Plan and is to be made by the Mayor with the approval of the Council. (3861(1)). The Plan is to cover the current year (FY04) and three following fiscal years (FY 05 – FY 07). The Authority is allowed 15 days to approve or disapprove the Plan. (3856(2)). In the event of disapproval, it is to notify the City of its reasons, and the City is to modify the Plan accordingly. If the City fails to do so, or if the Authority does not approve the modification, the Authority is to impose its own Plan. (3856(3), 3858(2) (a)). If the Mayor and the Council were unable to agree upon a Plan and Declaration of Need, the Authority would appear to be without power to issue bonds to finance the deficit and would be required to adopt a Plan with corresponding reductions in authorized expenditures of the City and Covered Organizations. Since an impasse would be catastrophic, the Mayor and the Council were under great pressure to reach agreement.

After the initial Plan, the Mayor is required each year to submit to the Authority, at or prior to the time he is required to submit his proposed budget to the Council, a Plan for the ensuing four fiscal years. (3857(1)). In each of the years FY 05 – FY 07, the Plan may call for Authority assistance to finance a budgeted deficit, provided that the Plan contains actions to reduce the Projected Gap in further increments as follows. (3857(1)).

FY 05	45-50%
FY 06	60-65%
FY 07	80-85%

The Projected Gap is defined to mean “the excess if any, of annual aggregate projected expenditures over annual projected revenues...in each year of a financial plan...” not counting Authority assistance. (3851(20)).

With the Plan and Budget, the Mayor is to submit to the Authority a certificate to the effect that the Budget is both feasible and consistent with the Plan. (3857(2)(a)). Prior to acting on the Plan submitted by the City, the Authority is required to request a community, educational or other organization to seek public comment on the City’s and Covered Organizations’ Plan and to report on such comment within 10 days after the City has submitted the Plan to the Authority. (3857(2)(a-1)). The UB Institute for Local Governance and Regional Growth was selected to serve in that role.

Within 20 days after receipt of a Plan (or 15 days after submission of a modification to the Plan, as discussed below), the Authority is to determine whether it complies with the financial standards of the Act and submit its recommendations to the City and Covered Organizations. (3857(2)(b)). Upon passage of the City Budget in accordance with the City Charter, presumably reflecting due consideration of the Authority’s recommendations, the Mayor is then to submit the Budget and Plan to the Authority with quarterly cash flow projections and a certificate that the Budget is consistent with the Plan. (3857(2)(c)). If the Authority finds that the Plan (or modification) is consistent with the financial standards of the Act, it is to certify the agreed-upon revenue estimates. (3857(2)(d)). This, it seems, constitutes adoption of the Plan. (Cf. 3857(2)(f)(“after the initial adoption of an approved financial plan”)).

If the Authority finds (i) that the Plan submitted by the City is incomplete, (ii) that it is not based on reasonable revenue and expenditure projections, (iii) that it fails to provide for operations of the City and Covered Organizations within available cash resources, or (iv) that it fails to comply with the Act or other requirements of law, it is to so report to the City, the State Director of the Budget, the State Comptroller, and the Chairs of the Assembly Ways and Means Committee and the Senate Finance Committee. (3857(2)(e)). In combination with the budget balancing and gap-reducing requirements mentioned above and the information requirements mentioned below (3857(4)), these appear (although not phrased as such) to be standards for approval or disapproval of the Plan.

If the City should fail to make modifications of the Plan as required to conform to the financial standards of the Act, then the Authority is to formulate and adopt its own modifications as necessary. (3857(2)(g), 3858(2)(a)).

The Plan is required to ensure that, except for deficit financing provided by the Authority during the transition period, each of the major operating funds of the City and Covered Organization will be balanced in accordance with generally accepted accounting principles. (3857(2)). Major operating funds include the City general fund, the Board of Education general fund, the City enterprise funds, the Board of Education special project funds, and such others as the Authority may designate. (3851(17)). The Plan is to be in such form and contain such information as the Authority may specify, including

estimated revenues and expenditures of the City and each Covered Organization, and such information as may be necessary to enable the Authority to satisfy itself that: (a) projected employment levels, collective bargaining agreements, capital construction and other matters are consistent with the provision made for such obligations in the Plan; (b) federal and state mandates are covered by the Plan; (c) adequate reserves are provided to maintain essential services in the event of an unanticipated deficit; and (d) the City has adequate cash to meet its obligations. (3857(3), (4)).

