

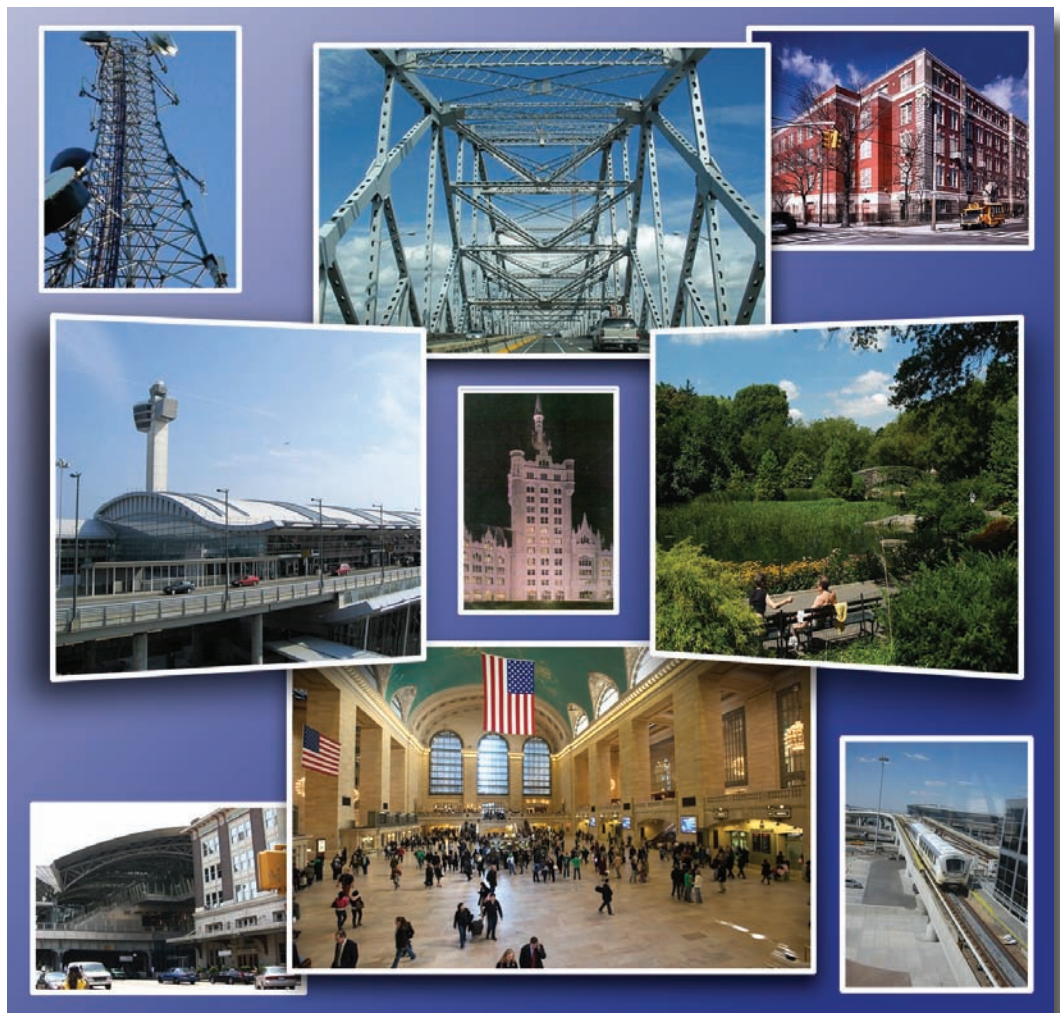


NEW YORK STATE COMMISSION ON

SAM

STATE ASSET MAXIMIZATION

Final Report • June 1, 2009



NYS Commission on State Asset Maximization

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Transmittal Letter

June 1, 2009

The Honorable David A. Paterson
Governor of New York
State Capitol
Albany, New York 12224

Dear Governor Paterson,

On behalf of the New York State Commission on State Asset Maximization, I am pleased to submit to you this Final Report of Recommendations.

In our Preliminary Report, the Commission outlined a set of Guiding Principles and criteria for asset maximization that should be considered for any project. In this Final Report, we recommend specific pilot projects that could be ideal for asset maximization, as well as a method for sustainable asset maximization that incorporates our principles, maximizes value, and protects our public policy goals.

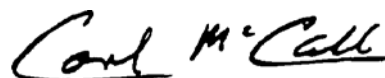
Despite the current fiscal crisis, the Commission believes the State has an incredible window of opportunity in which to act. President Obama's recent Federal stimulus package and the administration's emphasis on public-private partnerships bodes well for New York; it is our hope that this Report will position the State to take advantage of these various opportunities, and provide an approach for long-term, strategic investment in our assets.

This Report represents a tremendous investment of intellectual capital. Over the past 180 days, the Commission has received a broad diversity of input from public hearings held in New York City, Buffalo, Westchester County, Albany and Long Island. We have solicited advice from elected officials, business leaders, labor groups, policy experts, academic institutions and other key stakeholders. The members of this Commission have devoted substantial time and effort to understand the issues, complexities and trade-offs associated with public-private collaborations. Commissioners and staff have consulted a wide variety of public and private entities throughout New York and other states and countries, to learn from both their successes and their failures.

The Commission notes that the recommendations, projects and processes in this Report were approved by a majority of its members. Additionally, not all members are supportive of the specific projects or the balance between public policy objectives and asset enhancement described in the Report.

We are gratified to have completed this Final Report and stand ready to utilize the knowledge we have gained to assist you in advancing public-private partnerships in New York State. On behalf of the members of the Commission and staff, I thank you for the opportunity to participate in this important work.

Respectfully submitted,



H. Carl McCall, Chair

Commission Members

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The Commission wishes to acknowledge the dedication and hard work of Charlotte Hitchcock, the Commission's Chair from October 2008 to February 2009.

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Executive Summary

The New York State Commission on State Asset Maximization (“the Commission”) was established by Governor David A. Paterson’s Executive Order No. 11, dated October 2, 2008. The Commission is charged with broadly examining how asset maximization can benefit New York State, as well as whether any specific New York State assets are suitable candidates for public-private partnerships (PPPs). Governor Paterson’s goal in creating the Commission was to identify measures to more efficiently leverage the State’s resources, spur job creation, maintain and enhance the State’s infrastructure, and encourage economic growth.

In its Preliminary Report, the Commission identified a set of Guiding Principles to be used in evaluating the benefits of asset maximization, as well as opportunities for consideration in the asset classes of Transportation, K-12 Education, Higher Education, Energy and Surplus Properties. In this Final Report, the Commission will recommend both a process for sustainable asset maximization that upholds our public policy values, and specific pilot projects in each of the previously identified asset classes, and the additional asset classes of Social Infrastructure and Information Technology.

As detailed in the Preliminary Report, the goal of asset maximization is to achieve efficient allocation of opportunity and risk between the public and private sectors. Public-private partnerships, one method of asset maximization, are collaborations between a private, for-profit or not-for-profit entity, and government entities, in which “risks, resources and skills are shared in projects that benefit each partner as well as the community.”¹ Where appropriate, the Commission seeks to increase public value from State assets with the realization that private resources can help us to achieve this objective.

Part I: The Rationale

The Commission believes the State has an exceptional window of opportunity in which to act. New York State faces the largest budget deficits in its history. On February 17th, 2009 President Barack Obama signed the American Recovery and Reinvestment Act (ARRA), an infusion of funds into the economy specifically targeted at boosting State spending on infrastructure. While the stimulus funding is a positive sign for infrastructure spending, the Commission notes that this funding provides only a short-term solution to the State’s growing infrastructure needs. This Commission is uniquely positioned to develop a creative approach that allows for the fast-tracking of projects and long-term economic relief.

Furthermore, job creation has been a central part of the Commission’s focus. With the economy’s rapid deterioration over recent months, unemployment has risen to 8.9 percent

¹ Stratton, C. “Mechanisms for Job Creation,” Organization for Economic Co-operation and Development, 1989.

nationwide.² As a consequence, public investment in infrastructure is again taking the spotlight as a policy priority. While all forms of spending will produce jobs, the Commission believes infrastructure investment to be a highly effective engine for job creation. Simultaneously, there is a large appetite within the private sector for investment in infrastructure.

The Commission also recognizes that New York has extensive experience in PPPs across asset classes, though the process by which each has been realized has varied greatly. These projects have included both the creation and operation of new assets, and the reallocation of operational responsibility of existing assets. They have provided benefits from reducing the public cost of maintaining Central Park, to reducing the public cost of constructing new K-12 schools in Rensselaer; from leveraging human capital (NYSTAR), to leveraging private money to complete an otherwise unaffordable project (JFK Terminal 4). While New York's experience with PPPs highlights the value and importance of successful partnerships, the Commission notes that this effort has been largely piecemeal, revealing the need for the development of a strategic approach and comprehensive oversight.

Finally, asset maximization is critical to the competitiveness of New York State. More infrastructure spending means more jobs, and better infrastructure means better schools, better students, increased public safety and a higher quality of life for our citizens. We must invest in our State's physical and social infrastructure to both attract talent to New York, and retain the talent we have.

Part II: The Commission's Framework

In its Preliminary Report, the Commission undertook the fundamental task of defining the criteria the State must consider in order to maximize state assets. In this Final Report, the Commission has gone a step further to develop a framework for identifying asset maximization projects, assessing the value of these projects, and ensuring the protection of public policy values throughout the entire process. Additionally, the Commission has identified several labor and environmental protections that should be considered in every asset maximization project.

Part III: Recommendations

1. Establish a State Asset Maximization Board to provide a sustainable oversight process for asset maximization initiatives.

This Board would enable the State to formalize a consistent framework through which to assess the merits of proposed public-private partnership projects. By creating an upfront process for safeguarding public policy goals we could ensure that each time a project is proposed, the various questions pertaining to labor, environmental and value-for-money considerations would be addressed on a consistent basis. Such clear delineation of

² United States Department of Labor, Bureau of Labor Statistics, available at: <http://www.bls.gov/news.release/empsit.nr0.htm>, May 8, 2009.

principles would provide stakeholders with assurance that their issues have been addressed, while also providing critical oversight and enabling the fast-tracking of projects.

Additionally, the Commission is recommending a handful of pilot projects within the six identified asset classes that could be ideal for asset maximization. For many of these pilot projects, the State Asset Maximization Board will be the optimal vehicle for implementation. The Commission notes that these recommended projects are by no means the only projects suitable for asset maximization. Rather, these are projects the Commission has identified as having met our Guiding Principles, and which could serve as building blocks to prepare the State to undertake larger projects down the road.

Transportation

- 2. Implement a bridge improvement program to replace, rehabilitate and maintain New York's bridges through a public-private partnership.**
- 3. Establish a public-private partnership for construction of the Buffalo Harbor Bridge.**
- 4. Create a partnership between the New York State Department of Transportation (NYSDOT), private railroad companies, and investors to advance the development of high-speed rail passenger service on up to three designated corridors within New York.**
- 5. Partner with a private sector entity for the maintenance, repair, and operation of the Gowanus Expressway (I-278).**
- 6. Encourage the use of public-private partnerships by the Metropolitan Transit Authority (MTA) for Transit-Oriented Development.**

Social Infrastructure

- 7. Establish a pilot program that enables school districts with major anticipated capital construction programs, such as Yonkers and Syracuse, to utilize directly, or via the Dormitory Authority of the State of New York (DASNY) as owner's representative, alternative delivery approaches currently unavailable through existing legislative authority.**
- 8. Examine and define the conditions under which new sources of private capital might be accessed to support capital construction programs for healthcare facilities.**

Higher Education

9. Enable not-for-profit foundations affiliated with State University (SUNY) campuses to work with DASNY to finance supplementary capital expenditures beyond the SUNY and CUNY Master Plans.
10. Enable public builders constructing buildings for or on behalf of SUNY and CUNY to employ alternative construction delivery mechanisms including construction manager-at-risk and design-build.
11. Initiate a targeted pilot program for a select number of SUNY schools to lease campus lands to private entities under the authority of the newly established State Asset Maximization Board.

Energy

12. Support public-private partnerships in the development of electricity transmission and distribution infrastructure.
13. Identify ways to make the siting process for energy projects more efficient and timely, without abdicating its responsibility to a thorough and comprehensive assessment of a project's local and statewide impact.
14. Leverage the New York Power Authority's (NYPA) and the Office of General Services' (OGS) consolidated electricity purchasing powers to include all State agencies and authorities, schools, hospitals, local governments, and not-for-profit organizations.
15. Utilize long-term power purchase contracts with renewable energy developers to incentivize green businesses to locate in New York.
16. Assess the potential for new private investment in extracting natural gas in the Marcellus Shale.
17. Assess the potential for siting renewable energy projects, including wind, solar and hydro, on State-owned lands and waterways.
18. Support development of a process for installing renewable energy technologies on State facilities.
19. Evaluate the potential for reducing the energy use and costs of the State's aging properties, through the implementation of energy management strategies.
20. Review structural constraints to make energy efficiency programs offered by the New York State Energy Research and Development Authority (NYSERDA), NYPA, Long Island Power Authority (LIPA), DASNY, and utilities more accessible.

Information Technology

- 21. Pursue a public-private partnership with the wireless industry in which the State identifies and leases building rooftops and land holdings for all wireless carriers to expand their commercial network.**
- 22. Establish a public-private partnership for the State's existing data center assets to help finance new construction and/or to refurbish existing data centers.**
- 23. Construct an expanded broadband network by allocating risk across public owners and private contractors.**

Underutilized Property

- 24. Formalize a public-public partnership with Empire State Development Corporation (ESDC) and OGS to centralize authority in managing the State's real estate needs.**
- 25. Employ joint ventures, license agreements, ground leases, and other transaction alternatives to unlock revenue from underutilized assets that might be otherwise disposed.**
- 26. Develop a comprehensive database to inventory and report on the State's real estate assets by leveraging future brokerage agreements with the private sector for lease administration or other services.**
- 27. Support the establishment of a public-public partnership between the City of New York and the State to support the New York City Brownfield Cleanup Program.**

Preface

On October 2, 2008 Governor David A. Paterson created the New York State Commission on State Asset Maximization by Executive Order No. 11. The Commission is charged with examining how asset maximization can benefit New York State, and recommending whether any New York State assets are suitable candidates for public-private partnerships (PPPs).

The Commission's members were appointed by the Governor, including one each upon the recommendations of the Speaker of the Assembly, the Majority Leader of the Senate, the Comptroller, and the Attorney General, and one representing Labor. The Commission is served directly by an Executive Director, and is supported by a staff and several special advisors. Primary support has been provided by Empire State Development, the Executive Chamber, the Department of Transportation and the Division of Budget. As requested in Executive Order No. 11, the Commission submitted a Preliminary Report of findings on December 15, 2008, and now submits this Final Report of recommendations to the Governor.

Commission Process

The Commission has held meetings and hearings across New York State in order to provide recommendations for both specific pilot projects and a sustainable process for asset maximization. We have solicited input from the public and private sectors, in the form of testimony, proposals, and presentations. The Commission held numerous meetings with experts, elected officials, stakeholders, and members of the public, and reviewed both national and international examples of public-private partnerships.

In our Preliminary Report, the Commission described the process by which it requested proposals from private sources through a Request for Participation (RFP). The RFP has been the Commission's tool for receiving input from financial, legal, infrastructure and real estate firms on how partnering with the private sector could be a source of innovation. In the first ninety days of the Commission's work, it requested that firms submit proposals on the most effective means for achieving the Commission's goal of more efficient leveraging of the State's physical and human assets. In the second half of our work, the Commission incorporated the Guiding Principles established in the Preliminary Report into the RFP, requiring that each proposal address the nine principles that define the Commission's criteria.

The Commission has held hearings in New York City, Buffalo, Westchester, Long Island and Albany, and has received public testimony and RFP responses from over 120 organizations and individuals, including representatives of government, business, energy, technology, infrastructure, and institutions of higher education.

In October 2008, the Commission launched a website, www.nysamcommission.org, so that the public could track its work, view hearing notices, download Commission testimony and resources, and easily access information pertaining to the Commission.

Introduction

Governor David A. Paterson created the Commission on State Asset Maximization to identify measures to more efficiently leverage the State's resources, spur job creation, maintain and enhance the State's infrastructure, and encourage economic growth. In the short period of this Commission's existence, the economic reality in which we live has changed dramatically. In the past six months, the economic crisis has become increasingly dire; the State's revenues have dropped significantly and the Dow Jones Industrial Average is down 34 percent from one year ago. The Governor's early calls for the State to do more with less have proven to be especially prescient – now, change is not a luxury; it is a necessity.

During this tumultuous period of constrained credit markets and limited financial resources, the State must find innovative ways to fund its crumbling infrastructure and give taxpayers more for their money. The Commission has sought to establish an effective balance between the enhancement of public value from state assets and the realization that, even now, private resources can help us achieve this objective. Asset maximization is one measure to achieve efficient allocation of opportunity and risk between the public and private sectors.

The Commission believes that with its framework and standards, the State will in fact be better positioned to minimize the imbalances between the public and private sectors than with the ad-hoc partnering that has occurred up until now. With that charge in mind, the Commission has uncovered various means by which the State can unlock value from its assets to spur job growth and cost savings, ensure public safety and achieve maximum efficiencies, the results of which are contained in the recommendations of this Final Report.

State Assets

The Commission strongly believes that investing in our infrastructure is essential to economic recovery. As noted in our Preliminary Report, New York State is blessed with numerous assets that any state (and many countries) would envy. The State's enormous economy, the world's twelfth largest, has produced generations of leaders, public and private, who have invested billions of dollars in a vast transportation system, higher education system and environmental assets such as parks. The State also controls critical energy, technology and water infrastructure.

