Transcript of the Meeting of the
CHARTER REVISION COMMISSION
held on Wednesday, December 8, 2004
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Borough of Manhattan

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Meeting convened at 7:20 p.m.

PRESENT

DR. ESTER FUCHS, Chair

COMMISSIONERS:

JENNIFER RAAB

ROBERT ABRAMS

CURTIS ARCHER

AMALIA BETANZOS

STEPHEN FIALA

DALL FORSYTHE

DAVID CHEN

MARY MCCORMICK

STEPHANIE PALMER

Also Present:

TERRI MATTHEWS, Executive director

BRIAN GELLER, Analyst
CHAIRPERSON FUCHS: Good evening. I'd like to call our session of the New York City Charter Revision Commission to order, please. First of all, thank you, everyone, for attending this evening and a special thank you to President Raab of Hunter College and to her staff and especially to Paulette Enriquez for helping to host this evening at Hunter College and for making this space available for the City for this meeting of the Charter Revision Commission.

This is the first of three baseline meetings that we will be holding and these are public meetings as opposed to public hearings. Public meetings actually have the public observing as opposed to asking questions and we will have some expert testimony for all these three baseline meetings. We will be holding hearings later on and I will provide information about that at the end of the session.

We welcome comments from everybody in this room, from your friends and neighbors and anybody else you would like to inform about the work of the Charter Commission. You can contact us at our website, www.nyc.gov/charter. The website is up and running. You can actually send us a message directly from the website, you can send a message to me as Chair, you can send a message to the executive director, Terri

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Matthews, who is here tonight and you can sign up on the
website to receive e-mails and if you're interested in
signing up this evening to receive e-mails, there is a
sheet going around. Ruth Gen and Abby, you just might
raise your hands. Somewhere in the corner of the room
is the sheet that will allow you to sign up and receive
e-mails from the Charter Commission. On the website you
can also access the meeting schedule and transcripts
from previous meetings.

We are trying to make the information as
accessible as possible to the broadest public that we
can reach and we, as I said, welcome everybody's
comments, questions, interests and as well as expertise
on this particular Charter Revision Commission.

This evening, the subject of our expert
testimony will be fiscal stabilities and issues related
to the sunsetting of the Emergency Financial Control Act
of the State Government and we're very, very fortunate
today to have the City's Budget Director, the Director
of the Office of Management and Budget of the City of
New York, Mark Page, to testify before the Commission.

Is Mark here? Great. I'd just like to
invite him to come up. Briefly, Mr. Page is as I said
the Director of OMB for the City of New York. His
responsibilities are far reaching. He monitors and
forecasts, I'm going to say he personally monitors and forecasts City revenues and expenses, analyzes the economy, evaluates agency management and improvement initiatives, issues bonds in the public capital market in conjunction with the City Comptroller. He has been with the Office of Management and Budget since 1978 and he's been the director since 2002. He serves on a variety of Authorities and he received his BA from Harvard University and his law degree from NYU.

It is a pleasure to welcome Mark Page to speak before the City Charter Revision Commission.

Thank you.

MR. PAGE: Thank you. My tenure in City Government happens to coincide, so far at least, with the kind of second generation version of the Financial Emergency Act. There was a first generation enacted in 1975 and major revisions, actually, in the spring of 1978 when I started working as a lawyer for the Budget Bureau in January before that. So I was at least present, I don't know how involved, particularly, with the substance of what was done that spring, and along with others who were there, I guess I continued to be somewhat amazed that the structure that was devised that spring in terms of a rolling four-year plan and the standards and procedures that accompany it, has actually
worked as well as it has since then, through a number of
different mayors, a number of different economic cycles,
different agendas of mayors. New York City has achieved
23 years of balanced operating results. Which is
unusual for a Government entity, and I guess I'd like to
sort of go back to the mid-70's in terms of what this
system is and its nature as a creature of State law as a
practical matter which has been picked up here and there
in the City Charter, but not I think in the
comprehensive arrangement that is, I think, fairly
clearly and sort of understandably, and that's perhaps
only because I'm a lawyer, so I think that this stuff is
understandable that others might not.

If you look at New York City in 1975, I
mean, as we all know there's this great moment when New
York City has had a substantial amount of short-term
debt outstanding, and some of it is bond anticipation
notes issued for legitimate capital purposes, but a lot
of it is notes in anticipation of tax revenue or in
anticipation of State aid of one kind or another, which
were sold, the proceeds were used to pay operating
costs, the revenues didn't materialize, the note comes
due and so the obvious thing to do is to sell another
one, because then you have the money to pay off the one
that comes due. This is a very satisfactory pattern, it
continues fine until somebody decides they're not going
to buy the next note at which point it ends rather
abruptly which results in the 1975 experience of New
York City and none of this is a surprise to any of you,
but with an operating budget of $12 billion, there was a
question as to how many notes stopped rolling, the
answer was six billion which is a lot, a sudden,
unexpected, unplanned for expense to accommodate.

Everyone is surprised to remember the City
couldn't accommodate it and couldn't pay the notes when
it came due. That was upsetting to people who might
consider lending more money to New York City. And the
first sort of State approach to that problem was the
creation of the Municipal Assistance Corporation for the
City of New York. If you are actually compelled for
whatever reason to read the MAC Act as adopted by the
New York State Legislature in 1975, you would find
there's a whole lot of small print in there that
actually talks about how the City is supposed to behave,
how it's supposed to relate to the credit markets,
restrictions on short-term debt, the issue of RANs and
TANs, which is basically how the City had financed with
cash an ongoing and growing operating deficit through
the early 1970's and perhaps earlier than that.

MAC was primarily, however, a cure for
access to the credit markets; it was this thing of
breaking off basically sales tax revenue from New York
City. MAC could issue debt for which the payment would
come from the sales tax and it was sales tax before the
sales tax actually got into the City. So the lender,
investor in a bond didn't have to trust City Government
to pay interest and principal on debt instead of this
week's police payroll, the money went to MAC, MAC didn't
have a police payroll so it wasn't so hard for them to
pay debt service, and then downstream with MAC, whatever
surplus they might have went to the City and, you know,
fell into this dubiously managed box.

