

Getting Past the Prisoners' Dilemma: Transparency and Accountability Reforms to Improve New York's Industrial Development Agencies

By Amy Lavine

I. Introduction: Economic Development Subsidies and IDAs

To promote commercial and industrial development, New York State authorized the creation of local Industrial Development Agencies (IDAs) in 1969.¹ The legislation gave IDAs the power to subsidize business projects through tax exemptions,² tax exempt bond financing,³ straight lease transactions,⁴ and project site acquisitions.⁵ By the time the law was enacted, forty other states had already established their own industrial development agencies, and IDAs were seen as crucial to enhancing New York's business climate and economic competitiveness.⁶



The establishment of IDAs in New York was just one of a broader suite of economic development programs,⁷ all enacted with the goal of luring industry to locate and remain in the state. But other states established these programs as well, leading to competition among states and localities to offer the most enticing incentives—even if subsidies sometimes canceled out the benefits to be obtained by attracting business. Because of this subsidy competition, economic development programs have been criticized for decades as perpetuating an “economic war among the states” and a publicly financed race to the bottom.⁸ Subsidy programs persist, however, because any state or local government that refuses to offer development incentives will likely lose investments and jobs to jurisdictions where such programs exist. The situation presents a classic example of the prisoners' dilemma: state and local governments would be better off if no economic development subsidies were available, but they very reasonably continue to offer subsidies in order to protect their own self interest.⁹

While this prisoners' dilemma may not have an easy solution, the states do have the ability to increase the transparency and accountability of economic development agencies so as to ensure that they use tax dollars in good faith, with due care, and with the public interest in mind. IDA reform has long been a hot topic in New York, and the passage of the Public Authorities Accountability Act of 2005 (PAAA) and related amendments in 2009 (which are currently awaiting gubernatorial approval)¹⁰

may signal growing support for amendments to the IDA Act.¹¹

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This article starts from the premise that the public would benefit from the enactment of some IDA reforms. Indeed, there is no real opposition to increasing the transparency and accountability of the IDA system, at least to a certain extent.¹² Other reforms may be desired, but less likely to be enacted—the prisoners' dilemma, after all, is a hard one to break, and it militates against any changes that could damage New York's business climate and thus deter economic growth. The article begins with a short discussion about the public benefits that IDAs provide, followed by a brief description of the agencies' deficiencies. An overview of reforms will then be provided, with a concluding discussion offering some thoughts on how best to accommodate the opposite sides of a very deeply rooted impasse.

II. Why We Need IDAs

Economic development subsidies may have a bad reputation, but it is not clear that they actually cause a race to the bottom. Their positive social benefits are often overlooked or underestimated,¹³ and their aggregate impact may even provide net benefits to the state.¹⁴ Although critics of economic development subsidies are more vocal than supporters, it is important to recognize that IDAs and similar public agencies are intended to serve beneficial functions. The following sections briefly summarize the positive aspects of economic development subsidies.

A. IDAs Improve New York's Business Climate

The most frequently cited support for IDAs is that they serve to mitigate the effects of New York's high tax rates, especially in upstate areas.¹⁵ New York has “the reputation of a tax purgatory” and consistently ranks at the bottom of state business competitiveness indices.¹⁶ Accordingly, economic development incentives may be

especially important in New York, and enacting overly burdensome restrictions on IDAs could push companies to leave the state for more business-friendly jurisdictions.

B. IDAs Produce Public Benefits

IDAs do more than maintain New York's economic competitiveness, however. Importantly, IDAs across the state have worked to bring in new businesses and provide new job opportunities. They have also helped to finance nonprofit projects like libraries and community centers, as well as small business initiatives, alternative energy projects and sustainable development projects.¹⁷ While anecdotal reports of failed and wasteful IDA projects may be cause for concern, it must be remembered that many, and possibly most, IDA projects are successful.

C. IDAs Optimize the Allocation of Public and Private Resources

Economic development subsidies also have strong theoretical support. First, competition for business at the local level should serve to allocate resources most efficiently because "businesses that seek a particular type of environment, work force, or package of goods and services will gravitate to those locations that signal their desire to attract firms with similar preferences."¹⁸ According to this theory, known as the Tiebout model, the competition caused by development subsidies should optimize the coordination of public and private entities.¹⁹

The flexibility of the IDA model also allows agencies to account for the unique characteristics of their communities and to develop strategies and incentives tailored to their needs.²⁰ The local nature of IDAs also makes them "laboratories of innovation" and should encourage inventive responses to different social and economic considerations.²¹

Moreover, as a type of public-private partnership, IDAs help "to determine the most efficient actors for each development function at each stage in the life of a project."²² Private sector entities, whether for-profit businesses or nonprofit organizations, can often act "to improve public services and to provide those services on a cost-effective basis."²³ In the context of IDAs, business subsidies can thus be seen as investments in job creation programs that are better managed by private entities than by government agencies.

Finally, the subsidies offered by IDAs and other government agencies help to mitigate financial risks and should therefore lead to increased private sector investment.²⁴ Over the long run, this can result in government cost savings and increased economic development activity.

III. Why IDAs Are Problematic

IDAs may have the ability to optimize efficiency and resource allocation, but the complex public-private

relationships that they create also offer opportunities for waste and abuse.²⁵ The following subsections summarize the primary criticisms leveled against economic development subsidies.

A. Businesses Get Subsidies When They Do Not Need Them

Waste is frequently cited as one of the most problematic aspects of the IDA model. In their zeal to attract development, agencies may award larger subsidies than necessary to attract or retain businesses; in some cases, subsidies may even be awarded to firms that would have located or remained in New York even without financial incentives.²⁶ Businesses have good reason to seek out such "freebies," as subsidies have become so common that they are virtually guaranteed, especially if the company is large enough to persuade more than one community to compete for its business.²⁷ But these incentive packages are paid for by the public, and critics argue for more safeguards to ensure that subsidies are awarded on an objective basis that takes into account the company's need for the subsidy balanced against the benefits to the locality. Imposing stricter standards, moreover, would improve the predictability of subsidy decisions and help to deter favoritism.

B. Businesses Fail to Produce Promised Benefits

A second problem is posed by projects that fail to meet their job creation or retention goals,²⁸ although it is unclear how common this is.²⁹ Broken job creation promises can be partly attributed to the fact that businesses tend to inflate their economic development potential in order to justify larger subsidies.³⁰ But the problem is also caused by a lack of any real penalty provisions in the IDA Act. Long term tax abatements and favorable lease terms, for example, are not required to be cut off when businesses fail to meet their job creation goals, and a business that packs up and relocates to another state before its subsidies have expired gets to keep the taxpayer dollars it has already received. Nor is there any statutory requirement that agencies assess the reasonableness of job creation goals before awarding subsidies, and IDAs' subsidy eligibility policies are often vague enough to support awards that might not be in the public interest.³¹ Inconsistent reporting, moreover, sometimes makes it difficult to determine whether projects have met their job creation and investment goals.³²

C. IDAs Subsidize Low-Wage Jobs, Hurt Existing Businesses, and Encourage Sprawl

Criticism has also been leveled at the types of developments that IDAs subsidize.³³ Critics argue that public funds should not be used to subsidize "poverty wage" jobs that impose hidden taxpayer costs due to the need for local governments to fund additional social support services.³⁴ And when subsidies are provided to new businesses, especially big box retail outlets, existing busi-

nesses often suffer.³⁵ The result may be a net reduction in jobs and economic development, with corresponding impacts on the local economy, even if job creation goals are met. Subsidizing sprawl and environmental destruction is another problem, as IDA projects are often located in suburban and exurban areas.³⁶ Unlike projects located in urban areas with existing infrastructure and access to transit, sprawl increases local governments' infrastructure maintenance and service delivery costs, leads to higher emissions from vehicle trips generated, and results in the loss of natural habitats and farmland.³⁷

D. IDAs Use Tax Dollars That Could Be Put Toward "More Important Things"

Finally, even though their economic development incentives do not require cash payments or underwriting from local governments, IDA tax exemptions divert a major source of funding—property taxes—from school districts and municipal general funds. The various state tax exemptions offered by IDAs similarly add up to millions of dollars of lost revenues, which could otherwise be used for any number of underfunded state programs.³⁸ In theory, IDA tax exemptions are more than justified by the increased property values and tax revenues that will be produced by projects after their exemptions expire. But in reality, one of the most forceful criticisms of IDAs is that their tax exemptions bleed money away from education, public safety and other government programs—what some people have taken to calling “more important things.”³⁹ The criticism is not just that business interests are being promoted over public interests, however. Better funding for education, infrastructure and public safety could help to grow the kinds of environments that businesses actually seek out, as no amount of economic development subsidies can produce a well-educated workforce or a community with a high quality of life.⁴⁰

IV. Proposed Reforms

Commentators have been unable to agree about the effectiveness of IDAs and other economic development subsidies. Regardless, it can hardly be argued that the IDA Act is perfect. Parts of the Act are outdated, and other sections could be improved by reforms designed to increase transparency, accountability, project quality, and public involvement. IDAs are subject to the state's recently passed public authorities reforms,⁴¹ but legislation is still needed to address specific deficiencies of the IDA Act. The following subsections highlight some of the reforms that have been proposed by legislators and public interest groups.

