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## **Operational Review**

# **Counties of Warren and Washington Industrial Development Agency and Civic Development Corporation**

**March 21, 2019**

**OR-2018-02**

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## Executive Summary

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### **Purpose and Authority:**

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and to assist these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Counties of Warren and Washington Industrial Development Agency (IDA) and the Counties of Warren and Washington Civic Development Corporation (CDC) was performed from June to October 2018 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of our review was to provide an objective evaluation of both the IDA and the CDC's operations and the extent of their statutory compliance, and make necessary recommendations to improve their practices.

### **Background Information:**

The Counties of Warren and Washington Industrial Development Agency (IDA) was established by Chapter 862 of Laws of 1971 as a public benefit corporation created to promote, develop, encourage and assist in the construction, expansion, and equipping of economically sound industrial and commercial facilities in order to advance the job opportunities, general prosperity, and economic welfare of the citizens of Warren County and Washington County.

The IDA coordinates with the Counties of Warren and Washington Civic Development Corporation (CDC), a not-for-profit corporation created pursuant to Section 1411 of Not-For-Profit Corporation Law in 2011 to promote community and economic development and create jobs in the not-for-profit sectors of Warren and Washington Counties. The CDC accomplishes this by providing access to low interest financing.

### **Results:**

Our review found that the IDA has not adopted adequate procedures to evaluate proposed projects seeking financial assistance. Although IDA Executive Committee board members review the project application and the cost-benefit

analysis as a basis for approving projects for financial assistance, we found that the information in the cost-benefit analysis does not always match the information provided in the project application. Of the five projects approved since June 2016, the amount of exemptions in the cost-benefit analyses prepared by the IDA for each of those projects were different than the amount of total exemptions requested in the application. Although the Executive Committee members receive both the project application and the cost-benefit analysis as part of their review of the proposed projects, there was no indication that committee members were aware of these discrepancies or had questions regarding the amount of exemptions to approve.

We also found that the IDA is not adequately monitoring sales tax exemptions reported by projects, and is failing to recapture funds in accordance with its established policy and General Municipal Law. The amount of sales tax exemptions approved by the board and recorded on the ST-60 (NYS Sales and Use Tax Exemption Form) does not always match the amount of sales tax exemptions requested by the project owner, and there is no record to explain the reason for the difference. And although General Municipal Law requires that board resolutions include the amount of sales tax approved, of the 11 projects approved for sales tax exemptions during our review period (January 2015 through October 2018), only one board resolution included the amount of sales tax exemptions approved by the board. We also noted that two projects reported to the IDA that they claimed more sales tax exemptions than the amount recorded on the ST-60, but there was no action taken by the IDA to recapture the excess exemptions.

We also found that some projects may be receiving more sales tax exemptions than intended by the board, because the amount of sales tax exemptions recorded on the ST-60 for five projects was based on an 8 percent sales tax rate, rather than the 7 percent sales tax rate in effect in the counties during the time periods under review.

General Municipal Law also requires IDAs to annually evaluate all active projects toward achieving the objectives indicated in the project agreement, and that these assessments must be provided to the board. The IDA requires project owners to submit an annual employment survey to report the number of full-time equivalent employees as of the end of each year. However, we found that only 12 of the 24 active projects were presented to the board in 2015, no

projects were presented to the board in 2016, and only 22 of the 26 active projects were presented to the board in 2017.

Our review also found that the IDA is incorrectly calculating payment in lieu of taxes (PILOT) amounts because it is using the wrong school year in determining the amount of the PILOT owed, that the IDA does not have a written contract with its legal counsel, that conflicts of interest are not adequately identified and addressed, and that a contract to verify the accuracy of data submitted in the Public Authorities Reporting Information System (PARIS) is of questionable value since the IDA reported incorrect data in its annual PARIS submissions. Our report recommends that IDA and CDC board members attend board member refresher training.

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## **Introduction and Background**

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The Counties of Warren and Washington Industrial Development Agency (IDA) was established in 1971 pursuant to Section 890-c of General Municipal Law. The IDA's mission is to advance the job opportunities, general prosperity, and economic welfare of the citizens of Warren County and Washington County. The IDA accomplishes this by providing financial assistance and incentives to the business community. This financial assistance includes low interest financing through the issuance of industrial development revenue bonds and exemptions from mortgage recording taxes and sales and use taxes. In addition, real property owned by the IDA is exempt from real property taxes. Assisted businesses can transfer title to property they own to the IDA and these exemptions are then passed through to the businesses through a lease agreement with the IDA. In return, a portion of the foregone property taxes is recaptured via a payment in lieu of taxes (PILOT) made by the assisted business to affected taxing jurisdictions such as local governments and school districts.

The IDA coordinates with the Counties of Warren and Washington Civic Development Corporation (CDC). The CDC is a not-for-profit corporation created pursuant to Section 1411 of Not-For-Profit Corporation Law in 2011 to promote community and economic development and create jobs in the not-for-profit sectors of Warren and Washington Counties. The CDC accomplishes this by providing access to low interest financing through the issuance of bonds for eligible projects.

