Public Authorities by the Numbers: Empire State Development Corporation

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Thomas P. DiNapoli
New York State Comptroller

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Office of the State Comptroller
Public Information Office
110 State Street
Albany, New York 12236
(518) 474-4015

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Executive Summary

This report, one in a series of Comptroller DiNapoli's reports on public authorities in New York State, summarizes the revenues, expenditures, debt and employment of the Empire State Development Corporation (ESDC) and examines certain issues regarding accountability and transparency in its operations.

ESDC is New York State's chief economic development agency, and has been charged with the administration of more than 50 programs intended to spur economic activity, stimulate job creation and encourage business investment in the State. ESDC spent $1.3 billion in Fiscal Year (FY) 2014 in pursuit of these and other goals.[1] It administers the allocation of hundreds of millions of dollars in grants, loans, tax credits and other incentives to private companies, nonprofit organizations and other entities throughout New York State. For FY 2013, ESDC reported that its programs helped 201 employers retain 12,355 jobs. In addition, ESDC reported that 2,424 other jobs were created with its assistance, a figure that represents approximately 1.8 percent of net private sector job creation during FY 2013.

ESDC's efforts to publicly assess the effects of its programs appear limited. Its measures of performance developed in response to the reporting requirements of the Public Authorities Reform Act of 2009 include numbers and types of customers served, financing provided and leveraged, jobs projected to be retained and created, associated capital investment in the State, and regional and industry breakdowns of such metrics. The overall agency and a number of its individual programs are subject to other statutory requirements for reporting on accomplishments and outcomes. ESDC does not publicly assess whether individual projects would have occurred without its involvement, or the overall impact of its programs on New York's economic performance relative to the nation.

Additional findings in this report include the following:

- ESDC is both an economic development agency and a financing vehicle for the State. Its debt outstanding totaled more than $10.7 billion for its fiscal year ended March 31, 2014, and increased 20 percent compared to 2013. Almost that entire total is State-supported debt, or borrowing conducted on behalf of the State. ESDC is one of the primary vehicles for such "backdoor borrowing," which is conducted on behalf of the State with no requirement for voter approval.

- Interest and other expenses associated with ESDC's outstanding debt (revenue and corporate) and loans totaled $468 million, or 37 percent, of ESDC's $1.3 billion in FY 2014 expenditures. Economic development grants derived from State appropriations and borrowing represented 45 percent of the total. This total

[1] ESDC's fiscal year is the same as the State's fiscal year, and begins on April 1. Unless otherwise stated, the data in this report are for ESDC's fiscal year ended March 31, 2014.

does not reflect the value of tax credits and certain other tax benefits associated with some ESDC programs. For example, some programs provide a benefit to the recipient in the form of lower tax obligations and reduce revenue to the State, but are not reported as expenditures by ESDC.

- Since its establishment in 1968 as the Urban Development Corporation (UDC), and subsequent evolution in name and purpose to ESDC, the authority has created more than 200 subsidiary corporations and other entities. Audits by the Office of the State Comptroller have found that ESDC has not adequately overseen the status of many of its subsidiaries, and has rarely dissolved such entities once their purpose had been achieved.

- As of FY 2014, nearly 57 percent of ESDC's 290 reported employees were classified in some kind of management role. Nearly 23 percent of all ESDC employees received total annual compensation of $100,000 or more.

- While ESDC has been charged with administering more than 50 economic development programs, it provides little public information regarding the results of taxpayer-funded investments in its initiatives. ESDC makes no public assessment of whether its disparate programs work effectively together, whether such initiatives have succeeded or failed at creating good jobs for New Yorkers, or whether its investments are reasonable in relation to jobs created and retained. It is unclear to what extent ESDC's programs drive net job creation in the State.

ESDC's mission is critical, given the chronically weak employment picture in many areas of the State and the economic challenges that remain from the Great Recession. ESDC's Board of Directors is responsible for ensuring that ESDC effectively assesses its progress in fulfilling its mission. More standardized and detailed public reporting requirements for every program could better inform State policymakers and taxpayers as to which programs are successful and which are in need of improvement. Such information could be part of an overall State assessment of the impact that the State's broad range of economic development initiatives has on employment and economic growth in New York.

The complex nature of the State's economy and the complicated mix of State initiatives intended to spur job growth demand a high standard of public accountability to ensure that the State's investments in economic development pay off. Further efforts by ESDC to thoroughly assess the costs and benefits of the State's economic development initiatives could help promote confidence that its investment of public resources maximizes job creation and other beneficial results for all New Yorkers.

Introduction

ESDC, statutorily named the New York State Urban Development Corporation (UDC), was created in 1968 to address the State's growing urban blight, lack of low- and moderate-income housing, and inadequate access to educational, recreational, cultural and community facilities. In addition, the UDC Act sought to address unemployment and underemployment, which were exacerbated by the loss of industrial, manufacturing and commercial facilities in the State. UDC was formed to prevent further economic decline, promote economic growth and encourage job creation.

The Legislature granted UDC broad powers to carry out its mission, empowering it to issue bonds and notes, grant loans and tax exemptions, and acquire private property. UDC was also granted the power to acquire real property through the provisions of the Eminent Domain Procedure Law, provided that UDC finds that the acquisition is necessary or convenient to achieve its purpose. In addition, UDC was authorized to create subsidiaries, by Board resolution, pursuant to the Business Corporation Law, the Not-for-Profit Corporation Law or the Private Housing Finance Law. ESDC's website states that UDC's "ability to execute complex financial transactions, coordinate public and private resources and serve as a one-stop development authority thus offers a combination of services that no other private or public service entity in New York State can provide."

UDC began doing business as ESDC in 1995, with the intention to serve as an umbrella organization for all of the State's economic development entities. Before 1995, the State's four main economic development organizations – the Department of Economic Development (DED), a State agency, as well as UDC, the New York Job Development Authority (JDA) and the Science and Technology Foundation (STF), all public authorities – were administered separately.[2] Some STF functions were transferred to ESDC, while others were transferred to the New York State Foundation for Science, Technology and Innovation (NYSTAR). Legislation abolishing the STF was enacted in November 1999 and NYSTAR was merged with DED in 2011.

Although efforts to consolidate functions related to economic development may provide opportunities for efficiency improvements and facilitate access to programs for participants, there is a lack of transparency with regard to the enmeshed structure of the State's economic development entities. ESDC and JDA are, and continue to operate as, legally independent public authorities with separate financial statements and authorizations to issue debt, grant loans and create subsidiaries. DED, as a State agency, is funded through the State Budget and subject to the same oversight and accountability as other State agencies. However, there is no discernible distinction in the operations and functioning of DED and ESDC. While the operations of these entities are closely related, this report examines only the financial and operational data of ESDC.

[2] The Department of Economic Development traces its origin to the Legislature's creation of the Division of Commerce in 1941. The Division was replaced by the Department of Commerce in 1944. For more information, see www.esd.ny.gov/AboutUs/History.html.

Various Executive proposals over the years have sought to consolidate the State's economic development entities statutorily. However, most of these proposals have not been enacted by the Legislature, due, in part, to concerns related to reduced transparency and accountability. This is because the proposals have consistently sought to transfer agency functions to public authorities, which are not subject to the same oversight requirements that apply to State agencies. An exception was the transfer of most of the powers and duties of NYSTAR, a public authority, to DED, a State agency, in 2011.

As of January 2015, ESDC maintained three main offices in Albany, Buffalo and New York City, in addition to 10 regional offices around the State. ESDC also identified an international presence, including offices in the United Kingdom, Israel, South Africa, China, Canada and Mexico.[3]

Empire State Development Corporation by the Numbers

The data in this report have been submitted by ESDC to the Office of the State Comptroller (OSC), primarily through the Public Authorities Reporting Information System (PARIS) maintained by the Office of the State Comptroller. PARIS was created in response to a need for greater accountability and transparency through more timely data collection and analysis. The system was fully implemented in November 2007 and is jointly managed by the Office of the State Comptroller and the Authorities Budget Office (ABO).