A. Increase Monitoring and Reporting Requirements

Increased disclosure has been described as one of “the most fundamental” reforms needed for economic development agencies, as accurate data is necessary to understand how IDAs can be improved.⁴² Legislation requiring IDAs to submit annual financial statements to

the Comptroller was passed in 1989,⁴³ and amendments passed in 1993 required IDAs to report additional job creation data.⁴⁴ Nevertheless, some of the job data collected from IDAs is still incomplete, inconsistent or unreliable. Studies based on data from 2005 have determined that IDAs failed to submit complete job data for somewhere between 11% and 48% of all projects.⁴⁵ The Comptroller's most recent report (assessing 2007 data) concluded that nearly 10% of IDAs “reported zero job data across all job categories”⁴⁶ and “IDAs still do not consistently verify employer-reported job information.”⁴⁷ Different organizations (with opposing political agendas) have also reached starkly different conclusions about the effectiveness of IDAs, illustrating how malleable the data is when different metrics are used to decide which IDA reports are complete enough to analyze.⁴⁸

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The Comptroller, however, has statutory authority to impose reporting requirements on IDAs,⁴⁹ and over the past several years the Office of the State Comptroller (OSC) has taken a number of steps to facilitate more accurate and consistent reporting. New queries have been added to the list of statutory reporting requirements, such as wage and benefits data.⁵⁰ Other changes, such as prohibiting IDAs from revising job creation goals, have been imposed in order to make it easier to determine whether project goals have been met.⁵¹ OSC has also offered increased training for IDA board members, issued guidance for preparing annual statements, and increased the number of IDAs that it audits.⁵² In 2007, the online Public Authority Reporting Information System (PARIS) was launched to simplify the reporting process and improve consistency.⁵³

While the Comptroller's increased oversight of IDAs has resulted in better reporting, additional reforms have been proposed. One commentator has suggested that annual reports should include more detailed information relating to payments in lieu of taxes as well as “information on all government assistance provided to a project” and not just IDA subsidies.⁵⁴ A 2009 bill sponsored by Assemblyman Sam Hoyt would codify many of the project and job information reporting provisions now required by the Comptroller. It would also require IDAs to develop benchmarks to track how well projects meet their goals.⁵⁵ Another bill, called the Corporate Accountability for Tax

Expenditures Act, would require IDA annual reports to include data on the aggregated amount of diverted state taxes and follow-up information on previous years' agreements. And whereas current law suspends IDAs' subsidy granting powers if they fail to comply with reporting requirements, this bill would go farther and suspend previously awarded benefits if businesses refuse to provide necessary data.⁵⁶

B. Make the Application and Subsidy Award Process More Objective

Several reforms have been suggested to ensure that incentives are awarded to projects that actually need them, and to ensure that subsidies are no larger than necessary. Chief among these proposals is to codify procedures relating to subsidy applications and subsidy awards. Currently, the IDA Act prescribes very few steps for the project application and approval process, presenting opportunities for IDAs to distribute subsidies in an inconsistent and possibly wasteful or biased manner. Making the process more formal, and codifying certain minimum requirements, would give the system more integrity and make subsidy decisions more predictable.

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The IDA Act currently includes no content requirements for project applications.⁵⁷ A certain baseline of information is needed, however, for agencies to make informed subsidy decisions, and things like corporate information, detailed project proposals, and cost-benefit analyses should be considered necessary components of any IDA application.⁵⁸ The Hoyt bill would require applications to include this information, among other things, and it would also require companies to explain in their applications why assistance is necessary. IDAs, in reviewing applications, would then have to make findings that the estimated job creation goals are reasonable and that the project "would not be undertaken but for the financial assistance provided by the agency[.]"⁵⁹

Another useful reform would be to require agencies to make subsidy decisions based on objective and uniformly applied criteria.⁶⁰ The 1993 amendments to the IDA Act were intended to address this issue. The legislation required IDAs to adopt uniform tax-exemption policies, which were to take into account such factors as the expected number of jobs to be created, estimated tax revenue increases and the project's negative environmental impacts. Deviations from the uniform policy were to be explained in writing, with notification being made to any

affected taxing jurisdiction.⁶¹ Unfortunately, some IDAs failed to comply with the legislation,⁶² and some uniform policies are so vague as to offer little guidance as to the types of projects eligible for subsidies or the amount of subsidies available.⁶³ According to the 2006 Comptroller report, other IDAs have used "expansive interpretations" to stretch the meaning of project eligibility requirements.⁶⁴

To strengthen the 1993 amendments, the Hoyt bill would require IDAs to adopt specific subsidy criteria and to make an independent analysis of the cost-benefit information contained each application. The amount of assistance available would then be determined based on "a point scoring system to evaluate the job, wage, investment, and community and workforce development attributes of each project[.]" Finally, the bill would require uniform tax exemption policies to be reviewed every year, with input from affecting taxing jurisdictions being presented at public hearings.⁶⁵ By improving the consistency of agencies' subsidy decisions, these reforms would help to prevent IDA decisions based on favoritism, exaggerated project goals and poor judgment.

C. Increase Transparency and Public Participation in the Subsidy Award Process

Across the country, state and local governments have created a slow but steady trend of improving the transparency and accountability of economic development agencies.⁶⁶ Measures have been enacted to make information about subsidies more widely available to the public, and to provide a larger role for public participation in decisions regarding subsidy awards.

The IDA Act would benefit from these sorts of transparency and accountability reforms. First, the statute sets the minimum period of notice for IDA public hearings at a mere 10 days.⁶⁷ Second, public hearings are often held just before agencies make their decisions on incentive applications. Without the benefit of public comment closer to the beginning of the subsidy award process, hearings may serve as more of an afterthought to IDA board members who have already invested substantial amounts of time in negotiations with project applicants.⁶⁸ Finally, public participation could also be fostered by requiring IDAs to make project applications and related documents easily accessible to the public, well in advance of public hearings.⁶⁹

Responding to these procedural concerns, the Corporate Accountability for Tax Expenditures bill proposes to increase the notice period for public hearings to 30 days, and to require a public hearing to be held within 60 days of an application's submission.⁷⁰ The Hoyt bill would additionally require IDA-specific documents to be posted on agencies' Web sites, including PILOT agreements and information about pending projects.⁷¹ These reforms are long overdue.

The Hoyt bill would also establish a Community Impact Review process, which is similar to the economic impact reviews now required in a number of state and local jurisdictions for large-scale project proposals.⁷² Under this review process, agencies would be required to prepare community impact reports (CIRs) and make them available to the public along with project applications. The CIRs would include enough project information for board members and taxpayers to make informed decisions about the costs and benefits of subsidy decisions. Briefly stated, the CIR would contain “an analysis of the economic, social and environmental impact of the project on the community, including its employment, infrastructure and housing[.]” and it would require all potential adverse impacts to be disclosed.⁷³ Before approving any subsidy, agencies would be required to find “that any negative impact from the project...will be avoided or minimized to the maximum extent possible.” Alternative project plans would have to be considered in making this determination, including the no-project alternative.⁷⁴

D. Increase Ethical Standards for IDA Board Members

IDA board members are currently subject to the conflict-of-interest provisions applied to municipal officers.⁷⁵ Additionally, the PAAA required each IDA to adopt a code of ethics and whistleblower protection policies. Board members, moreover, must now make annual financial disclosures and attend mandatory training sessions dealing with governance issues.⁷⁶ Amendments to the PAAA passed in 2009 and currently awaiting gubernatorial approval further emphasize, if there was remaining any doubt, that agency board members have a fiduciary duty to the public.⁷⁷

Even with these increased ethics standards, two bills introduced in 2009 would impose tougher conflict of interest rules, requiring board members to recuse themselves rather than merely disclosing their conflicts.⁷⁸ The Hoyt bill, in addition to requiring recusal, would also prohibit the appointment of any person who, within the previous five years, served as a lobbyist in the local jurisdiction or worked for a consultant or supplier to the IDA.⁷⁹ While these conflict of interest provisions may be unappealing to business interests, there are few grounds on which they can be opposed.⁸⁰

