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COLORADO GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT
AND INTERNATIONAL TRADE

REGIONAL TOURISM ACT



OCTOBER 2017

PERFORMANCE AUDIT

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October 13, 2017

DIANNE E. RAY, CPA
—
STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Colorado Governor's Office of Economic Development and International Trade's (OEDIT's) administration of the Regional Tourism Act. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the responses of OEDIT, and within OEDIT, the Economic Development Commission.

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REPORT HIGHLIGHTS



REGIONAL TOURISM ACT
PERFORMANCE AUDIT, OCTOBER 2017

COLORADO GOVERNOR'S OFFICE OF
ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

CONCERN

The Colorado Governor's Office of Economic Development and International Trade (OEDIT) lacks internal controls to provide assurance that the objective of the Regional Tourism Act (RTA) program is being met and that approved projects are adequately monitored. Additionally, the unique provisions of the RTA law, as interpreted by OEDIT and the Economic Development Commission (Commission) may not provide adequate protection of the State's interests.

KEY FINDINGS

- OEDIT and the Commission could not demonstrate that they ensured only projects meeting all statutory criteria and likely to promote achievement of RTA legislative intent were approved. We found:
 - ▶ For seven project applications, an independent third-party analyst concluded that the project did not meet the statutory criterion that in the absence of RTA financing, the project is not reasonably expected to be developed within the foreseeable future. Three of these projects were approved, however, OEDIT and the Commission could not demonstrate how they addressed the analysts' concerns.
 - ▶ For all nine applications, the applicant's incremental state sales tax revenue calculations for the project were higher than the third-party analyst's calculation, by 28 to 94 percent. Of the five approved projects, four were awarded higher amounts than the independent analysts' calculations. OEDIT and the Commission cannot demonstrate how they determined that the higher calculations should be used as the basis for RTA awards.
- OEDIT and the Commission are not holding project entities accountable for fulfilling all statutory and project resolution requirements. We found 11 of 57 required reports were not submitted, and OEDIT could not provide sufficient evidence that 32 of 64 required meetings were held. We also found that OEDIT does not have evidence that some projects are meeting specific requirements, and has not issued any deficiency notices to projects or otherwise enforced terms and conditions. As such, OEDIT's monitoring efforts do not appear to serve as a meaningful mechanism for holding project entities accountable for adhering to project conditions of approval.

BACKGROUND

- The RTA was established in 2009 to provide financing incentives for developing large-scale tourism projects expected to generate new tax revenue from out-of-state tourists. The RTA is unique in that it provides "tax increment financing" to projects; no other state-level program uses this type of financing method.
- OEDIT administers the RTA program. The Commission within OEDIT determines which projects it will approve for RTA financing.
- Between 2012 and 2015, local governments submitted nine applications; of these, five projects were approved for RTA awards totaling \$445 million over the next several decades. Statutes require that the final two projects be approved prior to January 1, 2016. No further projects may be approved.
- As of July 2017, \$11.3 million in state sales tax revenue has been distributed to three of the approved projects. RTA projects are estimated to become operational and begin generating revenue in 2018, 2019 (two projects), 2020, and 2025.

KEY RECOMMENDATIONS

- In the event the General Assembly allows additional applications for RTA financing through statutory revisions, OEDIT and the Commission should implement written policies and establish processes for managing project applications, including establishing internal controls to demonstrate each application meets statutory requirements.
- OEDIT should work with the Commission to implement written policies and procedures regarding ongoing monitoring of approved projects, including guidance on what monitoring activities should include, what actions to take when problems arise, and what should be documented.



CHAPTER 1

OVERVIEW

The 2009 Colorado Regional Tourism Act (RTA) established a financing mechanism for “attracting, constructing, and operating large-scale regional tourism projects that will attract significant investment and revenue from outside the state” [Section 24-46-302(1)(d), C.R.S.]. Legislative intent for awarding state funds under RTA includes increasing and diversifying out-of-state tourism, and awards are based on a model of “tax increment financing.”

RTA TAX INCREMENT FINANCING

Typically for tax increment financing, local governments establish the programs rather than the State, and use local property taxes to fund redevelopment projects in economically blighted areas. Under the RTA, Colorado established a state-level program that uses state sales taxes to finance tourism projects in areas that have been identified by local governments as best-suited for the development. Under both state and local tax increment financing programs, *future* tax revenue that is expected to be generated by tax revenue growth over time is diverted to finance projects. This means, in part, that the state or local government first identifies a base (existing) level of tax revenue already being generated by existing businesses in an established area (known as the “regional tourism zone” under RTA). After identifying the base revenue amount, any increments or increases in revenue generated each year over that base amount may be used towards project financing.

Under the RTA program, approved RTA projects receive a percentage of the incremental state sales tax revenue every year for a set number of years, known as the financing term. This allows a project to begin receiving state sales tax revenue as the project is being developed and constructed, so long as the state sales tax revenue grows above the base amount. The RTA projects have financing terms for receiving state sales tax revenue that range between about 30 and 50 years, and the percentage of the tax revenue awarded is set at the time of the award.

The RTA requires the award amount be equal to the amount of new state sales tax revenue the project is expected to generate over the financing term [Section 24-46-305(3)(d) C.R.S.]. For example, if a project is expected to generate \$50 million in new state sales tax revenue over 30 years, the RTA requires the state financing award amount to be set at a percentage of the incremental revenue growth, over the base amount, which will equal \$50 million in total. The project may receive less than the \$50 million awarded if the *actual* revenue growth over the base is less than what was initially *projected*. Additionally, if the RTA project receives the total award amount before the financing term ends, no further state sales tax revenue is diverted to the project. Project

applications provide extensive economic analyses to show how the amount of new tax revenue generated has been estimated by the applicant, and, using the applicant's data, also by an independent third-party analyst hired by the State. Projects approved for RTA financing have been awarded amounts equal to or less than the applicant's estimates. More information on the estimates and awards can be found in APPENDIX A.

Currently, the RTA program is the only program that uses tax increment financing in Colorado at the state level. One reason the RTA was established was to help Colorado compete with neighboring states that use state financing to attract large-scale tourism projects through State Tax Revenue (STAR) bonds. For example, when the General Assembly initially discussed the need for the RTA, there was a desire to develop a tourism project for hosting National Association for Stock Car Auto Racing (NASCAR) events in Colorado, and the Kansas Speedway was cited as a similar project that received state financing through STAR bonds. A NASCAR project was never proposed in Colorado after the RTA was enacted, though the bill history for RTA indicates that the General Assembly considered this potential project while drafting the legislation. The RTA program is structured differently compared to STAR bonds in neighboring states (e.g. Kansas, Nevada), primarily because RTA financing is not limited to only supporting bonds, but rather may be used for other project costs, such as administrative expenses, direct construction costs, and legal services.

RTA PROGRAM ADMINISTRATION

The Colorado Governor's Office of Economic Development and International Trade (OEDIT) and the Economic Development Commission (Commission) within OEDIT are responsible for administering the RTA program. No additional FTE were appropriated when the RTA was enacted, but OEDIT reports that one to four staff members and the Executive Director have conducted work for the RTA program at different points in time. The 11-member Commission is established within OEDIT under Section 24-48.5-105(1)(b) C.R.S., and consists of the Governor or their designee, four members selected by the

Governor, three appointed by the Speaker of the House of Representatives, and three appointed by the President of the Senate [Section 24-46-102(3), C.R.S.]. Under statute, two of the members must have “advanced industry business and research experience,” and the Commission must meet quarterly but in practice typically meets monthly.

The process begins when local governments identify tourism projects they are working to develop within their regions. Once a local government, or group of local governments, has determined sufficient information on core project development aspects, they may submit a project application to OEDIT to request state financing under RTA. The OEDIT Executive Director provides application guidance and corresponds with the local governments and other stakeholders as needed to facilitate the application process. The OEDIT Executive Director also reviews applications and makes an initial determination on whether the project application is complete based on RTA requirements. The Commission receives the final applications and determines which projects it will approve, based on RTA requirements. The Commission memorializes its approval and terms and conditions in a written “resolution of approval” [Section 24-46-305(3) and (4), C.R.S.].

Part of the RTA project application process includes the applicant obtaining an economic analysis of the project application from an independent third-party analyst [Section 24-46-304(2)(i), C.R.S.]. The role of the third-party analyst, who is selected and overseen by the Office of State Planning and Budgeting (OSPB) within the Governor’s Office, is to conduct “an independent and thorough analysis” of the applications’ outcomes and impact claims. OEDIT and the Commission receive the third-party analyst report to review alongside the applicant’s information and analysis. Beginning in 2014, statute also requires OSPB, in conjunction with OEDIT, to calculate the rate of expected incremental revenue increases that the applicant and the third-party analyst must use in their calculations of what percentage of incremental revenue would result in the appropriate amount of RTA financing to award to projects [Section 24-46-304(1.5), C.R.S.].

After the Commission approves a project application and awards RTA financing, OEDIT and the Commission monitor project progress and the Commission is required to authorize the Department of Revenue to begin calculating and sending state sales tax revenue to the project [Section 24-46-305(4) and (4.5), C.R.S.]. Over the project financing term, on a monthly basis, the Department of Revenue is responsible for calculating the state sales tax revenue collected in a project's established regional tourism zone and then sending the project the percentage of the incremental revenue that the Commission awarded the project under the RTA.

OEDIT and the Commission report that because the RTA is unique in how it is structured, they have used the advice of counsel from the Attorney General's Office on a frequent and ongoing basis in administering the RTA program.

APPROVED RTA PROJECTS

Under the RTA, the Commission was authorized to approve up to six RTA projects before January 1, 2016, [Section 24-46-305(2)(c), C.R.S.]. At this time no further projects may be approved for state financing under the RTA. Between 2009 and 2016, OEDIT and the Commission conducted three application "rounds" and a total of five projects were approved, which were awarded \$445 million in total in state sales tax revenue over the next 30 to 50 years. Project financing awards range in size from \$35.7 million to \$121 million per project, and include the following:

ROUND 1—APPROVED MAY 18, 2012.

- **THE PROFESSIONAL BULL RIDERS (PBR) UNIVERSITY AND HERITAGE OF HEROES PROJECT**, proposed by the City of Pueblo. This project has five elements that include expanding the Pueblo Convention Center and Exhibition Hall, which includes enhancing the Medal of Honor Memorial and Walk of Valor; building a Professional Bull Riders University arena; integrating the Gateway Center Boathouse facility with the Historic Arkansas Riverwalk of Pueblo; building a Regional Aquatic Center and Water Park; and building parking structures.

- **THE AURORA GAYLORD HOTEL AND CONFERENCE CENTER PROJECT**, proposed by the City of Aurora. This project consists of constructing a 1,500-room hotel with more than 406,000 square feet of meeting and exhibition space and seasonal event programming.

ROUND 2—APPROVED DECEMBER 16, 2013.