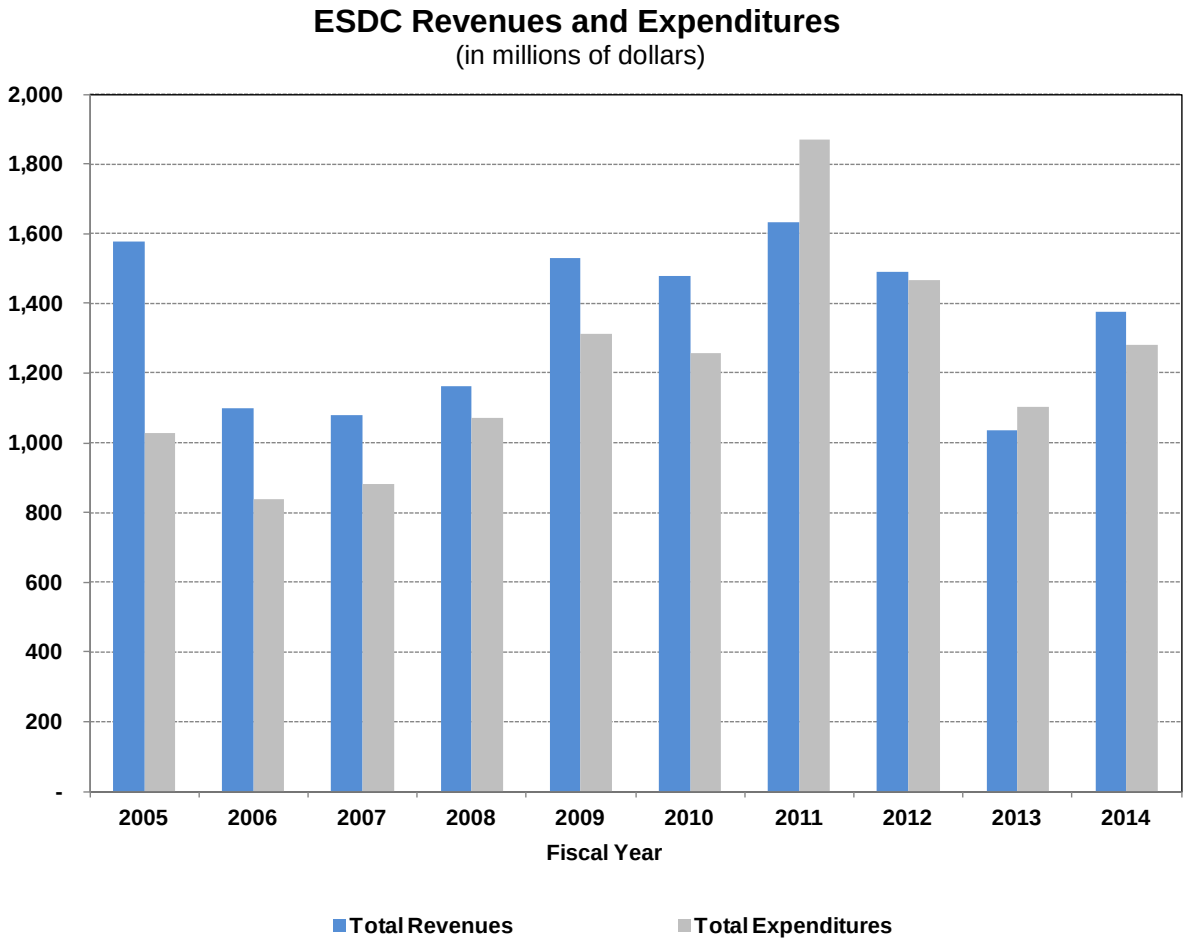
Unless otherwise stated, the data in this report are for ESDC's fiscal year (FY) ended March 31, 2014. The information and numbers are self-reported by ESDC and have not been verified by the Office of the State Comptroller.

Revenues and Expenditures

ESDC is among the largest of the State's public authorities in terms of total revenues and expenditures, ranking seventh in both categories behind the Metropolitan Transportation Authority, the Long Island Power Authority, the Power Authority of the State of New York, the Housing Trust Fund Corporation, the Dormitory Authority of the State of New York, and the State University Construction Fund.

[3] An audit by the Office of the State Comptroller of ESDC's Oversight of International Offices, released in June 2013 and available at www.osc.state.ny.us/audits/allaudits/093013/12s7.pdf, noted that several of ESDC's international offices had been closed due to budget constraints, including the offices in China and Mexico. As of July 2014, the ESDC website identified a presence in the United Kingdom, Israel and South Africa. As of January 2015, the ESDC website identified the additional offices in China, Canada and Mexico.

Figure 1



Self-reported revenues for ESDC for the fiscal year ended March 31, 2014 totaled $1.4 billion, as shown in Figure 1. The primary sources of ESDC's revenues are economic development grants derived from State appropriations and bond proceeds, which reflected $576 million or 42 percent of revenue in FY 2014. Other sources of revenues include federal, State and local reimbursed grants ($272 million or 20 percent), interest on revenue bonds ($52 million or 4 percent) and hotel tax revenue ($42 million or 3 percent).[4]

Non-operating revenue, which represents $411 million or 30 percent of total revenue, primarily consists of State appropriations for interest on revenue bonds. The remaining $22 million, or 2 percent, includes interest and finance income from a U.S. Department of Housing and Urban Development (HUD) subsidy, housing companies, and nonresidential projects, as well as State appropriations for programs and resources categorized as "other revenue."

[4] Certain ESDC bonds associated with the expansion and renovation of the New York Convention Center, also known as the Javits Center, are supported, in part, by a $1.50 hotel tax imposed for a 40-year period on daily hotel room rentals in New York City.

Total expenditures reported for FY 2014 were $1.3 billion. ESDC's major expenditure categories include $410 million in non-operating interest expenses and other costs associated with its revenue bonds, which represented 32 percent of the total. Interest related to corporate purpose bonds, corporate loans and revenue bonds, which is categorized as operating expense, represented $58 million, or an additional 5 percent of total expenditures. These operating and non-operating interest expenses represented nearly 37 percent of total expenditures.

Additional expenses include economic development grants, which represented $581 million or 45 percent of the total, and reimbursed grant expenses, which represented $137 million or 11 percent of the total.

The remaining $96 million, or 7 percent, includes smaller categories of expenditures such as general and administrative expenses and subsidiary and program administration expenses. ESDC's expenditure total does not reflect the value of tax credits and certain other tax benefits associated with some programs. For example, some programs provide a benefit to the recipient in the form of lower tax obligations and reduce revenue to the State, but are not reported as expenditures.

Until mid-2013, the authority managed a portion of the State's Mitchell-Lama affordable housing portfolio, and received a HUD subsidy associated with the portfolio. On June 5, 2013, the portfolio was transferred from ESDC to the Housing Finance Agency (HFA). As a result, HFA paid ESDC $45.4 million, which ESDC indicates will be used for operating expenses over the current and next fiscal year.[5] The State Fiscal Year (SFY) 2013-14 Enacted Budget Financial Plan stated that, beginning in SFY 2015-16, ESDC would receive additional support from the State to make up for the loss of the subsidy.[6]

Debt

ESDC's debt outstanding totaled more than $10.7 billion for its fiscal year ended March 31, 2014, an increase of 20 percent over FY 2013, as shown in Figure 2. Of that total, most is State-Supported debt issued over time for various purposes but reflecting an increasing reliance on debt issued by ESDC to fund a broader scope of State purposes including highway projects, correctional and youth facilities projects and to refund debt of other authorities.[7] Recent examples include bonds issued to finance the cost of economic development programs such as the Buffalo Regional Innovation Cluster, the Economic Transformation Program, and the New York State High Technology and Development Program.