E. Amend the Anti-Piracy Statute

The anti-piracy provision in the IDA Act (sometimes called the anti-poaching or anti-raiding statute) is intended to prohibit agencies from luring companies from one part of the state to another, as this merely shifts jobs, rather than creating new economic growth.⁸¹ The rule contains two exceptions, however, allowing intra-state relocations where the subsidy is necessary either to prevent a business from moving out of the state, or for the business to remain competitive.⁸² Critics allege that these

exceptions have weakened the anti-piracy statute to the point where it is “virtually without effect,”⁸³ but this may be an overstatement, as the courts have found violations of the statute in a number of cases.⁸⁴

A more cogent criticism lies in the windfall remedy that a pirating municipality receives when a violation of the statute is found.⁸⁵ According to case law, the second municipality not only gets to keep the pirated jobs, but is also awarded a refund of the unlawful subsidies. The original host community loses its jobs and gets no compensation for the act of piracy, and the pirating IDA receives no meaningful penalty aside from losing its deal.⁸⁶ IDA reform proponents have proposed to change these outcomes by making subsidy refunds available to the first municipality instead of the second, and by temporarily suspending the pirating IDA’s subsidy granting powers.⁸⁷ A less common suggestion is to give the first municipality the power to veto any subsidies granted by an agency trying to persuade a business to relocate.⁸⁸

Another approach to minimizing instances of job piracy within the state has been to advocate for better coordination among IDAs. With several counties having five or more separate IDAs,⁸⁹ better cooperation could promote regional needs and discourage competition between urban areas and their surrounding suburbs.⁹⁰ Improving regional cooperation would have the additional benefits of streamlining the process for subsidy applicants and making the economic development system (which includes other entities aside from IDAs) easier to navigate and more cost effective.⁹¹ Some IDAs have already taken voluntary measures to increase regional cooperation,⁹² but merging or consolidating IDAs currently requires the passage of state legislation. Proposals have thus been made to amend the IDA Act to allow neighboring agencies to merge without state approval.⁹³

F. Enact Meaningful Penalties for IDAs and Subsidy Recipients

The only real penalty currently authorized by the IDA Act is a provision that suspends agencies’ subsidy powers if they fail to submit an annual report.⁹⁴ There are no repercussions for businesses that refuse to provide IDAs with information necessary for reporting. Nor are there any penalties for companies that fail to create or retain the number of jobs that were promised, even if the business abandons the state completely. With sufficient evidence, local governments and school districts can bring suit against IDAs and subsidy recipients for fraud, breach of the common law fiduciary duty, or even civil RICO.⁹⁵ Such claims are difficult to prove, however, and require costly and time-consuming litigation. They are not very common.

To prevent companies from inflating their job creation goals in order to receive larger subsidies and from being unjustly enriched if they accept subsidies and then

relocate out of state, other states have enacted subsidy termination and recapture (or clawback) provisions.⁹⁶ Both the Hoyt bill and the Corporate Accountability for Tax Expenditures bill include such rules. Essentially, they would discontinue long-term subsidies if a project failed to meet its job creation goals, and they would require a business that leaves the state within five years to repay all of the subsidies it received.⁹⁷ Significantly, the Corporate Accountability for Tax Expenditures bill does not seem to require the repayment of local tax exemptions, making it much weaker than the Hoyt bill. The Hoyt bill contains another notable difference in that it requires subsidies to be discontinued not only for failing to meet project goals, but also if a business is found to be in violation of any labor or environmental laws.

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Subsidy discontinuance and recapture provisions have received broad support from public interest groups and government officials,⁹⁸ but business representatives and other politicians have opposed them for fear that they may damage the state’s business climate. Indeed, businesses might very well be dissuaded from operating in New York State if they feared that their subsidies could be retroactively revoked for good-faith efforts that nevertheless failed to meet their targets.⁹⁹ The Corporate Expenditures for Tax Accountability bill responds to this concern by allowing the state to waive recapture requirements on a case-by-case basis, but the Hoyt bill includes no such parallel safety valve.¹⁰⁰ Waiver provisions or exceptions for *forces majeure* would make clawbacks fairer rules, but they must be crafted carefully to preclude inconsistent or lax application.¹⁰¹ Accordingly, a compromise reform might be to require IDAs to attach subsidy discontinuance and recapture requirements to their assistance agreements, but to allow for good-faith exceptions in specific and limited situations.

G. Make Sure That Local Governments and School Districts Are Involved in the Subsidy Award Process

IDA tax exemptions divert revenue streams that would otherwise go toward local governments, school districts, and the state. In 2007, IDAs granted \$970 million in tax exemptions, the majority of which came from local property tax abatements. These tax exemptions were offset by \$377 million in payments in lieu of taxes,

or PILOTs, bringing the net amount of tax exemptions to \$593 million.¹⁰² The statewide impact of these exemptions on education and local government funding is significant; just half of this amount could pay the annual salaries of more than 5,000 teachers¹⁰³ or 3,000 police officers.¹⁰⁴ Because of these fiscal impacts, many commentators have called for the IDA process to be more accountable to the local governments and school districts that they impact.¹⁰⁵

Some of the reporting and public disclosure reforms discussed in other sections of this article could help to shed light on the impacts of tax exemptions on public finances. They could also help to identify wasteful projects, and subsidy suspension and recapture proposals, if enacted, would return some of these subsidies to their original taxing jurisdictions.

One reform proposal specifically intended to protect affected taxing jurisdictions is to require the inclusion of local government and school district representatives on IDA boards. Several currently pending bills would also reserve board seats for labor and environmental representatives,¹⁰⁶ thus ensuring a more diverse range of decision-makers on boards that have traditionally presented opportunities for nepotism and revolving-door business appointments.¹⁰⁷ In 2007, a bill was proposed that would have required affected school districts and local governments to approve agencies’ uniform tax exemption policies.¹⁰⁸ A variation on this rule could give school boards and local governments a veto over the adoption of or deviations from any uniform policy, but this could lead to selfish or misguided actions on the part of affected taxing jurisdictions. A more balanced rule might be to require a public hearing for adopting or deviating from a uniform tax-exemption policy, with special notice being provided to representatives of affected taxing jurisdictions.¹⁰⁹ Another option would be for the state to reimburse school districts directly, but this would result in further losses to state revenues.¹¹⁰

H. Improve the Quality of Subsidized Projects

i. Prevailing and Living Wages¹¹¹

Prevailing and living wage standards are viewed as a priority IDA reform by numerous labor organizations and public interest groups.¹¹² There is a moralistic aspect to this reform, as it suggests that public money, through government decisions, should not be spent on jobs that offer insufficient wages and benefits for employees to achieve a decent quality of life. But economic policy also supports increased wages for a number of reasons, including: decreased costs for public assistance programs necessitated by “poverty wage” jobs; increased worker competence, productivity and reliability, which can actually result in lower costs for developers and employers; and spin off benefits to local economies resulting from larger amounts of discretionary income.¹¹³ Moreover, precedent exists for prevailing wage standards given that the state already

requires increased wages for construction jobs associated with most public works projects.¹¹⁴

A few IDAs have already taken steps to require subsidized projects to create better paying jobs. The Nassau County IDA, for example, has raised the bar for construction jobs by refusing to issue tax exempt bonds for projects costing more than \$5 million unless the applicant and its subcontractors agree to pay prevailing wages and enter into project labor agreements.¹¹⁵ The Ulster County IDA also enacted an increased wage policy in 2007, which applied to both construction and permanent jobs. It has been temporarily suspended, however, so that the IDA can determine its impact (positive or negative) on the county's ability to attract new development.¹¹⁶

At the state level, prevailing wage standards for IDAs have been proposed repeatedly over the last several years,¹¹⁷ and four such bills are currently pending.¹¹⁸ While some of these bills impose prevailing wages for only construction employees, the Hoyt bill mandates increased wages for construction workers, building maintenance employees, and other workers.¹¹⁹ The Hoyt bill has provoked strong opposition, however, with opponents generally framing the wage requirements as "job killers."¹²⁰ They argue that mandatory wage requirements will increase the cost of doing business in New York too much, driving both new and established businesses away. A 2008 study provides support for this view, finding that "extending prevailing wage to IDA projects will increase the total cost of a typical construction project 23% for upstate regions...and 52% for downstate regions[.]"¹²¹

As with the larger question of whether economic development subsidies are good public policy, there is room to debate the effectiveness of prevailing and living wages. What is clear, however, is that wage requirements are the most controversial aspect of IDA reform, and it will be unfortunate if prevailing wage provisions continue to stall the passage of other much needed reforms. A more pragmatic approach might be to set aside increased wage requirements and instead propose additional incentives for projects that offer prevailing and living wages (or disincentives for projects that do not). The data generated from this type of incentive program would also help to answer the question of whether or not prevailing wages would actually damage New York's ability to attract business.

ii. Local Hiring Requirements

The County of Monroe IDA (COMIDA) requires projects to hire construction workers from a nine-county area, with exceptions available only in limited circumstances.¹²² While not raising wages, this provision keeps the benefits of development within the greater Rochester area, supporting the regional economy and all of the businesses that depend on it. Additionally, because the policy

is regional in scope, it may also help to increase regional cooperation among IDAs.