- **THE CITY FOR CHAMPIONS PROJECT**, proposed by the City of Colorado Springs. This project is centered around the presence of the United States Olympic Committee and the United States Air Force Academy, both based in the city, and includes construction of a United States Olympic Museum and Hall of Fame, Colorado Sports and Event Center, University of Colorado—Colorado Springs Sports Medicine and Performance Center, and Gateway Visitors Center at the United States Air Force Academy.

ROUND 3—APPROVED NOVEMBER 12, 2015.

- **GO NOCO FAMILY RESORT/WATER PARKS PROJECT**, proposed by the City of Loveland, Town of Windsor, Town of Estes Park, and Larimer County. This project consists of four tourism attractions including the PeliGrande Resort and Windsor Conference Center, the Indoor Waterpark of the Rockies, the U.S. Whitewater Adventure Park, and the Stanley Film Center.
- **THE NATIONAL WESTERN CENTER**, proposed by the City and County of Denver. This project provides for the construction of new multipurpose facilities for the National Western Stock Show, including the following components: Livestock Center; Equestrian Center; Stock Yards Center and Event Pavilion; Denver Public Schools Site Parking Garage; and public amenities. The project also received RTA funding for maintenance and operations of the new facilities.

EXHIBIT 1.1 provides a summary of the RTA financing awards for the five approved projects. More detail on each project is provided in APPENDIX A.

EXHIBIT 1.1. APPROVED RTA PROJECTS					
	PUEBLO HERITAGE OF HEROES/PBR PROJECT	AURORA HOTEL & CONFERENCE CENTER PROJECT	COLORADO SPRINGS CITY FOR CHAMPIONS PROJECT	GO NOCO FAMILY RESORT & WATER PARKS PROJECT	DENVER NATIONAL WESTERN CENTER PROJECT
YEAR APPROVED	2012 (Round 1)	2012 (Round 1)	2013 (Round 2)	2015 (Round 3)	2015 (Round 3)
EXPECTED OPENING YEAR ¹	2019	2018	2019	2020	2025
END OF FINANCING TERM	2062 (50 years)	30 years after opening	2043 (30 years)	2045 (30 years)	2051 (36 years)
RTA AWARD PERCENTAGE	24.7% until 2022, then 3.3%	65.8%	13.08%	20.48%	1.83%
MAXIMUM RTA AWARD ²	\$35.7 million	\$81.4 million ³	\$120.5 million	\$86.1 million	\$121.5 million

SOURCE: Office of the State Auditor analysis of RTA applications, RTA approval resolutions, and OEDIT reports.

¹ As of July 2017, expected opening date according to OEDIT staff.

² For all except Aurora, projects will receive RTA financing until the earlier of when projects reach their total RTA award or the end of the financing term.

³ Aurora will receive RTA financing for 30 years after the project opens, with no maximum award size limit. However, this amount represents the amount the third-party analyst and the Commission expected Aurora would receive as a result of the RTA award percentage established in the resolution for the project.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent Government (SMART) Act. The audit was prompted by a legislative request for a performance audit of OEDIT's administration of the RTA program because of concerns regarding whether approved tourism projects needed state financing in order to be built. Audit work was performed from January 2017 through September 2017. We appreciate the assistance provided by management and staff of OEDIT and members of the Commission during this audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence

to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The key objectives of the audit were to:

- Evaluate OEDIT's and the Commission's implementation and administration of the application process for RTA projects with respect to statutory requirements and intent.
- Evaluate OEDIT's and the Commission's monitoring of the progress of the five RTA projects approved for state financing with respect to statutory requirements and Commission terms of project approval.
- Understand, as possible, the aspects of the RTA that result in a unique regulatory framework and the General Assembly's intent for ensuring that state sales tax revenue awarded under the RTA program serves the legislated purpose.

To accomplish our audit objectives, we performed the following audit work:

- Reviewed applicable statutes and rules, the written application guidelines OEDIT staff developed for project applicants, all nine submitted applications, all nine reports from the third-party analysts, OEDIT's written recommendations to the Commission for all applications, all project resolutions and amendments, and the Commission meeting minutes and audio from July 2009 through August 2017.
- Reviewed annual and biennial reports submitted by OEDIT to the General Assembly from 2013 through 2016, and listened to audio recordings of General Assembly committee hearings and chamber debate from 2009, 2012, and 2014 regarding the creation and amendment of the Regional Tourism Act.
- Reviewed all other documentation OEDIT had available and

provided during the audit for each applicant and project file, including email correspondence and staff notes.

- Reviewed all quarterly and annual reports submitted to OEDIT and the Commission by project entities from April 2013 through January 2017.
- Attended Commission meetings held from April through August 2017, and interviewed OEDIT and other staff within the Governor's Office, Commission members, and staff within the Office of the State Controller, Department of Revenue, and the Office of Legislative Legal Services.
- Reviewed data we received from the Department of Revenue to verify the amount of RTA sales tax revenue collected and distributed from 2013 through July 2017.
- Researched the use of tax increment financing nationally to determine whether other states use a program similar to RTA. We did not find that another state uses a program similar enough to provide a basis for comparison or guidance during our audit work.

We relied on sampling to support some of our audit work. We selected a non-statistical sample of 16 of the 46 quarterly and annual project reports submitted from April 2013 through January 2017 to assess whether the reports contained required information, as specified in the project resolutions. The sample was chosen to provide sufficient coverage of those areas that were significant to the objectives of this audit and the results of our sample testing were not intended to be projected to the entire population.

The objectives of our audit were focused on OEDIT's and the Commission's administration of the RTA application process and processes for monitoring approved projects, and the audit did not include a review of other agencies with responsibilities under RTA. We did not review the Department of Revenue's processes for distributing RTA funds to approved projects, or OSPB's processes for selecting and

monitoring third-party analysts.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in CHAPTER 2 of this report.

CHAPTER 2

PROGRAM ADMINISTRATION AND POLICY CONSIDERATIONS

The Economic Development Commission (Commission), established within and staffed by the Colorado Governor's Office of Economic Development and International Trade (OEDIT), awarded state financing to five Regional Tourism Act (RTA) projects between 2012 and 2016, and no further projects may receive awards without legislative change. The RTA financing awards range from \$35.7 million to \$121.5 million, for terms

ranging from about 30 to 50 years. As of July 31, 2017, about \$11.3 million has been diverted to projects and about \$1.4 million of that amount has been reported as expended by the projects.

We evaluated OEDIT's and the Commission's administration of the RTA program's project application process and staff monitoring of approved projects. Our audit work found issues in both areas. Additionally, we identified aspects of the RTA that are unique within Colorado's statutory and regulatory structure, and that present policy considerations that may need to be addressed to meet the General Assembly's intent for the RTA program and to ensure that state sales tax revenue awarded under the program serves the legislated purpose. We discuss these issues in the remainder of this chapter.

THE RTA APPLICATION PROCESS

Between 2009 and 2016, OEDIT oversaw three application “rounds.” Local governments identified tourism projects to develop within their regions, including identifying financing options, construction components, and revenue projections for the project. Local governments then submitted project applications to OEDIT to request financing under the RTA. Section 24-46-304(2)(i), C.R.S., requires the applications to be accompanied by a third-party analyst report providing (1) an assessment of the applicant's data and conclusions and (2) the third-party analyst's own calculation of the appropriate RTA financing amount. The third-party analyst selected by the Office of State Planning and Budgeting (OSPB) within the Governor's Office must be “an expert in the field of economic or public financial analysis” and must be chosen by OSPB through a request for proposal process [Section 24-46-304(2)(i), C.R.S.].

OEDIT provided written guidelines to potential local government applicants and held in-person conferences to provide information on the RTA application process. OEDIT was required under Section 24-46-

305(1), C.R.S., to review applications and identify whether specific application components were provided regarding the proposed project’s anticipated scope and “how the project will meet each of the criteria, including an economic analysis detailing projected economic development,” and “impact on future state sales tax revenue during and after the financing term...” [Section 24-46-304(2)(d), C.R.S.]. After its review, OEDIT was responsible for providing all application information and a recommendation from the OEDIT Executive Director for project approval, denial, or approval with conditions to the Commission [Section 24-46-305(2), C.R.S.].

The Commission was charged with making the final decisions on whether to approve, approve with conditions, or deny each project application. Section 24-46-305(3), C.R.S., states that the Commission shall “give consideration to [OEDIT’s] recommendations” and hold public hearings to receive input on the applications prior to making approval determinations. Additionally, Section 24-46-304(2)(i), C.R.S., indicates that the third-party analyst’s calculations are to be used in determining the approved financing amount, stating the calculations should reflect the amount “that can be dedicated to the regional tourism project to be set by the Commission.” Using all of the information provided and any additional information “reasonably requested,” the Commission was required to set the RTA award at its “best estimation” of the new revenue the project was expected to generate [Sections 24-46-304(2)(d) and 24-46-305(3)(d), C.R.S.]. The RTA authorizes the Commission to set an award amount greater than the third-party analyst’s estimate (for Round 3, a unanimous vote was required to set an award more than 50 percent higher than the analyst’s estimate).

During the application process, OEDIT staff corresponded with applicants to request additional information and clarification about the applications; and the applicants, third-party analysts, and other stakeholders attended Commission meetings to present project information and answer questions. As shown in EXHIBIT 2.1, OEDIT and the Commission received and reviewed a total of nine RTA project applications, of which, five were approved for state financing. We present further details on the five approved projects in APPENDIX A.

EXHIBIT 2.1. REGIONAL TOURISM ACT (RTA) PROJECT APPLICATIONS			
	PROJECT APPROVED?	RTA AWARD AMOUNT ¹ (IN MILLIONS)	RTA AWARD TERM (IN YEARS)
APPLICATIONS RECEIVED IN ROUND 1 (2012)			
City of Pueblo	Yes	\$35.7	up to 50
City of Aurora	Yes	\$81.4 ²	30 ²
Douglas County	No		
Town of Estes Park	No		
City of Glendale	No		
Montrose County	No		
APPLICATIONS RECEIVED IN ROUND 2 (2013)			
City of Colorado Springs	Yes	\$120.5	up to 30
APPLICATIONS RECEIVED IN ROUND 3 (2015)			
Go NoCO ³	Yes	\$86.1	up to 30
City and County of Denver	Yes	\$121.5	up to 36
Total RTA Awards, All Rounds ¹		\$445.2	
SOURCE: Office of the State Auditor analysis of data from OEDIT.			
¹ This is the expected total dollar amount the RTA award is estimated to equate. For all except Aurora, projects will receive RTA financing until the earlier of when projects reach their total RTA award or at the end of their financing term.			
² Aurora's total RTA award represents the amount the third-party analyst and the Commission expected Aurora would receive as a result of the RTA award percentage. Aurora will receive RTA financing for 30 years after the project opens, with no maximum award size limit.			
³ Joint project by a group of local governments in the northern Colorado region (City of Loveland, Town of Windsor, Town of Estes Park, and Larimer County).			

