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I. PUBLIC AUTHORITIES IN NEW YORK STATE

New York State has a complex system of public authorities that are formed to achieve public or quasi-public objectives. Public authorities are designed to function for the benefit of the people of New York through various activities including financing, building, and managing public projects and improving a variety of governmental functions.[1] Utilized at all levels of government, the State relies on public authorities to deliver vital services to the people of New York. Public authorities are responsible for developing, operating, and maintaining some of the State's most critical infrastructure including roads, bridges, hospitals, and schools. Public Authorities include state and local authorities, industrial development agencies and local development corporations.

The State's current reliance on public authorities primarily began in the 1930s, with Robert Moses using the concept to finance a variety of transportation projects across New York State, including the now-Robert F. Kennedy Bridge.[2] Importantly, 1938 amendments to the NYS Constitution expressly empowered public authorities to contract debt independently of the State, allowing them to bypass constitutional limits on state debt.[3] Under Governor Nelson Rockefeller, the use of public authorities at both the state and local levels significantly expanded.[4] The most notable feature of the expansion was the development of legal instruments that enabled public authorities to issue debt on behalf of the State for purposes that state agencies could only previously pursue and finance by

[1] N.Y. AUTHORITIES BUDGET OFFICE, ANNUAL REPORT ON PUBLIC AUTHORITIES IN NEW YORK STATE (2019) (hereinafter "ANNUAL REPORT ON PUBLIC AUTHORITIES").
[2] *Public Authorities in New York State*, CITIZENS BUDGET COMMISSION, Apr. 2006, at 1.
[3] NY Const art X, § 5
[4] *Public Authorities in New York State*, CITIZENS BUDGET COMMISSION, Apr. 2006, at 1.

borrowing money through general obligation bonds approved in a general election.[5] By the mid-1970s, public authorities were aggressively aiding the State in financing projects relating to housing, urban renewal, universities, medical facilities and transportation.[6]

Today, often unbeknownst to the public, the State frequently relies on public authorities to fund and manage essential government functions relating to energy, economic development, healthcare, education, and transportation.[7] Notable public authorities responsible for providing essential state functions include the Metropolitan Transportation Authority, the Power Authority of the State of New York, the New York State Thruway Authority, the New York State Bridge Authority and the New York State Affordable Housing Corporation.

Over the past 50 years, public authorities have become a critical source of funds for New York State.[8] As the needs of the public have surpassed tax revenue, the State has increasingly relied on public authorities to fund essential infrastructure by providing financial assistance neither approved by the public nor reflected in the state budget.[9] Due to the State's extensive reliance on public authorities, they play a significant role in the debt structure of New York State; over 96 percent of all State-funded outstanding debt was issued by public authorities without voter approval.[10]

While public authorities play a vital role in providing essential government services, including economic development, unregulated activities of authorities too often

5 *Id.*
6 *Id.*
7 *Id.*
8 Scott N. Fein & Ira M. Millstein, *Who's Running the Railroad?*, CRAIN'S NEW YORK BUSINESS, Sept. 13, 2019.
9 *Id.*
10 OFFICE OF THE NEW YORK STATE COMPTROLLER, *Public Authorities* (2019).

lead to the waste and abuse of public funds. Regulating the rampant behavior of public authorities is essential to ensuring the public benefit.

On March 25, 2019, the New York State Senate Committee on Investigations and Government Operations opened an investigation into the compliance and practices of public authorities across New York State.[11] The Committee issued information and document requests to 143 public authorities, each receiving 17 requests with sub-questions. Requests were sent to 10 state authorities, 15 local authorities, 109 Industrial Development Agencies, and 9 Local Development Corporations. Exhibit A provides the list of 143 public authorities selected for this investigation.

The requests sought information and documents relating to the operations and finances of each authority as well as reviewed compliance with applicable New York State laws. Of the 143 public authorities investigated, 135 responded to the Committee's requests. The public authorities that failed to respond wholly or in part include:

- Geneva Industrial Development Agency;
- Mount Vernon Industrial Development Agency;
- New York State Thruway Authority;
- Southern Tier Economic Growth, Inc.;
- Town of Corinth Industrial Development Agency;
- Village of Spring Valley Urban Renewal Agency;
- Westchester County Industrial Development Authority; and
- Yonkers Industrial Development Agency.[12]

[11] Reference to the "Committee" within this report refers to the actions and opinions of a majority of the New York State Senate Investigation and Government Operations Committee members.

[12] The Committee sent the information and document request letters using the United States Postal Service's regular mail service. While the Committee acknowledges that letters for the nonresponsive authorities may have been lost in transit or delivered to an incorrect location, investigative staff attempted to contact the nonresponsive authorities on at least one occasion. After the issuance of this report, the Committee encourages and welcomes a response from the nonresponsive authorities.

II. OVERVIEW OF PUBLIC AUTHORITIES

Public authorities are instruments of the State created only by a special act of the Legislature.[13] New York State's first significant public authority was created in 1921 to coordinate the operations of the Port of New York and New Jersey. Public authorities have since proliferated at both the state and local level, providing essential quasi-governmental functions for the benefit of the public. Their levels of autonomy vary depending on the powers and constraints built into their statutory mandate. While some public authorities are entirely self-sufficient, others rely on State appropriations in the budget to fund operations and projects.

Authorities primarily achieve their public purpose by providing financial assistance to private corporations to stimulate economic development in a community. Most authorities can issue bonds to develop and maintain infrastructure, such as roads and schools, or to fund projects for third parties, including building hospitals and nursing homes. The debt for the bonds are typically supported by project revenues, including tolls levied by the authority, fees paid by the third party, or appropriated payments from the State to repay the outstanding debt.[14] The State has also designated specific revenue streams to an authority to assist payment of debts.[15]

The nature of public authorities in New York is unique; authorities are neither traditional agencies nor private companies, both of which have statutory mandates to ensure transparency and accountability. To ensure public authorities act in the public

[13] NY Const art X, § 5
[14] OFFICE OF THE NEW YORK STATE COMPTROLLER, PUBLIC AUTHORITIES BY THE NUMBERS 2 (January 2017).
[15] ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1.

interest consistent with their intended purpose, the State adopted the Public Authorities Accountability Act (PAAA) of 2005 and the Public Authorities Reform Act (PARA) of 2009. The purpose of PAAA was to ensure openness and accountability of all public authorities and strengthen "public confidence in the financial and operating integrity of these institutions."[16] Despite the PAAA's intent to enhance transparency and oversight by strengthening reporting requirements, in 2009 the Public Authorities Reform Act ("PARA") was passed, designed to strengthen existing public authorities regulations by expanding the enforcement, oversight and regulation of public authorities.[17]

Formally established with the passage of PARA, the Authorities Budget Office (ABO) is responsible for monitoring and regulating the activities of public authorities. The mission of the ABO is to ensure public authorities act in the public interest consistent with their intended purpose. The oversight the ABO provides is crucial in shedding light and providing insight on the operations and financial activities of public authorities.

As of July 2019, there are 583 active public authorities, an increase of 298, or by 126 percent, since July 2008, when the ABO issued its first annual report.[18] The current inventory of covered public authorities includes:

- 48 state authorities
- 535 local authorities
    - 109 IDAs
    - 294 LDCs
    - 41 urban renewal or community development agencies
    - 28 water, water finance, and water and sewer authorities
    - 9 solid waste and resource recovery authorities
    - 5 parking authorities
    - 3 airport authorities
    - 25 land banks
    - 21 miscellaneous authorities

16 Budget Report on Bills at 1-2, Bill Jacket, L 2005, ch 766.
17 Budget Report on Bills at 1-2, Bill Jacket, L 2009, ch 506.
18 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1.

In 2018, public authorities collectively spent approximately $54.2 billion in operating expenses and held a total of $282.1 billion in outstanding debt.[19] *Table 1* provides the operating expenses and outstanding debt by type of authority for the 2018 fiscal year.

Table 1: Authority Operating Expenses and Outstanding Debt for 2018 ($ millions)

2018	Operating Expenses ($)	Outstanding Debt ($)
State Authorities	35,249.38	165,248.77
Local Authorities	17,825.46	89,797.69
IDAs	69.66	7,610.8
LDCs[20]	1,012.8	19,449.66
Totals	**54,157.30**	**282,106.92**

III. AUTHORITIES BUDGET OFFICE

The Authorities Budget Office ("ABO") was first created in unconsolidated law with the enactment of the Public Authorities Accountability Act of 2005 (PAAA). Initially established within the State Division of Budget, the ABO was created to "review and report on the compliance of public authorities with accepted standards of corporate governance, accountability and financial disclosure."[21]

With the passage of PARA in 2009, the ABO was re-established as an independent entity within the Department of State in order to improve the oversight, accountability and transparency of public authorities.[22] Importantly, PARA also requires all state and local

[19] ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 9, 19.
[20] *Id.* Figure for LDCs excludes Tobacco Asset Securitization Corporations (TASCs).
[21] Budget Report on Bills at 1-2, Bill Jacket, L 2005, ch 766.
[22] *See* Mem. In Support 5, Bill Jacket, L 2009, ch 506.

authorities to submit detailed annual, budget, financial, and other reports to the ABO for public review to ensure transparency and accountability of public authorities' activities.[23]

Pursuant to PAAA, the ABO's powers and duties include analyzing financial and program information to assess compliance, assisting authorities with the improvement of management practices and procedures, and producing annual reports on its findings and analysis of public authorities.[24] With the passage of PARA in 2009, the power and resources of the ABO significantly expanded, enabling the newly independent office to enhance its oversight of public authorities. Detailed in Public Authorities Law § 6, key expanded powers and duties of the ABO include the ability to:

- Promulgate regulations necessary to effectuate the purposes of the Act relating to the statutory responsibilities of the ABO;
- Make recommendations to the Governor and the Legislature concerning opportunities to improve the performance, reporting, reformation, structure and oversight of public authorities;
- Make recommendations to the Governor and the Legislature concerning changes in terms of office of public authorities' board members;
- Request and examine the books, records, and other documentation of any public authority;
- Initiate formal investigations in response to complaints or appearances of non-compliance with statutory requirements by an authority;
- Issue subpoenas pertaining to such investigations;
- Publicly warn and censure authorities for non-compliance with statutory requirements and establish guidelines governing such actions;
- Recommend the suspension or dismissal of officers or directors who fail to act in accordance with statutory requirements;
- Compel any non-compliant authority to submit a detailed explanation of such failure to comply; and
- Commence a special proceeding in the Supreme Court seeking an order to compel production when an authority fails to provide requested information or other documentation necessary to perform its duties.[25]

23 PUB. AUTH. §§ 6(3), 2800-2802 (2019).
24 PAAA § 27, L 2005, ch 766.
25 PUB. AUTH. § 6 (2019).

Both PAAA and PARA serve as guideposts that empower the ABO to monitor and regulate public authorities. The ABO's mission is to make public authorities more accountable and transparent and to ensure they act in the public interest consistent with their intended purpose.[26] The ABO carries out its mission by:[27]

- Collecting, analyzing and publicly disseminating information on the finances and operations of public authorities;
- Conducting reviews of the operating and governance practices of public authorities to assess compliance with state law;
- Promoting good governance principles through training, technical assistance, policy guidance, the issuance of recommended best practices and assistance to staff and board members; and
- Investigating complaints made against public authorities for non-compliance or inappropriate conduct.

The ABO is headed by a Director, appointed by the Governor upon the advice and consent of the State Senate.[28] The Director serves a fixed four-year term, and can only be removed for reasons of permanent disability, inefficiency, neglect of duty, malfeasance, a felony or conduct involving moral turpitude, or a breach of fiduciary duty.[29] The Senate confirmed the current Director Jeffrey Pearlman on June 19, 2017. For the 2019 fiscal year, the ABO's budget is $2.059 million, an increase from $1.936 million appropriated in the 2018 fiscal year.[30]

In 2019, the Legislature amended Public Authorities Law to authorize the ABO to suspend local authority board members and executive staff for failure to submit any report requirement by Public Authorities Law § 2800 within 36 months of its due date.[31] Annual

26 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 1.
27 *Id.*
28 PUB. AUTH. § 5 (2019).
29 *Id.*
30 S1500-D, 2019-2020 Sen. (Ny. 2019), S7500-D 2018-2019 Sen. (Ny. 2019).
31 S1872, 2019-2020 Sen. (Ny. 2019).

reports are due 90 days after the end of an authority's fiscal year. Prior to this amendment, the ABO was only permitted to make recommendations of suspension and issue a public censure. The lack of a sufficient enforcement mechanism previously allowed authorities to ignore the reporting requirement with impunity. This amendment closes a gap in the ABO's enforcement powers, holding non-compliant individuals accountable for long-term violations. This amendment took effect on November 20, 2019.[32]

The mechanisms by which the ABO ensures public authorities comply with statutory requirements are essential to protecting public authorities' duties of transparency and accountability to the public. No other office in the United States has a similar centralized mission that includes oversight of such a diverse system of state and local authorities.[33]

Since 2007, the ABO has issued 13 annual reports on all public authorities, 68 special reviews of individual authorities, and 5 general reports on authority practices. All ABO reports and authority reviews are available to the public on their website.

