

OFFICE OF THE NEW YORK STATE COMPTROLLER



DIVISION OF LOCAL GOVERNMENT SERVICES
& ECONOMIC DEVELOPMENT

Industrial Development Agencies' Project Approval, Evaluation and Monitoring Efforts

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State of New York Office of the State Comptroller

Division of Local Government Services and Economic Development

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Dear Agency Officials:

One of the Office of the State Comptroller's top priorities is to identify areas where local governments and related New York State entities can improve their operations and provide guidance and services that will assist officials in making those improvements. Further objectives are to develop and promote short-term and long-term strategies to enable and encourage agency officials to reduce costs, improve service delivery and to account for and protect their entity's assets.

The reports issued by this Office are an important component in accomplishing these objectives. These reports are expected to be a resource and are designed to identify current and emerging fiscally related problems and provide recommendations for improvement. The following is our report on Industrial Development Agencies' Project Approval, Evaluation and Monitoring Efforts.

This audit was conducted pursuant to the State Comptroller's authority as set forth in Article 10, Section 5 of the State Constitution. The report contains opportunities for improvement for consideration by the Boards of Industrial Development Agencies.

If we can be of assistance to you or if you have any questions concerning this report, please feel free to contact the Statewide and Regional Projects Unit at (315) 428-4192.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government Services
and Economic Development*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

There are 115 Industrial Development Agencies (IDAs) in the towns, villages, cities and counties of New York State. The powers and duties of IDAs are set forth under Article 18-A of General Municipal Law. IDAs are independent public benefit corporations whose purpose is to promote, develop, encourage, and assist industrial, manufacturing, warehousing, commercial, research and recreation facilities thereby advancing job opportunities, health, general prosperity and the economic welfare of the people of the State of New York.

To carry out their mandate, IDAs offer financial incentives to attract, retain, and expand businesses within their jurisdiction. Such incentives could include one or more of the following: issuance of a low interest rate bond, abatements from real property tax, and exemptions from sales tax and mortgage recording tax. The bonds issued are not obligations of the municipality or the State. Normally the IDA receives application and administrative fees for providing its services to businesses. As part of the transaction, the IDA would generally take title to the real and/or personal property involved in the project. The IDA is not required to pay taxes or assessments on any property it acquires or that is under its jurisdiction, control, or supervision. This benefit is, in substance, passed on to the assisted business. Businesses that receive real property tax abatements typically enter into payments in lieu of taxes (PILOT) agreements, which enable the affected taxing jurisdictions to recover a portion of the forgone property taxes.

Scope and Objective

We audited six IDAs throughout the State. We reviewed selected projects the IDAs took title to (closed) during the years 2000 to 2001 that evidenced how IDA officials estimated incentives; approved, monitored and evaluated projects; and utilized their recapture provision. We also reviewed selected projects that the IDAs took title to in 2003 and 2004 to determine if they involved movement of businesses from one area of the State to another and if the IDAs documented whether these projects met the exceptions provided by statutes for such movement. The objective of our audit was to answer the following questions.

- Are IDAs designing and implementing systems to adequately verify reported job data, evaluate project performance, and recapture benefits for performance shortfall?
- Do IDAs have criteria for selecting firms or businesses receiving sponsorship and economic development incentives and are those criteria consistently applied?

Audit Results

In order for IDA officials and the public to evaluate the effectiveness of IDA economic development projects, IDAs need to have systems in place to monitor project performance. Our audit looked at the job performance of 96 single unit projects sponsored by the six IDAs we reviewed. We found that 33 percent met or exceeded their job creation goals, 33 percent did not meet their goals but increased or had no change in staffing, and 33 percent did not meet their goals and reduced staffing since they applied for IDA incentives. In total, for all the single unit projects we reviewed, the IDAs only achieved 55 percent of the job growth that had been projected.

To effectively monitor project performance, IDAs must have accurate and complete information. Our examination disclosed that all six IDAs surveyed project owners in an attempt to obtain current job data, however none of them had a process in place to verify the accuracy of the reported data. While four of the IDAs had job surveys on file for the projects we tested, the Erie County IDA only had 44 percent of the job surveys at the start of our audit, and the Town of Amherst IDA did not retain the surveys.

Four of the six IDA's have adopted a recapture policy that enables the IDA to recoup benefits received by companies if they do not meet their job creation goals. However, officials from these four IDAs informed us that they have never invoked their recapture provisions. Without project monitoring, IDA officials won't have a starting point to even consider invoking their recapture provisions. We found that the Tompkins County IDA was the only IDA in our audit that actively monitored project performance for its recapture provision during our test period. The Administrative Director of the Tompkins County IDA compared the number of jobs projected by businesses with the number of jobs reported on job surveys and met with companies that did not create the jobs they projected to determine why their goals were not met. Additionally, while we found only limited evidence that Suffolk County IDA officials actively monitored project performance prior to our audit; officials did make certain noteworthy changes during our audit with regards to monitoring and their recapture policy.

We also found that while all six IDA's utilized the statutes and their own various policies to determine project eligibility and to provide some general guidance that officials should consider when making project sponsorship decisions, only the Ontario County IDA actually developed and documented formal project evaluation criteria which was applied consistently to determine whether each project would be in the best interest of the local community and taxpayer. Formal project evaluation criteria level the playing field for all businesses and limit subjective decision-making from the process. It also provides greater assurance that only the most beneficial projects will be approved.

Comments of Agency Officials

The results of our audit and recommendations have been discussed with officials from the six IDAs and their comments, which appear in Appendix A, have been considered in preparing this report. Officials agreed with some aspects of our findings and recommendations, and disagreed with others. Excerpts of these responses and our comments are included in Appendix A.

Introduction

Background

In 1969, New York State adopted the Industrial Development Agency Act, which became Article 18-A of the General Municipal Law. A goal of the Act is to promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies (IDAs). IDAs are independent public benefit corporations created by special act of the State legislature for the benefit of a particular local government and the inhabitants thereof. There are currently 115 IDAs in the towns, villages, cities and counties of New York State. The powers and duties of IDAs are set forth under Article 18-A of General Municipal Law. The purposes of an IDA are to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining or equipping certain facilities thereby advancing job opportunities, health, general prosperity and the economic welfare of the people of the State.

To carry out their mandate, IDAs offer financial incentives to attract, retain, and expand businesses within their jurisdiction. Businesses wishing to obtain financial assistance apply to an IDA. The assistance granted to these businesses generally includes one or more of the following: issuance of a low interest rate bond, abatements from real property tax, and exemptions from sales tax and mortgage recording tax. The bonds issued by an IDA are not obligations of the municipality or the State. As part of the transaction, the IDA would generally take title to the real and/or personal property involved in the project. The IDA is not required to pay taxes or assessments on any property it acquires or that is under its jurisdiction, control, or supervision. This benefit is, in substance, passed on to the assisted business (project owner). As a result, IDA decisions to sponsor projects affect the school districts and other local governments within the IDA area. Businesses that receive real property tax abatements typically enter into payments in lieu of taxes (PILOT) agreements, which enable the affected taxing jurisdictions to recover a portion of the forgone property taxes. Normally the IDA receives application and administrative fees for providing its services to businesses. Typically, the fees are based on the cost or benefited amount of the project ranging from 0.5 percent to 1.5 percent. For the year ended December 31, 2004 or June 30, 2005,¹ the six IDAs included in our

¹ All of the IDAs have fiscal years that ended December 31, 2004 with the exception of the Onondaga County IDA, which has a fiscal year that ended June 30, 2005.

audit reported a total of 750 active projects and \$3,863,412 in fee revenues in their annual financial reports to the Office of the State Comptroller (OSC).

Objective

The objective of our audit was to answer the following questions:

- Are IDAs designing and implementing systems to adequately verify reported job data, evaluate project performance, and recapture benefits for performance shortfall?
- Do IDAs have criteria for selecting firms or businesses receiving sponsorship and economic development incentives and are those criteria consistently applied?