The current economic downturn makes it even more difficult for the State to maintain the level of investment needed to enhance the performance of these assets, deliver quality education, and ensure the public safety of its citizens. For these reasons, we must utilize innovative means to finance and deliver infrastructure projects. Without a committed, focused push by all interested parties, including the Governor, Legislature, organized labor and business, to explore the benefits of asset maximization and public-private partnerships, the State stands to miss out on billions of dollars in private sector investment and thousands of jobs. The Commission believes that implementation of the recommendations put forth in this Final Report will stimulate the economy by creating jobs, and is vital to

fostering the State's long-term economic development and competitiveness in an increasingly fragile economy.

Faced with the largest budget deficits in its history, the State has a window of opportunity in which to reverse course. While the collapse of the financial services industry on Wall Street has acutely encumbered the State's fiscal austerity, the overriding contributor to our financial status is the State's long-term practice of allowing spending to outpace revenue. Indeed, the task of this Commission is not to identify opportunities merely to fill budget gaps, but rather, to provide a framework for creating sustainable State asset maximization. Thus, in the State's overall financial recovery plan, there is no better time for the exploration of asset maximization.

Federal Stimulus Funding

On February 17th, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA), an infusion of \$787 billion into the economy, with upwards of \$126 billion targeted at boosting State spending on infrastructure.

While this stimulus funding is considerable, it is admittedly a stop-gap solution for advancing "shovel ready" projects and will not address the billions of dollars in needed infrastructure improvements. In fact, the sum allocated to State spending on infrastructure is a fraction of the more than \$175 billion in funding the NYSDOT estimates it will require over the next twenty years. The needs of this State are vast, and the stimulus, while unprecedented in size, will at best provide a short-term boost to the State's lagging economic engine.

Therefore, while the Federal funding will jumpstart many backlogged projects across the State, it cannot sufficiently address the public safety and economic development needs of New York. With projects like the Tappan Zee Bridge and High Speed Rail to Albany estimated to cost approximately \$14 and \$8 billion respectively, Federal and State funds will not and cannot continue to be the only source of procurement needs of this State. These "mega projects," in addition to the various projects across the State with costs ranging from \$100 million to in excess of \$1 billion, will not be completed without the assistance of private sector capital.

There are several positive signs that President Obama's administration recognizes that states cannot continue to fund transportation and infrastructure projects through traditional means, and that increased partnership between the public and private sectors is critical. For example, ARRA includes specific language encouraging the use of innovative financing in public projects, and U.S. Secretary of Transportation Ray LaHood has revealed that the upcoming 2010 reauthorization of federal transportation legislation will include significant funding for states that utilize innovative financing and private sector investment. Furthermore, President Obama's budget includes \$5 billion for a Federal infrastructure bank, another mechanism that could advance private sector investment in infrastructure.³

³ "Obama budget has \$5 billion for infrastructure bank," *Reuters*, February 26, 2009.

Without flexible project delivery methods, the State is constrained in its approach to the procurement of infrastructure. If New York State seeks to be competitive in the twenty-first century, create jobs, and ensure the public safety of its citizens, it must begin to think creatively. This Commission believes that adopting alternative procurement and financing methods like public-private partnerships is one of them many tools by which we can accomplish this goal.

Abroad, flexible delivery approaches have spurred a fusion of public and private capital that has delivered all forms of infrastructure, including non-revenue producing assets. For example, the United Kingdom has procured 221 primary, secondary schools and colleges, 181 hospitals, 62 transportation projects, 36 government buildings, sixteen prisons, nine court facilities, and numerous other projects through PPPs.⁴ Japan has twenty new PPP projects in the pipeline, and France has delivered a \$58 billion high-speed train through a PPP.⁵ In just three years, British Columbia, Canada has utilized PPPs to procure \$8 billion in projects.⁶

In the United States, approximately half of the states have begun to engage in PPPs. In fact, as recently as February 20, 2009, California passed legislation in tandem with the stimulus funding to allow for expanded use of PPPs and alternative delivery mechanisms – such as design-build – for their transportation infrastructure projects.⁷

A confluence of factors, from the State’s aging infrastructure and congestion, to the changing economic situation and Federal funding, has precipitated the need to identify new ways by which the State finances and delivers infrastructure projects. While President Obama’s Federal stimulus package provides a needed boost to infrastructure spending, we must recognize that the stimulus alone is not nearly enough to address the billions in future State infrastructure needs.

New York has its own distinct needs, a diverse mix of stakeholders, and valid public policy values including labor, environmental and minority- and women-owned business considerations. The recommendations of this Commission are intended to give New York additional tools to use in partnership with the private sector – while upholding our public policy values – to stimulate the economy, increase funding for public works projects, and maintain New York State’s competitive edge.

⁴ Partnerships UK Projects Database (2008), available at: <http://www.partnershipsuk.org.uk/puk-projects-database-search.aspx>.

⁵ CPA Australia (August 2007), available at: <https://www.cpaaustralia.com.au/cps/rde/xchg/SID-3F57FECB-9A286848/cpa/hs.xsl/Index.html>.

⁶ “Annual Report 2007-2008,” Partnerships British Columbia.

⁷ California Senate Bill No. 4, available at: <http://www.dot.ca.gov/hq/innovfinance/Public-Private%20Partnerships/SB%204%202nd%20Ext.%20Session.pdf>.

Part I: The Rationale

Infrastructure as an Investment

Job creation has been a central part of the Commission's focus when identifying projects that most effectively maximize state assets, which include human capital. With the economy's rapid deterioration over recent months, unemployment has risen to 8.5 percent nationwide.⁸ As a consequence, public investment in infrastructure is again taking the spotlight as a policy priority.

While all forms of spending will produce jobs, infrastructure investment is a highly effective catalyst for job creation. In a recent report, the Political Economy Research Institute estimates that infrastructure investment spending will create about 18,000 total jobs for every \$1 billion of new investment spending.⁹ Investment in core economic infrastructure, including energy and transportation, is particularly important in maintaining and improving economic performance.

However, the rate of public investment in these core areas has been falling precipitously since the 1970s, with a steep drop-off in the last decade. Since 1980, the growth of infrastructure investment on average has lagged behind overall economic growth. The result has been a worsening infrastructure deficit and mounting investment needs.

Consequently, states are exploring creative ways to attract private investment in infrastructure. Well-executed projects can create attractive and transparent alternative investment options with the flexibility to withstand economic cycles and provide sustainable revenue generation to both public and private sponsors. The recent passage of the American Recovery and Reinvestment Act of 2009, which falls \$1.1 trillion short of our nation's infrastructure repair needs over the next five years, has showcased the enormous need for private investment.

Availability of Capital

Simultaneously, there is a large appetite among the private sector for investment in infrastructure. Despite the overwhelming capital and liquidity constraints facing the global economy, equity infrastructure funds have grown markedly. This growth has continued despite the current economic downturn because infrastructure assets, which are critical to the everyday needs of society, generate stable, inflation-protected returns that are largely shielded from market volatility. For fund managers and investors, infrastructure has core characteristics such as inelastic demand, long life cycles, and stable cash returns that allow for portfolio diversification.

Between 2006 and 2008, total private equity commitments to infrastructure grew from approximately \$60 billion to \$180 billion, respectively, and twenty global infrastructure

⁸ "Bureau of Labor Statistics," United States Department of Labor, March 6, 2009.

⁹ Heintz, James, Robert Pollin and Heidi Garrett-Peltier, "How Infrastructure Investments Support the U.S. Economy: Employment, Productivity and Growth," Political Economy Research Institute, January 2009.

deals over \$500 million were announced in 2008.¹⁰ While the availability of equity capital has held steady or grown, debt capital markets remain largely frozen – preventing investors from leveraging infrastructure transactions at the aggressive 80:20 debt-to-equity ratios seen at the height of the last credit cycle.¹¹

While debt financing remains difficult to source, creative financing structures can be implemented where concessionary sponsorship is strong. For example, in October 2008, ACS Infrastructure Development (ACSID), through its I-595 concessionary entity, was awarded a contract by the Florida Department of Transportation (FDOT) to design, build, finance, and operate the I-595 Express for a total of 35 years. On March 3, 2009, FDOT brought this \$1.8 billion project to a financial close through a combination of nearly \$800 million of bank loans, \$200 million in equity, and \$700 million in Federal Transportation Infrastructure Finance and Innovation Act (TIFIA) funding. I-595 demonstrates that despite the tumultuous financial climate, investor appetite for public-private partnerships in infrastructure remains strong.

Additionally, Los Angeles and Pittsburgh are hiring advisers to develop PPPs with their public parking systems, Milwaukee retained advisers to concession their water system, and discussions are being undertaken in New Orleans, Kansas City, Minneapolis-St. Paul, and Milwaukee regarding the potential long-term concessions of their respective airports. These projects indicate that, market difficulties notwithstanding, municipalities and their authorities continue to pursue creative private sector investment in their assets.

Infrastructure Investors

With the passing of the American Recovery and Reinvestment Act, many pension and retirement funds that were previously exploring infrastructure as a portfolio investment option have found increased validation and enthusiasm for the asset. This familiarity and increased awareness is critical for the sustainability and growth of fund allocations to infrastructure.

A recent Pensions and Investments survey reported that 17 of the 200 largest pension funds had defined allocations for infrastructure investment. Overall, funds allocations in infrastructure grew 270 percent from \$600 million to \$2.28 billion for the year ended September 30, 2008. While some noteworthy pension funds are already invested, others are working to increase or carve out allocations for infrastructure investment. In January 2009, Connecticut State Treasurer Denise L. Nappier announced her plans to address the Connecticut Retirement Plans and Trust Funds Investment Advisory Council to gain approval for alternative asset investments, including infrastructure.¹² The United Nations

¹⁰ Note: Scenario assumes approximately \$180 billion in available capital is distributed evenly over a ten-year period and does not take into account fluctuations in funds' size. Figures provided by Morgan Stanley.

¹¹ "Infrastructure 2008 – A Competitive Advantage," Urban Land Institute and Ernst & Young, 2008.

¹² "Connecticut closer to alternative investing," *Pensions and Investments*, December 30, 2008.

Joint Staff Pension Fund and Arizona Public Safety Personnel Retirement System have also been reported as seeking to expand into the infrastructure asset class.¹³

The nature of pension fund infrastructure investment is also evolving rapidly. In February 2009 the Dallas Police & Fire Pension Fund directly contributed 10 percent of the equity in a \$2 billion North Texas highway development project. This marked the first direct investment into a project by a U.S. pension fund. Additional project sources of funding included bank debt, U.S. DOT loans, and gas tax dollars.¹⁴ (For a full list of U.S. pension funds currently invested in infrastructure, see Appendix B.)

Overall, the Commission believes investment in our infrastructure to be a highly effective engine for job creation and of paramount importance to assuring our economic recovery. At the same time, there exists a large appetite among the private sector for investment in infrastructure, and equity infrastructure funds have grown markedly. New York State should take advantage of these opportunities within the market, and coupled with the Federal stimulus, seek out innovative ways to not only boost public and private investment in our infrastructure, but to sustain it over the long-term.

¹³ "U.N. eyes real assets, alts consultants" and "Arizona Public Safety commits to infrastructure," *Pensions and Investments*, December 30, 2008 and February 9, 2009, respectively.

¹⁴ "Stimulus Bill May Help CalPERS," *Pensions and Investments*, February 23, 2009.

New York’s Experience with Asset Maximization

In its Preliminary Report, this Commission found that public-private partnerships can indeed enable the State to more effectively leverage its assets. The Commission also recognizes that New York has extensive experience in asset maximization, though the process by which the State realized each project has varied greatly.

To start, New York State has successfully designed and implemented a number of innovative transportation and social infrastructure asset maximization initiatives. These projects have included both the creation and operation of new assets, and the reallocation of operational responsibility of existing assets. They have provided benefits from leveraging public facilities and human capital for development of advanced technology (NYSTAR), to leveraging private money for completion of an otherwise unaffordable project (JFK Terminal 4). This portfolio also provides us with valuable lessons in ensuring public oversight (Grand Central retail development) and protecting labor interests (Rensselaer School District). The following are some of the most demonstrative examples of successful PPPs implemented by New York State:

Transportation: JFK AirTrain

Benefits: Expedited Delivery, Risk Transfer

In the mid-1990s, as part of capacity planning at John F. Kennedy Airport, the Port Authority of New York and New Jersey (PANYNJ) aimed to improve both access to JFK from existing transit networks and inter-terminal access. The proposed 8.1-mile “AirTrain” light rail project would construct a rail system between each terminal, as well as to transit connections, long-term parking, and car rental facilities.

Following the effective implementation of the AirTrain project at Newark Airport, the PANYNJ decided to accelerate their own project by using a “design-build-operate-maintain” method, awarded to the lowest bidder. The winning consortium was led by Skanska USA Civil and Bombardier Inc. After the \$1.9 billion project opened in December 2003, the consortium agreed to operate and maintain the system per contract stipulations for the next five years. Thus far, the AirTrain JFK has provided several benefits directly related to the contract: the final project cost was more than \$100 million below budget, the consortium assumed the risk for design and construction-related aspects, and the contract included incentives for on-time performance, as well as clean windows, operating doors and swept floors.¹⁵

Transportation: JFK Terminal 4

Benefits: Efficiency, Cost Benefits, Risk Transfer

Another success in New York’s transportation infrastructure history also occurred at John F. Kennedy Airport. Port Authority officials understood that a major capital expenditure was necessary to bring JFK into the modern age. As part of a \$9 billion airport overhaul, the

¹⁵ Kagan, David. “Presentation to the NYS Commission on State Asset Maximization,” November 6th, 2008.

international terminal – or Terminal Four – was completely redesigned to accommodate the five million passengers who travel through it each year.

While Port Authority officials recognized the immediacy of the project, they did not have the cash on hand to build it. The \$1.4 billion, 1.5 million-square-foot capital project required the Port Authority to leverage limited State government funds into innovative solutions through a public-private partnership that would address a major infrastructure deficit. Port Authority transferred risk to the private sector and sought an on-time and on-budget facility, and Terminal Four broke new ground as the first major American airport terminal financed and managed through a PPP. Port Authority granted a management group, JFK International Air Terminal, a 25-year lease for the 165 acres on which the terminal was built.

The modernized terminal has been a success for Port Authority and the millions of passengers who frequent it. JFK's most significant success is its much-increased capacity (six million passengers per year), and highly modernized systems (state of the art security, for example). JFK's Terminal Four, the archetypal modern American terminal, was officially opened in May 2001 – the result of a successful and creative partnership between the public and private sectors.

Transportation: Grand Central Retail Development

Benefits: Cost Savings, Expedited Delivery, Retention of Public Oversight

In 1988, the Metropolitan Transit Authority (MTA) undertook a study of Grand Central Terminal to develop a Master Plan to improve service to transportation users, upgrade the quality of the merchandising, increase the amount of retail space compatible with transportation users, and maximize income to help pay for the redevelopment and restoration of the historically sensitive aspects of the building. In 1993 the MTA selected a joint venture of Jones Lang LaSalle and Williams Jackson Ewing to undertake the retail redevelopment of the terminal.

Construction of this \$259 million, 860,000-square-foot historic restoration and revitalization project took place from April 1994 through the third quarter of 1998. Throughout the course of this massive, high-profile renovation project, the development team accommodated ongoing railroad operations and 500,000 pedestrians per day. The project was delivered under budget and on schedule. Widely accepted as a successful PPP, Grand Central Terminal has been restored to its rightful status as the greatest train station in the world and one of the greatest public spaces in New York.

K-12 Construction: Rensselaer Public Schools

Benefits: Efficiency, Cost Benefits, Protection of Labor Interests

New York State has achieved success in social infrastructure asset maximization as well. After residents voted down a school construction referendum, the Rensselaer school board was faced with few options to renovate two of its aging schools. A private developer, U.W. Marx, proposed an unconventional solution – to demolish the town's riverfront high school,

build a mixed-use residential development on its original site, and construct a new school on an alternative site that would then be leased back to the city. After gaining legislative approval, in 2007 the city contracted U.W. Marx to design and build the new school, leasing it for \$60 million. The result was a modern structure that has few maintenance needs and uses less energy than the previous one. This alternative process allowed the school district to unlock underlying asset value – in this case, desirable real estate – that could be better utilized by the private sector in return for a new school constructed at a reduced cost.

Energy: LIPA

Benefits: Efficiency, Cost Benefits, Retention of Public Oversight

New York State has had success maximizing energy assets. For example, Long Island Power Authority (LIPA) has recently partnered with three private sector companies for power generation projects on Long Island. LIPA selected Calpine and Pinelawn Power to design, build, and operate two 79.9 mega watt combined-cycle generation plants in Bethpage and West Babylon, signing a twenty-year Power Purchase Agreement (PPA), contractually guaranteeing that LIPA will purchase a steady stream of power from the plants. Both plants were on-line quickly, delivering power within a year of the groundbreaking. LIPA also selected Caithness Energy to design, build, and operate a 350 megawatt facility in Brookhaven, which is currently under construction and subject to a twenty-year PPA, guaranteeing that LIPA will purchase approximately 85 percent of that yield.

Technology: NYSTAR

Benefits: Efficient Use of State Assets, Human Capital Investment

In the technology sector, New York State has had success maximizing its robust network of technology companies and research institutions. The NYSTAR Research Equipment and Facilities Database is a searchable database of research equipment, labs and prototyping facilities at New York's colleges, universities, and research centers that facilitates partnership between research and industry, public and private. Companies and researchers can leverage existing equipment, facilities, and technical expertise for research and product development. This innovative solution for linking researchers and industry leaders is particularly useful where equipment or facilities are too expensive to purchase or develop on-site. The database, which includes technologies such as Advanced Materials and Nanotechnology, Environmental and Energy Systems, Information Technology, Life Sciences, Microelectronics, Imaging, and Sensors and MEMs, is continually being updated with new items and resources.