IV. STATE AUTHORITIES

State authorities include public authorities or public benefit corporations created in state law, with one or more of its members appointed by the Governor or who serve as members by virtue of their elected or appointed position.[34] As of July 2019, there are 48 active state authorities in New York. Examples of active state authorities include the Capital District Transportation Authority, the New York State Bridge Authority, and the

32 *Id.*
33 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 1.
34 PUB. AUTH. § 2(1) (2019).

Metropolitan Transportation Authority. Exhibit B provides the full list of active state authorities.

State authorities are responsible for critically important functions in numerous areas including transportation, energy, environmental protection, housing, and economic development.[35] Their finances and operations are often closely intertwined with those of the State itself, resulting in heightened concerns because state public authorities are not subject to the same statutory oversight, accountability and transparency mandates that apply to State agencies.[36]

Pursuant to New York State Public Authorities Law, state authorities are required to submit certain operational and financial information to the ABO annually for review. Section VIII of this report provides a comprehensive discussion of public authorities reporting requirements. State authorities are also subject to reporting and accounting requirements by the State Comptrollers' Office.[37] Pursuant to 2 NYCRR 201.2, state authorities are required to submit its annual report, financial statements, report on internal controls, report on procurement contracts, investment reports and a copy of its annual independent audit of investments.[38] Additionally, the State Comptroller has the discretion to review and approve state authority contacts.[39]

The New York State Public Authorities Control Board (PACB) has the responsibility of approving applications for the financing and construction of any project proposed by 14 delineated state authorities and their subsidiaries, including, for example,

[35] OFFICE OF THE NEW YORK STATE COMPTROLLER, PUBLIC AUTHORITIES BY THE NUMBERS 1 (January 2017).
[36] *Id.*
[37] 2 NYCRR 201.2 (2019)
[38] *Id.* List is not exhaustive.
[39] 2 NYCRR 201-206 (2019)

the Dormitory Authority, the Long Island Power Authority, and the State Job Development Authority.[40] The PACB consists of five members appointed by the Governor, four of which are based upon recommendations of leaders in the Legislature.[41] Without prior approval, the state authorities cannot make a commitment, enter into an agreement, or incur any debt for the purpose of acquiring, constructing, or financing any project.[42] Only three of the five PACB members vote on the approval or rejection of a project.[43] The two members appointed upon the recommendations of the minority leaders of the Senate and the Assembly are non-voting members.[44] Each voting member has veto authority; the PACB must come to unanimous agreement on approving project financing.[45] During the 2019-2020 Legislative Session, Public Authorities Law was amended to require that a member of the PACB vote within the scope of his or her legal authority; failure to vote within the scope of legal authority constitutes a violation of the public's trust. As the appointing authority, the Governor has the discretion to remove a PACB member "he or she finds to be acting, or threatening to act, beyond the scope of such member's legal authority."[46]

A. STATE AUTHORITIES SPENDING

State authorities operating expenses for 2018 were $35.2 billion, an increase of 15.6 percent between 2014 and 2018.[47] The Housing Trust Fund Corporation, which increased

[40] PUB. AUTH. § 51 (2019).
[41] PUB. AUTH. § 50(2) (2019).
[42] PUB. AUTH. § 51 (2019).
[43] PUB. AUTH. § 50(2) (2019).
[44] *Id.*
[45] *Id.*
[46] PUB. AUTH. § 51 (2019).
[47] ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 9.

its operating expenses by $2.8 billion during that period, is responsible for the majority of the increase.[48] The Metropolitan Transportation Authority (MTA) also reported a $993 million increase from 2014 to 2018.[49] A complete list of state authorities operating expenditures from 2014 to 2018 is included as Exhibit C.[50]

B. STATE AUTHORITIES DEBT

In 2018, state authorities reported $165.2 billion in outstanding debt, a 6 percent increase since 2014.[51] State authorities' debt represents nearly 60 percent of the total debt reported by all public authorities in 2018.[52] A complete list of state authorities' outstanding debt from 2014 to 2018 is included as Exhibit D.[53] *Table 2* illustrates the total outstanding debt for state authorities.

Table 2: State Authorities' Outstanding Debt for 2018 by Type of Debt ($ millions)

2018	Outstanding Debt ($)	Percent of Total (%)
State Debt	49.0	29.7
Authority Purposes Debt	69.7	42.2
Conduit Debt	46.5	28.1
Total Debt	**165.2**	**100**

State debt includes debt issued at the direction of the State or backed by its moral obligation or direct appropriations.[54] Non-State funds include debt issued by state

48 *Id.* at 9.
49 *Id.*
50 Exhibit is provided courtesy of the ABO in its 2019 Annual Report.
51 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 19.
52 *Id.*
53 Exhibit is provided courtesy of the ABO in its 2019 Annual Report.
54 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 19.

authorities to finance its capital needs and purposes, and retired using the authorities' own revenue streams.[55] Conduit debt includes debt issued by state authorities on behalf of third parties.[56]

State authorities' outstanding debt has continued to increase since 2014.[57] While most state authorities have reported a decrease in debt, six state authorities have reported increases of 40 percent or more compared to 2014, with a combined debt of $32.1 billion in 2018 compared to $22.1 billion reported in 2014.[58] *Table 3* below illustrates the debt growth those six state authorities have reported since 2014.[59]

Table 3: State authorities with debt growth of 40 percent or more 2014 ($ millions)

Authority	**2014 ($)**	**2015 ($)**	**2016($)**	**2017($)**	**2018($)**	**Growth 2014-18 (%)**
Erie County Medical Center	173.13	175.53	173.65	272.51	257.33	48.6
New York Job Development Authority	6,939.30	6,436.63	6,595.92	10,068.65	10,007.06	44.2
NYS Housing Finance Agency	12,661.28	13,644.43	15,446.38	16,780.29	17,733.68	40.1
Ogdensburg Bridge and Port Authority	4.13	3.38	2.59	2.07	10.97	166.0
Utility Debt Securitization Authority	1,932.32	2,919.44	3,965.53	4,262.40	4,139.59	114.2
Westchester County Health Care Corporation	446.63	460.71	682.84	670.27	657.06	47.1
Total ($)	22,156.79	23,640.12	26,866.91	32,056.19	32,805.69	-

55 *Id.*
56 *Id.*
57 *Id.* at 19.
58 *Id.*
59 *Id.* at 22.

V. LOCAL AUTHORITIES

Local authorities, similar to state authorities, are incorporated to provide essential services to the communities they serve, including creating and maintaining infrastructure, revitalizing communities, improving jobs and opportunities, and stimulating economic growth. As of July 2019, there are 535 active local authorities in New York State.

According to Public Authorities Law § 2(2) local authorities include:[60]

- A public authority or public benefit corporation created by the State whose members do not hold a civil office, or are *only* appointed by the governor specifically upon the recommendation of the local government(s);
- Not-for-profit corporations affiliated with, sponsored by, or created by a county, city, town or village government;
- A local industrial development agency or authority or local public benefit corporation;
- An affiliate of such local authority; or
- A land bank corporation created pursuant to Article 16 of Not-For-Profit Corporation Law.

For the purposes of reviewing and analyzing compliance with statutory requirements, the ABO separates IDAs and LDCs from other types of local authorities; this report adheres to the ABO's distinction of the three categories of public authorities, thus the financial data of local authorities in this section excludes data from IDAs and LDCs. Nevertheless, *all* local authorities defined in Public Authorities Law § 2(2) are required to annually submit certain operational and financial information to the ABO for review. Section VIII of this report provides a comprehensive discussion of public authorities reporting requirements.

[60] PUB. AUTH. § 2(2)(a)-(e) (2019).

A. Local Authorities Spending

In 2018, local authorities reported $17.8 billion in operating expenses, a 16 percent increase from 2014.[61] The increase is mainly due to the New York City Health and Hospitals Corporation increasing its expenses by $2.1 billion over that period.[62] Importantly, this overall increase is likely higher because 24 of 102 local authorities did not file their reports with the ABO prior to the issuance of the ABO's 2019 annual report.[63] A complete list of local authorities operating expenditures from 2014 to 2018 is included as Exhibit E.[64]

B. Local Authorities Debt

Local authorities reported a total of $89.8 billion in outstanding debt for 2018, a 19 percent increase compared to 2014.[65] Of the total debt, debt issued to finance the purposes of the local authority comprised 84.6 percent, state backed debt 8.9 percent, and conduit debt 6.5 percent.[66] A complete list of local authorities' outstanding debt from 2014 to 2018 is included as Exhibit F.[67] *Table 4* illustrates the total outstanding debt for local authorities.

Table 4: State Authorities' Outstanding Debt for 2018 by Type of Debt ($ millions)

2018	Outstanding Debt ($)	Percent of Total (%)
State Debt	7.94	8.9
Authority Purposes Debt	76.04	84.7
Conduit Debt	5.8	6.4
Total Debt	**89.8**	**100**

61 *Id.* at 9.
62 *Id.*
63 *Id.* at 9.
64 Exhibit is provided courtesy of the ABO in its 2019 Annual Report.
65 Annual Report on Public Authorities, *supra* note 1, at 19.
66 *Id.*
67 Exhibit is provided courtesy of the ABO in its 2019 Annual Report.

VI. INDUSTRIAL DEVELOPMENT AUTHORITIES

IDAs are established by the State at the request of a particular municipality—county, city, town, village or Indian reservation—for the benefit of such municipality.[68] Following the passage of a special act of the Legislature, the local municipality must submit to the Secretary of State a certificate setting forth the date of passage, the agency name, names of members and terms of office, and facts establishing the need for the IDA.[69]

As of July 2019, 109 IDAs are active in New York State. Every county has authorized the formation of an IDA – a single IDA serves Warren and Washington counties and a single IDA serves the five counties that comprise New York City.[70] An additional 52 IDAs exist at the sub-county level.[71] Exhibit G provides the number of IDAs located in each New York State county.[72]

A. INDUSTRIAL DEVELOPMENT AGENCY STATUTORY MANDATE

In addition to the statutory mandates set forth for local authorities in Public Authorities Law, IDAs are primarily governed by the New York State Industrial Development Act, codified as Title One of Article 18-A of the New York General Municipal Law.[73] General Municipal Law permits IDAs to undertake projects relating to: industrial, manufacturing, warehousing, commercial, research, recreational facilities,

68 GENERAL MUNICIPAL LAW §§ 854, 856 (2019).
69 GENERAL MUNICIPAL LAW § 856 (2019).
70 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 48.
71 *Id.*
72 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).
73 GENERAL MUNICIPAL LAW §§ 850-88 (2019).

industrial pollution control facilities, educational or cultural facilities, and civic facilities.[74] An IDA can initiate a project on its own behalf or provide financial assistance to a third party to undertake the project.

IDAs are authorized to offer financial incentives to attract, retain, and expand businesses to improve economic conditions in their respective locales.[75] Types of financial assistance include issuing the proceeds of bonds, straight-leases, or tax exemptions.[76] A straight-lease transaction is a project in which an IDA takes ownership or control of the property or equipment of a project, entitling such property or equipment to be exempt from taxation, but the project occupant does not receive proceeds of bonds.[77] IDAs can also operate a revolving loan fund, whereby it provides loans for projects in which the IDA will not take a traditional ownership interest.

Since IDAs act for the public benefit, they are exempt from paying taxes or assessments on any property acquired or under its jurisdiction, control or supervision.[78] Bonds, notes, income and property of the IDA are exempt from taxation, except for transfer and estate taxes.[79]

Pursuant to General Municipal Law § 874(1) and Real Property Tax Law § 412-a, real property owned or leased by an Agency is exempt from certain real property taxes.[80] The tax exemption lasts until the IDA terminates its ownership or leasehold interest of its property.

[74] GENERAL MUNICIPAL LAW § 858 (2019). List is not exhaustive.
[75] N.Y. AUTHORITIES BUDGET OFFICE, OPERATIONAL REVIEW: IDA SALES AND USE TAX Exemptions (2009).
[76] GENERAL MUNICIPAL LAW § 854 (2019).
[77] *Id.*
[78] GENERAL MUNICIPAL LAW § 874 (2019).
[79] *Id.*
[80] The IDA must file a form with the local assessor claiming such exemption.