MAC worked for a while. It actually didn't
have sufficient market access to cover the need in terms
of refinancing the City's then overdue notes. And the
Financial Emergency Act was an effort to address not
just the structural credit problem in New York City, but
the fiscal management problem, and it's I think kind of
interesting for that reason.

The basic theory was that the State created
this oversight board, basically run by elected officials
in their official capacity. It's the Governor, it's the
City Comptroller, the State Comptroller, the Mayor.
That's four out of seven members who are in fact elected
Government officials and then three private members
appointed by the Governor. I mean, as a model, it's not that you're looking for people to volunteer to serve on this board. Yes, the three private members but the real weight of the board is actually elected officials in their Governmental capacity.

And then in '75 and then as revised in 1978, you have this idea that you're going to impose a fiscal planning structure on the existing budget and financial management process in the City. It doesn't supersede the basic budget scheme in the Charter. The Mayor proposes an executive budget, the Mayor dictates the revenue estimate that can be relied on under the Charter, the City Council adopts a budget, it can be a modified version of the executive budget. By adopting it, they authorize spending a certain amount of money. They can look to the Mayor's revenue estimate and then under the Charter they have to balance the budget, as has been true long before the mid-'70s by the level of property tax they impose.

So you have authorized spending, revenue determined by the Mayor and this extra amount levied in the property tax. It has to be balanced, that's what the Charter says.

The Financial Emergency Act said, well, besides that, we're going to require that the Mayor
submit a financial plan which has reasonable estimates of expected revenue and provides for everything that you're going to have to spend and after a transition period up front of phasing out a deficit using MAC to finance it, shows in the current year balance in terms of what you forecast in revenue and what you expect to have to spend to meet all your legal obligations for spending.

The standard is imposed at the beginning of the year and to begin with, the estimates of revenue and the provision for expenses had to be approved by the Control Board before the year began, effectively, but then it requires the Mayor not just to have set up that construct in June for the year beginning July 1st, but to watch what happens, and, one, you can't enter into contracts or issue debt or spend something that's not consistent with the plan as it's in effect, but, two, if revenues change or expense requirements change, you actually have to keep the plan in synch with those standards of it's got to be a reasonable forecast of revenues. If the bottom falls out of the economy in October, you can't stay with the forecast that you had back in June, you actually have to lower revenues and you have to maintain balance. So somehow or other you've got to spend less, so that it's an ongoing, live
standard which is sort of enforced with not just this
idea that you're setting up forecasts at the beginning
of the year, you have to operate such that at the end of
the year, when you hire, as the Act requires, an outside
auditing firm to look at what you actually did in that
fiscal-year period, looking back at it, on the basis of
those audited financial statements, you show that you
spent no more than you took in, in actuality in that
fiscal year. Spent, took in, well, those are supposed
to be current revenues and current expenditures as
defined under generally accepted accounting principles.
Generally accepted accounting principles when that
standard was put in the Act sounded to some of us as
this sort of arcane kind of chant or something that
could be placed upon something that was going to make it
real. It's because none of us were accountants.

Having worked with this for a long time, the
audited financial results of New York City for a number
of years have shown a surplus of current revenues over
current expenses on what's now approaching a $50 billion
operating budget, of $5 million, as reported in October
of every year. That suggests if you think about it for
ten seconds that there must be some flexibility in these
standards. But, nonetheless.

That backward looking edit on performance is
I think for large municipal entities pretty much unique to New York City, and it exists in the Financial Emergency Act as a backward looking standard, I mean, it’s certainly not as well developed in the Charter as it stands.

The Control Board as the oversight body stayed in effect with, again, the Mayor basically being obliged to propose financial plans to them, to periodically modify financial plans to reflect changes in the revenue outlook or if an unexpected expense showed up, to demonstrate how that was going to be accommodated, perhaps by reducing other expenses ongoing. The Control Board, until 1986 was also obliged to review and approve contracts and debt issuances before they became binding obligations. Again, for consistency with this ongoing plan, it meant that there was a continuous fiscal negotiation between the Mayor's office and the Control Board and its staff for what were reasonable assumptions and expenses that really could be accommodated within this defined universe of a financial plan.

Although in the language of the Act, there is this phrase that budgets are supposed to be consistent with the financial plan, practice in recent years has sort of caught up with that standard and the
budget modification process defined in the Charter, which has the Mayor proposing budget changes in the course of a year, this is subject to approval by the City Council, that's pretty much happened, although certainly for the first decade or so of operation under this Act, the ongoing amendment process of the financial plan and the Mayor's responsibility to operate within it and achieve balance was a circuit that to a large degree was independent of the City Council's review and approval of changes. The Act has inherent in it very broad Mayoral Powers for impoundment, if you want to look at it that way, because it has a very clear mandate that operations must be consistent with the plan and must provide balance, even if the appropriations aren't reduced, if the revenue goes down, in theory, I mean, the Mayor is legally required to reduce spending to keep the two sides lined up.

Since 1986, the Control Board has been in what's known as sunset. The criteria originally put into, or put into the Act in 1978 when this was going to happen required that the City show it had three years of balanced budgets, it no longer had federal guarantees of City debt outstanding; that the State and City controllers had certified that the City had access to the credit markets sufficient for its needs. I guess we
were generally in compliance with the Act, which
ultimately means that we had in effect and were
maintaining financial plans that had reasonable revenue
estimates, that provided for what we had to spend, and
that we were living inside that.

Those operating standards continue to apply
to New York City and continue to be a responsibility of
the Mayor, even in sunset. The consequence of a failure
to adhere to those standards of operation is that the
Control Board in theory comes back into a control
period, which basically means preaudit; that they have
to approve the financial plan and approve contracts
before the City could operate under them, rather than
simply standing back a step and watching that the City
is holding on to those standards.

At the moment, the Charter has in it in
various places mandates having to do with a financial
plan or a four-year financial plan. It does not have
explicitly in it the standards of estimation that are
supposed to govern those plans, although there's
obviously a lot of outside comment by more than just the
Financial Control Board staff as to whether our general
budget assumptions are reasonable at any given moment.