After adoption of the Financial Plan, the Mayor is required to submit quarterly summary reports of overall trend data by major category, actual total revenues and expenditures, and cash flow projections, showing and explaining variances between projections and actual receipts and disbursements. (3857(4)). With the quarterly reports, the Mayor is to submit recommendations to the Council for remedial action to resolve unfavorable budget variances. (3857(4)). The Mayor is required to submit modifications as necessary to maintain a balance between aggregate expenditures and revenues. (3857(2)(f), (g) and (h)). If the City fails to make such modifications, the Authority is to adopt a Financial Plan to remain effective until it approves a Plan submitted by the City. (3857(2)(g), see also 3858(2)(a)). The City is required to amend its budget or modify the Plan in order to keep them consistent, and it is prohibited from operating under a budget inconsistent with an approved Plan. (3857(2)h)).

V. FINANCIAL ASSISTANCE OF THE AUTHORITY

To enable the City to maintain essential services during a four-year transition period, while it develops a combination of cost reductions and revenue enhancements sufficient to bring its revenues and expenditures into balance without extraordinary annual increases in state assistance, the Authority is empowered to borrow against future City sales tax revenues (the City's share of the County sales tax) and general purpose state aid revenues. To the extent necessary, those revenues are intercepted and diverted from the City to the Authority for payment of principal and interest on the bonds issued by the Authority. The bonds must mature and be paid off no later than 30 years from their date of issue or June 30, 2037, whichever is earlier. (3862(2)). This device is designed to allow borrowing on behalf of the City in circumvention of provisions of the state constitution limiting the City's long-term debt and prohibiting long term debt to finance current operating expenditures. The Court of Appeals, over a strong dissent by Judge Jasen, has sustained the constitutional validity of the device. Wein v. City of New York, 36 NY2d 610, 370 NYS2d 550 (1975).

The Authority may issue notes and bonds to finance the refunding of existing City debt, cash flow needs, capital projects, and operating deficits during the four-year transitional period. (3862, 3851(15)). As noted above, it may finance operating deficits only on request by the City in the form of a Declaration of Need submitted by the Mayor with the approval of the Council, and only pursuant to a Financial Plan providing for a progressive reduction in the projected gap between revenues and expenditures, in amounts equal to 35-40% in fiscal year 2004, 45-50% in fiscal year 2005, 60-65% in fiscal year 2006, and 80-85% in fiscal year 2007. (3857(1)). The Act limits the aggregate principal amount of the Authority notes and bonds that may be outstanding at

any one time to \$175 million. (3862(1)). Because the Authority's notes and bonds will be secured by the interception of City sales tax and state aid revenues, they will probably enjoy a higher credit rating than the City's general obligation debt. The City therefore may have to look to the Authority to refinance existing debt and to finance annual cash flow needs (tax and revenue anticipation notes) and capital projects. To the extent that it does so, the Authority will have less borrowing capacity to finance operating deficits during the transitional period.

VI. CONTROLS

1. Approval of the Financial Plan and Modifications.

The Authority is empowered to exercise a pervasive set of controls over the fiscal decision making of the City and Covered Organizations during the initial control period and any subsequent control periods. Most fundamentally, as discussed above, it is to make recommendations as to, and then approve, require modification, or, if necessary, adopt its own Financial Plan and modifications in order to achieve compliance with the deficit reduction and budget balancing standards of the Act. It is important to recognize, though, that the Act reserves to the City and the Covered Organizations the power to determine the purposes and amounts of their expenditures within available funds and aggregate expenditure limits set by the Plan. (3860(3)). The responsibility of the Authority is essentially to assure fiscal stability by bringing aggregate expenditures into line with revenues and cash resources, and the Authority will presumably disapprove a Plan or modification submitted by the City only if it fails to comply with the financial standards mentioned above. (3857(1), (2), (4)).