Conclusion

While New York has had success with many asset maximization initiatives, the Commission has found that the effort has been a largely piecemeal approach. Each project has adhered to its own unique set of standards and has been structured without a tested process. Enabling legislation has often been required for these projects, slowing down the process considerably and subjecting the projects to political decision-making rather than sound policy and business principles. New York's experience with asset maximization highlights the value and importance of successful public-private partnerships, while also revealing the

obstacles to developing a strategic approach and comprehensive oversight. For New York State to achieve the greatest cost savings and public value, as well as a sustainable, long-term approach to asset maximization, it will need to create a streamlined, standardized process.

Part II: The Commission's Framework

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As noted earlier, Governor Paterson's goals in creating the Commission were to identify measures to more efficiently leverage the State's resources, spur job creation, derive new revenues to maintain and enhance the State's infrastructure, and encourage economic growth. The Commission has worked aggressively to achieve these goals, and in the process, sought to find a balance between incorporating proven ideas for asset maximization and remaining steadfast in our adherence to the public policy criteria we have identified. Furthermore, current financial challenges have compelled the Commission to contemplate the long-term limitations of the State's current procurement process and consider alternative delivery methods for certain projects while preserving the State's commitment to fair labor practices, a clean environment and other public policy goals.

In its Preliminary Report, the Commission developed a set of Guiding Principles that represented the criteria used by the Commission to evaluate prospective opportunities for asset maximization across New York State. These standards have been applied across assets classes and inform the recommendations that appear later in this report. These Guiding Principles are:

1. Asset maximization should spur quality job creation and economic growth.
2. Changes in the management, financing or use of an asset should allow for private sector innovation that accelerates the delivery of capital projects and produces demonstrable cost savings as compared to traditional delivery methods.
3. Asset maximization should optimize New York State's share of Federal and private capital resources to expand overall spending targeted for infrastructure development.
4. A transparent government oversight process should be established for public-private partnerships to ensure significant public input and a thorough review of proposals.
5. Asset maximization proposals should conform to the State's public policy goals, ensuring that necessary environmental and labor protections are preserved.
6. Geographical balance should be key factor in the identification of asset maximization opportunities.
7. Minority- and Women-Owned Business Enterprises (MWBEs) should be encouraged to participate in asset maximization initiatives. Eliminating barriers to MWBE participation in partnering with the private sector is key to realizing the benefits of these projects in every corner of the State.

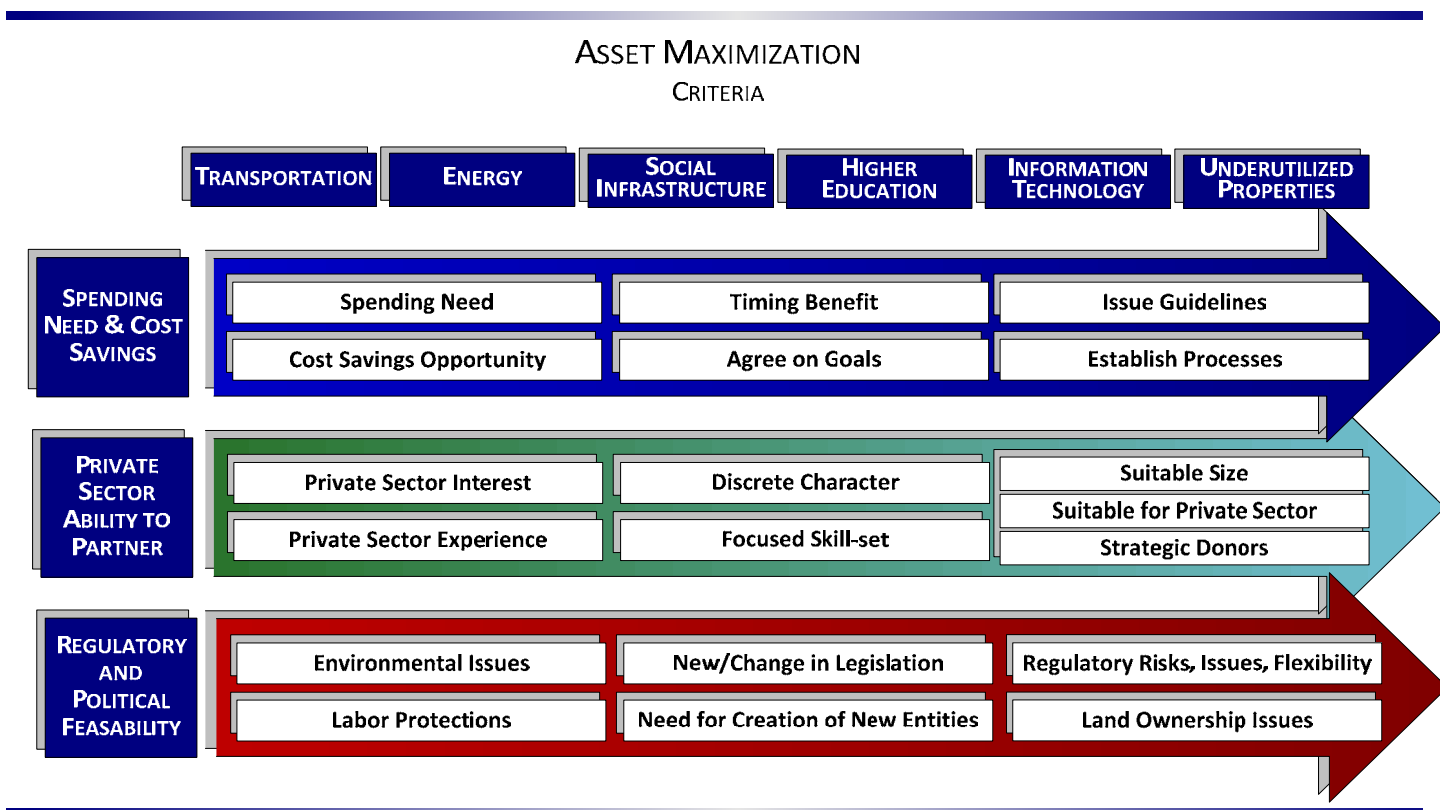
Asset Identification

For the purposes of our Final Report, the Commission has identified six categories of asset classes: Transportation, Higher Education, Social Infrastructure (K-12 Education and Healthcare), Energy, Information Technology, and Underutilized Properties (referred to in our Preliminary Report as Surplus Properties). Given the tremendous ongoing need for asset

maximization, the State should continue to assess these and other asset classes for untapped value.

The key factors that contribute to the decision to identify a project for asset maximization fall into three categories: (1) spending need/cost savings; (2) private sector ability to partner; and (3) regulatory and political feasibility (See Figure 1).

FIGURE 1: Key criteria for identifying projects for asset maximization



Spending Need / Cost Savings

The Commission’s Preliminary Report included a detailed description of the State’s need for infrastructure investment across asset classes. In Figure 1, the “Spending need/cost savings” lens identifies assets and projects that will require the greatest investment in the near term, and/or where a partnership could generate the most significant revenue increase, cost savings, advanced investment, opportunity for capital raising, enhanced risk sharing, or economic stimulus in terms of job creation. The process for identifying those assets that would benefit from an asset maximization solution in quantitative terms, referred to as a “Value for Money” analysis, is described below.

Private Sector Ability to Partner

The “private sector ability to partner” criterion in Figure 1 takes into account the size, diversity, needed competencies, complexity of the project, and the suitability for private sector financing and risk-taking. In evaluating strategic partners for future asset

maximization projects, the State should carefully consider the solvency and performance track record of its project partners.

It is also critical that the State seek out partners whose guiding principals are aligned with its own, especially as they relate to labor, including hiring and contracting policy standards that directly affect workers. Many pension and private equity funds have proactively created labor policy standards that they and their partners must adhere to in order to protect and maintain workers rights and employment opportunities. Some firms, including New York-based LamdaStar, have created management positions, such as Chief Labor Officer, to monitor and effectuate these labor policies.¹⁶

Further, in order to strengthen the private sector's appetite and ability to partner, the State should better define the "rules of engagement" for undertaking public-private partnerships. As illustrated in an earlier section, New York has a diverse history of undertaking public-private partnerships. In most cases, new legislation was required to advance the project, accompanied by many questions among stakeholders and potential private sector partners. This need to constantly recreate a process that protects all stakeholders and ensures value for money considerations are accounted for, minimizes the amount of private engagement the State can undertake.

Therefore, in order to attract the strongest group of investors to the table to compete for an asset maximization project, New York State should have a process in place before a project is advanced through the RFP stage. The suggested process would provide greater certainty to investors that the project has a realistic chance of occurring and that there is a transparent process through which it will be screened.

Regulatory and Political Feasibility

The "regulatory and political feasibility" criterion in Figure 1 identifies legislative, regulatory and political hurdles to any partnership, and the potential means to overcome those hurdles, which include labor considerations, environmental concerns, and the need for legislative reform. The Commission directly addresses some of these considerations in the next section of this Report.

Value for Money Analysis: the Commission's Analytical Framework

Beyond a commitment to a set of Guiding Principles, the Commission believes that once a project addresses these public policy goals, there must be an analytical process for evaluating projects. This analytical framework would be informed by a Value for Money analysis (see Figure 2 below).

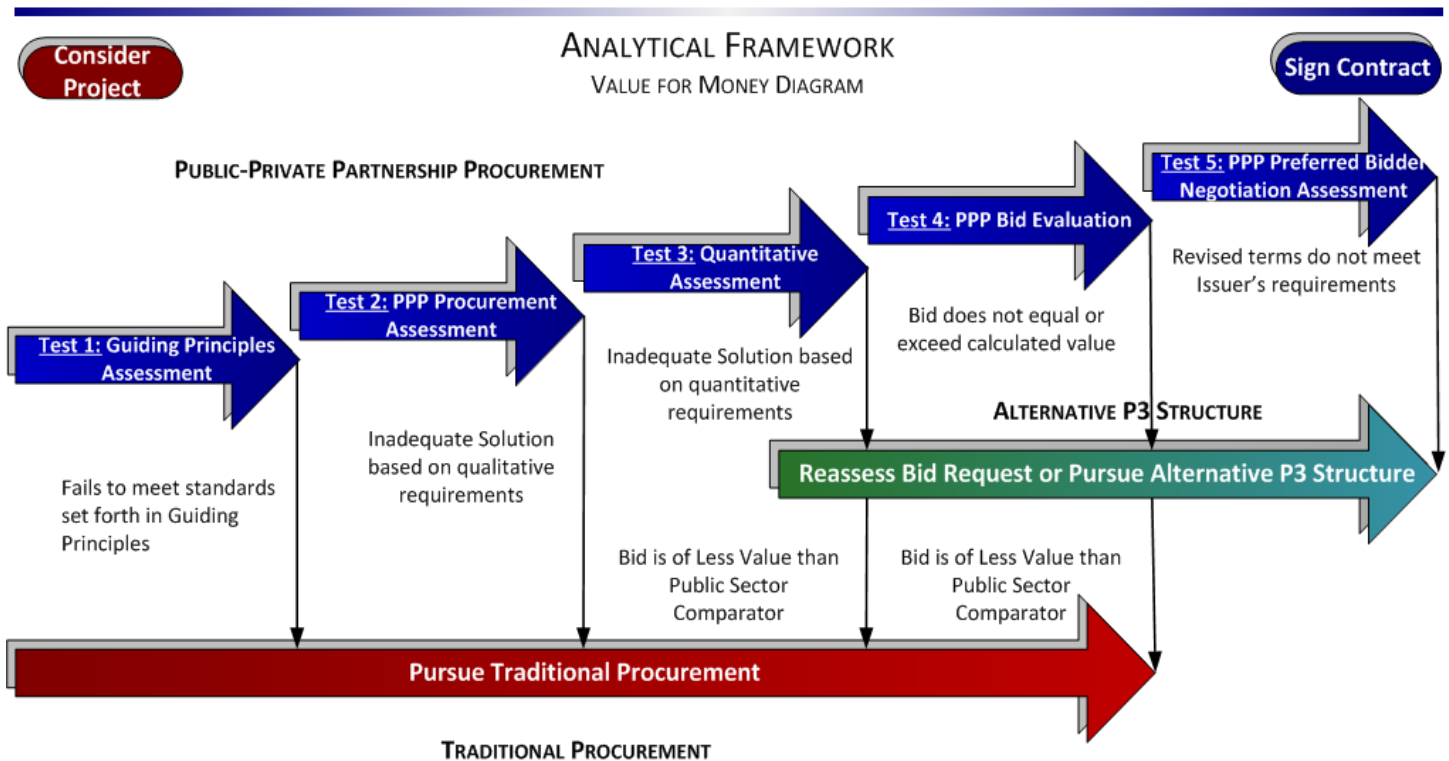
Value for Money is a method of analysis for comparing the total estimated life-cycle costs of traditional procurement versus alternative procurement. The estimated life cycle cost for traditional procurement becomes a "public sector comparator" against which to measure

¹⁶ LamdaStar Infrastructure Partners, LP, "Jobs for Infrastructure – Organized Labor Hiring and Contracting Policy," 2008.

the total life cycle cost of any alternative public-private partnership opportunity.¹⁷ Life cycle costs may include property acquisition, design, construction, maintenance and operations, financing, ancillary costs, as well as any risks retained by the public sector for the useful life of the asset. If the estimated costs of the alternative procurement are less than the estimated costs of the traditional public sector procurement, then there is positive Value for Money, and the public-private partnership opportunity warrants further examination.

Last year, for instance, Montreal utilized a Value for Money analysis to determine whether the Autoroute 30 Highway project should be undertaken as a public-private partnership or through the traditional procurement approach. After a Value for Money analysis revealed that the Province of Quebec could save \$750 million through an alternative delivery method, a public-private partnership was advanced for the project. The decision of whether or not to pursue a public-private partnership should include an analysis of whether it will provide more value to the public than traditional procurement methods. An effective Value for Money analysis is illustrated in Figure 2.

FIGURE 2: Analytical Framework



Elements Contributed by Scott Balice Strategies

¹⁷ "Assessing Value for Money: A Guide to Infrastructure Ontario's Methodology," Infrastructure Ontario, 2007.

Risk Allocation

Effective risk allocation is an essential component of any public-private partnership. In traditional infrastructure procurement, the public sector bears essentially all project costs and related risks, including those associated with property acquisition, design, construction, financing, operation, and maintenance. In a public-private partnership, project risks are allocated between the public and private sector based on each partner's ability to most effectively price and manage certain risks. Asset maximization can be achieved when the optimal allocation of opportunity and risk is struck between the public and private sectors. Well-structured public-private partnership agreements are tailored to address the specific characteristics of a particular project and to allocate risks to the party best positioned to assume and price those risks. Furthermore, selection of the right contractual and financial models facilitates efficient allocation of risk and opportunity, which will ultimately determine the Value for Money available for a project under a particular asset maximization approach.

Cost of Capital

With a few limited exceptions, public infrastructure within New York State has historically been financed either on a "pay-as-you-go" basis (e.g., project costs are funded with tax receipts when and as available) or with proceeds of tax-exempt debt. While tax-exempt notes and bonds generally carry lower rates than taxable debt, assets financed with tax-exempt debt must meet certain eligibility criteria, which generally include pre-defined constraints on private participation in a funded project. Certain exceptions may be available for projects receiving allocations of tax-exempt "private activity bond" capacity, which has been the case in sectors such as U.S. airport and housing programs, or where public funds secure debt service payments, and project development and operating contracts are carefully structured to meet IRS guidelines. It is important that each of these possibilities be considered in developing the public sector comparator models and determining the Value for Money analysis as described above.

Despite the yield advantages of tax-exempt financing, experience has proven that the benefits of transferring many development and long-term maintenance risks to the private sector can result in positive Value for Money on a life cycle basis. By offering performance-based project development and long-term lower cost guarantees at more attractive levels than available through the public sector, private bidders can produce savings compared to a traditional publicly financed approach.

As previously noted, the Florida I-595 Managed Lanes public-private partnership provides a recent example of a public agency capitalizing on private sector willingness to share risk. In return for offering a 35-year right to develop, operate and maintain the 10.5-mile commuter highway project, ACS Infrastructure Development (ACSID) committed to capping annual costs at approximately \$64 million, which is estimated to result in \$275 million of life cycle cost savings. Rather than financing the project with tax-exempt bonds and limiting its ability to share in the long-term project performance efficiencies, ACSID chose to fund the \$1.67 billion project cost with approximately \$1.46 billion debt, including \$780 million of taxable bank debt and \$678 million of subordinated U.S. DOT financing loan debt (TIFIA),

and \$208 million of private equity. In the case of I-595, the Florida Department of Transportation determined that the ability to take a life cycle view of an important congestion-relieving project resulted in substantial project cost savings to taxpayers. Ultimately, cost of capital was just one element of the total life cycle cost and Value for Money analysis outweighed by other pricing considerations.

Asset Maximization Process

The Commission has considered asset maximization strategies broadly that can be categorized in three classes: public-private partnerships, public-public-partnerships, and other innovative initiatives to unlock value from undervalued and underutilized assets.

The selection of an asset maximization model varies on a case-by-case basis depending on the financial, political, and operational objectives the public sector pursues. These factors are similar to those used to initially identify an asset as appropriate for asset maximization, and the questions asked during the selection stage will in many ways inform those in this feasibility stage (indicated in test one in Figure 2).

In addition to considering the Commission's Guiding Principles, the following qualitative and quantitative questions should be addressed at each stage of evaluating projects for asset maximization:

- Does the cost of capital justify private leasing?
- Does the State prefer an initial payment or recurring revenue?
- What degree of control executed through what mechanism does the public entity need to retain to protect appropriately labor and service levels?
- Are there legal restrictions to certain levels of private involvement?
- To what extent does the State wish to maintain the flexibility to make operational adjustments?
- How will upfront proceeds be used?
- How will appropriate risk and revenue sharing adjustments be handled when future circumstances create the need to reallocate?
- Are there properly developed oversight and monitoring devices?

