

Empire State Development

Oversight of Select High-Technology Projects

Report 2017-S-60 | August 2020

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine if Empire State Development (ESD) adequately monitors selected high-technology (high-tech) economic development programs and projects it oversees and whether these projects are achieving the intended employment goals. The audit covered the period January 1, 2013 through April 30, 2019.

About the Program

ESD is the chief agency responsible for the coordination of New York State's economic development programs, and has approved billions of dollars in investments since 2013 intended to stimulate job creation and economic growth in high-tech industries across the State. The majority of these ESD investments have been for projects developed under the State University of New York Polytechnic Institute (SUNY Poly). ESD funding for these types of projects has included the acquisition of real estate as well as the design, construction, and equipping of high-tech facilities for private companies. In some instances, the private companies then operate and maintain the facilities with lease or other payments and with certain requirements for private investment and creating high-tech or other jobs. Collectively, these projects were intended to create thousands of jobs and generate billions of dollars in private investment. Since 2013, ESD has approved \$2.2 billion for high-tech projects administered through SUNY Poly and the Buffalo Billion initiative (an investment announced in 2012 for the Buffalo area economy to create jobs and spur economic growth) and \$477.5 million for NYSTAR, ESD's Division of Science, Technology and Innovation programs.

Key Findings

- ESD has provided millions of dollars to private companies in high-tech sectors with the ultimate goal of creating jobs and increasing private investment. While ESD has effective practices for monitoring specific programs, such as those under NYSTAR, it has not adequately monitored other high-tech projects within the SUNY Poly and/or Buffalo Billion portfolio to ensure that taxpayer money is effectively spent and is producing the intended results. For example, we found the following deficiencies in ESD's management and oversight of high-tech programs and projects:
 - Initial project assessments lacked sufficient detail, such as reviews of the financial viability of beneficiary companies and cost-benefit analyses to assess the overall benefits of the projects, to justify the use of State funds.
 - There is a lack of consistent and rigorous performance and evaluation standards for measuring whether programs and projects attain their intended goals.
 - Public progress reports provide limited and conflicting information on high-tech projects' progress, making it difficult to determine their current statuses.
- Despite millions of dollars of State funding, selected high-tech projects have yet to create

the expected number of jobs. While these projects still have time to meet their total job commitments, it is unclear whether such goals will be met, given that much work remains to yield the overall employment and investment targets – in some cases, years after construction has been completed.

Key Recommendations

- Conduct comprehensive assessments of the risks, costs, and economic benefits of projects before funding decisions are made to determine if projects should receive significant State investment.
- Develop standard performance metrics and then evaluate projects to determine their actual economic benefits compared with the State's investment.
- Standardize the public reporting of projects to eliminate discrepancies and provide the public with accurate information on project costs, statuses, and economic benefits using a clear and consistent method.



Office of the New York State Comptroller Division of State Government Accountability

August 21, 2020

Mr. Eric Gertler
President and CEO
Empire State Development
633 3rd Avenue
37th Floor
New York, NY 10017

Dear Mr. Gertler:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of Select High-Technology Projects*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution as well as Article II, Section 8 of the State Finance Law and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Buffalo Billion initiative	An initiative announced by the Executive in 2012 originally involving a \$1 billion State investment in the Buffalo area economy to create jobs and spur new economic activity	<i>Key Term</i>
Discretionary projects	ESD terminology referring to projects for which ESD may play a key role in their selection for assistance	<i>Key Term</i>
ESD	Empire State Development	<i>Auditee</i>
FRMC	Fuller Road Management Corporation	<i>State Entity</i>
FSMC	Fort Schuyler Management Corporation	<i>State Entity</i>
GDA	Grant Disbursement Agreement	<i>Key Term</i>
High tech	High technology	<i>Key Term</i>
Non-discretionary projects	ESD terminology referring to projects requested by the Assembly, Senate, or Executive branch and/or those specifically identified through a budget appropriation	<i>Key Term</i>
NYSTAR	ESD's Division of Science, Technology and Innovation programs	<i>Key Term</i>
Plan	Buffalo Billion Investment Development Plan	<i>Key Term</i>
Progress Reports	REDC reports about the progress of high-tech projects	<i>Key Term</i>
REDCs	Regional Economic Development Councils	<i>Key Term</i>
RiverBend	Buffalo High-Tech Manufacturing Innovation Hub at RiverBend	<i>High-Tech Project</i>
SUNY Poly	State University of New York Polytechnic Institute	<i>State Entity</i>
SUNY RF	State University of New York Research Foundation	<i>State Affiliate</i>
WNY REDC	Western region REDC	<i>Key Term</i>

Background

Empire State Development (ESD) is the chief agency responsible for the coordination of the State's economic development programs. Its mission is to promote a vigorous and growing State economy; encourage business investment and job creation; and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing, and other forms of assistance. As part of its work toward this end, ESD undertakes projects intended to generate employment and economic benefits and provide financial assistance to companies locating or expanding in New York. To support its economic development mission, ESD states it invests strategically in infrastructure and innovation; supports the development of new businesses and industries that will contribute to the development of the 21st-century economy; provides early-stage support for new ventures (including the research and development of new technologies); and strengthens the State's innovation-based economy through partnerships with universities. According to ESD officials, high-technology (high-tech) sectors are highly valued tools of economic development due to a belief that they will yield higher rates of growth, attract greater capital investment, generate higher-paying jobs for workers, and produce other positive economic and fiscal benefits.

In recent years, ESD has administered State-appropriated grants for economic development projects led by the State University of New York Polytechnic Institute (SUNY Poly) and its affiliates, including the non-profit entities Fort Schuyler Management Corporation (FSMC) and Fuller Road Management Corporation (FRMC). Through its non-profit affiliates, SUNY Poly oversees more than a dozen high-tech facilities across upstate New York that host several thousand industry jobs and the semiconductor research and development facilities. FRMC owns and operates nearly all SUNY Poly's campus and research facilities in the Albany area, while FSMC's portfolio is entirely based outside of Albany in areas such as Buffalo, Syracuse, and Utica.

Historically, for most SUNY Poly projects, the State provides grants that cover

What Are High-Tech Programs?

According to ESD officials, high-tech economic programs have a major goal of advancing and supporting high-tech industries. Such industries include the research, design, manufacturing, or maintenance of technologies related to computer systems, software, computer and communication equipment, biotechnology, advanced electronics, alternative transportation, photonics and imaging, and molecular mechanics. Due in part to the complexity and number of factors that influence the high-tech economy, officials indicated virtually every ESD program and project in some way directly or indirectly benefits the high-tech economy. During our audit, we reviewed programs and projects that officials agreed were primarily considered high tech.

a project's capital costs, with the funding often provided up front or in periodic progress payments. Upon construction, FSMC or FRMC continue to own the assets, which are leased to companies in exchange for economic and other commitments. According to FSMC, under this model, ESD acts as the funding source and compliance agent on behalf of the State in all financing transactions. Once the State approves a project, and a State budget that includes funding for the project has been finalized, ESD solicits a funding application from SUNY Research Foundation (SUNY RF), which provides contract negotiation and management services for all SUNY campuses and/or FRMC/FSMC. After a Grant Disbursement Agreement (GDA) has been finalized, ESD begins to act as a compliance agent on behalf of the State, with SUNY RF, FSMC, or FRMC submitting invoices to ESD for review, approval, and disbursement of funds. ESD requires quarterly or annual reports on employment and investment targets as outlined in the GDA and reserves the right to withhold funding if targets are not met on a predetermined schedule. ESD also has the right to conduct an audit of a grantee to ensure that it is in compliance with its GDA. ESD also typically assigns an employee or contractor on site at the project to monitor progress and achievements in real time.