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed statutes, the written application guidelines OEDIT staff developed for project applicants, and all of the RTA project information OEDIT received and maintained from the three application rounds. This included the submitted applications and follow-up correspondence to and from OEDIT and the applicants, reports required from the third-party analysts, OEDIT's written recommendations to the Commission, the minutes and audio from Commission meetings from July 2009 through December 2016, and other documents OEDIT maintained as part of the RTA project files. We listened to General Assembly committee and chamber audio recordings when the RTA was established in 2009 and amended in 2012 and 2014. We also interviewed OEDIT and other staff within the Governor's Office, Commission members, and Department of Revenue staff.

The purpose of our work was to evaluate whether OEDIT and the Commission established and implemented an application process for RTA projects that complied with statutory requirements and intent.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED AND WHAT PROBLEMS DID THE WORK IDENTIFY?

We evaluated all of the information OEDIT provided to us regarding OEDIT's application review process and the Commission's decision-making process for achievement of legislative intent, compliance with specific requirements of the RTA, and internal controls. We found evidence that OEDIT implemented certain procedures to administer the application process and clearly adhered to the following statutory requirements for the RTA program:

- **COMPLETENESS OF APPLICATIONS.** We found indications that OEDIT reviewed and ensured that all the applications it received were complete. Based on our review, all applications appeared responsive to the statutory provisions that require project applications to include detailed financial and project planning information, including maps and data showing the proposed regional tourism zone that would generate sales tax revenue; information about the project's financing and supporting economic analyses; and a third-party analyst report assessing the applicant's data and conclusions, and proposing RTA financing amount and terms [Section 24-46-304(2), C.R.S.].
- **RECOMMENDATIONS TO THE COMMISSION.** We found that the OEDIT Executive Director provided the Commission recommendations for approval, denial, or approval with conditions of each application, as required in Section 24-46-305(2)(a), C.R.S.

However, we also found indications that OEDIT and the Commission did not consistently conduct their application review and approval processes in a manner that fully complied with other requirements of the RTA, or implement the internal controls needed to provide assurance that the

objective of the program, as reflected in statute, is being met. We discuss the concerns we identified in the following sections.

LEGISLATIVE INTENT. The Legislative Declaration of the RTA discusses the need for the State to provide a financing mechanism to support large scale regional tourism projects that will attract significant investment and revenue from outside the State and diversify the State’s economic base to contribute to economic stability. This intent is reflected in Section 24-46-304(3), C.R.S., which states that the Commission shall approve an RTA project “upon a finding by the majority of the commissioners participating in the review...that the application demonstrates that each of the following criteria are materially met”:

- 1 **UNIQUE AND SIGNIFICANT TO ECONOMIC DEVELOPMENT.** The project is of an “extraordinary and unique nature” and is reasonably anticipated to contribute significantly to economic development in the state and communities where the project is located.
- 2 **SUBSTANTIAL INCREASE IN TOURISM.** The project is reasonably anticipated to generate a substantial increase in out-of-state tourism.
- 3 **INCREASE SPENDING IN COLORADO.** The project is reasonably anticipated to generate state sales tax revenue that either is significantly attributable to new spending by non-Colorado residents, or that would likely have been otherwise spent by Colorado residents out-of-state.
- 4 **FINANCING NEEDED TO EXPEDITE DEVELOPMENT.** The application includes “reliable economic data” to demonstrate that in the absence of RTA financing, the project is not reasonably expected to be developed within the “foreseeable future.”

We could not conclude on OEDIT’s and the Commission’s adherence to the legislative objective to provide financing for projects that meet all four of these criteria. OEDIT retained hundreds of pages of application documents and correspondence with applicants, as well as Commission meeting minutes and audio. However, none of the documentation

demonstrated that OEDIT had implemented an internal control structure designed to ensure that it recommended and the Commission approved only those projects that met all statutory criteria and were likely to promote achievement of the legislative intent. Specifically, OEDIT's documentation does not demonstrate the standards the OEDIT Executive Director or commissioners used to (1) assess project applications; (2) resolve any deficiencies in the proposed projects; and (3) ultimately decide on approval, approval with conditions, or denial of projects. We describe the problems in more detail below.

UNCLEAR ADHERENCE TO STATUTORY CRITERIA. For seven of the nine project applications, the third-party analyst report explicitly cited concerns with the project's ability to meet the fourth statutory criterion that, in the absence of RTA financing, the project is not reasonably expected to be developed within the "foreseeable future." For example, for the Colorado Springs project, the third-party analyst report stated "none of the four project components have met either the financial need or development readiness criteria. No firm funding commitments, letters of intent, or other evidence, have been provided by the Applicant." For the Pueblo project, the third-party analyst report stated, "Pueblo proposes to use State [RTA funds] to finance 100 percent of the cost" and that the project "is not development ready." In OEDIT's written guidance to applicants, OEDIT stated that to meet these criteria they must be seeking RTA financing as the "final, not first piece of the capital structure" (often called gap financing), and the project must be "near shovel ready."

The OEDIT Executive Director recommended the Commission deny five of the projects, including the Pueblo project, stating in the recommendation letters that the RTA criteria were not met. The Commission voted to approve three of the seven projects the third-party analyst indicated did not meet statutory criteria. The Commission-approved projects included one (Pueblo) that OEDIT had recommended denying. The third-party analyst reports include detailed methodology on how the analyst conducted an independent economic analysis of each applicant's data, and OEDIT arranged for the third-party analysts to address the Commission at public hearings (during Rounds 2 and 3).

Further, OEDIT stated that the work of the third-party analyst is pivotal to the RTA process because “they provide independent data and modeling for RTA awards” and the analysts “don’t have an incentive to push for aggressive assumptions” regarding a project. Despite the opportunities for the Commission to obtain detailed information about the analyses and the importance of those analyses to the process, OEDIT had no documentation or other evidence to indicate whether new information was provided to address the concerns raised or why the Commission disagreed with the third-party analyst and, for the Pueblo project, with OEDIT, and decided to approve the projects despite indications that all criteria were not met.

CONFLICTING REVENUE ESTIMATES. For all nine applications, the applicant’s revenue calculations were higher than the third-party analyst’s calculations, with differences ranging from \$14.1 million to \$112.7 million, and ranging from 28 to 94 percent. OEDIT’s recommendation letters for all nine projects showed a side-by-side comparison of the applicant’s and the third-party analyst’s revenue estimates, but did not explain how they affected the Executive Director’s recommendations, or include any recommendation on which calculations should be used for the Commission’s decision making.

INTERNAL RATE OF RETURN CONCERNS. For three of the nine applications, there were problems related to information in the applications related to the internal rate of return of the project. These concerns were not discussed in any of OEDIT’s documentation and were not assessed and concluded upon during Commission meetings where minutes or audio were available.

- For the Aurora and Denver applications, the third-party analyst found that each project had a low internal rate of return, which is an economic measure that indicates the level at which a development project generates a return on investment that is high enough for the developer to build the project.
- For the Colorado Springs project, the applicant did not provide enough information to calculate the internal rate of return.

OEDIT told us that for the Aurora project, a low internal rate of return at the time of application was likely not a problem because that project was expected to find ways to increase return in the future, such as by reducing project costs and finding additional funding. This explanation was not documented anywhere and seems contradictory to the third-party analyst reports and to the written guidance OEDIT provided to applicants. That guidance states that RTA financing is intended to be the “final, not first piece of the capital structure” needed for the project, and that projects need to be “near shovel ready” at the time of application. OEDIT reported to us that a low internal rate of return was not a concern for the Denver or Colorado Springs projects because internal rate of return is not as applicable to non-profit or publicly developed projects. However, OEDIT’s guidance to these applicants indicated that they should include calculations of the internal rate of return and, in Round 3 when Denver applied, OEDIT’s guidance specifically stated that internal rate of return “is required even if owner/developer is non-profit.” Additionally, OEDIT did not indicate in the guidance or to us what other economic measure it used in place of this measure.

COMMUNICATION WITH LOCAL GOVERNMENTS. Under Section 24-46-305(2)(a), C.R.S., OEDIT must provide each complete RTA application to any adjacent local government, such as a county or municipality, that may be affected by the proposed tourism project at least 30 days prior to a public hearing. A complete application includes all of the requirements in Section 24-46-304(2), C.R.S., including a third-party analyst report. Under statute, these entities have the opportunity to review the applications and provide comments to the Commission before it considers the application for approval or denial. We found in some cases OEDIT did not have documentation to show that it had provided adjacent governments with applications at all, and in other cases OEDIT provided incomplete applications. Specifically:

SOME APPLICATIONS MAY NOT HAVE BEEN SHARED WITH LOCAL GOVERNMENTS. For the six applications OEDIT received in Round 1, OEDIT did not have evidence that it provided any of the six applications to any of the 35 adjacent local governments. OEDIT agreed

that they lacked evidence that these notifications occurred, but stated that they believed that these notifications had taken place.

SOME APPLICATIONS SENT TO LOCAL GOVERNMENTS WERE INCOMPLETE. For the three applications submitted in Rounds 2 and 3, we confirmed that:

- OEDIT did not provide the final applications, with amended project information, to any of the 37 adjacent governments for any of the three projects. These applicants made changes to their applications, including removing entire project elements and changing cost and state financing requests, after OEDIT sent the applications to the adjacent governments. The Colorado Springs application changed the programming of its Sports and Event Center so that it would no longer host the Sky Sox minor league baseball team, and increased its request for RTA financing from \$82 million to \$120.5 million. The Denver project increased its request for RTA financing from \$117 million to \$128 million. The Go NoCO project removed two of its initial project elements and replaced them with the Stanley Film Center.

- OEDIT did not provide the third-party analyst reports to any of the 37 adjacent governments for any of the three projects. The RTA requires the independent, third-party analyst report be included as part of the full application materials. The third-party analyst reports for all three of the projects contained concerns regarding information from the applicants, such as the applicant's calculations regarding the project's ability to generate new state sales tax revenue. In all cases, the third-party analyst found that applicants' claims of generating new state sales tax revenue were overstated, as were the requests for RTA financing. For example, the Colorado Springs application stated that the project would generate \$120.5 million in new state sales tax revenue and therefore under the RTA, must be awarded this amount. The third-party analyst determined that the project would only generate \$53 million, less than half of the amount projected by the applicant.

OEDIT stated that sending incomplete applications to adjacent governments was a “minor error” with “no practical impact” because OEDIT interprets statute to limit adjacent government and public input to expressing concern or support about the transportation, education, land use, and employment impacts of the project, and that the amended applications and third-party analyst reports did not affect those topics. However, statute does not place limits on what the adjacent governments can consider, but rather states that adjacent governments must be given “an opportunity to review the application and submit comments to the [C]ommission” [Section 24-46-305(2)(a), C.R.S.]. Adjacent governments may have had concerns that the changes to the applications might detract from tax revenue generated in their own communities or detract from the revenues collected by the State.

