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27TH DISTRICT, NEW YORK

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April 11, 2006

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Mr. Michael R. Fleischer
Executive Director
New York State Thruway Authority
200 Southern Blvd.
Albany, NY 12201-0189

Via fax and mail

Re: Inquiry regarding Buffalo Waterfront Funds

Dear Mr. Fleischer:

In this morning's *Buffalo News* article by Tom Precious, you state "I notice the congressman did not include \$15 million for the Buffalo inner harbor," in the list of non-Thruway spending which I conveyed to you in yesterday's correspondence. I did not address that concern in yesterday's correspondence because the Thruway Authority's failure to live up to its obligations to the people of Buffalo and Western New York with regard to Waterfront development has been so egregious as to deserve separate treatment and a separate inquiry. I herewith convey that inquiry.

First, it is important to understand the history of the Thruway Authority's efforts regarding Buffalo waterfront development.

- In 1982, US Senator Daniel Patrick Moynihan brokered a deal through which the Authority would receive federal funding from that time until 1996, at which point the initial bonds used to construct the Thruway would be paid off and all tolls would be removed system-wide.^[1]
- In 1989, then Governor Mario Cuomo formed the NYS Thruway Authority Transition Advisory Council, to give advice on whether or not to keep the tolls as the 1996 deadline approached.^[2]
- In April, 1992, the Advisory Council put forward a plan called "Thruway 2000."^[3] The plan proposed that excess tolls would be used for much needed economic

^[1] U.S. Senator Daniel Patrick Moynihan, "Trouble in New York", *The Buffalo News, Buffalo Magazine*, September 10, 1989, page 7.

^[2] Final Report of the NYS Thruway Authority Transition Advisory Council, page 1.

replace the Buffalo Skyway, possibly removing the section of the I-190 from Rt. 198 to I-290 inland, to free up public access to the Niagara River, and implementing the plans of the Horizons Waterfront Commission.^[4]

- The Thruway 2000 plan was successful at achieving buy-in for the continuation of Thruway tolls by Upstate opinion leaders, particularly in Western New York. Previous to the Thruway 2000 plan, Western New York opinion leaders generally felt that the tolls should be removed when the 1996 deadline was reached, as expressed more than once by the editorial page of the Buffalo News.^[5] After the announcement of the Thruway 2000 plan, there was a shift among some Western New York opinion leaders, who grudgingly advocated then for the continuation of the tolls.^[6]
- The Thruway Authority's commitment to the Buffalo Waterfront was pared down considerably and codified in law on August 3, 1992.^[7] The 1992 law called for \$15 million in Thruway funds to implement the provisions of the Horizons Waterfront Commission.
- In the four years from 1992 to 1996, none of the funds for Buffalo's waterfront were spent. The Thruway Authority's commitment to the Buffalo Waterfront was pared down further in 1996, when the Legislature codified the notion that any improvements made to the Erie Canal in Erie or Niagara Counties would count toward the Authority's \$15 million obligation to the Buffalo waterfront.^[8] From this point forward, because of the improvements the Authority was making to the canal from Tonawanda to the Niagara County line, the Thruway Authority considered its obligation to the Buffalo Inner Harbor project to be \$11.7 million.^[9] From this point on, there would never be "\$15 million for the Buffalo inner harbor," from Thruway funds, to use your words from this morning's Buffalo News.
- The Thruway Authority, in concert with Empire State Development, both of which are and were controlled by Governor Pataki, proceeded with waterfront development in Buffalo at a snail's pace;
 - Of the \$11.7 million committed in 1996 (which was pared down from the \$15 million originally committed in 1992), only \$401,590 was spent before 1999.^[10]
 - Another \$1,618,192 was spent in 1999.^[11]
 - Another \$2,450,819 was spent in 2000, leaving a commitment of \$7,229,480.^[12]
 - Another \$669,650 was spent in 2001, leaving a commitment of \$6,559,830.^[13]

^[4] Thruway 2000, A New New York, April, 1992, pages 6 and 7.

^[5] The Buffalo News, "Raising Thruway Tolls", [editorial], January 16, 1988; The Buffalo News, "Thruway Tolls Must Go in 1996 as Scheduled," [editorial], December 28, 1987; The Buffalo News, Paxon Adamant on Ending Tolls, December 21, 1990, Page B4.

^[6] The Buffalo News, "Like it or not, Keeping Tolls is Best", [editorial], May 4, 1994; Robert J. McCarthy, The Buffalo News, "Business Community Favors Retention of Thruway Tolls, March 22, 1991, p. 7 (Dr. Andrew Rudnick quoted in favor of keeping tolls).

^[7] NYS Laws of 1992, Chapter 766.

^[8] NYS Laws of 1996, Chapter 634.

^[9] NYS Thruway Authority, Schedule of 1999 Procurement Contracts, page 4.

^[10] NYS Thruway Authority, Schedule of 1999 Procurement Contracts, page 4.

^[11] NYS Thruway Authority, Schedule of 1999 Procurement Contracts, page 4.

^[12] NYS Thruway Authority, Schedule of 2000 Procurement Contracts, page 4.

- o Another \$1,180,669 was spent in 2002, leaving a commitment of \$5,379,160.^[14]
- o Another \$ 1,549,642 was spent in 2003, and nothing was spent in 2004, leaving a commitment of \$3,829,518.^[15]

So, people in Western New York were sold on the continuation of the tolls with bold promises that excess toll revenue would be used for all kinds of major waterfront development projects here. Those promises were minimized down to a \$15 million commitment in 1992 legislation. That commitment was further pared down to \$11.7 million in 1996. You did not start spending any real money on this project until 1999. What money you did spend from 1999 until the end of 2004 went presumably to pay for the well documented blunderings of Empire State Development with regard to Inner Harbor Development in Buffalo.

To add insult to injury, you went so far as demand that you must approve any Inner Harbor plans before money could be spent,^[16] and that the City of Buffalo provide you with a portion of any slip rental fees earned at the Inner Harbor, in perpetuity, as a condition of your providing funding to Empire State Development for this project (as if you were not already obligated to fund this project by law).^[17]

So, consistent with the provisions of the state Freedom of Information Law (FOIL) and federal Freedom of Information act (FOIA), I request that you transmit the following information to my Buffalo office:

- What remains of the \$11.7 million in Thruway funds which was slated for Buffalo's Inner Harbor?
- A complete accounting of how the portion of the \$11.7 million which has already been expended was spent.

Please direct any inquiries regarding this FOIL/FOIA request to my Buffalo Office at 716-852-3501 or to our postal address there. Thank you very much.

Sincerely,



Brian Higgins
Member of Congress

Cc: Hon. George Pataki, Governor of the State of New York
Hon. Eliot Spitzer, NYS Attorney General
The Western New York State and Federal Delegations
Hon. Dave Swarts, Erie County Clerk

^[13] NYS Thruway Authority, Schedule of 2001 Procurement Contracts, page 4.

^[14] NYS Thruway Authority, Schedule of 2002 Procurement Contracts, page 3.

^[15] NYS Thruway Authority, Schedule of 2004 Procurement Contracts, page 3.

^[16] Minutes of the Thruway Authority, Meeting # 555, p. 23.

^[17] Minutes of the Thruway Authority, Meeting # 571, p. 5.