Each IDA is required to adopt a "uniform tax exemption policy" to provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions.[81] Among other requirements, the guidelines must include procedures for payments in lieu of taxes (PILOTs) as well as for deviations from the uniform tax exemption policy.[82]

General Municipal Law § 858(15) permits IDAs to enter into agreements with businesses for payments in lieu of taxes (PILOTs). PILOT agreements essentially fix a beneficiary's tax liability to a specified amount over a certain time period. An IDA must remit any PILOT payments it receives to each affected tax jurisdiction within 30 days of receipt.[83] Affected tax jurisdictions include any municipality or school district that will fail to receive real property tax payments because of the agreement.[84] Unless otherwise agreed upon, the PILOT payments must be allocated among affected tax jurisdictions in proportion to the amount of taxes which would have been received had the project not been tax exempt.[85]

Purchases by an IDA are also exempt from state and local sales and use taxes.[86] IDAs can designate the project beneficiary as an "agent" of the IDA to conduct the project, thereby passing the exemption through to the project beneficiary.[87]

Prior to providing any financial assistance of more than $100,000 to any project, the beneficiary must meet certain prerequisites. The project must serve a public purpose,

81 GENERAL MUNICIPAL LAW § 874 (2019).
82 *Id.*
83 GENERAL MUNICIPAL LAW § 874(3) (2019).
84 GENERAL MUNICIPAL LAW § 854(16) (2019).
85 GENERAL MUNICIPAL LAW § 858(15) (2019).
86 GENERAL MUNICIPAL LAW § 874(1) (2019).
87 GENERAL MUNICIPAL LAW § 874(1), (9) (2019).

by preserving or creating permanent, private sector employment.[88] The IDA must adopt a resolution describing the project and the financial assistance contemplated.[89] Any financial assistance must be consistent with the IDA's adopted uniform tax exemption policy.[90] The IDA must hold and give 10 days' published notice of a public hearing regarding the proposed project and financial assistance.[91] All IDAs must develop and adopt a standard application form to accept all requests for financial assistance.[92] Each IDA must develop and adopt uniform criteria for the evaluation and selection for each category of projects.[93] IDAs must develop a uniform agency project agreement that sets forth the terms and conditions under which financial assistance can be provided.[94]

B. INDUSTRIAL DEVELOPMENT AGENCY SPENDING

In 2018, IDAs reported $69.7 million in operating expenses, a 16 percent increase from 2014. Notable increases in expenses during this period include the Syracuse IDA increasing by $5.4 million (109.9 percent), the Chautauqua IDA increasing by $3.4 million (573.2 percent), the Genesee County IDA increasing by $3.4 million (255.4 percent), and the Franklin County IDA increasing by $2.5 million (625.6 percent).[95] A complete list of IDAs operating expenditures from 2014 to 2018 is included as Exhibit H.[96]

88 GENERAL MUNICIPAL LAW § 862(c) (2019).
89 GENERAL MUNICIPAL LAW § 859-a(1) (2019).
90 *Id.*
91 GENERAL MUNICIPAL LAW § 859-a(2)(3) (2019).
92 GENERAL MUNICIPAL LAW § 859-a(4) (2019).
93 GENERAL MUNICIPAL LAW § 859-a(5) (2019).
94 GENERAL MUNICIPAL LAW § 859-a(6) (2019).
95 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 9.
96 Exhibit is provided courtesy of the ABO in its 2019 Annual Report.

C. INDUSTRIAL DEVELOPMENT AGENCY DEBT

In 2018, IDAs reported $7.6 billion in outstanding debt, a 44 percent decrease compared with 2014.[97] Conduit debt comprises the majority of the debt at $7.4 billion, or 97 percent. The remaining $229.2 million, or 3 percent, is debt issued for authority purposes. A complete list of IDAs outstanding debt from 2014 to 2018 is included as Exhibit I.[98]

D. INDUSTRIAL DEVELOPMENT AGENCY FINANCIAL ASSISTANCE

In 2018, 97 IDAs reported distributing tax exemptions totaling $1,413,999,483.[99] Table 3 provides a breakdown by type of tax exemption issued for 2018. Compared with 2017, the total reported tax exemptions issued by IDAs in 2018 increased by 1.5 percent.[100]

Table 3: Type of IDA Tax Exemptions for the 2018 Fiscal Year ($)

Type of Exemption	State Sales Tax	Local Sales Tax	County Property Tax	Local Property Tax	School Property Tax	Mortgage Recording Tax	Total
Amount Issued	84,239,001	76,442,394	166,654,367	506,035,862	554,004,192	26,623,668	**1,413,999,483**

The IDAs that issued the most amount of tax exemptions in 2018 include the New York City IDA, Nassau County IDA, Hempstead IDA, Yonkers IDA, and Rensselaer

97 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 19.
98 Exhibit is provided courtesy of the ABO in its 2019 Annual Report.
99 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).
100 *Id.*

County IDA. *Table 4* illustrates the amount and type of tax exemptions those IDAs issued during the 2018 fiscal year.[101]

Table 4: Top IDA Tax Exemptions Issued for the 2018 Fiscal Year ($)

Authority	State Sales Tax	Local Sales Tax	County Property Tax	Local Property Tax	School Property Tax	Mortgage Recording Tax	Total Exemptions
New York City IDA	5,851,318	6,017,487	0	308,777,642	0	11,069,254	331,715,701
Nassau County IDA	2,357,255	2,723,035	18,987,985	26,694,716	70,633,398	1,667,990	123,064,380
Hempstead IDA	706,551	816,951	19,199,260	6,382,508	47,255,160	373,230	74,733,660
Yonkers IDA	3,202,492	3,903,038	6,783,322	15,939,768	29,427,780	87,968	59,344,368
Rensselaer County IDA	6,299,102	6,299,102	7,585,824	11,690,296	19,811,161	233,700	51,919,184
Total	**18,416,718**	**19,759,613**	**52,556,391**	**369,484,930**	**167,127,499**	**13,432,142**	**640,777,293**

VII. LOCAL DEVELOPMENT CORPORATIONS

"Local Development Corporation" or "LDC" is a generic term used by the ABO to include not-for-profit corporations that meet the definition of a local authority pursuant to Section 2 of Public Authorities Law.[102] Unlike other public authorities, LDCs are incorporated through the filing of certificates with the Department of State. Excluding Tobacco Asset Securitization Corporations (TSACs), there are 256 active LDCs in New York State. Exhibit J provides the number of LDCs located in each New York State county.[103]

101 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).
102 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 9.
103 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).

A. LOCAL DEVELOPMENT CORPORATIONS STATUTORY MANDATE

Pursuant to Public Authorities Law § 2(2)(b), local authorities include not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government. The most common type of not-for-profit that meets this definition is a LDC, formed pursuant to Section 1411 of New York State Not-for-Profit Corporation Law.[104] LDCs include those corporations created for lawful business purposes that achieve a public or quasi-public objective.[105] Their certificates of incorporation often describe their mission as reducing unemployment, promoting employment, improving job opportunities, lessening the burdens of government or expanding existing industry in the local community.[106] LDCs also include land banks established pursuant to Article 16 of Not-for-Profit Corporation Law.

LDCs have the power to construct and improve industrial or manufacturing plants for the use of others, issue grants and loans, borrow money, acquire real property from a municipality below market value, enter into contracts, and provide certain tax exemptions in support of its corporate purposes.[107]

Since LDCs qualify as local authorities under Public Authorities Law, they are subject to the reporting requirements of PAAA and PARA; Section VIII of this report provides a comprehensive discussion of public authorities reporting requirements.

104 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 56.
105 *Id.*
106 *Id.*
107 NOT-FOR-PROFIT CORPORATION LAW § 1411 (2019).

B. Local Development Corporations Spending

In 2018, LDCs reported $1 billion in operating expenses, a minor increase of 0.04 percent from 2014 to 2018.[108] The New York City Economic Development Corporation ($794.6 million), the Brooklyn Navy Yard ($66.8 million), and the Governor Island Corporation ($41.8 million) comprise 84.7 percent of the reported operating expenses for 2018.[109] A complete list of LDCs operating expenditures from 2014 to 2018 is included as Exhibit K.[110]

C. Local Development Corporations Debt

LDCs are commonly used as tools to alleviate municipal budget pressures by assuming municipal debt or providing cash infusions to balance budgets.[111] In 2018, LDCs reported $20 billion in outstanding debt.[112] *Table 5*, on the following page, provides LDC debt from 2015 to 2018.[113]

108 Annual Report on Public Authorities, *supra* note 1, at 10. Figure excludes Tobacco Asset Securitization Corporations (TASCs).
109 *Id.* at 10.
110 Exhibit is provided courtesy of the ABO in its 2019 Annual Report.
111 Annual Report on Public Authorities, *supra* note 1, at 57.
112 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).
113 *Id.*

Table 5: Type of LDC Debt from 2015 to 2018

	LDC Debt ($)			
Fiscal Year	**Authority Debt**	**Conduit Debt**	**Other-State Funded**	**Grand total**
2015	9,011,704,336.81	9,281,098,330.31	26,787,128.00	18,319,589,795.12
2016	8,807,838,039.85	11,394,565,801.67	12,753,496.00	20,215,157,337.52
2017	8,422,923,863.19	11,733,780,908.84	12,483,496.00	20,169,188,268.03
2018	8,051,431,543.91	11,922,576,726.76	12,153,496.00	19,986,161,766.67
Change from 2015 to 2018 (%)	-10.7	+28.5	-54.6	+9.1

Build NYC Resource Corporation is the biggest contributor to outstanding debt reported in 2018, rising from $1.1 billion in 2014 to $2.9 billion in 2018.[114] *Table 6* provides the LDCs with the most outstanding debt reported in 2018.[115]

Table 6: Top LDC Debt for 2018

	Type of Debt ($)		
Authority	**Authority Debt**	**Conduit Debt**	**Total**
Build NYC Resource Corporation	-	2,995,456,575.99	2,995,456,575.99
Hudson Yards Infrastructure Corporation	2,723,870,000.00	-	2,723,870,000.00
Monroe County Industrial Development Corporation	-	1,860,548,384.77	1,860,548,384.77
Dutchess County Local Development Corporation	-	1,031,001,803.00	1,031,001,803.00
Town of Hempstead Local Development Corporation	-	522,355,000.00	522,355,000.00
Total	**2,723,870,000.00**	**6,409,361,763.76**	**9,133,231,763.76**

114 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 26.
115 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).

D. Local Development Corporations Financial Assistance

Pursuant to Non-for-Profit Corporation Law § 1411, in furtherance of its authority purposes, LDCs may issue financial assistance in the form of loans, bonds, grants and other negotiable obligations.

i. LDC Loans

LDCs reported issuing $57.4 million in loans during the 2018 fiscal year, a 142.2 percent increase compared with 2017.[116] *Table 7* below provides the total amount of loans issued by LDCs from 2015 to 2018. The Buffalo Urban Development Corporation issued the largest single loan reported, $9.7 million to the development project at Northland Avenue, which will be the location of the Western New York Workforce Training Center.[117] In 2018, 66 LDCs reported to the ABO a cumulative loan debt of $210.8 million.[118]

Table 7: LDC Loans Issued from 2015-2018

Year	2015	2016	2017	2018
Amount of Loans Issued ($)	43,927,267	44,051,337	33,958,406	57,433,820
Number of Issuing LDCs	46	41	42	46

116 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).
117 *Id.* at 57.
118 Annual Report on Public Authorities, *supra* note 1, at 57.

Five LDCs issued 79 percent of the total loans for 2018. *Table 8* provides the loans issued for those LDCs during the 2018 fiscal year.[119]

Table 8: Top LDCs Loans Issued for 2018

Authority	2017 ($)	2018 ($)	Change (%)	Percent of Total (%)
NYC Neighborhood Capital Corporation	1,384,553	23,520,000	+1598.7	40.95
NYC Energy Efficiency Corporation	3,236,335	10,469,085	+223.5	18.23
Buffalo and Erie County Regional Development Corporation	3,267,500	5,133,500	+57.1	8.94
New York City Economic Development Corporation	8,500,000	3,931,890	-53.7	6.85
Albany County Business Development Corporation	2,261,800	2,120,813	-6.2	3.69
Total	**18,650,188**	**45,175,288**	**+142.2**	**78.6**

ii. LDC BONDS

In 2018, LDCs issued bonds totaling almost $959 million, a 72 percent decrease since 2017.[120] *Table 9* illustrates the LDCs with the largest bonds issued in 2015 to 2018. Currently, LDCs have cumulatively $15.6 billion in outstanding bond debt.[121]

119 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).
120 Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).
121 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 57.

