IBO

New York City Independent Budget Office

Policy Brief

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Full Disclosure? Assessing City Reporting on Business Retention Deals

OVERVIEW

In order to spur job creation and retention, New York City offers businesses a variety of financial incentives administered by the Economic Development Corporation (EDC). Although EDC's use of tax abatements, low-cost loans, and other incentives affect the city's budget, the City Council has little information on which to assess these programs. Local Law 69 (LL69), sponsored by Council Members Stephen DiBrienza and Ronnie Eldridge and enacted in 1993, was an attempt to obtain the information necessary to evaluate the effectiveness of incentive programs.

The law requires EDC to issue an annual report covering any retention deal that provides tax benefits, loans, and other financial arrangements with a value greater than $250,000, or that are expected to result in the preservation of 25 or more jobs. The report also includes EDC's calculation of the cost of the city assistance, the agency's estimate of the tax revenue maintained or newly generated because of this assistance, and the number of jobs retained and created.

EDC has issued seven reports and states it has entered into contracts providing more than $5.1 billion in financing assistance and $200 million in tax abatements. Given the number of reports and the value of the assistance, Council Member DiBrienza asked the Independent Budget Office to review the information and analysis presented under LL69 guidelines.

While the LL69 report provides a significant amount of data on the tax incentive and financing agreements, it does not offer the information needed to adequately assess and compare specific deals nor to evaluate the underlying policies. Some of IBO's key findings include:

- The LL69 report understates the fiscal cost to the city of the job retention agreements.
- Estimates of the positive budgetary impacts of the assistance programs are overstated.
- Job retention and creation data presented in the report are unreliable and do not provide a clear picture of each deal's benefits.
- Figures that should be constant sometimes vary from report to report, and stated property tax revenues are frequently inconsistent with other city tax records.
- The report is often released late and EDC does not make the report readily available to others on request or via the agency's Web site—limiting its utility to legislators, the media and the general public.

An appendix to this report provides a matrix that details each Local Law 69 requirement and its compliance, categorizes problems with the law and reviews some alternative solutions.

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INTRODUCTION

Local Law 69, enacted in August 1993, requires that the Economic Development Corporation submit to the City Council an annual report on the corporation's assistance programs for firms doing business in New York City. An assessment of the quality of the information and the underlying analytic assumptions contained in the report demands an understanding of the types of assistance available to firms, the Local Law 69 requirements, and the report structure.

Types of assistance. EDC, a non-profit local development corporation under contract with the city and whose president is appointed by the mayor, has the ability to offer a variety of assistance to firms in exchange for staying in, expanding in, or relocating to New York City. For the purposes of the LL69 report, EDC divides its assistance programs into four categories, based on the type of financing:

Industrial Development Agency (IDA). The IDA is an EDC subsidiary that issues tax-exempt bonds to finance acquisition, leasing and improvement of fixed assets. IDA may also grant exemptions from mortgage recording and sales taxes, and abatement of real property taxes and energy costs. Since the interest income to holders of IDA bonds is tax-exempt, the interest rate for these bonds is lower than comparable commercial bonds. As a result, IDA can charge a lower interest rate to borrowers than they would otherwise have to pay to a commercial lender.

Land Sales. EDC also assists firms through the direct negotiated sale of city-owned real property. Public property must generally be sold through an auction process to achieve the greatest return for the city. EDC, however, is authorized to sell public property to selected buyers at a negotiated price that is often substantially below market value. These businesses may also qualify for property tax abatements through the city's Industrial and Commercial Incentive Program. EDC will also assist with the public approval process and may provide city capital funds for project-related public infrastructure.

Leases. Similarly, EDC can also grant firms long-term leases on city property at below market rates.

Direct Loans. The fourth type of incentive found in the LL69 report is direct loans to businesses, made through a variety of programs. These programs have been discontinued.

Local Law 69 requirements. Under Local Law 69, EDC reports annually on the assistance it provided to firms in order to retain or create jobs. The report is limited to those loans, grants, or tax benefits that are in excess of $250,000, and those sales or leases of real property where the project is estimated to create or retain at least 25 jobs. Local Law 69 requires the report include the following for each transaction for eight years (the year in which the assistance is first provided plus the next seven years):

- Name and location of the project
- Time span for assistance
- Type of assistance
- Number of jobs projected to be created or retained for the eight-year period
- An estimate of the actual number of jobs created or retained to date
- The estimated amount, for that year and cumulatively to date, of the assistance
- The estimated amount, for that year and cumulatively to date, of retained or additional tax revenue derived from the project
- A projection of the retained or additional tax revenue to be derived from the project for the eight-year period.[1]

Report structure and methodology. The LL69 report consists of two volumes. Volume 1 provides background on the report, a description of EDC's business retention programs, and a summary of the economic impact of the policy. Volume 2 includes project-specific information required by the law in a standardized 38-field Project Reporting Form (PRF).

