

Chenango County Industrial Development Agency

Project Approval and Monitoring

APRIL 2022



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Chenango County Industrial Development Agency

Audit Objective

Determine whether the Chenango County Industrial Development Agency (CCIDA) Board of Directors (Board) evaluated projects prior to approval and subsequently monitored the performance of businesses that received financial benefits.

Key Findings

Although the Board evaluated projects prior to approval, the Board did not adequately establish and document its evaluation and approval process. In addition, the Board did not properly monitor the performance of businesses receiving financial benefits. The Board did not:

- Adopt the required uniform project evaluation or selection criteria needed to assess project applications.
- Develop the required cost-benefit analysis for each project it evaluated and approved.
- Cumulatively track project investments to identify investment shortfalls.
- Verify that businesses are meeting agreed upon job creation and retention goals.
- Track sales tax and mortgage tax exemptions to ensure they were not exceeded.
- Track payments in lieu of taxes (PILOTs) to ensure they were billed and paid in accordance with the PILOT agreements.

Key Recommendations

- Track and compare capital investment information to project goals as stated in applications.
- Verify that businesses are meeting agreed upon job creation and retention goals.
- Track PILOT payments to ensure that all bills are accurately prepared and paid timely.

CCIDA officials agreed with our findings and indicated they plan to initiate corrective action.

Background

CCIDA is an independent public benefit corporation and its Board is composed of seven members appointed by the Chenango County (County) Legislature and responsible for CCIDA's general management and financial and operational affairs.

Commerce Chenango, Inc. (Commerce), was hired to perform administrative services.

The President and Chief Executive Officer of Commerce is appointed by the Board as CCIDA's Chief Executive Officer (CEO) responsible for the day-to-day operations. The Board appointed a Board member as Treasurer and hired a local accounting firm to maintain all financial records.

During the audit period, significant changes occurred with the composition of the Board, management and staff.

Quick Facts 2020

Active Approved Projects	10
Pilot Amounts Owed	\$902,577
Application and Administrative Fees	\$28,241

Audit Period

January 1, 2020 – September 15, 2021, covering projects approved after June 15, 2016.

Project Approval and Monitoring

According to its mission statement, CCIDA was established to offer economic incentives to County businesses to create and retain quality employment opportunities and strengthen the local tax base. CCIDA offers financial assistance to businesses – including real property, mortgage recording and sales tax exemptions – by generally taking title or entering into lease-leaseback agreements of the property owned or leased by the business. CCIDA facilitates the provision of the financial assistance because the property is tax-exempt under New York State General Municipal Law (GML) Section 874. In return, many projects receiving CCIDA financial assistance promise to create new jobs or retain existing jobs in the community, invest in new buildings or in the renovation of existing buildings, and/or provide other benefits, including community generated power. The project owners also agree to make annual payments in lieu of taxes (PILOTs) to affected tax jurisdictions (ATJs) – municipalities or school districts – to help offset the tax exemptions provided.

[A] board must ensure project approval decisions are based on accurate and reliable information.

How Should an IDA Board Approve Projects?

Tax exemptions provided through industrial development agency (IDA) lease-leaseback agreements often result in a significant cost to the community. As such, a board must ensure project approval decisions are based on accurate and reliable information. Effective June 2016, IDAs must comply with certain requirements before providing financial assistance, which include the following:

Project Application and Approval – IDAs must develop a uniform tax exemption policy (UTEP) that describes the types of projects eligible for assistance and the levels of tax abatements and exemptions available, such as real property, mortgage recording and sales tax exemptions. IDAs must then develop a standard application form that includes the name and address of the applicant, a description of the proposed project, the amount and type of financial assistance requested, an estimate of the project’s capital costs, the projected number of jobs to be retained or created and a statement acknowledging that the submission of any knowingly false or misleading information may lead to termination of any financial assistance.

Further, an IDA must develop uniform evaluation and selection criteria to assess all material information included with the project application to afford a reasonable basis for the board’s decision to provide financial assistance for each category of projects.

Cost-Benefit Analysis (CBA) – An IDA’s uniform criteria requires the IDA to prepare a written CBA prior to project approval. The CBA must identify the extent to which a project will create or retain permanent jobs, estimated value of any tax exemptions to be provided, amount of capital investment needed, likelihood of a timely project completion, and extent of additional sources of revenue the project will provide for surrounding municipalities and school districts.

An IDA's board and officials should ensure they understand the chosen CBA calculation methodology and that it meets their IDA's needs and purposes before an IDA board adopts the calculation methodology. An IDA board also should ensure that each CBA contains a conclusion or meaningful determination or summary of what the analysis indicates.