Scope and Methodology

We audited six IDAs throughout the State including the Erie County IDA, Town of Amherst IDA, Suffolk County IDA, Ontario County IDA, Onondaga County IDA, and the Tompkins County IDA. We reviewed selected projects the IDAs took title to (closed) during the years 2000 to 2001 that evidenced how IDA officials estimated incentives; approved, monitored and evaluated projects; and utilized their recapture provision. We also reviewed selected projects that the IDAs took title to in 2003 and 2004 to determine if they involved movement of businesses from one area of the State to another and if the IDAs documented whether these projects met the exceptions provided by statutes for such movement.

We conducted our audit in accordance with Generally Accepted Governmental Auditing Standards. As part of our audit, we reviewed project applications, job survey forms and ST-340 forms that were prepared by businesses receiving incentives. We did not verify any of the information reported by the businesses on the forms and applications. We used this unaudited data to provide perspective in our report and to demonstrate why it is important for IDA officials to monitor project performance and evaluate the accuracy of estimated and reported sales tax exemptions. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

Responses of Agency Officials

The results of our audit and recommendations have been discussed with officials from the six IDAs and their comments, which appear in Appendix A, have been considered in preparing this report. Officials agreed with some aspects of our findings and recommendations, and disagreed with others. Excerpts of these responses and our comments are included in Appendix A.

Project Evaluation and Monitoring

A significant responsibility of the IDA Board is to monitor and evaluate the performance of businesses receiving financial assistance to determine whether the businesses are meeting the goals established in their project applications. Without effective monitoring, the IDA will not be able to identify and address business performance shortfalls; and the community will not be able to determine if desired benefits are achieved. Overall, with the exception of the Tompkins County IDA, we found that project performance was not adequately monitored. There was only limited evidence that steps were taken by the IDA officials to ensure that sponsored projects reasonably met their employment projections or other goals as indicated in their applications for IDA assistance. None of the IDAs imposed sanctions and/or penalties in cases where projects failed to create or retain jobs as projected.

Evaluating Job Creation Performance

All six IDAs include provisions in their lease agreements that require project owners to submit information related to employment. Each IDA sends out annual job survey forms to project owners to request information on the number of full-time employees at the project location. As part of our audit, we requested 2004 job surveys for selected projects the IDAs took title to in 2000 and 2001, so we could analyze job creation performance. Four IDAs were able to provide us with the surveys we requested. However, Town of Amherst IDA officials informed us that they had disposed of the surveys, so they were not available for our examination. As a result, we selected a sample of ten projects in our test period and re-surveyed the project owners directly. The Erie County IDA only had job surveys on file for 21 of the 48 projects we selected (about 44 percent). During the course of our audit, officials re-surveyed the remaining 27 project owners and received 17 more responses. Ten companies failed to send their employment information to the Erie County IDA. In order to effectively monitor and evaluate project performance, IDAs must have accurate and complete employment information.

To analyze job creation performance, we compared projected full-time jobs on project applications to full-time jobs reported by project owners in the job surveys for 2004² for the 110 projects that had job

² All of the surveys utilized to determine 2004 reported jobs were dated as of December 31, 2004 with the exception of the surveys for the Onondaga County IDA. The Onondaga County IDA has a different fiscal year ending June 30. Since its survey results correspond to the fiscal year, we utilized the most current information as of June 30, 2005.

surveys available. We separated projects into two different groups to evaluate job performance: single unit projects and speculation (“spec”) building projects. For single unit projects, the IDA knows at the time of application what company will occupy the project site. “Spec” building projects involve incentives to developers to build a facility which will later be leased to tenants. In some instances, the IDA and developer do not know who all the tenants of these facilities will be at the time of application. For “spec” building projects, the developers often estimate projected jobs based on the square footage of the proposed facility and the expected type of occupancy. For example, a developer may estimate 250 square feet per person for class “A” office space. If the building is 25,000 square feet, the developer would estimate 100 projected jobs. Of the 110 projects we tested, 96 were single unit projects and 14 were “spec” building projects. The results of the single unit projects job performance are reflected in Table 1.

Table 1. Job Creation Summary for Single Unit Projects

IDA	Number of Projects Tested	Businesses that Met or Exceeded Job Creation Goals	Businesses that Did Not Meet Goals but Increased or Had No Change in Jobs	Businesses that Did Not Meet Goals and Reduced Jobs
Erie County	34	14	12	8
Town of Amherst	8	1	3	4
Suffolk County	15	7	4	4
Ontario County	19	4	6	9
Onondaga County	14	6	3	5
Tompkins County	6	0	4	2
Totals	96	32	32	32
Percentage	100%	33%	33%	33%

Of the 96 single unit projects included in our review, 33 percent met or exceeded their job creation goals, 33 percent did not meet their goals but increased or had no change in staffing, and 33 percent did not meet their goals and reduced staffing since they applied for IDA incentives. Table 2 shows the number of jobs the 96 projects had before receiving IDA assistance, the number of jobs the businesses projected creating, and a comparison of their total estimated jobs and 2004 reported jobs.

IDA	Jobs before IDA Status	Estimated Job Creation	Estimated Jobs to be Retained	Total Jobs Estimated	2004 Reported Jobs ³	Reported Jobs Over/ (Short) of Projection
Erie County	5,168	929	4,871	5,800	5,567	(233)
Town of Amherst	2,371	1,205	2,371	3,576	2,047	(1,529)
Suffolk County	4,291	1,956	4,291	6,247	6,561	314
Ontario County	1,063	542	1,063	1,605	990	(615)
Onondaga County	1,921	1,436	1,901	3,337	2,791	(546)
Tompkins County	321	263	321	584	361	(223)
Total	15,135	6,331	14,818	21,149	18,317	(2,832)

There was a wide range in job creation performance among the six IDAs included in our audit. The projects we tested in the Town of Amherst IDA and Ontario County IDA actually decreased jobs in total after receiving IDA benefits. In the Town of Amherst IDA, the businesses projected increasing jobs by a total of 1,205, but they actually reduced staffing by 324 (14 percent). Similarly, in the Ontario County IDA, the businesses projected increasing jobs by a total of 542, but they actually reduced staffing by 73 (7 percent). The projects we tested in the Onondaga County IDA and Tompkins County IDA added jobs in total, but the businesses only created 62 percent and 15 percent, respectively of the jobs they projected they would create. Although the projects we tested in the Erie County IDA fell slightly short of their projections in total, the businesses did create 75 percent of the jobs they estimated they would create in their project applications. The Suffolk County IDA was the only IDA in our audit which had projects that met and exceeded their job projections in total for our test period. In total, for all the single unit projects we reviewed, the IDAs only achieved 55 percent of the job growth that had been projected. More specific information on the job creation performance for each single unit project we reviewed is included in Appendix C of this report.

Four of the IDAs took title to speculation building projects during our test period. The results of our comparison of total estimated jobs and 2004 reported jobs for the 14 “spec” building projects we tested are summarized in Table 3.

³ Reported jobs for the Onondaga County IDA are as of June 30, 2005.

Table 3. Speculation Building Project Employment Numbers

IDA	Number of Projects Tested	Businesses that Met or Exceeded Job Projections	Businesses that Did Not Meet Job Projections	Total Jobs Estimated	2004 Reported Jobs	Reported Jobs Over/(Short) of Projection	Reported Jobs as a % Total Estimated Jobs
Erie County	4	3	1	828	1,056	228	128%
Town of Amherst	2	0	2	637	123	(514)	19%
Suffolk County	5	0	5	3,728	2,986	(742)	80%
Ontario County	3	1	2	440	182	(258)	41%
Total	14	4	10	5,633	4,347	(1,286)	
Percent	100%	29%	71%				

The Erie County IDA was the only one out of the four IDAs that had speculation building projects which met their employment projections in total for our sample. Erie County IDA officials informed us that they exceeded projections because two of the developers estimated employment based on office space, but leased the project sites to call centers that require significantly less space per person. Suffolk County IDA officials informed us that some of their project sites were not fully occupied. Also, the developers did not adjust original estimates at application for common area square footage, so officials believe the estimated projections in the project applications were overstated. Appendix D of this report includes more specific information on the individual “spec” building projects we reviewed.