WHY DID THESE PROBLEMS OCCUR?

Overall, OEDIT lacks internal controls to administer the application process. First, OEDIT lacked a consistent mechanism for staff to use in receiving and reviewing project applications. It is not uncommon for state programs that award state funding to external entities through an application process to use standardized scoring sheets, checklists, or similar tools to guide and document their reviews.

Second, neither OEDIT nor the Commission defined the RTA criteria terms that are open to interpretation, so that staff would be clear on how the Commission understood the requirements and be able to conduct consistent and fair reviews. For example, the four RTA criteria for approval contain qualitative terms such as “unique,” “extraordinary,” “substantial,” “significant,” and “foreseeable future.” Without establishing any parameters around what the terms signify within the context of RTA intent, OEDIT staff and Commission members may have understood and applied the criteria in different ways, and applicants and the third-party analysts may have understood and applied the criteria differently from OEDIT and the Commission.

Third, OEDIT lacked internal policies and procedures to guide all aspects of the application process. OEDIT issued application guidelines to help

local governments submit applications, however neither that document nor any other written guidance was developed to guide OEDIT staff through the application process from review to notification of local governments to recommendations for the Commission. OEDIT also did not establish written policies on how it would document its review of submitted applications or what details it would provide to the Commission for the Commission’s consideration in approving or denying projects for state financing, or establishing conditions of approval.

OEDIT stated that one overarching reason for not establishing internal controls was that OEDIT and the Commission wanted to keep the application process flexible to account for differences in projects, which are each unique and require a high degree of individualized review. For example, OEDIT indicated that for Round 2, because only one application was submitted and the Commission was authorized to award RTA funds for up to two projects, the one application submitted in that Round (Colorado Springs project) was assessed against the RTA criteria in a “minimal sense.” While each of the project applications is highly individualized and requires assessment based on its individual and overall merits, doing so does not preclude establishing minimum standards as a guide to ensure that the RTA intent and requirements were applied fairly and transparently. For example, OEDIT and the Commission did not set a quantifiable standard to determine if the applicants met the criterion of substantially increasing out-of-state tourism because differences in the geographic location of projects could make a standard unfair. However, OEDIT could have worked with the Commission to establish a standard that would account for geographic or population differences, such as setting a percentage of increased tourism within the area where the project is located. This type of standard would account for the geographical considerations while demonstrating equity and transparency across all reviews. Similar standards could have been established for at least some of the statutory terms, such as a percentage increase in new spending in the project area or a range of timeframes to assess whether a project could only be completed within the “foreseeable future” with RTA financing.

Additionally, OEDIT management stated that changes in leadership and turnover among staff led to some of the lack of documentation of how OEDIT reviewed and assessed RTA applications. OEDIT management also reported that its and the Commission's philosophy regarding the RTA program evolved over the three application rounds and that "continuous improvement" created the differences we saw in how OEDIT and the Commission evaluated applications over time. During the audit we confirmed that in Rounds 2 and 3 the Commission held pre-application conferences for local governments, increased the number of meetings it held to discuss RTA applications, and invited the third-party analyst to discuss their analysis with the Commission. However, we found no indication that OEDIT established internal policies and procedures to manage the application process or that the Commission ever established internal controls for the review and approval processes to better ensure adherence to statute.

OEDIT management and the Commission also stated that Commission members developed concerns about the credibility of the third-party analyst during application Rounds 2 and 3, in particular after a calculation error that significantly affected the RTA funds awarded to the Pueblo project was identified. OEDIT and the Commission stated that these concerns were expressed to OEDIT, though no concerns regarding credibility appear in the available audio or minutes from Commission meetings. OSPB stated that neither OEDIT nor the Commission expressed any concerns about the work or credibility of the third-party analyst, other than one OSPB staff member recalling that OEDIT mentioned commissioners were "disappointed" with one presentation during Round 2. OSPB determined the same third-party analyst was most qualified to review applications over all three Rounds.

Finally, OEDIT emphasized that although they did not document how the applications were analyzed for RTA compliance, OEDIT believed that they had followed a rigorous process. Specifically, OEDIT reported that they frequently requested and relied upon legal advice from the Attorney General's Office to verbally confirm that they had correctly interpreted and applied all requirements under the RTA. Additionally, OEDIT stated that staff devoted "thousands" of hours and overtime to

the RTA application process. As such, OEDIT does not believe that there is a risk that the applications did not meet RTA requirements. However, the lack of internal controls and documentation around OEDIT's evaluation process and the Commission's decision-making prevented us from being able to verify that controls were designed and implemented to ensure compliance with specific statutory requirements and fulfill statutory intent.

WHY DO THESE PROBLEMS MATTER?

The intent of the RTA was to promote near-term development of projects that generate economic benefits to the State by providing financing equal to new tourism revenue generated by the projects. As of July 31, 2017, the State has distributed about \$11.3 million in state sales tax increment revenue that was generated by existing businesses in the projects' regional tourism zones to three of the five approved RTA projects, and has approved an additional \$434 million in diverted revenue over the next 30 to 50 years. As of July 31, 2017, no tourism revenue had been generated by any RTA projects and the first project anticipated for completion is not expected to open for business until the end of 2018.

The RTA program is inherently higher in risk for the State because financing decisions are based on long-term estimates. OEDIT and the Commission did not implement internal controls for determining if projects met RTA criteria and can generate revenue to offset the financing award that mitigate this financial risk to the State. The OEDIT Executive Director stated, in the Colorado Springs project recommendation letter, that approved RTA projects can receive diverted tax revenues upon approval "for at least five years and potentially longer, even if the Applicant does not build any Project elements or create any new revenue." The financial risks to the State are demonstrated by both the Pueblo project, which has received \$5.64 million in diverted revenue over 5 years, and the Colorado Springs project, which has received \$5.65 million over 4 years, which have not built any project elements or created any new revenue. In addition, the OEDIT Executive Director stated that if RTA financing awards divert

more revenue than the projects generate, RTA financing “will be reducing the state’s tax receipts and harming its fiscal position” and that “adoption of the [third-party analyst] recommended tax increment percent is more protective of the State’s interest.”

Finally, because of the problems we found, there is a risk that OEDIT and the Commission may not have treated project applicants equitably. For example, although OEDIT identified similar concerns with the Pueblo and Colorado Springs project applications—namely, that some elements of each project were not unique or extraordinary and that the projects were too reliant on RTA funds—it recommended denial of the former and approval of the latter. The Commission approved both projects, but OEDIT’s recommendation to approve one and deny the other may indicate that it did not evaluate the projects in a consistent manner.

CONCLUSION

Under current law, no additional applicants may be awarded RTA financing [Section 24-46-305(2)(c), C.R.S.]. As such, OEDIT is not required to administer any further application processes under this program, and is now only responsible for monitoring the progress of the five projects that the Commission approved. In the event that the General Assembly allows additional RTA applications through statutory revisions, prior to accepting RTA project applications OEDIT and the Commission should establish and implement written policies and processes for managing RTA applications. This should include controls that allow OEDIT to demonstrate that staff have ensured that each application meets each of the statutory requirements and demonstrate how any major concerns identified are resolved, and that all staff recommendations to the Commission include adequate information and support for informing project approval decisions. Such actions will help OEDIT and the Commission ensure that taxpayer dollars are funding economically viable and statutorily compliant tourism projects.

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE RESPONSE

There are several areas addressed in this report about which OEDIT would like to provide context. As the audit report acknowledges, OEDIT performed and documented critical processes related to the RTA applications as required by the RTA statute, such as ensuring applications were complete, providing preliminary feedback to the applicants, and providing the OEDIT Executive Director’s (“ED”) recommendation letters. These letters and formal documents were provided to the EDC for all RTA applications, and every ED recommendation letter provided the ED’s conclusions on all four of the RTA statutory criteria. OEDIT staff recalls requesting additional FTE to administer the program when the first RTA bill was considered. The fiscal note associated with the RTA enabling legislation did not provide any additional staff because it was not deemed necessary. (SB 09-173 Fiscal Note “*The bill requires the EDC to review each application proposed by local governments. Since no more than two projects can be approved, the EDC should be able to handle the applications within existing appropriations.*”). OEDIT notes that the application process was extremely time consuming and the follow up monitoring required over more than 30 years of the financing terms is very involved.

However, even with limited staff, OEDIT took the following additional steps to ensure that the applications were statutorily compliant: reviewed each application in depth; requested and received any missing information; exchanged written and verbal communications with each applicant; continually improved application processes and procedures between each round in response to information and experiences from prior rounds (e.g. include pre-application conferences after round 1, provided input to the House Speaker for legislation to address concerns with establishing the baseline sales tax growth rate after round 2, bifurcated the EDC decision process and added more detailed follow up meetings after round 2).

OEDIT followed statutory steps including those mentioned above and provided applications to local governments for comment and held public hearings and meetings to obtain feedback and assess the RTA projects.

Another consideration impacting the appropriate amount and nature of documentation was that the Aurora project, approved during round 1, immediately attracted multiple lawsuits. All subsequent application reviews and other program decisions were taken under close consultation with the Governor’s legal counsel and Attorney General (AG) in consideration of concerns related to potential discovery by opposing parties in the Aurora litigation or future disputes, and the general challenges associated with interpreting the RTA statute. In that regard, OEDIT and the EDC worked EXTRAORDINARILY CLOSELY with, and took ongoing directions from, legal counsel at every stage in the RTA process during each of the rounds following the commencement of the Aurora litigation.

As the audit report alludes to, OEDIT views internal rate of return metrics as less important for assessing the fourth statutory RTA criteria (“are the RTA funds required for the project to move forward?”) for non-profit or publically-owned projects than for privately developed and owned projects. In its review of the Denver application, the third-party analyst (TPA) similarly stated *“This is a large scale complex redevelopment and a public-private partnership for economic development. A traditional pro forma analysis to measure investor returns is therefore not entirely applicable, as the Partners are approaching this Project for broader economic and community development reasons that are not as readily quantifiable.”*

The audit report points out that RTA projects are inherently risky and that the lack of implementation of controls in the application process could result in a situation where this risk is not mitigated to the fullest extent. OEDIT agrees that these risks are inherently present in the types of projects funded by the RTA program and also points out they are amplified by the RTA statute’s design; awards are based on estimates that include assumptions, 30-year forecasts and begin to pay out before

the projects have started. However, OEDIT believes that the guardrail requirements the EDC imposed on the projects via the written resolutions are a strong risk mitigation tool to help ensure the projects, if built, are unique and extraordinary and will generate the net new revenue to Colorado that was estimated by the EDC.