Although no local hiring requirements have been proposed this year,¹²³ the Hoyt bill does direct subsidy recipients to consider, where practical, hiring employees from the metropolitan statistical area if more than 30% of the area's residents live below the poverty line.¹²⁴ A more general local hiring requirement may be warranted, however, as there are few downsides to such provisions aside from the cost of monitoring. Geographical hiring restrictions that cover a large area, like the COMIDA program, should not overly restrict the pool of qualified employees. If they arise, problems of this sort can be resolved by including exceptions, as in COMIDA's policy, for specialized construction contractors and a lack of local workers.¹²⁵ In the alternative, local hiring programs that apply to smaller geographical areas are often structured so as to give local residents priority in applying for jobs. This allows employers to hire any employees they wish, but still creates increased opportunities for local residents.¹²⁶ Another option would be to require individual IDAs to set their own local hiring goals.

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iii. Increased Environmental and Sustainability Standards

In addition to calls for increased wages and local hiring, reform proposals have also sought to impose energy and environmental standards on IDA projects. These requirements might increase upfront development prices and make communities less "business friendly," but they have engendered much less opposition than wage provisions. This may be due to the fact that many environmental standards decrease long-term costs,¹²⁷ and because businesses have begun to respond to consumer demands for green products.¹²⁸

Several pending bills focus on requiring subsidized projects to meet green building standards and prohibiting them from being built on greenfields.¹²⁹ An alternative approach already being taken by some IDAs would be to increase the incentives available to companies that voluntarily adopt such heightened environmental standards.¹³⁰ This may be a better option, especially for provisions requiring IDA projects to be located on brownfields or greyfields. These prohibitions on greenfield development greatly limit agencies' abilities to find suitable sites for businesses, and they have not received broad support.¹³¹

V. Where to Go With IDA Reform

For better or worse, New York's IDAs will likely be in the subsidy game for many years to come. Many reforms, however, can be enacted now to improve agencies' efficiency, transparency and accountability. Very few criticisms can be made against proposals to augment the Act's reporting requirements, to tighten the uniform tax exemption statute so that agencies' policies must, in fact, be uniform policies, or to make the Act's notice and hearing requirements more amenable to meaningful opportunities for public participation. Additional ethics requirements, provisions giving school districts and local governments more say as to how their diverted tax dollars are used, increased environmental standards, and an anti-piracy statute that does not result in windfall remedies are also improvements that most people can agree on, even if consensus on the details has yet to be reached.

Supporters of IDA reforms should take pragmatic considerations into account and focus on these generally accepted proposals, as many of them are extremely important. Compromise proposals can be developed for more controversial provisions: clawbacks can have exceptions, properly tailored, and wage increases can be incentivized rather than mandated.

Endnotes

1. 1969 Laws of N.Y., ch. 1030, codified at N.Y. GEN. MUN. LAW §§ 850 *et seq.* The IDA Act also authorizes agencies to assist recreation, education and cultural projects. N.Y. GEN. MUN. LAW § 854 (4). A 1986 amendment to the IDA Act also permitted agencies to subsidize "civic" projects, meaning projects developed by nonprofits. 1986 Laws of N.Y., ch. 905, previously codified at N.Y. GEN. MUN. LAW § 854 (13). However, the civic project provision expired in 2008.
2. N.Y. GEN. MUN. LAW § 874. *See also* *Pyramid Co. of Watertown v. Tibbets*, 76 N.Y.2d 148 (1990) (discussing the tax benefits available under the IDA Act).
3. N.Y. GEN. MUN. LAW § 864. *See Wegmans Food Markets, Inc. v. Dep't of Taxation & Fin.*, 126 Misc.2d 144, 145 (Monroe County 1984) (explaining typical bond financing arrangements).
4. N.Y. GEN. MUN. LAW § 868(9); N.Y. GEN. MUN. LAW § 854 (defining "straight lease transaction"). *See also* Brian T. McMahon and Michael O'Shea, Esq., *Industrial Development Agencies and the 504 Loan Program: Great Economic Development Partners*, <http://www.nybdc.com/December2006Newsletter/partnerpageDec2006.htm> (last visited Sept. 10, 2009).
5. N.Y. GEN. MUN. LAW § 858(4). *See also* *Ne. Parent and Child Soc'y v. Schenectady IDA*, 494 N.Y.S.2d 503 (3d Dep't 1985).
6. *See* Memorandum, Office of the Governor of N.Y., In Support of N.Y. Gen. Mun. Law §§ 850 *et seq.* (May 26, 1969) (stating that IDAs were necessary to "help communities in New York State to compete more effectively with communities in over 40 other states where industrial development agencies are now operating.").
7. *See generally* Frank J. Mauro & Glenn Yago, *State Government Targeting in Economic Development: The New York Experience*, 19(2) *PUBLICUS* 63-82 (1989) (discussing the history of economic development programs in New York).
8. *See, e.g.*, Robert L. Birmingham, *Industrial Development Bonds and Economic Policy*, 1 *CREIGHTON L. REV.* 9, 12 (1968); *Congress Should*

End the Economic War Among the States: Hearing Before the Subcomm. on Domestic Policy of the Oversight and Gov't Reform Comm., 98th Cong. (2007) (statement of Arthur J. Rolnick, Senior Vice President, Federal Reserve Bank of Minneapolis), *available at* http://www.minneapolisfed.org/publications_papers/studies/econwar/rolnick_testimony_2007.cfm#n2.

9. The prisoners' dilemma is a classic problem in the economics field of game theory, based on a hypothetical situation in which two criminal suspects must choose between betraying each other or refusing to implicate the other prisoner in the crime. The game assumes that there are three possible results: (1) both prisoners can remain silent, in which case the police, with no evidence, must let them go; (2) both prisoners can take a plea bargain and implicate the other, in which case both prisoners receive sentences but also receive a commutation of several years for their cooperation; or (3) one prisoner can rat out the other, while the second remains silent, in which case the informant (with no evidence offered against him) goes free, and the silent prisoner receives the maximum sentence, as no commutation is offered for cooperation. If the prisoners are barred from communicating with each other, game theory predicts that they will always take a plea bargain, regardless of the fact that remaining silent could achieve the best results for both prisoners (result 1). This is so because taking a plea bargain will protect the informant regardless of the other prisoner's choice (results 2 and 3), while staying silent could result in the longest sentence possible (result 3). *See* Daniel P. Petrov, Note, *Prisoners No More: State Investment Relocation Incentives and the Prisoners' Dilemma*, 33 *CASE W. RES. INT'L L.* 71 (2001); Birmingham, *supra* note 8, at 17-19 (1968).
10. Public Authorities Accountability Act, ch. 766 L. 2005, 228th Sess. (N.Y. 2005) (codified as amended at Pub. Auth. Law §§ 2 *et seq.* (2006)), and amendments passed in A.2209-C, 232nd Sess. (N.Y. 2009) [*hereinafter* S.1537-C/A.2209-C] (currently awaiting gubernatorial approval), together increased reporting requirements for authorities, imposed additional ethics rules, established an Authority Budget Office and an independent Inspector General, enabled the Comptroller to approve certain contracts, and established beyond a doubt that authorities owe a fiduciary duty to the public.
11. Although IDAs are subject to the new provisions of the Public Authorities Law, separate legislation is necessary to address issues specific to the IDA enabling act.
12. For example, the New York State Economic Development Corporation (NYSEDC), which represents economic development and business professionals, has supported a requirement that written reports of IDA hearings be made available to board members. BRIAN McMAHON, TESTIMONY BEFORE THE ASSEMBLY LOCAL GOVERNMENTS COMMITTEE (2005), *available at* <http://www.nysedc.org/legislativenews/Assembly%20testimony.pdf>. The Center for Governmental Research, in a report prepared for NYSEDC, also recommended "clearer communication between the OSC [Office of the State Comptroller] and the IDAs in order to eliminate reporting confusion." *CTR. FOR GOVERNMENTAL RESEARCH, JOB CREATION AND NEW YORK STATE IDAS: A RESPONSE TO THE JOBS WITH JUSTICE REPORT* (Feb. 2008), *available at* http://www.cgr.org/reports/08_R-1535_Job_Creation_and_NYS_IDAS.pdf. *See also* NYSEDC, *IDA RECOMMENDED PRACTICES*, *available at* <http://www.nysedc.org/legislativenews/IDA%20Recommended%20Practices%20Report.pdf> (recommending that IDAs establish Websites to provide the public with access to agency information, and that they establish subsidy recapture/suspension policies, among other things also supported by IDA reform proponents); Memorandum In Opposition to S.1241(Thompson)/A.3659(Hoyt), The Bus. Council of N.Y. (Apr. 6, 2009), *available at* <http://www.bcnys.org/inside/Legmemos/2009-10/s1241a3659industrialdevelopmentagencies.htm>.
13. Clayton P. Gillette, *Business Incentives, Interstate Competition, and the Commerce Clause*, 82 *MINN. L. REV.* 447, 452 (1997).