Uniform Project Agreements (UPA) – IDAs must develop UPAs that describe the terms and conditions under which financial assistance will be provided to project owners. The UPAs must contain policies for suspending or discontinuing financial assistance, modifying PILOT agreements to require increased payments under specified circumstances (i.e., material violations of the terms and conditions of a UPA) and returning all or part of financial assistance approved for a project (i.e., “claw-back” provisions).

At a minimum, UPAs must describe the projects, amounts and types of financial assistance to be provided and the IDA's purpose to be achieved for the projects.

The Board Should Improve Its Approval Process

During the application process, the Board and Commerce staff typically meet with applicants to discuss the scope of the proposed project and familiarize the applicant with CCIDA's process. Once the application is completed, the Board reviews it, determines the type of financial assistance being granted, and approves the application by adopting a resolution. If the cost of the project is over \$100,000, a public hearing will be scheduled, and the public will be notified. The public hearing is held, giving an opportunity for the public to make comments, and the minutes are presented to the Board for final approval of the project. The Board determines whether the project, in consideration of the financial assistance to be provided, is in the community's best interest before approving. If the Board approves, the project's closing documents, including the PILOT agreement, are drafted.

However, the Board should improve the establishment and documentation of its policies and certain procedures related to the approval process.

Project Application and Approval – While the Board is using some uniform criteria, the Board did not adopt the required uniform project evaluation and selection criteria to assess material information in a project application. For example, the UTEP does not:

- Outline the different types of projects CCIDA provides assistance to,
- Include details on mortgage and sales tax exemptions, or
- Include a standard tax abatement schedule by which to measure deviations against – or contain required language regarding – appraisals performed.

[T]he Board did not adopt the required uniform project evaluation and selection criteria. ...

We reviewed the applications of all eight projects approved after June 15, 2016 totaling approximately \$285.5 million and found that the standard application was used for each project. However, the applications did not have any documentation to support the projects' capital investments (e.g., detailed site plans, construction budgets or contractor estimates) or job creation/retention goals to enable Commerce staff to verify this information or subsequently monitor the projects.

CBA – Only one of the eight projects had a CBA, but it was not prepared by CCIDA as required. Instead, CCIDA had the applicant prepare the CBA for their project under review. The CEO and Board members told us they do an informal CBA during the discussion of the application at their monthly meetings. For example, we found a discussion documented in the Board minutes concerning a solar project where the initial project proposal did not offer enough benefit to the community for consideration. At a later meeting, a revised proposal was presented to the Board, discussed and approved after it was determined there was a significant benefit to the community.

Uniform Project Agreements – Six of the eight projects had UPAs which included clear expectations and claw-back provisions. Commerce staff were unable to locate the UPAs for the two oldest projects. All required public notices for these projects, where applicable, were published at least 10 days prior to when the public hearings were held.

How Should a Board Properly Monitor Projects?

IDAs are required to, at least annually, assess each project's progress toward achieving its objectives listed in the project application. These assessments must be provided to IDA board members to determine whether project goals were met and the community is receiving the intended benefits. A board should clearly define expectations and have written policies and procedures to hold businesses accountable if expectations are not met.

Capital Investment – IDAs should verify the amount of capital that project applicants invest to ensure that the actual investment agrees with the amount on the application and in the CBA. This is because the amount of capital invested could eventually impact the assessed value of a project's real property. It also affects the amount of taxes that the ATJs will receive after the facility is constructed or renovated and no longer exempt from taxes.

Project Energy Generating Capacity – Project agreements should include the energy generating capacity and type of energy being generated if they are energy related projects. An IDA should consider additional benefits to the community, such as whether the energy is community distributed generation (CDG) in which customers can join together to share in the benefits of the renewable energy projects.

IDAs are required to, at least annually, assess each project's progress toward achieving its objectives listed in the project application.

Job Performance – Project agreements should require project owners to submit duplicate copies of their quarterly wage reports (NYS-45 form, quarterly combined withholding, wage reporting and unemployment insurance return) so the IDA can verify the job creation and/or retention numbers reported by project owners.

Sales Tax Exemptions – The value of the sales tax exemption benefits claimed by the project owners must not exceed the amount granted. Project agreements should require project owners to submit duplicate copies of their annual sales and use tax exemptions claimed reports (ST-340 form) so the IDA can track the sales and use tax exemptions taken to ensure that businesses do not exceed the approved amounts. Before an IDA submits its annual report, the IDA board should review the information to verify its accuracy.

Mortgage Recording Tax Exemptions – Mortgage tax exemptions, when approved, should be disclosed in project agreements. CCIDA's policy is to grant the exemptions as part of the project's closing. A procedure should be in place to ensure exemptions are properly documented and reported.

PILOT Agreements – PILOT agreements should be monitored to ensure payments comply with the agreements and are made on time. The County is responsible for the PILOT billings for the County, towns and school districts. However, one PILOT included a payment to a village, which has the responsibility for its own billings.