I think, just one other observation, which
has -- isn't directly related to the mechanism of
whether the Control Board as we now know it stands
ultimately in judgment, whether control period or a step
back of whether we're performing properly under this
financial planning structure, but is an offshoot of it.
New York City has four-year financial plans. I think
people have kind of absorbed that as part of the
woodwork. I mean, it's almost assumed that of course
we'll always have four-year financial plans, but are I
think taken seriously to a surprising degree.

We have these 23 years of balanced operating
results, but I think that most people when they think of
New York City and budgets instantly think operating
deficits. The deficits are in the years two, three and
four of our four-year financial plans, and almost
invariably they're there. Part of that is perhaps that
it's very easy to run out year after year the costs of
doing business and the inflation in costs of doing
business. On the revenue side, it's more of a guess in
terms of what the actual result will be. If the
consequences of going out of balance are serious,
there's perhaps some careful bias in the revenue
forecasts, although, I mean, many people would tell you
that they're always wildly conservative. Well, if you
look at New York City over the last few years, they're
not. For the first couple of years of this
administration every time we did another iteration of
the financial plan, the revenue forecast was coming
down, as a matter of fact.

In any case, the importance of those out
years in this four-year structure I believe have enabled
New York City in an odd way to have the debate and
anguish over resources for services versus tax burden
and what you can get out of other levels of Government,
in front of where we are. The fact is there's huge
debate over budget resources in New York City. Well,
there's debate about most things and this is important
to people, why wouldn't there be? But generally, it's
how you deal with the forecast imbalance and by the time
you actually get to the middle of June before the year
beginning July 1st, in an odd way the war has been
fought, everyone's exhausted and we're exhausted enough
so that I think it works surprisingly well that people
are willing to make compromises and deal with what
resources are genuinely there, so that we have this
enviable record of actually having adopted budgets by
the beginning of our fiscal year, which are balanced
when adopted on this forward-looking standard, and, as
I've said, actually through rather assiduous maintenance
and continuous adjustments through the years have also
in retrospect achieved operating balance.
The Financial Control Board has also functioned as the standard, as setting the standard of how the City will report on itself and what information will be available on an ongoing basis. Again, it's something that's built into the woodwork now and pretty much taken for granted, but it was the subject of considerable rancor and debate when the grooves were being developed in the late '70s and early '80s.

Although the financial plan itself is a couple of pages, it's very high level, it does not purport to dictate program choices by any means, but the amount of information that goes with each iteration of the plan in terms of documentation and assumptions is very extensive, and the reporting against the plan that the City does, we have what's known as financial plan statements which come out, each year the City lays out its budget plan on a monthly basis, it tracks how its actuals compare to that forecast and on a month's lag basically publishes and reports on how it's doing. That is a publicly published presentation of what OMB spends an enormous amount of time doing, which is continuously watching to see when we're getting out of synch, so that you can make the adjustments you need to as you go along.

It's worked, I think surprisingly well, as
I've said. How to maintain the effect and usefulness of this structure going forward is I guess the question before us now as a practical matter.

I can ramble on forever, but perhaps you have questions that would be more useful.

CHAIRPERSON FUCHS: We're open for comments and questions from the Commissioners. First of all, thank you so much for an extraordinary presentation. Bob?

COMM. ABRAMS: I thought that was an outstanding presentation, as the Chair has indicated. Very articulate, very understandable and very helpful historically.

What do you recommend to us? Some of the financial controls from the original legislation are going to expire. Do you believe that wholesale we should retain everything that has been in place for the last couple of decades or should some provisions be sunnetted and be allowed to expire?

MR. PAGE: At this moment, I don't have a perfect answer to that question, quite honestly. I think that there is a value to the four-year financial management structure that is laid out in one place in a fairly focused fashion in the Financial Emergency Act that doesn't have to be there. It could be somewhere...
else, quite honestly. I think that there's value to this backward-looking balance standard.

Most governments are required to have budgets that are balanced when they're adopted. Budgets are always forecasts, as a practical matter, that's the nature of this business, but having a backward-looking test, I think puts a whole different light on fiscal management for a Governmental unit. That GAAP balance standard, I mean, it's extremely arbitrary and it's sort of a blessing and a curse, frankly, together. The fact that you have to line up current revenues and current expenses in each fiscal-year period becomes a very arbitrary snapshot in terms of your operations. It is definitely an enforced discipline.

It does mean that if, as is often the case, you get to the latter part of June and agencies may not spend more than their appropriated ceiling for the year, so the nature of budgeting and authorization to spend through appropriation, if you can't go over, chances are you're going to go under. So you find at the end of the year you haven't spent as much as authorized to be spent for operations, and on the revenue side, if you know that it's going to be acutely embarrassing to come out short, I mean, you run out of money on June 15th, what do you do for the next two weeks, the chances are you're
going to be a little over.

So customarily, New York City has more resources available at the end of the year than it has to spend in that year. If you leave those resources so that they are reflected in your audited financial statements for that year, that's very nice for the balance sheet, but the money having come in as a current revenue in year one and shown up in your audited financials, can never balance a current expense in a future year. It can only be a current revenue one year. Okay, it was a surplus that year, well, that's nice, but now it was a billion dollars. I'd love to spend a billion dollars, it came out of the tax base, why can't I spend it? Well, because I have to balance current expense against current revenue, can't do it.

So we go to extraordinarily -- well, we work very carefully at the end of each year to make certain that basically that doesn't happen, that you find expenses which you might not have had to cover in that year, but that you could cover in that year and that will benefit you in the future, and you move them back to use the resources at the end of June, when you're still in that year, so that they become current expenses in that year and you can match them.

But it's a little tense as a process,
because the fact is, you have to do this by the end of June and you don't have your audited results until the end of October and there are a lot of variables. I mean, there are a bunch of tax revenues that come in in July and August which accrue back as revenues to the prior June 30th. It's a bit of a tightrope. That box is a difficult. As soon as you think about varying it, how would you vary it in a way that wouldn't upset people's confidence in this model? I mean, that's sort of an interesting question to me.