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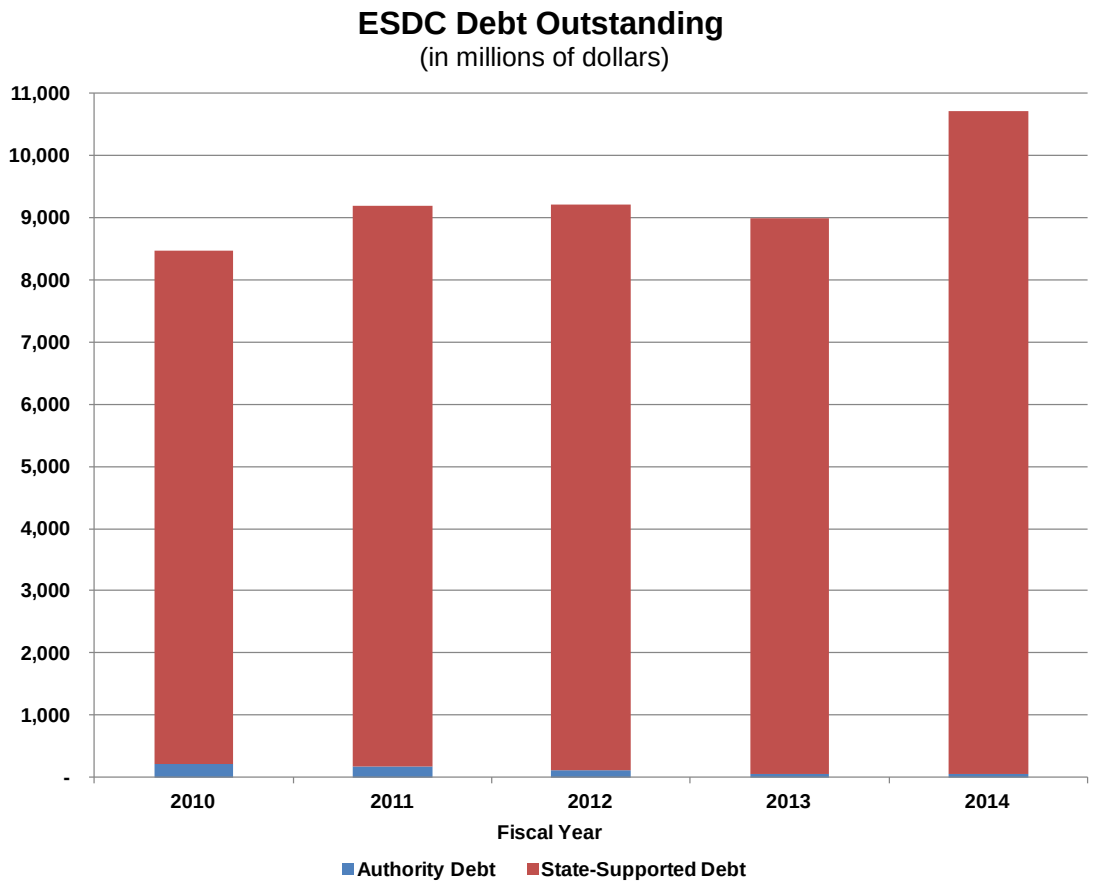
[5] New York State Urban Development Corporation and Subsidiaries, Consolidated Financial Statements and Independent Auditor's Report, March 31, 2014 and 2013.

[6] For more information, see the New York State FY 2014 Enacted Budget Financial Plan, page 19, at www.budget.ny.gov/pubs/archive/fy1314archive/enacted1314/2013-14EnactedBudget.pdf.

[7] The debt is categorized by ESDC as State-Supported. State-Supported debt under Section 67(a) of the State Finance Law is defined as any bonds or notes, including bonds or notes issued to fund reserve funds and costs of issuance, issued by the State or a State public corporation for which the State is constitutionally obligated to pay debt service or is contractually obligated to pay debt service subject to an appropriation, except where the State has a contingent contractual obligation.

In addition, bond proceeds were used to finance various equipment purchases and capital projects of State agencies, as well as to pay for the costs of issuance related to the debt. As of July 2014, ESDC debt made up 20 percent of the total State public authority debt outstanding reported as being issued for State purposes.

Figure 2



ESDC is one of five public authorities authorized to issue Personal Income Tax (PIT) revenue bonds on behalf of the State to finance State capital spending. In SFY 2009-10, ESDC and the Dormitory Authority of the State of New York (DASNY) were authorized to issue PIT bonds for any State-Supported purpose, except General Obligation bond purposes and bonds backed by other revenues of the State, including purposes other than those for which ESDC was created.

This authorization was subsequently expanded in SFY 2013-14 to include any bond programs backed by other revenue of the State.[8] These actions reflect an expansion of ESDC's mission from its focus on economic development to include a broader role as a more general-purpose financing vehicle for the State.

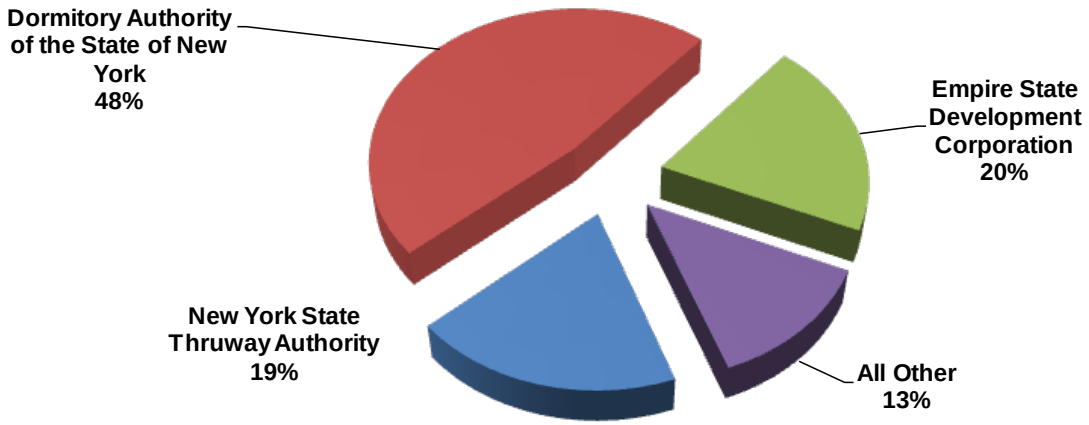
[8] As per Section 68-b of State Finance Law, as amended by Section 44 of Chapter 57 of the Laws of 2013.

The SFY 2013-14 Enacted Budget also created a new borrowing program backed with sales tax revenues, similar to the PIT Program. The program authorizes ESDC, the Thruway Authority and DASNY to issue the revenue bonds. It reflects the State's shift to consolidate the debt issuances of several State public authorities to these three issuers (see Figure 3).[9] The creation of this new financing program provided the State with another mechanism to bypass voter approval of State borrowing, which is required under New York's Constitution. This so-called "backdoor borrowing" is undertaken through public authorities primarily to avoid the requirement for voter approval.

As of March 31, 2014, approximately 95 percent of all State-Funded debt outstanding was issued by public authorities without voter approval.[10] Public authority debt issued on behalf of the State is the primary method of financing the State's capital program.

