

**Testimony submitted to the
New York City Charter Revision Commission**

**by
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June 27, 2005

I am the executive director of the Fiscal Policy Institute, a nonprofit research organization with offices in Latham and New York City. I was the director of research for the 1987-88 and 1989 New York City Charter Revision Commissions.

These comments deal with the Charter Commissions preliminary recommendations regarding “fiscal stability.” I have also read the Commission’s preliminary recommendations on “agency efficiency, effectiveness and accountability,” and will submit comments on those recommendations tomorrow.

The Charter Revision Commission’s Preliminary Recommendations of June 10, 2005, indicate that it is interested in obtaining public comments on “whether the City should import into the Charter certain key provisions of State law that have helped to ensure the City’s fiscal stability for more than two decades.”

The purpose of this testimony is to indicate support for the idea of importing into the Charter “certain key provisions of State law that have helped to ensure the City’s fiscal stability for more than two decades” BUT, at the same time, to indicate my belief that the preliminary proposals as released for public comment do NOT accomplish that objective.

In anticipation of the possible expiration, in 2008, of all or some of the provisions of the Financial Emergency Act for the City of New York (FEA), the Charter Revision Commission’s June 10, 2005, preliminary report indicates that “now is an excellent time to import the meritorious provisions of the FEA into the City Charter to ensure their continuation and also to focus the eventual debate on the remaining features of the FEA.”

This statement implies, either intentionally or unintentionally, that the provisions of the FEA being recommended for importation into the Charter are “meritorious,” and that the other provisions of the FEA (i.e. those not being recommended for importation into the charter) are, by definition, not meritorious. The only hint given in the report as to which features of the FEA are deemed not to be meritorious are those that “represent a significant intrusion on the City’s home rule powers.” And, the only example given in the report of a feature of the FEA that represents such an intrusion is the fact that the FEA entrusts “the Financial Control Board with significant powers with respect to the City’s budget under certain circumstances.”

While opinions may differ on whether or not those intrusions on the City's home rule powers are, on balance, helpful or harmful to the City, those aspects of the FEA could not, in any event, be imported into the Charter without state action. So, it is not necessary, in the context of the current charter revision effort, to deal with those aspects of the FEA that might be seen as intrusions on the City's home rule powers, including the existence and roles of the Financial Control Board.

What I believe is being missed in the preliminary recommendations is the fact that the FEA does not just require the Mayor to produce a multi-year financial plan but that it establishes a process by which that financial plan and its quarterly updates are reviewed by independent, professionally staffed organizations which because of the powers granted to the Control Board by the FEA have access to any and all of the information that they need to accomplish their analyses of the financial plan updates and the gap-closing actions proposed by the Mayor in those plans.

For example, among the steps taken during the 1970s that were critical to the restoring of stability to the City's finances was the creation of the position originally referred to as the Special Deputy Comptroller for the City of New York, and now referred to as the State Deputy Comptroller for the City of New York. Both the Financial Emergency Act and the State Finance Law make clear that a primary responsibility of the Office of the State Deputy Comptroller (OSDC) is to assist the Control Board in its work. Section 41-a of the State Finance Law, for example, provides that OSDC "shall assist the New York state financial control board created pursuant to section five of the New York state financial emergency act for the city of New York in carrying out and exercising the responsibilities assigned and powers granted to such board." The FEA provides that the Control Board shall receive from the Deputy Comptroller "such financial statements and projections, budgetary data and information, and management reports and materials as the board deems necessary or desirable to accomplish the purposes of this act."¹

In practice, an essential part of the multi-year financial planning process established by the FEA has been the scrutiny that the City's financial plans receives from both OSDC and the Control Board's own staff. These two staffs carefully review and analyze the quarterly updates to the multi-year financial plans submitted by the City pursuant to the FEA. And, both OSDC and the Control Board's staff issue public reports with their detailed analyses of the City's financial situation and of the steps that the City proposes, in its financial plans, to take to close its projected budget gaps.