We caution against relying exclusively on the results presented in these tables when assessing project performance, because the data sources (project applications and 2004 job surveys) were completed by the businesses and have not been verified to other sources such as tax records or payroll documents. The Onondaga County IDA and Erie County IDA requested businesses to send the IDA a copy of their *Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return* (NYS-45-MN), which shows the number of employees working in New York State for the entire business. Although the Onondaga County IDA had substantially all the payroll tax forms for its projects, officials informed us that they do not use the forms to verify employment numbers unless the number on the job survey is significantly different from the prior year. The Erie County IDA asked businesses to submit the payroll tax records with their 2004 job survey, but only received 11 responses from the 48 projects we reviewed. The other four IDAs do not have a system in place to verify employment numbers reported by businesses. None of the IDAs make on-site visits to the businesses

to substantiate the data reported. Verification of data is important, not only to ensure an accurate portrayal of job performance, but also to evaluate whether the Board needs to address the project according to its recapture policy.

Recapture Provisions for Performance Shortfalls

Although not required by law, IDAs may place provisions in project contracts that allow them to ‘recapture’ economic benefits if companies do not meet their project goals. Penalties for non-performance or a shortfall in job creation or other promised benefits could come in varying forms. A company could be prohibited from reapplying for an incentive program, or a recapture policy could be imposed that would require the company to return all or part of the tax exemptions received. A recapture policy may be based on the number of new jobs created, a specific length of time a company must stay at a subsidized location, or other factors selected by the IDA.

Four of the IDAs included in our audit, Tompkins, Suffolk, Onondaga, and Ontario Counties, have adopted a recapture policy that allows the IDA to recover all or a portion of the value of the incentives received by a business for not achieving the projected employment levels of the project. As reflected in Tables 1 and 2, our analysis of job creation performance for single unit projects revealed that only 33 percent of the businesses we tested met or exceeded their job creation goals. Even though four IDAs have a recapture policy which allows them to recapture benefits when employment projections are not met by businesses, officials from the IDAs informed us that they have never invoked their recapture provisions. As part of our audit, we selected projects that either did not meet their job creation projections, or lost jobs since receiving IDA assistance, and asked officials in the IDAs that have a recapture policy if they had evaluated the projects and considered recapturing benefits for the performance shortfall.

Tompkins County IDA officials appeared to be the most actively involved in monitoring projects. As part of their monitoring efforts, officials compared the number of jobs projected by businesses with the number of jobs reported on job surveys and the Administrative Director met with companies that did not create the jobs they projected. The Tompkins County IDA’s recapture policy includes valid explanations such as a natural disaster, industry trends, and the loss of a major supplier or customer, which Agency officials take into consideration when deciding whether to recover the incentives received by the business due to performance shortfall. The Administrative Director provided us with his hand-written notes summarizing the meetings he held with the companies and the explanations they provided for not

creating the jobs they projected. While the Administrative Director does follow-up with business that do not meet their performance goals, he does not have a process in place to verify the businesses' explanations for not achieving the projected results. Additionally, we were informed that the Board primarily left it up to the Administrative Director to decide whether projects should be referred to the Board for consideration of the recapture provision. Based on our review of the minutes and our discussions with officials, we found no indication that any of the projects we reviewed that had performance shortfalls were presented to the Board for its determination whether to recapture benefits.

We found limited evidence that Suffolk County IDA officials actively monitored project performance prior to our audit and evaluated whether the IDA should recapture benefits for performance shortfall. The Suffolk County IDA's Recapture of Benefits Policy provides that the IDA may recapture the value of the incentives received by a business getting the enhanced real property tax abatement if the economic benefits of the project are not achieved within the first four years of the project. The policy states that if a business has a "significant employment reduction," then the IDA may consider it for recapture. However, the policy does not define what it considers a "significant employment reduction." We identified two companies that received the enhanced real property tax abatement and reduced jobs in our test period. After we inquired of Agency officials whether they considered recapturing benefits from these companies, officials contacted these two companies to discuss the reasons they did not create the jobs they projected, but instead reduced jobs. The Executive Director then discussed these two companies with the Board at its meeting on October 27, 2005. The Board decided not to recapture benefits from the companies at this time; however the IDA sent letters to the companies indicating they will continue to monitor their job creation performance in the future.

On December 7, 2005, the Suffolk County IDA Board adopted Recapture Guidelines, which outline the reasons for recapturing benefits, and identify circumstances in which the IDA should issue warnings to companies and/or implement its recapture provision. According to the new guidelines, if jobs are 20 to 25 percent below projections, this is considered to be a "significant employment reduction," and the Board should consider recapturing benefits.

Under the recapture provision in the Onondaga County IDA's Uniform Tax Exemption Policy, the IDA may recapture the value of the incentives received by a business if a project site is sold or closed, or the number of jobs is reduced below 75 percent of the number employed at the time of application, or below 75 percent of the employment projections provided by the company, and no substantial future economic benefit is likely to accrue to the community. Although the Board reviews job performance annually, it does not have a procedure to begin the recapture process. We identified four out of 14 projects that had employment that dropped below 75 percent of the projected number and therefore should have been considered for the recapture of benefits. We found no indication Onondaga County IDA officials contacted any of these companies about the shortfall in job creation, or that the Board considered recapturing benefits from the companies.

The Ontario County IDA's Uniform Tax Exemption Policy has a section on recapturing benefits which states that it is up to "the sole discretion of the Agency on a case-by-case basis" whether to recapture benefits from businesses when they fail to meet certain requirements. The policy allows the Board to take back incentives for one or more of the following reasons: the project results in significant employment reduction, the project owner sells or closes the project site, or documentation (e.g., job surveys or ST-340 sales tax exemption forms) is not remitted as requested. Because "significant" employment reduction is not defined in the policy, we identified companies whose employment dropped by 10 percent or more from the time of application to determine the action taken by the IDA. We found that eight of the 19 projects we reviewed had reduced staffing by 10 percent or more since the projects closed in 2000 and 2001. In fact, one company has closed the project site and the building is currently vacant. Officials informed us that they have chosen to keep the "IDA status" with the building in hopes that this will be a positive selling point. We asked officials whether these eight projects had been considered for the recapture of benefits. Officials informed us that they met with the companies that fell short of their employment projections to determine if circumstances were beyond the companies' control, however these meetings were not documented in the project files, so we could not confirm their representation. Additionally, we noted that 19 of 22 projects did not provide all of their sales tax ST-340 forms, which were requested by the IDA for the purpose of preparing its annual financial reports. We found no indication that the Ontario County IDA Board formally consider recapturing benefits from any of the companies that met the criteria established in its recapture provision.

The Erie County IDA and the Town of Amherst IDA are two of six IDAs located in Erie County. We found that Erie County and Town of Amherst IDAs do little to evaluate project performance and to determine if businesses receiving tax incentives are producing benefits to the community as intended. Officials informed us that none of the six IDAs within the County have adopted a recapture policy, and if they were to adopt such a policy, this would put them at a disadvantage competing with the other IDAs within the County to attract businesses. Although the Erie County IDA does not have a recapture policy, it does include provisions in its lease agreements that enable it to increase a company's PILOT if the project's use is materially altered, or if the project closes or exceeds one-third use by ineligible tenants. The Town of Amherst IDA has provisions in its lease agreements to terminate the lease agreement if the project does not meet its financial obligation or fails to perform any material covenant or condition of the agreement. It also has provisions that increase PILOT payments if the project is not being used in accordance with the lease agreement. Town of Amherst IDA officials told us they believe it is bad public policy to take back incentives just because a company does not make its job creation or retention projection for one year. The company may eventually meet its projection at some point during the period it receives incentives from the IDA, so the IDA does not want to penalize the company by recapturing benefits.

Monitoring Sales Tax Exemptions

Project owners and tenants receiving sales tax exemptions are required to report the actual sales tax savings to the New York State Department of Taxation and Finance on form ST-340. All six IDAs included in our audit require project owners and tenants receiving sales tax exemptions to send copies of the ST-340 forms to the IDA so IDA officials can include these figures in their annual financial reports. Although officials request these forms from businesses, none of the IDAs use the forms to monitor sales tax exemptions by comparing actual sales tax exemptions reported on ST-340 forms to the estimates included in the project applications.