14. *Id.* at 448 (1997). See also WILLIAM T. BOGART, BROOKINGS INSTITUTION, CIVIC INFRASTRUCTURE AND THE FINANCING OF COMMUNITY DEVELOPMENT 1 (2003), available at http://www.brookings.edu/~media/Files/rc/reports/2003/05metropolitapolicy_bogart/20030527_Bogart.pdf (quoting a developer who explained that the goal of public sector investment is "to set the stage for the private sector to operate effectively at a profit").
15. See, e.g., Brian T. MacMahon, *How will 20 percent tax encourage businesses to invest?*, THE POST STANDARD, Feb. 26, 2008, available at http://blog.syracuse.com/opinion/2008/02/how_will_20_percent_tax_encour.html; PETER A. BAYNES, TESTIMONY BEFORE THE ASSEMBLY STANDING COMMITTEE ON LOCAL GOVERNMENTS (Mar. 4, 2009), available at http://www.nyc.com.org/mn_news/documents/IDATestimonyonLH.doc.
16. ARTHUR B. LAFFER, STEPHEN MOORE & JONATHAN WILLIAMS, AM. LEGIS. EXCHANGE COUNCIL, RICH STATES, POOR STATES: ALEC-LAFFER STATE ECONOMIC COMPETITIVENESS INDEX 9 (2d ed., 2009), available at http://www.alec.org/am/pdf/tax/09RSPS/26969_REPORT_full.pdf. This report ranks New York as the state with the worst business climate. *Id.* at 25, table 6. But see FRANK MAURO, TESTIMONY BEFORE THE NEW YORK STATE ASSEMBLY STANDING COMMITTEE ON LOCAL GOVERNMENTS (Mar. 4, 2009) [hereinafter MAURO TESTIMONY], available at http://www.fiscalpolicy.org/MauroTestimony_IDAs_March2009.pdf at 12 ("How is it that we hear of New York coming up short on measures of business climate? Unfortunately, some of the cruder measures look only at the cost side of production.").
17. See, e.g., JENNY VICKERS, BUS. FACILITIES, NEW YORK STATE OF MIND (Apr. 2009), available at http://www.businessfacilities.com/bf_09_04_special1.php; Kathy Kellog, *IDA to Review proposed PILOTs for wind farms*, The Buffalo News, Jun. 8, 2009; Press Release, Maggie Brooks, Brooks Addresses IDA Reform (Mar. 4, 2009) available at <http://www.growmonroe.org/comida/files/file/Press%20Release/2009/IDA%20Hoyt%20Testimony.pdf>; John Golden, *Assisted Living Projects Get County's Green Light*, WESTCHESTER COUNTY BUS. J., Jul. 16, 2009, available at <http://www.westfaironline.com/westchester-county-business-journal/article/2456-assisted-living-projects-get-countys-green-light.html>.
18. Gillette, *supra* note 13, at 448.
19. *Id.* Gillette notes that "[a]lthough Tiebout models of local government services are usually directed at the market for residence, the same desire for preference satisfaction should apply to the market for firms." *Id.*
20. See Gillette, *supra* note 13, at 449; Richard Briffault, *Localism and Regionalism*, 48 BUFFALO L. REV. 1, 15 (2000).
21. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").
22. Marc B. Mihaly, *Living in the Past: The Kelo Court and Public-Private Economic Redevelopment*, 34 ECOLOGY L.Q. 1, 40 (2007).
23. See THE NAT'L COUNCIL FOR PUB.-PRIVATE P'SHIPS, CRITICAL CHOICES: THE DEBATE OVER PUBLIC-PRIVATE PARTNERSHIPS AND WHAT IT MEANS FOR AMERICA'S FUTURE 6 (2003), available at <http://www.ncppp.org/presskit/2003whitepaper.pdf>.
24. See BOGART, *supra* note 14, executive summary.
25. See Mihaly, *supra* note 22, at 58-59 (explaining that "[a]ll governmental decisions run the risks of contamination by interested parties. Public-private partnerships clearly pose new and special challenges because they involve such intricate interdependencies.").
26. See OFFICE OF THE NEW YORK STATE COMPTROLLER, DIV. OF LOCAL GOV'T & ECON. DEV., INDUSTRIAL DEVELOPMENT AGENCIES IN NEW YORK STATE: BACKGROUND, ISSUES AND RECOMMENDATIONS 14 (May 2006) [hereinafter 2006 COMPTROLLER'S REPORT], available at <http://www.osc.state.ny.us/localgov/pubs/research/idabackground.pdf>; Chris Farrell, *The Economic War Among the States: An Overview, Banking and Policy Issues Mag.* (Jun. 1996), available at http://www.minneapolisfed.org/publications_papers/pub_display.cfm?id=3659; GOOD JOBS NEW YORK, KNOW WHEN TO FOLD 'EM: TIME TO WALK AWAY FROM NYC'S CORPORATE RETENTION GAME 6 (Feb. 2004), available at http://www.goodjobsfirst.org/pdf/gjny_report_final.pdf; David Robinson, *Fantasy Island To Get Tax Breaks*, BUFFALO NEWS, Feb. 12, 2008.
27. See, e.g., Rolnick, *supra* note 8.
28. A particularly egregious example is J.P. Morgan Chase, which reportedly received more than \$200 million in subsidies since 1989, but eliminated 13,000 jobs between 1995 and 2000. NEW YORK JOBS WITH JUSTICE, GETTING OUR MONEY'S WORTH: THE CASE FOR IDA REFORM IN NEW YORK STATE 7 (May 2007), available at <http://www.nyjwj.org/docs/GOSW.pdf>. That works out to paying J.P. Morgan Chase more than \$15,000 to cut each job.
29. See *infra* pt. IV.a.
30. See Sherry L. Jarrell, Gary Shoesmith & Neal Robbins, *Law and Economics of Regulating Local Economic Development Incentives*, 41 WAKE FOREST L. REV. 805, 823 (2006).
31. See *infra* pt. IV.b.
32. See *infra* pt. IV.a.
33. See, e.g., NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 8.
34. See, e.g., *id.* at 6; Rep. Paul Tonko, Op-Ed., *IDA Reforms Create Good Public Policy*, ALBANY TIMES UNION, Jun. 11, 2009.
35. See generally STACY MITCHELL, BIG-BOX SWINDLE: THE TRUE COST OF MEGA-RETAILERS AND THE FIGHT FOR AMERICA'S INDEPENDENT BUSINESSES (2006). See also Albor Ruiz, *Bronx Small Business Owners Fight Big-Box Store Plan for Kingsbridge Armory*, N.Y. DAILY NEWS, Jul. 16, 2009.
36. See, e.g., ALLISON LACK, GOOD JOBS FIRST, SPRAWLING BY THE LAKE: HOW IDA-GRANTED PROPERTY TAX EXEMPTIONS UNDERMINE OLDER PARTS OF THE BUFFALO/NIAGARA METRO AREA (May 2007), available at <http://www.goodjobsfirst.org/pdf/buffalosprawl.pdf>.
37. See NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 10; Greg LeRoy, *TIF, Greenfields, and Sprawl: How an Incentive Created to Alleviate Slums Has Come to Subsidize Upscale Malls and New Urbanist Developments*, 60 PLAN. & ENVT'L. L. 3 (2008), available at <http://www.goodjobsfirst.org/pdf/apa.pdf>; Patricia E. Salkin, *Sustainability and Land Use Planning: Greening State and Local Land Use Plans and Regulations to Address Climate Change Challenges and Preserve Resources For Future Generations*, 34 WM. & MARY ENVT'L. & POL'Y REV. --- (forthcoming 2009).
38. See, e.g., Press Release, State of New York, Div. of Budget, Governor Paterson's Executive Budget Eliminates Largest Deficit in State History, Reins in Spending (Dec. 16, 2008), available at http://www.budget.state.ny.us/pubs/press/2008/press_release08_eBudget0910-1.html.
39. Greg LeRoy, *Will the Stimulus Be Frittered by Job Wars Among States?*, Clawback Blog, <http://clawback.org/2009/06/30/will-the-stimulus-be-frittered-by-job-wars-among-states/> (quoting the Seattle coalition, Citizens for More Important Things, <http://www.citizensformoreimportantthings.org/>) (last visited Sept. 10, 2009).
40. See, e.g., Jarrell, Shoesmith & Robbins, *supra* note 30, at 825.
41. 2005 Laws of N.Y., ch. 766; A.2209-C (currently awaiting gubernatorial approval). IDAs are considered to be local public authorities and are covered by the Public Authorities Law as well as the Industrial Development Agencies Law.
42. PHILIP MATTERA, KARLA WALTER, JULIE FARB BLAIN & MICHELLE LEE, GOOD JOBS FIRST, *THE STATE OF STATE DISCLOSURE: AN EVALUATION OF ONLINE PUBLIC INFORMATION ABOUT ECONOMIC DEVELOPMENT SUBSIDIES, PROCUREMENT CONTRACTS AND LOBBYING ACTIVITIES* 10 (Nov. 2007), available at <http://www.goodjobsfirst.org/pdf/statedisclosure.pdf>.

