It's Time to End New York State's Empire Zone Program

Founded in 1932, the Citizens Budget Commission is a nonpartisan, nonprofit civic organization devoted to influencing constructive change in the finances and services of New York City and New York State governments.

The Commission conducts research and regularly issues reports and recommendations based on that research. The research is conducted by staff members and consultants and guided by committees composed of Trustees of the CBC.

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Introduction and Overview

In 1986 the New York State Legislature created the Economic Development Zone program. Its purpose was to retain and attract jobs to specific areas of the State that were experiencing extreme economic hardship. Businesses locating or expanding in these areas were made eligible for public subsidies in the form of corporate income and other tax benefits.

In 2000 the program was revised and expanded. Economic Development Zones were renamed "Empire Zones" and new eligibility rules made it much easier to create new Zones and for more firms to qualify for benefits. The program's political appeal is such that repeated efforts to "reform" it have only created more loopholes; what was once intended as a small, targeted program to assist economically distressed areas is now a vehicle for giving tax breaks to a variety of corporations, with no clear, consistent, verifiable justification for the public investment.

Today, Empire State Development (ESD) reports that there are over 9,800 certified businesses employing more than 380,000 people in 82 Empire Zones statewide.[1] As the scale of the program has grown dramatically its costs have ballooned. In 2000 the cost of the program was $30 million;[2] by 2008 the figure had grown to $582 million. [3] This represents a twenty-fold increase in just eight years. In addition, firms have $900 million in unused credits that can be used in future years.[4] The Empire Zone program has been expanded to the point that its beneficiaries no longer even have to be located within the Zones, and the Zones themselves have grown dramatically in number and size.

A 2007 assessment of New York State's economic development apparatus conducted by AT Kearney, the management consulting firm, concluded:

> "Of all of the programs examined here New York's Empire Zones program provides perhaps the best example of good economic development intentions gone wrong. Its original mission has been morphed by political patronage, legislative revision and commercial manipulation, effectively repositioning it from a program primarily helping distressed communities to one routinely offering tax relief for ongoing businesses."[5]

Commenting on that assessment, Patrick Foye, then the downstate chairman of the Empire State Development (ESD), said, "On balance, the Empire Zone program has been a failure, and in some ways a gross failure. We have no way of knowing how many jobs have been created or retained."[6] The upstate chairman at that time, Dan Gundersen, told business leaders in June 2007, "Of the 9,700 companies that currently claim Empire Zone benefits, three-quarters of them are in the upstate region. Yet job growth has been sluggish or non-existent. The problem we have with the Empire Zone program is that it is not tied to any overall economic strategy."[7]

Key State legislative leaders have weighed in against the Empire Zone program. Senator James Alesi, Chair of the Commerce, Economic Development and Small Business Committee, in June 2007, said the State might be better off eliminating the Empire Zone program entirely, and, "People like myself are saying, 'Are we getting enough for our investment?' Clearly the answer is no."[8] Assemblyman Richard Brodsky, Chair of the Corporations, Authorities, and Commissions Committee, who has spearheaded multiple investigations of the program, called for a six-month moratorium on the program until it could be thoroughly audited and completely overhauled.[9] On September 17, 2008 Senate Majority Leader Dean Skelos proposed that the Empire Zone program be phased out and replaced with a new statewide tax credit for small business.[10] Most recently, on November 17, 2008 Assembly Speaker Sheldon Silver said that a moratorium should be imposed on the program as part of the State's budget savings plan.[11]

Access to public information about the program has been so tightly held that the Syracuse *Post-Standard* had to sue New York State in 2006 to get ESD, which oversees the program, to release basic information about how the public's money is being spent. Using the power of his office to review program records the State Comptroller has completed numerous audits, which have repeatedly documented the program's serious flaws. An audit in 2004 found poor financial management by the Zone Administration Boards (ZABs).[12] The Comptroller made 17 recommendations including a series of procedures for collecting and using more accurate data, particularly with regard to the application of cost benefit analyses, and more stringent enforcement of performance targets.

Two additional audits released in 2004 focused on the effectiveness of the Empire Zones. The first covered eight Zones around the State—Binghamton, Buffalo, Friendship (Allegheny County), Islip, Rochester, Syracuse, Tonawanda, and Yonkers—and found widespread failure.[13] Fully 70 percent of the businesses receiving tax breaks in these Zones failed to meet the job creation targets they set when they were certified to join the program. The second, launched at the same time, examined three Zones in New York City—South Jamaica, Queens; East Harlem, Manhattan; and North Shore, Staten Island. The New York City audit showed more significant failures in these Zones than were found upstate.[14] Both audits found that the local boards were failing to satisfactorily oversee the program.