The IDA is comprised of a ten-member board of directors equally appointed by the Warren County and Washington County legislatures. The CDC is comprised of the same ten-member board. These boards are responsible for overseeing the general management of the IDA's and CDC's finances and operations. The IDA and CDC have hired a single part-time employee to administer and operate the agencies, and also contract with a legal firm to review and recommend projects for approval and monitor active projects for adherence and compliance with project agreements. The part-time administrator is responsible for organizing board meetings, recording board meeting minutes, distributing appropriate documents, preparing reports required by Public Authorities Law, responding to questions regarding proposed and active projects, and monitoring project records. The legal firm determines whether proposed projects comply with the IDA's and CDC's selection requirements, determines the amount of mortgage and sales tax exemptions, prepares board resolutions and project agreements, and submits required forms to required oversight agencies, such as the New York State Department of Taxation and Finance and communicates with and monitors active projects for adherence with project agreements. The IDA paid the legal firm \$76,132 in 2015; \$81,071 in 2016; and \$85,371 in 2017.

For 2017 the IDA had \$296,332 in operating revenue while the CDC had \$70,665. The primary source of revenue for both the IDA and the CDC consist of project fees charged for eligible projects. For 2017 the IDA had total operating expenses

of \$138,596 and the CDC had total operating expenses of \$20,330. As of December 31, 2017 the IDA had \$9.7 million in industrial revenue bonds outstanding while the CDC had \$29.8 million in bonds outstanding.

The IDA reported that it had 26 active projects receiving financial assistance during 2017, five of which received proceeds from bonds that had been issued. It reported these projects received \$2,622,834 in total tax exemptions and paid approximately \$1,095,598 in PILOTs. The IDA approved two additional projects through October 2018.

The CDC reported seven active projects receiving financial assistance during 2017, all of which received proceeds from bonds that had been issued.

### **Compliance Review Objectives**

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. Our operational review was conducted to determine whether the IDA and CDC boards are providing adequate oversight of operations, adequately monitoring projects for adherence with project agreements and being transparent and accountable to the public.

### **Compliance Review Scope and Methodology**

Our compliance review was conducted between June and October 2018. The review assessed the IDA's and the CDC's operations for the period January 2015 through October 2018. To perform our review, we relied on the following documentation and data sources:

- Agency financial records
- Project applications, project agreements and related documents
- Policies and procedures indicative of good governance practices
- Annual reports required by the Public Authorities Law
- Board meeting minutes and board meeting packets

In addition to reviewing documents and records, we attended board meetings and interviewed staff and board members. We also performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve the IDA's and CDC's operations and strengthen board governance and oversight.

The results and recommendations of our review were provided to and discussed with IDA officials, and their responses are reflected in this report where

appropriate. In general, IDA officials agree with our recommendations and indicate that they have, or will be, taking steps to implement or address those recommendations.

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## **Review Results**

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Our review found that the Counties of Warren and Washington Industrial Development Agency (IDA) has not adopted adequate procedures to evaluate proposed projects seeking financial assistance or to monitor projects that have been provided financial assistance. The IDA is not annually monitoring the job creation results for all projects. In addition, the IDA board is failing to recapture sales tax exemptions in excess of amounts authorized in accordance with General Municipal Law and its established policy. In addition, the IDA needs to ensure that payment in lieu of taxes (PILOTs) are billed in accordance with the PILOT agreement and provisions of General Municipal Law.

Our review also found that improvements are needed to ensure that the IDA enters written contracts when appropriate and ensure that information reported in the Public Authorities Reporting Information System (PARIS) is accurate. The boards of the IDA and the Counties of Warren and Washington Civic Development Corporation (CDC) should also adhere to their fiduciary duties by appropriately disclosing all potential conflicts of interest, participate in board member refresher training, and ensure that the funds of each entity are used in the best interest of the respective agency.

### **Application and Cost-Benefit Analysis Are Not Being Adequately Reviewed**

The IDA is authorized by Article 18-A of General Municipal Law to offer financial assistance to encourage economic growth and expansion and to promote job opportunities and the general welfare of the Counties of Warren and Washington. Financial assistance consists of low interest financing through the issuance of industrial development revenue bonds and exemptions from mortgage recording taxes, sales and use taxes and real property taxes.

Section 859-a of General Municipal Law requires IDAs to develop a standard application that describes the proposed project for which financial assistance is requested, including the type of project, proposed location and purpose of the project, and the amount and type of the specific financial assistance being requested. It also requires IDAs to prepare a written cost-benefit analysis for each project before any financial assistance is provided to the project. The cost-benefit analysis is to identify the extent of job creation or retention, the estimated amount of exemptions to be provided, the amount of private sector investment by the project, the likelihood of timely completion of the project, the extent the project would provide additional revenue for municipalities and school districts, and any other public benefits that would occur should the project be approved. The IDA's policy indicates that the project application and all supporting documents are to be delivered to all board members for their review.

If a business owner is interested in obtaining financial assistance for a proposed project, the owner will meet with IDA staff to discuss the project and complete a project application. Counsel will verify that the project is allowable under the IDA's Uniform Tax Exemption Policy. IDA staff will then prepare a cost-benefit analysis for each project.

Once the application and the cost-benefit analysis are finalized, they are submitted to the IDA's Executive Committee for review. The project owner and the IDA counsel may also present relevant information regarding the project to the Executive Committee. Once a project is approved by the Executive Committee, the project is presented to the full board for approval. However, contrary to the IDA's policy, the board does not receive the application or the cost-benefit analysis for review. Instead, the board appears to rely on the verbal presentations from counsel and Executive Committee members as a basis for determining whether to approve a project.