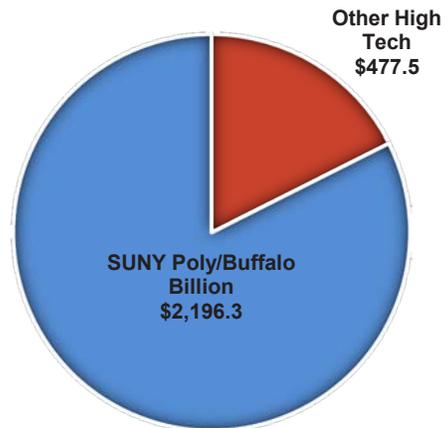
Since 2011, Regional Economic Development Councils (REDCs) have been tasked with developing long-term strategic plans for economic growth for their respective regions. In this role, REDCs, under ESD's oversight, aim to ensure that strategies are linked to measurable outcomes and that progress is reported to the public. REDCs are required to prepare annual Progress Reports that summarize monitoring and evaluation data, provide information on the status and performance of projects, and update regional metrics.

In 2012, the Executive announced a \$1 billion investment would be made in the Buffalo area to create jobs and spur new investment and economic activity through the Buffalo Billion initiative. The Western region REDC (WNY REDC) – which consists of ESD executives and local academic, industry, government, and other leaders – was responsible for forming working groups, including local stakeholders, to develop a strategic investment plan for the Buffalo Billion initiative. In February 2013, the WNY REDC published the Buffalo Billion Investment Development Plan (Plan), which analyzed Buffalo's economic drivers, promoted strategies based on Buffalo's unique assets, and advanced early initiatives for implementation. According to FSMC, neither it nor SUNY Poly participated in drafting the Plan.

ESD was tapped to implement the Plan's components and take responsibility for managing budget requests and communicating key information about the strategies, initiatives, and implementation status to the broader public. From the December 2012 Plan summary, "The WNY REDC will continue to work

with New York State to ensure an effective balance of high level coordination across the Plan’s many components and on the ground development, implementation and tracking of specific initiatives. To monitor progress and make appropriate adjustments, major milestones and metrics will be created for each initiative by year.” In support of SUNY Poly-led projects, FSMC applied for funding from ESD for certain high-tech projects (see Appendix A). The ESD Board of Directors approved the FSMC applications and directed the approved funding to be paid from the Buffalo Billion program. As Figure 1 illustrates, since 2013, ESD has approved \$2.2 billion for high-tech projects administered through SUNY Poly and the Buffalo Billion and \$477.5 million for NYSTAR, ESD’s Division of Science, Technology and Innovation programs, which work to promote industry–university partnerships; Innovate NY, which provides investment capital to seed-stage businesses; and the Innovation Venture Capital Fund, which invests in seed- and early-stage businesses. These projects were expected to create thousands of jobs and billions of dollars in private-sector investment in the State.

Figure 1 – Approved ESD Funding for High-Tech Programs Between SUNY Poly/Buffalo Billion and Other High-Tech Programs (in millions)



Audit Findings and Recommendations

Given the importance of high-tech programs to the State's economic development efforts and the significant commitment of resources, it is imperative that ESD establish a system to continually evaluate these programs' effectiveness. Furthermore, ESD should operate in a transparent fashion to the fullest extent possible, providing public information about project assistance, benefits and costs, and company compliance with investment and job commitments. According to ESD annual reports, ESD's success is measured by the number of jobs created and retained for New Yorkers, the degree to which its public resources leverage new private investment in the State, and the number of businesses served. However, ESD authorized significant high-tech grant awards and payments without adopting sufficient accountability and evidence-based monitoring practices. As such, the question of whether high-tech programs are individually and collectively achieving the intended effect of accelerating growth in the State's economy remains unanswered several years after the initiation of major projects.

We found ESD has effective practices to monitor specific high-tech programs, such as those under NYSTAR, including Centers of Excellence, Centers for Advanced Technology, and the Manufacturing Extension Program. For these programs, ESD obtains and reviews economic impact reports, reaches out to contractors for additional information when needed, and withholds reimbursements to contractors that fail to submit required reports and/or do not meet matching fund requirements. However, ESD has not adequately monitored high-tech projects within the SUNY Poly and/or Buffalo Billion portfolio to ensure that taxpayer money is effectively spent. Despite private tech companies benefiting from millions of dollars in ESD funding, ESD did not perform comprehensive assessments and analyses that would warrant allocating such significant State investments or provide reasonable assurance that the companies' achievements are commensurate with the funding they received. Furthermore, we found a lack of consistent and rigorous performance and evaluation standards for measuring whether programs and projects are attaining their intended goals.

In addition, ESD has not sufficiently reported on the return on investment for these projects. ESD reports, along with regional Progress Reports issued by REDCs, provide limited and conflicting information on high-tech projects' progress, making it difficult to determine their current statuses. Based on ESD's 2018 Annual Report and the WNY REDC 2018 Progress Report, certain high-tech projects within the Buffalo Billion portfolio have attained 40 percent of their employment targets. Although we acknowledge it takes significant time to construct and equip facilities, it is still of concern that many of these projects do not seem on track to yield the overall employment and

investment targets included in public announcements – in some cases, years after construction has been completed.

To better ensure that these types of projects attain their primary economic development goals and that public resources are used most efficiently and effectively, we believe ESD should strengthen its procedures and monitoring controls.

Monitoring High-Tech Projects

In some cases, ESD administers economic assistance resources under a specific program to support “discretionary” projects. ESD indicates that it plays a key role in selecting which discretionary projects receive assistance. Programs used to fund discretionary projects may have statutory or regulatory criteria that inform, restrict, and/or codify the program’s strategy. Examples of such programs include ESD’s NYSTAR programs, Innovate NY, and the Innovation Venture Capital Fund. In other cases, ESD also administers projects it considers “non-discretionary” (such as the high-tech projects within the SUNY Poly and/or Buffalo Billion portfolio) that the Assembly, Senate, or Executive branch has requested or for which there is a budget appropriation. In such cases, ESD indicates that it administers the State’s funds in accordance with the provisions of the appropriation and legislative or executive request.

In response to our preliminary findings, ESD officials indicated ESD’s actual role regarding SUNY Poly and Buffalo Billion projects prior to 2016 was limited to that of a funding administrator (providing funding and reviewing payment requests). They asserted ESD did not assist in selecting target companies benefiting from ESD investments. They also asserted ESD assumed a more active role in the oversight of these projects only after September 2016. However, due to the disbursement, recapture, and audit provisions in its GDAs with grantees and the Plan’s identification of monitoring and reporting responsibilities for ESD, it is reasonable to expect that ESD understood it had a larger role in the oversight of Buffalo Billion projects since their initiation. As the lead agency in implementing these projects, ESD has a significant role in ensuring the projects are successful.

Additionally, according to an August 2018 memo from ESD officials, ESD conducts robust assessments of companies receiving investment from the State to ensure that companies and/or industries (e.g., solar energy) could sustain economic growth. Typically, ESD reviews company finances and performs a cost-benefit analysis for projects that require companies to directly create and/or retain jobs. The memo further indicates ESD then monitors projects through periodic site visits, regular meetings, conference calls, and

grant payment reviews. As such, this type of due diligence should have been similarly applied to all high-tech projects.

While the complexities of ESD's role cannot be discounted, the amount of money at issue and the importance of high-tech projects to the State's economic expansion strategy warrant a careful examination of ESD's standard assessment practices for SUNY Poly and/or Buffalo Billion projects. Proper company and project assessments, cost-benefit analyses, and risk assessments should be expected from the State's chief economic development agency to ensure the efficient use of public dollars and that the terms of these projects appropriately reflect such assessment and analysis.

Project Assessments

A fundamental measure of program and/or project cost effectiveness is an analysis of costs versus the benefits businesses receiving assistance produce as a return on investment for the State. Anticipated costs and benefits should be clearly identified and assessed before any planned investment of public resources and again after such expenditures to compare expected outcomes at appropriate milestones throughout the project. These assessments are necessary to ensure that investment of public resources is appropriate, protected, and achieving the intended benefit.