A follow-up audit that looked at both administration and effectiveness was released in February 2008 and found few improvements. Comptroller Tom DiNapoli concluded, "New York should take another look at the Empire Zones program. We need to know if we're getting a bang for the taxpayer's buck. If officials can't demonstrate that the program is working, and if local governments and taxpayers are not benefiting from a program that's supposed to generate economic development and create jobs, it calls into question the value of the program."[15]

The evidence of the program's serious flaws has led to criticism from newspaper editorial boards. For example, in 2006 the *New York Times* called the Empire Zone program "yet another pork-barrel scam."[16] The *Albany Times Union* in 2007 concluded that the program had produced a "dismal return on billions of taxpayer dollars,"[17] and in 2008 called the program an "utter farce."[18] The *Syracuse Post-Standard*, which has published a series of special reports on the program, labeled it "a free-for-all trough of abuse" and "a $550 million juggernaut, with enough loopholes to allow companies to maneuver around its main mission: creating jobs."[19]

To prepare this report the CBC analyzed the claims made by firms in the program in 2006, examined the legislation itself, and compiled information from the numerous audits and legislative investigations that have been conducted over the years. The report is divided into two parts. The first part describes the benefits enjoyed by participating firms and how those benefits are distributed among economic regions of the State and types of firms.

The second part identifies and elaborates on the three serious problems that compromise the program's efficacy. First, the Zones have proliferated to such an extent that the mission of the program has been lost. The Zones no longer correspond to distressed areas; instead, Zones are built around businesses that seek the tax credits or, in the case of "Regionally Significant Projects," the tax credits are awarded without regard to whether the business is located within a Zone.

Second, the program's objectives are not measured consistently, and local agencies do not hold firms accountable for the economic development commitments they make. The program is complicated by the combination of State and local administration and compromised by a lack of transparency. As a result, it has been difficult for ESD and local Zone administrators to hold firms accountable by applying consistent standards for certifying businesses or monitoring outcomes.

Third, the program is failing to meet the targets that the firms themselves set when they were approved for participation. Numerous audits have shown that recipients do not meet their stated employment and investment goals.

The Empire Zone program has proven reform resistant. Repeated efforts to improve the program have led only to more loopholes and more tax breaks. Increasingly scarce public resources should no longer be spent in this unproductive way. The time has come to end the program.

Generous Tax Benefits that Vary Widely by Region and Firm

The Empire Zone program's generous tax benefits are meant to lower the cost of hiring, investing in capital plant and equipment, and paying for supplies and utilities. The combination of benefits is comprehensive and complicated—it differs for new businesses, for special target groups, and by type of capital purchase and tax status. It is difficult for businesses to figure out the benefits of participation, and for local Zone boards, ESD, the State Department of Taxation and Finance, and the Department of Labor (DOL) to administer and oversee the program. Despite the requirement for cost-benefit analysis in the Empire Zone application, and an ESD requirement that the ratio of benefits to costs be at least 15 or 20 to one, depending on the project, in practice it is exceedingly difficult to ensure that a consistent methodology for determining whether the promised investment and job creation by a business is worth the tax benefits is being applied. No uniform system currently exists to evaluate whether the goals specified in firm applications are being met.

To participate in the Empire Zone program, a business must first become Zone-certified. For certification, companies file an application with the local ZAB that includes a commitment to create new jobs or make capital investments. Starting in 2005 a cost-benefit analysis must also be included as part of the application. Once local Zone officials approve the application, it is forwarded to ESD and DOL for review and final approval.

Many of the benefits are as-of-right for a Zone-certified business and include tax credits for personal income, corporate franchise, bank, insurance, and sales taxes. Local governments can supplement Zone benefits by giving property and other local tax breaks to firms. Sales tax benefits are not limited to Zone-certified businesses, but the purchaser of the supplies must be buying for a property in the Zone. Companies certified for Empire Zone benefits are eligible for wage tax, investment tax, employment incentive, and capital credits and sales tax refunds according to a complex set of parameters. For companies hiring full-time or full-time equivalent employees in the Zone, wage tax credits, which are applied against business tax liability, of $1,500 per employee are available for up to five consecutive years. An additional $500 credit is available for jobs paying $40,000 per year or more. For employees in special targeted groups, the amount is raised to $3,000 per employee per year.[20] Unused wage and investment tax credits can be forwarded indefinitely; new businesses—those that have been taxable for five years or less—are eligible for a 50 percent refund of unused credits.

With legislation passed in 2000, businesses located in Empire Zones can get even deeper benefits if they are deemed a Qualified Empire Zone Enterprise (QEZE). Eligibility is based on several factors, including employment level and in-state business activity. QEZEs are granted a 10-year exemption from State sales tax on purchases of goods and services, including utility services, used predominately in the Zone. They are allowed a refundable credit for real property taxes paid, based on a formula that considers job creation, wages and benefits or investments made in the Zone. They are also allowed a credit against taxes equal to a percentage of income taxes attributable to the Zone enterprise based on its employment growth in the Zone. In 2005 about 1,200 firms claimed QEZE benefits.[21]

Empire Zone benefits vary considerably by region and firm. To describe the variation the CBC analyzed the data available on the firms claiming credits in 2006. The regional distribution of benefits was examined by tallying the dollar amount of tax credits used and the share of firms participating in each of the ten economic regions identified by the New York State Department of Labor and ESD. The variation in benefits by firms was

Table 1
Regional Distribution of Empire Zone Benefits, 2006

Economic Region	Credits Claimed (dollars in millions)	Share of the Total Program
Capital Region	$34	6.6%
Central Region	91	17.7%
Finger Lakes Region	37	7.2%
Hudson Valley Region	75	14.5%
Long Island Region	4	0.9%
Mohawk Valley Region	34	6.6%
New York City Region	57	11.1%
North Country Region	34	6.6%
Southern Tier Region	47	9.0%
Western New York Region	101	19.6%
Total	**$514**	**100.0%**

Source: New York State Empire State Development Corporation. Available from the *Syracuse Post Standard* data center, <www.syracuse.com/data/empirezones> Accessed September 17, 2008.

parsed in two ways—by identifying firms that account for the lion's share of the total, including the top ten beneficiaries, and by totaling the benefits for firms that are large enough to be on *Fortune* magazine's list of the largest 1,000 corporations.