We found that the information in the cost-benefit analysis does not always match the information provided in the project application. Prior to June 2016, the IDA did not require projects to include the amount of financial assistance requested in the project application. We reviewed the five projects approved by the IDA subsequent to June 2016 when a more detailed application was implemented. We found that the amount of exemptions in the cost-benefit analyses prepared by the IDA for those five projects were different than the amount of total exemptions requested in the application. Although the Executive Committee members receive both the project application and the cost-benefit analysis as part of their review of the proposed projects, there was no indication that committee members were aware of these discrepancies or had questions regarding the amount of exemptions to approve.

<b>Project</b>	<b>Exemptions Requested in Application</b>	<b>Exemptions in Cost-Benefit Analysis</b>	<b>Difference</b>
Aviation Hospitality LLC	\$889,563	\$932,462	(\$42,899)
Mohawk Industrial Werks, LLC	\$1,228,799	\$259,453	\$969,346
RAN Saunders Property Development	\$204,305	\$209,375	(\$5,070)
Ray Terminals LLC	\$573,040	\$510,356	\$62,684
TRSB Enterprises LLC - RockSport	\$170,279	\$176,453	(\$6,174)

For example, the Ray Terminals LLC project owner submitted an application to the IDA in May 2017. This application indicated that the project was requesting \$573,040 in total exemptions. However, the IDA's cost-benefit analysis for this project estimated the total exemptions to be \$510,356. There were no records to identify how the \$510,356 was determined. Even though the Executive Committee received both the application and the cost-benefit analysis, there were no questions regarding the different amounts recorded in the Executive Committee meeting minutes.

IDA officials indicate that they are in the process of improving how cost-benefit analyses are conducted and will endeavor to ensure that the information contained in cost-benefit analyses is accurate.

Although the Executive Committee is provided the application and cost-benefit analysis for review, we have concerns as to whether the Committee members actually review these documents as a basis for determining whether to approve providing financial assistance for projects. As indicated, there were discrepancies in the data that was provided to the Committee members without any indication that these discrepancies were identified and resolved. We also noted an instance where the Executive Committee did not appear to receive either the project application or the cost-benefit analysis. The Executive Committee reviewed and approved a project in May 2018, although there was no indication the application or cost-benefit analysis was provided to the Executive Committee prior to or during the meeting. There was no discussion or comment made by Executive Committee members regarding the lack of documents to review in the meeting minutes. Yet, the Executive Committee recommended to the full board that the project be approved, and the board approved the project. This would appear to indicate that the lack of records being provided to the Executive Committee or board was not an isolated event.

### **Sales Tax Exemptions Are Not Reviewed Appropriately**

Generally, IDAs do not purchase construction material, equipment and furnishings for projects but instead appoint project owners and operators as an agent of the IDA to purchase goods and services related to the project. This allows those purchases to be exempt from State and local sales and use taxes (sales tax). Section 875 of General Municipal Law requires IDAs to maintain records of the sales and use tax exemptions provided to projects and to recapture any unauthorized sales tax exemption benefits claimed or any amount claimed in excess of the amount approved. IDAs are to notify the Department of Taxation and Finance (Tax Department) when agents are appointed on form ST-60. The form requires IDAs to report the project, the name of the agent, a description and value of the goods and services to be exempt from sales taxes, the total value of the sales and use tax exemption, and the period of time the exemption covers. Once the sales tax exemptions are approved by the board, the IDA relies on counsel to prepare the ST-60 form and provide the form to the project owner and the Tax Department.

We found that the amount of sales tax exemptions recorded on the ST-60 does not always match the amount of sales tax exemptions requested by the project owner. We reviewed the project applications and the ST-60s for the five projects approved since June 2016 and found that the amount recorded on the ST-60 was the same amount requested by the project owner for two of them. There were no documents or discussions recorded in the meeting minutes to explain why the amount differed for the other three projects.

<b>Project</b>	<b>Sales Tax Exemption Requested in Application</b>	<b>Sales Tax Exemption Recorded on ST-60</b>	<b>Difference</b>
Aviation Hospitality LLC	\$263,000	\$263,000	\$0
Mohawk Industrial Werks, LLC	\$972,189	\$52,500	\$919,689
RAN Saunders Property Development	\$85,400	\$91,000	(\$5,600)
Ray Terminals LLC	\$196,000	\$196,000	\$0
TRSB Enterprises LLC - RockSport	\$46,004	\$43,764	\$2,240

IDA officials appear to indicate that their meeting minutes are adequate to document all motions, proposals, resolutions and any other matter formally voted upon as required by Public Officers Law. However, meeting minutes should also adequately describe the basis for why amounts approved for financial assistance differs from the amount requested.

Section 859-a of General Municipal Law requires IDAs to adopt resolutions describing the project and the financial assistance the IDA is contemplating for a project, as well as to develop project agreements that describe the amount and type of financial assistance being provided. However, the IDA board does not adequately describe the amount and type of financial assistance being provided to projects in its board resolutions. Of the 11 projects approved for sales tax exemptions since January 2015, only one board resolution included the amount of sales tax exemptions approved by the board (Aviation Hospitality LLC). IDA officials indicated that they will work to ensure that the amount of financial assistance approved for projects is included in resolutions and project agreements.

For an IDA to adequately monitor the total amount of sales tax exemptions claimed by projects, it must determine the amount reported by the projects each year and calculate the total amount reported over the life of the project. That total can then be compared to the total amount of sales tax exemptions approved by the IDA board, for the project, to determine whether the amount claimed is within the amount approved.