Table 9: Top LDC Bonds Issued 2015-2018

Authority	2015 ($)	2016 ($)	2017 ($)	2018 ($)	Total ($)	Change from First Reported Year (%)
Build NYC Resource Corporation	711,076,000	912,902,300	421,845,000	234,461,000	2,280,284,300	-67
Niagara Area Development Corporation	-	11,520,000	9,700,000	165,010,000	186,230,000	+1332.4
Jefferson County Civic Facility Development Corporation	-	11,000,000	-	93,170,000	104,170,000	+747
Dutchess County Local Development Corporation	105,885,000	79,015,237	464,507,459	84,010,000	733,417,696	-20.7
Otsego County Capital Resource Corporation	63,458,000	-	10,500,000	72,550,000	146,508,000	+14.3

iii. LDC GRANTS

In 2018, 31 LDCs reported issuing $55.5 million in grants, a 92 percent decrease compared to total amount issued in 2015. *Table 10* shows the total amount of grants issued by LDCs from 2015 to 2018.[122]

Table 10: Total Amount of Grants Issued by LDCs from 2015 to 2018 ($)

Year	2015	2016	2017	2018
Total	711,640,459	19,550,078	274,539,151	55,468,956

[122] Authorities Budget Office response to Investigations and Government Operations Committee (Oct. 30, 2019).

VIII. STATUTORY REQUIREMENTS OF AUTHORITIES

While public authorities perform important quasi-governmental functions for the benefit of the people of New York, lack of transparency and effective regulations may allow waste and abuse to occur, undermining the public trust. Statutory mandates requiring transparency of their activities is essential in holding public authorities accountable. However, the nature of public authorities is unique; as independent entities created in statute, public authorities are not subject to the many laws that regulate traditional agencies or private companies. To ensure public authorities and their members are acting in the public interest, the State has enacted several statutory mandates to assist with regulating their activities. Public authorities are subject to numerous areas of New York State law, including Public Authorities Law and Public Officers Law, which promote transparency and accountability.

A. REPORTING REQUIREMENTS

Pursuant to Public Authorities Law §§ 2800-2806, state and local authorities are required to submit to the ABO and other government entities detailed annual, budget, independent audit reports as well as other important operational and financial information. The information required is reported in an online application developed and maintained jointly by the Office of the State Comptroller and the ABO, known as the Public Authorities Reporting Information System (PARIS).

Section 2800 of Public Authorities Law requires public authorities to certify and submit an annual report and audit report within 90 days of the end of the fiscal year.[123] The

[123] PUB. AUTH. §§ 2800, 2802 (2019).

annual report must include the authority's operations and accomplishments; financial reports including audited financials; a schedule of outstanding bonds and notes, projects undertaken by the authority; a listing of materials changes; an assessment of internal controls; and, at a minimum, a four-year financial plan.[124] Section 2801 requires state authorities to submit a budget report 90 days prior to the start of the fiscal year; local authorities must file a budget report 60 days prior to the start of the fiscal year.[125] Furthermore, the State Comptroller is required to examine the books and accounts of every authority at least once every five years.[126]

Every financial report submitted pursuant to Public Authorities Law § 2800 must be approved by the authority's board and certified in writing by the CEO and CFO. The certification ensures that, based on the officer's knowledge, the information provided is (a) accurate, correct and does not contain any untrue statement of material fact, (b) does not omit any material fact which would cause the financial statements to be misleading, and (c) fairly presents the financial condition and results of operations of the authority.[127]

The ABO has the authority to "publicly warn and censure authorities for non-compliance" and as noted earlier in the report, while the ABO can suspend authority staff in certain instances, the ABO cannot dismiss, but only recommend the "dismissal of officers or directors, based on information that is [ ] available to the public under law."[128] The ABO periodically issues a report on the public authorities that are non-compliant with reporting requirements, which constitutes an official warning to those authorities on its

[124] *Id.* List provided is not exhaustive.
[125] PUB. AUTH. § 2801 (2019).
[126] PUB. AUTH. § 2803 (2019).
[127] PUB. AUTH. § 2800(3) (2019).
[128] PUB. AUTH. §§ 6(2)(f), (2)(g) (2019).

delinquent list. As of June 30, 2019, 137 public authorities failed to submit its annual report, audit report, and/or budget report for the previous fiscal year.[129] One state authority, Nassau Health Care Corporation, failed to submit all three reports.[130] The delinquent list also includes 30 local authorities, 12 IDAs, and 94 LDCs.[131] The ABO's most recent delinquent authorities list is attached as Exhibit L.

Notably, as the investigation progressed, the investigative team witnessed marked improvements in the activities of several of the previously non-compliant public authorities. Numerous public authorities recognized deficiencies in their public disclosure and informed the Committee they were making strides towards improving their websites and the information publicly accessible on their site.

B. PUBLIC DISCLOSURE

Public authorities law requires each state and local authority to make accessible to the public, via its official or shared website, "its mission, current activities, most recent annual financial reports, current year budget and its most recent independent audit report."[132] In addition, the ABO issued regulation, 19 NYCRR 250 that requires IDAs to post certain project information on their websites.

In light of the importance of public disclosure and transparent reporting of public authority financial and operational information, investigative staff performed a website

129 PUBLIC AUTHORITIES THAT HAVE FAILED TO FILE REPORTS IN THE PUBLIC AUTHORITIES REPORTING INFORMATION SYSTEM AS OF JUNE 20, 2019, AUTHORITIES BUDGET OFFICE (June 30, 2019).
130 *Id.*
131 *Id.*
132 PUB. AUTH. § 2800(b) (2019).

compliance check of 50 randomly selected IDAs. *Table 11* below provides the cumulative results of the compliance review. Exhibit M includes the detailed compliance information for all 50 IDAs selected.

Table 11: Public Disclosure Compliance Review

# of Authorities	Mission Statement	Enabling Statute	By-Laws	Code of Ethics	Operations & Accomplishments Report
Yes	43	28	48	49	27
No	7	22	2	1	23
# of Authorities	List of Board Members	Committees & Members	Executive Management Team	Board Meeting Schedule	Board Meeting Notices
Yes	47	43	42	38	29
No	3	7	8	12	21
# of Authorities	Board Meeting Agendas	Board Meeting Minutes	Annual Budget Report (2019)	Audited Financial Statement	List of Active Projects
Yes	37	49	42	45	29
No	13	1	8	5	21
# of Authorities	Applications for Active Projects	Resolutions for Active Projects	Project Agreements for Active Projects	Uniform Tax Exemption Policy	Uniform Evaluation Criteria Policy
Yes	20	20	18	45	14
No	30	30	32	5	36

As noted, Public Authorities Law § 2800(b), as well as ABO regulations, require public authorities to make publicly accessible on their website certain operational and financial information. The results of the compliance review conducted by investigative staff illustrates insufficient compliance among IDAs.

C. CONFLICTS OF INTEREST

Various sections of New York State law require public authority board members and employees to examine and report conflicts of interest issues that may arise at their respective authority. Section 74 of Public Officers Law prohibits officers and employees of state authorities from having a direct or indirect interest or engage in business or activities that may conflict with their proper discharge of duties.[133] Section 2824(7) of Public Authorities Law requires all public authorities to establish a governance committee responsible for examining ethical and conflict of interest issues.[134] Executive Law § 55 requires board members and officers of state authorities to report to the state inspector general any information concerning undisclosed conflicts of interest by another board member or employee relating to the activities of the authority.[135] Not-for-Profit Corporation Law requires not-for-profit entities, including LDCs, to adopt a conflict of interest policy.[136] Additionally, the ABO issued a Recommended Governance Practice for conflicts of interest, encouraging all public authorities to adopt a written conflict of interest policy to ensure its board members and employees act in the authority's best interest if such a situation were to arise.[137]

A conflict of interest occurs when the financial, familial, or personal interests of a public authority board member or employee comes into actual or perceived conflict with their responsibilities to the authority.[138] The purpose of such a policy is to protect the

133 PUB. OFFICERS LAW § 74 (2019).
134 PUB. AUTH. § 2824(7) (2019).
135 EXEC. LAW § 55(1) (2019).
136 NOT-FOR-PROFIT CORP. LAW § 715(a) (2019).
137 AUTHORITIES BUDGET OFFICE, CONFLICT OF INTEREST POLICY FOR PUBLIC AUTHORITIES (2019).
138 *Id.*

authority's interest when it is contemplating entering into a transaction or agreement that may potentially benefit the private interest of a board member or employee.[139] Instituting a conflict of interest policy is important in assuring that the public authority's interest prevails over the personal interest of the board member or employee, and therefore assuring the public authority's responsibility to the public benefit.

Of the 143 authorities investigated by the Committee, 35 reported a board member or employee having at least one conflict of interest since January 1, 2016. In total, the 35 authorities reported 199 conflicts of interest. *Table 12* provides the number of conflicts of interest reported by type of public authority.

Table 12: Reported Conflicts of Interest by Type of Authority Since January 1, 2016.

Type of Authority	**Number of Authorities Reporting**	**Number of Conflicts of Interests Reported**
State	1	2
Local	5	23
IDA	28	169
LDC	1	5
Total	**35**	**199**

The following 22 authorities failed to explicitly disclose to the Committee whether (or not) a board member of employee reported a conflict of interest since January 1, 2016.

- Buffalo Water Board;
- Cattaraugus County Industrial Development Agency;
- Chenango Industrial Development Agency;
- City of Rensselaer Industrial Development Agency;
- Cohoes Industrial Development Authority;
- Corinth Industrial Development Agency;
- Franklin County Industrial Development Agency;
- Islip Industrial Development Agency;
- Madison County Industrial Development Agency;
- Montgomery County Industrial Development Agency;
- Mount Pleasant Industrial Development Agency;
- New York State Bridge Authority;

139 *Id.*

- New York State Energy Research and Development Authority;
- Niagara Frontier Transportation Authority;
- Otsego County Development Corporation
- Power Authority of the State of New York;
- Southern Tier Economic Growth, Inc.;
- Suffolk County Industrial Development Agency;
- Town of Riverhead Community Development Agency;
- Village of Spring Valley Urban Renewal Agency;
- Westchester County Industrial Development Agency; and
- Yonkers Industrial Development Agency.

Implementing and enforcing a substantive conflict of interest policy is essential to ensuring public authorities' board members and employees are acting ethically and in the best interest of the community they serve. Importantly, only 20 of the 50 IDAs selected for the public disclosure compliance review have publicly accessible conflicts of interest policies on their website. The Committee strongly encourages all public authorities to evaluate their conflict of interest policies, immediately adopt any substantive modifications, and subsequently publicly post its policies on its website. Exhibit M provides a list of the 50 authorities reviewed for public disclosure, including a publicly accessible conflicts of interest policy.

D. WHISTLEBLOWER ACCESS AND ASSISTANCE

Public Authorities Law § 2986 requires the ABO, in consultation with the Office of the Attorney General, to develop a whistleblower access and assistance program for state and local authorities. The program is designed to provide "board members, officers, and staff of public authorities with a confidential means to report credible allegations of misconduct, wrongdoing, or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation."[140] State and local authorities are required to adopt and adhere to the ABO's whistleblower protection policy and procedures.[141] Of the 143 authorities investigated, 130 had publicly accessible whistleblower policies and procedures on their website. However, 3 of the 130 authorities whistleblower policies were buried within their code of ethics or miscellaneous policies. The Committee recommends to the following authorities uploading a distinct whistleblower policy document on its website: Delaware County Industrial Development Agency, Erie County Industrial Development Authority, and Ulster County Resource Recovery Agency. Additionally, while the Yonkers Industrial Development Agency has a whistleblower policy on its website, the Committee finds the policy insufficient, and recommends the Yonkers IDA expand upon its policy. Its current policy is included within the IDA's code of ethics policy, comprises only one sentence, and is vague: "it is the policy of the [Yonkers IDA] to afford certain protections to individuals who in good faith report violations of the [Yonkers IDA's] Code of Ethics or other instances of potential wrongdoing within the [IDA]." The Yonkers IDA should outline the protections of whistleblowers and its policies for when it receives a tip of alleged wrongdoing or misconduct.

The average "clicks" to reach the whistleblower policy from the home page was 2.4 for the 130 public authorities: 2.2 for state authorities, 2.7 for local authorities, 1.2 for IDAs and 2.3 for LDCs.