The biggest regional user of the Empire Zone program is Western New York, which receives 19.6 percent. The Central Region is responsible for another 17.7 percent. The smallest share is attributable to Long Island, with less than 1 percent. (See Table 1.)

Within the regions the share of firms that are certified to receive benefits varies. Central New York has a participation rate of 4.5 percent, the highest among the regions. (See Table 2.) Long Island and New York City have the lowest rates of 0.1 percent and 0.3 percent, respectively.

Across the State the participation rate is 0.9 percent; in 2006 4,959 firms out of 530,058 were certified. Even in regions with relatively high participation rates more than 95 percent of the firms are endeavoring to compete without Zone benefits.

Table 2
Participation Rate of Firms in the Empire Zone Program by Region, 2006

Regions	Total Number of Firms	Percent of Firms in State	Number of Firms in EZ Program	Percent of Firms in EZ Program	Participation Rate in EZ Program
Capital Region	27,163	5.1%	494	10.0%	1.8%
Central New York	18,577	3.5%	831	16.8%	4.5%
Finger Lakes	27,214	5.1%	359	7.2%	1.3%
Hudson Valley	71,487	13.5%	752	15.2%	1.1%
Long Island	98,268	18.5%	55	1.1%	0.1%
Mohawk Valley	10,570	2.0%	353	7.1%	3.3%
New York City	221,054	41.7%	570	11.5%	0.3%
North Country	9,567	1.8%	314	6.3%	3.3%
Southern Tier	13,497	2.5%	408	8.2%	3.0%
Western New York	32,661	6.2%	823	16.6%	2.5%
Total	**530,058**	**100.0%**	**4,959**	**100.0%**	**0.9%**

Sources: Empire State Development Corporation and the New York State Department of Labor.

Another way to analyze the Empire Zone program is to ask what firms are getting the benefits and to what extent. The benefits are highly concentrated. Of the approximately 5,000 firms that claimed credits in 2006, just 500 claimed almost $391 million, or 76 percent, of the $514 million total.

Within that group of 500 firms, a handful account for $100 million. This means that fully 20 percent of the credits went to the firms with the ten largest credit amounts claimed. (See Figure 1.) The three largest of these, International Business Machines (IBM), NRG Energy Inc, and Geico General Insurance, claimed $31.7 million, $20.2 million, and $19.4 million, respectively. Coming in fourth was the Carousel Center Company LP, owners of the Carousel Mall just outside Syracuse, with $9.7 million.

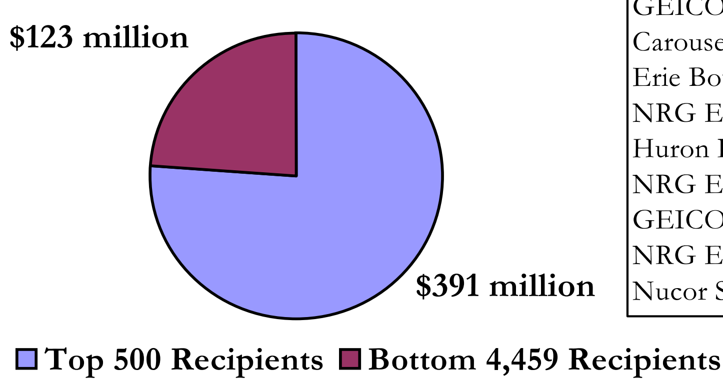
To understand what types of businesses are benefiting from the Empire Zone Program, CBC compared the list of 5,000 claims in

2006 to the Fortune 1000 list, after aggregating the credits claimed by the firms located in different parts of the State under their firm name. The analysis showed that $127 million, or about 25 percent of the total annual claims, went to these firms. (See Table 3.) The five largest firms on the list by 2007 revenue—Wal-Mart, Berkshire Hathaway, IBM, Home Depot, and Costco—were ranked by the magazine at the 1, 11, 15, 22, and 29 spots, respectively. Among these firms, three claimed credits for multiple locations. Wal-Mart claimed credits for three certified locations in upstate in Oneida, Oswego, and Gloversville. Home Depot claimed credits for eight locations in Watertown, Cattaraugus, Sullivan, Schenectady, Hornell/Corning, Staten Island, Brooklyn, and Yonkers. Costco claimed credits for two locations in Yonkers and Brooklyn.

Many of the large corporations are "big box" retailers. Of the 25 firms among the Fortune 1000 that received Empire Zone credits 11 were retail chains. The firms—Wal-Mart, Home Depot, Costco, Target, Walgreen's, Lowe's, Staples, Kohl's, Family Dollar, Radio Shack, and Dick's Sporting Goods—got $30 million in credits. Large retail chain stores typically offer low-wage jobs and make location decisions on the basis of access to consumers, situating their stores according to where they can make the greatest profit. Since higher paying jobs make more of an impact in turning around economically depressed areas, the use of the program to benefit a significant number of employers known for close-to-minimum wage compensation may not be the best use of resources.