The City Charter is not the forum for deciding whether the Financial Control Board and/or OSDC should be eliminated or continued or, if continued, what their roles, in the future, should be in the review of the multi-year financial plans, and the quarterly updates, thereto, submitted

¹ The FEA also provides the Control Board with the authority to obtain all of these different kinds on information from the City government itself and from all covered organizations.

by the Mayor pursuant to the proposed amendments to the City Charter. Those decisions are up to the State Legislature. But, if the Charter Revision Commission, wants to contribute to the future fiscal stability of the City by importing into the Charter the financial planning process that has proven to be so beneficial over the course of the last 30 years, than it must import other aspects of the FEA's financial planning process into the charter in addition to the part of that process that requires the Mayor to submit a multi-year financial plan; to update that financial plan following budget adoption, during the second quarter of each fiscal year, and at such other times as the mayor deems appropriate; and, to issue monthly reports on variances actual and planned revenues and expenditures.

If the Charter Revision Commission wants to continue, in the Charter, the financial planning process established over the last 30 years under the FEA, then it must assign to some Charter-created entities the financial plan review roles assigned by the FEA to the Control Board and the OSDC. The two Charter-created entities that would be appropriate for these roles would be the City Comptroller and the Independent budget office.

Here are some of the financial plan preparation and review roles that are assigned to the Control Board and the State Comptroller by the FEA and which should be assigned to the City Comptroller and/or the Independent Budget Office by the Charter:

1. Section 7(1)(a)(i): In accordance with the provisions of section eight of this act, the board shall consult with the city and the covered organizations in the preparation of the financial plan, and certify to the city the revenue estimates approved therein
2. Section 7(1)(a)(ii): In accordance with the provisions of section eight of this act, the board shall prescribe the form of the financial plan and the supporting information required in connection therewith. (NOTE: The ability of the Board to specify the supporting information required in connection with the financial plan makes an informed review of the plan possible.)
3. Section 7(1)(c): The board shall, from time to time and to the extent it deems necessary or appropriate in order to accomplish the purposes of this act, (i) review the operations, management, efficiency and productivity of such city operations and of such covered organizations or portions thereof as the board may determine, and make reports thereon; (ii) audit compliance with the financial plan in such areas as the board may determine; (iii) recommend to the city and the covered organizations such measures relating to their operations, management, efficiency and productivity as it deems appropriate to reduce costs and improve services so as to advance the purposes of this act; and (iv) obtain information of the financial condition and needs of the city and the covered organizations. Nothing herein shall diminish the powers of the (state) comptroller otherwise provided by law and the board may request the assistance of the (satte) comptroller in performing the above functions.
4. Section 7(1)(d): The board (i) shall receive from the city and review the reports to be prepared by or on behalf of the city pursuant to section seven-a; (ii) shall receive from the city and the covered organizations and from the (state) deputy comptroller, and shall review such financial

statements and projections, budgetary data and information, and management reports and materials as the board deems necessary or desirable to accomplish the purposes of this act; and (iii) shall inspect, copy and audit such books and records of the city and the covered organizations as the board deems necessary or desirable to accomplish the purposes of this act.

5. Section 7(1)(g): The board and the (state) comptroller shall receive quarterly reports from the city comptroller setting forth the debt service requirements on all bonds and notes of the city and the covered organizations for the following quarter, which reports shall be in such form and contain such information as the board shall determine. Such reports shall be issued no later than sixty days prior to the start of the quarter to which they pertain and shall be updated immediately upon each issuance of bonds or notes after the date of such report to reflect any change in debt service requirements as a result of such issuance. The board also shall receive from the city monthly and quarterly financial reports, which reports shall be in such form and contain such information as the board shall determine and shall be made available by the city to the public. In order to avoid duplicative reports and reporting requirements, to the extent that the city is required to submit monthly or quarterly financial reports to the department of the treasury pursuant to any agreement or arrangement made in connection with federal guarantees of notes or bonds issued by the city or a state financing agency, copies of such reports shall be submitted to the board in satisfaction of the monthly and quarterly reporting requirements set forth above, together with such additional information as the board may require. Each monthly and quarterly report herein required to be submitted to the board must indicate any variance between actual and budgeted revenues, expenses or cash for the period covered by such report.

6. Section 7(1)(I): The board shall coordinate with the municipal assistance corporation for the city of New York and the (state) deputy comptroller with respect to the performance of its review and monitoring of the revenues and expenditures of the city and the covered organizations.