Figure 3

State Public Authority Debt Outstanding Issued for State Purposes



According to the Division of the Budget (DOB), bond authorizations for State-Supported debt topped $95 billion for SFY 2014-15, $10.9 billion of which is attributed to economic development.[11] In the SFY 2014-15 Enacted Budget, bond authorizations for State-Supported public authority debt were increased by $5.6 billion, reflecting an increase of 6.2 percent over the prior year. The Enacted Budget continues the State's reliance on public authorities as financing entities. Of the enacted increases, bond authorizations related to economic development increased $1.6 billion, or 17.1 percent, over SFY 2013-14, bringing total bond authorizations related to economic development to $10.9 billion.

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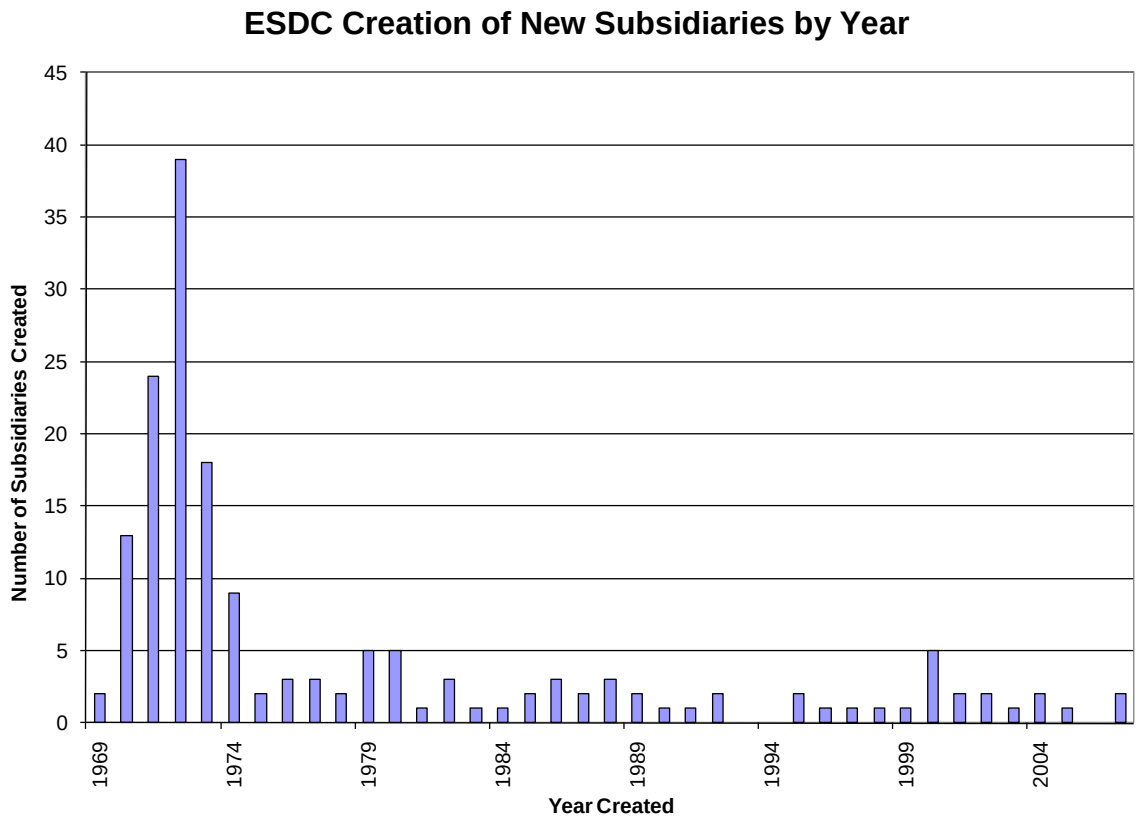
[9] The data in Figure 3 represents the most recently reported fiscal year for each authority.
[10] For more information on State debt generally, see the report by Office of the State Comptroller, *Debt Impact Study,* released in January 2013, available at www.osc.state.ny.us/reports/debt/debtimpact2013.pdf.
[11] New York State Division of the Budget, Annual Information Statement, June 13, 2014. Bond authorizations related to economic development exclude housing-related authorizations.

Subsidiaries

Since its establishment in 1968, ESDC has created over 200 subsidiary corporations and other corporate entities for various purposes. Currently, ESDC lists 168 subsidiaries in PARIS, which represents 73 percent of all public authority subsidiaries. ESDC and its subsidiaries make up 14 percent of all of the State's 1,180 public authorities and subsidiaries. As shown in Figure 4, most of ESDC's subsidiaries were created before 1975.

Figure 4



A 2006 audit by the Office of the State Comptroller examining the authority's oversight of subsidiary operations found that ESDC officials had appropriate processes in place to control and actively monitor subsidiaries that are responsible for managing ongoing large-scale economic development projects. However, the audit also found that ESDC did not adequately oversee the status of many of its subsidiaries, and rarely dissolved subsidiaries once their purpose had been achieved and they were no longer needed.

A follow-up audit issued in 2008 found that of the six recommendations made by the Office of the State Comptroller in the initial audit, ESDC had fully implemented only one. Four others were partially implemented and one had not been implemented at all.[12]

Provisions enacted in the Public Authorities Reform Act of 2009 restrict the formation of subsidiaries without legislative approval; however, subsidiary formation is permitted for a number of purposes. Subsidiaries formed for the purpose of a project or projects authorized pursuant to an authority's corporate purpose or those formed to limit the potential liability impact of a project to the authority are permitted. Also, subsidiaries formed because federal or State law requires that the purpose of the subsidiary be undertaken through a specific corporate structure are also permitted.

The Public Authorities Reform Act also added reporting requirements for subsidiaries, specifying that they provide the same reporting and disclosures as State authorities, unless the subsidiary's operations and financial information are consolidated with the parent authority. In addition, subsidiary reporting to the State Legislature is now required and must include disclosure of the legal name, address, contact information, and organizational structure, as well as a complete report of the purpose, operations, mission and projects of the subsidiary.

Still, access to independent financial data and detailed information for many of ESDC's subsidiaries is minimal. In addition, in many cases, the relationship of those entities with ESDC as the parent organization is unclear. ESDC is required to report subsidiary financial and other data as part of a consolidated filing, pursuant to various reporting requirements in the Public Authorities Law and related regulations. Entities which are not identified as subsidiaries, such as the Job Development Authority, must report independently. However, JDA did not begin to file many of the required independent reports until 2010.

Employment

For FY 2014, ESDC reported 290 full-time and part-time employees at various locations. Almost 57 percent of ESDC employees were reported to be in some kind of management role, including more than 13 percent with titles of president or vice president, and over 43 percent with titles of director or manager (see Figure 5).[13] Total employee compensation reported was $20.7 million.

[12] For more information, see the Office of the State Comptroller's audit, *Empire State Development Corporation: Oversight of Subsidiary Operations*, released in May 2006 (Report 2005-S-6) and *Empire State Development Corporation: Oversight of Subsidiary Operations, Follow-Up Report,* released in March 2008 (2007-F-51).

[13] These figures do not include ESDC's reported executive-level management titles, such as the Chief Executive Officer, the Chief Financial Officer, and the Chief Operating Officer.

Figure 5

ESDC Compensation by Job Title

Title	Number of Employees	Percentage of Total Employees	Total Compensation *(in thousands of dollars)*	Percentage of Total Compensation
President	6	2.1%	725	3.5%
Vice President	33	11.4%	3,245	15.7%
Director	48	16.6%	4,136	20.0%
Manager	78	26.9%	4,967	24.0%
All Other	125	43.1%	7,611	36.8%
Total	**290**		**20,684**	

Note: Columns may not add due to rounding.