In summary, Empire Zone tax benefits are numerous and generous, and they vary significantly by region and firm. The biggest user of the program, Western New York, has the most troubled economy in the State as measured by job and population change and the erosion of real wages,[22] while the smallest user is Long Island. Zone benefits to individual firms are highly concentrated among large users of the program with three quarters of the total going to 10 percent of the

Figure 1
Distribution of Empire Zone Credits by Amounts, 2006



Top Ten Claims = $102.7 million
International Business Machines- $31.7 million
GEICO General Insurance- $13.1 million
Carousel Center Company LP- $9.7 million
Erie Boulevard Hydropower L.P.- $8.4 million
NRG Energy Inc.- $7.4 million
Huron Real Estate Associates LLC - $7.2 million
NRG Energy Inc.- $6.6 million
GEICO Indemnity- $6.3 million
NRG Energy Inc.- $6.2 million
Nucor Steel Auburn Inc.- $6.1 million

Source: New York State Empire State Development Corporation. Available from the *Syracuse Post Standard* data center, <www.syracuse.com/data/empirezones> Accessed September 17, 2008.

participants. Some of the largest corporations in the world, as demonstrated by their high rank among *Fortune* magazine's Fortune 1000, are participating in the program and accounted for fully a quarter of the total.

The next part of the paper addresses three major problems that have plagued the program. They have proved insurmountable despite numerous attempts to address them.

Problem #1: Rapid Proliferation

Empire Zones were formed out of an earlier Economic Development Zone program authorized in 1986. It created 10 Zones consisting of census tracts with high poverty and unemployment rates. In 1993, the legislation was amended to allow counties to create a Zone if they faced "sudden and severe" job loss; counties only had to claim that they were likely to experience significant job loss in the coming three years. The 1993 amendments also allowed Zone designation for pieces of land that are nearby or contiguous to existing Zones and have the potential for business development and job creation. These changes caused a rapid expansion of the program; by 1995, there were 40 Zones.

In 2000, legislation formally changed the name of the program from the Economic Development Zone to the Empire Zone program, effective January 1, 2001. The new criteria for site selection eliminated the required threat of job loss entirely, making

Table 3
Fortune 1000 Firms Receiving Empire Zone Credits, 2006

Company Name	Rank on Fortune 1000	2007 Revenue ($millions)	2007 Profits ($millions)	Amount of Credits	Credit Locations
Wal-Mart Stores	1	$ 378,799.00	$ 12,731.00	$ 2,376,570.00	Various - Oneida, Oswego, Gloversville
Berkshire Hathaway (Geico)	11	118,245	13,213	19,549,900	Tonawanda
International Business Machines	15	98,786	10,418	31,700,000	Poughkeepsie/Dutchess
Home Depot	22	84,740	4,395	4,128,125	Various - Watertown, Cattaraugus, Sullivan, Schenectady, Hornell/Corning, Staten Island, Brooklyn, Yonkers
Costco Wholesale	29	64,400	1,083	31,238	Various - Yonkers, Brooklyn
Target	31	63,367	2,849	4,545,075	Various - Mount Vernon, Islip, Monroe, Amsterdam
Walgreen	40	53,762	2,041	144,415	Various - Queens, Yonkers, Buffalo
United Parcel Service	46	49,692	382	1,896,508	Various - Genesee, Bronx, Geneva, Potsdam, Rome, Cortland, Brooklyn
Lowe's Home Centers	48	48,283	2,809	15,947,647	Various - Staten Island, Oswego, Brooklyn, Onondaga, Rome, Utica
Lockheed Martin	57	41,862	3,033	5,662,787	Various - Onondaga and Tioga
PepsiCo	59	39,474	5,658	115,500	Broome County - Town Of Kirkwood
FedEx	68	35,214	2,016	542,509	Various - Brooklyn, Tonawanda
Sysco	70	35,042	1,001	132,300	Onondaga County
Hartford Financial Services	95	25,916	2,949	875,625	Various - Oneida, Syracuse
Washington Mutual	97	25,531	-67	701,032	Orleans County
3M	100	24,462	4,096	400,574	Town Of Tonawanda
Coca-Cola Enterprises	118	20,936	711	106,200	Town Of Tonawanda
Staples	128	19,373	996	1,095,000	Newburgh-Stewart, Orange County
Nucor Steel	151	16,593	1,472	6,130,000	Auburn
Kohl's	152	16,474	1,084	1,989,320	Sullivan County
Bank of New York Mellon Corp.	172	14,798	2,039	1,357,005	Onondaga County
General Mills	214	12,442	1,144	629,991	Buffalo
Family Dollar Stores	358	6,834	243	20,175	Various - Kingston, Ulster, Buffalo, Rochester, Troy
NRG Energy	403	6,039	586	20,222,810	Various - City of Dunkirk, Towns of Dunkirk and Sheridan, Oswego, Town of Tonawanda
Corning	417	5,860	2,150	6,233,259	Various - Ogdensburg and Hornell/Corning
RadioShack	531	4,252	237	13,125	Various - Oswego, Sullivan
Dick's Sporting Goods	562	3,888	155	34,875	City & Town Of Watertown
American Axle and Manufacturing	635	3,248	37	72,724	Buffalo
Tiffany	676	2,992	304	496,020	Mount Vernon
Amphenol	702	2,851	353	605,000	Delaware County
Total Fortune 1000	**NA**	**NA**	**NA**	**$127,755,309**	**NA**

Sources: New York State Empire State Development Corporation. Available from the *Syracuse Post Standard* data center, <www.syracuse.com/data/empirezones> Accessed September 17, 2008. 2008 Fortune 1000 List, *Fortune Magazine*, Available at <http://money.cnn.com/magazines/fortune/fortune 500/2008/full_list?>Accessed September 17, 2008.