43. 1989 Laws of N.Y., ch. 692. *See also* 2006 COMPTROLLER'S REPORT, *supra* note 26, at 11.
44. 1993 Laws of N.Y., ch. 356. *See also* 2006 COMPTROLLER'S REPORT, *supra* note 26, at 11. Both the 1989 and 1993 reporting reforms are codified at N.Y. GEN. MUN. LAW § 859.
45. *Compare* NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 3 (finding that 52% of projects submitted sufficient data) and CTR. FOR GOVERNMENTAL RESEARCH, *supra* note 12, at 11 (finding that 89% of projects submitted sufficient data). *See also* 2006 COMPTROLLER'S REPORT, *supra* note 26, at 15.
46. OFFICE OF THE NEW YORK STATE COMPTROLLER, DIV. OF LOCAL GOV'T AND SCH. ACCOUNTABILITY, ANNUAL PERFORMANCE REPORT ON NEW YORK STATE'S INDUSTRIAL DEVELOPMENT AGENCIES: FISCAL YEAR ENDING 2007 10 (Feb. 2009) [hereinafter 2009 COMPTROLLER'S REPORT], *available at* <http://www.osc.state.ny.us/localgov/pubs/research/idaperformreport.pdf>. Reporting blanks for job data queries may indicate that IDAs have failed to obtain the required information. "However, the OSC also advises the IDAs to leave data blank if there are projects at the same location for multiple years. And, sometimes, a blank means that OSC has made a clerical error." CTR. FOR GOVERNMENTAL RESEARCH, *supra* note 12, at 20.
47. 2009 COMPTROLLER'S REPORT, *supra* note 46, at 13.
48. New York Jobs With Justice (NYJWJ), which is a progressive organization strongly supported by labor and social justice groups, found widespread failures to meet job creation goals in a report assessing data submitted by IDAs in 2005. A counter-report commissioned by the New York State Economic Development Council (NYSEDC), which represents leaders of the state's economic development programs as well as private businesses, predictably refuted the claims made by NYJWJ and concluded that IDAs easily surpassed job creation goals. *Compare* NEW YORK JOBS WITH JUSTICE REPORT, *supra* note 28, with CTR. FOR GOVERNMENTAL RESEARCH, *supra* note 12 (the report was prepared for the NYSEDC). *Also compare* INITIATIVE FOR DEV. ACCOUNTABILITY, COMIDA ISN'T SPANISH FOR FREE LUNCH (Apr. 2006), *available at* <http://www.fiscalpolicy.org/ida%20reform.pdf>, with Brooks, *supra* note 17 (providing different conclusions about the effectiveness of the County of Monroe IDA).
49. N.Y. GEN. MUN. LAW § 859.
50. 2009 COMPTROLLER'S REPORT, *supra* note 46, at 14.
51. *Id.*
52. 2006 COMPTROLLER'S REPORT, *supra* note 26, at 12.
53. 2009 COMPTROLLER'S REPORT, *supra* note 46, at 2. *See also* N.Y. AUTH. BUDGET OFFICE, INFORMATION ABOUT THE PUBLIC AUTHORITIES REPORTING INFORMATION SYSTEM (PARIS), *available at* <http://www.abo.state.ny.us/paris/parisnotification.pdf>.
54. MAURO TESTIMONY, *supra* note 16, at 3.
55. A.3659, §§ 5-6 (2009). The corresponding Senate bill (S.1241 (2009)) is sponsored by Sen. Ruth Hassell-Thompson.
56. A.557 (2009).
57. The only application requirements included in the Act apply only to continuing care retirement communities. Prospective developers of these projects must "present the financial feasibility study, including a financial forecast and market study, and the analysis of economic costs and benefits required by...the public health law." N.Y. GEN. MUN. LAW § 859-b.
58. *See* 2006 COMPTROLLER'S REPORT, *supra* note 26, at 17-18.
59. A.3659, § 7 (2009).
60. *See* 2006 COMPTROLLER'S REPORT, *supra* note 26, at 17-18.
61. 1993 Laws of N.Y., ch. 356, *codified at* N.Y. GEN. MUN. LAW § 874.
62. *See* 2006 COMPTROLLER'S REPORT, *supra* note 26, at 4.
63. *See, e.g.*, Resolution of the Nassau County Industrial Development Agency Adopting the Agency's Uniform Tax Exemption Policy and Guidelines (1994), *available at* <http://www.nassauida.org/files/Uniform%20Tax%20Exemption%20Policy.pdf>; Cortland County Industrial Development Agency Uniform Tax Exemption Policy, *available at* <http://www.ccida.org/pdf/tax-exemption-policy.pdf> (listing factors that may be taken into account when awarding subsidies, but providing no indication of how those factors should be weighted). An example of a more objective uniform policy is the Clinton County uniform tax exemption policy, which provides a scoring formula to determine the tax exemption amount and duration. The uniform policy is available at <http://www.clintoncountyida.com/Clinton-IDA/CCIDA/99utep.pdf>.
64. 2006 COMPTROLLER'S REPORT, *supra* note 26, at 10.
65. A.3659, § 6 (2009). The New York State Economic Development Council has similarly recommended that IDAs be required to review their uniform tax exemption policies on a regular basis, and with input received at public hearings. NYSEDC, *supra* note 12, at 8.
66. *See generally* MATTERA, WALTER, BLAIN & LEE, *supra* note 42, at 10-16.
67. N.Y. GEN. MUN. LAW § 859-a (3). Amendments passed in 1997 increased the notice period to 30 days, but the provision expired in 2008 and reverted to the shorter time period. Law of N.Y. 1997, ch. 444 (amended several times thereafter to extend the sunset provision).
68. *See* NEW YORK JOBS WITH JUSTICE, *supra* note 27, at 19; MAURO TESTIMONY, *supra* note 15, at 2.
69. *See generally* MAURO TESTIMONY, *supra* note 16, at 2-3. The PAAA requires IDAs to make annual reports, minutes, public hearing notices and financial statements available on their Web sites. 2005 Laws of N.Y., ch. 766, *codified at* N.Y. PUB. AUTH. LAW § 2800 (2) (b). However, other important IDA documents, like uniform tax exemption policies and cost-benefit analyses, do have to be posted.
70. A.557 (2009). An alternative suggested by one commentator is to establish additional notice and hearing requirements similar to those required by the State Environmental Quality Review Act. MAURO TESTIMONY, *supra* note 16, at 2.
71. A.3659, §§ 3, 5-7, 11-13, 15 (2009). The Hoyt bill would also require board members to actually attend a minimum number of IDA hearings, and to ensure that at least two board members attend public meetings (§§ 2, 6). These provisions are quite important considering that IDA hearings "are frequently devoid of the IDA board members who will vote on a project." MAURO TESTIMONY, *supra* note 16, at 2.
72. *See* THE NEW RULES PROJECT, ECON. IMPACT REVIEW, <http://www.newrules.org/retail/rules/economic-impact-review> (recommending a similar type of review for proposals to build big box stores) (last visited Sept. 10, 2009). *See also* 10 VT. STAT. ANN. §§ 6001-6093 (requiring projects with a regional impact to undergo review for impacts relating to pollution, traffic and congestion, municipal services, aesthetics, historic sites, natural areas and wildlife, regional and municipal growth, energy conservation and patterns of sprawl, among other things). A 2007 bill also proposed community impact review for IDA subsidies. S.2413 (2007).
73. Some of the more specific information included in the CIR would be: the number of permanent jobs to be created or retained, the total estimated value of tax exemptions, the impact of proposed projects on existing businesses, the extent of private investments to be generated by the project, the likelihood of delays, environmental impacts, and the extent to which a project may require increased educational, public safety and transportation services. A.3659, § 7 (2009).
74. A.3659, §§ 6-7 (2009).
75. N.Y. GEN. MUN. LAW § 883.
76. 2005 Laws of N.Y., ch. 766, §§ 18, 19. *See also* 2006 COMPTROLLER'S REPORT, *supra* note 26, at 16.
77. A.2209-C, § 1 (currently awaiting gubernatorial approval).