In the event that this program was renewed, OEDIT would:

- Require new FTE for administration per the fiscal note process.
- Contingent on approval of FTE by legislature, establish and implement written policies and processes for managing RTA applications, including controls described in the Audit Conclusion section above.
- Consult with the AG regarding these policies, processes and controls to make sure they are not creating undue litigation risk for the State.

COLORADO ECONOMIC DEVELOPMENT COMMISSION RESPONSE

The EDC agrees with OEDIT's response above. The EDC, a volunteer board, spent hundreds of work hours reviewing each application, including the OEDIT Executive Director's recommendation letters and third-party analyst (TPA) reports, to determine if the applications met the RTA statutory requirements and to provide best estimations of the net new revenue generated by the projects. However, it is important to note that the EDC is not a State agency with a programmatic view toward how work is accomplished.

The EDC members have diverse, deep and seasoned industry experience and are appointed by the Governor and General Assembly leaders in recognition of their expertise and given broad statutory discretion. This expertise and judgment may, at times, lead the EDC to approve or reject the analysis of the OEDIT Executive Director, applicants, or the TPA. The EDC believes that all applicants were treated equitably and notes that no applicants have claimed otherwise. The EDC asserts that even

if the EDC and OEDIT had followed all of the audit recommendations, the project approval conclusions would remain unchanged. In addition, the EDC intentionally used written resolutions as the vehicle to document their RTA decisions in order to comply with the express requirements of the RTA statute upon the advice of legal counsel, which considered both the Aurora litigation and potential future threats of litigation that could expose the State to risk.

The audit report questioned how the EDC took the TPA's recommendations into consideration in their decision-making process in approving RTA applications. In performing its duties under the RTA statute, the EDC reviewed the written analysis and verbal explanations provided by the TPA in all 3 rounds. However, it became evident during rounds 2 and 3 of the RTA application review processes that the EDC had developed serious concerns about the credibility of the TPA who, by statutory design, was neither hired, managed, nor accountable to either the EDC or OEDIT. During rounds 2 and 3, the EDC expressed concerns to OEDIT staff about the TPA's explanation of the logic of the TPA's models, the TPA's lack of understanding of the scope of the applicants' projects, and the rationale behind the applicant's financial assumptions in their applications. Nonetheless, the same TPA was retained for all 3 rounds.

These issues were most apparent when OEDIT found that the percentage of incremental revenue calculated by the TPA, and adopted by the EDC for the Pueblo application in round 1, had a computational error that could cost the State hundreds of millions of dollars. This error was caught and corrected by OEDIT and the EDC after the application was approved, but it created a legally problematic circumstance. Another concern about the TPA recommendations occurred after the Colorado Springs award was approved during round 2. OEDIT and the EDC realized that the TPA had accepted, without providing any written analysis or discussion in their report, the applicant's assumption of the baseline sales tax growth rate which was much lower than publically available historical trends, or the growth rate used in the Pueblo RTA application. The baseline sales tax growth rate was a critical assumption in the economic models used in the Colorado Springs RTA application.

Based on the analysis OEDIT provided to the EDC, this assumption put hundreds of millions of State dollars at risk of overpayment to the Colorado Springs project and the EDC had to implement a cap on the Colorado Springs award after approving the RTA application. As a result, the General Assembly passed new legislation to correct issues in the RTA processes that included a requirement that the Office of State Planning and Budgeting (OSPB), and not the applicant or the TPA, set the baseline growth rate used in future applications. In spite of these performance issues with the TPA, the EDC performed its obligation to take into account the TPA's recommendations in each of the RTA rounds.

The EDC believes the statutory mechanisms around the selection and management of the TPA should change if the program was going to be renewed. Furthermore, the performance of the TPA during the 3 completed rounds is a topic worthy of further assessment.

Over time, as part of the approval process and in response to the inherently risky nature of unique and extraordinary RTA projects, the EDC added many additional guardrails to the EDC's RTA resolutions, to further protect the interests of the State. This is evident when comparing the Denver and Colorado Springs Resolutions to the Pueblo Resolution.

In the event that this program was renewed, the EDC would undertake the following actions:

- Work with OEDIT to review OEDIT's written policies, processes and controls described above and offer high level direction and input.
- Continue to require appropriate, detailed guardrails for any projects that are approved so that the projects to be completed conform with the applications that were originally submitted by the applicant and approved by the EDC.

- Make an exception for the RTA program by preserving non-executive session recordings of EDC RTA application meetings for 5 years instead of the normal 90 days.

- Provide feedback to the legislature about improving the TPA engagement process.

MONITORING OF RTA PROJECTS

After the Commission votes to approve a project for RTA funding, the Commission adopts a resolution that formalizes the terms and conditions of approval. The project resolution specifies, in part, the project applicant and financing entity (project entity) approved to undertake the project, the geographical area that comprises the regional tourism zone used to calculate the state financing award, the total state sales tax increment revenue amount and percentage that the State will dedicate to the project, and any additional conditions of approval imposed by the Commission [Sections 24-46-305(3) and (4), C.R.S.]. For all five approved projects, the Commission has established additional conditions of approval in the project resolution. Additional conditions have included, for example, construction specifications for buildings and requirements to procure lease agreements with vendors. The Commission approved the first RTA project in May 2012 and the final project in November 2015.

Once a project is approved, project entities submit written reports and attend meetings with OEDIT and the Commission, and OEDIT staff maintain ongoing contact with the entity as needed to address questions and discuss how projects are progressing.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed each project resolution and related files, and statutes related to the RTA program, OEDIT, and the Commission. We assessed whether required reporting and meetings were occurring, and we reviewed a non-statistical sample of 16 project reports to assess whether the reports contained required information, as specified in the project resolutions. We also reviewed other documentation OEDIT had available for each project,

including some email correspondence, Commission meeting minutes, and staff notes. Finally, we reviewed Department of Revenue data on tax increment revenue collections and payments for the five projects, and we interviewed commissioners, OEDIT and other Governor's Office staff, and Department of Revenue staff.

The purpose of our work was to evaluate OEDIT's and the Commission's monitoring of the progress of the five RTA projects approved for state financing, in accordance with the following:

REPORTING. Project entities are required under statute to submit written annual reports, beginning the year after the project is approved. These reports must include, in part, confirmation that the RTA funds were only used for eligible costs, revenue projections for the remainder of the financing term and expenditure details, and an independent audit attesting to the report's accuracy [Section 24-46-308(1) and (2), C.R.S.]. Additionally, when a project is approved, entities are required by the resolution to submit written quarterly reports that give detailed information about the "progress on the project as described" in the resolution.

MEETINGS. RTA project resolutions require entities to attend quarterly meetings with OEDIT and two Commission meetings per calendar year, and to document these meetings in the project reports. OEDIT stated that the purpose of the meetings is to provide project updates and answer Commission member questions.

STAFF MONITORING. OEDIT staff reported that, in addition to the written reports and scheduled meetings, staff maintain ongoing contact through email and phone calls with the project entity and other parties as needed. According to OEDIT, one of the purposes of these contacts is for staff to answer questions and give input and guidance to the entities as each project progresses, for example, while planning work is being conducted prior to construction and as vendor agreements are being solicited and obtained.

USE OF FUNDS. Section 24-46-305(4), C.R.S., states that the Commission must authorize the project entity to receive and use the RTA funds pursuant to “any conditions of approval imposed by the [C]ommission and incorporated in writing into the [C]ommission’s resolution of approval.”

INTERNAL CONTROLS. Section 24-17-102(1), C.R.S., requires each state agency to institute and maintain systems of internal accounting and administrative control, and in 2016, the Office of the State Controller directed all state agencies to begin following the *Standards for Internal Control in the Federal Government* (Green Book). According to Section 2 of the Green Book, monitoring is an important component of an effective internal control system, and monitoring activities should be established and operated to “assess the quality of performance over time and promptly resolve” deficiencies. Internal controls are processes designed to provide reasonable assurance that agencies will: (1) achieve their objectives; (2) operate effectively and efficiently; (3) safeguard public funds (including minimizing fraud, waste, and abuse); and (4) ensure compliance with applicable laws and regulations.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that OEDIT and the Commission are not holding project entities accountable for fulfilling all requirements stipulated in statutes and project resolutions through their monitoring efforts. The problems we found are described below.

OEDIT HAS NOT CONSISTENTLY ENFORCED REPORTING REQUIREMENTS.

We found that OEDIT did not obtain some required reports and that some reports that had been obtained were incomplete, as follows:

- Of the 57 total reports required between May 2012 and January 2017, we found 11 (19 percent) were not submitted. Specifically:
 - ▶ For two projects (Denver and Go NoCO projects), a total of 10 reports were due but no reports were submitted for either

project, between March of 2016 and January of 2017 (the end of our testing period). Each project was required to submit four quarterly reports and one additional status report during that time, to provide details about the progress that the projects had made towards accomplishing resolution requirements. OEDIT staff agreed that these reports were never submitted and management stated that staff waived the reporting requirement for these projects because they were working on finalizing the projects' resolutions. OEDIT reported that because the auditors questioned the practice of waiving required reports, OEDIT required the Denver and Go NoCO projects to begin submitting reports. The first Denver report was submitted on July 28, 2017, and the first Go NoCO report was submitted on July 31, 2017.

- ▶ For the Aurora project, one annual report, due September 2013, was not submitted. OEDIT staff agreed that this report was never submitted and indicated that staff waived the statutory reporting requirement for this annual report because of ongoing litigation surrounding this project during the time period. Annual reports contain information about the status of the project, projected revenue, current market and fiscal impact, and the return to the State on its investment.
- Of the sample of 16 reports we reviewed, we found that four of the six required annual reports were missing at least one required element regarding project revenue and cost information, as follows:
 - ▶ Four reports did not include confirmations that RTA funds were only used for eligible costs.
 - ▶ Two reports did not include the projected revenue for the remainder of the projects' financing terms.
 - ▶ One report did not include expenditure details, though a total of \$25,700 in RTA funds was expended on the project during the period covered by the report.
 - ▶ One report did not include an independent audit attesting to the accuracy of the report.

OEDIT confirmed that this information was lacking from the annual reports. All of the 10 quarterly reports in our sample appeared complete.

OEDIT HAS NOT CONSISTENTLY ENFORCED MEETING REQUIREMENTS. Of the 64 total update meetings required for the RTA projects between May 2012 and January 2017 (including both the quarterly meetings with OEDIT and the twice-yearly meetings with the Commission), OEDIT could not provide sufficient evidence that 32 (50 percent) had occurred. Specifically:

- 27 of the 42 quarterly meetings (64 percent) with the OEDIT Director were not documented in the reports, as required. Of those 27, OEDIT was able to provide calendars to show five of the meetings were scheduled, but we could not confirm that the meetings actually occurred. OEDIT did not have evidence that the other 22 quarterly meetings occurred. For two projects, OEDIT staff did not hold *any* of the quarterly meetings required by the project resolutions. OEDIT staff stated that they conducted frequent, ongoing conversations with project entities via telephone and email that met the intent of the OEDIT meeting requirement. However, staff did not document any of these other communications so we could not verify that they occurred.
- 5 of the 22 twice-yearly meetings (23 percent) with the Commission were not documented. OEDIT staff confirmed that these meetings did not occur.