NA - Denotes Not Applicable

almost any area eligible. By 2008 eligibility for the program had been expanded to cover 15 different "options." (See Table 4.)

Not only has the number of Empire Zones grown, but the Zones' borders have become convoluted; many look more like politically gerrymandered legislative districts than focused economic development targets. Two county examples—Saratoga and Monroe—serve to illustrate the problem. The Zone in Saratoga County has grown based largely on the needs of individual developers. The Zone contains five designated areas in different parts of the county, but dozens of individual parcels have been tacked on. In 2003, for example, boundary amendments to the Zone allowed 69 businesses to be certified for benefits. In the City of Saratoga Springs—one of the more prosperous small cities in the State—at one time there were 27 different small parcels attached to the Zone. In 2005 legislation forced the consolidation of the smaller parcels in the City of Saratoga Springs into four areas, but county officials used the new Regionally Significant Project designation to certify four major firms for benefits—the 70-acre campus of Quad Graphics in Saratoga

Table 4
Empire Zone Eligibility Criteria Changes Between 1986 and 2008

1986 Law

Option 1
1. Poverty rate at or above 20%
2. Unemployment rate at least 125% of State average
3. Population at or above 2,000

2008 Law

Option 1 (effective 1986)
1. Poverty rate at or above 20%
2. Unemployment rate at least 125% of State average
3. Population at or above 2,000

Option 2 (effective 1990, for counties)
1. At least 13% poverty rate over past 2 years
2. Unemployment rate at least 125% of State average
3. Does not contain any qualifying zones

Option 3 (effective 1993, for land nearby or contiguous to a qualified zone)
1. Land has significant potential for business development and job creation

Option 4 (effective 1993, for counties)
1. Unemployment rate of the Metropolitan Statistical Area exceeds national rate
2. MSA has experienced **or is likely to experience within 3 years** a loss of 4,000 jobs or dislocation of 0.5% of the area workforce, 50% from a single employer or 80% in a single industry

Option 5 (effective 1993, for counties)
1. Unemployment rate of the Metropolitan Statistical Area is equal to or less than national rate
2. MSA has experienced **or is likely to experience within 3 years** a loss of 8,000 jobs or dislocation of 1% of the area workforce, 50% from a single employer or 80% in a single industry

Option 6 (effective 1993, for counties)
1. Unemployment rate of the Labor Market Area exceeds national rate
2. Labor Market Area has experienced **or is likely to experience within 3 years** a loss of 500 jobs or the dislocation of 2% of the LMA's workforce

Option 7 (effective 1993, for counties)
1. Unemployment rate of the Labor Market Area is equal to or less than national rate
2. Labor Market Area has experienced **or is likely to experience within 3 years** a loss of 1,000 jobs or the dislocation of 4% of the LMA's workforce

Option 8 (effective 1993, for municipalities)
1. Declared a natural disaster

Option 9 (effective 1993, for municipalities)
1. Contains a military facility designated for closure

Option 10 (effective 1993, for municipalities)
1. Contains a mental health facility designated for closure or downsizing

Option 11 (effective 2000, for municipalities)
1. Unemployment rate equal to or exceeding the State average
2. Poverty rate of at least 20%
3. At least 14% of households receive public assistance
4. Located in non-metropolitan area
5. No other empire zone in the county

Option 12 (effective 2005, for individual projects)
1. Manufacturer projecting 50 or more new jobs

Option 13 (effective 2005, for individual projects)
1. Agri-business or high-tech or biotech making capital investment of $10 million and creating 20 or more jobs

Option 14 (effective 2005, for individual projects)
1. Financial or insurance services or distribution center creating 300 or more jobs

Option 15 (effective 2005, for individual projects)
1. Clean energy research and development enterprise

Source: New York State General Municipal Law, Section 958. Good Jobs First, *Straying From Good Intentions: How States are Weakening Enterprise Zone and Tax Increment Financing Programs*, August 2003.

Springs, the 290-acre facilities of Momentive Performance Materials in Waterford, the half-acre site of DC Sports in Mechanicville, and the 600-acre future site of Advanced Microchip Devices in Malta. Before the new category was added, the maximum size of each Zone was capped at 1,280 acres so the expansion effectively added 1,000 acres of parcels that are the equivalent of a new Zone.[23]

With respect to Monroe County, an investigation by Assemblyman Richard Brodsky in 2004 concluded that the multiple amendments approved for Monroe County had the effect of "furthering the fragmentation and suburbanization of the Zone."[24] Between July 2002 and October 2003, the Monroe County Empire Zone's boundaries were amended 42 times to include new properties. Of these, 25 were included on the grounds that the parcels contained vacant buildings - with no accompanying justification as required in statute related to specific job creation, retention, or capital investments. Fully 25 of the amendments were for parcels in relatively well-to-do suburban locations.