[140] AUTHORITIES BUDGET OFFICE, WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM (2019).
[141] *Id.*

The 12 public authorities who do not have a reasonably publicly accessible whistleblower policy on its website are:

- Brooklyn Navy Yard Development;
- Buffalo Water Board;
- Corinth Industrial Development Agency;
- North Greenbush Industrial Development Agency;
- Port Jervis Industrial Development Agency;
- Southern Tier Economic Growth, Inc.;
- Suffolk County Industrial Development Agency;
- Suffolk County Judicial Facilities Agency;
- Sullivan County Partnership;
- Tompkins County Development Corporation;
- Village of Groton Industrial Development Agency; and
- Village of Spring Valley Urban Renewal Agency.[142]

In light of the importance of monitoring the actions of public authorities to ensure they are acting in the best interests of the public, the Committee strongly encourages all public authorities to develop and adopt a substantive whistleblower protection policy, and make it reasonably accessible to the public by placing it on their authority web homepage. Exhibit M provides a list of the 50 authorities reviewed for public disclosure, including a publicly accessible whistleblower policy.

IX. CASE STUDIES

In an effort to delineate best practices for Industrial Development Agencies, the Committee chose to evaluate two case studies in New York State: the Medline Industries, Inc. ("Medline") warehouse project in the Town of Montgomery, Orange County, and the Green Acres Mall project in the Town of Hempstead, Nassau County. For both case studies,

[142] Investigative staff performed a reasonable and diligent search of public authorities' websites to locate whistleblower policies.

the Committee issued information and document requests to the pertinent parties, including the company requesting financial assistance and the relevant IDA, as well as other parties that have an interest in the project. The goal of the case studies is to recognize best practices as well as expose fraud and waste that may accompany IDA practices by gaining a comprehensive understanding of how these deals are made.

A. MEDLINE

Medline, based in Illinois, is the largest privately held manufacturer and distributor of medical supplies in the United States. Medline currently has 16 distribution centers across the United States, including, up until recently, one in the Town of Wawayanda near Middletown, Orange County, New York. In 2018, Medline reached over $10 billion in company sales, and is currently ranked number 32 on Forbes' 2018 list of largest privately held companies in America.

On January 8, 2019, Medline submitted an application to the Town of Montgomery Industrial Development Agency, requesting financial assistance to build a new warehouse in the form of a 15-year PILOT program and a sales tax exemption.[143] The project proposed building a 1.3 million sq. ft. warehouse on 188 acres of land in the Town of Montgomery. The proposed new warehouse would replace Medline's 500,000 sq. ft. warehouse near Middletown, Orange County, which the company claims it has outgrown.[144] The property tax breaks for Medline's current warehouse near Middletown expired in 2019.

[143] Medline Industries Inc. application for PILOT to Town of Montgomery Industrial Development Agency (Jan. 8, 2019).

[144] *Id*. Medline refers to its current warehouse in Middletown, NY, but the exact location of the warehouse is in Wawayanda, NY.

Medline's proposed project in Montgomery, Orange County, was chosen as a case study because it serves as an example of how financial incentives can be abused to the detriment of local taxpayers. Additionally, the Medline case study demonstrates a clear and apparent need for economic development agencies, including IDAs, to better scrutinize incentive applications. In light of public objections and community concern following Medline's IDA application, Senator Skoufis, as Chair of the Senate Investigations and Government Operations Committee, opened an investigation into Medline's request for a new PILOT program.[145] On behalf of the Committee, investigative staff issued Medline, the Town of Montgomery IDA, the Orange County IDA, and the Orange County Partnership, requests for information and documents relating to Medline's activities in New York State. On October 7, 2019, one day before Medline was required to respond, Medline announced it would withdraw its application for $17 million in property tax breaks from the Town of Montgomery IDA; Medline also withdrew its request for $8 million in sales tax exemptions. Nevertheless, the warehouse project moved forward without the financial incentives.

Medline has a history of looking to lower its taxes by applying for financial assistance from economic development agencies when previous incentives come due to expire. In 2014, Medline threatened to leave Illinois, where it has been headquartered for over 100 years, and relocate 714 jobs unless it received $18 million in "edge" tax credits from the Illinois State Commerce Department. The tax credits it received in 2014 were the fourth since 2001, including $12 million over the past five years.[146]

[145] Investigation announced on September 3, 2019.

[146] Cahill, Joe, *Medline Threatens to Move, and our Governor Caves – again*, CHICAGO BUSINESS (Dec. 3, 2014).

Prior to its most recent PILOT application in Montgomery, the Orange County IDA approved a 10-year PILOT in 2008 for Medline to build its warehouse near Middletown; in total, Medline received a real property tax exemption of approximately $2,750,000 and a sales tax exemption of approximately $840,000. Medline's PILOT from the Orange County IDA expired in 2019, the same time Medline sought a new location and new round of tax breaks in the Town of Montgomery. At the expiration of the PILOT, Medline was due to pay their full assessment-based property taxes. The fact that Medline applied for a new facility and tax incentives to build it just as existing tax incentives were ending brings into question whether Medline was again attempting to lower its taxes in the guise of development.

The circumstances surrounding Medline's application to the Town of Montgomery IDA brings the actions of Medline and local economic development officials into question. Initially, Medline was seeking tax exemptions for its new Montgomery facility from the Orange County IDA. Medline submitted an application for financial assistance on June 6, 2018, requesting approximately $7,556,250 in sales tax exemptions and $12,446,515 in real property tax exemptions. However, after months of discussions, Medline withdrew its application from the Orange County IDA after determining that working with the Town of Montgomery IDA, rather than the Orange County IDA, would "provide 'one-stop shopping' and reduced costs."[147] The Committee received this correspondence as part of its document request to the Orange County IDA. It is included as Exhibit N. At the same time Medline's Town of Montgomery IDA application was pending, the Town of Montgomery planning board was considering the project's local approvals. The Committee

[147] Email from Eric Gerstein, Medline, Vice President of Tax and Finance to Vincent Cozzolino, The Accelerator, Orange County IDA (Jan. 12, 2019).

sought to ascertain whether "one-stop shopping" suggested there was a connection between local approvals and the IDA's consideration of financial incentives, a collaboration which would prove unethical, if not illegal. No parties that received a document request would or could elaborate on what "one-stop shopping" meant in the context of Medline's communications.

The rationale for IDA's to provide tax incentives is to spur economic development that would not occur otherwise, providing an overall benefit for the community that would exceed the cost of the tax breaks. According to Medline's own calculations provided to the IDA in their application, the company estimated that if they constructed the proposed Montgomery warehouse without any tax incentives from the IDA, they would make $74.8 million in profits in the first year.[148] The same application states that, if the IDA provided a package that would include $17,608,653 in property tax exemptions and $8,043,750 in sales tax exemptions, or a total of $25,652,403 in tax breaks, the company stood to make a first year profit of $76.8 million. Given that Medline itself calculated that a new Montgomery facility built without any tax benefits would be profitable, this brings into question the need to provide the company with over $25 million in tax breaks, which according to the company would only lead to an increase in profits of $2 million.

On numerous occasions, and in its applications, Medline warned the Orange County IDA and the Town of Montgomery IDA that if it did not receive the financial assistance it was seeking, it would pursue other site locations in New Jersey and Pennsylvania, therefore relocating jobs outside of New York.[149] Eric Gerstein, Medline's Vice President of Tax,

[148] Medline Industries Inc. application for PILOT to Town of Montgomery Industrial Development Agency (Jan. 8, 2019).
[149] *Id.*

Treasury & Risk, stated at the Orange County IDA's July 10, 2018, public meeting that "without [financial incentives] unfortunately [the warehouse] might make more sense in New Jersey."[150] In the Committee's opinion, neither the Town of Montgomery IDA nor the Orange County Partnership properly scrutinized the application to determine if Medline's threats to leave New York State were serious or hollow. The Orange County Partnership provides business development resources to clients including site selection assistance, financing options, employment training, and marketing. When asked, neither organization provided the Committee with documentation of attempts to ascertain what incentives, if any, were being offered to Medline by New Jersey or Pennsylvania. Further, the Town of Montgomery IDA could not provide the Committee with any documentation regarding investigative work into Medline's alleged interest into out-of-state sites.[151] Additionally, the Orange County Partnership stated it did not attempt to contact a single real estate professional in New Jersey or Pennsylvania, or otherwise investigate the validity of Medline's threat to relocate.[152]

At the request of local Medline representative R.J. Smith, Senator Skoufis took a meeting with Mr. Smith on September 11, 2019, to discuss the Senator's opposition to the proposed PILOT. Mr. Smith noted "representations were made" to Medline regarding a PILOT, implying the company was assured by stakeholders that financial incentives would be approved. The Committee inquired with all parties whether any representations were made to Medline regarding a PILOT; each either offered a denial or refused to answer,

150 *In the Matter of Medline Industries, Orange County Industrial Development Agency* (July 10, 2018) (statement of Eric Gerstein, Vice President of Tax, Treasury & Risk, Medline).
151 Response from Town of Montgomery Industrial Development Agency to New York State Senate Committee on Investigations & Government Operations (Sept. 27, 2019).
152 Response from Orange County Partnership, Inc. to New York State Senate Committee on Investigations & Government Operations (Oct. 8, 2019).

calling into question how and why representations were made to Medline and by whom, particularly provided the fact that the Town of Montgomery IDA had neither taken any votes nor made any public comments to support a PILOT.

The Orange County Partnership was further asked whether it communicated with the Town of Montgomery IDA or its board members outside of public meetings regarding Medline's PILOT application. The Orange County Partnership indicated its President and CEO, Maureen Hallahan, had two conversations: (1) regarding board vacancies and the number of votes required for board action and (2) noting the Committee's information and document request. Nevertheless, in the aftermath of Senator Skoufis' inquiry into Medline's PILOT application, Ms. Halahan writes, "I'm hearing that the Montgomery IDA is still supportive."[153] The Committee received this correspondence as part of its document requests; it is included as Exhibit O. This statement indicates the Orange County Partnership was receiving private, direct or indirect assurances from the Town of Montgomery IDA regarding Medline's PILOT application despite no formal decision being made by the IDA board.

If Medline had chosen to abandon its proposed project in Montgomery, it stood to lose $10 million in Excelsior Jobs Tax Credits.[154] Additionally, Medline already purchased the project site for $17,802,000, on September 25, 2018. Abandoning Montgomery and selling the real estate would likely result in a significant monetary loss for Medline given the costs of selling its Montgomery property, the hiring and training of hundreds of new employees, and forfeiture of already-issued and –entitled tax breaks. Moreover, if Medline

153 Email from Maureen Halahan, Orange County Partnership, to Dmitry Dukhan, Medline and Kaitlyn Perez, Orange County Partnership (Sept. 9, 2019).
154 Response from Orange County Partnership, Inc. to New York State Senate Committee on Investigations & Government Operations (Oct. 8, 2019).

chose to leave Montgomery, it would forfeit $7 million in property tax breaks over the first ten years from an automatic 485-b exemptions. It is the opinion of the Committee that Medline used the threat of relocating New York State jobs to pressure incentive approvals that ultimately were unnecessary, as proven by the fact that the PILOT and sales tax exemption were withdrawn and yet the project is nevertheless moving forward.

As previously mentioned, as part of the case study, the Committee issued information and document requests to the three pertinent economic development stakeholders, the Orange County IDA, the Orange County Partnership, and the Town of Montgomery IDA. All three organizations were significantly involved in the progression of Medline's objective of receiving financial assistance for its new warehouse.

Orange County Industrial Development Agency

The Orange County IDA proved to be the most cooperative party the Committee sought information from regarding the Medline PILOT application. As previously discussed, Medline was originally in discussions with the Orange County IDA prior to moving on to the Town of Montgomery IDA. The Orange County IDA facilitated meetings with stakeholders in the Town of Wallkill, Town of Montgomery, and Empire State Development. Of note, in one such meeting with Empire State Development, Medline was advised to "please use this sentence today" … "Medline has interest in retaining and expanding operations in Orange County pending competitive NYS incentives and IDA Pilot. The Company has competing interest from [New Jersey] though Wallkill could be our first choice contingent on NYS incentives."[155]

Orange County Partnership

155 Email from Vincent Cozzolino, Managing Director, The Accelerator, Orange County IDA to Eric Gerstein, Medline (June 5, 2018).