The report calculates for each project how much the city gains or loses in revenue—in other words, its fiscal impact. This calculation reflects the difference between the project's benefit (its contribution to city tax revenue) and its costs (both in city spending and the revenues forgone because of tax breaks).

EDC projects economic benefits using the Regional Input-Output Modeling System to estimate the economic activity generated by a given firm. EDC uses this analysis both to guide its negotiations with individual firms and to estimate the benefits reported in the LL69 report.

To estimate the firm's contribution to city output, EDC considers three categories of output stemming from the presence of the firm: direct, indirect, and induced. The direct impact is the output of the company itself and is estimated using the number of jobs at the site. Indirect impacts are the additional economic activity generated as a result of the company's need for goods and services from other local businesses. Lastly, induced impacts refer to spending by New York City households with workers whose employment depends either directly or indirectly on the company's continued presence in the city.

The estimated tax revenue benefits to the city are based on the share of economic output attributed to the presence of the firm here. The LL69 report methodology estimates each firm's contribution to city tax revenue by assuming that tax revenue generated is proportional to output.

Costs to the city stem mostly from the economic development incentives provided, and include foregone revenues from tax exemptions and reductions, and the firms' purchase of low-cost, tax-free energy. Financing assistance is not considered a city cost since, unlike grants or subsidies, loans must be repaid. Only direct loans that are in default are included in city costs.

Findings. The LL69 report contains a significant amount of data on job creation and retention agreements. It does not, however, provide the information needed to adequately assess the policy in general, the deals specifically, or to compare different deals.

A knowledge of costs and benefits is essential to determine if an agreement is cost effective, how one deal compares with another, the deal's effect on employment, and how the policy has changed over time. The report states that the "Net impact can be viewed as the city's return on its investment." Because the report understates fiscal costs and overstates fiscal benefits, EDC's calculation of net impacts is of limited value. The report suffers from other flaws as well, which diminish public scrutiny and accountability.

UNDERSTATED FISCAL COSTS

The report understates the fiscal cost to the city of the job retention and creation agreements because it: does not include costs for all the years costs are incurred; omits some types of costs; does not report total costs; and does not include all the agreements. This occurs, in part, because Local Law 69 mandates a limited reporting period and does not require all costs to be included.

Costs not reported for all years. While the LL69 report is required to include costs to the city for the first eight years of each deal, subsequent subsidies are not reported. Moreover, the report does not give any indication of the total duration of the assistance.

The eight-year time frame is artificial, however, and bears little relationship to the actual costs of the deals. Many tax benefits continue well beyond the eight-year reporting period. For example, property tax exemptions last 15 to 20 years. Similarly, the value of sales tax credits used in the reporting year and cumulatively to date falls short of presenting the full story. Sales tax incentives are offered as a total credit against sales taxes that can be used over the course of a number of years. The report states that the value of sales tax breaks in years beyond the report year is zero, even if the credit is still available and falls within the eight-year timeframe. Finally, transactions older than eight years, which are not included in the report, still provide benefits to firms at a cost to the city. The result of these omissions is an underreporting of the true costs of the transactions.

Some types of costs omitted. According to the methodology used in the LL69 report, the cost of the job retention deals is the tax revenue the city forgoes. In other words, it is revenue the city would have received if the development had proceeded without any of the tax incentives. But one significant type of foregone tax revenue–the tax exemption on interest income received by bondholders of IDA financing—is omitted from the report. Moreover, the report also omits the costs to the city of below-market leases and land sales.

For New York City residents, interest earned on IDA bonds is double tax exempt, free from both city and state taxes on personal income. From the city's perspective, the cost of this exemption depends on the total amount of outstanding IDA debt, the interest paid to bondholders, and the marginal tax rate faced by city residents who have invested in IDA bonds.

However, the LL69 report fails to present the total amount of outstanding IDA debt. It cannot be determined from the loans shown because not all borrowing is listed and because some of the loans listed are refinancing of IDA debt, and there is no way to distinguish the refinancings from the original issues. Like a homeowner refinancing a mortgage, companies that benefit from an IDA financing can take advantage of reduced interest rates by borrowing a second time and paying off the first loan with the proceeds. To the extent bond proceeds are used to pay off outstanding debt, they do not add to the total debt.

Without knowing how much debt is outstanding, one way to roughly estimate the impact of the IDA tax exemption on city revenues is to look at the tax break associated with IDA loans issued since 1991.[2] Assuming that bondholders are generally upper-income residents who are subject to the city's highest marginal tax rate and that the rate of interest paid on IDA bonds averages 4 percent, then the city tax break on the $4.7 billion of IDA loans issued since 1991 is roughly $4.8 million a year.[3] By way of comparison, the most recent LL69 report shows that all other economic development tax incentives cost the city a total of $44.1 million in 1998.