In addition to the 11 projects approved for sales tax exemptions during our review period, we also reviewed three other projects that had been approved prior to our review period, but reported claiming sales tax exemptions during our review period and were therefore included in our review. Of the 14 projects, two projects reported to the IDA that they claimed more sales tax exemptions than the amount recorded on the ST-60. However, no action was taken by the IDA to recapture the excess exemptions.

The IDA issued an ST-60 in March 2013 for the LG Plaza project that provided sales tax exemptions totaling \$273,750 with an end date of September 30, 2015. For 2013, the project reported to the IDA that it claimed \$128,476 in sales tax

exemptions and for 2014, the project reported to the IDA that it claimed \$206,318 in sales tax exemptions for a total of \$334,794. There was no effort made by the IDA to recapture the \$61,044 that was reported in excess of the amount provided. At the February 2015 board meeting, counsel notified the board that the project had exceeded the amount of sales tax exemptions approved, and the board approved issuing an amended ST-60 to increase the amount of sales tax exemptions allowed. An amended ST-60 was issued, but only increased the total approved sales tax exemptions to \$295,820 with an end date of March 30, 2015. This project had already reported that it had claimed more sales tax exemptions than this revised amount, yet the IDA still took no action to recapture the \$38,974 that was claimed in excess of the revised amount approved.

For the Patti Morris LLC Expansion project, the IDA issued an ST-60 in November 2012 that provided sales tax exemptions on goods and services totaling \$44,000 in sales tax exemptions with an end date of April 1, 2014. The IDA approved a total of four extensions for this project between March 2014 and April 2016 to allow for additional time to complete construction. The project did not report that it claimed any sales tax exemptions for 2012 through 2014, but reported to the IDA that it had claimed a total of \$23,594 in sales tax exemptions in 2015 and \$73,666 for 2016. Counsel notified the IDA board in February 2017 that the project had exceeded the amount of sales tax exemptions approved. Rather than attempt to recapture the \$53,260 in excess sales tax exemptions that were reported, the board approved additional sales tax exemptions for the project. The total sales tax exemptions approved for the project was increased to \$160,400 and the end date was extended to July 15, 2017. For 2017, the project reported to the IDA that it claimed \$98,173 in sales tax exemptions, for a cumulative total for the project of \$195,433. The IDA board has not taken any action to recapture the \$35,033 that was reported by the project in excess of the revised amount approved, as required by Section 875 of General Municipal Law and the IDA's recapture policy.

IDA officials acknowledge their obligations to recapture certain tax exemptions claimed that are in excess of the amount approved by the board and indicated that they will consider recapturing these in the future. However, they did not indicate whether they would take any steps to recover the excess amounts claimed that are identified in our report.

We also found that some projects may be receiving more sales tax exemptions than intended by the board. The combined State and local sales tax rate in both Warren and Washington Counties, as well as the neighboring counties, is seven percent. Of the 14 projects approved by the IDA to receive sales tax exemptions, nine received an amount based on the seven percent sales tax rate. However, the amount of sales tax exemptions recorded on the ST-60 for five projects was based on an eight percent sales tax rate. For example, the ICC4 West Main LLC project was approved for sales tax exemptions based on \$1,125,000 of purchases to be exempt. This would equate to \$78,750 of sales tax exemptions based on a seven percent sales tax rate. However, the ST-60 for this project recorded a total sales

tax exemption of \$90,000, based on an eight percent sales tax rate. We note that this project claimed a total of \$86,899 in sales tax exemptions. This is within the amount of sales tax exemptions recorded on the ST-60, but would have exceeded the \$78,750 if it was based on the seven percent sales tax rate. IDA officials indicated that in the future they will ensure that the amount of sales tax exemptions approved are based on the applicable sales tax rates in the counties.

Section 875 (3)(d) of General Municipal Law requires IDAs to prepare an annual compliance report that details the terms and conditions established regarding recapture of sales and use tax exemptions and the IDA's efforts to recapture sales and use tax exemptions taken in excess of the amount authorized. This report is to be submitted to the Commissioners of the Department of Taxation and Finance and the Department of Economic Development, the Director of the Division of the Budget, the State Comptroller, and the Warren County and Washington County Legislatures. We found that the IDA did not submit this report for 2015, 2016 or 2017. IDA officials indicate that they are now aware of the requirement to submit this report.

### **Jobs Monitoring Is Not Thorough**

Section 874 (11) of General Municipal Law requires IDAs to develop a policy for the return of part or all of financial assistance provided to a project in the event the project fails to meet the terms and conditions of the project agreement. The IDA has adopted a recapture policy that calls for the recapture of real property tax abatements or sales tax benefits under certain conditions, such as the company selling or closing the project facility, significant change in the use of the facility or business activities, significant employment reductions, failure to comply with reporting requirements, or sales tax benefits taken for items not authorized or in excess of the amount authorized. The policy provides that projects not meeting 80 percent of job creation/retention goals or of private investment expectations would be considered a material shortfall in complying with the project agreement. The recapture policy stipulates the percentage of financial assistance to be recovered based on the number of years since the PILOT agreement was effective.

For example, the recapture policy stipulates that projects that fail to meet 80 percent of the job targets during years one through five will have 100 percent of the real property tax exemptions that were granted returned to the affected taxing jurisdiction. However, this specific provision of the policy appears to conflict with the IDA's project agreements, which stipulate that projects are not required to meet job creation goals until year two for projects starting in 2016 or year three for older projects.

IDA officials indicate that they will review project agreements to ensure that the language used does not conflict with the recapture policy.