We selected four projects from each IDA that closed in 2000 and 2001 to compare the estimated sales tax exemptions reflected on project applications with copies of the ST-340 forms submitted by the businesses and on file at the IDA. In some cases, we had to limit our audit testing because all the required forms were not available at the IDA, the exemption period extended beyond our audit period, or the projects were not completed within our audit period. The Town of Amherst IDA only had one of 17 ST-340s on file at the start of our audit.

Officials contacted the project owners during our audit and obtained 11 of the 16 outstanding forms. Additionally, the Onondaga County IDA only had the required ST-340 forms on file for two of the four projects we tested and Tompkins County IDA officials had forms on file for three of the four projects we tested.

We found that the four projects we tested at the Ontario County IDA reported less sales exemptions on their ST-340 forms than was estimated in the project applications. Our comparison of projected and reported sales tax abatements at the Erie County IDA revealed only immaterial variances. Some of the more significant variances we identified during our testing are as follows:

- Two companies estimated sales tax exemptions of \$3,271,125 and \$5,060,175 in the project applications they submitted to the Suffolk County IDA. The companies reported actual sales tax exemptions that exceeded these estimates by \$2,256,375 (69 percent) and \$1,236,157 (24 percent), respectively. After we held our exit conference with the Suffolk County IDA, officials contacted the company that reported exceeding its estimated sales tax abatement by 69 percent. According to IDA officials, the company said it filled out the ST-340's incorrectly. Instead of showing the actual sales tax exemptions received, the company asserts that it multiplied the sales tax rate times its total costs for each year, resulting in an overstatement in reported sales tax exemptions.
- One company estimated sales tax exemptions of \$538,400 in the application it submitted to the Onondaga County IDA. The company reported actual sales tax exemptions of \$832,475 on its ST-340 forms, which was \$294,075 or 54 percent over the estimated amount.
- The Town of Amherst IDA approved a project that estimated \$222,573 in sales tax exemptions would be received by the company. However, the company reported receiving \$330,554 in sales tax exemptions which exceeded the estimated amount by \$107,981 or 49 percent.
- The Tompkins County IDA approved sales tax exemptions for two tenants that leased space in IDA sponsored project sites. These two companies estimated their sales tax exemptions would be \$23,000 and \$59,000. However, the companies reported actual abatements that exceeded their estimates by \$179,292 (780 percent) and \$48,144 (82 percent), respectively.

A comparison of estimated sales tax exemptions with actual exemptions claimed would enable IDA officials to identify and investigate large variances, and to use the information to develop more accurate estimates in the future. It would also improve accountability if IDA officials were to follow-up with those businesses that reported sales tax exemptions which significantly exceeded estimates to help ensure that the sales tax exemptions were only used for the intended purpose.

Recommendations

1. IDA officials should retain job survey forms on file to support the employment numbers reported in the IDA's annual financial report.
2. IDA officials should require all businesses receiving incentives to comply with their lease agreements by submitting job surveys, ST-340 forms or other required documentation.
3. IDA officials should independently verify reported employment data, such as by making on-site inspections of company premises or obtaining payroll information. The Board should consider entering into contractual agreements with benefited project owners that provide IDA officials with access to employment information.
4. IDA Boards should require that periodic project evaluations be performed to determine whether sponsored projects are producing benefits as intended and whether benefits should be recaptured from those businesses that fall short of their performance goals (e.g., job retention or job creation). IDA officials should verify the explanations provided by businesses for not meeting their performance goals.
5. IDA Boards without a recapture policy should develop a policy to recapture benefits or institute other sanctions, such as increased PILOT payments, for those projects that fall below job performance standards.
6. IDA officials should compare the sales tax exemptions the project owners and tenants are claiming against the estimate at application and investigate the reason for significant variances.

Project Evaluation Criteria and Project Approval

New York State Law specifies that only certain types of projects are eligible for IDA assistance. These include manufacturing, warehousing, research, commercial or industrial facilities; or industrial pollution control, recreation, educational, cultural, horse racing, railroad, and civic facilities. Since the legislation provides a broad framework for eligible projects, and the tax benefits granted by IDAs may result in a substantial cost to the community; it is important for IDAs to go beyond eligibility and develop project evaluation criteria and use these criteria consistently when making project sponsorship decisions. This is necessary to help ensure that only those projects that are most beneficial to the community receive IDA sponsorship.

There is a wide-range of diverse factors an IDA could, and should, consider when making project decisions. Evaluation criteria could include such things as the creation of a certain number of jobs, achievement of certain wage levels, and possible increased productivity and competitiveness of the company. Other factors to consider are the projects' impact on community development and public policy issues. These factors could encompass whether projects will improve, diversify, or stabilize the local economy, stimulate other business development in the area, revitalize a business district, or modernize facilities to meet health, safety and environmental requirements.

IDAs should also evaluate the project applicant's financial operations prior to approving the project. Such evaluations could include reviewing the applicant's credit history, assessing the strength of the business by analyzing past earnings and projected cash flow, and considering the experience of management.

In addition, IDAs should carefully determine if IDA involvement is necessary for the company to put the project into operation in the local area, whether an existing company would move to another state if it did not receive IDA assistance, or whether a project would be undertaken even without IDA sponsorship.

Businesses wishing to obtain incentives submit an application to the IDAs. The application includes information about the project such as a description, estimated project cost, estimated tax abatements,

and questions about the applicant's current employment levels and how many jobs it plans to create and/or retain. The Board reviews the application and holds a public hearing for projects they anticipate will receive benefits in excess of \$100,000 prior to making its decision whether to approve a project.

Project Evaluation Criteria

The Ontario County IDA was the only one of the six IDAs that has developed and documented formal evaluation criteria. The Ontario County IDA utilizes a detailed cost-benefit analysis as its criteria when making project sponsorship decisions. The Agency prepares this analysis for a three-year period and considers such factors as the estimated real property, sales and mortgage recording tax abatements the project will likely receive (costs to the community) and the estimated benefits to the community such as increased sales, real property and income tax from the jobs estimated to be created over a three-year period. The Ontario County IDA then nets the costs with the benefits and applies a present value formula to determine the County's "net present value" of the project.

Although the Boards of the other IDAs included in our audit utilized the statutes and their own various policies to determine project eligibility and to provide some general guidance that officials should consider when making project sponsorship decisions, the IDAs did not develop and document formal and specific evaluation criteria. For example, the Tompkins County IDA Board adopted a document entitled, Mission, Policies and Procedures that states the IDA wants to "avoid offering incentives to businesses that will compete with or displace existing Tompkins County businesses," and that the IDA would "prefer" to assist "businesses that have a market for products and services extending beyond Tompkins County." The Onondaga County IDA Board also provides some general guidance in its Uniform Tax Exempt Policy, which states that on a case-by-case basis the IDA may enter into agreements with businesses that are "net wealth generating" and therefore "serve a customer base outside of Onondaga County." The Onondaga County IDA has also adopted a Tax-exempt, Taxable and Sales/Leaseback Policy that provides some general guidance on three classes of projects the Onondaga County IDA would consider approving. The Onondaga County IDA has established a few additional eligibility requirements for the different classes of projects beyond what is required by the law. In addition, the Erie County and Town of Amherst IDAs both adopted a Countywide IDA Eligibility Policy which indicates that the IDAs strive to "promote economic development through the creation of

jobs and the expansion and diversification of the County’s tax base.” The Erie County and Town of Amherst IDAs have also identified the different North American Industry Classification System (NAICS) codes of businesses they consider to be eligible for IDA assistance. By doing so, the IDAs have established a few additional guides for project eligibility beyond what is required by the law.

Utilizing formal and specific evaluation criteria as part of their sponsorship decision-making process would provide the IDA Board with greater assurance that a consistent approach is employed to achieve the IDAs objectives, and that reasonable cost-benefit determinations are made. For the five IDAs that did not develop specific project evaluation criteria or document how they used the claims of project applicants in the decision-making process, it was not possible to determine whether every project was subject to a consistent and fair evaluation process.