And then, I guess the other overarching question -- and maybe, I mean, maybe you could. You could look at that column in the audited financial statements and you can see whether you have a cumulative surplus in it. Maybe you could authorize to spend cumulative surplus in it. If you have money in one year that's available in the future, that could go into your GAAP balance. It opens other doors in terms of how you might operate that get more complicated.

I guess the other general question is, we're very used to the standards we operate under in this four-year plan and the information we're obliged to publish and the level of care that goes into forecasts of revenues, making certain that we've actually covered everything we have to spend. And the existence of the
Control Board itself was the origin of creating those grooves. Do you need something of that kind, even if ideally it actually doesn't have to ever use its voice, that would be an ongoing, live assurance that your standards would be adhered to, and I don't really know the answer to that, either, but it's certainly I think a question in here.

A further question is, New York City's Government is very, I mean, it has a very strong executive as a practical matter in terms of how it operates. The Financial Emergency Act actually in overall fiscal management adds a considerable additional weight to executive strength and responsibility for an outcome. How do you deal with that concept going forward?

CHAIRPERSON FUCHS: Steve?

COMM. FAILA: Thank you. Madam Chair. Let me, Director Page, let me associate myself with the Chair's remarks and Commissioner Abrams' remarks and thank you for your testimony. You gave a very good and thorough overview of the Financial Emergency Act of '75 and I think that we have now had a sufficient amount of time, giving the number of economic cycles, bull markets and bear markets, we've seen how this plays out, and there's no question that New York City under this Act
has one of the best budgetary systems, I would assume,
of any municipality, or State Government for that matter.

I had a question and I throw it out there, and I don't expect you to give an answer, because you've pretty much summed it up, but the question that I had related to those principles or provisions which presently exist or have existed prior to the control period ending, which have not been incorporated into the Charter as of yet, and those areas that you would like to see studied and possibly expanded. If we could rewrite it, if we could take the provisions from '75, those that have been incorporated into the Charter language and those that remain outstanding, and then you could tweak it based on the lessons we've learned over nearly three decades, what would they be?

Rather than put you on the spot, because you gave a very eloquent answer, maybe you could think about that, and if you have anything, submit it to us. But if I could segue into an area that we've touched on in our three hearings, because you touched upon it somewhat, and it's maybe a stretch for me, but I want to link it to your remarks, because I think it's something that would serve the people of New York very well, and ultimately the elected officials of New York very well.
Your last statement related to the powers of the Mayor and accountability over spending and programmatic initiatives.

Here's the question I have, if I may pose it, and again, if you want time to think about it, take it as a rhetorical question.

I have maintained for now, I guess nearly a decade, while I was on the Council and I've been out for almost four years, this observation: Under our model, we have, with the Ravitch and Schwarz commissions created a Government where the Mayor and the City Council are co-equal branches of Government. The City Council's Powers were expanded enormously in areas of budget and land use. And here we are all these years later operating under this great model on paper, and this is my personal opinion, I do not speak for this Commission nor anyone on it, but I believe that in addition to any technical language that we would want to look at with respect to FEA principles, we should look at something else, and I'd like your thoughts on if you believe it's as big a problem as I do.

We operate with a close to $47 billion budget, is that accurate?

MR. PAGE: A little more than that.

COMM. FIALA: Most of that budget, neither
the Council or the Mayor can do a damned thing about. There are federal mandates and state mandates and we have the unusual additional burden that no other municipality has of a 25 percent share in Medicaid. So you have this tiny thing to argue over and the additional variables being thrown at us. The CFE is $5 plus, and if Speaker Silver is correct, and we're going to pick up 25 percent of that share, those are additional mandates that are going to be imposed on the Mayor and the City Council, who have very limited authority with respect to taxing. So what is your position when a financial plan is adopted or a budget is adopted based on financial plans and as you indicated, you want to stick to that, that's the intent, you want to stay to it as closely as possible, but midway through, halfway through, the Legislature acts in a manner that creates its own unfunded mandates. I'll take two and I'm sure I'll get attacked back at home for this. Yesterday they overrode a veto for nurses in Catholic schools and it's going to cost $7.5 million. I know this because before I left Councilman O'Donnell and I took five million from other areas and funneled it into that program. We offset, we found the money. This body didn't do that.
Yesterday they also passed a ferry bill which I support in concept, but it's going to cost five million, so $12.5 million of money not in a plan, yet who has to find it? Well, there are two avenues. The Mayor can cut or he can propose future increases in revenue, or it can wind up in the courts and it seems to me the threat and the public must understand this, more and more as legislatures act irresponsibly by creating mandates but not having to define where the money will come from -- nurses are very popular. No one in their right mind would say they weren't, but it's a lot easier to stand there and create the program than it is to find a way to pay for it.

I have not spoken to the Mayor, but I doubt very much he's opposed conceptually to it, but I imagine the issue of the 12.5 million is a problem because it's got to come from somewhere. So these things wind up in the courts, we see it with CFE and special masters.

Would it then, not be a benefit for us to have a frank discussion with the people over the next year and possibly put before them a simple question, and that is, that we finish the equation. I was a City Councilman and with every bill there was attached a fiscal impact statement and it said Steve Faila, this is going to cost a hundred million dollars and I voted yes.
because it was very popular, but I didn't care where the money came from. So it went over to the Mayor, at this time was Rudy Giuliani, and it was his turn to be the bad guy. But I got to say I did this, and I didn't have any of the accountability.

Should the City Council or any legislature in theory, just as the Federal Government has, have the requirement to not only have a fiscal impact statement since we're studying it anyway and they have people studying, but if they want to create new programs, identify the funding streams.

MR. PAGE: Well, I've obviously worked for the Mayor's office for some time, so my answer is somewhat predictable. But I guess it's kind of two-fold. One is, that I think that to a considerable degree, you know, motivated by the mess of the mid-1970's and I think to a large degree enabled by the fiscal management structure that came out of it, New York City is extraordinarily good at making the necessary adjustments to accommodate mandated spending, wherever it may come from, so that we'll basically move heaven and earth to achieve a balanced operating result, having paid what we're legally obliged to pay for.