We reviewed the 25 projects in 2017 that were expected to create jobs and found that all projects that had been active for at least three years had met the 80 percent benchmark established in the IDAs recapture policy and would not be subject to recapture of benefits.

The law also requires IDAs to annually evaluate all active projects toward achieving the objectives indicated in the project agreement, and that these assessments must be provided to the board. To annually evaluate each project, the IDA requires project owners to submit an annual employment survey to report the number of full-time equivalent employees as of the end of each year. The IDA staff uses this data to prepare an annual jobs report and provides this report to the Audit and Finance Committee (Audit Committee) for review and evaluation. However, we found that all projects are not always presented to the Audit Committee for review. For 2015 there were 24 active projects, 22 of which were expected to create jobs, but the results of the annual surveys were reported to the Audit Committee for only 12 projects. For 2016 there were 24 active projects, 21 of which were expected to create jobs but there was no annual jobs report provided to the Audit Committee, apparently due to staff turnover. And for 2017 there were 26 active projects, 25 of which were expected to create jobs, but the annual survey results for only 22 projects were provided to the Audit Committee.

IDA officials indicate that they are reviewing and updating procedures regarding job creation calculations in applications as well as how it calculates and reports job creation and retention information.

### **Inaccurate Payment In Lieu Of Taxes Calculations**

The IDA also offers financial assistance in the form of real property tax exemptions. Assisted businesses can transfer title to property they own to the IDA, which results in the property being exempt from real property taxes. The IDA will then negotiate a payment in lieu of taxes (PILOT) agreement with the project owner, which enables a portion of the foregone property taxes to be recovered by the affected taxing jurisdictions such as local governments and school districts.

Of the 26 active projects in 2017, 18 had PILOT agreements. We reviewed nine of these projects to determine the accuracy of the PILOT payments made by the projects. We compared the PILOT amount that was billed by the IDA to the amount stipulated in the PILOT agreements, and also determined the amount paid by the project. While the PILOT amounts billed and received by the IDA were accurate for three projects, we determined that the PILOT amount billed by the IDA for six projects did not match the amount stipulated in the PILOT agreements for those projects. The IDA calculated the incorrect PILOT amounts for four of the projects because it used the wrong school year in determining the amount of the PILOT.

For example, the PILOT agreement for the Irving Tissue, Inc. Expansion project provides that the PILOT amount will be 0 percent of the tax rate for five years and

then 50 percent of the tax rate for the next five years. The PILOT agreement includes a table to identify which county and school tax year applies to each year of the PILOT agreement, a portion of which is indicated below. In determining the amount of the PILOT for year six of the agreement, the IDA applied the 2015 county and town tax rate, but applied the 2015/16 school year tax rate. This resulted in the project overpaying \$92,393 more than it should have in PILOTs for the three years 2015 through 2017. The discrepancy in year seven is more significant than in the other years due to a change in the assessed value of the property that year.

<b>PILOT Year</b>	<b>County/Town Tax Year</b>	<b>County/Town Tax Rate</b>	<b>School Tax Year</b>	<b>School Tax Rate</b>	<b>Amount per Agreement</b>	<b>Amount Billed</b>
6	2015	9.31	2014/15	19.92	\$302,895	\$304,350
7	2016	9.64	2015/16	20.1203	\$306,917	\$388,844
8	2017	9.71	2016/17	20.7081	\$481,348	\$490,358

We noted that three other projects (BBL Tribune, LLC, LG Plaza, LLC and TRIBALS, LLC) were also billed more for PILOTs during the three year period than required in the PILOT agreements, overpaying a total of \$31,015. The LG Plaza, LLC was also billed \$2,024 less than the amount stipulated in the PILOT agreement for 2017 due to using the wrong school year.

We also identified two projects (M&S Precision Machine Co. LLC and Patti Company LLC) which were billed less than the amount stipulated in the PILOT agreements during the three years due to other errors in calculating the PILOT amount each year. Collectively these two projects paid \$641 less than the amounts stipulated in the PILOT agreements for the years 2015 through 2017.

IDA officials responded that each PILOT year is comprised of a County/Town tax year and a school tax year based on discussions with the various taxing jurisdictions. However, this report does not take exceptions with how the PILOT year is comprised. Instead, we found that the PILOT amounts billed do not correspond to the amounts called for in the PILOT agreements. As indicated in the table above, the PILOT agreement for Irving Tissue, Inc. Expansion Project calls for a PILOT of \$302,895 in Year 6 of the PILOT agreement. However, the IDA billed \$304,350 for Year 6, which was based on the School Tax Rate for 2015/16 rather than the School Tax Rate for 2014/15.

Section 874 (5) of General Municipal Law states that PILOTs which are delinquent are subject to a late payment penalty of five percent of the amount due, and that one percent interest will also accrue on the unpaid amount after the first month. The IDA's PILOT agreements stipulates that late fees will be charged but do not specify the rate to be assessed. However, the IDA only charges a one percent penalty on late payments, rather than the five percent stipulated in General Municipal Law. The IDA charges a one percent late penalty because that is the rate charged by the counties for delinquent tax payments.

We found two projects were delinquent in making PILOT payments during the period of our review. Due to the IDA charging a lower penalty than stipulated in General Municipal Law, the respective municipalities received \$2,616 less than they should have in penalty and interest on the delinquent PILOTs.