The Orange County Partnership (OCP) assisted Medline with finding and applying for financial incentive programs offered at the state and local level, but claims it did not specifically direct Medline as to which economic development agencies to apply for tax incentives.[156] OCP provided the following services to Medline: site searches; telephone calls to elected officials to inform them that Medline was anticipating moving into their jurisdiction; advising Medline of available incentive programs and making telephone calls or arranging for meetings with appropriate contacts; and advising Medline of available local resources and professional consultants.[157] When asked at what point OCP began discussions with Medline regarding its application for financial assistance to build a new warehouse, OCP responded November 2018.[158] However, correspondence the Committee received during its investigation indicate that OCP and Medline were in discussions as early as May 2018; Maureen Halahan of OCP informed Medline that "as the center of economic development, [OCP] is able to shepherd [Medline] through this process from site-selection, community outreach, incentives, workforce needs, public relations etc."[159]

Notably, OCP was heavily involved in the public relations campaign surrounding Medline's application for financial assistance and local approvals. On numerous occasions, Medline representatives asked OCP to bring members to public hearings to brandish local support for their project. On August 3, 2019—as a result of "opposition [ ] getting momentum"—Medline instructed OCP to gather members to pack the public meeting held on August 13, 2019, at the Valley Central High School Cafeteria, seeking "50 employees,

156 Response from Orange County Partnership, Inc. to New York State Senate Committee on Investigations & Government Operations (Oct. 8, 2019).
157 *Id.*
158 *Id.*
159 Email from Maureen Halahan, Orange County Partnership to Dmitry Dukhan, Medline (May 14, 2018).

60-80 residents and other supporters and 30-40 additional businesses."[160] This correspondence, received by the Committee in its documents requests, is included as Exhibit P. On August 7, 2019, Medline asked OCP to request all members to help with support letters for their project, wanting 30-40 more letters from "our friends at the partnership."[161] Again, on August 21, 2019, Medline requested OCP to collect 40-50 more letters of support from area businesses.[162] Additionally, Maureen Halahan of OCP reached out to Town of Montgomery Supervisor Rod Winchell requesting direction on arranging meetings for Medline in an effort to assist with grassroots public relations outreach. Town Supervisor Winchell then arranged for a meeting between Maureen Halahan, Medline representatives, the Town of Montgomery Police Chief, and himself.[163]

Importantly, OCP, Medline, and the Orange County Government, engaged in discussions regarding garnering public support for Medline's proposed warehouse in Montgomery.[164] Bill Fioravanti, Economic Development Director for Orange County, held discussions with representatives from Medline regarding hiring a PR professional, preferably an individual that is locally known and respected, "to handle the messaging [and] the media[.]"[165]

160 Email from Dmitry Dukhan, Medline, to Maureen Halahan, Orange County Partnership (Aug. 3, 2019).
161 Email from Dmitry Dukhan, Medline, to Maureen Halahan, Orange County Partnership (Aug. 7, 2019).
162 Email from Dmitry Dukhan, Medline, to Maureen Halahan, Orange County Partnership (Aug. 21, 2019).
163 Email from Maureen Halahan, Orange County Partnership to Rod Winchell, Supervisor, Town of Montgomery Supervisor (Jan. 31, 2019.)
164 Email from Bill Fioravanti, Economic Development Director for Orange County, to Nick Fitzpatrick, Aden Brook (Jan. 11, 2019).
165 *Id.*

In response to the Times Herald Record reporting of Senator James Skoufis' public opposition of Medline's application for financial assistance, Medline representatives asked OCP staff and Orange County officials how the Orange County Economic Development Office and the OCP were going to "push back."[166]

Town of Montgomery Industrial Development Agency

In light of Medline's abrupt switch from the Orange County IDA to the Town of Montgomery IDA, due to its appeal of "one-stop shopping," the Committee was especially interested in the progression of Medline's application for financial assistance as well as the practices and policies of the Town of Montgomery IDA.

The Committee requested on what date the Town of Montgomery IDA began discussions with Medline regarding its application for financial assistance. In its response, the Town of Montgomery IDA stated "on or about January 8, 2019 (date of application)."[167] However, from emails the Committee received as part of its investigation, the Town of Montgomery IDA and Medline began discussions in November 2018, as evident from emails between Maureen Halahan of the Orange County Partnership, Eric Gerstein of Medline, F. Edward Devitt, then-Chairman of the Town of Montgomery IDA, and Joseph Joy, CEO of the Town of Montgomery IDA.[168]

[166] Email from Larry Wolinsky, Of Counsel, Jacobowitz and Gubits, LLP, to Richard Smith, Rand Commercial, and Dmitry Dukhan, Medline (Aug. 16, 2019). *See also* Email from Richard Smith, Rand Commercial, to Maureen Halahan, Orange County Partnership, and Bill Fioravanti, Orange County Government (Aug. 16, 2019).

[167] Response from Town of Montgomery Industrial Development Agency to New York State Senate Committee on Investigations & Government Operations (Sept. 27, 2019).

[168] Email from Eric Gerstein, Medline, to Maureen Halahan, Orange County Partnership, Ed Devitt, Chairman, Town of Montgomery IDA, and Joseph Joy, CEO, Town of Montgomery IDA (Nov. 1, 2018).

Of the 14 requests included in the Committee's letter, the Town of Montgomery IDA failed to provide substantive responses for the majority of requests for information and documents. Unlike the Orange County IDA and the OCP, the Town of Montgomery IDA was significantly less inclined to assist the Committee in its investigative case study.

B. GREEN ACRES

On August 15, 2014, Macerich, the Green Acres Mall Developer, applied for two separate PILOT agreements for consideration by the Town of Hempstead Industrial Development Agency.[169] The first PILOT application related to capital improvements to the already existing Green Acres Mall ("Mall"). The second was for new construction of a two-level shopping center, the Green Acres Commons ("Commons") to be built adjacent to the Mall. Both PILOT programs would allow the Town of Hempstead IDA to assume title of the properties, while collecting PILOT payments from Macerich, which would be redistributed to the affected tax jurisdictions.

Green Acres Mall Project

In its application for financial assistance, Macerich sought a PILOT as well as sales tax and mortgage recording tax exemptions over a 15-year period. The PILOT agreement entailed a 10-year period with a 5-year option expiring on December 31, 2026, and December 31, 2031, respectively. The sales tax exemption was for $76,930,000 over 15 years, expiring December 31, 2030. The proposed project included making $46.2 million

[169] Response from John E. Ryan, Counsel for Town of Hempstead Industrial Development Agency to New York State Senate Investigations and Government Operations Committee (Nov. 13, 2019) (hereinafter "Town of Hempstead IDA Response to NYS IGO Committee (Nov. 13, 2019)") (on file with author).

in capital investments over the following 15 years and $31 million in tenant improvement costs. Macerich anticipated the total project costing approximately $79 million. Macerich stated the PILOT program was necessary to "enhance the visitor experience, improve the property's profile, and ensure a feeling of safety around the property."

On August 27, 2014, the Town of Hempstead IDA Board approved inducement resolutions for both the Mall and Commons PILOT projects.[170] On December 4, 2014, the Town of Hempstead IDA announced a public hearing to discuss the Mall PILOT application, which was subsequently held on December 15, 2014.[171] Notification of the public meeting was sent via certified mail to the Nassau County Executive, Town of Hempstead Supervisor, Mayor of the Village of Valley Stream, Superintendent of Valley Stream School District 30 and Superintendent of the Central High School District.[172] Additionally, the IDA published a notice in Newsday, posted notice in two locations at the Town of Hempstead Town Hall, contacted all taxing jurisdictions and posted the notice on the IDA website.[173] With the exception of IDA officials and a court reporter, no one attended the public meeting.[174]

On December 17, 2014, the Town of Hempstead IDA Board approved the Mall PILOT agreement, which provided for the following PILOT payments to District 30, the Town of Hempstead and the Village of Valley Stream.[175]

170 *Id.*
171 *Id.*
172 *Id.*
173 *Id.*
174 *Town of Hempstead Industrial Development Agency and Valley Stream Union Free School District 30: Green Acres Mall PILOT Payments,* OFFICE OF THE NEW YORK STATE COMPTROLLER (December 2017) (hereinafter "*Green Acres Mall PILOT Payments* report").
175 Response from Cory Scott, Senior Vice President, Macerich to New York State Senate Investigations and Government Operations Committee (Nov. 1, 2019) (hereinafter "Macerich Response to NYS IGO Committee (Nov. 1, 2019)") (on file with author).

General Tax Year	Total Pilot Payment Per Year ($)
2017-2021	$13,700,000.00
2022-2026	$14,500,00.00
2027	$15,675,676.00
2028	$16,077,616.00
2029	$16,489,863.00
2030	$17,176,940.00
2031	$17,892.646.00

In its application for the Green Acres Mall Project, Macerich stated that when fully leased the new mall would create 355 full-time jobs in the first year and 570 full-time jobs by the second year. The application also stated the new mall would create 535 direct jobs in the Town of Hempstead when fully leased.

The agreement was set to expire on December 31, 2026, however the agreement permitted an extension; the continuation of the project for the remaining five years was contingent upon the continued job compliance commitments Macerich agreed to in its Lease Agreement with the IDA. As part of both PILOT programs, Macerich promised to create 355 full-time jobs in the first year and 570 by the end of the second year.

Green Acres Commons Project

The Commons IDA application sought a PILOT as well as sales tax and mortgage recording tax exemptions over a 15-year period. In the application, Macerich noted that the project would not be feasible if it did not secure the financial benefits from the Town of Hempstead IDA. The PILOT agreement entailed a 10-year period with a 5-year option expiring on December 31, 2026, and December 31, 2031, respectively. The sales tax exemption was for $27,000,000 over 3 years, expiring June 1, 2018. The anticipated total project cost was $83.7 million.

On April 8, 2015, the Town of Hempstead IDA announced a public hearing to discuss the proposed Commons PILOT program, which was subsequently held on April 21, 2015. The IDA followed the same notification procedures as it did for the proposed Mall PILOT program hearing.[176] Again, with the exception of IDA officials and a court reporter, no one attended the meeting.[177] A day after the public meeting, the IDA Board approved the Commons PILOT agreement, which provided for the following PILOT payments to District 30, the Town of Hempstead and the Village of Valley Stream throughout the 15-year period.[178]

General Tax Year	Total Pilot Payment Per Year ($)
2017	$440,000.00
2018	$808,000.00
2019	$1,254,000.00
2020-2021	$1,700,000.00
2022-2026	$1,800,000.00

In its application for the Green Acres Commons Project, Macerich stated that, over the construction period, 475 direct full-time equivalent workers and 225 indirect and induced full-time workers, with an average annual salary of $62,000. The application also noted that the existing mall would retain its current 2,774 full-time employees.

The agreement was also set to expire on December 31, 2026, however the Lease Agreement included an extension clause; the continuation of the project for the remaining five years was contingent upon the continued job compliance commitments.[179]

176 Town of Hempstead IDA Response to NYS IGO Committee (Nov. 13, 2019).
177 *Green Acres Mall PILOT Payments* report at 3.
178 *Id.*
179 Macerich Response to NYS IGO Committee (Nov. 1, 2019).

Prior to the 2016-2017 fiscal year, District 30 officials were notified of the PILOT programs, which would affect the District's tax revenue. Importantly, District 30 shares PILOT revenue with the Central High School District. While preparing the 2016-17 budget, District 30 officials were informed that it would receive approximately 72.25 percent of the Mall PILOT payments and 63 percent of the Commons PILOT payments.[180] However, the former Assistant Superintendent of Business advised the District Board to budget for approximately 50 percent of the Mall PILOT, with the difference in expected revenues for the 2016-17 fiscal year to be funded by the tax levy.[181] This recommendation of 50 percent was based upon a previous, unrelated PILOT agreement.[182] District 30 only budgeted to receive $3.2 million for the 2016-17 fiscal year, but ultimately received $5 million in PILOT payments for the Mall and Commons projects.[183] The miscalculation resulted in District 30 realizing $1.8 million more in revenue than budgeted.[184] The Central High School District budgeted $3.5 million in PILOT payments, but received $5.3 million, realizing $1.8 million in additional PILOT revenue.[185] As a result of District 30 and Central High School District's miscalculations, they levied $3.6 million more in taxes than necessary.[186]

During the first year of the PILOTs (2016-2017), property taxes increased significantly in the affected tax jurisdictions, including Districts 30, 13, and 24, due to the indirect impact of the PILOT payments on the funding of the school districts.[187] While a

180 *Green Acres Mall PILOT Payments* report at 6.
181 *Id.*
182 *Id.*
183 *Id.* at 9.
184 *Id.*
185 *Id.*
186 *Id.*
187 *Green Acres Mall PILOT Payments* report at 5.

portion of the unanticipated increase is attributable to inaccurate PILOT estimates made by District 30 and Central High School District officials, the increase is also a result of factors such as increases to the tax levy and shifts in the proportion of property taxes paid to the school districts.[188] Due to the Mall and Commons PILOT projects, the affected tax jurisdictions received approximately $6.5 million in less revenue compared to the previous year.[189]

On January 19, 2017, the Town of Hempstead IDA held a public hearing to discuss possibly revoking the PILOT agreements. About 700 community members attended the hearing, many of which repeatedly expressed concerns that Macerich was not meeting its employment benchmarks for construction and full-time jobs, as it promised in the agreements. As a result of this public concern, the IDA investigated Macerich's employment figures and concluded that Macerich had grossly misstated the number of both temporary construction jobs and permanent, full-time jobs.