ESDC reported 66 employees, or 23 percent of total staff, with total compensation of $100,000 or more, as shown in Figure 6. Of those, 58 employees received total compensation of between $100,000 and $150,000 and 8 employees had total compensation exceeding $150,000. By comparison, State public authorities as a whole reported that just under 13 percent of their staffs earned total compensation of $100,000 or more during the most recently reported fiscal year, while 8.7 percent of State employees and 14.7 percent of New York residents earned as much.[14]

ESDC participates in the New York State and Local Employees' Retirement System and also has several employees who have elected to participate in the New York State Voluntary Defined Contribution Plan. This plan was made available to employees meeting certain requirements as a result of legislation enacted in March 2012. Employees are also eligible to participate in the State's deferred compensation program. ESDC provides health benefits for eligible retired employees and their dependents through a health care plan with varying participant contribution rates.[15]

Figure 6

ESDC Employee Data

Compensation Category	Number of Employees	Percentage of Total Employees	Total Compensation *(in thousands of dollars)*	Percentage of Total Compensation
Less than $50,000	83	28.6%	2,732	13.2%
$50,000 or more but less than $100,000	141	48.6%	9,735	47.1%
$100,000 or greater	66	22.8%	8,216	39.7%
Total	**290**		**20,684**	

Note: Columns may not add due to rounding.

[14] U.S. Census Bureau, 2010-2012 American Community Survey Three-Year Estimates, Table S2001. Earnings in the Past 12 Months (in 2012 Inflation-Adjusted Dollars); Office of the State Comptroller, data as of June 2014.
[15] New York State Urban Development Corporation and Subsidiaries, Consolidated Financial Statements and Independent Auditor's Report, March 31, 2014 and 2013.

Contracts

The Public Authorities Law and regulations established by the Office of the State Comptroller require authorities, including ESDC, to report essential financial information accurately to promote high standards of transparency and accountability. Competitive and noncompetitive bid procurement data is supposed to include all active contracts, regardless of contract award date or end date, and reflect the total contract amount over the life of the contract. The data reported by ESDC for competitive and noncompetitive procurements in FY 2014 does not fully reflect the total contract amount in all instances because many of the active contracts were reported with a contract amount of zero.

In FY 2014, ESDC reported 249 active competitively bid and noncompetitively bid contracts with a total reported amount expended of nearly $460 million, as shown in Figure 7. Of those active procurements, ESDC reported a total contract amount in excess of $110 million. However, ESDC identified 186 contracts, or 75 percent, with a reported total contract amount of zero, though ESDC had reported expending more than $320 million on these contracts in that year. ESDC's PARIS filings for a substantial segment of its procurement activity appear to indicate that improvements in contract reporting are needed.

Figure 7

ESDC Procurement Data
(Amounts Expended are shown in thousands of dollars)

Award Process	Number of Procurements	Amount Expended (for FY 2014)	Amount Expended (life to date)
Competitive Bid Contracts	133	211,085	890,699
Noncompetitive Bid Contracts	116	248,825	667,297
Non-Contract Procurements	170	229,121	-
Purchased Under State Contract	6	591	-
Total	**425**	**689,621**	**1,557,996**

Note: Columns may not add due to rounding.

Contracts awarded through noncompetitive and other processes represented 69 percent of the total number of ESDC's procurements, and represented an equal share of ESDC's reported contract expenditures for FY 2014. Contracts for Design and Construction/Maintenance represented over 30 percent of the total amount expended on contracts reported by ESDC for FY 2014, while expenditures for contracts categorized as Other also represented 30 percent. ESDC reported 22 percent of the total amount expended as Consulting Services, nearly 11 percent as contract expenditures for Other Professional Services, and nearly 4 percent as expenditures for Legal Services contracts.

Unlike State agency contracts, few of these public authority transactions are subject to prior review and approval by the Office of the State Comptroller. However, the Public Authorities Reform Act of 2009 gives the Comptroller the discretion to review contracts

in excess of $1.0 million that are either awarded noncompetitively or are paid in whole or in part from State-appropriated funds, with certain exceptions primarily associated with health- and energy-related contracts.[16]

Recent audits by the Office of the State Comptroller have identified areas where ESDC may have opportunities to reduce costs and improve accountability in its procurements. A 2009 audit examined compliance with 2003 DOB guidelines that required State agencies and public authorities, including ESDC, to perform a complete review of its service contracts to curtail expenditures by eliminating all lower priority, non-essential, overlapping, or otherwise inefficient activities. When asked whether certain service contracts, with a total value of $236 million, had been reassessed for potential savings, ESDC officials responded that they had been advised by DOB to ignore the 2003 directive to reassess contracts and not perform the review.[17] ESDC also informed the Comptroller's staff that it was less costly to simply renew certain contracts year after year because new and lower bidding contractors would have an expensive learning curve. Auditors recommended that ESDC conduct cost-benefit analyses and explore options before selecting contractors, and to document its justification of new contracts and reassessment of existing contacts, among other changes.

A 2011 fraud and forensic audit of a consultant contract issued by ESDC concluded that public officials may have violated the law.[18] A State-appointed official employed by the New York State Council on the Arts was also a consultant contractor for ESDC. The audit found strong indications that the contract was initiated and continued primarily as a means to circumvent the salary level set by State law for the Council on the Arts position and to increase the compensation to a level that had been negotiated with the former Governor's office. As a result, the official was paid $135,000 annually, instead of the $109,800 salary capped by law, for more than three years. The services provided were already part of the official's existing job duties at the Council, and therefore the separate ESDC contract was unnecessary and wasteful.

A 2013 audit of ESDC's personal service contracts by the Office of the State Comptroller identified additional defects in ESDC's procurement practices.[19] The audit found that ESDC officials failed to comply with several requirements of the Authority's own adopted procurement guidelines governing the necessity, award, and monitoring of procurement contracts as required by Public Authorities Law. In addition, the audit concluded that ESDC did not enforce several contract terms with the vendors. As a result, it was unclear whether the contracts were necessary, appropriately procured and monitored to ensure the required delivery of services. While this audit reviewed only two judgmentally selected contracts, the findings suggest the need for a stronger control environment and for improved monitoring practices overall to prevent waste, fraud and abuse of resources at ESDC.

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[16] For more information, see www.osc.state.ny.us/pubauth/contracts.htm.
[17] For more information, see www.osc.state.ny.us/audits/allaudits/093010/09s62.pdf.
[18] For more information, see www.osc.state.ny.us/audits/allaudits/093013/11s6.pdf.
[19] For more information, see www.osc.state.ny.us/audits/allaudits/093014/11s53.pdf.

ESDC Programs

Overview

ESDC has been charged with administering more than 50 programs that provide grants, loans, tax credits and technical assistance to businesses, not-for-profit corporations, and other public and private entities. Some programs, such as the Urban and Community Development Program, have been created for very broad purposes, while others have very specific objectives such as the Healthy Food & Healthy Communities Fund. Appendix A provides a list of ESDC's programs.

The size and scope of ESDC's programs and the nature of its role with respect to such programs vary widely. For certain programs, ESDC administers the allocation of State grants, tax credits, and other resources. For example, the Excelsior Jobs Program was established in the SFY 2010-11 Enacted Budget and provides tax credits for businesses in targeted industries, such as biotechnology, pharmaceuticals, high technology, clean technology, green technology, financial services, agriculture and manufacturing. For the period ending March 31, 2014, ESDC indicates that 248 entities were accepted into the program and an estimated $426 million in tax credits were committed.[20] ESDC estimates that for tax year 2013, 122 entities will file performance reports requesting $30.5 million in tax credits through this program.[21] For tax years 2011 through 2013, ESDC reports that 38 companies received over $13 million in tax credits.[22]

By contrast, ESDC's role in certain other programs is limited. For example, ESDC has administrative responsibilities associated with the Land Bank Program, which was created in 2011 to allow certain municipalities to create not-for-profit corporations to address problems associated with properties that are tax delinquent, tax foreclosed, vacant, or abandoned. Under this program, ESDC's role is limited to reviewing and approving land banks in the State. Funding for the land banks has been provided by the New York State Attorney General from bank settlement moneys.[23]

These programs are intended to facilitate ESDC's core mission of furthering economic development in the State. The myriad programs ESDC administers directly are aimed at expanding the State's economy, creating and preserving jobs and encouraging business investment in the State. Other entities under the ESDC umbrella that are involved with economic development activities include JDA and its subsidiaries, such as the Brooklyn Arena Local Development Corporation and the New York Liberty Development Corporation, and DED.