The report also omits the costs of below-market leases and land sales. While the reported sale prices reach a high of $14 million, several are less than $5,000, most likely below the market price. No information on lease rates is provided. The difference between the market value, which would have been realized if the properties were sold on a competitive basis, and the discounted price of the land sale or lease by EDC should be reported as a cost to the city, regardless of the individual merits of the deal.

Total costs not reported. By providing only eight years of data—with no indication of the duration of benefits—the report does not provide a complete picture of the total cost to the city or value to the firm of the incentive. Without providing the total value of all the costs and benefits to the city for the full duration of the assistance, it is impossible to fully evaluate a particular deal. It is also impossible to compare deals of different duration or that occurred at different points in time unless the full value of costs and benefits is presented in net present value terms (with clearly articulated assumptions about discount rates).

It is interesting to note that press releases announcing the major deals always use the total present value of benefits to illustrate the total value of the incentives, although the releases do not provide detailed information on how the number quoted was calculated. In this sense, the LL69 report actually has less useful information than the press releases.

Some agreements omitted. The LL69 report does not include all discretionary job retention and creation agreements. Local Law 69 requires that EDC include only those deals with loans, grants, or tax benefits over $250,000 or that create or retain at least 25 jobs.[4] The report does not provide data on each of the smaller transactions individually, nor any aggregate information. The omission of this data distorts the totals and limits one's ability to draw conclusions about city economic development policy as a whole.

FISCAL BENEFITS ARE OVERSTATED

Estimates of the budgetary impact of job retention deals on New York City contained in the LL69 report are in most instances too high. The law does not prescribe how the fiscal benefits of the deals should be calculated. EDC has chosen to assume that none of the deal-related tax revenue would be received without the city's assistance. Implicit in the methodology is EDC's assumption that the firm would have left the city (or would not have relocated to the city) if the assistance was not provided and that there would be no substitution of other firms for its place in the local economy. In other words, if not for the deal, the firm, all its employees, and many of its suppliers and their employees would leave (or never relocate to) the city. The report provides no evidence to support this assumption for any of the deals. Moreover, there have been occasions where firms received benefits while publicly stating they were not planning to leave. Firms such as Bear Stearns, ABC, and Merrill Lynch have been the beneficiaries of lucrative tax breaks even though there was no evidence they were preparing to leave the city. There also is evidence some projects would occur without any tax breaks at all: Concerned about the potential for a lengthy public review process, Bertelsmann A.G. rejected a $28 million tax break and went ahead with its midtown expansion without any public subsidy.

Even where firms choose to leave the city, other businesses often take the place of the departing firm in the local economy, continuing to buy from its suppliers. Yet the report includes as a benefit all the property tax a firm pays, even though the tax must be paid regardless of whether or not the property is occupied, and all tax revenues related to the receiving firm's purchases from other firms, including related personal income taxes paid by the supplying firm's employees.

Property tax impacts. Property tax revenue is cited as one of the benefits to the city as a result of EDC's job retention contracts. In listing these revenues as a benefit of the transaction, EDC assumes that the tax revenues would not be received by the city if the deal had not been made. But property tax revenues cannot be considered at risk when a firm threatens to leave the city. The land and building will not relocate with the company and the property owner is obligated to continue to pay taxes.[5]

The problem is compounded by the inclusion of indirect and induced property taxes. These are the property taxes paid by the properties housing businesses and individuals that benefit economically from the presence of the firm. It is conceivable that the firm's departure would have an adverse impact on these other tenants, and even reduce the value of their property. But again, because these properties are not at risk of leaving the city, including this revenue among the benefits of the retention contract is an additional overstatement. [6]

Estimating other tax impacts. In addition to overstating the effect on property taxes, the LL69 report tends to overstate the impact of individual transactions on city income, consumption, and use taxes. Estimates of a deal's effect on these taxes are based on the firm's output and on the indirect and induced impact of the firm's presence in the city. The three categories of output are then added, and a tax revenue impact is determined based on current ratios of city output to city tax revenues.

Using input-output analysis. In general, input-output analysis is based on the idea that a city's export industries, which sell their goods or services outside the city, drive a local economy. If there is an increase in export industry output, there will be an even greater increase in output of the city as a whole because of the export industry's need for supplies, and because of the spending by the employees of the industry and its suppliers.

Although input-output analysis is the standard tool for estimating economic impacts, EDC's methodology can produce decidedly overstated estimates of the economic and tax benefits associated with business retention deals. The LL69 methodology assesses the impact of the transactions on tax revenue by estimating and then totaling the tax revenue contributions of the firm, its employees, its local suppliers, and their employees. This technique implicitly assumes that all four of these groups and their contributions to the city's economy would depart from the city if not for the agreement.