That can be an open ticket for the kind of action you're talking about. Because if a bill is...
passed that is going to cost $12 million or $50 million
or what have you, the sort of fiscal management side of
the house is going to do its very best to still deliver
the balanced operating result, even if it means pinching
a whole lot of other places or raising fees or pushing
taxes or what have you.

This question of one-sided budgeting, I'm
one of the Mayor's sort of requested appointments on the
MTA board and in the MTA's capital plan, beginning this
January 1st, the four of us didn't vote to endorse the
capital plan, as the four Mayoral people on that board,
not because the capital plan doesn't actually make
sense, it doesn't provide for things that would be good
to have and probably sensibly prioritized, at least the
basic core programs certainly, but because how can you
have a budget that's only one side? I mean, the fact is
-- this is really what you're raising. The budget is,
the substance of it is the connection between the
resources that you can get your hands on and your
priorities in what you want to spend them for. And it
makes no sense one-handed.

I mean, you look at the spending priorities,
well, that's fine, but if you don't hitch it to how are
you going to pay for this, I mean, there's no reality to
it. There's a lot of tension in this equation. Nobody
wants to pay taxes and everybody wants more service, and if you don't have both sides of that equation in mind as you take actions of what you are looking to budget, I mean, you have a problem, and you're right, you have a problem in terms of the legislative mandate for more nurses or a particular, you know, lead abatement program in housing, you name it.

So, yeah, you need to get the two sides locked in somehow, because that's what political, what Governmental unit budgeting is about. It's a very political process, but it's one that is political on both sides, the spending and the revenue.

CHAIRPERSON FUCHS: Dall?

COMM. FORSYTHE: I want to thank you in presenting that, I thought it was very, very clear, your presentation. I had a few comments. One that relates in part to Steve's question, but also something you said earlier which I hadn't thought much about, but the sort of implicit powers of impoundment that the Mayor has based on the ability to modify the financial plan and the necessity to maintain operating budget is part of the answer of what happens to unfunded mandates which is they don't get implemented as quickly as funded mandates.

In other levels of Government, the Federal
Government and the State Government, there have been judicial decisions or political battles about impoundment and the Executive's ability to impound and typically those have ended up limiting the ability of the Executive to impound funds in a way that doesn't sort of fit the New York City model. So that may not be a helpful approach in the long run. I mean, I think the City probably does well not to get in explicit battles about impoundment because judges can do all kinds of odd things.

MR. PAGE: In general, the impoundment or the sort of pulling back on spending discretion that the Mayor exercises is not sort of to pick out particular programs that he disagrees with and to defund them. The practice is quite strongly to be quite sort of even handed about not spending.

COMM. FORSYTHE: I understand. It sounds like you had mentioned a few things that you did think -- I mean, I know you spoke well of the entire fiscal regime and its value for the City over the years, and especially the four-year plan which is in the city Charter, but also some of the more detailed reporting requirements that the FCB has required but that might need our attention as we sort of think about how to keep some of the valuable parts of the system going after the
Financial Emergency Act goes. The backward looking balance standards, and perhaps as you at least implied with some sort of consequences so that it actually matters at the end of the year whether you met it or not. It's one thing to have the standard, it's another thing to have something happen if you don't meet it, which is quite normal in other governments.

The question about more explicitly standards of estimation, I thought that was useful, that that's not in the Charter, it could be easily done, I suppose, and then somewhere along the line the question of the division of labor among monitors of the financial Control Board disappears, and in raising that, I've asked Ester, for example whether that division of labor ought to include discussion about the audit committee.

More and more in the corporate world there's discussion about the role of audit committees. This has sort of spilled over not always in a terribly helpful way in the non-profit world, but the question of audit committees and what their value is, is something that might be worth at least some exploration.

I did have a question. The question is how much of this is worth doing in City Charter, how much of this do you think needs to be specified as well or instead in State Government and this I guess is a
question about how the bond holders and other people who lend the City money would feel about those standards if they were only in the City Charter.

MR. PAGE: Obviously a big driver of the system we now have was this whole question of credit market access and trying to regain it. And, you know, New York City issues debt with a final maturity of 30 years plus, so that a fiscal management standard that is, that can be amended by a legislative action has a different impact, presumably, than one that can't. I mean, one of the things we've been living with in the Financial Emergency Act is that along with enacting this management scheme, the State authorized the City to include as a term of City bonds effectively a covenant running from the State to the purchaser of the City bond saying basically that the State wouldn't amend the kind of essential pieces of the Financial Emergency Act, the GAAP balanced standard being one of them.

It's worrisome when you put something like that in place for fear you've established a standard that you're not going to be able to live with 15 years down the road when there's another 15 years for the covenant to run. Theoretically you can refinance all the debt without the covenant in it, but that's a little cumbersome. On the other hand, if the investor thinks
he's relying heavily on this standard, it obviously
gives him or her confidence that the standard will be
there until he's paid back.

That works, that kind of covenant that
effectively locking State law in by attaching it to
outstanding debt is a very common concept with respect
to State law and bonds and in New York State I mean,
it's very familiar, it's a sort of trusted, understood
device. Although you might be -- it's possible that you
can think of ways of doing at least something
approaching that with a Local Law, it's much less
familiar, and I don't know, my experience of people who
invest in municipal bonds is that originality and
excitement is not what they're looking for.

COMM. FORSYTHE: Thank you.

COMM. RAAB: I want to echo everyone's
comments on Mark's excellent presentation and brag a
little bit. He is a professor at Hunter College when
he's not taking care of the City's finance, so there may
be others --

MR. PAGE: Adjunct, please.

COMM. RAAB: There may be those who want to
take your courses. I guess following up on Dall's
questions, in addition to the bond holders, are there
any other private actors; banks, underwriters, who may
have concerns with the expiration of the Act and may be looking for this Commission to have a particular kind of discussion?

MR. PAGE: I think it's interesting in a way there's been so little public focus and discussion on this topic. 2008, well, I mean, that's several years out at this point. It's just coming up as the back year of the City's four-year financial plan, and it may be a testament to the fact that people don't generally look ahead very far, I don't know. You know, there's sort of mild discussion on the topic, interested parties would presumably be the agencies that rate New York City credit. There are particularly mutual funds of various kinds that hold substantial amounts of City debt and some individual investors who presumably would be, or you would expect would be professionally awake to this topic.