Over the years, the structure of the State's system for delivering economic development initiatives has changed – new programs are added, other programs are continued, and

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[20] Empire State Development Corporation, Excelsior Jobs Program Quarterly Report, March 31, 2014.
[21] *Ibid*.
[22] *Ibid*.
[23] For more information, see www.esd.ny.gov/BusinessPrograms/NYSLBP.html and www.ag.ny.gov/feature/land-bank-community-revitalization.

some old programs are retired. In recent years, an attempt has been made to consolidate some of the economic development activities that have historically been scattered among different entities.

The Regional Economic Development Councils (REDCs), established in 2011, seek to coordinate and distribute economic development resources from both State agencies and authorities through a competitive funding process using a Consolidated Funding Application (CFA). The REDCs and the CFA reflect an effort to streamline access for entities that are seeking economic development benefits offered by the State. According to the Executive, since their inception in 2011, the REDCs have awarded more than $2.7 billion in State funding and other benefits.[24]

Although the REDCs are portrayed as "one-stop shopping" for economic development benefits offered by the State, less than half of the funds available through the CFA are appropriated through ESDC and DED for traditional economic development purposes. Over one-third of the funding offered through the REDCs takes the form of private activity bond allocations which allows private entities to issue tax exempt bonds. This Federal program limits the scope of the projects to be financed with the tax exempt bonds to those with a public purpose; the use of these bonds being primarily used to finance affordable housing projects and water/sewer infrastructure projects.

As ESDC administers these State-level programs, some with local components, other economic development activities are also being managed at the local level. While the REDCs may have improved coordination of applications for economic development funding, there is no comprehensive report on overall, combined State and local investment in job creation and business incentives. Also, other statistics on the cost and benefits of economic development programs to the State and its localities are unavailable or insufficient.

Reporting

As a result of provisions enacted in the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, ESDC is required to report or otherwise make available certain financial, debt, governance and other information regarding its operations. Additional statutory provisions provide for other reporting, including an annual fiscal report to the Comptroller, the Executive, DOB and the Legislative fiscal committees and an annual program report to the Executive and the Legislative fiscal committees, along with certain other committees.

A program evaluation report is due every four years to DOB and the Legislative fiscal committees by an entity independent of ESDC. However, reporting standards for specific programs vary, with much of the reporting directed by the legislation that created the program. While some required program reports are readily available on

[24] For more information, see www.governor.ny.gov/news/governor-cuomo-announces-7092-million-economic-development-resources-awarded-fourth-round.
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ESDC's website, others are not. It is unclear whether ESDC continues to meet each of its statutory requirements for reporting on program outcomes.

Certain programs created in recent years have more specific language regarding required reporting than more longstanding programs. For example, provisions in the enabling statutes for the Excelsior Jobs Program and for the Economic Transformation and Facility Redevelopment Program require quarterly, publicly available reporting by the Commissioner of DED. The reporting must provide certain specific data elements such as the number of applicants, the number of participants approved, the names of participants, and the total amount of benefits, as well as data on job creation and investment in the State.

While such data are important, the criteria that ESDC and other agencies use to select participants and projects are also critical to ensure effective use of the resources dedicated to economic development purposes, and should also be made more transparent. How applicants are evaluated for participation is an important component in assessing the effectiveness of these programs and whether the recipients selected present the best opportunities for furthering the State's economic development strategy. Again, with certain newer programs, enabling legislation provides specifics regarding the selection criteria that should be considered. Even in these cases, however, there appears to be minimal information available about the evaluation process and the criteria ESDC applied in selecting one project over another.

Pursuant to Section 2824-a of the Public Authorities Law, which was added with the enactment of the Public Authorities Reform Act of 2009, State public authorities are required to submit a proposed mission statement and self-determined performance measurement criteria to the ABO. The ABO is then required to post the mission statement and measurements on its website. The mission statement and performance measurement criteria for ESDC are available on the ABO website as required.[25] However the requirement to identify stakeholders and their reasonable expectations of ESDC is not addressed in its publicly disclosed documents. In addition, the statute requires each authority to re-examine the mission statement and measurements, and publish a self-evaluation of its performance based on the established measurements.

In conformance with the Reform Act requirement that authorities develop and report on performance measures, ESDC provides some level of reporting on its performance measures by funding source.[26] This reporting does not yet appear to be available for FY 2014. Its chosen measures of performance include number and types of customers served, financing provided and leveraged, jobs projected to be retained and created, associated capital investment in the State, and regional and industry breakdowns of such metrics.

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[25] ESDC's mission statement and performance measurement criteria, as published by the ABO, can be found at www.abo.ny.gov/annualreports/MissionStatements/State/NYSUrbanDevelopmentCorporation2014.pdf.

[26] ESDC's performance measures report for Fiscal Year 2012-13 can be found at www.nylovesbiz.com/CorporateInformation/Data/RequiredPostings/2013/PerformanceMeasureRpt2012-2013.pdf.

As shown in Figure 8, ESDC reported that it helped employers retain 12,355 jobs and create 2,424 additional jobs in FY 2013. ESDC's figure of jobs created with its assistance represented approximately 1.8 percent of net private sector job creation during FY 2013.[27]

Figure 8

FY 2013 ESDC Performance Measures – Job Data by Region

Region	Companies/ Organizations Assisted	Jobs Retained	Jobs Created
Capital	16	31	24
Central	19	1,574	323
Finger Lakes	23	1,873	353
Long Island	15	872	258
Mid-Hudson	12	554	199
Mohawk Valley	13	145	20
New York City	54	1,629	246
North Country	12	65	-
Southern Tier	11	386	450
Western New York	26	5,226	551
Total	**201**	**12,355**	**2,424**

Source: ESDC

The performance measures reported by ESDC lack details that could provide a fuller picture for consideration by ESDC's Board, State policy makers and the public. The report shows that nearly 26 percent of the total amount of grants and 28 percent of the companies and organizations assisted are categorized as "Core Discretionary Programs & Pre-Regional Council Initiatives," but provides no detail on the breakdown of funding and entities assisted among the programs described as "Core Discretionary."

In addition, there is no detail provided on the number of applicants, the participants or specific projects. While there is data related to job retention and job creation, there is no comparison to the established goals of the projects. An additional category is labeled Non-Discretionary by ESDC, representing 29 percent of the total amount of grants and 28 percent of the companies and organizations assisted. These are identified as funds administered by ESDC where recipients are not selected by ESDC, but rather, for example, by the Legislature.

There is no single publicly available source of comprehensive data about these programs and how allocations are determined. In addition, currently, there is no consistent, empirical and objective way to measure the effectiveness of these programs or to determine if the State's broader economic development strategies are working. More standardized and detailed reporting requirements for every program may facilitate the determination of which programs are successful and which are in need of improvement.

[27] Comparison based on average statewide private-sector employment for FYs 2012 and 2013, U.S. Department of Labor, Bureau of Labor Statistics.