This sort of analysis is well suited for estimating the impact of the arrival of a new factory serving global markets in a small industrial city. New workers would come to the city, and local businesses would have to grow to serve the needs of the factory and its employees.

In contrast, for a city like New York, which has hundreds or thousands of firms in an export industry, it is unrealistic to estimate the impact of one firm's departure by assuming that its output will be deducted from the industry's aggregate output. Some of the departed firm's customers will switch to other remaining firms. The departing firm's suppliers may find other clients to replace at least a portion of their potential lost revenue. The employees will not instantly relocate; many will stay in the city and find other work. EDC's input-output analysis does not take any of these highly likely factors into account. Instead, the LL69 report assumes that the firm's output will disappear, as will the output of the firm's suppliers, and the firm's and the suppliers' employees and their expenditures will depart as well.[7]

Other economic development agencies have refined their methods for estimating tax benefits. For example, the cost-benefit analyses performed by the state's Empire State Development Corporation refine the input-output methodology by assuming that other firms would take up a portion of the departing firm's activities. If EDC altered its assumptions to better reflect the New York City context, their estimates of the tax benefits associated with business retention deals would be reduced and more accurate.

Questionable employment figures. The credibility of the income, consumption, and use tax estimates is also marred by their dependence on one number: the estimated number of employees currently at the benefiting site. This is called "jobs used in analysis" in the PRF, and that employment figure is combined with city, industry, and borough averages to estimate the tax impact of the agreement.[8] But the job numbers that are essential to the equation do not come from a verifiable source and are particularly difficult to interpret (see below).

Opportunity costs ignored. It should also be pointed out that even if the company elected to stay in the city as a result of the tax breaks, and accurate totals were provided reflecting the tax breaks and the tax revenues generated, an important cost would still be left out: the opportunity cost of the tax break. The tax expenditure could have been spent in a variety of alternative ways, including more general tax reductions, or increases in public spending. These alternatives would have benefited city businesses and residents and might also have led to increases in city economic activity and tax revenue.

It is not possible to quantify the opportunity cost of providing economic development incentives; while it is difficult to measure the impact of expenditures that did occur, it is impossible to know the benefits of expenditures that did not. But readers of the LL69 report should be made aware that tax revenue benefits in excess of the tax expenditures do not guarantee that the program represents the best use of the city's funds.

REAL JOBS?

Although employment figures are critical to assessing the success or failure of economic development incentives, the jobs data presented in the LL69 report do not provide a clear picture of each project's benefit. Although determining the benefits of a project requires credible job numbers, LL69 does not mandate that the employment data come from a verifiable source. Therefore, the figures used in the report may not reflect the number of jobs actually present at the site in question. In addition, the State Comptroller's staff found evidence that firms deliberately misrepresented the number of jobs retained as a result of the assistance provided.[9] The report also uses four different methods to derive the "jobs used in analysis" number. Yet there is no indication of which method is used to estimate employment, making it difficult to interpret the data included in the report.

Unreliable job numbers. The accuracy of the input-output methodology utilized by EDC is wholly dependent on the accuracy of employment figures. These numbers are the most important numbers on each PRF since they are the basis of all the projections of non-property tax revenues presented in the report. Hence, any evaluation of the success or failure of a job retention agreement requires examination of employment levels.

Although three different jobs figures are reported on each PRF, none of the data can be reliably interpreted.

Local Law 69's requirement to report "projected and actual jobs created and retained" translates into three categories of job numbers for each project:

- *Jobs to be retained.* This is the number of jobs the company states will be retained as a result of the assistance provided by EDC. This figure corresponds to "base employment" in the job retention contract. Employment levels above this amount often entitle the company to increases in sales tax benefits.
- *Jobs to be created.* This is the number of jobs the company states would be created as a result of receiving EDC assistance.
- *Jobs used in analysis.* This number is intended to reflect the number of jobs in place at each project site for each of the eight years included in the report.

EDC bases its job estimates on information provided by the company. If the company does not provide the information, EDC makes its own estimate using data from the New York State Department of Labor. In theory, EDC could require that companies provide reliable data concerning employment levels as a condition of receiving assistance. Some companies are reluctant to allow employment information to become public, however, because disclosure could put the company at a competitive disadvantage.

Jobs retained. A 1995 audit by the State Comptroller[10] raised a number of questions concerning the data on jobs to be retained (base employment). The Comptroller expressed concern about EDC's required monitoring of the companies' claims; IDA files for 8 of the 11 deals had inadequate documentation to support the number of jobs claimed to be retained. Upon interviewing firms receiving benefits, the Comptroller found that some firms deliberately underreported their base employment levels. In their response to the audit, EDC asserted that the variances were typographical errors or were revisions intended to be conservative.

