

# City of Cohoes Industrial Development Agency

## Legislative Reform Compliance

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**AUGUST 2019**

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

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# Report Highlights

## City of Cohoes Industrial Development Agency

### Audit Objective

Determine whether the City of Cohoes Industrial Development Agency (CCIDA) complied with the 2015 industrial development agency (IDA) legislative reform.

### Key Findings

The Board did not ensure that:

- Adequate cost-benefit analyses for proposed projects were developed before project approval.
- Annual project status reports were submitted in a timely manner.
- Annual assessments of progress toward achieving project goals were performed.

### Key Recommendations

- Ensure adequate project cost-benefit analyses are developed before project approval.
- Ensure annual project status reports are submitted in a timely manner.
- Annually assess the progress of projects toward achieving project goals.

CCIDA officials agreed with our recommendations and indicated they planned to initiate corrective action.

### Background

The CCIDA is an independent public benefit corporation established in 1972 at the request of the City of Cohoes (City). The CCIDA's Board is composed of seven members, who are appointed by the City's Common Council and responsible for the CCIDA's general management and financial and operational affairs. The Board annually elects its officers including the Chairman, Vice Chairman, Secretary and Treasurer from its membership.

The Board-appointed chief executive officer and chief financial officer (CFO) are responsible for day-to-day operations. The CCIDA funds its operations primarily with application and project closing fees charged to applicants seeking financial assistance. The CCIDA annually reports information for approved projects. The 2018 report included projects approved between 2001 and 2018. The Board approved seven projects between 2016 and 2018.

#### Quick Facts

2018 Reported Projects	14
2018 Tax Exemptions	\$3.8 million
2018 Payments in Lieu of Taxes	\$2 million

### Audit Period

June 15, 2016 – December 31, 2018

# Legislative Reform Compliance

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The purpose of an IDA is to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreational facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare for the people of the State. The powers and duties of IDAs are set forth under New York State General Municipal Law (GML).<sup>1</sup>

The CCIDA offers financial assistance to businesses, including mortgage recording, sales and real property tax exemptions, by taking title or entering into lease-leaseback agreements<sup>2</sup> for the property owned or leased by the business, facilitating the provision of financial assistance because the property is tax-exempt under GML.<sup>3</sup>

In return, many projects that receive 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 agree to make an annual payment in lieu of taxes (PILOT) for affected tax jurisdictions to help offset the loss of revenues from the tax exemptions provided and increase the tax base. Payments are made in accordance with PILOT agreements governed by the CCIDA's Uniform Tax Exemption Policy.

Before submitting an application, the project applicant meets with the City's Office of Economic and Community Development (OECD) to discuss the proposed project and the potential financial assistance. The OECD Director contacts the CCIDA special counsel to review any preliminary legal issues and qualification under the IDA statute. Next, the applicant prepares a draft application and submits it to the OECD. The Director and the CCIDA special counsel review the draft application for compliance with CCIDA policy and, if there are no issues, the applicant completes and submits a final application with the application fee.

The Board meets to discuss the proposed project where the Director and/or the applicant make a presentation regarding the project. The Board reviews the application, discusses the proposed project and schedules a public hearing where the applicant provides a presentation about the project and financial assistance requested. Assuming the project has met any other City requirements, the Board considers the CCIDA's uniform criteria for evaluating projects, expected public benefit regarding the project and public comments from the public hearing before taking action and determining whether a project and the financial assistance is in the community's best interest.

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1 New York State General Municipal Law (GML), Section 858

2 In a lease-leaseback agreement, the IDA takes possession of the project's property. With the ending of the project term, the project is leased back to the operator, its exemption from property taxes ceases and it is usually returned to the real property tax roll.

3 GML, Section 874

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## What Does the 2015 IDA Reform Legislation Require?