Verification of Application Data

All six IDAs require the applicant to sign a certification stating that the information they put in the application is correct. However, none of the IDA officials who review the application prior to presentation to the Board do anything to verify the current employment levels or other information provided on the project applications. When IDA officials do not verify reported employment levels at the time of application, it could result in an inaccurate measure of project performance in the future. For example, if an applicant understates its employment numbers in the application, this could lead to an overstatement of the number of jobs reported as created in future years.

Verification that IDA Incentives are Necessary

In addition, none of the IDAs we reviewed had a formal procedure to determine that the project would not have proceeded without tax incentives. Four of the IDAs do not include questions in the project application to determine why the project owner needs tax incentives or whether the business would proceed without the tax incentives. The Erie County and Town of Amherst IDAs ask these questions on the application, but officials do not verify any of the responses received by the businesses. Minutes of meetings of the Board of the Tompkins County IDA indicate that the Board members often ask that question when presented with the project, but there is no indication that officials verify the response.

The use of incentives to subsidize a move or expansion that the business would have undertaken without incentives, in effect decreases future tax revenue over the life of the project. For example, using the various PILOT schedules of the IDAs we audited, the real

property tax abatements granted to businesses could result in a net loss of future tax revenues of 27.5 percent to 70 percent over the life of the PILOT schedule if the project would have proceeded without benefits and the project was not eligible for an exemption under Real Property Tax Law, Section 485-b. The PILOT schedules ranged from seven to 10 years.

Projects that Involve Movement

IDAs are generally statutorily prohibited from using financial assistance to encourage companies to move from one area of the State to another. This practice is often referred to as job “pirating.” Specifically, Section 862 of the General Municipal Law requires that an IDA shall not provide financial assistance to any project if it will result in the movement of a facility or plant from one area of the State to another area of the State or in the abandonment of a plant or facility within the State. The law provides that exceptions can be made if the project is reasonably necessary to discourage the project occupant from moving the plant or facility to a location outside the State, or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

IDA Boards must consider these legal restrictions when making a determination whether a business is eligible for IDA assistance. We reviewed a total of 117 projects that the IDAs took title to in 2003 and 2004 to determine if the projects involved the movement of businesses and if the IDAs documented how the businesses met one of the two exceptions provided by law. Since the word “area” is not defined in the law, our test included all projects that involved any movement of a business from one location in the State to another, regardless of whether the movement was within the same IDA or if the business moved from a location outside of the IDA. Our test included 108 single unit projects and nine speculation building projects. The Ontario County IDA was the only IDA included in our audit that did not sponsor a project that involved movement during our test period. The other IDAs each sponsored from one to nine projects that involved movement. Of the 108 single unit projects we tested, 21 (19 percent) involved movement of businesses. Sixteen projects moved from locations within the same IDA and five moved from locations covered by other IDAs.

Five of the six IDAs we audited included questions in the project application that ask if the business is moving from another location in the State, and whether the project meets one of the exceptions defined in the law. The Tompkins County IDA, which sponsored only one “spec” building project that involved movement during our

test period, was the only IDA that did not include these questions in its project application. We found that all the single unit project owners claimed that they would either leave the State without IDA assistance or needed IDA assistance to preserve their competitive position; however, the project owners generally did not provide the IDA with any documentation supporting their claims. The files for these projects generally included no analysis by IDA officials to indicate how the claims of the applicants were verified or used in the decision process. IDA officials appear to have taken the information at face value and relied upon the statements in the applications to make their determinations whether to sponsor the projects.

The nine speculation building projects involved movement of 26 tenants. Of the 26 tenants, 22 or 85 percent moved within the same IDA, and four moved from areas covered by other IDAs. Except for the Ontario County IDA and the Onondaga County IDA, each of the IDAs we reviewed sponsored one or more “spec” building projects during our 2003 and 2004 test period. We noted that Town of Amherst IDA was the only IDA that required tenants to complete a tenant eligibility form prior to moving in. Erie County IDA officials informed us they started this practice for projects induced subsequent to December 2001. This is a good practice because it helps the IDAs to determine if the tenants meet eligibility requirements. The tenants that moved into projects sponsored by the other IDAs were not required to complete an eligibility form or application, so no information was available to show whether they met one of the exceptions provided by statute. Without a formal process to review and approve new tenants before they enter project locations, tenants could relocate that do not meet the eligibility requirements outlined in General Municipal Law.

An IDA Policy Task Force made up of representatives of each of the six IDAs in Erie County proposed a Statement of Clarifications with regard to the Countywide IDA Eligibility Policy. The Statement of Clarification was approved by the Amherst and Erie County IDA Board effective July 1, 2005 (after our audit period), and it includes uniform procedures for the IDAs to follow for inter-municipal moves of companies. When a project applicant proposes moving between municipalities within Erie County, the Statement of Clarifications requires the IDA to provide written notification about the proposed project to the chief elected officer of the municipality in which the company is relocating from. The Statement of Clarifications also requires the IDAs to develop sufficient documentary evidence to support the determination that companies seeking IDA assistance to move from other areas of the State meet one of the exceptions provided by statute.

Recommendations

7. The IDA Boards should develop specific project evaluation criteria upon which to base sponsorship decisions. This would include setting standards for reasonable cost-benefit determinations of projects and ways to evaluate the likelihood of a project being undertaken without IDA assistance. The criteria would also enable the Board to develop benchmarks to evaluate approved project performance.
8. IDA officials should use a standardized format to document the project evaluation process so that it can be readily determined upon which criteria the decision to sponsor a specific project was based.
9. The IDA Boards should verify information included on the project applications submitted by businesses.
10. IDA Boards should require applicants moving from another area in the State to provide supporting documentation when they claim one of the exceptions provided by General Municipal Law.
11. IDA Boards should require prospective tenants to fill out an application or eligibility form prior to moving into an assisted project, and establish procedures to evaluate whether prospective new tenants meet the eligibility requirements.

APPENDIX A

RESPONSES FROM AGENCY OFFICIALS

A draft copy of this report was sent to each of the six IDAs we audited. The following representative comments were excerpted from the six responses we received:

Overall Comments

“The Tompkins County IDA is in the midst of a comprehensive review of all of its policies and procedures. This will likely be finished by the fall and will result in significant refinements. The State Comptroller’s recommendations have been an integral part of this review.”

“We welcome these audit findings as an opportunity to improve an already effective program and look forward to implementing process improvements that address these recommendations.”

Evaluating Job Creation Performance

“While reviewing the job performance of these projects at a specific date provides information at that point in time, we feel that it does not tell the whole story of the economic development effort. Job measurement...is not the sole goal of economic development. Even for companies that did not make their projections thousands of additional dollars were collected by local municipalities in the form of PILOT payments”

“Much like a venture capitalist, the IDA “invests” in a wide-ranging portfolio of projects with the knowledge some will be successful, some will not, and some will take longer to be successful than originally thought.”

STATE COMPTROLLER’S NOTE: Such “investments” are made at the expense of the taxpayer. Because of this, it is essential that the IDAs attempt to determine which projects may or may not be successful and which will produce benefits to the community that will outweigh the costs.

“The percentages included in the Comptroller’s report are somewhat misleading as they focus only on jobs created. In an era of jobs moving to other States, or overseas, we view a job being retained as important as a job created.”

STATE COMPTROLLER’S NOTE: We recognize the importance of retaining jobs. Table 2 in our report shows both estimated job creation and job retention and the extent to which each IDA achieved these projections based on the projects we tested. However, we believe that the percentage of projected job growth actually achieved is also a valid measure of performance, and we included these percentages in our report.

“The OSC requirement that job projection in the private sector is a rigid goal... belies economic reality.”

Recapture Provision for Performance Shortfall

“We will identify thresholds that we feel represent significant employment reductions and will document our discussions and make recommendations to our board regarding a suggested course of action.”

“We feel that punitive measures such as clawing back benefits only hurt an already struggling company, further jeopardizing jobs.”

“We acknowledge that the recapture provision is a useful tool under certain circumstances.”