Another issue raised by the Comptroller was inconsistencies in reporting the number of jobs retained. Once a firm reports its base level of employment, there is no reason for that figure to change from one report to the next. For 4 out of 11 firms sampled by the Comptroller's office, however, this figure was inconsistently reported in various documents.

EDC's estimate of the benefits of economic development incentives are based largely on their projections of jobs to be retained—the number of jobs at risk in the absence of a deal. Without improved documentation, however, data on jobs retained are not reliable. By extension, EDC's estimates of the economic benefits associated with a project are also problematic.

Jobs created. While the number of new jobs tax incentive deals are expected to create usually figure prominently in public announcements, these job numbers usually are not tied contractually to benefits. The estimate of new jobs comes from forms filled out by the company on the occasion of the financing and is a projection by the company. Although in the contracts IBO was able to obtain the tax break was calculated based on the number of jobs at the site in excess of the base employment ("jobs retained") number, the firms appear to be under no obligation to live up to the their "jobs created" projections in order to maintain the benefit received. There are some recent deals, however, which do have "clawback" provisions that tie tax benefits in part to the number of jobs created.

Jobs used in analysis. Benefits often hinge on jobs numbers. The "jobs used in analysis" number is the report's estimate of the actual number of jobs at the site in a particular fiscal year. The number of jobs each company maintains at the project site in the years following the signing of the job retention contracts can determine whether the firms receive additional tax breaks, have their tax breaks reduced, or even have their contracts canceled. This number is also used to calculate the tax revenues (other than property tax revenue) that the deal will produce by keeping the company in the city.

Both the State Comptroller's audit and an audit conducted by the City Comptroller in 1997[11] found that some of the firms they audited had not complied with the requirement to report jobs on site. The LL69 documentation acknowledges that reporting remains spotty. EDC requests the number of jobs at each project site from the participating companies, but concedes that the figures are reported under jobs used in analysis *when they are provided.* Both audits also expressed concern that EDC took no steps to enforce the reporting requirements or to independently verify the reported levels of employment.

Even where data on the jobs used in the analysis is included in a LL69 report, the use of four alternative methods of calculating this variable makes the data impossible to interpret. The most recent LL69 reports assert that when actual employment figures are unavailable, the number for jobs used in analysis comes from the number of jobs said to be retained at closing, *or* 50 percent of the jobs the project is expected to create, *or* one job if neither a jobs retained nor a jobs to be created number is available. The PRFs do not note which of these methods was in fact used. Moreover, no summary information is provided showing the number of firms that submitted employment data. Without knowing how a particular number was derived, the reader cannot interpret a project's success or failure in creating or retaining jobs.

PROBLEMS LIMIT ACCOUNTABILITY AND PUBLIC SCRUTINY

The report exhibits a number of other flaws that together limit accountability and public scrutiny. Local Law 69 does not require that certain information about the terms of individual agreements be reported. Nor does LL69 require that the report be made widely available to elected officials and the public. Although the law does have a deadline for issuing the report, it is routinely missed.[12]

Unreported contract terms. A number of critical transaction details do not appear in the reports, as LL69 fails to require EDC to furnish all the details needed to understand and evaluate the agreements made on behalf of the city.

The report does not include the terms or performance requirements of the agreements. Some of the tax breaks offered to firms are contingent on maintaining a certain number of jobs at the benefiting location. The agreements can call for increases in the tax breaks should job levels exceed a certain threshold, and for decreases should job levels fall below minimum levels. However, the PRFs in the LL69 report make no mention of any performance requirements associated with the tax benefits. Since there is no way to determine if a firm is required to maintain or add a specified number of jobs, the public cannot establish whether a firm is meeting its agreed-upon obligation.

The report also does not include the date the agreement was made. The only date shown is the date the loan, sale, or lease actually took effect and the firm began receiving benefits, which may be years after the agreement was struck. This limits the report's usefulness in determining policy shifts, since benefits in any given year are likely to be attributable to decisions made at various times. Knowing the dates the agreements were actually reached is important to determine political accountability and to analyze trends.

Availability of the report. Public accountability also is limited because the report is not released on time and is difficult to obtain.

The current deadline for the report is January 31, seven months after the end of the fiscal year in question, and after the Mayor has submitted the Preliminary Budget for the following fiscal year. The costs and benefits to the city shown in the report, however, are known at the time each contract is signed. Therefore, a report summarizing the contracts could be completed soon after the end of the fiscal year. Making this information available earlier in the budget process would make the information more timely and relevant.

In addition, the report usually arrives late, generally months after the January reporting deadline. Notwithstanding the January date on its cover, the report for fiscal year 1996 contains spreadsheets dated March 13, 1997, indicating that the report was prepared a month and a half after it was due to be submitted to the Council.