We are generally given credit by analysts in the business of rating how particular borrowers perform, to being fiscally well managed. I mean, they may be nice about other factors about New York City, but generally the management side is a plus. It's conceivable that we're actually dealt a little bit more slack on this at the moment. Because of that, they actually think we'll think of something sensible to do
before we fall off the edge of the cliff. I don't know.

CHAIRPERSON FUCHS: Any further comments or questions?

COMM. McCORMICK: I have a question and, again, it was a wonderful presentation. This question is about the relationship between the financial needs and our access for capital and the implications of the system that we created for the program and the operations of City agencies and while it works very well, what you've described, I do think that from an operational point of view the period of time between, say, January or June for a lot of non-profit agencies that have contracts with City Government is one of great difficulty, and I would be interested if you had any thoughts about what we could recommend that would preserve what you've talked about, but would also ease that burden on the ability or the inability of contractors with City agencies to plan, because they're not really, to the extent the City can plan it's wonderful. To the extent that nonprofit agencies that are trapped and cannot make reasonable plans, I think it adds a burden that maybe we could address somehow.

MR. PAGE: I don't believe that it's the financial management structure that we've been talking about that causes the problem that you are observing. I
think in the long run those agencies along with really
the rest of us are better served by fiscal management
that doesn't have nasty surprises in it and doesn't dig
itself into holes of running a current deficit that then
requires not just the difficulty of prospectively
squeezing the two sides together, but also correcting
the mess that you've just made behind you.

I think that that's actually helpful to
everybody. I think that the question of whether
resources will be available for a given not-for-profit
agency that basically provides public services for the
City in the following year has a lot to do with the
dynamics of the political process between the Mayor and
the City Council, and how that process is expressed in
the budget cycle. And it's clearly a significant topic.
I don't know how -- and we're thinking about, maybe
there is some structural way of addressing it. I don't
-- it's not addressed in the stuff I've been talking
about, and offhand I don't know the answer. It's
certainly an interesting question.

CHAIRPERSON FUCHS: Dall?

COMM. FORSYTHE: Just a comment and a
further question. The comment is I think the State
creates a lot more chaos for non-profits than the City
because of there -- is that -- yes, I see heads.
COMM. McCORMICK: That is true. There's no debate there.

COMM. FORSYTHE: There are ideas like forward funding that the Federal Government looks to that might allow some better degree of planning, but then you wouldn't get to do all the wonderful cash flow borrowing -- lending that you --

COMM. McCORMICK: Love to be out of business.

MR. PAGE: Out of that business.

COMM. FORSYTHE: But to go back to a related question or maybe underlying question. One of the things that's unusual about New York City's budgetary process is the idea of a preliminary budget that's put forward in January. Most local governments I think put forward an executive budget and then go forward to enact a budget. Are you satisfied with that process? Do you think it's a useful part of the process or are there times when you think that there's something that should be reconsidered?

MR. PAGE: I think that's definitely a useful part of the process, as a matter of fact. As a practical matter in the last few years we've really started planning for the next year kind of as the dust settles in early July on the current year. The first
quarter financial plan modification which customarily is
sort of bringing assumptions up to date after you know
your results for July, August, September has actually
become the first major step towards how you're going to
close the gap between forecast spending and revenues in
the year beginning the following July.

I think that the -- well, in the current
first quarter modification lays out a very tentative gap
closing program for '06 which includes a reduction in
spending in '05, the year we're now in of $300 million.
It's not because we think we're going to run a deficit
this year, it's because we think we need to start
building the excess of resources in this year so we can
pull expenses back from next year as a head start on how
are we possibly going to balance next year. I think the
most extraordinary example of how far forward New York
City is operating and how real people perceive the next
year's budget problem to be is the fact that the
property tax was increased by 18-1/2 percent basically
as a decision in the November before the year beginning
the following July 1st and implemented in January,
again, not because we were going to run an operating
budget deficit in that year, but because the
understanding was that if you didn't act for the next
year until you got there, you were going to have to do
such drastic adjustment that in reality you had to step ahead.

I mean, both of the examples I'm using are actually stepping ahead of the preliminary budget. They're actually in the fall before that January. I do think they're a testament to the degree to which this multi year forecasting model that encompasses this year, but in an odd way this year is kind of old hat by the time you get into it. The debate has become well, now, what are you going to do next year. It really, it's taken hold very strongly for us. Many of us don't really think of this whole operation as a fiscal year by fiscal year, it's a much more continuous planning process. It does, as observed earlier -- we're good at it, which in a way makes us more vulnerable to being hit with mandates for spending by the local Legislature, which at least is here, so that they're seeing what's happening, or, I mean, other levels of Government which just land you with stuff that has to be paid for without having to hang around for what it takes to do it.

CHAIRPERSON FUCHS: David?

COMM. CHEN: I guess every time there's a budget crisis immediately New York City will be reminded that we are known as the City of the have and have nots, and when you think about the have, you always thought (516) 741-5342 AR-TI RECORDING COMPANY (212) 349-9692
about tax revenue coming from Wall Street. We may not
love Wall Street until we find out how much they pay on
the revenue base.

On the other hand, non-profits are big
spenders. I don't know what the revenue base shift over
the last 30 years has been in terms of Wall Street
continuing to the revenue base. Obviously it must have
shifted, I don't know the numbers and Wall Street is not
getting any less volatile. So knowing that nonprofit
the union, collective bargaining have fixed cost pretty
much and you have this very volatile situation, without
a four-year plan, and no specific standards on the
estimate, wouldn't you think that having a financial
control act helps as a buffer to provide some stability
between the battle between the City Council and the
Mayor in terms of legislating things you can't pay for
but you're shifting the issues?

By having this plan in place, won't it serve
as some sort of a buffer that you just know that
something's set up ahead of time, then you don't have to
battle it every year when it's up and down or forward
just on the perception part.