2. Maximum spending level, settlement of claims, audits.

Among its specific control powers, the Authority may set a maximum spending Level for the proposed budget of a Covered Organization, review and approve or disapprove the proposed settlement of a claim against the City or a Covered Organization in excess of \$50,000, obtain information, audit books and records, and perform audits of the City or a Covered Organization. (3858(2)(b), (l), (m) and (n)).

3. Approval of borrowing.

The Authority is required to review and approve or disapprove any borrowing by the City or a Covered Organization. (3858(2)(I)). Exempted from this requirement, however, is the recently completed financing of Phase I of the Joint Schools Construction Board program through the issuance of Erie County Industrial Development Agency Bonds in the amount of about \$180 million.

4. Approval of Contracts.

The Authority is empowered but not required to approve or disapprove contracts

on the part of the City or a Covered Organization. (3858(2)(h)). In the case of the Troy, New York City and Nassau County financial control legislation, provision was made for the municipal chief executive officer to submit to the control board a proposed list of the types of contracts to be reviewed, and for the board then to adopt a resolution specifying the types of contracts to be reviewed by the board. Although the Buffalo Act does not provide for such a mechanism, the parties appear to have reached agreement in that regard.

5. Exploration of Merger of Services with County.

The Authority may require the City “to undertake certain actions to advance serious and in-depth exploration of a merger of services with the County, including identification and analysis of options; development of a detailed fiscal and programmatic plan; identification of city, county, and state impediments; and fostering of informed public debate.” (3858(2)(k)). This obviously falls well short of a power to impose any merger of services, which would require the concurrence of the County and City governments and would be subject to significant legal and state constitutional constraints. The phrase “a merger of services with the county,” is probably intentionally indefinite and open-ended as to the scope and form of such mergers of services, presumably encompassing a range of possibilities including inter-municipal service contracts, consolidation of particular functions, and even a complete merger of the City and County. (3858(2)(j) and (k)).

6. Collective Bargaining Agreements, Wage Freeze.

The Authority is required to review collective bargaining agreements entered into by the City and Covered Organizations and to disapprove any agreement it finds inconsistent with the Financial Plan. (3858(2)(e)). It is to act jointly with the City in selecting members of any interest arbitration panel, and it may present evidence to the panel regarding the fiscal condition of the City. (3858(2)(f)).

A particular significant cost-cutting power, and one that does not depend upon action by the City or a Covered Organization, is the power to impose a wage and/or hiring freeze. (3858(2)©). The Authority may order that all salary and wage increases scheduled to take effect after the date of the order shall be suspended, even if the scheduled increases are pursuant to a collective bargaining agreement or arbitration award already in existence, and including step increments, shift differentials and the like. (3858(2)©(1)). No retroactive pay adjustments can accrue during the period of a wage freeze. (3858(2)(12)©(iii)). Moreover, the suspended increases are not to be counted in calculating the pension base of employee retirement allowances. (3858(2)©(1)). If, however, the employees’ union (or the unrepresented employee) has agreed to a deferment of salary or wage increase accepted by the Authority as an appropriate contribution towards alleviating the fiscal crisis of the City, then the deferred increase may be counted in the employees’ pension calculations. (3858©(ii)). Thus, although the Authority cannot impose on the unions a change in employee rights under a collective bargaining agreement other than a wage freeze, the Authority, City and Covered

Organizations have been afforded a powerful bargaining position in negotiations to induce the unions to agree to measures to increase efficiency and cut costs.