OEDIT DOES NOT HAVE EVIDENCE THAT SOME PROJECTS ARE MEETING SPECIFIC REQUIREMENTS. OEDIT's staff monitoring efforts do not appear to serve as a meaningful mechanism for holding project entities accountable for adhering to all of the requirements of their resolutions. Specifically:

- The Colorado Springs project resolution specifies that *no RTA funds* may be spent on “specific project elements” prior to meeting all of the project planning terms and conditions. However, OEDIT confirmed that this project began spending RTA funds prior to

meeting these cited terms and conditions. OEDIT stated that even though the terms and conditions had not been met, the expenditures were intended to be allowable because the costs were administrative costs incurred by the project entity, and the intent of this requirement was to prohibit spending on construction by the individual project developers. However, the resolution does not specify that administrative costs are allowable, but rather states that *no* RTA funds may be spent prior to meeting the planning requirements cited in the resolution.

- The Denver project resolution specifies project planning terms and conditions that must be met. However, in addition to not submitting any of the required reports until 20 months after the project was approved, as of September 2017, the Denver project has not provided OEDIT with any other evidence to show that it had met any of the project planning terms and conditions specified in the project resolution. OEDIT indicated, and we confirmed, that the Denver project has recently begun conducting work towards these requirements, such as attending city council meetings and drafting a “framework” agreement that is one part of the project planning terms and conditions. Through July 2017, the Department of Revenue had distributed \$17,000 in RTA funds to this project.
- The entity for the Go NoCO project did not submit information the Department of Revenue requires to finalize the businesses that should be included in the project’s regional tourism zone and begin RTA payments to the project until July 2017. OEDIT did not send official written deficiency notification, as outlined in all project resolutions, to the Go NoCO entity or take other action to address the delay of over 20 months in submitting the information.
- The entity for the Pueblo project did not provide a lease document, required by OEDIT and the Commission in September of 2015, until April of 2017 (19 months later). OEDIT did not send Pueblo any official written deficiency notice during the time period.

OEDIT raised concerns about the project’s ability to meet its 5-year statutory deadline to begin substantial work after noting major issues in the lease. In April 2017, OEDIT sent the project entity a letter stating that, if uncorrected, these lease issues could “present an untenable position for the [Commission] and the State of Colorado” and produce a scenario in which the State “will not achieve any net new out of state tourist revenue to offset the state sales tax increment revenue paid” to the project entity. The letter also instructed the project entity to take no other actions until the issues with the terms of the lease had been resolved. In May 2017, OEDIT and the Commission sent a second letter stating that the project entity had to secure bonds to meet the 5-year statutory deadline for beginning substantial work. In August 2017, OEDIT and the Commission determined that the project had begun substantial work by securing bonds.

According to OEDIT, during the time between the April letter about the lease and the August determination that substantial work had begun, the Commission decided, in consultation with the project entity and the Attorney General representative, that the lease issues were no longer critical; however, OEDIT confirmed that the lease document had not changed and none of the lease issues were corrected as had been instructed in the April 2017 letter.

OEDIT has not issued any official written deficiency notices, as outlined in the resolutions, to inform project entities that deficiencies in project progress or issues of noncompliance must be addressed, for any of the projects.

WHY DID THESE PROBLEMS OCCUR?

OEDIT and the Commission have not developed any methodology regarding RTA project monitoring, including determining the underlying purpose for conducting required monitoring activities. Specifically, there are no written policies specifying:

- What OEDIT’s review of the required annual and quarterly reports should include. For example, there is no written guidance about whether staff should review the reports to ensure that they are complete, verify that expenditures are allowable, identify information that indicates that the project is experiencing difficulties, or for other or some combination of these purposes.
- What actions staff should take when required reports are not submitted or are incomplete. For example, there is no guidance about what staff should do when reports are missing elements such as an independent audit attesting to the accuracy of the report.
- What actions staff should take when any of the monitoring activities identify delays or other problems with a project, such as when staff must notify the project entity in writing that the deficiency must be addressed.
- What actions should be taken when commissioners identify problems with the projects based on meetings with the project entities, such as when and how commissioners will conduct follow-up to ensure that problems are resolved.
- What actions should be taken when entities are not present for required meetings to ensure that staff and commissioners receive information in a timely manner.
- How staff should document their monitoring activities, including the results of their review of reports, the content of meetings and other contacts, and the pursuit and resolution of issues.

OEDIT and the Commission have stated that in general, project monitoring is conducted for two reasons. First, to help projects make progress towards meeting the 5-year deadline for commencement of substantial work. However, OEDIT and the Commission have not established what is required to indicate a project has met this deadline, including defining what “substantial work” means or how to use reported information to determine whether substantial work has begun

or how close an individual project is to beginning substantial work. Second, OEDIT stated that staff conduct monitoring activities to receive and forward all project information to the Commission so that the Commission can assess project compliance and progress. However, OEDIT has not consistently received all required information, such as project reports or information confirming that planning requirements have been met.

Additionally, OEDIT and the Commission stated that the RTA explicitly gives the Commission the authority to establish project terms and conditions but “does not give clear guidance on what the [C]ommission must do if certain things do or don’t happen to move a project forward.” As such, OEDIT and the Commission have not defined any actions staff should take when RTA project information is not submitted or is incomplete, or when delays or other problems with a project are identified.

Further, OEDIT and Commission members have indicated that staff spend a significant amount of time administering the RTA program so that litigation is avoided, and that requiring staff to document all of this work is not a priority and would create an unreasonable burden, in part because when the RTA was enacted OEDIT received no additional staffing resources to administer the program. We found no evidence that OEDIT had requested additional staff for the program at any time between RTA enactment and the 2017 legislative session.

WHY DO THESE PROBLEMS MATTER?

A lack of monitoring of RTA projects by OEDIT and the Commission could prevent them from being aware of problems on a project in a timely manner and thus able to assist projects in addressing the problems. For example, enforcing the reporting and meeting requirements helps ensure OEDIT and the Commission are updated regarding each project’s progress as intended by statute and the project resolution. These updates can help them identify and resolve problems in a timely manner, such as identifying when a project is not correcting issues as instructed. A lack of awareness and action on the part of

OEDIT and the Commission can increase the risk the State assumed in investing in these projects or result in the State not realizing the full economic benefits expected in exchange for the State's foregone sales tax revenue. In total, the Commission has approved the diversion of up to \$445 million in anticipated state sales tax revenue over the 30-plus years of the projects' financing terms. As of July 31, 2017, the State has forgone \$11.3 million in sales tax revenue that has been diverted to finance three of the RTA projects. According to their applications, these three projects were expected to become operational in 2014, 2017, and 2022 but each has now been delayed between 2 and 5 years. These projects were anticipated to generate a total of 17,434 jobs during project construction and 1,840 jobs annually once operational. Because these projects have experienced delays in completing project planning and commencing construction work, neither the short-term nor the long-term job benefits have been realized. Additionally:

- The Pueblo project, which was approved on May 18, 2012, should have started substantial work no later than May 18, 2017 to meet the statutory deadline. On May 18, 2017, the Commission approved extending the deadline by 3 months, to August 18, 2017. The Pueblo project entity now reports that rather than completing and having in operation major project elements in 2014 as the original project application stated, those project elements will not be completed until January 2019 at the earliest. These initial project elements include the expansion of a convention center, construction of an arena, and completion of parking lots and other infrastructure. The Pueblo project, therefore, will not be available as a Colorado regional tourism venue for 5 or more years later than anticipated when the Commission approved the project application.
- The Go NoCO project, which was approved in November 2015, had not, until July 2017, submitted the complete information that the Department of Revenue needs to finalize the project's regional tourism zone calculations and remit payment to the project entity (20 months after approval). As a result, the project has not received any RTA funds. This delay could put at risk the project's proposed final completion date of November 2025.

OEDIT agreed that there have been issues with projects' lack of progress and reported that "several approved projects have not fulfilled their promises to the state." OEDIT stated that the resolutions for the two most recently approved projects (Denver and Go NoCO) specifically include more detailed terms and conditions to ensure that each project is completed as envisioned when the Commission approved the project, and that the State's investment is better protected. In contrast, over the course of the audit OEDIT management repeatedly stated that no amount of monitoring by OEDIT could have made these projects move forward more quickly, and that OEDIT's monitoring has no impact on whether RTA projects are successfully completed because these projects are inherently high-risk. According to OEDIT management, there is a high likelihood that not all of the projects will be successfully completed. However, requiring extensive terms and conditions without also (1) providing ongoing oversight to confirm that those conditions are met, and (2) enforcing the stated penalties when not met, does not provide additional protection of the State's investment in these projects. Additionally, it does not allow OEDIT and the Commission to demonstrate they have adequately acted within their authority to influence project progress, as was intended by establishing the conditions of approval.

Further, the lack of OEDIT and the Commission defining what is required to meet the 5-year substantial work deadline led to issues with the Pueblo project. Specifically, the project entity disagreed with OEDIT and the Commission over whether the project had commenced substantial work by May 18, 2017, and expressed confusion over what it should have done to meet the deadline. OEDIT stated that it established numerous requirements for this project to demonstrate that it had commenced substantial work, such as executing a specified lease. However, as discussed previously, the Commission did not enforce these requirements.

Finally, when OEDIT does not adequately monitor projects, such as by receiving complete project reporting, it is unable to provide accurate information to the General Assembly and the public. Under Section 24-46-308, C.R.S., OEDIT is required to submit annual and biennial

reports to the General Assembly on the RTA projects that include an “assessment of overall effectiveness” of the projects. OEDIT stated that it cannot yet fully assess the effectiveness of any of the RTA projects until they are complete and operating. As of June 2017, only two projects (Aurora and Colorado Springs projects) have broken ground to begin construction.

RECOMMENDATION 1

The Governor’s Office of Economic Development and International Trade (OEDIT) should work with the Economic Development Commission (Commission) to implement written monitoring policies and procedures for projects approved for financing under the Regional Tourism Act (RTA) by:

- A Establishing what OEDIT’s monitoring activities for RTA projects should include. This should include guidance on the purpose of and the specific actions to take when reviewing required reports, holding required meetings, and conducting any other activities, as well as establishing how to assess whether a project has met the 5-year deadline for commencing substantial work.
- B Establishing what actions OEDIT staff should take when RTA project information is not submitted or is incomplete, or when staff or Commission members identify delays or other problems with a project through monitoring efforts.
- C Establishing how OEDIT should document monitoring activities, including their receipt and review of reports, meetings and other discussions, and any instances where project issues are identified including how issues are resolved.