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.<sup>4</sup> For new projects, GML requires IDAs to develop a standard application including, the name and address of the applicant, a description of the proposed project, the amount and type of financial assistance requested, an estimate of capital costs of the project, 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.<sup>5</sup>

In addition, GML requires IDAs to develop, and adopt by resolution, uniform criteria for evaluating and selecting projects for which financial assistance will be provided, and requires the IDA to assess all material information to afford a reasonable basis for its decision to provide financial assistance and develop a written cost-benefit analysis that identifies the estimated value of any tax exemptions to be provided.<sup>6</sup>

IDAs must develop a uniform project agreement setting forth the terms and conditions under which financial assistance will be provided and policies for the suspension or discontinuance of financial assistance, or for modification of PILOT agreements to require increased payments under specified circumstances<sup>7</sup> and for the return of all or part of the financial assistance provided for a project.<sup>8</sup>

Further, IDAs are required by GML to annually assess the progress of each project, which continues to receive financial assistance or is otherwise active, toward achieving the investment, job retention or creation or other objectives of the project listed in the project application and provide the assessment to the Board.<sup>9</sup>

The CCIDA's new uniform project agreements require project owners to file a report of financing received, the number of people employed, salaries paid, tax abatements received and capital invested on an annual basis (within 60 days after the end of each calendar year).

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4 GML, Section 859-A

5 Ibid.

6 Ibid.

7 Such circumstances may include events of material violation of the terms and conditions of a project agreement.

8 GML, Section 858-A

9 GML, Section 874

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## **The Board Adopted a Standard Application, Uniform Project Agreement and Policies**

Effective September 2016, the Board authorized revisions to its standard project application and adopted new policies for evaluating projects and recapturing financial assistance to address the 2015 IDA reform legislation.

We reviewed all seven projects approved by the Board after the 2015 IDA reform legislation became effective. We found that all these projects had a standard application, a uniform project agreement including provisions for suspension, discontinuance and recapture of financial assistance, which were consistent with this legislation.

## **The Board Did Not Develop Adequate Cost-Benefit Analyses for Proposed Projects**

The Board-adopted standard application required the project applicant to prepare a cost-benefit analysis, from which CCIDA officials prepare a schedule of the expected public benefits to be realized from the project's completion. However, the project applications did not require the applicant to include the impact on real property taxes had the project moved forward without a real property tax exemption. Therefore, the cost-benefit analysis completed by the applicants did not include an estimated cost of the real property tax benefit being sought during the period of the proposed PILOT agreement.

Specifically, the project cost-benefit analysis completed by the applicants compared only the impact of the existing real property taxes (pre-development) to the proposed payments under the requested PILOT agreement. Therefore, the Board was precluded from developing adequate cost-benefit analyses for the projects applying for financial assistance.

The Board relied on the cost-benefit analysis submitted by the applicant to assess the cost of the financial benefits provided to the project. However, the Board did not prepare any additional analysis to verify or assess these costs because the full-impact on real property taxes, had the project moved forward without a real property tax exemption, was not included in the applications. As a result, the Board did not obtain sufficient information on the actual cost of the real property tax benefit granted before approving projects.

We found that three of the seven project applications reviewed lacked a complete cost-benefit analysis. One of these applications was submitted before June 2016<sup>10</sup> and the Board did not require the applicant to resubmit a complete application with the required cost-benefit analysis. Of the remaining four projects, only two requested real property tax exemptions. One of these applications lacked

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<sup>10</sup> The application was submitted in 2014, but not approved by the Board until September 27, 2016.

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estimates for the amount of exemption requested, and the other did not identify how the amount requested was determined.

In addition, the CCIDA officials did not require these two project applicants to submit supporting documentation for estimates provided or perform any action or analysis to verify the reasonableness of the estimates provided (i.e., consulting with the City Assessor for an estimate of the project's assessed value at completion).

Such information could have allowed the Board to estimate the value of the real property exemption sought in connection with these projects and weigh the estimated cost of real property exemptions against the expected public benefit of the project. As a result, the Board cannot properly assess the potential cost of the proposed financial benefits before approval.