In New York City, employee unions challenged the constitutional validity of similar wage freeze provisions of financial emergency legislation. In Patrolmen's Benevolent Association v City of New York, 41 NY2d 205, 391 NYS2d 544 (1976), the Court of Appeals held that the freeze legislation, which by its terms applied to increases "which will take effect after [June 30, 1975] pursuant to collective bargaining agreements or other analogous contracts, now in existence or hereafter entered into" did not extend to an increase required by a court judgment confirming the award of an impasse panel. Although the BFSA Act differs from the New York City statute in that it includes "interest arbitration awards," it does not mention judgments.

In Subway-Surface Supervisors Ass'n v. N.Y.C. Transit Authority, 44 NY2d 101, 404 NYS2d 323 (1978), the Court of Appeals addressed the question whether the wage freeze was unconstitutional insofar as it applied to wage increases provided by an already existing collective bargaining agreement. The Court held that the freeze, as so applied and apart from its effect on employees' pension computations, was "reasonably necessary to serve an important public purpose" (quoting United States Trust Co. v New Jersey, 431 U.S. 1, 97 S. Ct. 1505 (1977)), and therefore was within the State's reserved police power and did not violate the contract clause of the United States Constitution. The Appellate Division had held that the statutory directive that suspended increases not be counted in pension computations violated Article V, Section 7 of the New York Constitution, which provides that the pension benefits of members of the state and local government pension systems shall not be impaired. The Court of Appeals reversed the Appellate Division in that respect, on the ground that since the union had entered into a wage deferment agreement requiring the deferred increases to be included in pension computations, it had no standing to challenge the statute in that respect. The question has not yet been addressed on the merits by the Court of Appeals.

7. Orders to Officers and Employees, Prohibitions and Penalties.

The Act empowers the Authority to issue orders to appropriate officials of the City and Covered Organizations to accomplish the purposes of the Act. (3858(2)(o)). It prohibits City and Covered Organization employees from incurring any obligation in excess of the amount available under the Financial Plan, from entering into any contract or incurring any other monetary obligation if the contract is required to be but has not been approved by the Authority, from violating an order of the Authority, and from presenting any false or misleading information to the Authority or upon learning that such information is false or misleading, failing promptly to so advise the Authority. (3858(a) and (b)). To afford the City and Covered Organizations sufficient flexibility to meet changing conditions, the Plan should be drafted to expressly allow transfers of funds within aggregate expenditure limits.

In addition to other penalties and liabilities, an officer or employee who violates these prohibitions is subject to administrative discipline, including, when warranted, suspension without pay or removal from office by the Mayor or the Governor. A knowing and willful violation constitutes a misdemeanor. (3858(3)©). The Mayor and chief executive officers of Covered Organizations are required to report to the Authority any violation and the disciplinary action taken. (3858(3)(d)).

VII. AUTHORITY ADVISORY FUNCTIONS

In addition to its specific control and financial assistance functions, the Authority may, during both control and advisory periods, review and make recommendations to the City and Covered Organizations with respect to their operations, management, efficiency and productivity as the Authority deems appropriate to reduce costs, enhance revenue, and improve services. (3858(2)(j)).

During advisory periods, the Authority is required to monitor the City and Covered Organizations; obtain information; audit their books and records; audit compliance with the Financial Plan in such areas as it considers appropriate; review and make recommendations as to their operations, management, efficiency and productivity; comment as deemed appropriate on budget or financial plan provisions; review and comment on any proposed borrowing; and assess the impact of collective bargaining agreements and other significant contracts on the City's long-term fiscal condition. (3859).

A crucial role of the Authority and the financial planning process will be to generate an understanding – on the part of both the affected interest groups and the community – of the extraordinarily difficult choices and accommodations that must be made among legitimate but competing interests, and to build the necessary consensus to resolve the issues in the public interest.

VIII. CONCLUSION

The City, the School District, and their employee unions have been unable to master the collective will to reorganize services and reduce personnel levels, especially in the police and fire departments, and to contain health insurance and fringe benefit costs, as rapidly and effectively as the times have required. The control board will certainly impose a necessary measure of discipline in those respects. Recognizing the necessity for a control board in the context of the existing structure of state-local government finance, however, I submit that this should not deflect attention from the more fundamental need for reform at the state level, and so long as the cities remain hammed in by state law, both geographically and financially, to provide the cities with an equitable and reliable source of revenues sufficient to meet their needs.