MR. PAGE: I think there's a value in that.
I mean, just for your information, in terms of the
securities industry, it's now about four percent of the
jobs in New York City. It's about 25 percent of the tax revenue. And the shift over the last thirty, forty, whatever, I mean, if you go back to the late '30's, it's probably gone on progressively since, New York City like most local governments collected property tax revenues, I don't know, over 95 percent of its revenue. And the property tax is now about, I don't know, I think it's $12 billion or something and the operating budget is about 50 and tax revenue is probably 26, $28 billion. So property tax which is fairly predictable and steady has gotten to be a smaller and smaller percentage. Income and transaction taxes are a much larger percentage, and a major source of income, both corporate and individual, in New York City is the securities industry. Yes it's volatile, but thank goodness it's here.

COMM. ABRAMS: Madam Chair, sitting here for the past hour my mind went back to the middle '70s when I was Borough President of the Bronx and sat on the board in the middle of a fiscal process. I thought not just now and tonight but over the past number of years that history has not been kind to an extraordinary leader or as generous as it should be to an extraordinary leader whose leadership helped create everything we have talked about in the last year and
that's Governor Hugh Carey. He had great courage and leadership in putting together a fiscal plan, notwithstanding tens of thousands of protesters in Albany wherever he would be in New York City, recruiting Felix Rohatyn to be the first Chair of the financial Control Board, I think he was the Chair --

MR. PAGE: Yes.

COMM. ABRAMS: And it was an extraordinary display of vision, courage and commitment and what we've talked about thus far shows that it was the right set of actions for the right time and I think what we're talking about, not just for the last 25, 30 years, but perhaps well into the future as we seek to ingrain in the Charter many of these provisions.

I for one, Mr. Page, we'd like to see you try to submit to us specific proposals that we would entertain that would be placed on the ballot for the people to consider and to vote on next November, so if among your other duties and responsibilities you can seek to try to give us as much guidance as possible in terms of specific proposals, I think it would be very, very helpful to us.

CHAIRPERSON FUCHS: I think we got more than we expected today, in fact, from this -- this evening, from Mark Page's presentation. The members of the
Commission have received memos on background material on
the Financial Control Board and the Fiscal Emergency
Act. I think what I'd like to do at this point is
reiterate what Bob Abrams has suggested which is really
summarize what Mark Page has said to us.

He said to us very clearly that what's been
in place for the past 30 years has worked surprisingly
well, and that there are aspects of this act that we
would like to maintain and that is pretty clear from
your presentation and from the research that's been put
together on this issue, and so what we have before us
now is really an issue of what we should do in the
context of the Charter, which is a slightly different
question or Bob Abrams' question slightly reformulated.
So what I'd like to put before you in the spirit of the
Mayor's charge to this Commission, which is to look in a
forethinking -- is that a word? I'm going to make up a
word tonight. To look in a way where we try and in a
sense prevent a future crisis and a catastrophe, to
think about an issue that in fact the bond market and
the public has not really started to think about yet,
before it becomes a crisis.

This would be something relatively new for
the City of New York, I think, but in the spirit of
Michael Bloomberg's administration, I think we're here
to really address exactly that question as part of our mandate, and so on behalf of the Commission and the people of the City of New York, I really want to thank Mark Page for putting in the time and doing the work to really set the stage now for considering what we really should be putting before the public in a Charter proposal, if anything at all, or should we be proceeding on this issue in another way, because as our Commission moves forward, we don't have to do things necessarily through the Charter, but we can make proposals and suggestions to other branches of Government to act as well. So it's pretty clear that something should come from this Commission in terms of a proposal on this issue, and now I think we're in a position to make hopefully some intelligent choices about what we might put before the public or what we might propose as a Commission.

So thank you very much for I think starting us off in a very intelligent and thoughtful way on this issue.

MR. PAGE: Thank you very much for having me this evening. I'd also like to thank Terri Matthews for the summary of the provisions in the Financial Emergency Act which you have. Thanks a lot.

CHAIRPERSON FUCHS: What we're going to do
next is review some of the questions that Commissioners
have presented before us and I'm going to ask Terri
Matthews, the Executive Director of the Commission, to
go over some outstanding issues.

MS. MATTHEWS: Hello. You should have
received a copy of this, which was intended to do more
than I'm going to be able to do tonight. There's a lot
more information.

The first four items were proposals that
failed at the ballot, but that were still open because
we didn't negotiate a similar provision with the Council
in our large package on procurement. The first one was
a proposal that would have permitted the Mayor to
designate additional agencies for which DCAS could
perform procurement services. The Council objected to
the way it was drafted, because it was broader than
procurement. It was all administrative services, so we,
the staff, think and we would like to submit to you for
consideration, that it's really actually a topic that's
very well suited for the third topic of this Commission,
which is the broad operational efficiencies,
Governmental accountability. It's not per se
procurement. I mean, at some level the Council was kind
of right it, was broader than procurement, so I think
it's no longer a procurement issue, it can go into the
broad discussion of Governmental operational efficiency topic.

CHAIRPERSON FUCHS: Does anybody have any comments on that particular point?

MS. MATTHEWS: So we're just deferring it to another topic. It's not gone.

COMM. BETANZOS: We would have time to be able to discuss it.

CHAIRPERSON FUCHS: We're going to discuss it under rubric three.

MS. MATTHEWS: You can discuss it now if you'd like. It's just, you know, today was a Financial Emergency Act day.

Regarding the proposal that would have deleted the detail of the report that was authorized, and authorize the Department of Small Business Services Commissioner to promulgate rules concerning required information, this is the employment report that is very voluminous, the detail is in the Charter. We think that looking at the Charter that the Commissioner currently has enough flexibility to, as I say here, he can prescribe the form and the information and the employment reports and he can provide appropriate exemption by rules, so the staff feels at this point that there's enough flexibility already in the Charter.
that we don't have to take it up as procurement per se.
The Mayor's Office of Contracts doesn't feel it's
essential to reducing cycle time.

Once again, it is something that could be
defered to the broader topic and if the Commissioner of
DSBS is interested in this, that would be an appropriate
way to deal with this.