New York State has generally not matched national rates of growth in jobs and population for most of the post-World War II period. The creation of ESDC and other economic development agencies was intended to address this by fostering economic growth and job creation, but it is unclear whether ESDC's programs significantly influence overall economic conditions in the State. For example, for five years starting in 2007, New York's employment performance outpaced the nation's. In 2012 and 2013, the State's job growth rate once again fell behind the national average.[28] However, any connection between this up-and-down picture of New York's economic strength relative to the nation, and ESDC's initiatives during the period, remains unclear.[29]

Off-Budget Spending

Most public authority spending is not appropriated in the State Budget and, therefore, not captured by New York's Statewide Financial System. This reliance on spending outside the State budget makes it difficult to track public authority expenditures in detail and assess whether authorities are operating efficiently and in the public's interest. The off-budget nature of spending by public authorities can also undermine capital planning efforts, as it is difficult to assess whether the State's critical infrastructure needs are being met.

DOB reports on certain off-budget spending by public authorities undertaken on behalf of the State. DOB reported that off-budget capital spending by ESDC totaled $3.4 million in SFY 2013-14, including $1.4 million for the Empire Opportunity Fund, $1.2 million for the Community Enhancement Facilities Assistance Program (CEFAP), and nearly $800,000 for the Community Capital Assistance Program (CCAP).

However, these reported amounts do not reflect a significant portion of ESDC's overall spending for economic development and other purposes. For example, the SFY 2014-15 Enacted Budget includes a transfer of up to $90 million from the New York State Power Authority to the General Fund, or as otherwise directed by the Director of DOB. In the Executive Budget, $50 million of this amount was designated to support the Open for Business marketing initiative and other purposes according to DOB. In addition, language in the Enacted Budget establishes certain requirements if the funds are used to promote START-UP NY.

ESDC Board of Directors

The ESDC Board of Directors, pursuant to its enabling legislation, comprises nine directors. Seven of the directors are appointed by the Governor with the advice and consent of the Senate. Two ex-officio directors, the superintendent of the New York State Department of Financial Services and the Chairman of the New York State Science and Technology Foundation (STF), serve by virtue of their gubernatorially designated positions with these entities. However, the STF was abolished in 1999, and

[28] U.S. Department of Labor, Bureau of Labor Statistics.
[29] For more information, see the Office of the State Comptroller report, *Employment Trends in New York State*, August 2013, available at www.osc.state.ny.us/reports/economic/employment_trends_nys_2013.pdf.

its duties and powers were transferred to the New York State Office of Science, Technology and Academic Research (NYSOSTAR). Upon the transfer, any reference to the STF occurring in laws, contracts or other documents was deemed to refer to NYSOSTAR and its executive director.

In 2005, NYSOSTAR was abolished and its powers and duties were transferred to the New York State Foundation for Science, Technology and Innovation (NYSTAR). Again, as part of the transfer, any reference to NYSOTAR occurring in laws, contracts or other documents was deemed to refer to NYSTAR and its executive director. Finally, when NYSTAR was merged into DED in 2011, statutory language specified that any reference to NYSTAR was deemed to refer to DED and its commissioner or ESDC and its president and CEO.

ESDC's Board includes the Superintendent of the Department of Financial Services, who serves as ex-officio director, and three directors appointed by the Governor.[30] The ESDC President and CEO and DED Commissioner (roles filled by one individual) was also listed as a director on the Board, with no indication that the appointment was dependent on his positions with ESDC or DED. This information indicates that there were four vacancies on the ESDC Board; however, it is unclear whether this individual served by virtue of his roles at ESDC and DED or as a separate appointee of the Governor, which is how his directorship was reported in PARIS.

Provisions enacted in the Public Authorities Accountability Act of 2005 and amended by the Public Authorities Reform Act of 2009 outline reporting requirements related to boards of directors, as well as the role and responsibilities of board members and board governance. Authorities are required to provide, as part of the annual report pursuant to Public Authorities Law Section 2800, a description of the authority and its board structure, including the names of board committees and committee members and lists of board meetings and attendance.

Pursuant to Public Authorities Law Section 2824, board members are required to undertake various responsibilities including providing direct oversight of the authority's chief executive and other management, establishing compensation policies for the chief executive and management, establishing personnel policies and adopting a code of ethics for all employees and directors. Board members are required to exercise their duties in good faith with diligence, care, skill and independence, in the best interest of the authority, its mission and the public. In addition, each board member is required to formally acknowledge his or her understanding of the member's role and fiduciary responsibilities to the authority. As mentioned above, the ESDC Board currently has four vacancies. Lack of the full complement of directors may hamper the Board's ability to exercise its required oversight roles fully and effectively.

Comprehensive information and consistent reporting regarding ESDC's activities are not readily available to the public. It is unclear whether ESDC provides its directors with performance metrics and other information that is not publicly available but might assist directors in carrying out their statutory roles as Board members.

[30] Board information is as presented on ESDC's website as of December 2014.

Conclusion

This overview and additional profiles of public authorities are part of Comptroller DiNapoli's continuing efforts to strengthen government accountability, improve public access to information, and provide New York's taxpayers and policy makers, along with the users of public authority facilities, with data that can serve as the basis for sound planning and policies.

ESDC administers and monitors economic development programs that allocate significant resources to generate business investment, stimulate job growth and encourage economic expansion in New York State. In addition, ESDC manages a substantial portion of the State's public authority-issued debt portfolio.

Audits of ESDC by the Office of the State Comptroller in recent years have examined contracts for personal and miscellaneous services, oversight of international offices, a contract for a specific consultant, and subsidiary operations. These audits have identified several areas of ESDC operations in need of improvement and have set forth several recommendations including documenting the need for service contracts, formalizing a process for periodic review of service contracts, improving monitoring of international offices, and improving compliance with procurement guidelines, including contract justification and monitoring.

This report raises additional questions regarding accountability and transparency at ESDC. Such issues include the accuracy of certain filings ESDC has made to PARIS, the adequacy of the authority's public reporting on its performance, and the strength of ESDC's impact on New York State's economy and job growth.

To improve accountability, ESDC officials should review information filed in PARIS and ensure it is accurate and complete. To address gaps in the amount of information that is publicly available about ESDC's programs, the authority's Board of Directors should consider development of more consistent and detailed public reporting requirements for each program. Improvements to ESDC's reporting on its performance could help State policy makers assess whether New York's investments in economic development deliver the intended benefits in new jobs and economic activity.

Such information could be used to determine which ESDC programs are successful and which should be improved or considered for elimination. Analysis of ESDC's efforts could be part of an overall State assessment of the impact that the State's broad range of economic development initiatives has on employment and economic growth in New York. Given the continued economic strain many New York State communities are experiencing, and the increasingly competitive environment for attracting new businesses or encouraging expansion of others, the State and its local partners need to ensure that the funding targeted to further these goals is being used in the most cost-effective and efficient manner possible.

Appendix A: ESDC Programs

Better Buffalo Fund
Brownfield Cleanup Program
Build Now-NY/Shovel Ready Program
Capital Access Program
Champlain Bridge Assistance Program
Commercial District Revolving Loan Trust Fund
Community Development Financial Institution Program
Community Enhancement Facilities Assistance Program
Disaster Recovery
Downstate Regional Program
Downstate Revitalization Fund
Economic Development Purposes Grants
Economic Transformation Program
Empire State Economic Development Fund
Entrepreneurial Assistance Program
Environmental Assistance
Environmental Investment Program
Excelsior Jobs Program
Export Marketing Assistance Service
Global Market Export Services
Governor's Office for Motion Picture & Television Development
Healthy Food & Healthy Communities Fund
Industrial Development Bond Cap
Industrial Effectiveness Program
Innovate NY Fund
Job Development Authority Direct Loan Program
JOBS Now Program
Linked Deposit Program
Manufacturing Assistance Program
Metropolitan Economic Revitalization Fund
Micro Lending Program
Minority and Women Revolving Loan Trust Fund Program
Minority and Women-owned Business Development and Lending Program
New Markets Tax Credits
New York Empowerment Zone
New York State Film Production Credit
New York State Land Bank Program
New York State Post Production Credit
New York State Surety Bond Assistance Program
Procurement Assistance Program
Regional Council Capital Fund
Regional Revolving Loan Trust Fund
Regional Tourism Marketing Grant Initiative
Restore New York Communities Initiative
Small Business Revolving Loan Fund
Start-Up New York
State Small Business Credit Initiative
STEP Program
Strategic Investment Program
Transportation Capital Assistance Program
Upstate Regional Blueprint Fund
Urban and Community Development Program
World Trade Center Job Creation & Retention Program
World Trade Center Rent Reduction Program

Note: This list reflects programs identified by ESDC as well as other sources and may not be comprehensive.