### **The Board Did Not Annually Assess Project Progress**

The uniform agreements for the seven projects we reviewed included a standard cover letter and standard annual status report form that CCIDA officials were supposed to send project owners to complete and return. However, the Board did not ensure these letters and reports were sent to and completed by the project owners or implement procedures for the annual review of active projects toward achieving project goals.

Of the seven projects reviewed, one project was required to submit an annual status report in 2016, five projects were required to file annual status reports in 2017 and all seven projects were required to file annual status reports in 2018. However, while CCIDA officials requested the number of current employees from projects and reached out to project owners for sales tax information, they did not send the status form request letters to project owners in 2016 or 2017. In addition, the 2018 request letters were not sent until March 8, 2019, which was after the date that agreements require project owners to file the status form requests (within 60 days after the end of each calendar year).

The Chairman and CFO told us that they were unaware of the annual reporting requirement, and that after a project is approved the Board does not annually review or assess a project's progress toward achieving the project's goals. While the standard status report form requests information on job creation and capital investment, it did not include a request for information to measure the achievement of other project goals.

For example, all seven projects examined were for residential development and identified the goal of constructing a specific number of market rate or affordable residential units. Without information on the status of the construction of these units, the number rented and the rental rates charged, the Board cannot assess

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whether those goals were achieved. As a result, the Board is unaware whether projects are completed in a timely manner or achieving investment and other project goals, which is necessary to assess whether a project should continue to receive financial benefits.

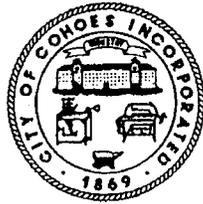
### **What Do We Recommend?**

The Board should:

1. Ensure that project cost-benefit analyses are developed, which include a comparison of the requested PILOT to the estimated real property tax after project completion had there had been no PILOT agreement, before project approval.
2. Ensure that the estimated costs of financial benefits requested by project owners in their project application are verified, annual project status reports address all measurable project goals and annual project status reports are requested and received in a timely manner.
3. Develop procedures for annually assessing each project's progress toward achieving its goals.

# Appendix A: Response From IDA Officials

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## CITY OF COHOES INDUSTRIAL DEVELOPMENT AGENCY

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August 13, 2019

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Re: City of Cohoes Industrial Development Agency – Draft Audit Report

Dear [REDACTED]

The City of Cohoes Industrial Development Agency has reviewed the preliminary draft report. The Agency agrees with the findings in the preliminary report. Once the final report has been issued, the Agency will develop a Corrective Action Plan within 90 days.

Thank you.

Very truly yours,

Rodney Dion  
Chairman

CC: Catherine Hedgeman, Esq.  
A. Joseph Scott, Esq.

## Appendix B: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 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 CCIDA officials and reviewed policies and procedures to gain an understanding of the CCIDA's compliance with the 2015 IDA reform legislation.
- We reviewed annual reports and other documentation to determine whether ongoing projects were approved after the reform legislation became effective. We reviewed project applications, cost-benefit analyses, agreements and annual project status reports to assess whether they were developed and maintained in accordance with the reform legislation for the seven applicable projects.

We conducted this performance audit in accordance with GAGAS (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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 the Secretary's office.

## Appendix C: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

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

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

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

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

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

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm)

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

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

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

[www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf](http://www.osc.state.ny.us/localgov/pubs/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/localgov/finreporting/index.htm](http://www.osc.state.ny.us/localgov/finreporting/index.htm)

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

[www.osc.state.ny.us/localgov/researchpubs/index.htm](http://www.osc.state.ny.us/localgov/researchpubs/index.htm)

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

[www.osc.state.ny.us/localgov/academy/index.htm](http://www.osc.state.ny.us/localgov/academy/index.htm)

## Contact

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