IDA officials indicate that the requirement to implement late fees as stated in General Municipal Law is contained in the PILOT agreements. However, as indicated the PILOT agreements only stipulate that late fees will be charged, but do not stipulate the rate to be assessed as a late fee. Although General Municipal Law stipulates that the late fee is to be 5 percent, our review found that in practice the IDA is assessing late fees of only 1 percent.

### **PARIS Certification Services Contract**

Section 2800 of Public Authorities Law requires public authorities to submit reports on their finances and operations annually to the appropriate local government officials as well as to the ABO and the Office of the State Comptroller. The ABO and the State Comptroller have jointly developed and maintain a web-based application, the Public Authorities Reporting Information System (PARIS), to enable public authorities to report the required information in an easy to use electronic format.

For the three years of our review for 2015 through 2017, both the IDA and the CDC had contracts with a firm to provide limited financial services and to certify the accuracy of the data submitted in PARIS. During this period the IDA and CDC paid this firm a total of \$16,143 for these services. The services being provided to the IDA and CDC appear to be of questionable value. Although the contract was for the individual to certify the accuracy of the data submitted in PARIS, we found that the employment and exemption information submitted in PARIS by the IDA was not always accurate and the amount of debt issued by the LDC was reported incorrectly for one project.

For example, the IDA is required to report the estimated number of jobs to be created or retained by each project. This information is reported to the IDA on the project application. However, the data submitted in PARIS did not match the data contained in the project application for 25 of the 34 projects that were reported during the review period. In addition, each project reports to the IDA the number of actual full-time equivalent positions existing at the end of each year. The number of full-time equivalent positions existing at each project that was submitted in PARIS did not match the data reported by projects for 17 of the 24 projects that were active in 2015, for 16 of the 24 projects that were active in 2016, and for 21 of the 26 projects that were active in 2017. For some projects the data reported by the IDA did not match the data reported by the projects because the IDA failed to include part-time jobs in determining the number of full-time equivalent positions while for others the IDA counted part-time jobs as a full-time job.

We also noted that the sales tax exemptions for each project reported by the IDA in PARIS did not always match the sales tax exemptions that each project reported to the IDA. Of the 14 projects that received sales tax exemptions during the review period, the sales tax exemptions that the IDA reported in PARIS for five projects did not match the sales tax exemption amounts that were reported by the projects. The IDA reported more sales tax exemptions claimed for one project than the amount reported by the project to the IDA, and the IDA reported a lower amount of sales tax exemptions claimed for four projects than the amount reported by those projects to the IDA.

The CDC has issued conduit debt on behalf of various civic projects, such as hospitals and housing related entities. In 2017 the CDC issued \$7 million in bonds for the Silver Bay Association YMCA. However, the CDC reported in PARIS that the amount of the bond issuance was \$100,000. This appears to be the amount of the principal paid in 2017, rather than the total amount of the bond issuance. We also noted that the CDC provided funds in the form of a grant to the IDA in 2015, but did not report the issuance of this grant in PARIS.

IDA officials indicate that the IDA has already implemented changes relating to entering data in PARIS and will endeavor to ensure that this data is accurate prior to certifying the data.

We noted that the contract to provide limited financial services and certify the accuracy of the data submitted in PARIS is signed annually by a partner of the firm. This individual is also the son-in-law of the individual that was chair of both the IDA and the CDC through January 2018. This relationship presents a clear conflict of interest. The IDA and CDC have both established codes of ethics policies that prohibit board members from participating in the discussion, negotiation or awarding of any contract in which the board member or a relative has an interest, and requires board members with a conflict to publicly disclose in the official meeting minutes the nature and extent of the conflict. Yet this conflict was only disclosed in August 2015 when the Executive Committee was discussing renewal terms for the contract. There was no disclosure of this conflict during board meetings in 2015, 2016 or 2017 during which the contract was being discussed by the board, and there is no indication that the chair recused himself from these contract discussions. IDA officials indicate that ethics and conflicts of interest issues will be addressed as part of the IDA's continuing education initiative.

### **Procurements not Competitively Selected and No Written Contract**

For the three year period 2015 through 2017 the IDA had total operating costs of \$468,566. Each year the largest expenditure is for counsel services, which totaled \$242,574 over the three year period, an average of more than \$80,000 per year. The IDA has adopted a procurement policy that indicates purchases of goods and services in excess of \$20,000 should require competitive selection, and indicates

that professional services such as legal costs be obtained through a request for proposal process. Although legal services is the largest annual expenditure, the IDA did not solicit requests for proposals in selecting the law firm that provides services. IDA officials indicate that in the future they will document any reasons why requests for proposals for professional services are not practicable.

Further, the IDA does not have a formal written contract with this law firm specifying the services to be provided and the costs of those services. Instead, the IDA pays the law firm a set hourly rate for services based on invoices submitted by the law firm. IDA officials responded that they will document any reasons why formal contracts for professional services might not be practicable on a case-by-case basis. However, this response indicates a lack of understanding for the purpose of a written contract. A written contract serves to formalize the understanding between the parties of the services to be provided, the timeframe for providing such services, the amounts to be paid for those services and methods to evaluate the quality of the services. To indicate that a formal written contract for services that exceed \$80,000 per year is not practical could be viewed as a failure by the board to uphold its fiduciary duty to ensure that the resources of the authority are used prudently and responsibly.