This process, coupled with the consideration of the Commission's Guiding Principles, will work to ensure that asset maximization projects uphold New York's public policy goals. Some of these specific goals, including labor and environmental protections, are outlined in the next section of this report.

Part III: Recommendations

Recommendation: Sustainable Asset Maximization

As demonstrated earlier, New York has a long history of public-private partnerships with varying degrees of success across a range of asset classes. These have included Stewart Airport, the JFK Air Train, the Belt Parkway, Grand Central Terminal, and the Rensselaer school district. Each of these projects has operated with differing standards and criteria for engaging the private sector. As a result, each time an asset maximization project that involves private sector participation is put forth, all stakeholders must push for the protection of their interests in transaction specific legislation. To break this cycle, the merits of different implementation approaches should be assessed through a comprehensive policy-driven approach with uniform criteria.

The current piecemeal approach, which requires separate legislation for each significant public-private partnership, has also put the State at a disadvantage with regard to leveraging Federal stimulus funding. Per Federal rules concerning the use of infrastructure money, most funds must be committed within 120 days. If the State had the ability to use design-build procurement (as opposed to the traditional design-bid-build approach) or alternative project delivery methods to fast-track projects, it may be able to undertake more projects within that short time frame.

Globally, the governments that have proven the most successful at implementing these projects on an ongoing basis have done so by creating a governing entity with oversight over asset maximization efforts. As these entities mature they are able to become better counterparties to the private sector with an understanding of what works and what does not. By taking a long-term view, these agencies are able to examine the successes and failures of projects, from concept to completion and on into operation.

In the United Kingdom, for instance, the Private Finance Initiative (PFI) was announced in 1992 with the aim of achieving closer partnerships between the public and private sectors, to increase the involvement of the private sector in the provision of public services and to enhance the value received by society. The PFI focused on a number of significant projects, helping departments to set priorities from the outset while trying to facilitate negotiations and to establish value for money. Created within the Treasury Department, the PFI consisted of both a policy arm, staffed by Treasury professionals, and a project arm staffed by individuals from the private sector.¹⁸ Since the 1990s, PFI has been the most common delivery mechanism for providing new assets such as hospitals, schools, roads, courts, prisons, social housing, water and waste projects, police and fire stations, airports, roads, rails and major defense equipment. As of November 2008, 628 projects had been contracted under the PFI, with a combined capital value of just under £62 billion.¹⁹

Likewise, Canada has developed successful models for sustainable asset maximization in

¹⁸ "Partnerships for prosperity - a new framework for the PFI," HM Treasury News Release (1997), available at: http://www.hm-treasury.gov.uk/press_132_97.htm.

¹⁹ "Private Finance Initiatives: Statistics," HM Treasury, available at: http://www.hm-treasury.gov.uk/ppp_pfi_stats.htm.

Ontario and British Columbia. Infrastructure Ontario, a corporation of the Ontario government, was established in 2006 to deliver public infrastructure improvements through public-private partnerships. Infrastructure Ontario uses a PPP project delivery model called Alternative Financing and Procurement (AFP) to strategically involve the private sector in infrastructure projects that yield the best value for money while maintaining appropriate public control. For the province's biggest projects, Infrastructure Ontario uses private finance and procurement to rebuild and rejuvenate vital infrastructure, while the public sector maintains control and ownership. Infrastructure Ontario has developed specific guidelines to determine whether a project is suitable for AFP. These include: paramount public interest; demonstrable value for money; appropriateness of public control; accountability of responsibilities; fairness, transparency, and efficiency of process. Further, Infrastructure Ontario is overseen by a board of directors that includes stakeholders from the private sector, industry associations and public agencies.

Partnerships British Columbia (BC) is another example of a government-owned agency with a strong mandate to promote, enable, and implement public-private partnerships. The aim of Partnerships BC is to impose institutional discipline on the PPP procurement process across the Province through its three lines of service: 1) business planning (case analysis and feasibility study); 2) procurement process; and 3) implementation or post-completion advice. The company develops standardized transaction documents and processes, thus reducing transaction costs and duration for the benefit of both the public and private sectors. The company also serves as the entry point for the private sector to bring forward ideas and solutions. To date, British Columbia has undertaken the largest number of completed and ongoing infrastructure PPPs of any single jurisdiction in North America.

As of end of FY 2008, Partnerships BC reported that they had more than twenty partnership projects that have been, or are scheduled to be, delivered on time and on budget in communities all across British Columbia. Of these projects, five have reached the operational stage and each project was completed either on or ahead of schedule and within budget. Of the projects that are currently under construction, all are on or ahead of schedule and on budget. Together, these projects make up a total investment of nearly C\$8 billion, C\$5 billion of which is private capital.

Creating a Process for Sustainable Asset Maximization

Recommendation: Establish a State Asset Maximization Board (the Board) to provide an oversight process for asset maximization initiatives. The Board of Directors that oversees this entity should be diverse and include representation from labor, the legislature, public agencies, and the private sector. For many of the pilot projects set forth in this Report, the State Asset Maximization Board would be the optimal vehicle for implementation.

Board Purpose and Function

This Board would enable a consistent framework through which to assess the merits of proposed asset maximization projects. By creating a process for safeguarding public policy

goals upfront, each time a project is proposed, the various questions pertaining to labor, environmental and value-for-money considerations could be addressed on a consistent basis. Such clear delineation of principles would allow projects to move forward more rapidly while providing stakeholders with assurance that their issues have been addressed. Furthermore, the creation of such a board would ensure the protection of the Guiding Principles established in our Preliminary Report, which include: spurring job creation and economic growth; optimizing the State's share of Federal resources; providing appropriate governmental oversight, transparency and public input; ensuring the preservation of environmental and labor protections; ensuring geographical balance; and encouraging the participation of Minority- and Women-Owned Business Enterprises.

In addition, this entity would strive to ensure that asset maximization projects are not undertaken as a means of selling State assets to close budget gaps or outsourcing State workers; but rather to expand capacity, improve existing services, and create more private and public sector jobs. Serving as a critical entry point for private sector ideas and solutions and as the guardian of the public interest, the Board would provide a transparent oversight process that includes necessary upfront protections for safeguarding taxpayer interests.

Initially, the Board should give serious initial consideration to the pilot projects suggested by this Commission to determine if they are suitable for asset maximization. Once a project is approved by the Board, necessary authority would be granted to the relevant agencies to implement the project using the financing techniques and delivery approaches contained in the Board's authorization. Agencies would retain contracting control but rely on the Board for guidance, expertise and compliance with the Board's authorization. Thus, the Board would not serve in any procurement role; rather, it would act as an enabling body to provide agencies, authorities and local governments with the ability to engage in public-private partnerships on a project by project basis, while ensuring its approval and due diligence processes.

In addition to enabling proposed public-private partnerships, the Board would also provide advisory support to State agencies and authorities concerning infrastructure partnership suitability and best practices. The staff that supports this Board should be small and nimble, and consist of current employees transferred from relevant agencies. The staff would assist in analyzing the qualitative and quantitative value of potential projects to inform the Board's decision of whether or not to pursue the project. The Board's staff could also make available to other agencies or authorities research and analysis based upon lessons learned from previous partnership projects undertaken in the U.S. and internationally.

To prevent the formation of a bloated bureaucracy, the Board and its staff should remain focused so that agencies may develop the internal capacity to identify and implement effectively public-private partnerships. The staff would help agencies and authorities to standardize forms, contracts and approval processes to dramatically reduce project timetables and transactions costs. From this process the Board would create repositories throughout State government of dedicated infrastructure and public-private partnership professionals, empowered with invaluable skill sets to develop and transfer experiences from one project to the next and create standard frameworks for completion of projects.

Finally, the Board should be largely self-funded through payment of fees such as reasonable application fees, as is the case in California, Virginia, and the United Kingdom.

Board Oversight Process

Central oversight by the Board will bring the following elements to consideration of public-private partnerships and other alternative delivery mechanisms: (1) clear definition of eligible projects; (2) criteria for considering alternative delivery that utilizes the Commission's Guiding Principles and Value for Money Analysis; (3) safeguards for ensuring the process fairly measures the benefits of alternative versus traditional operation or delivery; (4) expertise in the allocation of risk, and protection of the public interest during implementation; (5) oversight of agencies to ensure the integrity of both evaluation and implementation process; and (6) an open and thorough review of proposals.

As noted above, any agency or authority that desires to advance a public-private partnership proposal would seek approval through the Board. If, for instance, a State agency or authority chose to advance a potential public-private partnership through the Board, the agency/authority's staff would work with the Board and its staff to determine if the proposed project meets the qualitative standards (the Commission's Guiding Principles) and quantitative standards (Value for Money Analysis).

If the Board's staff determines the proposed public-private partnership structure to be viable, then the project will be presented to the Board of Directors and the members will have the discretion to advance the project. If the Board of Directors approves the project, then the client agency's staff and the Board's staff will continue a rigorous quantitative analysis through a Request for Proposals (RFP) process. If the project cost, as determined through the alternative delivery approach, is lower than the public sector comparator (traditional procurement approach) for the value of the project, then the client agency will negotiate the contract. The public comparator will be standardized across agencies and reflect a valuation method that the Office of the State Comptroller deems appropriate. If the negotiated terms of the bid are consistent with the agreement then the agreement will be signed and implementation will begin.

Project Implementation

Once a public-private partnership agreement is finalized, the Board should continue to play a significant oversight role throughout project implementation. The Board should work in close cooperation with the relevant client agencies for which public-private partnership authority is being granted to make certain the terms of the contract are being met. Lack of compliance with a Board authorization could result in the termination of a project until compliance or a modification of the original authorization is achieved or in the rejection of future projects from the same sponsors. The Board's staff should serve as an additional check and balance to ensure adherence to the Commission's criteria and to ensure progress in accordance with contracted timetables.

Board Structure

The Board of Directors of this entity would be composed of the following members: one Chair, appointed by the Governor, one State Senate appointee, one Assembly appointee,

one Comptroller appointee, one labor appointee, and four private sector gubernatorial appointees with relevant public-private partnership experience. Membership on this Board would be unsalaried, and would include an expectation of regular and direct participation so that Board members would have ample opportunity to gain experience and lend their expertise and judgment to the Board's deliberations and decisions. It is essential that conflicts of interest be avoided to ensure the Board has the credibility necessary to fulfill its mandate. This new entity could also have a specified sunset date (e.g., five years following the commencement of operations) so that it may be reshaped once it has gained important knowledge.

Board Location

The history of ESDC illustrates a unique ability to partner with the private sector, as demonstrated through its involvement in Roosevelt Island, the Jacob Javits Convention Center, and the revitalization of 42nd Street, all of which were undertaken through subsidiary corporations. ESDC could therefore be an effective vehicle to develop a central repository of best practices in public-private partnerships for other State agencies and authorities.

Federal Funding Impact

In addition to upholding the Guiding Principles and criteria the Commission has set forth, the Board will prepare the State to leverage future Federal funding tied to private sector investment. As noted earlier, U.S. Secretary of Transportation Ray LaHood recently revealed that the upcoming 2010 five-year reauthorization of the Federal transportation legislation will include significant funding for states that utilize innovative financing and private sector investment. Further, President Obama's budget currently contains funds allocated to the creation of a Federal infrastructure bank, which would provide yet another mechanism for advancing public-private partnerships. This Commission believes that implementing a structure like the State Asset Maximization Board will enable New York to take advantage of these future opportunities.

Sustaining Our Public Policy Values

The final phase of the Commission's work has devoted extensive time to developing solutions to several public policy issues that have historically hindered previous asset maximization efforts. The Commission believes that resolving many of these issues upfront places the State in a strategic position to more efficiently engage the private sector across asset classes.

Labor Considerations

After reviewing international and domestic best practices of public-private partnerships across asset classes, the Commission has concluded that it is possible to safeguard necessary labor protections while gathering tremendous value-for-money benefits. Therefore, the Commission has developed the following guidelines pertaining to labor, which should be considered as standard and applied to each public-private partnership:

- 1. Project-specific language should ensure that all construction contracts deemed to be carried out on behalf of the public entity entering into the concession, lease or other agreement, are for a public purpose and are subject to Articles 8 and 9 of the Labor Law and all DOL enforcement provisions. In addition, construction contracts should be subject to competitive bidding laws provided, however, that where a project labor agreement is negotiated and made part of the concession, lease or other agreement, the legislation may provide for award of construction contracts by other methods.**
- 2. Project-specific language should ensure that workers involved in the ongoing operation and maintenance of existing assets do not have any reduction of total work as a result of a public-private partnership. At the same time, projects should not be foreclosed from consideration before the definition of “total work” is established. Further, such public-private partnerships should be viewed as public works, therefore guaranteeing prevailing wages, and should be subject to competitive bidding requirements.**
- 3. Value for money that can be delivered through public-private partnerships should not be achieved at the expense of public sector employees, hours, wages, and benefits.**

The State should provide employment protection or alternative employment opportunity for all incumbent employees potentially affected by any alternative delivery mechanism. New jobs created that are similar in nature shall continue to enjoy the same salary and benefits and representation by the current incumbent bargaining representative.

- 4. Asset maximization should be used as a vehicle to increase overall infrastructure spending, thereby generating more jobs. Asset maximization should therefore be a complement to, not a replacement for, State investment in such critical infrastructure funding.**
- 5. Asset maximization should expand opportunities for in-house engineers, providing a significant role for them in the preliminary design, preparation of the solicitation and technical materials for the Request for Proposal, the evaluation of bid documents, and in overseeing quality management of the design and construction process. It is the Commission’s objective that such asset maximization projects should not decrease the overall percentage of work that is currently performed by such State workers.**

Specifically, the State could take a similar approach as mandated by Section 1740 of the Public Authorities Law, which requires a percentage of design work by the New York City School Construction Authority be performed by public employees.

- 6. A competitive prequalification and selection process should be established for design-build entities and/or public-private partnership consortiums, including any**

subcontractors listed at the time of bid that clearly specifies the prequalification criteria, and states the manner in which the winning entity will be selected.

Environmental Considerations

An asset maximization strategy should also take into account environmental stewardship and sustainable development issues. It is essential that asset maximization projects reflect the State's policy priorities and uphold existing environmental laws and standards. To that effect, environmental considerations and protections should be integral to the State's project screening framework for its asset maximization program. It is important to note that the State has the opportunity to incorporate environmental protections as it sees fit into any public-private partnership agreements. In that context, the following principles should be considered in assessing the merits of future asset maximization projects:

1. Asset maximization projects should deliver environmental and public health benefits, thereby improving the quality of life for the State's residents.

Through accelerated delivery and improved services, asset maximization projects can improve air quality, promote safety, reduce congestion, and increase travel routes. To ensure that these benefits are provided, asset maximization agreements should include performance standards with measurable objectives.

2. Environmental performance goals should be required for all public-private partnership agreements.

Public-private partnerships should be required to comply with applicable law and achieve environmental performance goals. The Environmental Defense Fund has noted that such goals might include: "reducing air pollution and greenhouse gas emissions to achieve the State's goals, protecting parks and historic sites, conserving natural and recreational resources and working landscapes, including farmland and open space, and preserving wildlife habitat to help achieve the State's species protection goals." Rather than defining the means of delivering such goals, the private sector should be encouraged to use their knowledge and experience to create innovative technical solutions while maximizing savings and improving environmental performance. For instance, the A1 highway project in Yorkshire, England includes a performance payment and penalty system that rewards the contractor for operating a facility to minimize congestion delay and maximize vehicle throughput.²⁰

Environmental goals should be incorporated early in the asset maximization bidding process so that potential contractors have the opportunity to offer ideas for improving project performance. In addition, asset maximization agreements should

²⁰ Testimony of Michael Replogle, Environmental Defense Fund, before the Commission on State Asset Maximization, November 6, 2008. Available at: <http://www.nysamcommission.org/pdf/testimony/110608/Replogle110608.pdf>.

include monitoring and compliance provisions to ensure that projects continue to meet performance goals.

- 3. The long-term and integrated nature of public-private partnership contracts should result in projects undertaken to improve environmental performance and productivity, as contractors should be incentivized to consider synergies between the design of an asset and its ultimate operating costs.**

For instance, a contractor for a PPP should be financially motivated to consider which design characteristics and construction materials will generate optimum cost savings over the life of the contract. This might mean a contractor will invest in higher-cost design features if those features will be offset by lower maintenance and operational costs during the life of a contract and beyond.

- 4. A public-private partnership contract should include flexible provisions to allow for future environmental regulations and reporting requirements that may develop over the life of the project. Consequently, this might involve change-of-law provisions within the signed PPP contract.**
- 5. All public-private partnership agreements should provide the opportunity for public oversight and comment to ensure that stakeholders have an opportunity to add input regarding environmental considerations.**
- 6. Where public-private partnerships involve the replacement of aging infrastructure, private partners should be encouraged to provide plans for both the reuse and recycling of materials as well as the safe and environmentally sound disposal of non-reusable materials.**

The Commission notes that the Federal government has helped to ensure that facilitating public-private partnerships and upholding environmental protections are not mutually exclusive. For example, the Federal Highway Administration (FHWA) recently updated its regulations implementing the National Environmental Policy Act of 1969 (NEPA) to enable innovative procurement approaches, including public-private partnerships. Previously, regulatory policy at FHWA had substantially limited procurement options to design-bid-build, hindering attempts to utilize alternative delivery approaches necessary for PPPs. In August 2007, however, FHWA modified its NEPA regulations, allowing for State transportation departments and local transportation agencies to issue RFPs, award contracts, and issue notices to proceed with preliminary engineering prior to the conclusion of an environmental review under NEPA.