To execute these cost-benefit analyses effectively, ESD needs to: accurately track program and/or project costs, number of jobs created or retained, investments made by funded businesses, and any other significant costs or benefits produced (e.g., wages paid to new employees in newly created jobs, retention of businesses that planned to relocate out of State); analyze those costs and benefits; and take corrective measures to improve performance where it is found to be below expected and agreed-upon levels or recoup the investment of public resources, where necessary. A cost-benefit analysis can be a particularly important tool in analyzing whether an investment of public resources is appropriate and in helping to identify instances where businesses do not meet projected employment, investment, or other contract requirements.

We selected four projects that received a total of \$1.1 billion in ESD funding to review ESD's assessments of these projects. Overall, ESD did not conduct comprehensive assessments of projects before awarding funding to determine whether or not these projects justified the use of State funds. The assessments lacked sufficient detail, such as information regarding the financial viability of beneficiary companies and cost-benefit analyses, to weigh the overall benefits of the projects and justify the use of State funds.

Performance Monitoring and Reporting

Since 2011, REDCs have been tasked with developing long-term strategic plans for economic growth for their respective regions. In this role, REDCs, in conjunction with ESD, aim to ensure that strategies are linked to measurable outcomes and that progress is reported to the public. There are two performance metrics REDCs use to measure projects: regional economic indicators to assess progress and determine where development funds are most needed, and project-level metrics to determine how well the funded projects perform against their specific goals. To this end, REDCs are required to prepare annual Progress Reports that summarize monitoring and evaluation data, provide information on the status and performance of projects, and update regional metrics.

ESD issues annual reports on its loan and grant programs, which have specific job growth and retention goals to be met after the disbursement of funds. These reports highlight the performance of projects, including the amount of financial assistance disbursed, job commitments, and whether or not each company receiving funds has met its goals. However, these reports do not provide a consistent assessment of these projects. The reports provide only basic information, such as current status and, in some – but not all – cases, number of jobs. The reports fail to assess the overall costs and benefits to the State or to compare these costs and benefits to those anticipated at the time of the investment. Additionally, the accuracy of the information in some reports is questionable, as it conflicts with information in other reports.

For example, ESD's 2017 Jobs Report lists that the Buffalo Information Technologies Innovation and Commercialization Hub (Buffalo IT Hub), led by International Business Machines (IBM), created 1,806 jobs. Conversely, in its 2018 Annual Report, ESD indicated that the Buffalo IT Hub has over 200 employees and expects to create 500 technology jobs by November 2021. Moreover, this project was scarcely mentioned in WNY REDC Progress Reports, which offered no actual updates on this project, instead repeating language from previous Progress Reports.

On the other hand, we found that ESD has effective procedures in place to monitor its discretionary high-tech programs, such as Innovate NY, Innovation Venture Capital Fund, and those under NYSTAR – including the Centers of Excellence, Centers for Advanced Technology, and the Manufacturing Extension Program. Generally, companies receiving funds under these programs self-report their economic impact. In turn, ESD officials perform selective procedures to ensure the accuracy of such reports, including obtaining

signed attestations from company leaders, researching companies' successes, conducting site visits, and verifying economic impacts of companies.

The State's high-tech initiatives intended to spur job growth demand a high standard of public accountability to protect and ensure a positive return on investment. Such significant investments should be properly monitored and evaluated to determine economic impact and establish accountability. Further efforts by ESD to thoroughly assess the costs and benefits of these high-tech initiatives could help promote confidence that its investment of public resources maximizes job creation and private investment and has other benefits for all New Yorkers. The development of standardized performance metrics and more robust analysis of and reporting on these projects would assist ESD in making decisions about whether to invest public resources and in evaluating project outcomes and would provide transparency to the public about the results of these investments.

Performance of High-Tech Projects

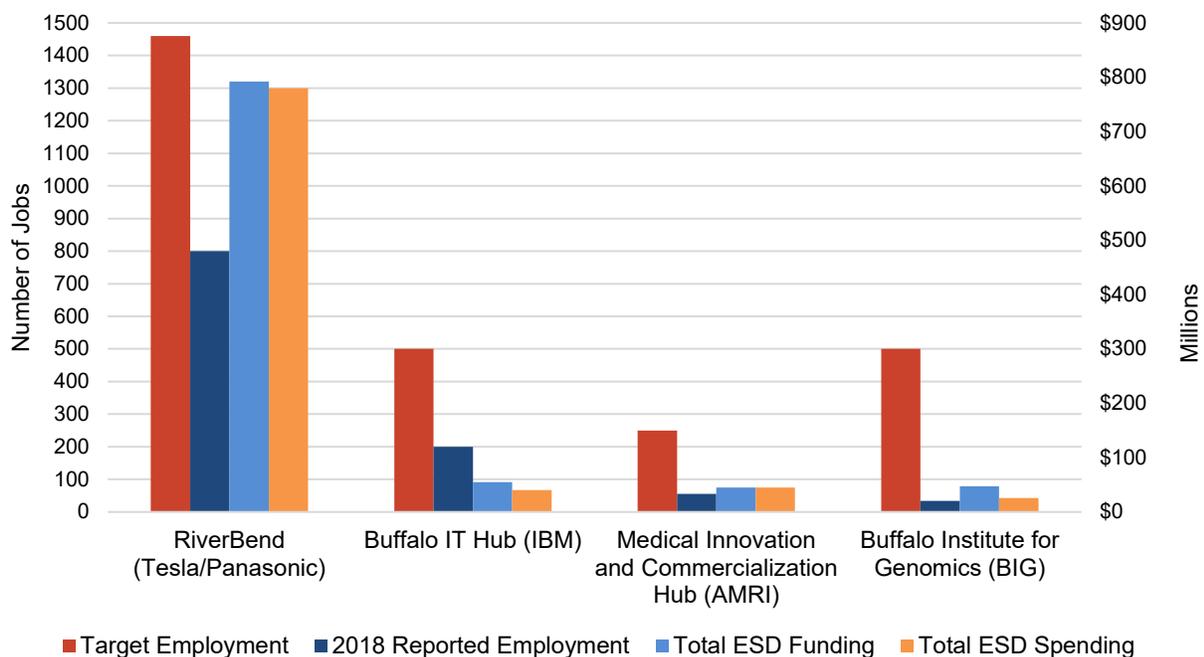
Since 2013, State executives have been announcing major high-tech projects, ostensibly involving the creation of thousands of high-tech jobs to bolster local economies. These projects are expected to create over 8,000 direct high-tech and additional support jobs for a total of over 16,000 jobs. However, it takes several years to design, build, construct, and equip these types of high-tech facilities. Furthermore, once production commences, it takes several years to reach full production output. For example, with these realities in mind, the agreement with the Buffalo High-Tech Manufacturing Innovation Hub at RiverBend (RiverBend) stipulates that full employment is to be reached by the fifth anniversary of the manufacturing facility completion date. However, changes in circumstances (e.g., business acquisitions) can push out agreed-upon completion dates and revise employment targets. It has been several years since some of these projects were announced to the public (especially those within the Buffalo Billion initiative) with the accompanying promise of high-paying jobs, and, for some of these ongoing projects, actual jobs are falling short of initial employment targets. Furthermore, based on REDC Progress Reports, multiple regions across the State, including the Western region, have seen a decline in jobs in the high-tech industries of advanced manufacturing and life science.

Employment Totals for Selected Buffalo Billion High-Tech Projects

To compare current employment to target employment levels, we reviewed ESD reports for four selected high-tech projects within the Buffalo Billion

portfolio that received over \$939 million in ESD grants (RiverBend, led by Tesla; Buffalo IT Hub, led by IBM; Buffalo Medical Innovation and Commercialization Hub, led by Albany Molecular Research Inc. [AMRI]; and Buffalo Institute for Genomics, led by the University at Buffalo). As illustrated in Figure 2, the four projects have a target employment total of 2,710 jobs. For the RiverBend project, we included only the expected jobs at the manufacturing facility. In total, these projects reportedly created 1,089 jobs – 40 percent of the target. While these projects still have time to meet their total job commitments, it is unclear whether such goals will be met, given that much work still remains many years after these projects’ initial promise of high-tech jobs.