### **Inappropriate Transfer of Funds**

For the three years from 2015 through 2017 the CDC had total operating costs of \$64,173. For this period the largest expenditure was a \$40,000 payment to the IDA, which the CDC identified as a grant to the IDA. There was no specific project or purpose identified for the use of the grant funds, but instead it appears to have been provided to subsidize the IDA's general operations. This appears to be in violation of the CDC's Certificate of Incorporation, which states that CDC's income and earnings are to be used exclusively for its corporate purposes which are to promote economic development and create jobs within the counties. We also note that the CDC board approved another grant to the IDA in its October 2017 board meeting, although this grant was not disbursed during our review period. In addition, since the IDA and CDC boards are comprised of the same individuals, there is a potential conflict with any transactions between the two organizations. Yet there was no disclosure or discussion of potential conflicts existing when the CDC granted the IDA \$40,000 in 2015. CDC officials responded that the CDC issued a grant to the IDA in furtherance of the CDC's mission, and that the CDC will ensure that any future grants to the IDA are in accordance with the CDC's by-laws. They also indicate that any potential conflicts are examined and dealt with accordingly. However, it is unclear how this grant is in furtherance of the CDC's mission of promoting economic development and creating jobs, since the grant did not require the IDA to promote economic development within the counties, and the IDA was not required to create jobs as a result of receiving the grant.

## **Board Member Refresher Training**

Section 2824 (2) of Public Authorities Law requires public authority board members to participate in state approved training within one year of appointment to the board. Of the ten board members comprising the IDA and the CDC in 2017, one board member had been on the board since 2011 but had not taken the required training. This individual left the board in April 2017. The other nine board members participated in the state mandated training, as required.

The ABO's Policy Guidance 17-01 regarding board member training recommends that board members participate in refresher training every three years, or upon reappointment to the board. Six of the nine members have been on the board for over three years, but have not yet participated in the recommended refresher training course. IDA and CDC officials responded that board members are provided regular educational updates and lectures at monthly meetings regarding ABO recommended practices. While we encourage the boards to continue this practice, it does not replace the need for board members to participate in the state approved training sessions upon initial appointment to the board or refresher training every three years or upon reappointment.

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## Recommendations

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1. Ensure that data included in the cost-benefit analysis is based on data provided by the project owner in its application or other documents.
2. Mandate that the project application and cost-benefit analysis are provided to the board.
3. The IDA should specify the amount of financial assistance approved for projects in the approving resolutions and in project agreements.
4. If the amount of financial assistance approved differs from the amount requested in the project agreement, the basis for this should be documented in board meeting minutes.
5. The IDA should recapture sales tax exemptions reported by projects that exceed the amount approved by the board in compliance with General Municipal Law and the IDA's existing policy.
6. The IDA should ensure that the amount of sales tax exemptions approved is based on the applicable sales tax rates.
7. The IDA should file the annual compliance report as required by General Municipal Law Section 875 (3)(d).
8. The board should review its recapture policy and project agreements to ensure that language regarding potential recapture of financial assistance is consistent.
9. The IDA should follow adequate procedures to ensure that all active projects are reviewed regarding whether the projects are meeting the job creation/retention expectations.
10. The IDA should implement appropriate procedures to ensure that PILOT payments are calculated in accordance with the provisions of the PILOT agreements.
11. Establish late fees as stipulated in General Municipal Law and assess and collect when projects fail to make PILOT payments when due.
12. Establish adequate procedures to review and verify that all data in PARIS is correct and accurate prior to certifying the data.

13. The board should establish appropriate policies to require the disclosure of all potential conflicts of interest and take appropriate measures, including requiring recusal of conflicted board members, when conflicts exist.
14. The IDA should enter formal contracts for all professional services that identify the specific services to be provided and the basis for paying for those services.
15. The IDA should solicit requests for proposals for professional service contracts, as addressed in the Procurement Policy.
16. The CDC should ensure that its funds are used exclusively for the CDC's corporate purposes, and not to subsidize the operations of the IDA.
17. IDA and CDC board members should participate in board member refresher training, as recommended by the the ABO's policy guidance.

**COUNTIES OF WARREN AND WASHINGTON  
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February 27, 2018

**Authorities Budget Office**

Michael Farrar  
Director Compliance Review  
State of New York  
Authorities Budget Office  
P. O. Box 2076  
Albany, New York 12220-0076

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Dear Mr. Farrar:

The Counties of Warren and Washington Industrial Development Agency (WWIDA) thanks you for the opportunity to submit this response to the draft operational review prepared by the Authorities Budget Office. We appreciate the recommendations contained in the draft report and will endeavor to implement many of them in our continued efforts to pursue our organizational mission in a legal and transparent manner. Through working with the ABO examiners, the IDA was made aware of certain of the below issues in advance, and has already taken steps to address the concerns detailed in the Draft Report.

It is worth noting that many of the recommendations contained in the draft report are not required by law, and have never been advanced by the ABO as recommended practices. That being said, the WWIDA follows the law and always makes a concerted effort to stay abreast of and implement ABO recommendations as they become available and will continue to do so.

The recommendations of the ABO are commented on in the order in which they are listed in the Draft Report:

1. "Ensure that the data included in the cost-benefit analysis is based on data provided by the project owner in its application or other documents."

**Response:** The IDA is in the process of improving how it conducts the analysis of the costs and benefits of proposed projects and will always endeavor to ensure that the information contained in the cost-benefit analysis is accurate.

2. "Mandate that the project application and cost-benefit analysis are provided to the board."

**Response:** The IDA will endeavor to ensure that its Policies and Procedures are always followed.

3. "The IDA should specify the amount of financial assistance approved for projects in the approving resolutions and in project agreements."