RESPONSES

OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE

- A AGREE. IMPLEMENTATION DATE: JUNE 2018.

OEDIT closely monitored the RTA projects post approval and the projects moving forward are in alignment with the conditions in the

EDC resolutions. With additional staff OEDIT agrees it could document its processes and procedures in writing with more detail.

All of the approved RTA projects apart from Go NoCO and one or two parts of Colorado Springs are making progress toward completion. All projects have provided regular updates via phone calls, meetings, reports, and emails.

The Pueblo project required intensive post-award monitoring which the EDC and OEDIT performed. As described above, the TPA error and the resulting legal risks complicated monitoring this project. As part of monitoring, OEDIT requested, at the EDC's direction, that the DOR suspend RTA payments to Pueblo until certain issues were resolved. This suspension lasted six months starting in late 2015. However, agreement with Pueblo was reached and the project broke ground, issued RTA bonds and committed city funds to construction.

OEDIT needs 1 more FTE to implement recommendations 1A-C. OEDIT requested, and the EDC approved, funds to hire an FTE. This analyst design and implement monitoring activities for RTA projects, including determining if a project has met the 5-year commencement deadline.

B AGREE. IMPLEMENTATION DATE: JUNE 2018.

OEDIT agrees that annual reporting is a statutory requirement and periodic reporting an important part of project monitoring. In a few cases, OEDIT temporarily waived requirements, as was noted in the audit. For example, instead of focusing on reporting, OEDIT and the applicant used their limited time to focus on litigation response (Aurora project), and to work on final written resolutions (Denver and Go NoCO projects). In each case, the applicants began normal reporting and meetings after passing these milestones and/or upon OEDIT's request.

OEDIT has worked closely and successfully with the EDC in implementing the RTA program to address and monitor critical issues around the RTA projects. OEDIT intends to implement a formal project tracking system to document monitoring of the RTA projects. When project information is missing or incomplete or delays or problems arise, OEDIT will: continue to work closely with stakeholders, the AG, and Governor's office to address issues that arise with RTA projects; communicate issues to the EDC and invite stakeholders to EDC meetings to discuss concerns; and establish via written documentation the actions OEDIT will take when RTA project information is not submitted or is incomplete, or when staff or EDC members identify problems with RTA projects through monitoring efforts.

C AGREE. IMPLEMENTATION DATE: JUNE 2018.

OEDIT will establish written processes and procedures for documenting monitoring activities, including: receipt and review of reports, meetings, other discussions, and identification and resolution of any identified concerns. Based on discussions with the auditors during this RTA audit, OEDIT has already begun augmenting its methodology for documenting RTA project monitoring. The amount of effort and detail provided by OEDIT in documenting monitoring activities should be calibrated against the incremental benefits to the State, and offset by the opportunity costs for the use of the State's limited resources.

OEDIT notes that RTA project delays are not the result of issues around monitoring, reporting or documentation. Rather the delays are due to the inherent difficulty of implementing large, complex commercial real estate developments with multiple stakeholders, and/or are the necessary result of the EDC and OEDIT ensuring that the RTA statutory requirements and guardrails in the EDC resolutions were met by the projects through its monitoring activities.

COLORADO ECONOMIC DEVELOPMENT COMMISSION

A AGREE. IMPLEMENTATION DATE: JUNE 2018.

The EDC agrees with OEDIT's response above. The EDC and OEDIT's extensive monitoring of RTA awards has been effective in administering the program. Monitoring occurred through receipt of written reports, testimony at transparent public meetings, and correspondence beyond what was required by statute or written resolutions. The EDC is pleased that the RTA program is producing high impact projects that will leave a legacy in Colorado. Several have commenced and are providing jobs to Coloradans including the U.S. Olympic Museum and Hall of Fame, Gaylord Rockies, and the Pro Bull Rider University. The National Western Center and UCCS Sports Performance Center will provide extraordinary new facilities and benefits to Colorado.

The funds approved by the EDC on September 21, 2017 in response to this audit will provide for expanded written documentation of the RTA monitoring process. However, these expenditures reduce limited resources that could be used for other strategic economic development initiatives. The EDC believes that the costs and benefits of using funds for these administrative purposes need to be carefully assessed on an ongoing basis. The EDC will work with OEDIT and the AG to review and approve written monitoring procedures and activities as required by statute and described in this report including establishing processes for assessing commencement of work.

B AGREE. IMPLEMENTATION DATE: JUNE 2018.

The EDC agrees with OEDIT's response above. The EDC has performed adequate monitoring throughout the RTA process to protect the State's interests and support projects moving forward.

The EDC, a volunteer board, has monthly and ad-hoc public meetings and holds oversight over many complex programs. Workload increased in the last few years. Meeting frequency went from quarterly to monthly and length from 3 to 4 hours. Per the 1-A response, the EDC is concerned that more effort spent documenting monitoring may increase workload without providing more benefits, and could detract from oversight of other programs. There is a balance between increasing formal policies and procedures and diverting limited resources from other programs. Also, the full EDC (not subcommittees) addresses important topics, such as RTA monitoring, so new protocols for problems identified during monitoring will impact all members.

Going forward the EDC will provide feedback and oversight to the actions OEDIT establishes will be taken when project information is late or incomplete or other monitoring concerns are noticed. The EDC will also continue to: discuss the status of RTA projects with OEDIT and stakeholders at public meetings; make motions providing assessments and directing additional steps to be taken, and draft follow-on resolutions or amendments when needed.

C AGREE. IMPLEMENTATION DATE: 6/30/18

The EDC agrees with OEDIT's response above. The EDC will work with OEDIT to review the implementation of additional monitoring processes, so that issues, decisions, and resolutions are documented.

While the EDC fully intends to work with OEDIT to implement this recommendation, it wishes to reiterate OEDIT's point above relating to the cause of project delays. Although monitoring cannot ensure that projects move forward, it can and has helped ensure that if projects do move forward, they do so in compliance with the RTA statute and the EDC's resolutions of approval.

OEDIT and the EDC have expended great time and effort to help these projects come to fruition in line with the RTA statute and legislative intent. Given OEDIT's available resources, some of that

effort was not formally documented in writing in a single location. The EDC will work closely with OEDIT to enhance and formalize appropriate monitoring processes.

POLICY CONSIDERATIONS

During our audit, OEDIT and the Commission stated that due to the unique provisions within the RTA, management and commissioners believe that there is a higher than normal likelihood of litigation and that this risk has been a core consideration in how OEDIT and the Commission have administered the program. They also reported they have obtained extensive guidance from the Attorney General’s Office since the RTA was enacted in 2009 to interpret the legislative intent and requirements.

Based on these discussions with OEDIT and the Commission, we interviewed staff within the State Controller’s Office and the Department of Revenue, consulted with an attorney at the Office of Legislative Legal Services (OLLS), and listened to testimony from the 2009, 2012, and 2014 Senate and House Committee and chamber debates that occurred while the RTA was being drafted, reviewed, and amended. Along with the other work carried out during the audit, the purpose of this work was to understand how the RTA came about and changed over time, what the General Assembly intended the RTA to accomplish, and why the General Assembly established unique statutory provisions.

Based on our work, we identified areas in which the unique provisions of the RTA, as interpreted by OEDIT and the Commission, may not provide adequate protection of the State’s interests, as described below.

SAFEGUARDS AROUND THE RTA PROGRAM

TAX INCREMENT REVENUE IS NOT THE PROPERTY OF THE STATE. Based on the information that we collected during the audit, it appears that no other state agency uses state sales tax increment revenue to fund any

aspect of a program; such revenue has historically only been used by local governments in Colorado. In addition, Section 24-46-307(2), C.R.S., states that awarded funds “shall be...the property of, and the revenue of the applicable [project]...entity and shall not be...revenue or property of the state.” The funds are held in the custody of the Department of Revenue.

RTA PROVIDES ADVANCE FUNDING. The RTA provides advance funding for approved projects by diverting state sales taxes generated by existing businesses to the project entities. These taxes would otherwise have gone into the State’s General Fund. As of July 31, 2017, the RTA has resulted in \$11.3 million of tax revenue diverted from the State to projects that have not yet begun generating any sales tax revenue. Specifically, the Pueblo and Colorado Springs projects have received diverted state sales taxes over the last several years, prior to either project breaking ground, and the Denver project began receiving state sales taxes in November 2016. For all three projects, this money came from growth in state sales tax revenue that was generated in these cities by existing businesses, and would otherwise have gone into the General Fund for use by the State. The five approved RTA projects will receive monthly payments, after the base year revenue is earned by the State each year, of diverted state sales tax based on the percentage of their awards up to the specified limits, a combined total of \$445 million over the next 30 to 50 years. The projects are scheduled for completion, and presumably the start of generating their own sales taxes, between 2018 and 2025.

By design, the RTA requires every tax increment financing award to be calculated as a percentage of *both* project-generated and non-project generated revenue [Section 24-46-305(3)(d), C.R.S.] from an established geographical “regional tourism zone” [Section 24-46-303(11), C.R.S.]. Four of the five approved RTA projects are located in regional tourism zones that include existing businesses. For the Pueblo and Colorado Springs projects, for example, the project zones encompass, generally, these entire cities (portions of these cities are not included in their zones). Traditional tax increment financing used by local governments is not designed nor intended to provide funding prior

to the project improvements being made, within the economically blighted areas that need development. According to OEDIT and the Commission, there is a high likelihood that not all of the approved projects will be successfully completed. This likelihood, along with the advance funding design, increase the risk that the State is foregoing revenue that may never result in the completion of the projects and the intended economic development.

USE OF RESOLUTIONS, NOT CONTRACTS, TO MEMORIALIZE PROJECT TERMS. The RTA explicitly requires the Commission to adopt a resolution for each approved project and states, in Section 24-46-305(3) and (4), C.R.S., that project resolutions must specify the conditions of the Commission’s approval, including terms and conditions that the Commission determines are appropriate for each individual project. OEDIT and the Commission view the resolutions as “unilateral” documents that may be changed by the Commission, in any manner at any time. As such, the Commission has not required that the project entities sign the resolution documents to indicate agreement with and commitment to the Commission’s terms of approval. OEDIT stated that, based on advice from the Attorney General’s Office, it and the Commission obtained signatures from applicants for the first three projects (Pueblo, Aurora, and Colorado Springs) to “acknowledge” the documents. OEDIT and the Commission did not have the final two approved project applicants, for Denver and Go NoCO, sign the temporary resolutions that were established when the projects were approved; the final Denver resolution established in July 2017 has been signed by the project entity. For all five projects, OEDIT and the Commission stated that they believe the resolutions, as “unilateral” documents, provide greater control than a bilateral document, such as a contract.