The third one, this is the one that got a
lot of attention at the last meeting. It was the
security, an exception for the requirement of public
notice and hearing for contracts for the purchase of
goods and services when the Mayor determined that the
notice or hearing would disclose sensitive information
that if made public would be detrimental to the security
of the City. And the Council as noted here thought it
was a little broad, overbroad and without sufficient
oversight. And so the thought is do we want to take
this up now, and we've learned from the Mayor's Office
of Contracts that this is a problem, this particular
problem is, it's real, but there's a bigger problem in
this area that is sort of mandated by State law which is
when you're procuring a good it must be competitively
bid and specifications are available to anybody who has
the money to copy them and depending on what the public
works is, you are getting sensitive information,
potentially.

So we think that the bigger problem is actually the State law and that's something that this Commission by law can't do, so we think that perhaps as part of a legislative agenda, the Mayor's legislative agenda, the notice of proposal could be folded into a much larger one and this problem is not faced just by New York City, but every local Government. This is not just us, so it really does require a State solution is what we think.

And then the last one, this is the last topic that relates to the prior proposals, was having an annual procurement report, which is not a hard thing, we do it anyway, the Mayor's Office of Contracts does it. We were going to require ourselves to do it. Currently it's not required, there's only one indicator in the MMR that's required to be reported, but because it was tied to the elimination of the PMMR, the whole thing, and the Council objected to the elimination of the PMMR, we decided we didn't want to, we didn't need to impose anything on ourselves and the real issue was about the PMMR, which as a topic will be coming up in the third large topic of Government accountability.

So it's not that we're not going to talk about it, it's just we're going to talk about it as part
of a broader discussion about operational efficiency.

So these topics are not over. It's just that they're going either into different parts of our discussion and with the security I think it's more appropriate for State legislation. But if you have any concerns or questions after you've had a chance to digest this, call us, e-mail me and we can discuss it.

COMM. BETANZOS: We will be questioning at other times dealing very intensely with other parts of the Mayor's Office to ascertain whether they are doing this before the State Legislature?

MS. MATTHEWS: I'm sorry?

COMM. BETANZOS: We would be pushing for the Mayor's Office to deal with State Legislature.

MS. MATTHEWS: Yes. That sort of awareness when we were discussing at a staff level that this is kind of an important topic that we do need to push and I don't think we would be alone. Other local governments have got to be facing these problems as well.

COMM. BETANZOS: I'm surprised they haven't done it before.

MS. MATTHEWS: You know, I could probably provide progress reports on that effort.

COMM. BETANZOS: Very good.

MS. MATTHEWS: So after the fourth bullet,
we move into some of the questions that came up from the Commissioners. One of them, and I don't remember who it was at this point, asked about professional training. Was that you? Hello. And basically in this, and I just don't have the vocal capacity to read it, but it is a summary of what the Mayor's Office of Contracts is doing on that front. So if you have any questions, if this spurs any more interest, we can perhaps have Marla come in and talk to you. That's always an option.

The second to last item was the use of technology to solve sort of the procurement problem and I mentioned that there was an RFP underway, and basically, and I think it's a fabulous RFP, so I kind of basically excerpted what I thought was sort of the broader description of it and I think it will be very, you might find it interesting.

And if you have questions, we can bring the people who are working on it here to explain it in all gory detail.

And the last item is both Stephanie Palmer and Lillian Barrios-Paoli both mentioned the need to treat human services, contracts and vendors differently than, say, construction and I was very sad that nobody had realized that we had been doing that, and so Marla kindly -- but you know what, it takes a while. We do
it, but then it takes a while for it to be felt. A Government doesn't change overnight, and as you say, in the not-for-profit world there's a lot going on, it doesn't always feel like we did it.

COMM. BETANZOS: But it's been a very good secret.

MS. MATTHEWS: Well it's not a secret anymore. It's here, Marla identified the administrative changes, nuances. We've been able to make changes that make sense. The rules permit a great deal of flexibility and the question is do you take advantage of the ability to be flexible and we have. This explains it. If you have questions, ask and then if enough of you think that there's a desire to hear from Marla herself, she'll come and then I won't have to explain it anymore. So, thank you.

CHAIRPERSON FUCHS: Thank you, Terri. All of the issues that Terri brought up can be reconsidered. We felt the staff put together, I think a very useful memo. Now people will have time to digest it for the future. Today's agenda was really about the fiscal issues.

Let me just go over a little bit of housekeeping business in the spirit of trying to convene at a reasonable, rather, leave at a reasonable hour

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tonight. There is a schedule for the Commissioners -- I
don't know if we have it here. Has it gone through
e-mail -- we're going to hand it out, on when the future
meetings are being held. January 19th at 7 p.m. at 22
Reade Street is the next meeting, which we will be
discussing as our next meeting judicial administration.

The third baseline meeting will be February
9th at 7 p.m. also at John Jay College at Columbus
Circle and there we will be discussing bureaucratic
accountability and efficiency.

We expect to be scheduling five public
hearings and at the public hearings we will be accepting
public comment, one in each borough and that schedule
will be released very shortly. It will be up on our
website. We're planning to begin those in the month of
March. Our practice will also be to publish notices
widely in newspapers so the public has an opportunity to
know when we're meeting, and we will send e-mail updates
before each meeting. We also will be posting mailings
from time to time to the mailing list that signs up to
hear from us.

We will also, as I said, provide information
on our website. I'll announce that again,
nc.gov/charter and if you need to contact us by mail we
are now seriously open for business at 2 Lafayette

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Street on the 14th floor. Our phone number there is (212) 676-2060, and we're delighted to hear from anyone who would like to be in contact with us.

Before we adjourn, I just want to ask the Commissioners if there is any new business that we haven't covered today that anybody would like to bring up to the Commission.

If that is the case, I'd like to accept a motion to adjourn.

COMM. ABRAMS: So moved.

CHAIRPERSON FUCHS: Any seconds?

COMM. BETANZOS: Second.

CHAIRPERSON FUCHS: Thank you, thank you everybody for attending tonight.

(Time noted: 8:49 p.m.)
CERTIFICATION

I, LINDA FISHER, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

LINDA FISHER,
Shorthand Reporter

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