The Board Did Not Properly Monitor Projects

CCIDA requires project owners to annually submit answers to a questionnaire regarding project activity if they are receiving financial assistance. Commerce staff then enter some of the information from the questionnaires into a spreadsheet for reporting to the Board. We reviewed the questionnaires submitted by project owners and CCIDA's spreadsheet and found insufficient and incomplete information for the Board to properly monitor projects. In addition, the Board's project recapture policy details CCIDA's right to suspend, discontinue or recapture any financial assistance granted for a project. However, without the proper verification of project goals, Commerce staff do not have the necessary information needed to make recommendations to the Board as to whether to recapture or terminate financial assistance.

Capital Investment – The annual questionnaire does not ask for capital investment information and CCIDA does not cumulatively track the investment amounts because that information is not on the spreadsheet. Without verifying reported capital investment information, and without policies and procedures in place to compare verified information to capital investment goals, the Board may not recognize material shortfalls in the actual amount of capital investment made

by projects, and the community may not receive the intended benefits of such investment.

Project Generating Capacity (for energy projects) – The five most recent projects approved by the Board are energy projects (four solar and one wind). These projects’ goals focus on the amount of clean energy being produced and whether the power is CDG. CCIDA does not have a procedure for verifying energy capacity and whether the energy is made available to the community when projects are completed and operating. These goals contributed to the approval of the project and, therefore, need to be verified and monitored.

Job Performance – The annual questionnaire does not ask for supporting documentation, such as quarterly New York State Combined Withholding, Wage Reporting and Unemployment Insurance Returns (NYS-45), which indicate the number of employees. Therefore, CCIDA has no procedure for verifying that businesses are meeting agreed upon jobs creation and retention goals. In addition, the summary spreadsheet did not track short-term construction jobs, which often are the only jobs an energy project has as goals.

For the three projects with job goals, one project self-reported that they met job retention and creation goals during 2020, while the other two projects self-reported that they did not. One of these projects had promised to add four jobs to four already existing jobs but self-reported two full-time jobs in 2020. The COVID-19 pandemic significantly impacted this project, and the Board gave it more time to meet its goals. The other project, a solar project, has finished construction. However, after promising 80 short-term construction jobs over six months, it only self-reported 15 short-term jobs in 2019. Since CCIDA had no procedures for monitoring short-term jobs effectively, there was no Board discussion noted about this project not meeting this goal in the Board meeting minutes.

Sales Tax Exemptions – While the annual questionnaire asks for this information, the spreadsheet does not track this information cumulatively and it is difficult to determine whether reported sales tax amounts have exceeded agreed upon exemptions. Seven of the eight projects completed or in the application process had sales tax exemptions ranging from \$8,000 to \$7.45 million, for a total of \$9.3 million. CCIDA did not have procedures to cumulatively track these, including requesting the annual ST-340 forms from project owners with the annual questionnaire.

Mortgage Recording Tax Exemptions – Mortgage recording tax is abated during the closing and the CEO stated that this is monitored at this time. Four projects had mortgage recording tax exemptions approved. However, CCIDA only had information available to support that one of the projects used the exemption.

... CCIDA has no procedure for verifying that businesses are meeting agreed upon jobs creation and retention goals.

We could not determine whether the other three projects used the exemptions because CCIDA did not have procedures to track them.

PILOT Agreements – CCIDA had three projects with active PILOT agreements during our audit period. Neither the Board nor Commerce staff tracked the PILOTs to ensure they were billed and paid in accordance with the PILOT agreements. The PILOT agreements all state that the County is responsible for the PILOT billings for the County, towns and school districts. However, one PILOT included a payment to a village and required the village to be responsible for the billings. We determined that the village had not billed or collected a total of \$620 for the first four years of the 10-year PILOT agreement. Village officials told us they were not notified of the PILOT agreement. When we informed the Board and CEO of this oversight, they told us they would follow up and correct this. The other two PILOT agreements were billed, collected and remitted to the proper taxing jurisdictions in a timely manner.

Because the Board, as a party to the PILOT agreements, is responsible for overseeing the billing process, its lack of monitoring of the agreements resulted in this oversight. Commerce staff were relying on the PILOT information that the County provided to them annually instead of ensuring payments were made in the correct amounts to the proper tax jurisdictions in a timely manner. Furthermore, because the Board does not monitor the PILOTs, it is not able to make informed decisions as to whether it should recapture financial benefits provided to any businesses that are delinquent with their payments.