“The audit presumes the purpose of a recapture policy is punitive in every case. Two more nuanced reasons for a recapture policy are that it encourages companies to consider carefully the projected future employment and, in the event of an egregious act of disinvestment or bad faith there is a basis for recourse by the Agency.”

“In most cases, companies that are not producing benefits as intended either had a significant or unforeseen event impact them (for example: calamities like 9/11, or new competition from China) or the company is in poor financial condition. In these circumstances, recapturing benefits could force the company to lay off even more employees or close permanently.”

Monitoring Sales Tax Exemptions

“We will consider a process improvement in which we compare estimated sales tax exemptions to actual exemptions taken by a company.”

“...staff has implemented one of the recommendations... a procedure to track sales tax exemptions on each project.”

“...the report notes a substantial difference between estimated sales tax abatement and actual...we expect this is because some contractors...were confused by the State forms...”

Project Evaluation Criteria

“We would prefer... that any changes in the criteria for evaluation of projects be subject to legislative review and adopted within General Municipal Law so that at least IDAs are consistently applying the same criteria across New York State.”

“We are completely surprised that the OSC has overlooked...any discussion or analysis focusing on the substantial capital investment that IDA’s have encouraged in their respective regions. This is especially surprising since capital investment is the primary rationale for providing public incentives under the General Municipal Law that created IDAs in the first place. The concept embedded in GML ...is that by encouraging capital investment, a region improves its competitiveness and thereby jobs and ‘general prosperity’ will follow.”

STATE COMPTROLLER’S NOTE: A business must make a capital investment in buildings or equipment in order to be eligible for IDA financial assistance. We agree that capital investment is an important consideration during the project evaluation and approval process. However, capital investment by a business, in and of itself, does not necessarily ensure that the benefits of the project to the community are worth the costs of the tax abatements and exemptions granted to the business.

Verification of Application Data

“We will receive and file a payroll tax form or other type of documentation with completed applications to confirm the employment numbers reported by the company.”

“Two of the eleven recommendations in the report call for verification of data provided by applicants. . . . it would be helpful if the Comptroller’s office would encourage the State Department of Labor to provide to the IDAs the information DOL collects.”

“In regard to employment verification and periodic monitoring it would be very helpful if the Office of the State Comptroller could provide specific procedures, forms and /or methodology that would be acceptable.”

“...all applicants are required to certify to the accuracy of the information they are providing for consideration of financial incentives. To imply that a company’s information is not accurate is disingenuous and assumes that the relationship we enter into with an applicant is based on false pretenses.”

STATE COMPTROLLER’S NOTE: IDAs provide significant tax incentives to businesses at taxpayer cost. The Board’s decision to sponsor a project is based primarily on the project application submitted by the business, so it is important for the IDA to verify that the information presented in the project application is accurate and complete.

Verification that IDA Incentives are Necessary

“We will include a series of questions in our application designed to document the likelihood of the project moving forward without agency assistance. For example, questions about the location of customers, suppliers and other company facilities and the impact on the economic viability of the project without agency assistance will be considered.”

Projects that Involve Movement

“We take pirating claims very seriously and have rejected projects in the past if we felt there was a possibility of jobs being pirated from one part of the state to our county.” “We will verify the information provided by the company through a review of the company’s own website or through other means to determine that no jobs are being lost at other company locations in New York State due to contemplated assistance on our part.”

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To accomplish our audit objective, we visited six IDAs and performed the following procedures in each IDA:

- We interviewed IDA officials to gain an understanding of the policies and procedures related to the application process and the approval, monitoring and evaluation of projects.
- We reviewed the Article 18-A of General Municipal Law, and the IDAs policies such as the Uniform Tax Exemption Policy and Recapture of Benefits Policy.
- We read the minutes from January 2003 to the end of fieldwork to document current issues related to the scope of our audit.
- In the Town of Amherst IDA, we selected 10 project owners and sent them job surveys to obtain information on their 2004 employment levels.
- To determine how well the companies performed at creating or retaining jobs, we compared job projections on project applications with reported jobs on 2004⁴ job surveys for projects that closed in 2000 and 2001 and were still active in 2004. We excluded projects that were only approved for financing purposes from our tests (i.e., projects involving not-for-profit entities).
- We reviewed four projects the IDAs took title to (closed) in 2000 and 2001 and compared estimates of sales and mortgage recording tax incentives at application to actual exemptions received. We used ST-340 forms submitted by businesses to the IDAs for our testing of the sales tax exemptions. For these projects, we also reviewed the calculations for the real estate tax abatement estimate to determine if the methods used were consistent and reasonable.
- We reviewed the applications of projects reported on the 2004⁵ annual financial report that closed in 2003 and 2004 to determine if they involved a move of a business from one area of the State to another. For projects that involved movement, we determined whether the IDA documented whether the projects met the exceptions provided by statutes for such movement.
- In the IDAs that had recapture provisions, we reviewed the projects the IDA took title to (closed) in 2000 and 2001 and inquired whether IDA officials had considered recapturing benefits from businesses that fell short of their performance goals. We reviewed related documentation when it was available.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those municipal operations within our audit scope. Further, those standards require that we understand the municipality's management controls and those laws, rules and regulations that are relevant

⁴ All of the surveys utilized to determine 2004 reported jobs were dated as of December 31, 2004 with the exception of the surveys for the Onondaga County IDA. The Onondaga County IDA has a different fiscal year ending June 30. Since its survey results correspond to the fiscal year, we utilized the most current information as of June 30, 2005.

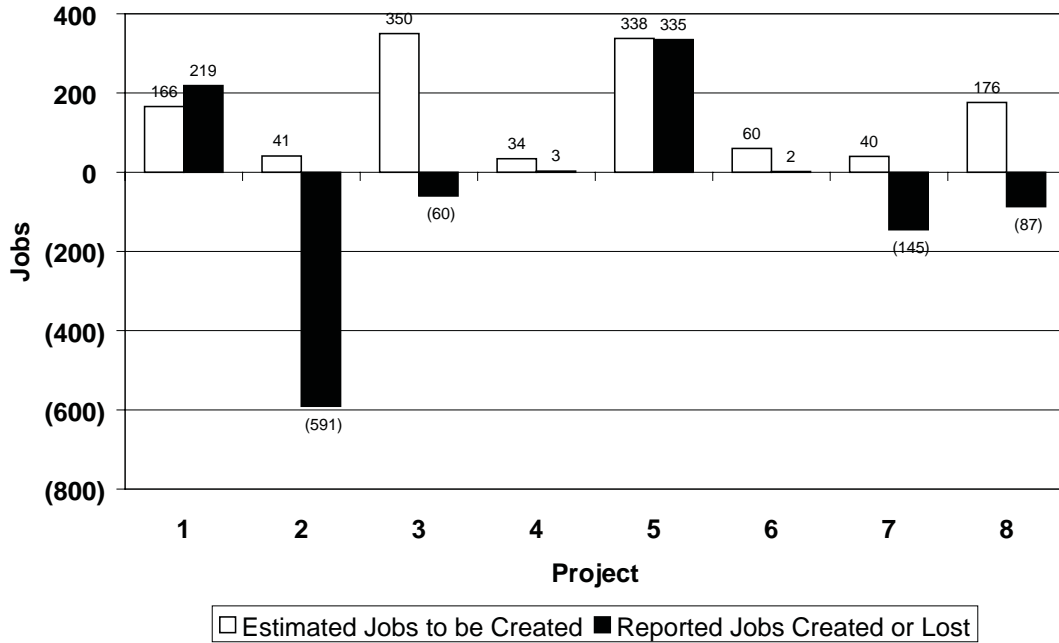
⁵ We utilized 2005 annual financial reports for the Onondaga County IDA.

to the municipality's operations included in our scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in accounting and operating records and applying such other auditing procedures, as we consider necessary in the circumstances. As part of our audit, we reviewed project applications, job survey forms and ST-340 forms that were prepared by businesses receiving incentives. We did not verify any of the information reported by the businesses on the forms or applications. We used this unaudited data to provide perspective in our report and to demonstrate why it is important for IDA officials to monitor project performance (e.g., job creation) and evaluate the accuracy of estimated and reported sales tax abatements. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report.