The declared objective of the Act is to restore Buffalo to “structural balance” and “fiscal stability” without “annual extraordinary increases in state aid.” This is essentially a question-begging formulation of the problem, and it does not provide real guidance as to the extent to which the City will be required to reduce its costs over the next few years.

As demonstrated at the beginning of this paper, Buffalo and all of the upstate cities (indeed all local governments) have quite properly depended upon annual increases in state aid since World War II. Increases for Buffalo have not been disproportionate to corresponding increases for Rochester and Syracuse. (Between 1996 and 2001, the rate of increase was substantially greater for the Syracuse city government (140%) than for Buffalo (87%).) Unless and until the state radically reforms its entire system of local government, it will necessarily have to continue to increase annual assistance to the cities, and it will have to do so at the fastest rates for the poorest cities, including Buffalo. There is no common understanding as to what represents an “extraordinary” increase, The appropriate level of state support for the cities – as for all local governments – is a fundamental political issue of statewide importance. Ideally it should receive comprehensive and fair-minded re-examination, leading to real reform at the state level. Absent such reforms, the city government, the Board of Education and the BFSA can only guess at the levels of state assistance that will become available in future years.

The City’s employee health insurance and pension fund costs can be expected to continue to rise rapidly in the next several years, far outstripping any realistic estimate of potential cost saving measures. Given the combination of the percentage deficit reduction requirements and the \$175 million limit on Authority financial assistance, it seems reasonable to conclude that it will be necessary not only to take every available opportunity to increase efficiency and reduce the costs of service, but also to find significant new revenue if the City and the School District are to maintain even minimally acceptable levels of service.

The City is close to its constitutional real property tax limit. Other city tax possibilities would be likely to accelerate the shift of people, jobs and wealth to the suburbs. To the extent that increasing state assistance is not sufficient; it seems likely that it will become necessary to allot to the City a greater share of the County sales tax. This, of Course, would necessarily generate an increase in the County property tax, unless the state was to relieve the counties of the rapidly growing Medicaid mandate. Ideally the State would reform its practice of ad hoc, year-to-year, unpredictable increases of financial assistance to the cities and their school districts and enact a rational, equitable and reliable revenue sharing formula, indexed to criteria of need and enabling the cities and their school districts to plan and manage their programs within predictable financial resources, but that is not likely to occur any time soon.

Contrary to prevailing rhetoric, the financial straits of the City are not due primarily to mismanagement by local government. Rather, they are due to multiple failures at the state level: first, failure to reorganize or facilitate reorganization of local government – or at least its financing – in response to a half century of predominant urban growth outside the boundaries of the cities that became fixed in the late 19th Century; second, to reform state laws imposing unnecessary costs on local government, such as the Wicks Law, which requires four separate contracts for most public works projects, and the Taylor Law, which requires mandatory arbitration of a collective bargaining impasse with a police or firefighters union and which requires adherence to the terms and conditions of an expired collective bargaining agreement until the parties

reach a new agreement (the Triborough doctrine); and third, failure to devise a rational, equitable and reliable system of revenue sharing that would enable the cities to plan for and live within an adequate revenue base.

The control board legislation will no doubt lead to some efficiencies and reductions in the cost of local government, mainly through less costly collective bargaining agreements. In view of its implicit assumption that the City will no longer be able to count on adequate state aid, however, the legislation also threatens to result in excessive impairment of essential services, especially public education. The legislation will not relieve the City of the need for increasing revenues in the years ahead. It will not in itself establish structural balance in the City's finances over the long term. And it will not bring about the fundamental reforms at the state level that must be achieved if Buffalo and the other upstate cities are to regain the ability to manage their own affairs effectively and responsibly. Our best hope is that the experience of our City under the control board legislation, and similar though perhaps less dramatic experience in the other upstate cities, will generate sufficient public demand and political leadership to realize those reforms.