7. Section 8 (2-a): The city and the board shall confer concerning the projected effect on the budgets of the city and the covered organizations of any change in generally accepted accounting principles, or change in the application of generally accepted accounting principles to the city and the covered organizations, made after the effective date of this act. If the board determines that immediate compliance with such change will have a material effect on such budgets over a time period insufficient to accommodate the effect without a substantial adverse impact on the delivery of essential services, the board may authorize and approve a method of phasing the requirements of such change into such budgets over such reasonably expeditious time period as the board deems appropriate. (NOTE: The Charter Commission's preliminary recommendation give this power of the Board to the Mayor without any requirement that the mayor even consult with the Comptroller even though one of the indicators of the city's financial mismanagement during the fiscal crisis of 1975 was that the Mayor and the City Comptroller had different records as to the City's revenues and expenditures. One of the reforms adopted by the City in response to this revelation was the establishment of the Financial information Services Agency under the joint control of the Mayor and the City Comptroller so that, in the future, the City would have one set of books.)

8. Section 8 (3)(b)(ii): At all times other than during a control period the board shall promptly review each financial plan and financial plan modification submitted by the city. If the board determines after such review that the financial plan or financial plan modification submitted by the city is not in accordance with the standards set forth in subdivision one of this section, the board shall promptly so notify the city and may take such other action under this act as it deems appropriate.

9. Section 8 (4): Each financial plan shall be in such form and shall contain such information for each year during which the financial plan is in effect as the board may specify, and shall, in such detail as the board may from time to time prescribe, include projections of all revenues, expenditures and cash flows (including but not limited to projected capital expenditures and debt issuances) and a schedule of projected capital commitments of the city and except in such instances as the board may deem appropriate each of the covered organizations. In addition, each financial plan and financial plan modification shall include a statement of the significant assumptions and methods of estimation used in arriving at the projections contained therein, set forth in such form and in such detail as the board may from time to time prescribe.

10. Section 8 (5): The city and the covered organizations shall promptly furnish the board with any information which the board may request to satisfy itself that (i) projected employment levels, collective bargaining agreements and other action relating to employee costs, capital construction and such other matters as the board may specify, are consistent with the provisions made for such costs in the financial plan, (ii) the city and the covered organizations are taking whatever action is necessary with respect to programs mandated by state and federal law to ensure that expenditures for such programs are limited to and covered by the expenditures stated in the financial plan, and (iii) adequate reserves are provided to maintain programs mandated by state and federal law and for which obligations are going to be incurred in the fiscal year and other essential programs in the event revenues have been overestimated or expenditures underestimated for any period.

To address these matters in the importation of provisions of the FEA into the City Charter, I suggest that the following changes and additions be made in the preliminary recommendations released for public comment on June 10, 2005:

1. Section 258 (b) (1): For each fiscal year, the city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with generally accepted accounting principles and would permit comparison of the budget with the report of actual financial results prepared in accordance with generally accepted accounting principles. Notwithstanding any inconsistent provision of this charter, in the event of any change in generally accepted accounting principles, or change in the application of generally accepted accounting principles to the city, if the mayor ~~determines~~ AND THE COMPTROLLER DETERMINE that immediate compliance with such change will have a material effect on such budgets over a time period insufficient to accommodate the effect without a substantial adverse impact on the delivery of essential services, the mayor AND THE COMPTROLLER, BY A JOINTLY ISSUED ORDER, may

authorize and approve a method of phasing the requirements of such change into such budgets over such reasonably expeditious time period as the mayor deems appropriate.

2. Section 258 (b) (4): All projections of revenues and expenditures contained in the financial plan, AND IN ALL MODIFICATIONS AND UPDATES THEREOF, shall be based on reasonable and appropriate assumptions and methods of estimation. All cash flow projections shall be based upon reasonable and appropriate assumptions as to sources and uses of cash (including but not limited to the timing thereof), and shall provide for operations of the city to be conducted within the cash resources so projected. IN CONJUNCTION WITH THE ISSUANCE OF THE FINANCIAL PLAN AND ALL MODIFICATIONS AND UPDATES THEREOF, THE MAYOR SHALL PROVIDE THE COUNCIL, THE COMPTROLLER AND THE INDEPENDENT BUDGET OFFICE WITH SUCH INFORMATION REGARDING SUCH ASSUMPTIONS AND METHODS OF ESTIMATION AS THEY MAY REQUIRE TO ASSESS THE REASONABLENESS OF SUCH PROJECTIONS.

3. Section 258 (e): Add the following to the end of this subdivision as proposed: IN CONJUNCTION WITH THE ISSUANCE OF SUCH MONTHLY REPORTS, THE MAYOR SHALL PROVIDE THE COUNCIL, THE COMPTROLLER AND THE INDEPENDENT BUDGET OFFICE WITH SUCH INFORMATION AS THEY MAY REQUIRE TO ASSESS THE REASONS FOR, AND THE IMPLICATIONS OF, SUCH VARIANCES.