Due to the failure to create jobs and the significant increase in property and school taxes in 2016, members of the affected communities held the Town of Hempstead Board responsible, demanding action on their part to address the increase.

The Executive Director of the IDA proceeded to request employment records from Macerich; the company replied that only 3 vendors responded to its inquiry of employment numbers, reporting only 45 employees. Macerich did not provide any additional information or proof to the IDA with regards to the construction jobs or whether the existing mall retained its 2,774 full time jobs. In April of 2017, the Town of Hempstead

[188] *Id.*
[189] *Id.*

IDA Board subsequently voted 5-0 to revoke the PILOT agreement for the Mall for failing to fulfill job commitments.

In response, Macerich sued the IDA, alleging they had met the promised job benchmarks. Despite the lack of information provided to the Town of Hempstead IDA regarding performance benchmarks, in February of 2018, Supreme Court Judge Timothy Driscoll found that Macerich had met its required job benchmarks, therefore finding that the Town of Hempstead IDA did not have the proper basis to revoke the Mall PILOT.

The Green Acres Mall and Commons PILOT projects serve as an example of the impacts IDA projects can have on a community if the financial assistance issued is not property scrutinized at the appropriate time. While School District 30 officials failed to accurately determine its budget in light of the PILOT agreements, the Town of Hempstead IDA neglected to properly investigate the proposed project prior to its approval. The Town of Hempstead IDA passed inducement resolutions for the Mall and Commons PILOT projects prior to receiving a cost-benefit analysis.[190] Additionally, the Town of Hempstead IDA does not have a policy requiring the review of direct and/or indirect property tax impacts.[191] Without a thorough review of the direct and indirect impacts a PILOT agreement can have on the affected tax jurisdictions tax rate, programs that may negatively affect a community may ultimately be approved.[192] As public authorities, IDAs are created to serve communities by increasing its economic welfare and promoting growth. The Committee strongly encourages the Town of Hempstead IDA, as well as all other IDAs, to

190 *Id.* at 4. *See also* Town of Hempstead IDA Response to NYS IGO Committee (Nov. 13, 2019).
191 *Green Acres Mall PILOT Payments* report at 5.
192 *Id.*

develop and implement practices that safeguard the public interest and prevent the abuse of public funds.

The Green Acres case study further demonstrates the need for all IDAs to properly and systemically track verifiable employment data on its own – and not be subject to the whims of an applicant's – or their vendors' – reporting.

Lastly, this case study highlights the significant need for the Legislature to re-examine whether existing notice requirements are adequate or effective; at both the December 15, 2014, and April 20, 2015, hearings on the projects, no one from the public attended, which community members attribute to insufficient notice. The Committee recommends amending current procedures to ensure communities and elected officials receive more robust notification of major actions and public hearings. With more adequate outreach, Town of Hempstead residents and elected officials may have been able to voice their concerns prior to the issuance of the two PILOTs – not after.

X. INVESTIGATIVE FINDINGS & LEGISLATIVE RECOMMENDATIONS

While public authorities play a significant role in assisting the State with providing essential services to the public, their unique niche between public agencies and private entities restricts the extent of oversight, accountability and transparency in their actions. As the State increasingly relies on public authorities to provide essential government functions to the public, including wholly funding and managing crucial infrastructure projects, the outstanding debt of public authorities continues to grow. In 2018, public authorities reported over one-quarter of a trillion in outstanding debt, approximately $282.1

billion, an 8 percent increase since 2014.[193] Public authorities are empowered to contract debt and issue financial assistance without public approval, bypassing constitutional limits on state debt.[194]

The State's extensive reliance on public authorities is problematic due to insufficient statutory mandates that scrutinize their financial and operational activities. Referred to as the "shadow government," public authorities are often not subjected to sufficient public scrutiny, creating questions about whether the interests of the communities they serve are being supported. It is the Committee's opinion that the standards of accountability and transparency of public authorities need to be strengthened to ensure public authorities are acting within their designed purpose: to serve the people of New York State.

Over the course of the investigation, the investigative team identified several deficiencies in the statutory mandates of public authorities, which ultimate result in insufficient oversight of public authorities' activities. Heading into the 2020 Legislative Session, the Committee recommends Members of the Legislature develop and pursue reforms that seek to better protect taxpayer interests. Additionally, given the symbiotic nature of accountability and transparency, public authorities can make vital adjustments to their practices immediately. The recommendations discussed in this section aim to increase accountability and transparency of public authorities.

The Committee urges the full Legislature and all types of public authorities to strongly consider the recommendations identified, many of which can be proactively incorporated into current practices.

193 ANNUAL REPORT ON PUBLIC AUTHORITIES, *supra* note 1, at 9, 19.
194 NY Const art X, § 5.

Recommendations relate to the following aspects of public authorities:

A. Inadequate Statutory Oversight

B. Accountability of Public Authorities

C. Insufficient Transparency

D. Insufficient Resources for Authorities Budget Office

E. Public Authorities Board Members Oversight

F. State Authority Board Vacancies

G. Industrial Development Agencies Reform

A. INADEQUATE STATUTORY OVERSIGHT

Public authorities annually invest billions of dollars in economic development projects each year, primarily in the form of grants, loans or tax credits. While public authorities are designed to offer financial incentives to stimulate economic growth, it is difficult to evaluate the extent and effectiveness of initiatives because oversight is spread across several State entities, including the ABO and the State Comptroller. Moreover, given the substantial amount of money invested each year, it is also difficult to ascertain the benefactors of assistance and determine whether the State is receiving an adequate return on investment, typically in the form of new or retained jobs. Examining public authorities' financial activities is crucial in preventing abuse of public funds. The Committee encourages the full Legislature to develop legislation that improves existing statutory oversight of public authorities. Monitoring investments in economic development projects is essential to understanding the efficiencies and effectiveness of financial incentives, enabling public authorities to better evaluate potential projects and serve their communities.

Industrial Development Agencies

IDAs are formed by the State at the request of a particular municipality for the benefit of such municipality. IDAs function to promote the economic welfare, business opportunities and prosperity of the communities they serve. The actions of IDAs, including issuing bonds or entering into PILOT agreements, directly affect economic interests of municipalities where they are located. Currently, there are 109 active IDAs in New York State; only the ABO and the State Comptroller have the authority to examine the operations and finances of IDAs. While the ABO and the State Comptroller act to safeguard the public interest, their resources and efforts encompass all IDAs within the State. Thus, in order to protect public interests and prevent fraud and abuse of public funds, the Committee recommends amending General Municipal Law to permit County Comptrollers to audit IDAs located within their municipality.

Local Development Corporations

Local development corporations (LDCs), as well as other types of private organizations, are frequently used by local governments as a means to indirectly finance local government operations and projects. Audits performed by the State Comptroller have exposed that LDCs have been used to avoid constitutional or statutory restrictions that apply to projects directly undertaken by a local government. While LDCs are established as distinct entities separate from a local government, as a practical matter, they often function as instruments of the local government.

Pursuant to General Municipal Law § 34, the State Comptroller is able to examine the finances and activities of every municipal corporation, industrial development agency, district, fire company or agency. The State Comptroller does not have the authority to audit LDCs and other similar types of private organizations, even when they are in the control of a local government.[195] Instead, the Comptroller may only examine the relationship between the local government entity and the private organization as part of an audit of the local government entity. However, even in the context of such an audit, the Comptroller is prohibited from inspecting beyond the financial or business relationship, and therefore cannot review the overall finances and operations of the LDC itself. This restriction on transparency is problematic, because, for example, the Comptroller is unable to examine the LDCs internal controls to assess whether financial assistance provided to the LDC by a local government is properly safeguarded.

S5445, introduced by Senator Skoufis, addresses this lapse in transparency by expanding the oversight authority of the State Comptroller to include direct audits of private organizations that are under the control of municipal corporations or other local government entities.[196] Expanding the scope of potential audits will provide greater assurance that private entities are acting in the public interest. S5445 passed the Senate on May 30, 2019, and the Assembly on June 18, 2019. The Committee strongly urges the Governor to sign this bill into law.

Additionally, the Committee recommends the full Legislature develop legislation that permits county comptrollers' to directly audit local development corporations within their county.

195 GENERAL MUNICIPAL LAW § 34 (2019).
196 S5445, 2019-2020 Sen. (Ny. 2019).

B. ACCOUNTABILITY OF PUBLIC AUTHORITIES

Public authorities differ from State agencies in the manner in which they are held accountable; elections and politics are the primary mechanism of accountability for the government, while public authorities are monitored through period compliance reviews and reporting on their operations and finances. However, throughout the investigation the lack of meaningful mechanisms to ensure accountability were evident. While the ABO has several vital functions, their statutory mandate neglects to include enforcement powers. The ABO is limited to publicly warning and censuring authorities for non-compliance and issuing recommendations for corrective action. However, the ABO does not have the authority to compel compliance.

Public Authorities Law empowers the ABO to conduct reviews and analysis of the operations, practices and reports of public authorities to assess compliance with statutory requirements and make recommendations concerning the reformation and structure of public authorities. As part of its oversight obligations, the ABO regularly issues public authorities and their appointing authorities' specific recommendations to improve practices. Recommendations often includes rendering conclusions and opinions regarding the performance of a public authority and/or board member. The purpose of a recommendation is to assist public authorities in improving its operational and financial practices as well as ensuring compliance with State statutes. However, neither public authorities nor their appointing authorities are required to respond to ABO recommendations, essentially rendering this important accountability mechanism ineffectual.

Holding public authorities accountable for their activities and operations is crucial to protect public interests, therefore the Committee recommends amending Public Authorities Law to require public authorities to respond to ABO recommendations. The Legislature should develop legislation mirroring the requirements codified in Executive Law § 170 for audits by the State Comptroller. Section 170 of Executive Law empowers the State Comptroller to audit agencies and issue a final report with recommendations. Pursuant to this law, the head of an entity audited by the State Comptroller is required to respond to any recommendations for corrective action with 90 days of receipt of the final report. Thus, the Committee encourages the full Legislature to amend Public Authorities Law to require public authorities and their appointing authorities' to respond to recommendations for corrective action within 90 days of receipt.

While PARA strengthened the reporting requirements of public authorities, the content and accuracy of the information are often inadequate. Pursuant to Public Authorities Law § 2800, public authorities are required to submit to the ABO certain annual and audit reports on its operations and finances. However, public authorities' reporting practices are significantly lacking, resulting in inaccurate information and a waste of public funds. A primary concern for the ABO is the accuracy of data reported in PARIS. In order to ensure public authorities are acting pursuant to their enabling legislation, reporting of accurate financial information is critical. Currently, financial reports submitted to the ABO must be certified that the information provided is accurate, is not misleading or omits material facts, and fairly represents the financials of the authority.[197] Despite this requirement, the ABO routinely identifies significant discrepancies in authorities' reports,

[197] PUB. AUTH. § 2800(3) (2019).

which hinders the accountability and transparency of their activities. Importantly, there are no penalties for filing false or inaccurate data with the ABO. Therefore, the Committee recommends the full Legislature develop legislation requiring certification under penalty of perjury for knowingly filing false or inaccurate information.

Each year, LDCs incur millions of dollars in debt and issue millions of dollars in financial incentives, however, LDCs are not subject to the same financial assistance agreements and recapture policies as those required of IDAs. In 2018, LDCs reported $19.5 billion in outstanding debt. The Committee recommends amending Not-for-Profit Corporation law to require LDCs implement similarly important financial policies to ensure public funds are not being abused or wasted.

C. INSUFFICIENT TRANSPARENCY

Designed to act for the benefit of the people, public authorities are ultimately accountable to those they serve. However, due to their unique status as quasi-public entities, public authorities are not subject to the same level of public scrutiny as traditional State agencies. Nevertheless, public authorities must be open and transparent because of their role in the economic welfare of a community. The Committee recommends amending Public Authorities Law to require public authorities to plainly disclose all conflicts of interests on their individual or shared website. Public disclosure of such conflicts will ensure public authorities are acting in the public interest when contemplating a transaction or agreement that may potentially benefit the private interest of a board or staff member.