Outside of the RTA, when large financial commitments are made by the State, such as through grant awards or to purchase goods or services, the commitments and terms are memorialized using state financial agreements such as contracts, that commit both parties. Contracts and other commitment documents must adhere to statutes, rules, and Office of the State Controller policies. The statutes, rules, and policies create a

framework for protecting the State's interests through the establishment and monitoring of performance expectations and the tracking and accounting control of the committed funds. The RTA resolutions do not provide the same mechanisms to protect the State, as follows:

- The Colorado Procurement Code and State Fiscal Rules require any commitment of state funds over \$100,000 to be reviewed and approved by the State Controller, who is statutorily responsible for managing the finances and financial affairs of the State. The State Controller assesses, in part, the level of risk to the State, compliance with applicable laws and policies, and that the content of the commitment document is sufficient and appropriate. OEDIT and the Commission have not had any of the resolutions reviewed or approved by the State Controller's Office. OEDIT stated that it and the Commission did not have the resolutions reviewed or approved by the State Controller, under the advice of the Attorney General's Office.

- The Procurement Code requires contracts to contain performance measures that have specific deadlines to ensure that the measures are being met, in a timely manner, or if not met, that allow the State to withhold payment for non-performance [Section 24-103.5-101(2), C.R.S.]. The Commission's terms and conditions for each of the RTA project resolutions contain detailed provisions—such as the building construction specifications that must be used and requirements for obtaining specific leases and permits—but do not contain any deadlines or other timelines for meeting these provisions. Rather, the resolutions include only the final project completion date, which the Commission established as 10 years after the effective date of the resolution (although all of the project applications indicated that projects would be completed within 2 to 7 years). OEDIT and the Commission stated that the resolution provisions serve as “guardrails” to protect the State's interests and legally bind projects. However, OEDIT's stance is that no amount of monitoring or enforcement of these guardrails affects a project's successful progress or completion, because projects are inherently high-risk, and as such OEDIT has not held projects accountable by

ensuring the resolution provisions are met or enforcing stated penalties when not met.

RESTRICTED STATUTORY AUTHORITY TO CHANGE OR REVOKE FUNDING. The RTA only provides one explicit basis on which the Commission may revoke or modify its approval of a project. Sections 24-46-309 (2) and (4), C.R.S., state that the Commission has authority to revoke or modify its approval if substantial work on the project does not commence within 5 years of approval by the Commission. The statute provides examples of substantial work which include beginning construction or issuing bonds secured with RTA funds. OEDIT and the Commission have indicated that because statute does not specify the Commission’s authority to withhold or revoke funding under other circumstances, the Commission’s authority is unclear. Therefore, in practice, OEDIT and the Commission interpret statute to mean that the Commission is not required, and does not have clear authority, to take any actions to hold entities accountable for completing the projects for which they received funding apart from the authority to require work to commence within 5 years.

Overall, the RTA is explicit in authorizing OEDIT and the Commission to approve the State’s foregoing of significant amounts of state sales tax revenue over the next several decades for developing, constructing, and operating large-scale tourism projects. At the same time, the RTA is *not* explicit in stating to what extent the General Assembly intended OEDIT and the Commission to follow controls that State agencies are required to adhere to when committing and managing funds under their control or the extent to which OEDIT and the Commission are expected to ensure that the funds awarded are being used as approved to accomplish the intent of the RTA. Due to the lack of specific language in statute, OEDIT and the Commission stated that they have complete authority to set and revise RTA project award terms but no clear authority to enforce the terms.

In summary, the combination of the unique funding mechanism and the stipulation that the funds are not the property of the State have caused OEDIT and the Commission to conclude that the controls that state

agencies are required to adhere to when managing funds, such as obtaining approval of the State Controller's Office to commit funds and using the protections of the standard contract language, do not apply for RTA. If the General Assembly were to decide to continue the RTA, it may wish to consider whether any of the unique provisions of the RTA, including the stipulation that the tax increment financing is not the property of the State, the advance funding, the use of resolutions rather than normal state commitment processes, and the lack of clear requirements for OEDIT and the Commission to hold projects accountable, should be changed to further protect the State's interests. If the General Assembly decides that changes are needed, OEDIT may be the entity best suited to coordinate with other state agencies, including the Department of Revenue and the State Controller's Office, to work with the General Assembly on legislative revisions.



APPENDIX A

**EXHIBIT A.1. OVERVIEW OF APPROVED
REGIONAL TOURISM ACT (RTA) PROJECTS**

	PUEBLO HERITAGE OF HEROES/PBR PROJECT	AURORA HOTEL & CONFERENCE CENTER PROJECT	COLORADO SPRINGS CITY FOR CHAMPIONS PROJECT	GO NOCO FAMILY RESORT & WATER PARKS PROJECT	DENVER NATIONAL WESTERN CENTER PROJECT
Applicant Award Request (Request made as a percentage of incremental state sales tax revenue)	46.8%	95%	13.08%	20.48%	1.93%
<i>Applicant Award Request, Calculated Equivalent in Dollars</i>	\$35,700,000	\$153,400,546	\$120,530,818	\$86,119,375	\$128,172,900
Third-Party Analyst Award Calculation (as a percentage of incremental state sales tax revenue)	24.7% ¹	65.8%	6.13%	15.79%	1.22%
<i>Third-Party Analyst Award Calculation, Equivalent in Dollars</i>	\$14,800,000 ¹	\$81,433,000	\$53,117,637	\$61,644,489	\$80,976,109
OEDIT Recommendation	Deny Project	Approve Project, Award Third- Party Amount	Approve Project, Award Third- Party Amount	Approve Project	Approve Project
Approved RTA Award (Awarded as a percentage of incremental state sales tax revenue)	24.7% until 2022, then 3.3% ¹	65.8%	13.08%	20.48%	1.83%
<i>Approved RTA Award (Calculated Equivalent in Dollars)</i>	\$35,700,000 ¹	\$81,433,000 ²	\$120,500,000	\$86,119,375	\$121,464,164 ³
Total Cost of Project	\$33,100,000	\$823,800,000	\$250,603,000	\$333,763,884	\$856,432,700
Award as a Percentage of Total Cost	108%	10%	48%	26%	14%
Date Approved by Commission	5/18/2012	5/18/2012	12/16/2013	11/12/2015	11/12/2015
Date Commission resolution adopted	11/8/2012	10/10/2013	9/11/2014	12/10/2015 ⁴	12/10/2015 ⁴
Proposed Project Opening in application	2014	2016	2017	2018	2022
Current Project Opening as of July 2017	2019	2018	2019	2020	2025
5-year Substantial Work Deadline	5/18/2017 ⁵	5/18/2017	12/16/2018	11/12/2020	11/12/2020
Required Completion Date Per Project Resolution	None	None	12/16/2023	11/12/2025	11/12/2025
Financing Term	50 years	30 years after opening	30 years	30 years	36 years
Useful Life (Applicant's estimated duration of project operation)	50 Years	Indefinite	50 years	55 years	50 years
Total Expected Visitors (Third-Party Analyst calculation)	709,000	591,530	2,267,070	1,005,734	960,500

**EXHIBIT A.1. OVERVIEW OF APPROVED
REGIONAL TOURISM ACT (RTA) PROJECTS**

	PUEBLO HERITAGE OF HEROES/PBR PROJECT	AURORA HOTEL & CONFERENCE CENTER PROJECT	COLORADO SPRINGS CITY FOR CHAMPIONS PROJECT	GO NOCO FAMILY RESORT & WATER PARKS PROJECT	DENVER NATIONAL WESTERN CENTER PROJECT
Expected Net New Visitors (percentage of total visitors)	71,350 (10%)	340,550 (58%)	484,443 (21%)	311,546 (31%)	452,277 (47%)
Expected Construction Jobs	680	10,172	3,114	5,251	13,640
Expected Ongoing Jobs	207	2,546	867	1,080	766
Actual Jobs Supported reported as of August 2017	22	510	4	0	0
Amount diverted to Project as of August 2017	\$5,639,270	\$0	\$5,654,732	\$0	\$17,052
Amount reported spent by project as of December 2016	\$1,363,697	\$0	\$69,239	\$0	\$0

SOURCE: Office of the State Auditor analysis of RTA project applications, third-party analyst reports, and OEDIT documentation.

¹ In 2016, the Commission amended the Pueblo resolution to be 24.7 percent for the first 10 years and then 3.3 percent going forward to correct a computational error made by the third-party analyst. The Commission also set an aggregate cap at \$35.7 million, which is the amount that Pueblo was requesting.

² The Aurora project does not have an aggregate cap, but the 65.8 percent of incremental state sales tax revenue represents an estimation of \$81.4 million. The total award amount may be more or less than this amount.

³ The Commission approved the Denver project at a level that was exactly 50 percent above the third-party analyst's calculation, after a vote to approve the full requested amount did not receive unanimous consent. Approving RTA funding at the full amount required unanimous consent of all commissioners under Section 24-46-305(3)(d) C.R.S.

⁴ The commission approved "temporary" resolutions for Go NoCO and Denver, with the intent to amend the resolutions later. The Denver resolution was amended on July 19, 2017. As of August 2017, the Go NoCO resolution has not been amended.

⁵ On May 18, 2017, the Commission extended Pueblo project's 5-year substantial work deadline by 3 months until August 18, 2017.

**EXHIBIT A.2. DIFFERENCE BETWEEN RTA APPLICATION REQUESTS AND
THIRD-PARTY ANALYST ESTIMATES**

	APPLICANT'S AWARD REQUEST ¹	THIRD-PARTY AWARD ESTIMATE ²	PERCENTAGE DIFFERENCE	AWARD APPROVED	COMMISSION DECISION
TOWN OF ESTES PARK	\$19,200,000	\$5,105,000	73%	n/a	Deny
CITY OF GLENDALE	\$124,090,000	\$11,368,000	91%	n/a	Deny
MONTROSE COUNTY	\$169,285,081	\$463,118	99.7%	n/a	Deny
DOUGLAS COUNTY	\$86,554,756	\$5,466,451	94%	n/a	Deny
CITY OF PUEBLO	\$35,700,000	\$14,801,000	59%	\$35,700,000	Approve
CITY OF AURORA	\$153,400,546	\$81,433,000	47%	\$81,433,000	Approve
CITY OF COLORADO SPRINGS	\$120,530,818	\$53,117,637	56%	\$120,500,000	Approve
GO NOCO	\$86,119,375	\$61,644,489	28%	\$86,119,375	Approve
CITY AND COUNTY OF DENVER	\$129,597,741	\$80,976,109	38%	\$121,464,164	Approve

SOURCE: Office of the State Auditor analysis of RTA applications and third-party analysis reports.

¹ Third-party analyst's calculation of the applicant's RTA request.

² For all applications, the differences between the requested RTA award and the estimated eligible award were due to third-party analyst calculations of different amounts of tourists and tourism revenue. In addition, for the Denver project there were differences due to the inflation rate Denver used and the inclusion of indirect and induced revenue, instead of just direct revenue generated by the project.