4. Section 258 (f): The first sentence of this subdivision as proposed (“The powers, duties, and obligations set forth in this section shall be subject to the powers, duties, and obligations placed upon any state or local officer or agency, including but not limited to the New York state financial control board, by or pursuant to the New York State Financial Emergency Act for the City of New York, while such act remains in effect.”) should be as written more clearly. What does it mean, for example, to say that “powers . . . shall be subject to powers?” Also, what does it mean to refer to say “powers...placed upon” an agency or an official. Is the intention of this sentence to say that “Nothing in this subdivision shall diminish the powers of any state or local officer or agency as provided by state law or as provided by other provisions of this charter.”

5. In order to import the financial plan review procedures established by the FEA into the City Charter, the following additional subdivisions should be added to the proposed Section 258 following subdivision (f):

G. THE COMPTROLLER SHALL, FROM TIME TO TIME AND TO THE EXTENT THAT THE COMPTROLLER DEEMS NECESSARY OR APPROPRIATE IN FURTHERANCE OF THE PURPOSES OF THIS SECTION, (1) REVIEW THE OPERATIONS, MANAGEMENT, EFFICIENCY, AND PRODUCTIVITY OF SUCH CITY OPERATIONS AS THE COMPTROLLER DEEMS APPROPRIATE, (2) AUDIT COMPLIANCE WITH THE FINANCIAL PLAN AS SUBMITTED, MODIFIED AND UPDATED BY THE MAYOR, (3) RECOMMEND SUCH MEASURES RELATING TO CITY OPERATIONS, MANAGEMENT, EFFICIENCY AND PRODUCTIVITY AS THE COMPTROLLER DEEMS APPROPRIATE TO IMPROVE SERVICE EFFICIENCY AND QUALITY SO AS TO ADVANCE THE

PURPOSES OF THIS SECTION, (4) OBTAIN FROM THE MAYOR AND ANY OTHER CITY AGENCY OR OFFICER, AND REVIEW, SUCH INFORMATION REGARDING THE FINANCIAL CONDITION AND NEEDS OF THE CITY, SUCH FINANCIAL STATEMENTS AND PROJECTIONS, BUDGETARY DATA AND INFORMATION, AND MANAGEMENT REPORTS AND MATERIALS AS THE COMPTROLLER MAY DEEM NECESSARY OR DESIRABLE TO ACCOMPLISH THE PURPOSES OF THIS SECTION, (5) INSPECT, COPY AND AUDIT SUCH BOOKS AND RECORDS OF THE CITY AS THE COMPTROLLER DEEMS NECESSARY OR DESIRABLE TO ACCOMPLISH THE PURPOSES OF THIS SECTION.

H. THE COMPTROLLER SHALL ISSUE A QUARTERLY REPORT SETTING FORTH THE DEBT SERVICE REQUIREMENTS ON ALL BONDS AND NOTES OF THE CITY AND ALL BONDS AND NOTES OF RELATED ENTITIES THAT RELATE TO OR IMPACT ON THE REVENUES AND EXPENDITURES OF THE CITY FOR THE FOLLOWING QUARTER, WHICH REPORTS SHALL BE IN SUCH FORM AS THE COMPTROLLER SHALL DETERMINE. SUCH REPORTS SHALL BE ISSUED NO LATER THAN SIXTY DAYS PRIOR TO THE START OF THE QUARTER TO WHICH THEY PERTAIN AND SHALL BE UPDATED IMMEDIATELY UPON THE ISSUANCE OF BONDS OR NOTES AFTER THE DATE OF SUCH REPORT TO REFLECT ANY CHANGE IN DEBT SERVICE REQUIREMENTS AS A RESULT OF SUCH ISSUANCE.