Public authorities are required to make certain information and reports accessible to the public via its shared or individual website. In addition, the ABO issued regulation

19 NYCRR 250 that requires IDAs to post certain project information on their websites. In light of these requirements, the investigative team conducted a compliance review of 50 randomly selected IDAs to examine if the required information is publicly accessible. Thirteen IDAs did not publicly post one or more of their financial and operational reports. An authority's website is a primary way the public can receive information on the authority's activities. Currently, the public does not have access to PARIS, the database for all reported information of public authorities. Transparency of operational and financial information is crucial to safeguarding public funds, and the lack of publicly accessible data hinders accountability. Therefore, the Committee strongly recommends that PARIS be accessible to the public.

Lastly, the Committee strongly encourages all public authorities to regularly update the contact information listed on their authority website. Throughout the course of the investigation, the investigative team had an alarmingly difficult time contacting staff of public authorities. On numerous occasions, the contact information listed for an authority was the general municipal building number or the clerk's office. Additionally, when staff contacted several authorities via the information listed on their website, the individuals who answered were completely unaware of the public authority's existence. Public authorities have a responsibility of transparency to the communities they serve; therefore, having accurate contact information readily accessible to the public is critical.

D. INSUFFICIENT RESOURCES FOR AUTHORITIES BUDGET OFFICE

The failure to prioritize public authority accountability is demonstrated in the State's failure to provide significant financial assistance to the Authorities Budget Office

(ABO) for their oversight activities. The ABO is the primary watcher of public authorities in New York State; its mission is to ensure public authorities are acting in the public interest consistent with their intended purpose. The mechanisms by which the ABO verifies public authorities are complying with statutory requirements are essential to protecting their duties of accountability and transparency to the public. As of November 2019, the ABO has a staff of 11: an Executive Director, two Deputy Executive Directors, three members dedicated to governance & technical assistance, and five for compliance & enforcement. The modest staff of 11 have the herculean task of ensuring the 583 active public authorities in New York State are acting for the benefit of the public.

For the 2019-2020 fiscal year, the ABO was appropriated $2.059 million, a minor increase of about $120,000 compared to the 2018-2019 fiscal year.[198] While the Senate appropriated an additional $450,000 in their one-house budget for the ABO's operations, this money was stripped out of the final, enacted 2019-2020 budget. To help it fulfill its vital statutory mission, the Committee recommends the full Legislature increase the appropriations to the ABO by at least $1 million in the 2020-2021 fiscal year. This increase would strengthen the ABO's oversight mechanisms, by allowing it to:

- Hire additional staff;
- Expand investigations and reviews;
- Modernize the Public Authorities Reporting and Information System (PARIS) to ensure accuracy of information reported;
- Obtain additional information from authorities to improve transparency and accountability of their operations;
- Monitor compliance with the Freedom of Information and Open Meetings Laws, and authorities' ethics guidelines and conflicts of interest laws; and
- Complete more powers and duties as delineated in Public Authorities Law.

198 S1500-D, 2019-2020 Sen. (Ny. 2019), S7500-D 2018-2019 Sen. (Ny. 2019).

E. PUBLIC AUTHORITIES BOARD MEMBERS OVERSIGHT

Public authorities are designed to strike a balance between political accountability and independence.[199] Unlike traditional State agencies, the governing boards of public authorities are expected to be more independent of those who appoint them, to make decisions outside the arena of politics, and to be accountable to the public through reporting and transparency. Therefore, those individuals who serve on a public authority board must be independent from political influence and be accountable for their decisions and actions as a board member.

Each year, IDAs grant millions of dollars of public funds in the form of tax incentives for projects seeking financial assistance. The board members of an IDA are responsible to deciding which projects will receive assistance and how much assistance to offer. Allowing elected officials to serve as IDA board members presents an inherent conflict and opportunities for corruption. For example, a benefactor seeking financial assistance from an IDA could contribute to the campaign of an elected official who serves on the IDA board to secure a vote of approval for its project. Despite this obvious potential for corruption, elected officials are permitted to serve on IDAs boards across the State. S4678, introduced by Senator Skoufis, would prohibit any elected official serving at the county, town, city or village level, from serving as board member for any IDA located within the county. The Committee encourages the Legislature to advance this important anti-corruption bill in the 2020 Legislative Session.

Public Authorities Law § 2824(2) requires board members of public authorities to participate in state approved training regarding their legal, fiduciary, financial and ethical

[199] *Public Authorities in New York State*, CITIZENS BUDGET COMMISSION, Apr. 2006, at 1.

responsibilities within one year of appointment. Following the passage of PARA in 2006, the ABO developed a policy guidance on board member training to assist public authorities in meeting the requirements. The ABO has subsequently updated its policy guidance to re-emphasize the training requirements and help ensure compliance. As part of annual reporting requirements, public authorities are required to indicate whether each board member has complied with the training requirements of Section 2824(2). To deter non-compliance with training requirements, the ABO is authorized to recommend to the appointing authority the suspension or dismissal of board members.[200] In September and October of 2019, the ABO sent a letter to the appointing authorities of 23 board members recommending their removal from the public authority board due to ongoing failure to attend training.[201] Only 2 of the 23 authorities responded to the ABO's recommendation for corrective action. Those authorities that have neglected to respond are:

- Brooklyn Navy Yard Development Corporation;
- Columbia Tobacco Asset Securitization Corporation;
- Erie County Fiscal Stability Authority;
- Jamestown Urban Renewal Agency;
- Municipal Assistance Corporation for the City of Troy;
- Nassau County Bridge Authority;
- Niagara Falls Urban Renewal Agency;
- Operation Oswego County;
- Orange County Water Authority;
- Rockland Economic Development Corporation;
- West Brighton Community Local Development Corporation; and
- Westchester County Local Development Corporation.[202]

Training is essential to ensuring board members understand their responsibility of accountability and transparency to the public. The Committee strongly urges these public

[200] PUB. AUTH. § 6 (2019).
[201] Information provided to the Committee by the Authorities Budget Office.
[202] *Id.*

authorities and the board members to comply with the requirements of the Law immediately. Furthermore, the Committee recommends amending the powers of the ABO to allow it to bring enforcement actions against non-compliant board members who fail to receive the mandated training.

F. STATE AUTHORITY BOARDS VACANCIES

State authorities include authorities or public benefit corporations created in state law, with one or more of its members appointed by the Governor or who serve by virtue of their elected or appointed position. As of November 2019, there are 463 vacant board member positions in 48 state authorities.[203] The Governor is responsible for appointing a candidate for at least 273 of the 463 vacancies.[204] The Committee urges the Governor to appoint qualified individuals for the 273 vacant positions as expeditiously as possible.

G. INDUSTRIAL DEVELOPMENT AGENCIES REFORM

Governor Nelson Rockefeller enacted IDAs in 1969 for the purpose of incentivizing economic activities in New York State by issuing financial assistance to private companies, primarily in the form of tax breaks. While reasonable incentives are occasionally necessary to attract or retain business, the extent to which IDAs have been providing questionable benefits brings into question whose interests are being served by the system. Private companies too often take advantage of financial assistance by threatening relocation or

[203] Information provided to the Committee by the Authorities Budget Office.
[204] *Id.*

closure. Projects requesting financial assistance are frequently approved with minimal scrutiny and little community input. This system appears to often favor the interests of business without sufficiently examining if the public interest is being met. The Committee strongly recommends reforming the powers and strengthening the accountability and transparency requirements of IDAs.

The purpose of IDAs is to incentivize companies to relocate or remain in its community through the offer of financial assistance. However, it is important to prevent IDAs from placing the interests of companies ahead of the public trust, which they are designed to serve.

S4668, introduced by Senator Skoufis, prohibits IDAs from issuing financial assistance to projects that have already started development. This bill would prevent companies that threaten relocation despite already being under-construction from receiving any unjustified financial incentives. Notably, many IDAs located in Long Island require retention applications that threaten relocation to supply incentive offer letters, if any, from other states. The Committee recommends pursuing legislation that requires all applications seeking financial assistance to disclose such information. Importantly, IDAs do not need to wait for law to be amended, but can immediately implement this requirement in their applications. The Committee strongly encourages all other IDAs implement such a requirement into their standard practices for applications for financial assistance.

Each year, IDAs issue millions of dollars of financial assistance to projects; however, in numerous instances, incentives are issued without disclosing the identity of the benefactor to the public. IDAs have a duty to be accountable and transparent to the communities they serve, therefore the public has a right to know what companies are receiving publicly funded incentives. S4667, introduced by Senator Skoufis, prohibits IDAs from issuing financial assistance to projects in which the project benefactor is not publicly disclosed at the time of the required public hearing for the project.

IDAs often approve the issuance of financial assistance with little or no community input. School districts are required to address budget impacts of PILOTs without having any involvement in the process; local workers are excluded from the discussions and decision making concerning the projects and incentives; and concerned citizens and community members are blindsided by IDA agendas released hours before meetings. As they were created to for the public benefit, IDAs have a responsibility of transparency to the communities they serve. S4720, introduced by Senator Mayer, holds IDAs more accountable by requiring all boards to have at least one representative from a labor union and at least one representative from a school board.[205] The bill also requires the affected school districts and state elected officials receive at least ten days public notice of meetings.[206] Agendas of meeting must also be made available to the public at least three days in advance of the meeting and must be posted on the IDA's website.[207]

During the 2019-2020 Legislative Session, the Senate passed S88, which requires IDAs to live stream and post video recordings of all open meetings and public hearings. IDAs must also post the video recordings for a period of not less than five years. This bill, introduced by Senator Kaminsky, was signed into law on August 27, 2019 and takes effect on January 1, 2020.

205 S4720, 2019-2020 Sen. (Ny. 2019).
206 *Id.*
207 *Id.*

IDAs often grant private companies financial assistance in return for economic benefit, typically a promise to create or retain jobs in the community. IDAs are required to annually evaluate the success of each project at meeting the job and economic metrics agreed to as a condition of financial assistance. Additionally, they must develop policies for the return of all or part of the financial assistance provided for a project in the event that a project has material shortfalls in job creation and retention or material violations of the conditions of the agreement. However, IDA boards have the discretion to implement such policies and compel the return of taxpayer funds. Too often, projects fall significantly short of their benefit promises, distressing the economic welfare of local communities, as was alleged by the Town of Hempstead IDA in the Green Acres case study. S4675, introduced by Senator Skoufis, addresses this abuse by requiring IDA boards to compel the return of taxpayer-funded incentives issued to underperforming projects. The Committee also recommends that construction jobs associated with projects receiving financial assistance be thoroughly tracked, reported to the ABO, logged in PARIS, and subjected to similar clawback provisions as aforementioned, especially in those instances where local labor requirements are imposed on a project.

The Committee recommends standardizing IDA fees for all IDAs that operate within the same county in order to mitigate “shopping around.” Where multiple IDAs operate in overlapping jurisdiction, standardizing fees will remove one variable that otherwise promotes a “race to the bottom” mentality where an applicant can bounce between IDAs and determine where they can get the best deal for themselves at the expense of local taxpayers. In light of their design to serve the community they are located within, the Committee recommends amending the General Municipal Law to require a substantial portion of IDA fees be given back to the community in the form of direct tax relief.

Preventing companies from “shopping around” for the best financial benefit possible from IDAs—as was evident in the Medline case study—is crucial to ensuring IDAs are acting in the best interests of the public, not in the interest of companies. While IDAs across the state provide important competitive incentives to attract and retain business, competition among IDAs that serve overlapping communities may harm, rather than benefit the public, by providing unnecessary or unwarranted financial incentives. The Committee encourages the full Legislature to examine the need to prohibit “overlapping” IDAs in order to ensure IDAs are acting in the public interests. Possible solutions to eliminating “one-stop shopping” include eliminating municipal IDAs and only permitting county IDAs or, alternatively, requiring that if a municipal IDA is active in a community, the county IDA where that municipality is located cannot serve the overlapping community.

The reforms discussed in this section are crucial in preventing the abuse of public funds by holding IDAs more accountable and transparent in their actions. The Committee encourages the full Legislature to develop and expand on these reforms during the upcoming 2020 Legislative Session.

In coordination with the recommendations outlined in this section, it is of the utmost importance that IDAs undergo a cultural and operational transformation whereby incentives are no longer viewed as an entitlement. During the course of the investigation, the Committee found that many IDAs, as a matter of practice, approve any application that checks the required boxes without serious scrutinizing of the project’s need for incentives.

The mission of an IDA should be to not simply incentivize for the sake of incentivizing, but to maximize a community's benefit, particularly when it comes to the project's ratable. While determining the seriousness of a threat to locate or relocate elsewhere can be a difficult and often subjective process, such scrutiny will benefit the taxpayers that IDAs are formed to represent.