The Buffalo Empire Zone boundaries also have been changed to accommodate individual firms. In 2003 an investigation by the *Buffalo News* found that Buffalo officials had "brought the zones to businesses" instead of delineating boundaries according to level of economic distress.[25] As a result, the 130 non-contiguous areas included in the Buffalo Empire Zone contain the City's most expensive downtown real estate.

Problem #2: Limited Accountability and Inconsistent Administration

The combination of State and local administration undermines accountability. Although ESD and DOL share responsibility with local Boards for business certification, local boards are responsible for collecting, analyzing, and forwarding the appropriate information to ESDC. Local Boards are also intended to play a role in enforcement to ensure that taxpayers get the jobs and investments promised in exchange for the tax breaks. These Boards, with county-appointed membership, vary in sophistication, financial acumen, and managerial capacity, and this leads to substantial variation in results. In practice, it can be difficult for a local body to muster the resources to verify the data and claims submitted by participating businesses; audits have repeatedly shown that reports handed over by firms to the ZABs are accepted with little scrutiny. As a result, the validity of the metrics employed to evaluate applications and measure progress toward economic development goals is questionable.

Irregularities in Board management have been spotted and corrected. In January 2008, for example, six of the ten members of the Monticello ZAB were replaced after a community activist voiced concern over its failure to keep appropriate records and abide by rules governing Zone amendments.[26] In the Lewis County Zone a special meeting had to be called in December 2006 to bring the ZAB's membership into compliance with State regulations that require that the Chairman of the Board be an employee of the sponsoring local government to prevent potential conflicts of interest.[27] The Chairman had to step down along with several other officers.

The ZABs do not have an incentive to perform rigorous certification reviews because the State pays for the program. In fact, from their perspective, the more tax credits they can deliver for local businesses the better, even if those employers later fall short of their job creation targets. This makes it hard for ESD to ensure that the materials it gets, and in particular the cost-benefit analysis that is required with every application, have been prepared with a critical eye. As ESD tries to improve the accountability of the program its goals will be at odds with local goals.

An audit by the State Comptroller released in 2004 identified numerous serious problems with program administration and accountability. In speaking about the audit's conclusions New York State Comptroller Alan Hevesi made clear the problem with joint administration.

> "Giving companies tax breaks is giving away real money. Empire Zone officials must ensure that the tax benefits actually create jobs and healthy companies. Some companies that receive tax breaks are creating jobs. That's important. But while the State Department of Economic Development (DED) maintains that much of the responsibility to manage the Zones lies with local officials, local officials told us that DED must improve its oversight of the program. The end result is that we have no way of knowing whether the hundreds of millions of dollars in tax breaks businesses receive each year are actually creating the desired economic benefits." [28]

The auditors found significant variation in the caliber of ZAB management and oversight. For example, the auditors found that the Zones did not count new jobs or new businesses the same way. According to ESD guidelines, new jobs created should be calculated by subtracting the total number of jobs on the prior year's report from the number of jobs on the current year's report. The Comptroller found multiple ways that Zones tallied jobs, rendering the data for the whole program inaccurate. Some ZABs added up all of the jobs reported in the current year for only businesses new to the program and others reported jobs created by businesses and did not net out the jobs lost by other businesses. State administration efforts were also found to be flawed. The DED did not document its decisions regarding final certification of applicants. Auditors found instances where businesses were certified by senior DED staff contrary to what would have been expected based on the material prepared by junior staff.

The audit team made 17 recommendations to improve the administration of the program. These included procedures for collecting and using more accurate data, particularly with regard to the application of cost benefit analyses. Greater use of standard forms and measures and better enforcement efforts for failure to meet targets were suggested.

In February 2008, the State Comptroller's audit teams revisited the eight Zones that had been examined in the 2004 audit. They found very limited improvement. Only two Zones—Yonkers and Friendship—had developed a written evaluation that compared outcomes to clear and measurable goals. Tonawanda had prepared a Zone-wide cost benefit analysis but was unable to verify the accuracy of the claims about job creation that they received from their member businesses. Accuracy of data was found to be a problem in all of the revisited Zones, as the ZABs had no capacity to check the assertions of their Zone businesses.[29]

To assess whether the credits given to each firm were based on the number of jobs it promised to create, the CBC used the 2006 data to calculate credits-per-job. The analysis revealed enormous variation. Some firms have extremely high credits-per-job while others received as little as $1 per job. Some firms got credits for producing no jobs at all; the program allocated $5.4 million, an average of $29,851 per firm, to 184 firms that fit this category. Another $41 million was spent on 729 firms that promised to employ just one person – an average of $56,747 per firm.

With a mean and median credits claimed per job of $2,223 and $1,435, respectively, the distribution is skewed toward the thousand firms that receive extremely significant tax breaks for relatively few jobs. For example, the top ten firms received between $615,356 and $2,791,175 in tax breaks per job for promising to create one to nine jobs apiece. (See Table 5.) Below these top ten in the ranking there are 896 firms that received credits ranging from $10,013 to $532,234 per job. It is possible that some of these firms promised capital investment that would offset these variations but the range in what they had promised would have to be vast to fully account for such extreme differences. That data has not been made public.