I. THE MAYOR SHALL PROVIDE THE COUNCIL, THE COMPTROLLER AND THE INDEPENDENT BUDGET OFFICE WITH MONTHLY AND QUARTERLY FINANCIAL REPORTS, WHICH SHALL BE IN SUCH FORM AND CONTAIN SUCH INFORMATION AS THE COMPTROLLER SHALL DETERMINE AND SHALL BE MADE AVAILABLE TO THE PUBLIC. IN ORDER TO AVOID DUPLICATIVE REPORTS AND REPORTING REQUIREMENTS, TO THE EXTENT THAT THE CITY IS REQUIRED TO SUBMIT MONTHLY OR QUARTERLY REPORTS TO AND FEDERAL OR STATE AGENCIES OR OFFICERS, COPIES OF SUCH REPORTS MAY BE SUBMITTED TO THE COUNCIL, THE COMPTROLLER AND THE INDEPENDENT BUDGET OFFICE IN SATISFACTION OF THE MONTHLY AND QUARTERLY REPORTING REQUIREMENTS SET FORTH ABOVE, TOGETHER WITH SUCH ADDITIONAL INFORMATION AS THE COMPTROLLER MAY REQUIRE.

J. THE DIRECTOR OF THE INDEPENDENT BUDGET OFFICE SHALL, FROM TIME TO TIME AND TO THE EXTENT THAT SUCH DIRECTOR DEEMS NECESSARY OR APPROPRIATE IN FURTHERANCE OF THE PURPOSES OF THIS SECTION, (1) REVIEW THE OPERATIONS, MANAGEMENT, EFFICIENCY, AND PRODUCTIVITY OF SUCH CITY OPERATIONS AS SUCH DIRECTOR DEEMS APPROPRIATE, (2) RECOMMEND SUCH MEASURES RELATING TO CITY OPERATIONS, MANAGEMENT, EFFICIENCY AND PRODUCTIVITY AS SUCH DIRECTOR DEEMS APPROPRIATE TO IMPROVE SERVICE EFFICIENCY AND QUALITY SO AS TO ADVANCE THE PURPOSES OF THIS SECTION, (3) OBTAIN FROM THE MAYOR AND ANY OTHER CITY AGENCY OR OFFICER, AND REVIEW, SUCH INFORMATION REGARDING THE FINANCIAL

CONDITION AND NEEDS OF THE CITY, SUCH FINANCIAL STATEMENTS AND PROJECTIONS, SUCH BUDGETARY DATA AND INFORMATION, AND SUCH MANAGEMENT REPORTS AND MATERIALS AS SUCH DIRECTOR MAY DEEM NECESSARY OR DESIRABLE TO ACCOMPLISH THE PURPOSES OF THIS SECTION, (4) INSPECT AND COPY SUCH BOOKS AND RECORDS OF THE CITY AS SUCH DIRECTOR DEEMS NECESSARY OR DESIRABLE TO ACCOMPLISH THE PURPOSES OF THIS SECTION.

K. THE COMPTROLLER AND THE DIRECTOR OF THE INDEPENDENT BUDGET OFFICE SHALL COORDINATE WITH EACH OTHER, AND WITH THE NEW YORK STATE COMPTROLLER AND WITH ANY OTHER STATE AGENCIES AND OFFICERS CHARGED WITH REVIEWING CITY FINANCES OR OPERATIONS, IN ORDER TO AVOID THE NEED FOR ANY DUPLICATIVE REPORTING ON THE PART OF ANY CITY AGENCIES OR OFFICERS.

L. THE MAYOR AND OTHER CITY AGENCIES AND OFFICERS SHALL PROMPTLY FURNISH THE COMPTROLLER WITH ANY INFORMATION THAT COMPTROLLER MAY REQUEST REGARDING CURRENT AND/OR PROJECTED EMPLOYMENT LEVELS, CURRENT AND/OR PROJECTED COSTS OF PARTICULAR CATEGORIES OF PERSONAL SERVICE AND NONPERSONAL SERVICE EXPENDITURES, AND THE ASSUMPTIONS AND METHODOLOGIES ON WHICH SUCH PROJECTIONS ARE BASED.

M. THE MAYOR AND OTHER CITY AGENCIES AND OFFICERS SHALL PROMPTLY FURNISH THE DIRECTOR OF THE INDEPENDENT BUDGET OFFICE WITH ANY INFORMATION THAT SUCH DIRECTOR MAY REQUEST REGARDING CURRENT AND/OR PROJECTED EMPLOYMENT LEVELS, CURRENT AND/OR PROJECTED COSTS OF PARTICULAR CATEGORIES OF PERSONAL SERVICE AND NONPERSONAL SERVICE EXPENDITURES, AND THE ASSUMPTIONS AND METHODOLOGIES ON WHICH SUCH PROJECTIONS ARE BASED.

Thank you for your consideration of these suggestions. Please contact me at 518-786-3156 or mauro@fiscalpolicy.org if you have any questions regarding these suggestions.