Figure 2 – Employment and Funding Comparisons for Selected Buffalo Billion High-Tech Projects



Decrease in Jobs Within High-Tech Industries

As a way to monitor and evaluate plan effectiveness, the REDC guidelines require REDC Progress Reports to include economic indicators to assess regional progress. These required indicators include total jobs within the high-tech industries of advanced manufacturing and life sciences. According to the 2018 Progress Reports, multiple regions receiving significant State high-tech investments saw a decrease in total jobs among both industries (see Figure 3). For example, the Progress Reports show three of the five

regions (Western, Central, and North Country), having received significant State investment in advanced manufacturing, saw a decrease in related jobs between 2.1 percent and 7.4 percent. On the other hand, jobs in life sciences were reported to have increased in two of the five regions (Central and Capital District). Similar to advanced manufacturing jobs, both the Western and North Country regions had reported decreases in life sciences jobs between 2.6 percent and 41 percent. Only the Capital District had reported job increases in both industries.

Figure 3 – Percent Change in Jobs Between 2011 and 2017 Within High-Tech Industries*

Region	State Investment in High-Tech (in millions)	Advanced Manufacturing	Life Sciences
Western	\$995.00	▼ -2.1%	▼ -2.6%
Central	\$100.60	▼ -7.4%	▲ 1.4%
Mohawk Valley	\$267.30	▲ 5.5%	–
North Country	\$94.10	▼ -3.6%	▼ -41.0%
Capital District	\$132.50	▲ 26.7%	▲ 52.6%
Statewide	–	▼ -2.9%	▲ 1.0%

*Source: 2018 REDC Progress Reports.

In response to our findings, ESD stated that, prior to September 2016, FRMC and FSMC were responsible for implementing these projects. Also, ESD contends that it had no legal authority over FRMC or FSMC and disagreed with our audit findings. ESD claims its role was limited to providing funding and reviewing payment requests. However, continued funding is contingent upon meeting provisions set forth in the GDAs. ESD, through the GDAs, establishes provisions that grantees, such as FSMC and FRMC, are required to meet. These include meeting employment goals, reporting requirements, and allowing for audits to ensure compliance with the GDAs. Additionally, ESD has the ability to reallocate funds to another form of assistance if it determines this reallocation would better serve the State’s needs.

Since 2016, ESD indicates that it has assumed a more active role in the oversight of SUNY Poly-led projects. As a result, officials say ESD has made improvements to the overall governance of FRMC and FSMC and improved legal agreements entered into since September 2016. ESD officials say they have initiated more definitive project milestones, reporting requirements, clawbacks (recoveries of already disbursed funds), and financial penalties. ESD should continue its efforts in this area to protect the State’s significant investment in high-tech growth.

Buffalo High-Tech Manufacturing Innovation Hub at RiverBend

Based on total funding, the RiverBend project is the cornerstone of the State's recent efforts to promote economic growth in the Buffalo area, having been awarded \$959 million (including \$791.9 million in ESD grants) from the Buffalo Billion and other initiatives. The following is a detailed review of the high-profile RiverBend project (see Appendix B for a project timeline). The issues identified in the areas of project assessment and performance monitoring, and the changing measurement of and progress toward employment totals, underscore the need for stronger oversight of economic development projects to ensure money spent is generating appropriate return on investment for New York taxpayers.

Despite the State's significant investment, ESD's assessment included only a single-page company profile on SolarCity (the company that acquired Silevo, the original anchor tenant of RiverBend) and a memo on the financial situation of FSMC. Additionally, the cost-benefit analysis performed by ESD was mainly informational and limited to a comparison of the proposed amount of economic assistance and the project's construction budget. The analysis reflects only the impact of construction-related activities and indicates that, unlike projects funded through certain other economic development programs, infrastructure and economic growth investment projects may involve no permanent job commitments, as these types of projects generate long-term benefits not captured in the period of analysis. However, ESD's cost-benefit analyses compare project evaluation results to established performance measures, including for infrastructure and economic growth investment projects. Overall, ESD's benchmark for these types of projects is \$30 in economic benefits per \$1 spent. For the RiverBend project, ESD's analysis indicated only \$0.54 in economic benefits per \$1 spent.

Furthermore, ESD's assessment lacked any review of the inherent risks related to the RiverBend project. For instance, Tesla (which acquired SolarCity) self-identified in public documents that it had limited experience in high-volume manufacturing of solar panels, thus raising a concern that the company potentially would be unable to fulfill the agreement to annually produce 1 gigawatt of solar energy, as stipulated, and create the requisite number of jobs.

ESD's lack of due diligence raises concerns that, prior to awarding hundreds of millions of dollars, no real scrutiny of these projects is done, increasing the risk that projects will not fulfill publicized high-tech job and private investment goals. Such lack of basic due diligence increases the risk that public dollars

will be spent with too little return on investment. In 2016, ESD officials stated they worked with Tesla to attract Panasonic to the RiverBend facility to create on-site jobs to help reach employment goals. As of the 2017 employment report, Panasonic – a company with no agreement with the State – employed more personnel at the facility than Tesla.¹

When the RiverBend project expanded in fall 2014, the State announced that it would create 5,000 jobs statewide, with over 3,000 jobs in Buffalo alone. Specifically, the agreement required 1,460 high-tech jobs for manufacturing operations at the RiverBend facility, while the remaining jobs include support for sales and installation (2,000 jobs) and suppliers of equipment (1,440 jobs). However, the agreement has been amended several times, pushing out completion dates and adjusting employment targets. The initial agreement required the creation of 1,460 high-tech jobs for manufacturing operations at the RiverBend facility, with 900 of those jobs to be added in the two years following facility completion. With subsequent amendments to the agreement, the employment targets changed, reducing the number of jobs required to be located at the RiverBend facility, as well as making it unclear what and where the remaining jobs would be.

For example, the October 2015 amendment replaced the original employment target with language that did not require that the 1,460 jobs would be high tech – only that the jobs would be in “Western New York” – and that 500, not 900, of the 1,460 jobs would be employees for manufacturing operations at the RiverBend facility and would be added within the initial two years of the facility completion date. Additionally, total jobs required for the first year were reduced from 600 to 500.

The December 2015 amendment again adjusted the employment target language to require Silevo (the original RiverBend anchor tenant) to create 1,460 jobs “headquartered in Buffalo,” maintaining that Silevo would create 500 of these jobs for the manufacturing operations at the RiverBend facility in the two years following facility completion.

However, for years it was unclear when the RiverBend facility would be deemed “fully complete,” which would ultimately define the time frame for employment and investment targets. According to the 2014 agreement, the facility was expected to be fully completed by the end of 2016, and reports indicate SolarCity took control of the facility in September 2016. Subsequently, Tesla and Panasonic finalized an agreement in December 2016 to begin manufacturing photovoltaic cells and modules at the RiverBend

¹ After we issued our draft report to ESD, it was widely reported that Panasonic is winding down its U.S. solar manufacturing and will exit the RiverBend facility by the end of September 2020.

facility beginning in summer 2017. However, based on the annual reports of employment provided by ESD, the facility had 25 full-time employees as of December 31, 2016. In 2017, the facility was operating and production appeared to have increased, growing from 32 employees in March 2017 to 467 employees (279 Panasonic and 188 Tesla) at RiverBend as of December 2017.

ESD officials ultimately announced (in May 2019) that April 30, 2018 was the official RiverBend facility completion date, as memorialized in a lease agreement effective on that date. Per the lease agreement, Tesla had access to the facility as of November 1, 2016 through April 30, 2018 for “planning, measurement, construction of improvements and installation of furniture, fixtures, inventory and equipment, shipping and receiving, and any activities included within the Permitted Use,” subject to FSMC approval. Tesla was able to operate for about 2½ years (November 1, 2016 to April 30, 2019) before being held accountable for employment and investment targets.