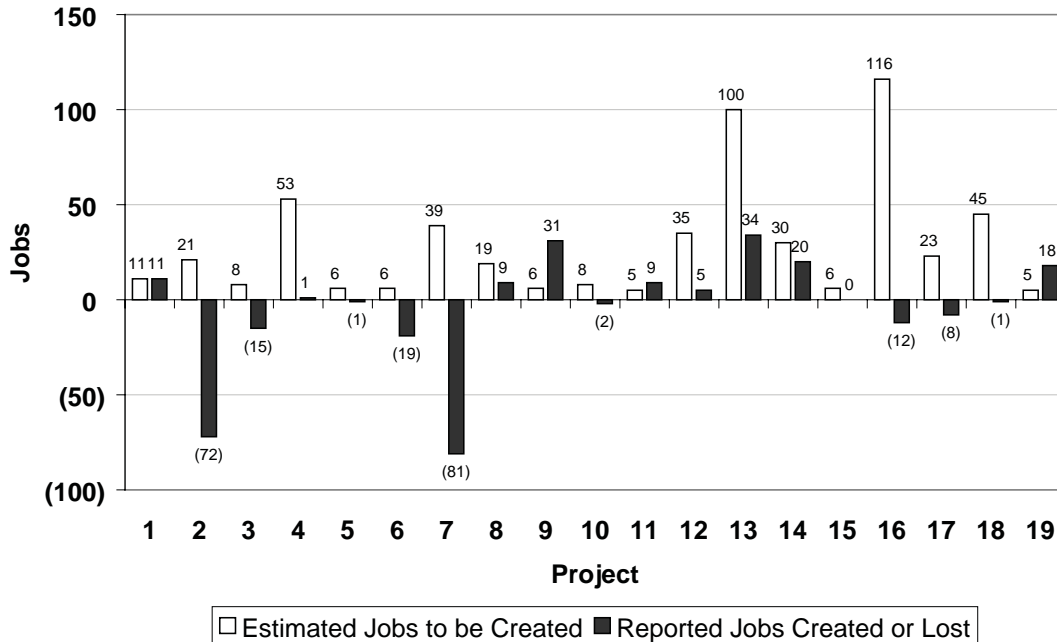
APPENDIX C

REPORTED JOB CREATION PERFORMANCE FOR SINGLE UNIT PROJECTS IN 2004⁶

Town of Amherst IDA

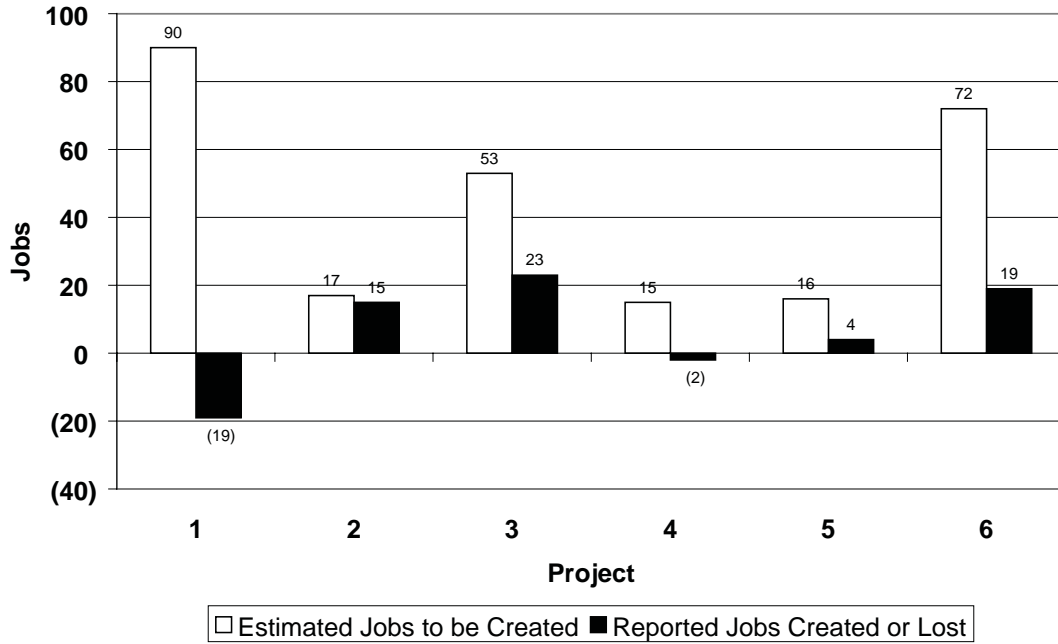


Ontario County IDA

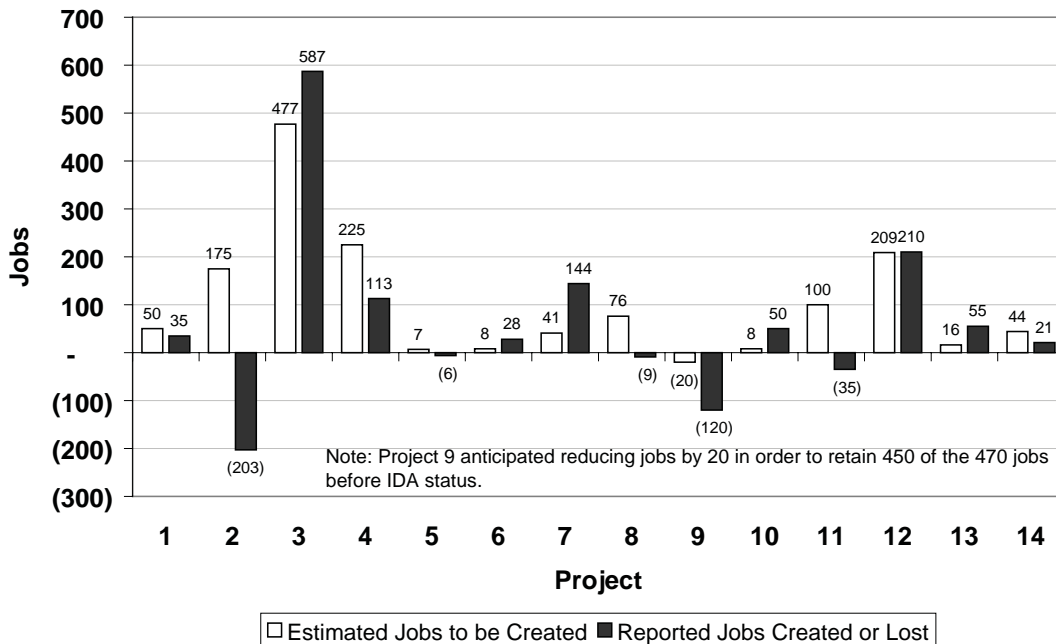


⁶ Job creation performance for the Onondaga County IDA is as of June 2005.