Working with the Division of Budget, ESD recently renewed its efforts to improve accountability and local administration. They have improved the review of the local application to enhance the cost-benefit standards for entry into the program, and are making the designation of a regionally significant project more consistent. However, the challenges they face in cleaning up the program are daunting; the Executive Budget for fiscal year 2008-09 included a savings target of $50 million.

Problem #3: Failing to Meet Economic Development Goals

The Empire Zone program is failing to meet economic development goals. Audits by the State Comptroller have shown that job creation fails to meet targets; recent efforts by ESD to improve the administration of the program have revealed high failure rates among firms at meeting investment as well as employment goals.

In addition to auditing the administrative and oversight capacities of the program, the State Comptroller audited the program to see how well it has met its job creation goals. The first audit released in 2004, *The Effectiveness of Empire Zones,* focused on eight Zones—Binghamton, Buffalo, Friendship (Alleghany County), Islip, Rochester, Syracuse, Tonawanda, and Yonkers. It documented that only 30 percent of the businesses that received tax breaks had met or exceeded their job creation targets, that 47 percent had failed to make their targets and 23 percent had actually lost jobs. Since local Zones were not evaluating performance, companies failing to meet targets continued to receive tax breaks for years. [30]

Three New York City Empire Zones—South Jamaica, Queens; East Harlem, Manhattan; and North Shore, Staten Island—were audited by the State Comptroller in 2004. Just 39 percent, 15 percent, and 20 percent of businesses met or surpassed their job creation targets in South Jamaica, East Harlem, and North Shore, respectively. The audit also showed that the failure rate in New York City Zones was much higher than elsewhere, with

Table 5
Top Ten Credit-Per-Job Claims by Firm, 2006

Company Name	Credits	Number of Jobs	Location	Credits per Job
Flat Rock Wind Power LLC	$5,582,349	2	Lewis County	$2,791,175
NRG Energy Inc.	$6,602,043	3	City Of Dunkirk, Towns Of Dunkirk & Sheridan	$2,200,681
257 W. Genesee LLC	$1,258,995	1	Buffalo	$1,258,995
Riverside Enterprises LLC	$1,162,193	1	Utica	$1,162,193
728 East Realty Corp.	$967,211	1	Port Morris, Bronx	$967,211
NRG Energy Inc.	$7,382,035	9	Oswego	$820,226
Greece Town Mall LP	$3,184,595	4	Monroe County	$796,149
NRG Energy Inc.	$6,238,732	8	Town Of Tonawanda	$779,842
Manhatten Nursing Home Realty Inc.	$692,261	1	East Harlem, New York	$692,261
Buffalo- Main Street LLC	$624,271	1	Onondaga County	$624,271
Ulster Business Complex LLC	$1,230,711	2	City Of Kingston, Town Of Ulster	$615,356

Source: CBC staff analysis based on data available from The *Syracuse Post-Standard*, Special Empire Zones Investigative Report series, Available at www.syracuse.com.

40 percent of the businesses adding no jobs or losing them compared to 23 percent in the eight Zones examined outside the City.[31]

In July 2007, as it began its efforts to manage more centrally the program and crack down on program abuses, ESD sent letters to 2,886 companies that were recipients of Empire Zone tax breaks in 2005 that did not create at least 60 percent of the job or investment targets that they predicted when they applied for the benefit. The letters were generated after a review of business reports that had been submitted covering the 2005 program year.

The administrative effort demonstrates the overall ineffectiveness of the Zones. ESD sent letters to 2,886 companies out of the 4,959 that claimed credits. Those 2,886 – or 58 percent of the firms participating in the program – had missed their job or investment targets *by at least 60 percent*. Letters were not sent to companies which had missed their targets by any lesser amount. Failure to meet job targets triggered 1,044 letters, while failure to meet investment targets triggered 1,842 letters. The regions that experienced the highest failure rates were New York City and the Hudson Valley, with rates of 79 percent and 69 percent, respectively. (See Table 6.)

Even more troubling is that 383 firms, or 7.7 percent, failed to meet targets by 60 percent in both categories. The regions with the most significant rates of double failure were again New York City and the Hudson Valley with rates of 10.5 percent and 9.5 percent, respectively. Long Island also had a high double failure rate of 14.5 percent with eight out of the 55 firms certified in the region missing both job and investment targets.

The Empire Zone Program Cannot be Fixed and Should End

Since 2001 the State Legislature has changed the Empire Zone program almost every year in an effort to combat criticisms and loopholes. None of the reforms has succeeded in cleaning it up.