Since 2017, publicly available Tesla reports have indicated potential setbacks with Tesla’s solar roof – a product it anticipated it would produce at the RiverBend facility. For example, Tesla reported on several occasions it had developed a residential solar roof in October 2016 that was ready for production. In March 2017, Tesla reported it planned to begin production of the solar roof in summer 2017 at RiverBend. In September 2017, it reported that solar roof installations would ramp up slowly in the fourth quarter of 2017 and increase considerably in 2018 as the production and installation process became standardized. However, in November 2018, Tesla reported it was still refining the product design and installation processes and, as a result, production would not significantly increase until the first half of 2019. During the first quarter of 2019, Tesla reported that solar roof deployments had significantly declined.

Despite these setbacks, Tesla was reportedly able to meet its employment and investment target requirements of 500 cumulative jobs and \$130 million invested as of the official first anniversary of facility completion, April 30, 2019. Per ESD officials, Tesla reported its employment and investment figures on May 15, 2019 for the period ending April 30, 2019. According to the report, Tesla had 633 cumulative jobs, including 329 at the RiverBend facility, 1 in Buffalo (but not at the RiverBend facility), and 303 at other locations throughout the State. Additionally, Tesla reported it has invested \$381.9 million. ESD officials state they have yet to audit these reported numbers, but plan to compare employment figures reported to the Department of Labor to date, conduct an audit of Tesla’s reported investments, and, based on the results, take any further action needed to verify compliance.

Recommendations

1. Conduct comprehensive assessments of the risks, costs, and economic benefits of projects before funding decisions are made to determine if projects should receive significant State investment.
2. Develop standard performance metrics and then evaluate projects to determine their actual economic benefits compared with the State's investment.
3. Standardize the public reporting of projects to eliminate discrepancies and provide the public with accurate information on project costs, statuses, and economic benefits using a clear and consistent method.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine if ESD adequately monitors selected high-tech economic development programs and projects it oversees and whether these projects are achieving the intended employment goals. Our audit covered January 1, 2013 through April 30, 2019.

To achieve our audit objectives, we interviewed ESD officials and reviewed agreements between FRMC/FSMC and private companies, GDAs between ESD and grantees (e.g., FSMC), the Plan, the Buffalo Billion initiative process and implementation, and ESD and FRMC/FSMC Board minutes. We also reviewed selected REDC strategic plans and Progress Reports, ESD jobs reports, and annual reports. Additionally, we reviewed publicly available company financial reports. We became familiar with and assessed the adequacy of ESD's internal controls as they related to our audit objective.

We focused on high-tech projects administered through SUNY Poly and the Buffalo Billion initiative. For the Buffalo Billion initiative, we reviewed only selected projects related to a high-tech industry (e.g., advanced manufacturing and life sciences), and our findings and conclusions are based on those projects only – not the Buffalo Billion initiative as a whole.

In total, we identified 15 high-tech projects with ESD-approved funding totaling \$2.2 billion.

We reviewed records for four judgmentally selected projects (RiverBend; Nano Utica initiative Computer Chip Commercialization Center; American Institute for Manufacturing Integrated Photonics Test, Assembly, and Packaging Facility [AIM Photonics]; and North Country Hub for Innovative Manufacturing Technology, Norsk Titanium Facility), which received \$1.2 billion in ESD funding. Our sample was based on funding level, geographical location, and current status (e.g., in operation). For the sampled projects, we reviewed company assessments, cost-benefit analyses, documentation of ESD's on-site actions, job creation reports, and any corroborating support to assess ESD's oversight of these projects and the projects' current economic impacts, such as job creation.

Additionally, we reviewed REDC Progress Reports, ESD's annual reports, and ESD's jobs reports to determine the reported number of jobs created for four Buffalo Billion projects: RiverBend, Buffalo IT Hub, Buffalo Medical Innovation and Commercialization Hub, and Buffalo Institute for Genomics. We selected these projects because they have been in progress for multiple years.

Furthermore, for five ESD programs – including three NYSTAR programs (Manufacturing Extension Program, Centers for Advanced Technology, and Centers of Excellence), Innovate NY, and the Innovation Venture Capital Fund – we judgmentally selected 24 entities that received a total of \$74.2

million under these programs. We selected programs based on funding levels and the existence of specific reporting and performance requirements. Our selection of specific entities was based on the highest total number of reported economic impacts. For the sampled entities, we assessed ESD's processes for monitoring these programs and validating reported economic impacts.

Our audit conclusions and observations are based solely on the review of selected projects and cannot be projected to the entire population of high-tech projects as a whole.

Statutory Requirements

Authority

Our audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution as well as Article II, Section 8 of the State Finance Law and Section 2803 of the Public Authorities Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

A draft copy of this report was provided to ESD officials for their review and formal comment. We considered ESD's comments in preparing this final report and attached them in their entirety at the end of it. In their response, ESD officials generally disagreed with our findings and conclusions. Our State Comptroller's Comments address certain ESD remarks, as well as inaccuracies and other issues, and are embedded within ESD's response.

Within 180 days of the final release of this report, as required by Section 170 of the Executive Law, the President and Chief Executive Officer of ESD must report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Appendix A

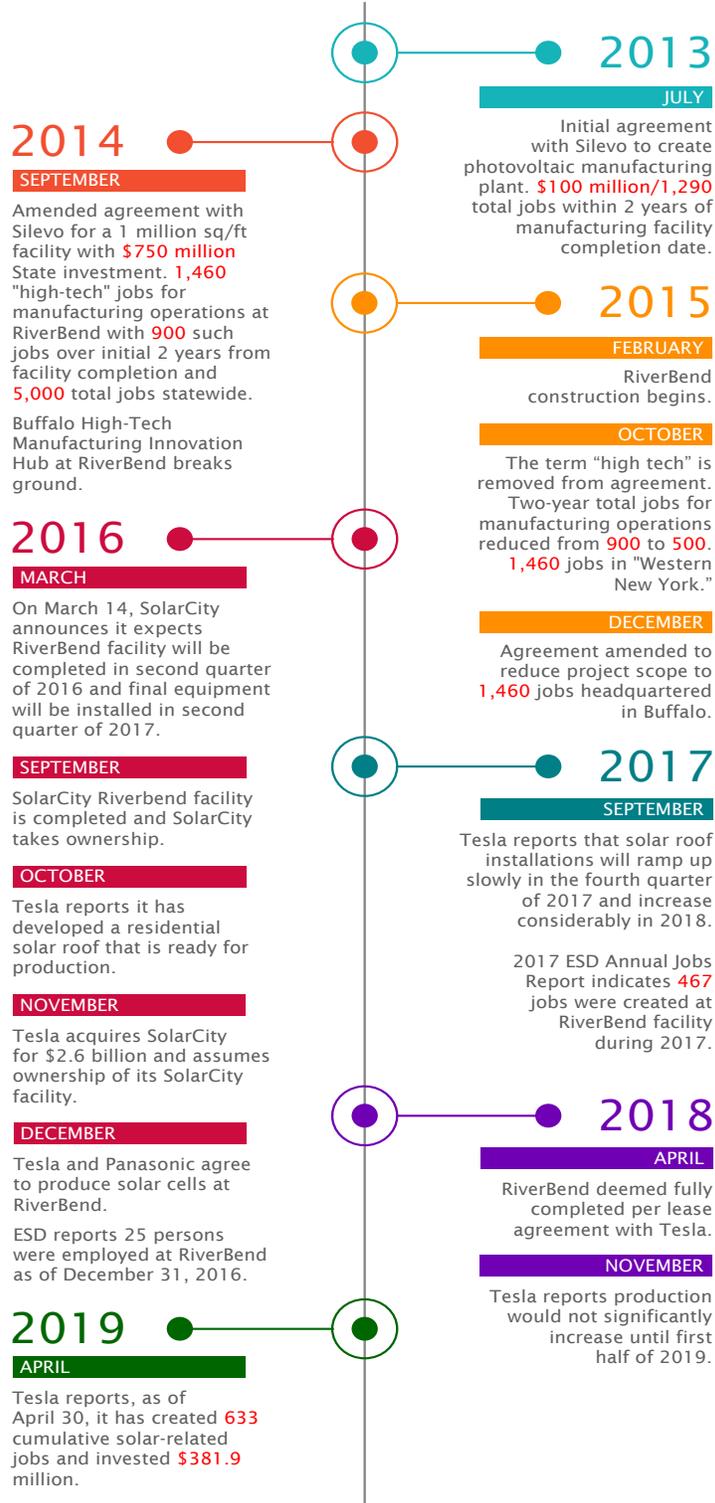
Approved ESD Funding (Since 2013) for SUNY Poly and Buffalo Billion High-Tech Projects