Appendix B: ESDC Subsidiaries

106th Street Houses Incorporated
125th Street Mart Incorporated
260-262 West 125th Street Corporation
42nd St. Development Project, Inc
900 Woolworth Redevelopment Corporation
Apollo Theatre Redevelopment Corporation
Apple Walk (Grote Street) Houses Incorporated
Archive Preservation Corporation
Arverne Houses Incorporated
Ashland Place Houses Incorporated
Averill Court Houses Incorporated
Beaver Road Houses Incorporated
Borinquen Plaza Housing Company Incorporated
BPC Development Corporation
Briarcliff Manor Houses Incorporated
Broadway East Townhouses Incorporated
Brooklyn Bridge Park Development Corporation
Buena Vista Houses
Buffalo Waterfront Homes Site 2 Incorporated
Buffalo Waterfront Phase Houses
Buffalo Waterfront Phase III Houses
Canisteo Homes Incorporated
Carlken Manor Houses Incorporated
Carousel Park Houses Incorporated
Cathedral Parkway Houses Incorporated
Cedarwood Towers Houses Incorporated
Centerville Court Houses Incorporated
Charlotte Lake River Houses Incorporated
Cherry Hill (Syracuse Hill III) Corporation
City-State Development Corporation
Claremont Gardens Houses Incorporated
Clifton Springs Houses
Clinton Avenue Paul Place Houses Incorporated
College Hill Houses Incorporated
Comfort Street South Houses Incorporated
Coney Island Site 17 Houses Incorporated
Coney Island Site 1824 Houses Incorporated
Coney Island Site 1A Houses Incorporated
Coney Island Site 4A-1 Houses Incorporated
Coney Island Site 4A-2 Houses Incorporated
Coney Island Site Nine Houses Incorporated
Cosgrove Avenue Houses Incorporated
Creek Bend Heights Houses Incorporated
Dutcher House Incorporated
Edgerton Estates Incorporated
Ellicott Houses Incorporated
Elmwood-Utica Houses Incorporated
Ely Park Houses Site I Incorporated
Ely Park Site II Houses Incorporated
Empire State Allsub Corporation
Empire State Community Development Corporation
Empire State New Market Corporation
English Road Houses Incorporated

ESDC Subsidiaries – continued

Erie Canal Harbor Development Corporation
Erie County Stadium Corporation
Excelsior Capital Corporation
FDA Headquarters Incorporated
Fordham Commercial Redevelopment Corporation
Frawley Plaza Houses Incorporated
Friendly Homes Houses
Fulton Park 4 Sites Incorporated
Fulton Park Site 2 Houses Incorporated
Genesee Gateway Houses Incorporated
Gleason Estates Houses Incorporated
Governors Island Redevelopment Corporation
Grasslands Houses Incorporated
Hampton Houses Incorporated
Harborview Houses Incorporated
Harlem Canaan House Incorporated
Harlem Community Development Corporation
Harlem River Park Houses Incorporated
Harriet Homes Incorporated
Harriman Research and Technology Development Corporation
Harrison House Incorporated
Highland Canalview Houses Incorporated
Hillside Homes (Wellsville Houses) Incorporated
HUDC 323 St. Nicholas Realty Corporation
Ithaca Elm-Maple Houses Incorporated
Jespersin-Rochester Houses
JUMA Development Corporation
Kennedy Square (Syracuse Hill I) Houses Incorporated
LaMarqueta Redevelopment Corporation
Liberty Senior Citizens Houses Incorporated
Lindsay-Bushwick Houses Incorporated
Lower Manhattan Development Corporation
Malone Town Houses Incorporated
Marcus Garvey Brownstone Houses Incorporated
Marinus Houses Incorporated
Melrose Site D-1 Houses Incorporated
Metro North Riverview Houses Incorporated
Metrocenter Development Corporation
Moynihan (Pennsylvania) Station Development Corporation
New York Convention Center Development Corporation
New York Empowerment Zone Corporation
New York State Mortgage Loan Enforcement Corporation
Newburgh Houses on the Lake Incorporated
Nodine Terrace Houses Incorporated
North Town Phase II Houses Incorporated
North Town Phase III Houses Incorporated
Oak Tree Development Corporation
Ogdensburg Crescent Mall Development Corporation
Painted Post Village Square Apartments Incorporated
Park Drive Manor Houses Incorporated
Parkedge House Incorporated
Parkside Houses Incorporated
Peekskill Plaza Houses Incorporated
Penview Houses Incorporated

ESDC Subsidiaries – continued

Perinton-Fairport Houses Incorporated
Phillips Village Houses Incorporated
Pilgrim Woods Houses Incorporated
Presidential Plaza Apartments Incorporated
Queens West Development Corporation
Rebraf Redevelopment Corporation
Rochester-Downtown Center Incorporated
Rockland Manor Houses Incorporated
Roosevelt Island Development Corporation
Rutland Road Houses Incorporated
Schemerhorn Houses Incorporated
SE Loop Area Three B Houses Incorporated
Seaport Redevelopment Corporation
Seven Pines Houses Incorporated
South Fallsburgh Houses Incorporated
Southeast Loop Phase IIA Houses Incorporated
Spring Valley Homes Incorporated
St. Paul's Upper Falls Housing Company Incorporated
Stanwix Houses Incorporated
State Street Houses Incorporated
Statewide (Downhill) Local Development Corporation
Syracuse Intown Houses Incorporated
Ten Broeck Manor Houses Incorporated
Times Square Hotel Incorporated
Tompkins Terrace Incorporated
Twin Parks NE Site 2 Houses Incorporated
Twin Parks Northeast Houses Incorporated
Twin Parks Northwest Incorporated
Twin Parks SE Modular Houses Incorporated
Twin Parks Southeast Houses Incorporated
Twin Parks SW Houses Incorporated
UDC Nonprofit Houses Incorporated
UDC Special Development Corporation
UDC Utica Redevelopment Corporation
UDC/Albee Square Redevelopment Corporation
UDC/Commercial Center Incorporated
UDC/Commodore Redevelopment Corporation
UDC/Harlem Incorporated
UDC/Love Canal Incorporated
UDC/St. George Incorporated
UDC/Ten Eyck Development Corporation I
UDC/Ten Eyck Development Corporation II
UDC/Ten Eyck Development Corporation III
Ulster Senior Citizens Houses Incorporated
Unity Park Houses Incorporated
Unity Park II (Niagara Park) Corporation
Upaca Terrace Houses Incorporated
Upstate Empire State Development Corporation
USA Niagara Development Corporation
Valley Vista Houses Incorporated
Van Rensselaer Village Houses
Vark Street Houses Incorporated
Vernon Avenue Houses Incorporated
Village Manor Houses Incorporated

ESDC Subsidiaries – continued

Warburton Houses Incorporated
Woodbrook Houses Incorporated
Woodrow Wilson Houses, Incorporated
World Trade Center Memorial Foundation, Incorporated
Wright Park Houses, Incorporated
Wright Park Phase II, Incorporated
Young Manor, Incorporated