Once the LL69 report is released, interested parties have experienced difficulty obtaining it. Although the law requires that the report be submitted to the Mayor and the Council, there is no requirement of distribution beyond that submission. A single copy is sent to the Council. The report is not made available on EDC's Web site. Elected officials, members of the general public, and the media must file Freedom of Information Law requests in order to obtain copies of the report. Requests can take weeks or months to process.

INCONSISTENCIES

Finally, figures in the report are too often unreliable. In comparing reports over time, IBO has found reported figures that should be consistent—costs that have already been borne, such as tax payments or tax breaks from previous years—frequently change from one report to the next. In addition, property tax revenues shown in the LL69 reports are often inconsistent with city property tax records.

Same firm, different figures. Reported tax benefits claimed for individual firms in a given year change from report to report. Total tax benefits shown under the heading "total assistance" are equal to the sum of property tax abatements and exemptions net of payments in lieu of taxes, mortgage recording tax waivers, sales taxes forgiven on purchases of building materials, and energy tax breaks. These inconsistencies are particularly disconcerting because these tax benefits are known—as opposed to estimated—by the time the report is scheduled for release.

Inconsistently Reported Project Data for Prudential Securities, Inc.
Dollars in thousands

	1995 Report	1996 Report	1997 Report	1998 Report	1999 Report	2000 Report
Mortgage Recording Fee Waiver	83	83	83	83	53	49
Sales Tax Abatement	--	1,757	1,737	842	842	842
Energy Benefits	--	--	11	11	47	47

SOURCES: IBO; Local Law 69 Report, Project ID 90294.

The pattern of inconsistency can also be seen by examining individual PRFs. The reported data for Prudential Securities, Inc., Project ID# 90294, exemplifies the kinds of inconsistencies that pervade the report. Using city fiscal year 1993, the first year that project benefits appeared, one can trace the evolution of the reported figures as they appear in all six LL69 reports. In this particular case, Prudential has been given three types of tax benefits: a mortgage recording tax waiver, sales tax abatements, and energy benefits.

Despite the fact that figures all refer to 1993, none of the three reported tax benefit amounts stayed constant over the five-year reporting period. As the table above shows, the reported amount claimed for the mortgage recording tax waiver in city fiscal year 1993 was $83,000 for the 1995-1998 reports, but was reduced to $53,000 in the 1999 report and to $49,000 in the 2000 report. Though no sales tax abatement was reported in 1995, an abatement roughly equal to $1.75 million was filed in both the 1996 and 1997 reports. The last three reports revise the figure to $0.84 million. The amounts shown for energy benefits were similarly erratic; the reported amount is $11,000 in the 1997 and 1998 reports, but increases to $47,000 in the 1999 and 2000 reports. Keeping in mind that the figures all apply to 1993 but are simply reported in different years, the inconsistencies are troubling. Although it is possible in some cases changes might represent corrections, late payments, or rebates, the pattern of continued alterations casts doubt over all of the data shown.

Property tax inconsistencies. Although the figure labeled "company direct" property taxes in the LL69 report is supposed to be the annual property taxes paid by the benefiting company, presumably on the property purchased or improved through the agreement, the figures often varied considerably from the city's property tax records.

IBO examined 94 properties for which block and lot information was available in the 1998 report. In 15 cases, the figures were equal to, or within 5 percent of, the property tax that would be due if no exemptions were granted. Other cases are much harder to explain. For 21 transactions, the figure given was much higher or much lower than the before-exemption property tax that would be due on the blocks and lots listed.

Two examples of unrealistically high company direct property taxes reported for 1998 are the CBS, Inc. studio on West 57th Street and a Display Creations property in Brooklyn. Before exemptions the CBS property would have yielded $1.1 million in property tax in 1998, but the figure shown is $2.3 million. For Display Creations, property tax records show that $2,000 in property tax would have been due before exemptions on the block and lot reported, but the report lists $186,000 as its property tax.

Conclusion

Local Law 69 was enacted to provide information about the city's discretionary job creation and retention agreements. Job retention deals are a common economic development tool in the United States and it is understandable that the city considers them in negotiations with firms that would otherwise relocate outside of New York.

These deals represent preferential tax policy; the targeted firms pay significantly less in taxes than existing laws require of other businesses. The use of these incentives establishes tax policy and budgetary decisions outside of the City Council's charter-mandated role in these processes. The inherent inequity of job retention deals that assist some firms but not others requires that full information be readily available to the Council and the general public.

The Local Law 69 report, while providing a great deal of data, does not provide the information necessary to fully evaluate specific agreements or the policy in general, and is insufficient to allow the Council to oversee the job retention activities of EDC. The information contained in the report is incomplete and often misleading. In addition, the reports are difficult to obtain, and the information in them is somewhat dated even when they are first issued.