Pilot Projects and Additional Recommendations

Introduction

Among the following recommendations, the Commission has selected a handful of pilot projects within the six identified asset classes. The Commission notes that these are by no means the only projects suitable for asset maximization. Rather, these are projects the Commission has identified as ideal, for they have met our asset maximization criteria, our Guiding Principles, and will serve as building blocks to prepare the State to undertake larger projects in the future.

Indeed, each of these initial projects will help New York State develop a more intelligent, experienced asset maximization program. For instance, the Tappan Zee Bridge, highlighted in the Transportation section of this report, could be a prime candidate for asset maximization. The Commission believes, however, that to successfully undertake this project through a public-private partnership, the State should first gather the necessary experience through smaller demonstration projects.

After such projects are successfully completed and valuable lessons learned, the State will be empowered to advance a project of such importance and magnitude as the Tappan Zee Bridge. Advanced capabilities cannot be established in the blink of an eye; achieving a successful, nimble and effective asset maximization program in New York will require taking incremental steps.

Many of the recommended pilot projects are largely concentrated around non-revenue generating assets. Following the successful approaches taken by Canada and the United Kingdom, this Commission has focused on projects that are not sources of revenue; rather they provide life-cycle cost savings and efficiencies to leverage the private sector's appetite for stable investments in infrastructure. The Commission has also identified numerous areas for revenue generation that do not require disposition of an asset, by leveraging the State's underutilized property.

Finally, due to an October 2008 ruling by the U.S. Department of Justice prohibiting lottery privatization initiatives, the Commission has refrained from recommending any project in regard to the New York State Lottery.²¹ The New York State Lottery is one of the largest and oldest lotteries in the country, generating over \$7 billion in fiscal year 2008-2009 alone. While questions still remain as to the legality of certain asset maximization initiatives concerning the lottery, the Commission has chosen to focus on projects that are possible in the short-term. The Commission also notes its support for efforts by State governments, in conjunction with their legislatures, to determine State lottery operations.

²¹ "Government tells states not to privatize lotteries," Reuters, October 24, 2008.

Asset Class I: Transportation

Primary Challenges

- Deteriorating infrastructure
- No long-term strategy for funding
- Constrained fiscal capacity
- High debt payments

Overview

As stated in the Preliminary Report, addressing New York State’s transportation needs in a strategic and timely manner is necessary to provide safe, efficient mobility and ensure that the State remains competitive in the global economy. Developing new methods of procurement such as public-private partnerships to supplement existing funding sources may be one tool to assist in this task. Furthermore, the Commission believes transportation infrastructure investment to be a catalyst for economic growth. In fact, a United States Department of Transportation (USDOT) study concluded that for every \$1 billion of Federal spending on highway construction nationwide, more than 30,000 jobs are created or sustained.²²

Despite the enormous economic benefit derived from transportation spending, New York State lacks necessary resources to even maintain its current infrastructure, let alone upgrade or improve capacity. An increasing number of projects are falling into the federal category of “major projects” (those costing more than \$100 million); other projects, like the Tappan Zee/I-287 Corridor projects are considered “mega-projects” (more than a billion dollars). Currently, all transportation user taxes and fees are being dedicated to highways and transit. Consequently, the State’s transportation system is deteriorating and no longer fully satisfies current or projected demands. Reversing this downward trend will require new comprehensive and long-term investment strategies.

If the State seeks to be competitive in the twenty-first century and, at a minimum, ensure the public safety of its citizens, it ought to add more tools to its tool kit, including enabling the selective and appropriate use of alternative procurement and financing methods, including PPPs. At the same time, any private sector assumption of risk for delivering transportation projects should complement, not replace, capital improvement programs and the existing State workforce. It is vital for the State to seize this opportunity to develop new financial strategies while protecting the jobs of its public employees.

State Funding Challenges

The New York State Department of Transportation (NYSDOT)

The NYSDOT has expansive responsibilities that include highways, public transportation, aviation, ports, railroads, and waterways. NYSDOT’s multimodal needs assessment in 2007 determined that, excluding the New York State Thruway Authority, the New York State

²² “Employment Impacts of Highway Infrastructure Investment,” Federal Highway Administration, available at: <http://www.fhwa.dot.gov/policy/otps/pubs/impacts/index.htm>.

Bridge Authority and the Metropolitan Transportation Authority, the State would need to invest \$175 billion over twenty years – more than twice the current rate of investment – to bring the system to a state of good repair. Extending current NYSDOT commitment levels for the next twenty years would result in approximately \$75 billion of capital funding, leaving a \$100 billion funding gap.²³

State Highway and Bridge Dedicated Trust Fund (Dedicated Fund)

The Dedicated Fund was created in 1991 and is now funded with all or a portion of several revenue streams that are shared with the Dedicated Mass Transportation Trust Fund and the Mass Transit Operating Assistance program. Those revenue streams include: the petroleum business and motor fuel taxes, highway use tax, motor vehicle fees, auto rental tax, transportation and transmission tax, and other miscellaneous revenues collected by NYSDOT. This fund supports both the capital and operating expenses of NYSDOT, including the snow and ice program and preventive maintenance activities, through a mix of “pay-as-you-go” and bond funding. Unfortunately, the capacity of the Dedicated Fund to support new commitments has reached critically low levels as nearly half of the revenues coming into the fund are used to pay debt service on bonds sold to finance State and local highway capital projects since 1991. By 2013, debt service will consume three out of every four dollars of currently authorized revenues. To continue current program spending levels the State will require a substantial transfer of general funds (or new revenues) to the Dedicated Fund. These transfers or new revenue requirements will grow to more than \$1 billion by 2013-2014. The State's current fiscal crisis makes this revenue transfer even more difficult to sustain.²⁴

Metropolitan Transportation Authority (MTA)

The MTA oversees North America’s largest metropolitan transportation network. This responsibility includes New York City transit, the Long Island and Metro-North commuter railroads and buses, and nine bridges and tunnels in the New York Metropolitan region. The MTA faces a potential \$2 billion shortfall in 2009, along with an unfunded \$25 billion, five-year capital program that is vital to the goals of maintaining the system’s state of good repair and continuing its network expansion projects.²⁵

The New York State Thruway Authority

In addition to overseeing the longest highway toll system in the United States, the Thruway Authority operates and maintains the State’s canals and the Tappan Zee Bridge. The Authority’s revenues remain highly leveraged, with its debt-service ratio projected to decrease to a multiple that could adversely affect its credit rating. Although the Authority’s capital program is funded through 2011, projections for the years 2012 to 2031 forecast a \$470 million annual spending need, but just \$317 million in spending from current toll and

²³ “Capital Plan,” NYSDOT, March 2008 and “Multimodal Investment Needs and Goals for the Future,” NYSDOT, 2007.

²⁴ “Testimony of Astrid C. Glynn, Commissioner, New York State Department of Transportation,” Capital Budget Hearing, Albany, New York, October 30, 2007.

²⁵ MTA 2009 Final Proposed Budget, available at:
http://www.mta.info/mta/budget/nov2008/nov2008_vol1.pdf.

revenue levels.²⁶ This forecast does not include the needs for financing the Tappan Zee Bridge replacement/I-287 Corridor improvements, which are estimated to cost between \$6 and \$16 billion.

The New York State Bridge Authority (NYSBA)

Between 2004 and 2007, revenues for NYSBA, which operates and maintains five Hudson River crossings, fell from \$39.8 to \$39.3 million. Meanwhile, operating expenses reached \$40.2 million in 2007. Falling revenues and increasing costs for rehabilitation, reconstruction and repair have the potential to put NYSBA in financial jeopardy.

Innovative Financing and Alternative Delivery

While the State recently received approximately \$2.3 billion in Federal stimulus funding for highway and public transportation infrastructure projects (less than a full year of Federal aid), these funds provide a short-term fix, intended to alleviate backlogged projects and revive the economy. Billions more, however, will be required to address the State's transportation-related public safety and economic development needs. Furthermore, the State is limited to utilizing the traditional design-bid-build procurement approach for projects. While this traditional procurement is suitable for most transportation projects, there are some instances when it would be particularly beneficial for the State to have additional tools to accelerate project delivery, allow innovation and risk transfer, and provide incremental capital and manpower to projects that would otherwise languish or subject the public sponsor to excessive cost and project delivery risks. Such authority would be a complement to existing processes and staffing resources, potentially allowing the delivery of additional needed projects.

As noted in the Commission's Framework, when considering a PPP the State should conduct a comparison to the traditional public sector approach to confirm that the PPP represents real value to citizens, taxpayers, and system-users alike. For projects which are found to be appropriate PPP candidates, the Commission fully anticipates that State workers would need to provide appropriate policy, planning, preliminary engineering, environmental work, project oversight and inspection.

Without these innovative financing options, the NYSDOT and Thruway Authority are inhibited from fully-leveraging Federal funding such as the stimulus funds. In fact, if New York State had more flexible project delivery methods already in place, more projects may have been ready to initiate in the 120-day timeframe required to spend at least half of the Federal recovery funding allocated to the State. As evidenced by the lack of funding for mega transportation projects such as the Tappan Zee Bridge/I-287 corridor project and high-speed rail along the Empire Corridor, which are estimated to cost up to \$16 and \$5 billion respectively, public funds cannot continue to be the only answer to the procurement needs of the State.

²⁶ "Presentation to the Commission on State Asset Maximization," New York State Thruway Authority, November 6, 2008.

The Role of Innovative Financing in Federal Funding

The Federal Highway Trust Fund, comprised primarily of fuel tax revenue, has been the backbone of federal highway funding for the past fifty years. With public travel habits changing considerably due to the economic downturn and fluctuating fuel prices, this fund is insolvent, requiring general fund transfers to maintain current investment levels, sending a strong signal that traditional means of financing transportation are no longer sufficient.

The U.S. DOT has begun implementing programs that encourage states to leverage private investment with Federal funding to fast-track infrastructure needs. Recent reauthorizations of Federal transportation funding have included a number of specialty programs to promote innovation in project delivery and finance, including the Transportation Infrastructure Finance and Innovation Act (TIFIA) program. The TIFIA program can be used to provide credit assistance to infrastructure projects involving private investment, and the expansion of tax-exempt private activity bonds (PABs) to highway facilities and surface freight transfer facilities.

The recent Federal stimulus legislation provides additional opportunities to leverage private sector funding. For example, a discretionary fund of \$1.5 billion was provided to the U.S. DOT to use on significant transportation projects, including those with private investment. From this amount, up to \$200 million may be used to support subsidy costs of projects eligible for TIFIA loans. The stimulus also allocated \$8 billion toward the development of a national high-speed rail system, which could be combined with private investment. U.S. DOT Secretary Ray LaHood also recently revealed that the 2010 five-year Federal transportation reauthorization will include significant funding for states that utilize innovative financing and private sector investment.²⁷ President Obama's budget even includes \$5 billion for a Federal infrastructure bank, another mechanism that could advance private sector investment in infrastructure.²⁸

The Commission believes that New York State's ability to leverage future Federal transportation funding will be linked in part to its ability to partner with the private sector to advance infrastructure priorities. New York should position itself to take advantage of all funding opportunities.

Recommendations

The following recommendations present an initial set of pilot projects and concepts that Commission believes are candidates for asset maximization. Both input from NYSDOT and the Commission's Guiding Principles served as criteria in the selection of these projects, and other candidates could be added to this list as more information develops. Additional research and financial analysis will be needed for implementation of any asset maximization projects in the transportation asset class.

²⁷ Conkey, Christopher. "Nominee for Transportation Dept. Urges Role for Private Sector," *Wall Street Journal*, January 21, 2009.

²⁸ "Obama budget has \$5 billion for infrastructure bank," Reuters, February 26, 2009.

Pilot Project: Bridge Improvement Program

Recommendation: Package several separate bridge projects as one overall bridge improvement program, to replace, rehabilitate and maintain New York's bridges through a public-private partnership.

The NYSDOT recently released a study showing that, based on the average life of a bridge, nearly 1,500 bridges will likely become deficient in the next five years. Absent significant investment in replacement, rehabilitation, and maintenance, that number will increase to 3,000 within six to ten years. Maintaining and slightly improving the condition of our State's bridges over twenty years will cost an estimated \$30.6 billion.

This package could include: (1) a short-span bridge replacement, which includes both State and local bridges primarily located in Upstate New York; (2) the replacement of the Kosciuszko Bridge located in New York City; and (3) the rehabilitation or replacement of the Robert Moses Causeway bridge over Fire Island Inlet, located on Long Island. All three projects would be separate, stand alone public-private partnerships.

1. Short-Span Bridge Replacement Program: Many of New York's State's deficient bridges are short-span bridges – standard designs typically less than 100 feet long. A bridge replacement program could restore the superstructures or fully replace approximately 290 State and local short-span deficient bridges, and potentially provide routine maintenance for a 25-year period. NYSDOT could solicit proposals to replace these bridges under one or more design-build-finance-maintain contracts, financed through an availability payment from the State to the winning bidder. Availability payments are pre-determined, periodic payments made to a private sector partner in exchange for delivering and maintaining the "availability" of an asset.²⁹ The award would be made based on best value, and contracts could be awarded geographically. **Estimated Project Cost: \$275 million.**

The Benefit: This approach would encourage the private sector to use innovative methods to design and replace these bridges in a short timeframe, using standardized designs where possible. This approach would accelerate the delivery of these bridges, reduce the affects of inflation, and deliver benefits to the traveling public sooner. Furthermore, such a program

²⁹ An availability payment structure is useful in cases where the State wishes to allocate project delivery risk (design, construction and start-up) as well as ongoing operations and maintenance risks to the private sector, but chooses to retain the risk of user demand, either because such risk is not easily priced by the private sector or because the State prefers to retain flexibility in future operations. The State sets the standards and conditions for the road or asset that must be met in order for the private entity to receive the full availability payment. To the extent that the road is not made available or the performance is not up to the contractual standard, there can be deductions applied to the annual payment made to the private sector party. Thus the availability payment is often referred to as the "MAP," or maximum availability payment, which the private sector works for but may not achieve if the project is not fully available or if performance is poor. Additionally, the public sector has the right to step in and cure any safety issues not ameliorated by the private sector and deduct related costs from the availability payments.

would provide geographic balance and test the implementation of various public-private partnership approaches in several areas of the State.

For projects like the short-span bridge replacement, the PPP finance model offers unique economies of scale to potentially drive both design and construction costs below levels incurred by the NYSDOT when separately procured. Regional contracting strategies might furthermore result in efficiencies of contracting for various bridge packages to the local contractors, equipment suppliers and raw material vendors best equipped to achieve bulk fabrication.

As an example, in 2007 the State of Missouri elicited proposals for a long-term concession agreement to repair, replace and maintain 800 bridges throughout the State. After failed negotiations with a prospective team of finance, engineering and construction enterprises, the State subsequently decided to revisit their approach. Six months later, the State committed to the rehabilitation of approximately 250 of those bridges, using its own staffing and resources. It later returned to the PPP marketplace with a RFP to undertake the rehabilitation of approximately 550 of the remaining bridges under a newly packaged design-build approach. This alternative form of PPP procurement, which the State determined better met their unique objectives, is currently being implemented. This case study highlights the flexibility available to state sponsors in the PPP markets, and demonstrates that the unobstructed, independent decision-making authority for any asset maximization program will always reside with the State as public sponsor.

2. Kosciuszko Bridge: The Kosciuszko Bridge carries a 1.1-mile segment of the Brooklyn-Queens Expressway (BQE, Interstate 278) between Morgan Avenue in the borough of Brooklyn (Kings County) and the Long Island Expressway (LIE, Interstate 495) interchange in the borough of Queens (Queens County). The deteriorating bridge has undergone a series of major roadway and structural repairs since the late 1980s, requiring over \$60 million to maintain a state of good repair. Despite these aggressive maintenance efforts, a long-term solution is needed to address the bridge's increasing structural deficiencies. In addition, the frequent maintenance and repair efforts and their associated lane closures, exacerbate congestion and traffic diversion problems.

In 2008, NYSDOT published a Final Environmental Impact Statement (FEIS) identifying a bridge replacement alternative as the project's preferred approach. In March 2009, FHWA issued a Record of Decision for the preferred alternative (BR-5) which consists of bridge replacement with new structures and additional lanes. Under BR-5, the existing bridge would be replaced by building a new permanent, parallel bridge on the eastbound (Queens-bound) side of the existing bridge. The new bridge would be built at a lower elevation to allow for reduced grades.

The Benefit: When completed, the Kosciuszko Bridge would include auxiliary lanes in both directions, carrying five lanes of eastbound traffic and four lanes of westbound traffic, and have standard lane widths and shoulders. The new bridge would also include a bikeway and walkway on the north side of the bridge. While construction is scheduled to begin on this

project in 2013 and the project completion scheduled for 2018, availability payments or user demand payments could accelerate the project.³⁰ **Estimated Project Cost: \$1.4 billion.**

3. Robert Moses Causeway Bridge over Fire Island Inlet: The 4,100 foot-long Robert Moses Causeway Bridge over Fire Island Inlet is the fourth largest bridge on Long Island. Built in 1962, the bridge requires major rehabilitation and perhaps a full replacement. The bridge is on the National Highway System (NHS), and currently has a deficient condition rating. The bridge may be a good candidate for a public-private partnership as the need for accelerating this project is significant – the bridge provides the only highway access to Robert Moses State Park on Fire Island and carries heavy traffic in the summer months. **Estimated Project Cost: \$100 to \$250 million.**

Recommendation: Establish a public-private partnership for the construction and maintenance of the Buffalo Harbor Bridge to improve access to the Buffalo waterfront.

The Benefit: New York State and the City of Buffalo, in partnership with the Erie Canal Harbor Corporation, are engaged in a large-scale development project on Buffalo’s waterfront. This project would link Buffalo’s central business district and downtown with the outer harbor waterfront revitalization, enhancing development potential in a critical area of the region.