Project	Portfolio	Current Tenant	ESD Region	ESD Approved Funding (in millions)		
				Since 2013	Since ESD Assumed SUNY Poly	Expended (as of 1/31/19)
New York Power Electronics Manufacturing Consortium	SUNY Poly	N/A	Capital District	\$100.0	\$33.0	\$90.0
NanoFab Xtension	SUNY Poly	N/A	Capital District	\$38.5	\$38.5	\$38.5
Smart Cities Technology Innovation Center at Kiernan Plaza	SUNY Poly	SEFCU CHA Consulting	Capital District	\$4.0	–	\$4.0
Marcy Nanocenter*	SUNY Poly	None	Mohawk Valley	\$96.9	(\$498.1)	\$103.8
Computer Chip Commercialization Center	SUNY Poly	Danfoss	Mohawk Valley	\$317.6	–	\$163.5
Central NY Chip Hub	SUNY Poly	NexGen	Central	\$105.0	\$15.0	\$98.0
Central NY Film Hub	SUNY Poly	N/A	Central	\$2.6	\$2.6	\$2.6
AIM Photonics Test, Assembly, and Packaging Facility	SUNY Poly	N/A	Finger Lakes	\$187.0	\$109.0	\$135.1
Buffalo High-Tech Manufacturing Innovation Hub at RiverBend	Buffalo Billion	Tesla	Western	\$791.9	–	\$779.7
High Pharmacy Oncology Manufacturing Facility	SUNY Poly	Athenex	Western	\$200.0	\$200.0	\$50.0
Buffalo Medical Innovation and Commercialization Hub	Buffalo Billion	AMRI Athenex	Western	\$75.0	–	\$70.0
Buffalo IT Innovation and Commercialization Hub	Buffalo Billion	IBM	Western	\$55.0	–	\$40.0
Buffalo Manufacturing Works	Buffalo Billion	N/A	Western	\$50.3	\$15.0	\$29.8
Buffalo Institute for Genomics	Buffalo Billion	N/A	Western	\$47.5	–	\$25.5
North Country Hub for Innovative Manufacturing Nanotechnology	SUNY Poly	Norsk Titanium	North Country	\$125.0	\$98.0	\$94.1
Totals				\$2,196.3	\$13.0	\$1,724.6

* Includes the reduction of Grant AB509 originally approved by ESD for \$535.9 million in July 2016, then later reduced to \$8,677,075 in March 2017 – a \$527.2 million reduction in approved funds.

Appendix B

Timeline of Significant Events for the RiverBend Project



Agency Comments and State Comptroller's Comments



February 18, 2020

Mr. Scott Heid
Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236

RE: **Response to OSC's Audit Findings Regarding ESD's High-Technology Programs**

Dear Mr. Heid:

Thank you for the opportunity to comment on the Office of the State Comptroller's ("OSC") Draft Audit Report 2017-S-60 ("Draft Audit Report") regarding the Empire State Development Corporation ("ESD") monitoring activities of selected high-technology (high-tech) economic development programs.

The ESD has given, and will continue to give, strong support to its recent role in the oversight of Fort Schuyler Management Corporation (FSMC) and Fuller Road Management Corporation (FRMC) high-tech construction projects that occurred in September 2016. As explained further below, ESD disagrees with OSC's findings because they mischaracterize ESD's role regarding these projects and ignores significant changes that have been implemented when ESD assumed enhanced oversight of the identified projects. Prior to the management shift, ESD's role in administering funds to defined, pre-identified State projects (often as one of multiple State funders) entailed significantly different ESD oversight functions than the ESD programs for which the Corporation was statutorily and contractually accountable.

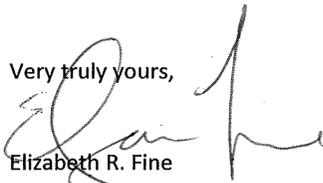
Furthermore, OSC selected projects for this report that are not representative of the entire scope of the Buffalo Billion Initiative and cannot be used to assess its administration or performance. Lastly, OSC criticizes ESD for actions of independent non-profit entities, FSMC and FRMC, over which ESD exerted no formal or legal control over either entity.

State Comptroller's Comment 1 – We stand behind our audit conclusions and recommendations, as detailed throughout the audit report. In responding to our draft report, ESD officials reiterated claims they made during the audit that ESD's role over high-tech projects within the SUNY Poly and/or Buffalo Billion portfolio before 2016 was limited. As we pointed out then, the disbursement, recapture, and audit provisions in ESD's Grant Disbursement Agreements (GDAs) with grantees and the Plan's identification of monitoring and reporting responsibilities for ESD indicate otherwise – that ESD has been responsible for the oversight of Buffalo Billion projects since their initiation. From beginning to end, ESD's response is misleading and disingenuous. Besides denying ESD's involvement in major high-tech projects, officials claim that our samples are not representative of the entire scope of the Buffalo Billion Initiative and

cannot be used to assess its administration or performance. Our report explicitly states our audit conclusions are based solely on the review of selected projects and cannot be projected to the entire population of high-tech projects as a whole. While our sample was not statistically projectable, it covered high-tech projects that received \$1.2 billion in ESD funding – including the RiverBend project. Based on total funding, the RiverBend project is the cornerstone of the Buffalo Billion, having been awarded \$791.9 million in ESD grants. ESD is the State's lead economic development agency. Given the amount of money at issue and the importance of these high-tech projects to the State's economic expansion strategy, ESD's position regarding its role is surprising.

It is also important to note that OSC approved every ESD request to draw State funds and provide them to the non-profits FRMC and FSMC. Finally, and most importantly, the audit makes no findings that any actual expenditures for these projects were inappropriate.

Please see our more detailed response attached hereto and do not hesitate to contact me if further information is needed.

Very truly yours,

Elizabeth R. Fine
EVP, Legal and General Counsel

ESD RESPONSE TO OSC FINDINGS AND RECOMMENDATIONS

A. ESD Adequately Monitors High-Tech Projects within the SUNY Poly Portfolio

ESD takes issue with OSC's finding that the Corporation failed to monitor high tech projects within the SUNY Poly Portfolio. OSC's findings regarding ESD's monitoring of the subject projects fail to account for the difference between ESD originated programs and projects and projects where ESD merely served as grant administrator. OSC audited ESD's discretionary high-tech programs – Innovate NY, Innovate Venture Capital Fund and NYSTAR – and found that ESD "has effective practices in place to monitor its discretionary high-tech programs." ESD directly administers these programs and, therefore, engages in more significant initial assessments, monitoring and oversight. In stark contrast, ESD's role in the SUNY Poly high-tech projects was limited to serving as one of several funding administrators and not as the State-affiliated entity charged with project implementation.

State Comptroller's Comment 2 – As explained in Comment 1, ESD has been responsible for the oversight of Buffalo Billion SUNY Poly high-tech projects since their initiation.