Although evaluating the efficacy of discretionary local economic development incentives is a difficult task, changes to Local Law 69 to require more timely, more complete, and more accessible information would help the Council and the public monitor and influence the city's economic development policy.

Appendix: Compliance and Alternatives

The report text discussed the many problems associated with the Local Law 69 Report. The following matrix details each Local Law 69 requirement and its compliance, categorizes problems with the law, and reviews some alternative solutions.

Local Law 69 Requirement	Compliance	Problem	Alternatives
Details of the Report			
Report to be submitted to the Mayor and Council	Yes	EDC submits only two copies of the report (one each for the Mayor and the Council Speaker) and does not make the report generally available except by Freedom of Information Law request.	Make the report be available upon request. Provide the report to members of City Council economic development and finance committees, City Comptroller, Public Advocate, Borough Presidents, and IBO.
Report is to be submitted by January 31	No	Reports typically not issued until March or April.	Have the report include the actual date it was submitted, along with a statement explaining any delay past the statutory due date. Require that no new agreement may be signed after the due date until the report is released.
Applies to loans, grants or tax benefits in excess of $250,000 or sales or leases of land where the project is estimated to retain or create not less than 25 jobs	Yes, but distorts totals	Because agreements worth less than $250,000 and retaining/creating less than 25 jobs are omitted, the total numbers do not reflect the full impact of the policy. There may be large numbers of agreements below these thresholds that are unreported, distorting the true picture of the economic incentive program.	Report all agreements. Include data on smaller deals in totals but do not report them separately.
Data is to be reported for the first seven years after the assistance is first provided	Yes, but distorts totals	Any costs and benefits incurred after seven years are ignored. The date the agreement is reached is also not reported.	Report from the date of the agreement and continue reporting until all benefits cease. Require present values in addition to annual amounts. Begin reporting when agreement is signed.
Statement of the time span over which the project is to receive assistance	No	This information does not appear in the project reporting forms	Enforce compliance through terms of EDC's contract with the city. Add a requirement to include the date of the assistance agreement.
Type of assistance provided	Incomplete	Some types of assistance are omitted from the report: • The PIT taxes forgone as a result of the issuance of tax-exempt bonds. • Any discount inherent in below-market sales and leases of real property.	Define assistance to include all types of foregone tax and other revenues.

Local Law 69 Requirement	Compliance	Problem	Alternatives
Cost to the City			
Estimated amount of such assistance	Incomplete and inaccurate	Annual benefit amounts, especially with no indication of the time span over which benefits will be granted, fail to give a sense for the total value of benefits. Some assistance is understated: • The report shows the value of all future sales tax benefits as zero, even when companies are entitled to additional sales tax-exempt purchases. • Some deals have benefits that can last for 25 years. The report only includes those deals within a seven-year window, omitting benefits such as tax abatements, from older deals still in effect. Loans used for refinancing are not identified. Assistance amounts shown for completed fiscal years often vary from report to report.	For every assistance deal still in effect, report: • Present value of all assistance. • Assistance provided in current year. • Assistance provided in each year since agreement reached. • Projected annual assistance for duration of assistance. Identify loans used for refinancing Explain any changes in reported figures from a prior report. Require EDC to maintain documentation verifying assistance amounts reported.
Benefit to the City			
Estimated amount of retained or additional tax revenue derived from the project	Overstated estimate; erroneous information	Estimates are overstated in two ways: • Revenue impact includes property tax revenues, although they are not at risk. • The revenue impact is based on several aggressive assumptions: that the firm would leave the city if not for the deal; that all its employees would also leave the city; and that many of its suppliers and their employees would also leave. The estimated revenue impact is also marred by sometimes relying on flawed estimates of the actual number of jobs on site at the time of reporting. Reported property tax payments are often inconsistent with property tax records.	Reporting actual measurable benefits, such as actual tax payments (including PIT withholding and corporate/unincorporated business income taxes). Only include property taxes to the extent that taxes increase due to physical improvements made to the property as a result of the city assistance. Require that tax revenue data be provided or verified by the Department of Finance. Require that the report divide revenue amounts into retained revenue (paid by businesses and employees who remain in city after the agreement) and created revenue (paid by new businesses or growth of existing businesses). Require estimates of induced and indirect tax revenues resulting from the agreements, based on data provided by the Department of Finance.