Pilot Project: High Speed Rail Service

Recommendation: Create a public-private partnership between NYSDOT, private railroad companies and rail service providers – utilizing the talents, expertise and resources of both sectors – to advance the development of high-speed rail passenger service on up to three designated corridors within New York.

This project would take advantage of recent Federal legislation providing funding for development of high-speed rail service. As noted earlier, the Federal stimulus legislation provided \$8 billion to help launch a national high-speed rail system that may be used in combination with private investment. In addition, recently enacted Federal legislation –

³⁰ In a user demand payment system each user is assessed a proxy toll, whereby a fee is paid indirectly by a third party authority on behalf of the user, without direct cost to the user. Typically, in such transactions the facility would not be tolled and the private sector developer would receive payments from the public sector based on the actual traffic counts. To address imbalances between the public and private sector that could otherwise result, user demand payment systems typically regulate payments along a spectrum that ensures a fixed minimum payment sufficient to repay debt obligations regardless of how low traffic levels may be, as well as an absolute cap on revenue payments regardless of how great traffic levels may become. The floor protects the private sector from being unduly harmed if it agrees to build a facility that may be a priority for the public sponsor, but that the driving public chooses not to use, while the ceiling prevents the private sector reaping extreme rewards from a project that proves more popular than anticipated. Under this banding system different payments can be charged to the private sector for different levels of traffic volume or different users.

Section 502 of the Passenger Rail Investment and Improvement Act of 2008, Public Law 110-432 – requires the U.S. Secretary of Transportation to issue a Request for Proposals for projects for the financing, design, construction, operation, and maintenance of a high-speed intercity passenger rail system operating within either the Northeast Corridor or one of ten Federally designated high-speed rail (HSR) corridors. The 439-mile Empire Corridor, from New York City through Albany to Buffalo is one of these ten designated corridors. The Federal Railroad Administration (FRA) is currently soliciting the submission of Expressions of Interest for potential projects to finance, design, construct, operate, and maintain an improved HSR intercity passenger system in the Northeast Corridor or in one of the federally designated corridors. The State of New York has already fulfilled a prerequisite for federal funding for rail capital improvement projects by releasing their 2009 New York State Rail Plan, the first comprehensive update of the State’s rail strategy in 22 years.³¹ Given the tremendous potential economic development that high-speed rail could bring to Upstate New York, efforts should be taken to enlist private sector partners to competitively pursue this funding. **Estimated Project Cost: TBD.**

The Benefit: A joint public-private endeavor provides the best opportunity for preparing the strongest, most comprehensive plan for New York's Empire corridor. This project could potentially reduce travel times by up to 25 percent. Specifically, it could reduce travel time between Albany and New York City from two hours and twenty minutes, to one hour and forty-five minutes, and travel time between Albany and Buffalo from five hours to three hours and forty minutes.

Pilot Project: Maintenance, Repair, Operation

Recommendation: Enter into a private-public partnership for the maintenance, repair and operation of the Gowanus Expressway (I-278).

The Gowanus Expressway (I-278) is an elevated interstate expressway that is also the longest bridge in New York State. It carries more than 170,000 vehicles each day across Brooklyn between Staten Island and connects to Long Island, Manhattan and Queens. Approximately \$70 million is spent each year to not only operate, inspect, and repair the expressway, but also to cover the cost of developing a long-term solution for its condition. Most of the maintenance work is performed by contractors and consultants, meaning very few State workers are directly involved in the effort. The contracting methods presently used to perform this work are standard contract types used for consultant and contractors, where the risk is borne by the public owner. State workers are used to provide oversight of the multiple contracts used to accomplish the work.

Rather than preserve the costly and fractured structure currently in place, the State could enter into a public-private partnership for the maintenance, repair and operation of the

³¹ “Governor Paterson Announces First Statewide Rail Plan in More Than Two Decades,” March 9, 2009. Available at: http://www.ny.gov/governor/press/press_0309092.html.

Expressway. Currently, NYSDOT pays to maintain, oversee and operate the “moving” bus/HOV lane on the Gowanus, with costs consisting of consultants, contractors and staff oversight. Availability payments (payments for open lanes during high demand periods) or user demand payments (paying per vehicle) could be viable for this asset because it is being replaced slowly, through maintenance, and high volumes of traffic still travel across it.

The Benefit: A potential significant savings to the State could be realized by contracting with one company to operate and maintain this facility and to develop a long-term plan. The savings would be generated by consolidation of existing contracts and by assigning management responsibility to a single company. This arrangement would be a slight variation on the arrangement NYSDOT has with the New York State Thruway Authority to operate and maintain Interstate 84 in the Hudson Valley, which has been in place for more than ten years. According to NYSDOT, this proposal poses little risk to the public sector, for if the contractor fails to perform or if the bids to do the work are higher than the current cost, the existing mechanism is still available without having to increase staff.

Encouraging Transit-Oriented Development

Recommendation: Leverage New York State’s transportation infrastructure by utilizing public-private partnerships through the Metropolitan Transit Authority (MTA) for Transit-Oriented Development.

As states and metropolitan areas focus on reducing greenhouse gas emissions and American dependence on fossil fuels, many communities have turned to Smart Growth policies and Transit-Oriented Development (TOD). TOD projects, in which communities cluster commercial and residential development around rapid transit (often urban and commuter rail), offer an underappreciated frontier for partnering with the private sector. Specifically, the State should encourage the use of TOD projects through the MTA that utilize both public and private financing.

The Benefit: Public-private partnership models in TOD projects can accomplish two mutually beneficial goals: first, PPPs can help communities finance the redevelopment of space around the MTA’s network of stations for New York City Transit, Metro-North Railroad and the Long Island Rail Road. Second, to the degree that TOD projects make use of rail and bus rapid transit (BRT) easy and convenient, PPPs can help boost ridership for New York City Transit, Metro-North and the LIRR and, eventually, BRT routes. Furthermore, various forms of PPP financing could help potential development partners in TODs achieve attractive rates of return while accomplishing environmental goals and economic development goals.

For example, Metro-North recently worked with the City of Yonkers to rehabilitate its local Metro-North station and the adjacent area. As part of the station renovation, Metro-North designed and built a corridor through the station’s concourse that provided direct access to the Hudson River waterfront, complementing the city’s newly-constructed riverfront esplanade. Furthermore, this collaborative effort attracted private developers to build a

significant mixed-use residential, commercial and retail development plus a waterfront park at the station, assisting downtown revitalization efforts. The development, in turn, generated greater ridership volume from and to the Yonkers station.

What transpired in Yonkers can occur at stations throughout the MTA's 5,000-square-mile territory with the right kinds of partnerships with communities, the private sector and other stakeholders. The station rehabilitation clearly improved the value of the MTA asset, advanced transit-oriented development and raised the value of property and space adjacent to the station.

Metro-North is also currently exploring a PPP initiative with its Southeast Station Intermodal project on the Harlem line. The enterprise will include more parking, new station facilities, including a new pedestrian overpass, elevators, canopies, staircases and a new intermodal area for taxis and buses. Metro-North is evaluating the feasibility of partnering with a private developer to finance and implement the project. All the major operating agencies of the MTA – New York City Transit, Metro-North and the LIRR - should consider transit-oriented development as a way to leverage the value of its transportation infrastructure and simultaneously catalyze the development and redevelopment of property around its stations.

The Tappan Zee Bridge / I-287 Corridor Project (TZ Project)

The Commission has conducted a careful examination of one of New York's greatest transportation opportunities, the Tappan Zee Bridge. The Tappan Zee, which spans the Hudson River between Westchester and Rockland Counties, has been open since 1955 and has reached a point of deterioration that demands either full repair or replacement. The Tappan Zee Bridge/I-287 Corridor Project (a joint effort of the NYSDOT, the NYS Thruway Authority and the Metro-North Railroad), is a plan to replace the three-mile-long bridge and add new transit systems in the thirty-mile transportation corridor between Port Chester in Westchester County, and Suffern in Orange County. These include a full-corridor Bus Rapid Transit system to serve inter- and intra-county passengers between Rockland and Westchester Counties and beyond, and a Commuter Rail Transit system which will connect west-of-Hudson passengers with the existing commuter rail system to New York City. The total cost of the TZ Project is estimated at \$16 billion in 2012 dollars.

The size and complexity of this project dwarf all the other infrastructure needs currently under review in New York State, and it is one of the largest ground transportation projects under development in the country. As such, funding, design, construction, operation and maintenance of the TZ Project through traditional mechanisms would be extremely challenging. At the same time, the very order of magnitude of the asset, its multi-jurisdictional nature, and its vital function in the economy of the State suggest that only the State has the ability to bring it to fruition.

The Commission believes that the size and scope of the TZ Project require that the State embark on a thoughtful process to openly and fairly examine every possible financing and procurement method possible to deliver the project. The process must begin without any

preconceived solutions and keep pace with radically changing capital markets and Federal funding opportunities. Recognizing that the TZ Project has the ability to generate significant revenue, the State should carefully investigate what advantages there may be in bringing private funding into the project. The transit components will require far more funding than is traditionally available through Federal transit programs or could be generated by the toll facility alone.

Therefore, the State should also consider appropriate staging of project elements as part of any financing methodology. The State should determine how best to minimize costs, accelerate project delivery, allocate risks and protect the public interest in labor considerations, environmental responsibility and competitive procurement. It should consider bringing together the efficiencies of conventional solutions with the innovations of evolving public-public and public-private models. Hybrid solutions mixing the best of public and private procurement and financing should be examined openly, with rigorous public involvement, as possible pragmatic solutions to the complex needs of the project.

The Commission endorses the TZ Project team's commitment to working with national and worldwide experts in the area of financing and delivering transportation mega-projects, with the involvement of the public, to create the smartest, most efficient solution to the monumental task ahead. The Commission looks forward to assisting the TZ Project team's efforts wherever possible. Lessons from implementation of other PPP pilot projects, such as those described previously, would provide a sound basis of experience for the State as it develops options for TZ financing.

Asset Class II: Social Infrastructure (K-12 Education and Healthcare)

The Primary Challenges

- High cost of construction
- Aging infrastructure
- Budget constraints
- Space shortages

Overview: K-12 Education

In our Preliminary Report, the Commission examined ways in which our investment in primary and secondary education can be better leveraged without compromising our priority in delivering high quality, affordable education to our students. Spending on K-12 education is a major component of the State budget, constituting 32.8 percent. Likewise, school construction costs are a major component of all school district budgets. School districts are reimbursed for a portion of their school construction project's principal interest costs. Last year, the State spent \$2 billion in reimbursements to public school districts for capital construction expenditures and is projected to spend \$2.2 billion in 2009. The State Education Department reports that from July 2001 through June 2006, total school construction approvals of 7,941 capital projects were valued at \$10.8 billion (excluding New York City).

Capital Program Shortfalls

Due to the difficulty in financing school construction projects, many of New York's school districts have deferred maintenance projects and space shortages. School districts currently have two options: delay maintenance and construction needs, or issue bonds to fund capital projects. This need for adequate facilities is of greatest concern to the State's "Big Five" school districts – New York, Buffalo, Rochester, Syracuse, and Yonkers – which have the least ability to invest in capital construction and maintenance upgrades.

These five districts, in which the average school facility is over sixty years old, receive a smaller proportion of building aid than their share of enrollment. A major contributor to this building aid deficit stems from the districts' inability to commit the necessary level of resources toward capital spending. Unlike other school districts, which can levy independent taxes and seek voter approval for bond issuances, the Big Five are "fiscally dependant" upon the city governments that control the amount of funding available. Therefore, big city school districts must compete with police, fire, sanitation, transportation and other budgets for funding.

In addition, the issue of municipal debt limits has historically been a major inhibitor to school construction in many high-need districts. While many smaller districts have separate debt limits, and can exclude debt supported by State building aid from their limits, debt for capital improvements for the Big Five school districts is included in the overall debt limits of the individual cities. Consequently, many of these districts have bumped up against constitutional debt limits as they have tried to reconstruct existing facilities or build new

schools.³²

Traditional Construction Method

Currently, the only legally available method of project delivery to public schools is the traditional design-bid-build process, modified to require State approval following the completion of the design. This one-size-fits-all approach to project delivery entails a sequential and separate process, with each phase of design and construction required to be completed before the next can begin. The time period necessary for State approval and bond referendum adds significantly to the cost of the project. Furthermore, unless the district hires a construction manager, for which many districts lack funding, the construction planning is often completed without any input from contractors. This lack of input means bids may come in too high, sometimes resulting in architectural redesign, cancellation of the procurement and re-solicitation. Such complications ultimately increase costs and delays.

We have heard from many State and local authorities regarding their efforts to maximize value and efficiency in determining how to pursue the planning, financing, design, and construction of schools within the available legal and regulatory frameworks. Aside from the traditional methods, there are several alternative processes that have been proposed to the Commission, such as design-build and public-private partnerships. These methods may, when properly managed and regulated, prove to be attractive alternatives to the traditional design-bid-build delivery approach.

Design-Build Procurement Method

To finance construction of new schools, public entities in the U.S. and abroad have turned to public-private partnerships, electing to outsource additional functions such as operation and maintenance in return for the financing of new projects. Design-build delivery has decreased costs (particularly on larger capital projects), accelerated project delivery by establishing single-source accountability for project owners, and provided flexibility in the ultimate delivery of the planned infrastructure project. Under the construct of a PPP, design-build project delivery has shown significant promise in reducing overall school construction costs, producing an average savings of up to 15 percent per project.³³

Experience shows that, in appropriate circumstances (given the size and complexity of a project), the integration of design with construction, or design with construction and operations, or design with finance, construction, and operations offers significant quality, cost, and time benefits both to school districts and to taxpayers. In “New York’s Experience with Asset Maximization,” we described the Rensselaer school district’s successful use of design-build, in which they partnered with a private entity, U.W. Marx, in return for a new school constructed at a reduced cost. Both Niagara Falls and Buffalo have also used this

³² “Comptroller Report Finds Problems of Five Largest School Districts Intensified by Fiscal Struggles of Cities,” New York State Office of the Comptroller, March 13, 2005.

³³ “Contract Administration: Technology and Practice in Europe,” U.S. Department of Transportation, Federal Highway Administration, October 2002. Available at: <http://international.fhwa.dot.gov/contractadmin/04.cfm>.

design-build method, after acquiring the necessary legislative authority, to complete school construction faster and at a lower cost.

Nationally, the State of California passed legislation enabling design-build in January of 2002. California has one of the fastest population growth rates in the nation and contains eleven of the nation's 100 largest school districts. The State's largest district, the Los Angeles Unified School District, is the nation's second largest school district after the New York City Department of Education. These demographic challenges contributed to an extreme shortage of school facilities and classroom space. Since implementing design-build, the method has been used by many individual school districts to open schools more quickly. It is important to note that when passing legislation, legislators made clear that their intention was not to replace design-bid-build but rather to provide an additional delivery option to the State's diverse body of independent school districts.

Through its Private Finance Initiative (PFI), the United Kingdom has also utilized PPPs to finance much of the U.K.'s social infrastructure, including massive school construction programs. The PFI allows public school districts to contract with the private sector for the construction and maintenance of a school, ensuring its upkeep over a specified, long-term period (typically 25 to 30 years). Since its inception eleven years ago, the UK's PFI program has delivered 94 new education projects covering over 800 schools. The success of the PFI program has translated into increased private sector commitments in the long-run, as the Building Schools for the Future projects over £9 billion in investment in the 2008-2011 period.³⁴

Pilot Project: School Construction

Recommendation: Establish a pilot program that enables school districts with major anticipated capital construction programs, such as Yonkers and Syracuse, to utilize directly, or via DASNY as owner's representative, alternative delivery approaches currently unavailable through existing legislative authority.

The creation of this pilot program would allow school districts to contract with private sector entities to provide financing, construction, and maintenance of school facilities in exchange for ongoing lease payments. The program would be for the development of school projects with over \$2 million in estimated construction costs, and each project should include either existing requirements to pay prevailing wage rates or a project labor agreement that binds all contractors on the project. The Commission notes that this pilot program should be authorized through the recommended State Asset Maximization Board, which would vet each project according to the appropriate financial criteria and public policy values put forth in the Commission's Framework. The following are two examples of ideal districts to begin a pilot program:

³⁴ "Secondary Building Programme Increases Momentum As 50th BSF School Opens," Department for Children, Schools and Families, January 20, 2009, available at: http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2009_0014.

1. Syracuse School District: The Syracuse school district currently has a major capital construction program with a projected cost of more than \$230 million. A public-private partnership could make an immediate impact in lowering costs and fast-tracking the delivery of the first and second phases of the program. Without changing any of the project labor agreements or MWBE goals of the program, the Syracuse school district and the State could potentially realize a savings of at least 18 percent by utilizing a lease/lease-back arrangement.³⁵ Through this approach, the district could leverage Federal stimulus tax credit bond financing to begin the replacement of the Blodgett Elementary School, which serves Pre-K through 8th grade. The district could also advance the completion of the \$100 million second phase of their capital program within two to three years.

2. Yonkers School District: Despite achieving high marks for school quality and program initiatives, the Yonkers Public School District has been referred to as a “district in crisis” because of its inadequate facilities. The district, receiving only 46 percent in State aid for construction, faces significant local funding shortfalls which have inhibited it from addressing its \$1.4 billion construction needs. However, by entering into a public-private partnership, the district could deliver such projects as Gorton High School, an estimated \$86 million “shovel ready” project that is currently without any funding. Gorton is the smallest and oldest of the District’s high schools. Built in 1923, Gorton serves 1500 students, though it is overcrowded and most classrooms do not meet minimum area standards required by the State Education Department. The district plans to replace the current building with a new school, built on the same site, while the old building is still occupied. The new school will house a similar number of students in a modern, educationally superior 220,000-square-foot structure.