78. A.2383 (2009); A.553 (2009). N.Y. GEN. MUN. LAW § 803, which applies to IDAs through the operation of Section 883, requires disclosure of conflicts but not recusal. These bills would prohibit conflicted board members from participating in any vote or board discussions about the matter.
79. A.3659, § 2 (2009).
80. The revolving door restriction might be criticized for reducing the number of qualified persons available to serve on agency boards. However, the restriction is limited both temporally and geographically, mitigating its negative impacts.
81. N.Y. GEN. MUN. LAW § 862.
82. See N.Y. GEN. MUN. LAW § 862.
83. 2006 COMPTROLLER'S REPORT, *supra* note 26, at 5. See also NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 15; SARAH STECKER & DAN STEINBERG, GOOD JOBS NEW YORK, PAY, OR WE (MIGHT) GO: HOW CITICORP GAMES THE STATES AND CITIES 3-5 (June 2007), available at <http://www.goodjobsny.org/NJPP%20Pay%206-07.pdf>.
84. See, e.g., *Main Seneca Corp., et al. v. Town of Amherst Indus. Dev. Agency*, 100 N.Y.2d 246 (2003) (holding that the Amherst IDA violated the statute by offering incentives to the business, previously located in the City of Buffalo, solely because the new location would be more convenient to its customers; neither the out-of-state nor the competitiveness exceptions applied); *Marine Buffalo Assocs., L.P. v. Town of Amherst Indus. Dev. Agency*, 773 N.Y.S.2d 667 (4th Dep't 2004) (holding that a conclusory statement that the relocation was necessary for the business to remain competitive was insufficient); *Mohawk Group, L.P. v. Town of Amherst Indus. Dev. Agency*, 765 N.Y.S.2d 717 (4th Dep't 2003) (affirming violation of the statute).
85. See MAURO TESTIMONY, *supra* note 16, at 5.
86. *Main Seneca Corp., et al. v. Town of Amherst Indus. Dev. Agency*, 100 N.Y.2d 246 (2003).
87. See, e.g., A.3659 (2009); NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 15; MAURO TESTIMONY, *supra* note 16, at 5; RON DEUTSCH, TESTIMONY ON TAXES AND ECON. DEV. POLICY IN THE 2008-2009 N.Y.STATE BUDGET PROPOSAL 7 (Nov. 27, 2007), available at <http://www.budget.state.ny.us/pubs/press/2007/townHallMeetings/Syracuse/NewYorkersforFiscalFairness.pdf>.
88. See, e.g., S.2413 (2007).
89. See 2006 COMPTROLLER'S REPORT, *supra* note 26, at 22 (listing IDAs by county). Note that the Village of Walden IDA has been dissolved since this list was prepared. 2009 COMPTROLLER'S REPORT, *supra* note 46, at 2.
90. See, e.g., N.Y.STATE COMM'N ON LOCAL GOV'T EFFICIENCY & COMPETITIVENESS, LOCAL ECON. DEV. 5, available at http://www.nyslocalgov.org/pdf/Local_Economic_Development.pdf; OFFICE OF THE N.Y.STATE COMPTROLLER, DIV. OF LOCAL GOV'T AND SCH. ACCOUNTABILITY, PERFORMANCE OF INDUS. DEV. AGENCIES 13 (Feb. 2008), available at <http://www.osc.state.ny.us/localgov/pubs/research/idareport08.pdf>.
91. See, e.g., Matt Glynn, *County IDA seeks merger; goal is to join with Amherst agency*, THE BUFFALO NEWS, Mar. 13, 2007.
92. The six agencies located in Erie County, for example, agreed in 2001 that relocations from the City of Buffalo to outlying suburbs must be approved by the County IDA. LACK, *supra* note 36, at 21.
93. A.3659 (2009), § 17; S.7133 (2007).
94. N.Y. GEN. MUN. LAW § 859(1)(e).
95. See, e.g., *County of Washington v. Counties of Warren & Washington Indus. Dev. Agency*, 2 Fed. App'x. 71 (2d Cir. 2001) (dismissing the county's claims (1) under Civil RICO, (2) for breach of the implied covenant of good faith, and (3) for breach of the common law fiduciary duty); *Barker Central Sch. Dist. v. Niagara County Indus. Dev. Agency*, 62 A.D.3d 1239 (4th Dep't 2009) (annulling an IDA subsidy agreement when the agency had failed to consider any evidence relating to the business' need for the subsidy and there was no evidence sufficient to justify a deviation from the agency's uniform tax exemption policy). In limited circumstances, other parties will be able to state a claim against an IDA and/or subsidized business. See, e.g., *Standardbred Owners Ass'n v. Roosevelt Raceway Assocs., L.P.*, 985 F.2d 102 (2d Cir. 1993) (holding that members of the Raceway Association had standing to bring RICO claims against the owners of a racetrack for injuries arising out of a "colossal fraud" to obtain IDA funding). An IDA can, of course, bring an action to recover debt owed on a defaulted loan. See, e.g., *City of Albany Indus. Dev. Agency v. Garg*, 250 A.D.2d 991 (3d Dep't 1998). And, at least theoretically, an agency could bring fraud charges against a company that unlawfully obtained its approval of a subsidy application. As far as I can tell, however, this has never occurred.
96. See, e.g., ARIZ. REV. STAT. § 41-1505.07(H) (allowing the state (but not mandating it) to recapture or readjust subsidies for noncompliance with the assistance agreement); CONN. GEN. STAT. § 32-9t (requiring pro rata recapture if the project's certificate of eligibility is revoked); 20 ILL. COMP. STAT. 715/25 (providing for subsidy discontinuance and recapture, with the possibility of having the requirements waived); N.J. ADMIN. CODE § 19:31-2.1 (C) (requiring pro rata recapture of sales tax exemptions).
97. A.557 (2009); A.3659 (2009). Another current bill, A.1513 (2009), would impose clawbacks for job abandonment, but no penalties for failing to meet project goals. See also S.2413 (2007) (requiring clawbacks).
98. See, e.g., NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 12; INITIATIVE FOR DEV. ACCOUNTABILITY, *supra* note 48, at 10-11; Good Jobs First, Reform #2: Clawbacks, Or Money-Back Guarantees, http://www.goodjobsfirst.org/accountable_development/reform2.cfm (last visited Sept. 10, 2009); 2006 COMPTROLLER'S REPORT, *supra* note 27, at 6; S.7133 (2007). The Hoyt bill is cosponsored by 39 other Assembly members, and it has received support from Congressman Paul Tonko. Tonko, *supra* note 34. Additionally, some IDAs have already adopted their own clawback policies.
99. See IDA RECOMMENDED PRACTICES, *supra* note 12, at 6; Business Facilities, Point/Counterpoint: Are Clawback Clauses Really a Necessary Evil?, http://www.businessfacilities.com/bf_03_04_cover5.asp (last visited Sept. 10, 2009).
100. Compare A.557 (2009) with A.3659 (2009).
101. See 2006 COMPTROLLER'S REPORT, *supra* note 26, at 5. Another suggested approach to clawbacks is to require IDAs to develop their own subsidy suspension and recapture policies. NYSEDC, *supra* note 12, at 6. This type of reform, however, would also be subject to lax enforcement.
102. 2009 COMPTROLLER'S REPORT, *supra* note 46.
103. See N.Y. State Educ. Dep't, Office of Teaching Initiatives, What New York State Has to Offer, http://www.highered.nysed.gov/tcert/career/nyteachers_opfforteachers.htm (last visited Sept. 10, 2009) (quoting the average teacher salary in 2004 as \$53,663, which would allow 5,525 teachers to be paid for \$296.5 million).
104. See Corey Kilgannon, *Crime May Not Pay, but in This Town, Fighting It Sure Does*, N.Y. TIMES, May 2, 2009 (quoting \$90,829 as the average salary for a New York City police officer with five years experience, which works out to 3,264 police officers for \$296.5 million).
105. See, e.g., NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 14; MAURO TESTIMONY, *supra* note 16, at 4.
106. A.2384 (2009); A.3659, § 2 (2009). Similar bills have been proposed in the past. See A.370 (2005); S.226 (2005); S.2413 (2007). Some IDAs have already adopted policies of including diverse representatives on their boards. See, e.g., Brooks, *supra* note 17, at 3.
107. See 2006 COMPTROLLER'S REPORT, *supra* note 26, at 14; Bruce Lambert & Shelley Feuer Domash, *Nassau Aid Went to Campaign Donors*, N.Y.