The administrative agreement the Board signed with Commerce to provide services does not outline the nature and required level of services to be provided in order to offer a clear understanding that CCIDA's needs and expectations will be met. Without an adequate contract, the Board did not have a documented understanding of the services expected to be provided. As a result, the Board did not have a way to ensure that Commerce provided the services and procedures needed to ensure CCIDA complied with relevant laws and regulations. Commerce staff told us they were unaware of these specific approval and monitoring requirements due to the staff's newness and have started to attend training to become better informed about the statutes related to an IDA's operations.

What Do We Recommend?

The Board should:

1. Adopt, by resolution, uniform evaluation criteria for each category of projects for which financial assistance is available. Revise the UTEP to include details on the standard tax abatement schedule, the different types of projects CCIDA provides assistance to and the required language regarding appraisals.

Neither the Board nor Commerce staff tracked the PILOTs to ensure they were billed and paid in accordance with the PILOT agreements.

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2. Ensure Commerce staff prepare complete and meaningful CBAs for the Board's consideration in evaluating project applications.
 3. Ensure capital investment information is cumulatively tracked and compared to project goals as stated in applications.
 4. Verify and monitor energy generating capacity and CDG to project goals as stated in the project applications.
 5. Require businesses to submit quarterly payroll tax forms with their annual questionnaires to verify the employment information reported.
 6. Require businesses to submit ST-340 forms with their annual questionnaires and track the information on a cumulative basis to help ensure sales tax exemptions are not exceeded.
 7. Establish procedures for documenting that approved mortgage tax exemptions have been used and properly reported.
 8. Implement procedures to track PILOT amounts billed and received to ensure that PILOT bills are accurately prepared and PILOT amounts are being received in a timely manner by all affected tax jurisdictions.
 9. Ensure the contract for administrative services includes an understanding of all services to be provided to comply with relevant laws and regulations and the roles and responsibilities of the parties.
 10. Continue attending training to become familiar with the various oversight responsibilities and periodically attend training to remain current on the statutory requirements and regulatory environment.

Appendix A: Response From IDA Officials



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April 15, 2022

Office of the State Comptroller
Binghamton Regional Office
44 Hawley Street – Suite 1702
Binghamton, NY 13901-4417

Dear Chief Examiner,

Thank you for taking the time to review the OSC Audit conducted by your office of the Chenango County Industrial Development Agency.

At this time we are submitting the following response:

The Chenango County Industrial Development Agency is in receipt of the Project Approval and Monitoring Report Draft 2022M-10. The Executive Director of the IDA, the Economic Development Assistant and the members of the board have received and read the initial findings and recommendations. The staff, in collaboration with the CCIDA Board of Directors, are in the process of creating the Corrective Action Plan as directed. We are pleased to note that due to the excellent communication throughout this process, many of the recommendations are already in progress or steps have been taken to make adjustments. We would like to thank the OSC staff assigned to our audit for their diligence and support throughout the process. With the current staff in place for less than two years at the time of the audit, we found the conversations helpful and productive. While many of the items noted occurred under a previous tenure, we would like to ensure the OSC that the current staff and the CCIDA Board of Directors is doing all they can to ensure compliance and we appreciate the feedback and recommendations.

Sincerely,

Kerri G. Green
Chenango County IDA
Executive Director

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article X, Section 5 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed the Commerce CEO and Economic Development Assistant and two Board members. We reviewed the Board meeting minutes to gain an understanding of CCIDA's operations and procedures regarding the approval and monitoring of projects.
- We reviewed the administrative services agreement between CCIDA and Commerce for 2020 and 2021 to determine whether it covers the necessary duties required.
- We selected all eight projects approved on or after June 15, 2016 or in the active approval process to determine whether:
 - A standard application was completed and met statutory requirements before it was submitted to the Board for acceptance.
 - The Board used uniform project evaluation criteria to assess projects.
 - An accurate cost-benefit analysis was prepared and met statutory requirements.
 - Public hearings were being held for projects totaling over \$100,000 prior to approval, and meeting notices were being advertised 10 days prior to the meetings.
 - Projects were approved by the Board via a resolution.
 - Projects had uniform project and PILOT agreements, when applicable, that met statutory requirements.
 - CCIDA developed and followed a recapture policy.
- For the three projects completed and in operation, based on the information available, we evaluated whether they were meeting project goals as outlined in the uniform project agreements.
- We reviewed the three PILOT agreements with PILOT amounts due in 2020 and 2021 and calculated the PILOT amounts owed to all affected taxing jurisdictions billed by the County Real Property Tax Department totaling \$726,186. We compared these calculated amounts to what was billed to determine whether businesses were accurately billed and payments were remitted to the jurisdictions in a timely manner.
- We reviewed the PILOT agreement for the one project in a village, spoke with village officials, and calculated the amount not billed or collected by the village.

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- We reviewed Board meeting minutes, closing documents and project agreements to determine which of the eight projects examined agreed to sales and mortgage recording tax exemptions and whether they were granted.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in CCIDA's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

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