Yonkers is also an ideal candidate to partner with the private sector given the existence of the Yonkers Educational Construction Fund.³⁶ Though the Fund has yet to be used to its full capacity (due to the City’s limited financial means), expanding the use of this Fund could provide Yonkers the ability to fast-track critical projects. An example of an active version of this type of fund is the New York City Educational Construction Fund (ECF). The ECF, dormant from 1980 until its recent revival by Mayor Michael Bloomberg, builds mixed-use real estate projects that feature new schools, delivering new seats to the City along with those created in the Department of Education’s five-year Capital Plan. ECF uses rents, leases, and other payments from the non-school portion of its projects to finance construction of its school facilities.

In 2008, ECF teamed up with a private company, the World-Wide Group, in a deal that included three new public schools on the East side of Manhattan. The first, the new P.S. 59 at 57th Street and 2nd Avenue, was completed in less than a year. The next phase of the project will include a new public elementary school and new High School of Art and Design, to be completed in 2012. The private element of this partnership is the 59-story residential tower that will be built above the school, with retail space – including a Whole Foods supermarket – below. The agreement between ECF and World-Wide entails a 75-year lease,

³⁵ “Proposal to the Commission on State Asset Maximization,” Gilbane Building Company, February 2009.

³⁶ Education Law, Article 10-B.

and the City will use the income provided by the developer to pay for the cost of the school buildings in their entirety.³⁷

The Benefit: The creation of pilot programs in both Syracuse and Yonkers could result in both cost savings and expedited delivery of their capital construction programs. Most importantly, they would enable many projects to occur that would otherwise not been financially feasible by reducing the burden of prohibitive up-front capital requirements for school construction. Cost savings over the long-term would also be gained as construction and future maintenance-cost risks would be transferred from public school districts to private sector partners. For instance, unlike the traditional design-bid-build approach, a public-private partnership would allow school districts to shift the cost of budget overruns, schedule delays, change orders, and other unknowns to the private sector to gather budget certainty.

Maximizing Federal Stimulus Funds

This pilot project would also allow districts to maximize the Federal stimulus funds allocated for school construction. As part of the overall effort to stimulate the U.S. economy, the Federal government has committed over \$100 billion for various existing education programs administered by the U.S. Department of Education and also provides \$53.6 billion directly to states for an education stabilization fund. The American Recovery and Reinvestment Tax Act of 2009 (ARRTA), part of the Federal stimulus package, creates a number of categories of taxable tax credit bonds that governments may issue which benefit from a Federal subsidy of between 35 and 100 percent of the interest costs borne by such bonds. Such limited tax credit bond structures include the Qualified School Construction Bonds³⁸ and the Build America Bonds,³⁹ available only in 2009 and 2010.

The changes to the Internal Revenue Code of 1986 contained in ARRTA, together with the relatively large amount of stimulus moneys that have been earmarked for educational purposes, present a once in a lifetime opportunity to broadly address the deteriorated state of many school district facilities across New York State. The key to achieving success in the goal of maximizing the number of new school facilities that can be brought to fruition with

³⁷ Wagner, Tara Lynn. "Developer Bridges Green Gap Between City, Schools," NY1, January 14, 2009.

³⁸ A Qualified School Construction tax credit bond entitles the bondholder, as of each quarterly credit allowance date, to a tax credit equal to 25 percent of the annual credit determined for that bond. The annual credit is established by multiplying the applicable credit rate for the bond by its outstanding face amount. The "credit rate" is determined by the Secretary of the Treasury on the date the bonds are initially sold. For Qualified School Construction Bonds, the credit rate is equal to the rate that will permit the bonds to be sold at par without any interest cost to the issuer, thus resulting in the issuer receiving a 100% interest subsidy from the federal government.

³⁹ "Build America Bonds" (BABs) were created through the federal stimulus legislation and are unique in that they can be used for any purpose that, under current law. BABs can be financed with governmental tax-exempt bonds and issued by any issuer of tax-exempt bonds, including municipalities, school districts and conduit issuers of governmental bonds. There are two types of BABs (tax credit BABs and direct payment BABs) that can be issued in unlimited amounts in 2009 and 2010 and entitle bondholders to a tax credit equal to 35 percent of the interest paid on the bonds or can provide a federal subsidy payment to the issuer of the bonds equal to 35 percent of the interest paid on the bonds in lieu of a tax credit.

ARRTA moneys and/or ARRTA authorized tax credit bonds, may ultimately rest in the ability to utilize financing structures and techniques that are generally not currently available to New York State school districts, like design-build. In particular, ARRTA-funded projects could serve as a demonstration program for addressing school district capital needs through the use of a public-private partnership approach. Establishing this pilot program in Syracuse and Yonkers would provide unified, efficient and flexible school construction and financing approach for ARRTA-funded projects that can be replicated by school districts throughout the State.

Overview: Healthcare

New York State's healthcare facilities are facing financial hardship that has inhibited access to capital markets and deferred critical capital improvements to hospitals and nursing homes. Struggling with high debt burdens and limited liquidity, New York State's healthcare providers have long experienced difficulty accessing the capital markets and most often need to secure mortgage insurance or credit enhancement to effectuate low cost borrowing. The current credit markets, and the unavailability of Industrial Development Authorities which previously provided additional avenues of access, exacerbate this long standing condition. Public healthcare facilities usually depend on their government sponsor for access to capital markets but must compete with other governmental priorities.

Lacking access to such capital, hospitals and nursing homes cannot invest in the physical plant or equipment that will deliver high-quality healthcare. Consequently, the majority of nursing homes in New York State were built before 1960, and the average age of all physical assets (buildings, medical equipment, and information technology) in New York City hospitals are 47 percent above the national average.⁴⁰

Healthcare Facilities Renovation and New Construction

Recommendation: The State should examine and define the conditions under which new sources of private capital might be accessed to support needed capital construction programs for healthcare facilities.

The Benefit: With scarce resources to undertake the State's massive healthcare infrastructure needs, utilizing public-private partnerships for the design, development, renovation and construction of healthcare facilities could significantly speed delivery and reduce costs. Various types of public-private partnerships for hospital development exist, all of which involve various levels of risk transfer and long-term obligations. A consortium, consisting of construction companies, design firms/architects, financiers, and property management firms, usually puts forth a bid to design, build and finance a hospital, along with maintaining the building over an extended period.

⁴⁰ U.S. data, see: *Almanac of Hospital Financial and Operating Indicators* (Ingenix 2008); New York City data from 2006, see: "The Deteriorating Financial Condition of New York City's Nonprofit Hospitals, and its Effect on Capital Investment," United Hospital Fund, 2008.

In contrast to New York State's traditional procurement approach, whereby hospitals are responsible for all upfront financing through State and federal funding or through bond issuance, a public-private partnership shifts major risk associated with the construction, design, financing, operations, technology, etc., to the private consortium. In a public-private partnership agreement, a hospital would make regular fixed payments to this consortium either through a long-term contract that involves a lease-back arrangement in which the consortia owns the building and leases it to the hospital, or the hospital can continue to own the title.

There are a variety of international examples of utilizing PPPs to invest in healthcare facilities which illustrate many valuable lessons. Canada has been a leader in the realm of hospital PPPs, as Ontario has financed and constructed nineteen hospitals through private sector consortia, and deals are close to completion for another seven. British Columbia has two completed hospital projects and four additional projects are in various stages of development. For example, British Columbia's \$355 million Abbotsford Regional Hospital and Cancer Centre, which was built as a public-private partnership, was delivered on time and on budget. The state of the art 300-bed facility will provide enhanced and specialized health services to more than 150,000 people in the greater Abbotsford area, and up to 330,000 in the Fraser Valley region. The cost of the project is estimated to be \$39 million less than traditional public sector procurement.⁴¹

At the same time, issues relative to quality, flexibility, complexity and oversight in hospital PPPs have risen as needing particular attention, especially in large initiatives such as the U.K.'s PFI hospital program. These concerns can be reduced by including the early input and involvement of end users, such as clinicians, doctors, nurses, and other hospital administrators, which is critical to delivering comprehensive design specifications. In addition, the winning consortium should be selected based on best value, which includes an emphasis on design quality. For instance, in selecting a winning team, Infrastructure Ontario places a 25 percent weight on the experience of the architect in the consortium and includes a peer review process of independent architecture oversight.

As with all recommendations put forward by this Commission, demonstration projects within the realm of healthcare will provide important lessons to New York State, and would be subject to detailed oversight, in part by the State Asset Maximization Board, throughout and subsequent to the duration of their implementation.

⁴¹ "Case Study: Abbotsford Regional Hospital and Cancer Centre," Partnerships British Columbia, available at: <http://www.partnershipsbc.ca/files/project-abbotsford.html>.

Asset Class III: Higher Education

The Primary Challenges

- Constrained operating budgets
- Inability to fully leverage existing assets and revenue streams
- Lack of regulatory parity between SUNY and CUNY
- Prohibitive capital construction costs

New York State should be incredibly proud of its public institutions of higher education. The State University of New York (SUNY) is the largest state university system in the nation, and the City University of New York (CUNY) is the largest urban university system in the nation. Both institutions are critically important to the State; not only for the education and quality of life they provide its citizens, but for their contribution to New York's economy, which exceeds billions of dollars per year. However, as the New York State Commission on Higher Education reported last year, SUNY and CUNY also face significant challenges, resulting from "too little revenue, too little investment and too much regulation."⁴²

The current fiscal crisis has forced New York State to make many difficult choices, including the reduction of State taxpayer support for SUNY and CUNY. At the same time, this crisis has resulted in an increasing number of applicants to SUNY campuses, as students look to improve their chances of employment and are attracted by the relatively low costs of public university tuition. This enrollment growth is placing a burden on many SUNY campuses that cannot be fully offset by the incremental revenue derived from these additional students and recent tuition increases.

Asset maximization can provide opportunities for campuses to develop additional and more diversified revenue streams to help them meet current and future operating budget challenges. The Commission found in its Preliminary Report that SUNY and CUNY are in possession of significant assets and revenue streams that can be more effectively leveraged to generate supplemental operating revenues for use in the improvement of educational quality, the expansion of access to education and the construction of higher quality facilities. Further, by adjusting the regulatory framework in which the State's public universities operate, colleges can make more effective use of those funds they receive.

In particular, the Commission has identified three opportunities through which the State's higher education assets can be more effectively maximized: (1) capital financing through the Dormitory Authority of New York (DASNY); (2) use of alternative delivery mechanisms in capital construction; and (3) the leasing of campus lands under specific conditions.

⁴² "Final Report of Findings and Recommendations," New York State Commission on Higher Education, June 2008.

DASNY Financing

Recommendation: Enable not-for-profit foundations affiliated with State University (SUNY) campuses to work with DASNY for the purposes of financing supplementary capital expenditures beyond the SUNY and CUNY Master Plans.

Current law limits DASNY involvement with SUNY in the financing and construction of dormitory facilities and in the financing of education facilities constructed by the SUNY Construction Fund. Current law also does not permit DASNY to work with foundations (e.g., alumni foundations, housing corporations, research foundations) that are exclusively affiliated with SUNY campuses. Such partnerships would allow for the expansion and renovation of existing and planned educational facilities beyond what can be financed through the current master-planning process. Absent such expanded financing authority, individual campuses have previously turned to local Industrial Development Agencies with varying degrees of success and reliability.

Foundations affiliated with public campuses often hold title to assets such as endowments, research patents, research grants and in some cases, physical assets (e.g., buildings). In order to access tax-exempt financing through DASNY, a campus foundation must have access to a significant asset (or set of assets) to secure the bonds, and a significant recurring revenue stream with which to service debt. Generally speaking, such assets and recurring revenue streams are characteristic only of the largest, most complex campuses, such as the university centers and medical campuses. However, smaller campuses may still be able to take advantage of this financing method by securing small amounts of funding for the purposes of minor construction or improvement projects.

As with all recommendations advanced in this Report, these projects should take into account the Commission's labor considerations. As such, these projects, pursued by affiliated campus corporations and financed in partnership with DASNY, should be viewed as public works projects, therefore guaranteeing prevailing wages and subject to competitive bidding requirements.

The Benefit: Allowing large campuses to finance through DASNY would jumpstart millions of dollars in major capital expansion and improvement programs, improve educational quality and campus prestige, and stimulate the regional economy. In addition, given the Authority's expertise in conducting a comprehensive credit review, the strength of its name in the bond market, and the strong oversight of its Board of Directors and the Public Authorities Control Board (PACB), financing through DASNY can provide both more affordable access to capital and enhanced oversight as compared to the status quo. Lastly, this expanded financing capability will minimize the use of State-supported debt, thus freeing capacity for additional uses or reducing State-supported debt in the long-term.

Alternative Construction Delivery Mechanisms

Recommendation: Allow public builders constructing buildings for or on behalf of SUNY and CUNY to employ alternative construction delivery mechanisms including construction manager-at-risk and design-build.

Construction manager-at-risk is an alternative project delivery method whereby a single contractor agrees to undertake a project at a maximum allowable price, bearing the risk for any cost overruns. In addition to transferring construction cost risks, this approach would allow any cost savings to be shared between the contractor and SUNY/CUNY. Therefore, the inability to employ construction manager-at-risk, on major projects over \$10 to \$20 million, has hindered the State University system from maximizing capital funds.

Design-build refers to an expedited project delivery approach whereby a single contractor is responsible for both the design and construction phases of a given project. As a result of this arrangement, construction can begin once a design has been approved in lieu of a requirement of a second round of public bidding for the building phase. As with the construction manager-at-risk approach, design-build shifts risk to the contractor and fast-tracks project delivery. Currently restricted from utilizing design-build, the State University Construction Fund and SUNY campuses are required to manage capital projects using the traditional design-bid-build method, which places more construction risk with the public owner and adds significant time to the overall project delivery.

The Commission recommends that project labor agreements (PLAs) be employed where practicable for such SUNY projects where the construction manager-at-risk delivery mechanism is employed. The Commission understands the term “where practicable” to apply to projects over \$25 million where a study is conducted with results showing that utilization of a PLA is fiscally advantageous or provides some other benefit to the owner such as, for example, a guaranteed labor pool for the duration of the project.

All projects pursued by either the SUNY or CUNY systems should continue to be considered public works projects requiring the payment of prevailing wages and the solicitation of competitive bids. The Commission understands these requirements to apply to construction projects whether the University is the contractor or whether a not-for-profit (such as a campus foundation) or a private entity is the primary contractor.

The Benefit: Access to these contemporary construction delivery methods will accelerate schedules for capital projects, allow increased partnering and risk sharing with the private sector and reduce costs. Increased efficiency in capital construction will maximize the impact of State investments and expand the options for projects pursued on State campuses. As a result, the improved and expanded facilities used by students, faculty and staff on campuses around the State will contribute to an enhanced learning environment and a higher quality of education.

Campus Land-Lease

Recommendation: Initiate a targeted pilot program for a select number of SUNY schools – such as five – to lease campus lands to private entities under the authority of the State Asset Maximization Board. Such Board decisions should be made based upon statutory limitations that ensure labor protections, maintain consistency with university mission and retain proceeds for supplementary university operating or capital funds.

University systems seek to lease campus lands to private entities in order to finance targeted capital construction and to achieve significant supplementary operational funding. The State-operated (i.e. non-community college) campuses of the SUNY system include over 2,300 buildings totaling over \$78 million gross square feet of space located on over 20,000 acres of land. SUNY campuses are located in every region of the state and represent 25 percent of all State-owned assets, excluding roads and bridges. These assets represent a huge opportunity for revenue generation through public-private partnership, particularly at a time when operating budgets are stretched thin by State funding shortfalls.

Currently, SUNY's ability to lease campus lands is limited by the Public Lands Law which governs all New York State agencies. As such, all SUNY lands are under the jurisdiction of the Office of General Services (OGS) and limited to five-year leases. As a result, SUNY is required to pursue ad-hoc legislation for each and every land-lease deal into which they wish to enter. Notably, these restrictions are not applied to CUNY which operates under the authority of the more flexible Public Authorities Law by virtue of the fact that most CUNY lands are held by DASNY. According to the Public Lands Law, all State-owned lands are under the jurisdiction of the Commissioner of the Office of General Services (OGS). Under this jurisdiction, the maximum lease term is five years and any revenues generated revert back to the State treasury (as opposed to the University). These provisions form the basis of the necessity for individualized enabling legislation that provides for longer-term leases and for funds generated to accrue to the University.

Associated delays can result in significant opportunity costs and the uncertainties associated with obtaining such enabling legislation can deter campuses from pursuing some public-private partnerships, despite opportunities which may be available to them. Further, the requirement of ad-hoc enabling legislation can introduce additional political considerations into a given land-use partnership.

By contrast, CUNY lands, to which DASNY holds title are effectively, controlled by the City University. Leasing campus lands requires only the approval of the CUNY Board of Trustees, the CUNY Construction Fund Board of Trustees, and DASNY. Notably, DASNY approval is contingent upon compliance with the terms of the applicable financing documents (most notably, the provisions of the Internal Revenue Code pertaining to the use of property financed with the proceeds of tax-exempt bonds), not policy or political considerations. This

procedure eliminates any unintended consequences associated with the policy-making process, as well as any limitations created by the regimented legislative calendar.