- TIMES, Oct. 24, 2004; INITIATIVE FOR DEV. ACCOUNTABILITY, *supra* note 48, at 11; NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 14.
108. S.2413 (2007).
 109. The Hoyt bill would require a hearing for the adoption of a uniform tax exemption policy, with special notice being given to the local government chief executive and the governing boards of any affected taxing jurisdictions. A.3659, § 15 (2009).
 110. See LeRoy, *supra* note 37, at 5.
 111. A prevailing wage reflects the average pay for particular jobs within a given area, and is often used in conjunction with construction projects. Living wages, on the other hand, are intended to provide workers with the minimum pay necessary to maintain a decent standard of living. While similar concepts, prevailing wages are often much higher than living wages because they are based on union pay scales. See George Lefcoe, *The Regulation of Superstores: The Legality of Zoning Ordinances Emerging from the Skirmishes Between Wal-Mart and the United Food and Commercial Workers Union*, 58 ARK. L. REV. 833, 848 (2006).
 112. See, e.g., NEW YORK JOBS WITH JUSTICE, *supra* note 28, at 6; INITIATIVE FOR DEVELOPMENT ACCOUNTABILITY, *supra* note 48, at 10; FISCAL POLICY INST., GETTING BANG FOR OUR BUCK: ECONOMIC DEVELOPMENT IN NEW YORK STATE (Feb. 2008), available at http://www.fiscalspolicy.org/publications2008/FPI_EconDevBrief_Feb2008.pdf.
 113. See, e.g., FISCAL POLICY INST., THE ECONOMIC DEVELOPMENT BENEFITS OF PREVAILING WAGE (May 2006), available at http://www.faircontracting.org/pdf/FPIbrief_May06.pdf; ANNA PURINTON, GOOD JOBS FIRST, THE POLICY SHIFT TO GOOD JOBS: CITIES, STATES AND COUNTIES ATTACHING JOB QUALITY STANDARDS TO DEVELOPMENT SUBSIDIES 10-11 (Nov. 2003), available at <http://www.goodjobsfirst.org/pdf/jobquality.pdf>; LAURA WOLF-POWERS, PRAIT CTR. FOR CMTY. DEV., BUILDING IN GOOD JOBS: LINKING ECONOMIC AND WORKFORCE DEVELOPMENT WITH REAL ESTATE-LED ECONOMIC DEVELOPMENT 25-29 (Dec. 2006), available at http://legacy.prattcenter.net/pubs/PrattCenter-Building_in_Good_Jobs_Report.pdf; ROBERT POLLIN, THE LIVING WAGE: BUILDING A FAIR ECONOMY (2000).
 114. N.Y. LABOR LAW § 220.
 115. Memorandum, Nassau County Indus. Dev. Agency, Prevailing Wage Policy, available at <http://www.nassauida.org/files/Prevailing%20Wage.pdf>.
 116. Memorandum, Ulster County Ind. Dev. Agency, Labor Policy (May 16, 2007), available at http://www.ulstercountyida.com/images/pdfs/laborpolicy_51607_%235a00b5.pdf. The UCIDA policy required prevailing wages for construction jobs and self-sufficiency wages for other jobs. The policy was suspended for a year in 2009. See Jeremiah Horrigan, *Ulster County IDA suspends prevailing wage policy for one year*, THE TIMES-HERALD RECORD, Jan. 28, 2009, available at <http://www.recordonline.com/apps/pbcs.dll/article?AID=/20090128/NEWS/90128076>.
 117. See, e.g., S.7784 (2007); S.2413 (2007); A.336 (2005).
 118. A.1789 (2009); A.3705 (2009); A.3659 (2009); A.3847 (2009).
 119. A.3659, § 9 (2009).
 120. Jim Fink, *Collins Wants End To Prevailing-Wage Bill*, BUFFALO BUS. FIRST, May 1, 2009, available at <http://www.bizjournals.com/buffalo/stories/2009/05/04/newscolumn1.html>.
 121. CTR. FOR GOVERNMENTAL RESEARCH, PREVAILING WAGE IN NEW YORK STATE: THE IMPACT ON PROJECT COST AND COMPETITIVENESS 2 (Jan. 2008), available at http://www.nysedc.org/CGR%20Prevailing%20Wage%20Report_Jan%2028_FINAL.pdf. See also George W. Walker, *IDA Wage 'Reform' Undermines Region's Prospects*, THE BUFFALO NEWS, Apr. 15, 2009; *Industrial Development Agencies: Pub. Hearing Before the Assembly Standing Comm. on Local Gov'ts* (2009) (statement by Buffalo Niagara Partnership President & CEO Andrew J. Rudnick), available at <http://www.thepartnership.org/Home/Advocacy/wherewestand/IDAHearing030409>; Stephen Williams, *IDA reform bill passes in state Senate*, THE DAILY GAZETTE, Apr. 9, 2009, available at http://www.dailygazette.com/news/2009/apr/09/0409_ida/.
 122. Memorandum, County of Monroe Ind. Dev. Agency, Local Labor Verified Exemption Policy, available at <http://www.growmonroe.org/comida/files/file/Local%20Labor/Local%20Labor%20Verified%20Exemption%20Policy.pdf>. See also Brooks, *supra* note 18, at 2. Similar requirements are currently being studied by the Niagara County IDA. See Mark Scheer, *Niagara County: IDA To Study Local Hiring, Prevailing Wage*, TONAWANDA NEWS, Mar. 11, 2009, available at http://www.tonawanda-news.com/archivesearch/local_story_070235114.html.
 123. They have been proposed in the past. See, e.g., S.2413 (2007).
 124. A.3659, § 4 (2009).
 125. Memorandum, County of Monroe Ind. Dev. Agency, Local Labor Verified Exemption Policy, available at <http://www.growmonroe.org/comida/files/file/Local%20Labor/Local%20Labor%20Verified%20Exemption%20Policy.pdf>.
 126. See, e.g., STAPLES CTR. CMTY. BENEFITS AGREEMENT A-14 to A-18, available at <http://www.communitybenefits.org/downloads/Los%20Angeles%20Sports%20and%20Entertainment%20District%20Project.pdf>.
 127. While the higher upfront costs associated with green buildings may ward off potential businesses, studies have found that the long-term energy and productivity benefits of green buildings make them more cost effective than conventional buildings. See, e.g., GREGORY H. KATS, MASS. TECH. COLLABORATIVE, GREEN BUILDING COSTS AND BENEFITS (2003), available at <http://www.cap-e.com/ewebeditpro/items/O59F3481.pdf>.
 128. Even capitalist behemoths like Wal-Mart have committed to going green. See Greenbiz.com, *Wal-Mart CEO Says Sustainability Drive Will Continue at Full Speed*, <http://www.greenbiz.com/news/2009/02/02/new-wal-mart-ceo> (last visited Sept. 10, 2009).
 129. A.3659 (2009) (providing green building and sustainable site location requirements); A.4425 (2009) (prohibiting subsidies for greenfield projects). See also S.2413 (2007) (prohibiting subsidies for greenfield projects).
 130. See, e.g., Memorandum, Onondaga County Ind. Dev. Agency, Uniform Tax Exemption Policy 2-3, available at <http://www.syracusecentral.com/green/pdf/FinalUTEP.pdf>; Brooks, *supra* note 17.
 131. See, e.g., The Bus. Council of N.Y., *supra* note 12.

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