Local Law 69 Requirement	Compliance	Problem	Alternatives
***Benefit to the City* (continued)**			
Projection of retained or additional tax revenue to be derived from the project for the remainder of the seven-year period beginning when the assistance was first provided	Incomplete (Overstated)	As above, the reported amount is overstated. It includes revenue that would largely accrue to the city even in the absence of the project (such as real property taxes).	Base benefit estimates on Department of Finance calculations. Report present value of all benefits.
Number of jobs projected to be created or retained for the first seven years after the assistance was first provided	Incomplete	The reported number of jobs retained is unreliable since some firms deliberately misrepresent base employment levels. Without knowing the true base, it is impossible to evaluate the successes or failures of the deals.	Require documentation for the number of jobs retained.
		Seven-year time period leads many deals to be excluded.	Revise the time span for reporting job data to match the revised time frame for reporting assistance (from the date of the agreement for as long as benefits apply).
		The reported number of jobs created is just a projection made by the firm, one it may be under no obligation to meet.	The report should show the number of jobs the firm is contractually required to create or retain in order to receive its full tax benefits.
Estimate of actual number of jobs created or retained to date	Incomplete	Because some firms do not report job numbers, actual number of jobs cannot be determined from report.	Report actual annual employment levels.
		Several different methods are used to produce estimated number of actual jobs, but method used is not identified. This makes the numbers shown impossible to interpret.	Require that numbers be calculated consistently from project to project and the methodology used to calculate the number be clearly stated.

Additional Issues:

1. Include terms of the agreement in the report, in particular the extent to which benefits are contingent upon company performance requirements

2. Demonstrate cost effectiveness of job retention program by providing the total assistance per job retained. This number can be used to compare New York City's program with other cities and states.

3. Include a description of EDC's economic development strategy, outlining industries targeted and plans for the five boroughs.

END NOTES

[1] Although the statute only requires projections of future revenue gains, the report also includes projections of foregone revenues from tax breaks. As shown in the text, however, in many cases these figures are not meaningful.

[2] In effect, this assumes that the understatement of foregone revenues associated with not including loans issued before 1991 is roughly equal to the overstatement associated with the inclusion of refinancings.

[3] The calculation assumes that insurance companies and other corporations that do not benefit from the tax exemption hold 30 percent of the bonds and that city residents hold the remaining 70 percent.

[4] This threshold is high relative to the other laws governing the reporting of economic development incentives. In Maine, all transactions in which an annual benefit of more than $10,000 must be reported. In Minnesota, local government subsidies to business with a value greater than $25,000 must be included in annual reports to the state.

[5] On occasion, the tax benefit could result in an increase in assessed value if the financing is used for significant improvements or building additions; in such cases the potential increase in property tax revenue will not occur in the absence of the deal.

[6] To be fair, removing buildings from the tax rolls is not the only way that property tax revenue can decline. The long-run value of the city's commercial property results from the rents commercial tenants are willing to pay. The departure of a rent-paying firm can cause the aggregate value of city commercial space to decline if a tenant willing to pay a similar amount is not found, and an eventual decline in property tax revenues may also occur. On the other hand, the positive impact of a retention agreement on property taxes is made less likely by the fact that the retention of the firm is contingent on tax breaks, often in the form of payments in lieu of property tax. There is no guarantee that the agreement will alter the likelihood of the company's staying in the city, the rent it will pay, or the property tax revenues that rent will support, once the company and the building go back to full tax-paying status.

[7] Economists believe that one reason for the existence of cities is that the output of firms is increased by the closeness of other firms in the same or in related industries. To the extent this is true, the departure of one firm could reduce the output of other firms in the industry, or make them more likely to leave the city as well. Rarely, though, will the departure of a single firm alter the advantages that a city such as New York offers other firms in that industry.

[8] The jobs number is multiplied by the output in New York City that can be attributed to each employee in an industry and by the tax revenue generated per dollar of city output. The impact of the retention of the company's employees is based on census data showing the percentage of all workers in each borough who are city residents. With the available data, it is not possible to determine how closely the census data tracks the actual distribution of employees in a particular firm, or firms in the aggregate, receiving assistance.

[9] State of New York, Office of the State Comptroller, Office of the State Deputy Comptroller for the City of New York, *New York City Economic Development Corporation—Improvements Needed to Strengthen Industrial Development Agency Program,* June 7, 1995, A-6-94.

[10] *Ibid.*

[11] City of New York, Office of the Comptroller, Bureau of Management Audit, *Audit Report on the Administration of Job Retention Agreements by the Economic Development Corporation,* September 19, 1997, MH96-183A.

[12] Another omission is the costs and benefits to New York State. Although press releases announcing EDC financing deals invariably include cost estimates for both state and city tax incentives, the state data is not required to be included in the LL69 report. City residents and taxpayers are state residents and taxpayers as well. In order to properly compare deals made with different companies, and to discern how much is being spent to retain jobs, state costs—such as subsidies to provide firms with low-cost energy—should be in the report. The reported benefits of the deals are also limited to the city. With broader geographic boundaries, however, the statewide benefit is likely to be greater than the city's.

This report was prepared by Stephen Mark and Joyce Sun. Preston Niblack, Andrew Rein, and Michael Rogovin also contributed to the report.