ESD has since assumed enhanced oversight of the SUNY Poly-led construction projects, which included the following:

1. Increased oversight: ESD increased its involvement in FRMC and FSMC board appointments, including adding the ESD CEO or his or her designee as an ex officio non-voting, non-fiduciary representative, and requiring ESD's consent/recommendation for the appointment of five out of eleven directors for each of the FSMC and FRMC boards;
2. Implemented governance changes to FSMC and FRMC, including the adoption of new bylaws, appointing new directors with ESD input, and approving new FSMC and FRMC policies that: a) incorporate key provisions of the Public Officers Law regarding records access, open meetings, and public accountability; b) enhance contract administration, procurement and property disposition standards and requirements; and c) set new standards of conduct for employees, officers, and directors of each corporation;
3. Restructured operations to increase accountability and effectiveness: At the direction of ESD and SUNY, a new non-profit, New York Center for Research, Economic Advancement, Technology, Engineering and Science (NY CREATES) was formed to assume control of the operations of FRMC and FSMC, and RF-led SUNY Poly projects, under the direction of former GlobalFoundries CEO Dr. Douglas A. Grose. The newly placed, yet richly experienced leadership team oversees the NY CREATES portfolio and

has streamlined operating structure, allowing SUNY Poly to focus on its academic operations while NY CREATES's team is empowered and accountable for more efficient, effective and transparently managed projects;

4. Provided greater on-site supervision of FSMC construction projects, which has included the retention of outside construction management firms or additional staff, as needed, to review project payments, change orders, schedules and other construction matters to better ensure that ESD grant funds are being used in their prescribed manner;
5. Assumed leadership of company due diligence, deal negotiation and business relations on new discretionary projects or amendments to existing projects to ensure that SUNY Poly projects meet the high standards to justify the expenditure of State funds;
6. Created a new ESD Public Projects Unit that brings together a cross-functional team of staff that specializes in providing stringent review of grant payment processes and monitors the integrity of SUNY Poly projects;
7. Reviewed the finances of each active SUNY Poly project to ensure that adequate funding is provided to mitigate the likelihood and duration of any payment delays;
8. Increased economic impacts: Job and spending figures from existing projects continue to grow and new commitments since September 2016 include over \$4 billion in investment and approximately 3,000 new retained and created jobs;
9. Improved finances: The combined outstanding principal on debt owed by FRMC and FSMC has fallen by over 20%, and, based on prior and ongoing ESD actions, the entire portfolio is now expected to achieve a stable operating budget beginning in Fiscal Year 2021;
10. Improved legal agreements: Though bound by the terms of prior agreements, ESD ensured that every new company agreement (NYS-Applied Materials META Center, NYS-IBM AI Hardware Center, Cree, NexGen) include significantly enhanced project milestones, reporting requirements, clawbacks and financial penalties for non-performance. ESD also secured clawback rights on the Norsk project as part of negotiations to adjust the facility program and budget;
11. Reduced vacancy rates: More than 100,000 square feet of clean room space that was previously vacant has since been leased to tenants like Applied Materials, Danfoss, NexGen and IBM, offsetting the portfolio's share of operating costs and adding several tens of millions of dollars in net new revenue each year; and
12. Increased research funding: Three new SUNY research partnerships with Applied Materials, Cree and IBM will provide over \$100 million in new research funding as a direct benefit to the SUNY system, which will in turn generate and leverage additional research.

B. OSC Misinterprets the Various High-Tech Projects and ESD’s Roles in Overseeing Them and Imposes Incorrect Standards

OSC conflates Buffalo Billion projects that were originated by ESD as compared to projects originated by SUNY Poly and funded with Buffalo Billion dollars, and fundamentally misunderstands the purpose and terms of ESD’s Grant Disbursement (GDA) Agreements such as:

- a GDA does not provide ESD with responsibility for the implementation of a project; that responsibility remains with the grantee; the GDA establishes the contractual requirements for the grantee to receive the grant funding;
- ESD enters into GDAs at a point in time near when funds need to be disbursed and not typically at the initiation of a project. Specifically, the GDA specifies the disbursement terms (including documentation requirements to trigger each disbursement) and recapture terms, among other provisions.

To the extent that OSC focuses on the Buffalo Billion Investment Development Plan as a basis for its findings about ESD’s level of involvement in project oversight, as noted earlier, of the projects examined by OSC in this audit, only the Riverbend project received any Buffalo Billion funds, and only a small percentage of its total grant funds were Buffalo Billion funds and thus the methodology was inherently flawed.

State Comptroller’s Comment 3 – ESD officials’ assertion that the GDAs contain limited responsibilities for ESD over Buffalo Billion projects is incorrect. As indicated in Comment 1, the disbursement, recapture, and audit provisions in its GDAs with grantees gives ESD oversight responsibilities of Buffalo Billion projects since their initiation. On September 23, 2014, the State officially broke ground on construction at the RiverBend site. Contrary to ESD’s claim that the GDA agreements occur when funds need to be disbursed and not at project initiation, the June 27, 2014 GDA between ESD and FSMC stipulates that “ESD’s Design & Construction (‘D&C’) staff will review the Project Plan, Scope, Budget/Design Development Estimates and proposed Schedule & Bid Packages. D&C shall be apprised of progress throughout site development and building construction phases and receive a copy of Meeting Minutes and periodic project status reports. D&C will visit the Project Location at its option, attend meetings, review payment requisitions and recommend payment when its requirements have been met,” per the GDA. Furthermore, ESD incorrectly claims in its response that only a small percentage of RiverBend grant funds were Buffalo Billion funds: in fact, RiverBend received \$791.9 million in ESD grants.

C. ESD Performed Appropriate Initial Assessments on the SUNY Poly Projects

ESD disagrees with OSC’s finding and recommendation that ESD’s initial assessments, such as financial viability of the companies and cost-benefit analyses, “lacked sufficient detail . . . to justify the use of State Funds,” and that ESD should “Conduct comprehensive assessments of the risks, costs, and economic benefits of projects before funding decisions are made to determine if projects

should receive significant State investment.”

As ESD explained to OSC in prior communications, ESD does not perform Benefit-Cost Evaluations (BCEs) for non-discretionary projects, for example, as here, projects that are funded via a specific appropriation, and/or projects specifically identified and funded through an appropriation. For such projects, ESD is not empowered to independently override the projects identified by democratically elected legislators by simply opting not to implement a project. In such cases, ESD’s role is limited to ensuring that the grantee has implemented the project in accordance with the relevant appropriations and meets ESD grant requirements, and that reimbursed expenditures fall within those grant requirements—and nowhere in the audit has OSC identified expenditures that did not meet this criteria.

The projects that OSC examined did not warrant cost-benefit analyses like those utilized for ESD’s discretionary projects with defined job commitments and investments. Both Nano Utica (Danfoss) and Norsk were non-discretionary projects that were funded through *specific* appropriations.¹

State Comptroller’s Comment 4 – As mentioned on page 10 of the audit report, ESD provided a memo to OSC that stated ESD conducts robust assessments of companies receiving investment from the State to ensure that companies and/or industries could sustain economic growth. This includes reviewing company finances, conducting cost-benefit analyses for projects requiring direct job creation/retention, and monitoring projects through periodic site visits, regular meetings, conference calls, and payment reviews. Accompanying the memo was a chart indicating that several projects, including RiverBend, went through ESD’s standard assessment process. Subsequently, OSC requested documentation to support ESD’s assessments – as outlined in ESD’s memo – for four projects, including RiverBend. Contrary to ESD’s statements, ESD conducted and provided a cost-benefit analysis completed for the RiverBend project (i.e., non-discretionary), as discussed on page 16. Overall, we concluded that the documentation to support ESD’s assessments provided only basic information and failed to include sufficient information to assess and evaluate the overall benefits of these projects compared to their cost to the State’s taxpayers.