From 1986 to 1993, narrow eligibility criteria kept the program relatively limited and stable. In 1993 the Legislature altered the criteria

Table 6
Location of Firms that Failed to Meet the Program Targets by 60 Percent or More, 2005

Region	Total Number of Firms	Firms Missing Job Targets	Firms Missing Investment Targets	Firms Missing Either	Failure Rate Either	Firms Missing Both	Failure Rate Both
Capital	494	84	121	205	41.5%	30	6.1%
Central	831	134	335	469	56.4%	42	5.1%
Finger Lakes	359	41	85	126	35.1%	10	2.8%
Long Island	55	16	15	31	56.4%	8	14.5%
Hudson	752	156	360	516	68.6%	73	9.7%
Mohawk	353	76	116	192	54.4%	27	7.6%
New York City	570	174	276	450	78.9%	60	10.5%
North Country	314	60	103	163	51.9%	24	7.6%
Southern Tier	408	104	129	233	57.1%	31	7.6%
Western	823	199	302	501	60.9%	78	9.5%
Total	**4,959**	**1,044**	**1,842**	**2,886**	**58.2%**	**383**	**7.7%**

Source: CBC staff analysis based on data available from *The Syracuse Post-Standard*, Special Empire Zone Investigative Report series available at www.syracuse.com.

permitting more businesses to qualify, moving away from objective criteria based on poverty and unemployment and allowing certification based on whether the land in question had significant potential for development and on an area's likelihood of experiencing job losses in the future. (Refer to Table 3.)

The most dramatic changes were authorized in 2000 and became effective January 1, 2001. The wage tax credit was expanded and a property tax credit and income tax credit were added. The tax credits were based on percentage increases in employment and in some cases reduced businesses' tax liability to zero.[32] In some cases the State is required to cut a check to a firm as a refund for excess credits, making the tax rate *negative*. At the same time eligibility was broadened in two ways. First, businesses only had to create one job to be eligible for tax credits. Second, the law did not carefully define "new business." It permitted a business to reincorporate under a new name and qualify as a new business, claiming credits for creating "new" jobs even though the jobs had already existed under the old company name. Thus, a practice known as "shirt-changing" was born and exploited.

Although governmental officials were aware of the loophole, they were slow to try to close it. The 2002-03 budget established stricter guidelines as to what could be considered a new business. In the intervening months, however, businesses entered the program at a rapid clip. For example, an investigation by the *Syracuse Post-Standard* revealed that 895 businesses were certified in July of that year.[33] This represented a 15 percent expansion in the program in just one month.

In 2002 the Legislature expanded eligibility again, by adding new criteria to tie eligibility determinations to job losses. Counties exploited this by adding past jobs lost to their "expected future" job losses, enabling almost any county to qualify; three counties that would not have qualified under the older rules became eligible to establish Empire Zones. That year the Legislature also tried to address the proliferation of non-contiguous Zones by requiring that at least 75 percent of a Zone be located in no more than three non-contiguous areas. However, the Commissioner of the Department of Economic Development was permitted to bypass this rule if a project offered significant potential for development.[34]

In 2005, the State attempted again to address the problem of non-contiguous areas and to improve reporting and enforcement provisions. It also tried again to crack down on "shirt changing." The new provisions require businesses receiving Empire Zone tax breaks to prove to the Tax and Finance Department that there is a "valid business purpose" for reincorporating. To date, the Tax and Finance Department has audited tax returns of 100 companies and denied tax credits worth $2.1 million to seven.[35]

The most recent legislative reforms were offered by Assembly Speaker Sheldon Silver and passed the Assembly on June 5, 2008. They would authorize ESD to review businesses to determine whether any were receiving a disproportionately large tax benefit, and if so, to require the application of a cost-benefit test. There was, however, no action on the proposal in the Senate.

However, when legislative leaders attempt to fix the program, their actions succeed only in opening new loopholes as they close the old ones. As AT Kearney reported, "….the program has spawned a cottage industry of lawyers and consultants specializing in helping businesses optimize benefits."[36] The program is flawed in too many ways to expect that further reform efforts would work.

New York's Empire Zone program is not worth the tremendous loss of revenue it requires. Its problems are so extensive and longstanding, its past reform attempts so ineffective, and its impact so dubious that it should be abolished. New York's economy, especially in the distressed areas that the Empire Zone program was meant to address, is struggling and deserves effective economic development initiatives – not a catalogue of lucrative tax breaks for firms sophisticated enough to take advantage of them. Expanding and perpetuating this program is unfair both to taxpayers and to the residents of communities that are simply not receiving the strategic economic development assistance needed if all areas of New York State are to thrive in the increasingly competitive global economy.

Public resources are too valuable and, in the current environment, too scarce to be wasted this way. With the State budget under enormous stress, the Empire Zone program should be a prime target for elimination.

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[19] *Syracuse Post-Standard*, "Zoned Out: Crackdown on Empire Zones Comes Not a Moment Too Soon," February 29, 2008; *Syracuse Post-Standard*, "Empire Zoned Out; State Still Not Pursuing Companies Unworthy of Tax Credits," April 10, 2008.

[20] Special target group employees are persons who have received public assistance in the prior two years, have income below the federal poverty level, qualify for benefits for dislocated workers, or have been honorably discharged from the U.S. Armed Services.

[21] Mike McAndrew, "Anatomy of Yet Another Empire Zone Loophole," *Syracuse Post-Standard*, June 3, 2007.

[22] Of the ten economic regions in the State, the Western region expanded its job base and population base the slowest from 1980 to 2007 and its real wage growth has been the second slowest. Based on data from the U.S. Department of Labor, Bureau of Labor Statistics, *Quarterly Census of Wages and*

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