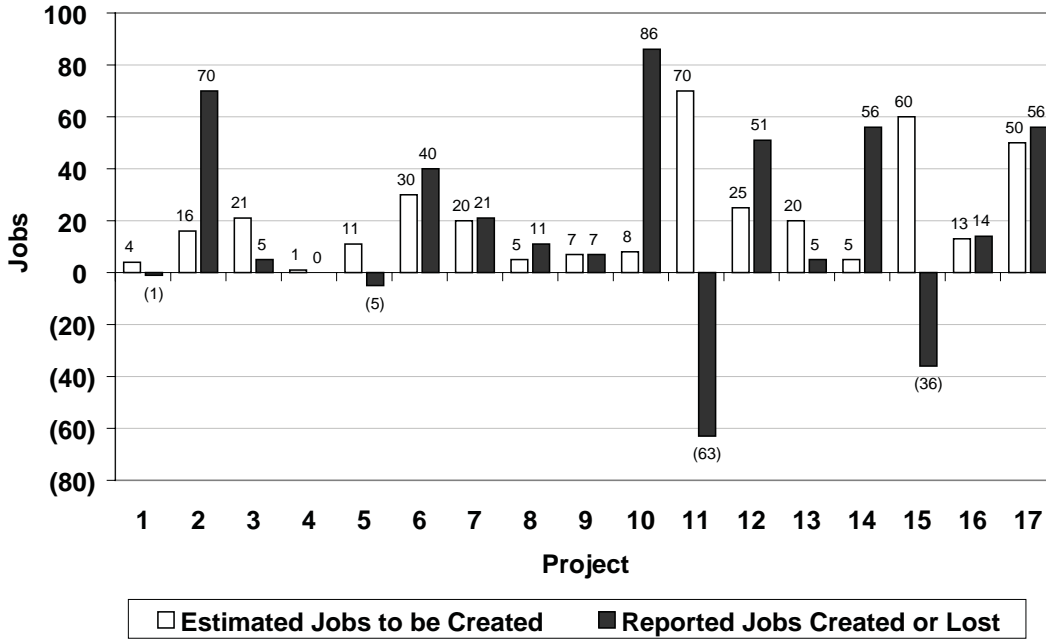
Tompkins County IDA



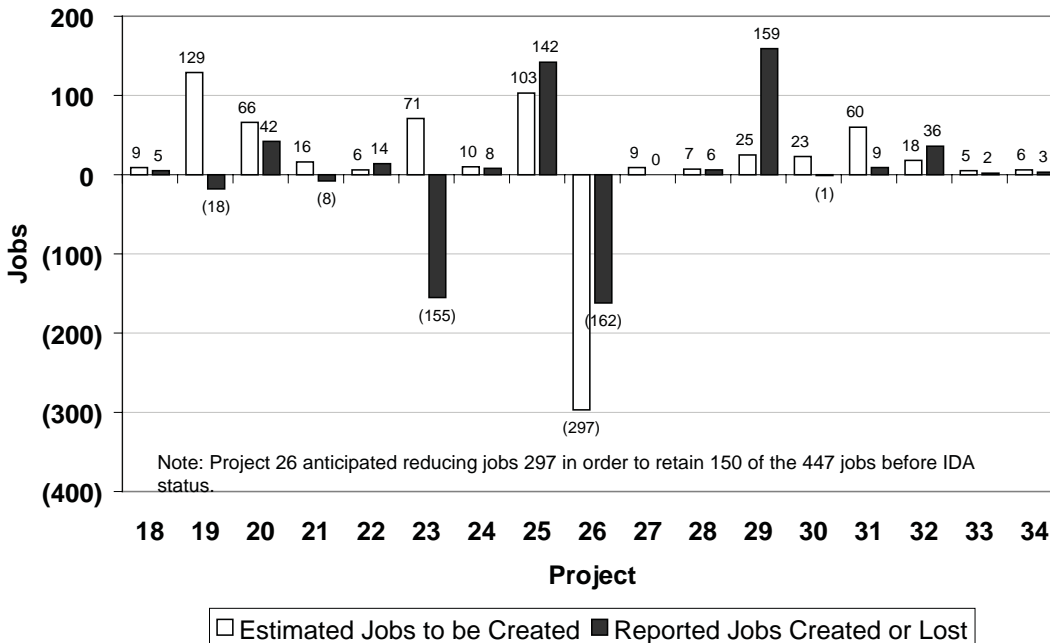
Onondaga County IDA



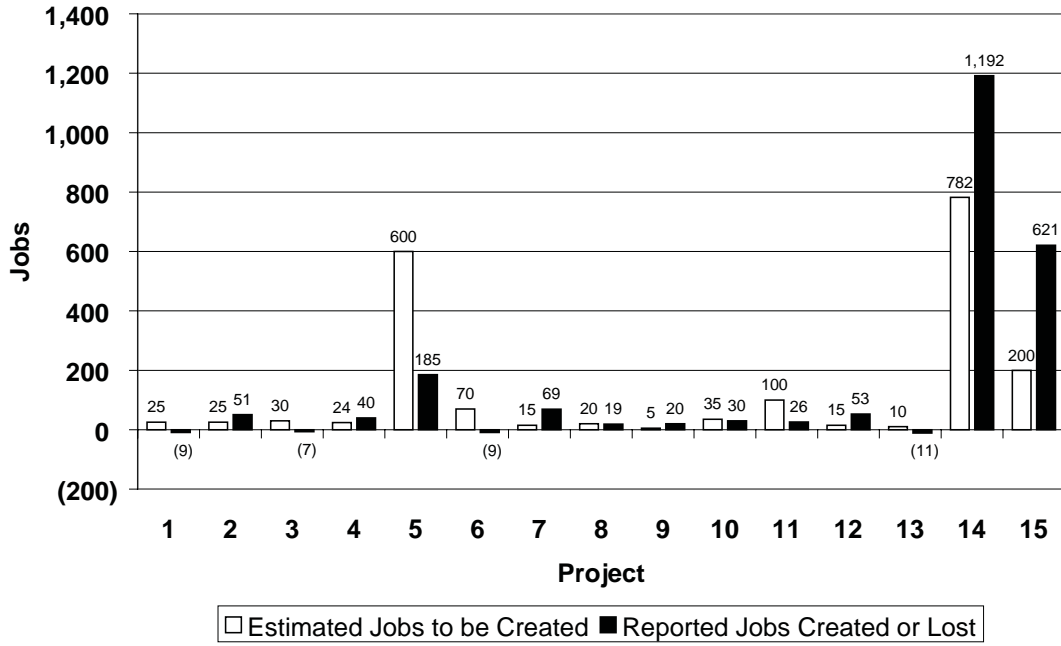
Erie County IDA



Erie County IDA (Continued)



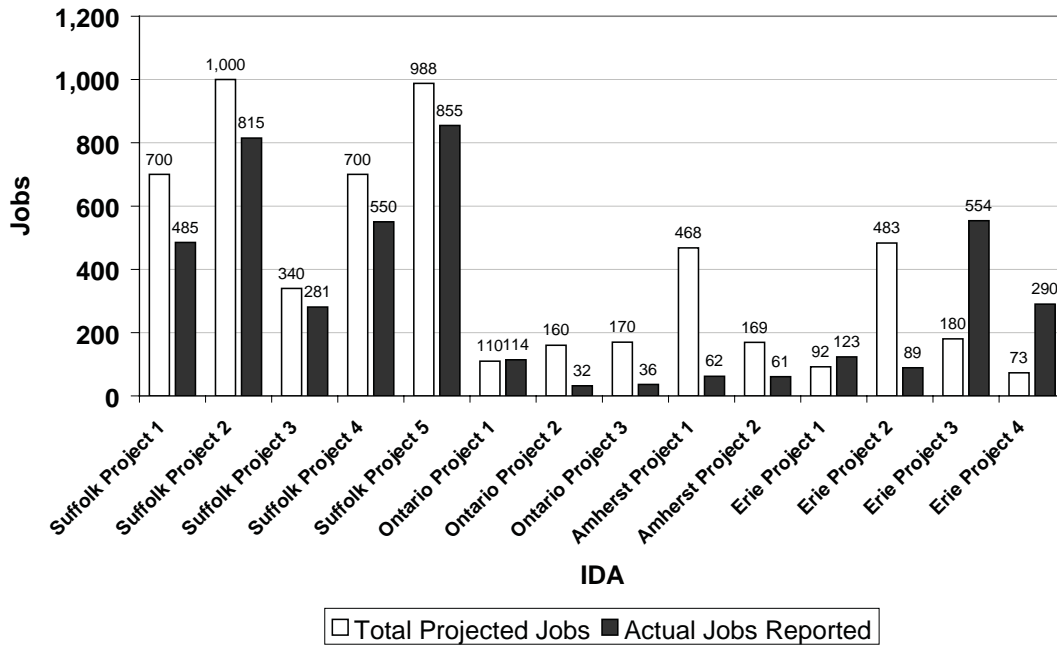
Suffolk County IDA



APPENDIX D

REPORTED JOB PERFORMANCE IN 2004 FOR “SPEC” BUILDING PROJECTS

Speculation Buildings Project Performance - 2004



APPENDIX E

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