**Response:** The IDA acknowledges its obligations as contained in General Municipal Law § 859-a to describe the financial assistance being contemplated for a proposed project and will

work to ensure that these obligations are reflected accurately in resolutions and project agreements.

4. "If the amount of financial assistance approved differs from the amount requested in the project agreement, the basis for this should be documented in board meeting minutes."

**Response:** The IDA acknowledges its obligations to keep meeting minutes of all motions, proposals, resolutions and any other matter formally voted upon, as well as the vote thereon pursuant to §106 of the Public Officers Law.

5. "The IDA should recapture sales tax exemptions reported by projects that exceed the amount approved by the board in compliance with General Municipal Law and the IDA's existing policy."

**Response:** The IDA acknowledges its rights and obligations to recapture certain tax exemptions claimed which are in excess of the amount approved by the Board and that due consideration will be given to these rights and obligations in the future.

6. "The IDA should ensure that the amount of sales tax exemptions approved is based on the applicable sales tax rates."

**Response:** In the future, we will make it known that sales tax exemptions are approved based on the applicable sales tax rates of Warren and Washington Counties.

7. "The IDA should file the annual compliance report as required by General Municipal Law §875(3)(d)"

**Response:** The IDA acknowledges its obligation to submit an annual report pursuant to General Municipal Law §875(3)(d).

8. "The IDA should review its recapture policy and project agreements to ensure that language regarding potential recapture of financial assistance is consistent"

**Response:** The IDA will continue to review its project agreements to ensure that they are not in conflict with the recapture policy.

9. "The IDA should follow adequate procedures to ensure that all active projects are reviewed regarding whether the projects are meeting the job creation/retention expectations."

**Response:** The IDA is currently reviewing and updating its procedures for the consideration and calculation of job creation in applications as well as how it addresses the calculation and reporting of job creation and retention.

10. "The IDA should implement appropriate procedures to ensure that PILOT payments are calculated in accordance with the provisions of the PILOT agreements."

**Response:** The IDA spans two counties and as such interacts with a number of taxing jurisdictions both large and small and strives to work with these jurisdictions in structuring PILOT agreements. In aligning an offset school year with a County or Town tax year, the IDA uses the taxable status date which for a school year, would occur in the spring following

a fall semester. So, the 2015 tax year for a County or Town correlates with the 2014/2015 school tax year. When this is done, it is done at the request of a taxing jurisdiction.

11. "Establish late fees as stipulated in General Municipal Law and assess and collect when projects fail to make PILOT payments when due"

**Response:** The IDA acknowledges its obligation to implement late fees in accordance with the General Municipal Law and such language is contained with the PILOT Agreements.

12. "Establish adequate procedures to review and verify that all data in PARIS is correct and accurate prior to certifying the data"

**Response:** The IDA has already implemented changes relating to the entry of data into PARIS and will endeavor to ensure that the data entered is correct prior to certifying the data.

13. "The Board should establish appropriate policies to require the disclosure of all potential conflicts of interest and take appropriate measures, including requiring recusal of conflicted board members, when conflicts exist."

**Response:** The IDA has a Code of Ethics which meets the criteria detailed in ABO recommended practices. The IDA endeavors to abide by its policy and the ABO guidance concerning Ethics and Conflicts of Interest. This topic will be addressed as a part of our continuing education initiative.

14. "The IDA should enter into formal contracts for all professional services that identify the specific services to be provided and the basis for paying for those services."

**Response:** In the future, the IDA will document any reasons why this might not be practicable on a case-by-case basis

15. "The IDA should solicit requests for proposals for professional service contracts, as addressed in the Procurement Policy."

**Response:** In the future, the IDA will document any reasons why this might not be practicable on a case-by-case basis.

16. "The CDC should ensure that its funds are used exclusively for the CDC's corporate purposes, and not to subsidize the operations of the IDA."

**Response:** The CDC has, in the past, issued a grant to the IDA in furtherance of the CDC's mission of improving economic opportunities for the citizens of Washington and Warren Counties. The CDC will ensure that any future grants to the IDA are in accordance with the CDC's bylaws and that any potential conflicts are examined and dealt with accordingly.

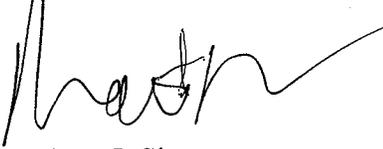
17. IDA and CDC board members should participate in board member refresher training, as recommended by the ABO's policy guidance.

**Response:** The IDA and CDC are aware of its obligations under Public Authorities Law §2824. IDA members receive educational updates and lectures at monthly meetings

regarding ABO recommended practices as well as general topics relating to the General Municipal Law, Public Authorities Law, Public Officers Law and as other topics of interest to IDA members.

In closing, the WWIDA thanks the ABO for its recommendations and assistance. The members of the IDA are unpaid public servants who devote significant time and energy in furtherance of the mission of the WWIDA in an environment that is often very complex and continually evolving and subject to a high level of scrutiny from the State and the Press. There is always room to improve and grow as an organization and the WWIDA appreciates the guidance provided by the ABO and the State of New York in pursuing the enhancement of the job opportunities, health, prosperity and economic welfare of the citizens of Warren and Washington Counties.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Matthew J. Simpson', with a long, sweeping flourish extending to the right.

Matthew J. Simpson  
Chair, Counties of Warren-Washington IDA

MJS:tjb