D. OSC’s Detailed Review of the Riverbend Project is Flawed

The Draft Audit Report mischaracterizes ESD’s due diligence for the RiverBend project, which was originated by agreement between SUNY Research Foundation and an entity now owned by Tesla. ESD did, however, implement enhanced due diligence requirements for this project. Despite providing documentation to reflect its work, OSC, nevertheless mistakenly found that ESD’s subsequent due diligence merely consisted of drafting a single-page document that reflected a

¹ Chapter 55 of the Laws of 2016, Bill page 615, line 41 – page 616, line 4. The funds have been re-appropriated in every budget year.

cost-benefit analysis for only the construction portion of the project but failed to take into account the numerous materials prepared by ESD, which included, among other things: (1) the project application with addenda, (2) publicly available information about the companies, (3) an internal financial review of the grantee, and (4) the ESD directors' materials, which also included ESD analyses of environmental due diligence and the statutory basis for the project's receipt of funding.

Moreover, the cost-benefit analysis document was based on a complex, contractor-developed economic analysis model, designed to serve as a clear and concise summary of ESD's assessment of the economic impact findings in a condensed format suitable for prompt consumption by ESD directors. OSC's limited focus on the condensed summary—as opposed to the volumes of other project documents and significant work required to prepare the cost-benefit document—only further reveals either OSC's misunderstanding of the documentation or an effort to take a reductionist approach in an attempt to criticize ESD and the project.

Second, OSC's comparison of the RiverBend project to "typical" ESD projects is improper. OSC states that ESD's benchmark for similar projects is to produce \$30 in economic benefits per \$1 spent; however, for the RiverBend project, ESD's analysis indicated only \$0.54 in economic benefits per \$1 spent. Again, OSC fails to note that this project is different from typical ESD projects because (i) ESD was not a party to the contract with the industry partner which set forth different contractual criteria and performance metrics, and (ii) the full-time employment commitment of 5,000 new jobs were not included in the economic benefits calculation; as such, the ratio, in isolation, presents a dramatically incomplete assessment of the full project benefits. Further, as with most SUNY Poly-led projects, ESD's funding made investments into capital property and equipment that would be retained by FSMC/RF, SUNY-affiliated non-profits, not the beneficiary company, and could thus be re-leased or re-sold in the event of project non-performance.

State Comptroller's Comment 5 – As mentioned in the previous comment, we requested documentation from ESD to support its assessments of selected projects based on ESD's own determination of its assessment activities. Whereas we received several documents related to the RiverBend project, we did not receive the project application or any addendums. Although the RiverBend project is different than typical ESD projects, ESD's cost-benefit evaluation includes performance metrics for such projects (i.e., infrastructure projects). ESD's analysis states that "the benefits reported in the table reflect only the impact of construction-related activity. Unlike typical ESD projects, infrastructure and economic growth investment projects may involve no permanent job commitments. Such projects generate long term benefits not captured in the period of analysis. This is reflected in the benefit cost estimates as compared to benchmarks developed for infrastructure and economic growth investment projects." As such, ESD's evaluation indicated the RiverBend project would generate far less in economic activity than similar projects. Furthermore, based on the GDA, about \$400 million was allocated for "machinery, equipment,

and tooling” for RiverBend. We disagree with ESD’s contention that owning facilities and equipment protects taxpayers against non-performing projects. There is no guarantee the State would be able to realize significant value in return for such specialized equipment. Conversely, ESD approved millions of dollars in an LED facility for Soraa after already investing tens of millions of dollars in the facility that, subsequently, Soraa never occupied.

E. ESD Already Has Standard Performance Metrics and Determines Economic Benefits

The Draft Audit Report recommends that ESD develops standard performance metrics and then evaluate projects to determine their actual economic benefits compared with the State’s investment. The OSC auditors found that “there is a lack of consistent and rigorous performance and evaluations standards for measuring whether programs and projects attain their intended goals.” However, ESD already employs standardized performance metrics for similar projects. Where the auditors allege that ESD failed to perform project monitoring sufficiently, they failed to outline any standard by which oversight responsibilities and project monitoring duties should be judged and failed to identify any specifically prescribed responsibilities or duties that ESD did not perform.

State Comptroller’s Comment 6 – According to the Plan, each signature investment was to include “tasks and timelines, budget development, major milestones, anticipated outcomes and performance metrics based on best practices research.” To monitor progress and make appropriate adjustments, the Plan further indicates “major milestones and metrics will be created for each initiative by year. They will be monitored through tracking tools, such as progress reports, to be created for each initiative.” However, as our report indicates, we found a lack of consistent and rigorous performance and evaluation standards for measuring whether programs and projects were attaining their intended goals. Specifically, there was a lack of reporting about standard information on projects’ progress: timeline and project status, updated cost and benefit information, and employment results. Rigorous performance reporting and evaluation would help identify the plans that are most effective and identify those plans that should be revised.

F. ESD’s Reporting Meets all Statutory Requirements

The Draft Audit Report recommends that ESD standardize the public reporting of projects to provide the public with accurate information regarding project costs, status, and economic benefits in a clear and consistent method. ESD’s Annual Report is statutorily mandated, publicly available and ESD meets all the statutory requirements in publishing that report every year. ESD is also in the process of creating a Database of Incentives that will provide a searchable database of ESD’s projects, giving further transparency to projects.

State Comptroller’s Comment 7 – While ESD may publish Annual Reports, these provide only basic information and fail to assess the overall costs and benefits to the State for high-tech projects or to compare these costs and benefits to those anticipated at the time of the investment. Additionally, the accuracy of the information in some reports is questionable.

G. All SUNY Poly Projects Have Met their Current Contractual Targets within the Specified Timeframes

OSC also prematurely speculates that four projects within the Buffalo Billion portfolio – Riverbend, Buffalo IT Hub (IBM), Buffalo Medical Innovation and Commercialization Hub (AMRI), and Buffalo Institute for Genomics (UB) – *may not* be able to meet their required job commitments. OSC states that these projects have met 40 percent of the target numbers. OSC concedes that these projects “still have time to meet their total job commitments,” but OSC obfuscates the fact that these projects have *actually met all their direct job commitments* to date according to the terms of their agreements.

State Comptroller’s Comment 8 – We compared job totals as reported in ESD’s reports to each project’s target employment, as presented in highly publicized announcements. Each of these projects was operating in 2015, with the exception of RiverBend, which began operations in 2016. We calculated that, based on ESD reports, only two jobs had been created for every five jobs promised (40 percent) thus far. On page 18 of our report, we acknowledge that the RiverBend project had met its initial employment target of 500 employees and an investment goal of \$130 million as of April 30, 2019 (the first anniversary of facility completion). However, as discussed on page 17, this employment target was less than what was originally agreed upon: subsequent amendments to the RiverBend agreement not only reduced employment targets (from 600 to 500 after the first year commencing with facility completion), but also reclassified jobs away from high-tech and reduced the number of manufacturing jobs at the facility (from 900 to 500 over the initial two years).

As an aside, we note that ESD was receiving annual employment reports during the term of the agreement. Given the project’s significant dollar allocation and the amount of publicity surrounding it, ESD could have made this information public and, in so doing, quelled media attention. ESD, however, was not forthcoming with project data. The lack of transparency gave the perception that Tesla may not meet its employment targets.

Furthermore, as we highlighted on pages 17 and 18, Tesla was able to operate within the facility for 2½ years before the first employment and investment milestones were to be met. By the end of 2017, RiverBend reportedly had over 460 jobs, the majority being Panasonic employees. Additionally, per ESD, a full-time permanent employee need only be either one full-time employee working at the project location for a minimum of 35 hours per week for no less than four consecutive weeks or two part-time employees working at the project location for a combined minimum of 35 hours per week for no less than four consecutive weeks – and who are entitled to the usual and customary fringe benefits extended to other employees with comparable rank and duties. The reduction in the total number of jobs that needed to be created, including the total number of jobs specific to manufacturing operations, and the flexibility to create any type of job as opposed to only high-tech-specific jobs, combined with Tesla being able to hire en masse up to four weeks before the deadline, have not only allowed Tesla to avoid penalties by meeting reduced employment goals, but undermined the intent of the project to bring good-paying jobs to the Western New York region.

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