The Commission recommends the advancement of a select number of pilot public-private partnership projects – such as five – to test the benefits of land leasing. This pilot program should be vetted through the State Asset Maximization Board, on a project-by-project basis, with the following principles governing any land-lease arrangement between the State University and a private entity:⁴³

- 1. Mission:** Any and all proceeds from any leasing of campus lands will be used in a way consistent with the mission of SUNY, namely, “to provide to the people of New York educational services of the highest quality, with the broadest possible access, fully representative of all segments of the population in a complete range of academic, professional and vocational postsecondary programs including such additional activities in pursuit of these objectives as are necessary or customary.”
- 2. Revenue:** Any and all proceeds from any leasing of campus lands will be retained by the State University for supplementary operating funding above and beyond State allocations.
- 3. Anti-discrimination/Participation of Minority- and Women-owned Business Enterprises:** Each lease or agreement shall be deemed a State contract for purposes of Article 15-A of the Executive Law, and the entity entering into such contract or lease shall be deemed a State agency for purposes of Article 15-A of the Executive Law.
- 4. Hours/Wages/Prevailing Wage and Supplements:** Each lease or agreement for construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration or improvement shall be deemed a public works project for the purposes of Article 8 of the Labor Law, and compliance with all the provisions of Article 8 of the Labor Law shall be required of any lessee, sublessee, contractor or subcontractor which performs such work.
- 5. Indemnity:** The lessee or sublessee shall indemnify and defend the State University against all claims, suits, actions and liability to all persons arising out of the lessee or sublessee’s use or occupancy of the leased premises.
- 6. Collective Bargaining Rights:** Nothing in any lease or agreement shall be deemed to waive or impair any rights or benefits of employees of the State University that otherwise would be available to them pursuant to the terms of collective bargaining agreements. All work performed on the leased premises that ordinarily would be

⁴³ These principles are intended to supplement, not supplant, University Board of Trustee oversight for each and every land-lease contract.

performed by employees subject to Article 14 of the Civil Service Law shall continue to be performed by such employees.

- 7. Reverter:** Upon the expiration of the lease or agreement, the demised premises shall revert to the State University. In the event the leased premises shall cease to be used for the purposes described in the lease or agreement, the lease or agreement shall immediately terminate, and the leased premises shall revert to the State University.

The Commission welcomes the stated interest by the SUNY Board of Trustees to include affected on-campus labor groups to participate in the planning process for all such land-lease development projects, and to implement a process that ensures such groups have a forum to provide their opinion to the SUNY Board of Trustees in advance of Board approval for projects. The Commission further notes that it views any projects pursued through land-lease arrangements with private entities to require the same prevailing wage protections as would a State-funded project.

The Benefit: The Commission estimates that millions of dollars in additional operating funding can be generated annually by allowing State-operated campuses to pursue public private partnerships through land-lease arrangements. The ability to lease campus lands would allow the State University systems the same freedom that is employed to great effect by public universities around the nation. In the contemporary operating environment, campus presidents must act as entrepreneurs as well as administrators. The ability to lease campus lands – as governed by the above-mentioned principles and processes – represents a necessary tool for use by the campus president.

Asset Class IV: Energy

Primary Challenges

- High and volatile energy prices
- Aging and insufficient energy infrastructure
- Growing clean power generation needs
- Untapped natural resources

Overview

Energy is the backbone of the State’s economy; it supports economic activity and prosperity and affords New Yorkers the standard of living they enjoy today. Energy projects are a vital component of the State’s infrastructure, and reliable, clean supplies of energy are essential to maintain reasonable and affordable energy prices. The goal of asset maximization in the area of energy is to make energy prices lower and less volatile, identify policies to conserve energy, improve energy diversity and energy security, and transition the State toward a clean energy economy. New York has the opportunity to address these challenges through public-private partnerships that:

1. Promote policies that attract private investment in energy infrastructure and a clean energy economy;
2. Create more open and accessible markets for trading and moving energy into and throughout the State;
3. Develop indigenous State energy resources;
4. Make available State owned lands for energy resource development through the lease or sale of State assets; and
5. Create an environment to support the State’s energy reliability, diversity, efficiency, and clean energy goals.

Average statewide electricity prices in New York are approximately 67 percent higher than the national average and, while varied by sector, are the fourth highest in the nation.⁴⁴ The State’s high electricity prices result from a number of influences, including underdeveloped indigenous energy supplies and limited energy infrastructures to make more supplies available; overreliance on importing a significant portion of its energy, which makes the State vulnerable to global price volatility; high State and local property tax burdens; and the high cost of regulatory assets that need to be repaid, but that do not generate electricity.

The State’s electricity generation mix is made up of approximately 32 percent nuclear, 29 percent natural gas, 19 percent hydroelectric, 14 percent coal, 3 percent petroleum, and 3 percent other renewable energy resources, including wind and biomass. Though this generation mix is more widely diversified and cleaner than many other states, its energy price fluctuations do impact the average consumer in New York. With the economic

⁴⁴ Energy Information Administration. New York State Energy Profile, 2009.
http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=NY.

downturn, high electricity prices place a significant burden on consumers and businesses, and higher prices detract from the economic competitiveness of the State in attracting and retaining industry and businesses. Natural gas and petroleum product prices in New York are also higher than the national average, due primarily to the State’s location at the end of the “product pipeline,” and its need to import most of its natural gas and petroleum products. This dependence on imports removes commodity pricing from State control and contributes to high and volatile energy prices. The State has large reserves of natural gas from shale deposits, but these have yet to be tapped. The State also has significant potential for off-shore energy development, including wind power, which could help mitigate price increases and reduce price volatility.

The State’s electricity system is also characterized by large supply and price disparities between upstate and downstate, due to high population concentration and fewer energy resources downstate. Upstate has lower demand and fewer transmission constraints, and hence lower prices. Natural gas and distillate fuel oil shortages experienced in New York City and Long Island, particularly during periods of peak winter demand, make those regions vulnerable to price volatility. In addition, the electricity transmission and distribution systems, natural gas pipeline systems, and steam systems, particularly in New York City, are aging, as evidenced by an increasing number of service interruptions and major outages (e.g., the steam explosion in New York City). New York’s natural gas pipeline infrastructure is in need of investment to both lower prices and create more stability. By encouraging investments in energy infrastructure, such as electricity transmission, new natural gas pipeline expansions and new natural gas supplies, these delivery systems could be markedly improved.

To address these challenges, the Commission has developed the following recommendations:

Create a Climate Conducive to Investment in Energy Infrastructure

Recommendation: The State should support and encourage public-private partnerships in the development of electricity transmission and distribution infrastructure, including “smart-grid” technologies, using State-owned lands and right-of-ways.

New York State can leverage the private sector’s expertise and desire for infrastructure development to promote critical power projects, including “smart-grid” technologies. NYPA and LIPA, for instance, could establish a joint venture with private partners for the development of new energy assets and infrastructure.

The Benefit: Improvements to the current energy infrastructure will result in substantial investments in the State, which will generate significant economic activity, and provide New York access to neighboring energy markets that can provide lower cost energy. There is also

the potential to leverage Federal funding, as the Obama Administration has made developing the nation's "smart grid" a priority.⁴⁵

Recommendation: The State should identify ways to make the siting process for energy projects more efficient and timely, while complying with the State's need for a comprehensive assessment of a project's local and State-wide impact.

The State should study the various laws, rules and regulations that guide the siting and permitting of energy projects, including those of the Departments of State, Environmental Conservation, and the Public Service Commission. Outdated and unnecessary requirements should be modified and new requirements should be considered where necessary.

The Benefit: An efficient siting process would help to build developers' confidence in the State's commitment to develop these projects, thereby making the State a more attractive place to do business. It would also reduce the uncertainty in the siting process timeline, which would facilitate the developers' ability to bring in private financing for their projects.

Create More Open and Accessible Markets for Trading and Moving Energy

Recommendation: Leverage NYPA's and OGS's consolidated electricity purchasing powers to include all State agencies and authorities, schools, hospitals, local governments, and not-for-profit organizations to potentially lower energy expenses in public and publicly-supported buildings.

The Benefit: Maximizing efforts to conserve energy are an important first step to lower energy expenses. Additionally, the State could realize cost savings through consolidated purchasing of electricity. State government consumes more than 1.9 billion kilowatt hours per year, costing over \$550 million annually.⁴⁶ Currently, the Office of General Services helps about thirty State agencies with operations in the New York City metropolitan area through a buying program with the New York Power Authority (NYPA). Through this consolidated energy buying savings program, these thirty agencies saved the State approximately \$13 million in FY 2007-2008, a savings of 26 percent. By expanding the buying program, more public offices could realize these types of savings.

Develop Indigenous Energy Resources

Recommendation: Utilize long-term power purchase contracts with renewable energy developers to incentivize green businesses to locate in New York.

⁴⁵ Remarks by the President and Vice President at the Signing of the American Recovery and Reinvestment Act, available at: http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-and-Vice-President-at-Signing-of-the-American-Recovery-act/.

⁴⁶ "Executive Order No. 111: Green and Clean State Buildings and Vehicles," NYSERDA, July 2003.

The Benefit: In addition to attracting renewable energy firms to reside in New York, such long-term contracts would provide energy price stability. Long-term contracts for renewable electricity could insulate the State from the budgetary risks of unexpected high electricity prices, usually caused by natural gas price spikes, as was seen after Hurricane Katrina and during June and July of 2008. Further, by entering into such contracts, the State can spur the development of jobs and increased tax revenue through new project construction.

Recommendation: Taking into account the significant environmental considerations, the State should study the potential for new private investment in extracting natural gas in the Marcellus Shale on State-owned lands, in addition to development on private lands.

The Marcellus Shale, a massive natural gas resource that extends northeast from West Virginia, through Pennsylvania to southwestern New York, presents an opportunity for the State to unlock tremendous value. Depending on the geology, a typical horizontal well in the Marcellus Shale (covering approximately 80 acres) may produce 1.0 to 1.5 bcf (billion cubic feet) of gas cumulatively over the first five years in service. At a natural gas price of \$6 per mcf, a 12.5% royalty could result in royalty income to a landowner of \$750,000 to over \$1 million over a five-year period.⁴⁷

The Benefit: An increase in natural gas supplies would place downward pressure on natural gas processes, improve system reliability and result in lower energy costs for New Yorkers. In addition, natural gas extraction would create jobs and increase wealth to upstate land-owners, and increase State revenue from taxes and land-owner leases and royalties. Development of State-owned lands could provide much needed revenue relief to the State and spur economic development and job creation in economically depressed regions of the State.

Develop State-owned Energy Resources through Lease or Sale of State Assets

Recommendation: The State should assess the potential for siting renewable energy projects, including land and off-shore wind, solar, and hydro on State-owned lands and waterways.

There are several options for viable projects in this category, including the following:

1. Offshore wind energy on New York's Great Lakes: The State has largely undeveloped wind energy resources in both the Great Lakes region and off the coast of Long Island. A public-private partnership could be developed to harness Great Lakes and Atlantic Ocean wind power to generate clean renewable energy. New York could develop a wind energy

⁴⁷ "Public-Private Partnerships: Submission to the New York State Commission on State Asset Maximization," Rothschild, January 12, 2009.

project either on Lake Erie, off the shores of Buffalo, on submerged land owned by the State or off the coast of Long Island. The projects could be owned by private entities that sell the power to utilities, and LIPA and NYPA under a stable-priced long-term contract.

The Benefit: The State could receive revenue from these projects in the form of rent payments. In addition, this type of project would create “green collar” jobs for the upstate region, and help meet the State’s clean energy goals.

2. Expanded hydropower generation along the Erie Canal: The Erie Canal, operated by the New York State Canal Corporation (a division of the New York State Thruway Authority), is an asset that could be further leveraged through a PPP for the expanded generation of hydropower. Currently, the canal system does not generate sufficient revenue to cover the costs of operation and maintenance. Deficits place fiscal pressure on the Thruway Authority to find other means to compensate for this deficit.

The Benefit: Through a PPP, the State can gather much needed recurrent revenue to minimize the Canal Corporation’s deficit, while spurring tremendous job growth and expanding the State’s renewable energy portfolio for transmission and generation.

Recommendation: The State should support the development of a process for installing renewable energy technologies on State facilities, particularly those that are energy intensive, and have open space and/or compatible roofing.

The installation of such renewable energy technologies could be undertaken at correctional facilities, universities and hospitals. Additional installations could be done for emergency applications, such as emergency and protective services centers, emergency shelters, and traffic signals. The State could partner with the private sector for financing, installation and maintenance of such systems.

The Benefit: Through a PPP, the State could leverage otherwise vacant space to provide a significant hedge against high and volatile fuel prices, while improving energy security and building a clean energy economy.

Recommendation: The State should evaluate the potential for reducing the energy use and costs of its aging properties, which may not be currently optimized for energy efficiency, through the implementation of energy management strategies.

These energy management strategies could include: enabling State buildings to participate in demand response programs in which the properties would reduce energy use at critical times, or in response to market prices; and Monitoring-Based Commissioning (MBCx), in which monitoring devices would enable energy managers to ensure that an asset maintains a favorable state of operation.

The Benefit: Managing demand-response and undertaking MBCx through a PPP would allow the State to leverage private sector capital and resources to reduce energy usage and costs.

Create an Environment to Support Energy Goals

Recommendation: The State should increase its outreach efforts to make energy efficiency programs offered by NYSERDA, NYPA, LIPA, DASNY, and utilities more accessible.

Collectively, the State and Utilities are investing over \$700 million annually in energy efficiency and renewable energy technologies to reduce energy use, diversify energy supply, improve energy security, and moderate energy price volatility.

The Benefit: Continued State support to this industry will be critical for the industry to prosper in New York and for the State to transition to a clean energy economy. By making energy efficiency programs more accessible, the State would see an increase in both program participation and the benefits realized by all ratepayers.

Asset Class V: Information Technology

The Primary Challenges

- Outdated and inadequate data centers
- Insufficient funding to undertake necessary upgrades
- Ensuring public safety
- Wireless and broadband coverage deficiencies

Overview

The Commission found in its Preliminary Report that the State can utilize asset maximization strategies to solve its information technology challenges. In particular, the Commission has identified telecommunications, broadband, and the State's data center consolidation as areas within information technology (IT) that require significant infrastructure investment while possessing tremendous potential for utilizing public-private partnerships.

Pilot Project: Telecommunications

Recommendation: Pursue a public-private partnership with the telecommunications industry in which the State identifies and leases building rooftops, land holdings and other fixed assets for all wireless carriers to expand their commercial network.

In addition to the public sector, the wireless industry could benefit greatly from access to land and building rooftops for their networks. A public-private partnership could be established in which a wireless carrier pays rent in exchange for a long-term lease for the use of the land to develop cellular towers. Since many locations can be developed to accommodate more than one wireless carrier, the State could receive rent from each carrier as a tenant. Currently, the State owns many properties, including correctional facilities, SUNY property, and NYSDOT highway and bridge facilities, which are not currently being maximized and could be used for the development of such wireless facilities.

The State could streamline the process for leasing State-owned property for the development of wireless towers. There could be a standardized master lease agreement (MLA) where any carrier could execute such an agreement with the State or any individual agency. Such an agreement would set out reasonable terms and conditions which would speed time to market and increase return on investment for wireless carriers. Individual locations could be leased by means of a site-license agreement (SLA), provided for in the master lease. This process allows for collaboration by both parties as to the viability of a given location. Carriers should also be provided ease of operational access for maintenance, repairs and technology upgrades to keep pace with the emergence of new technologies.

The Benefit: In addition to generating a new source of revenue for the State, other benefits from expanding commercial wireless coverage include simultaneously expanding emergency network coverage, improving overall public safety interoperability, spurring the creation of jobs and economic development, and meeting FCC requirements for a robust wireless network to support a cellular emergency messaging system.

Public Safety: Many regions of New York, especially New York's north country and Long Island, lack reliable wireless coverage. Without this robust coverage, residents cannot benefit from the innovative safety uses of wireless networks. For example, public safety personnel can now determine the location of a caller based on their proximity to wireless sites.

Emergency personnel and other first responders depend on wireless services to perform their jobs. Although emergency agencies strive toward interoperability of their equipment, so that fire, police, and medical facilities can communicate, this feat has still not been achieved. Consequently, these personnel use their wireless phones to communicate with one another and will always need commercial wireless networks to communicate to anyone outside the emergency community. With network development hindered by local land use practices in certain areas of the state, critical personnel do not yet have the one tool for providing timely, integrated assistance.

To incentivize municipalities to lease land for the construction of new cell towers, the wireless industry has provided inducements, including the mounting of radios for local police, fire, public field personnel, i.e., building and health inspectors, and other first responder organizations by the wireless carriers. Allowing carriers to construct commercial towers to support public safety equipment will provide the State an improved emergency network at a significantly reduced cost.

Meeting Regulatory Requirements: The Federal Communications Commission has mandated that, by 2010, wireless carriers must implement a cellular emergency messaging system. This system will push text messages to warn people with wireless phones of disasters in their immediate area. Several cities across the Country have already implemented Reverse 911 systems. For example, New York City piloted a reverse-911 system and Mayor Bloomberg has announced his intention of taking the system to all five boroughs. To meet this goal, NYC will need high-performance wireless networks.

Municipalities already enjoy the benefits of entering into these land lease agreements. Wireless carriers prefer to utilize municipal property because traditional approvals are accelerated, minimizing the 'time to market' from as much as several years to a few months. This allows carriers to receive a quicker return on their investments. For instance, Suffolk County created an innovative program to maximize its land by proactively identifying 41 sites most conducive to the construction of new wireless infrastructure. Because these sites were municipal building, public opposition was minimal, and wireless carriers began construction on many of these locations within a year of the RFP.

Pilot Project: State Data Centers

Recommendation: Establish a public-private partnership to help finance new construction and consolidation of the State's data centers.

The Commission has identified three asset maximization options to address the State's current data center capacity challenges:

1. The State could enter into a long-term lease arrangement (ten to twenty years) with private sector partner(s) through a facilities management arrangement for the operating platform(s) of the data center portfolio. The State would continue to manage the technology within the consolidated data center for the various New York State agencies and their managed service needs. This option would enable the State to avoid annual maintenance costs, to transfer risk of facility downtime to private operators, and to focus on other core IT competencies, i.e., delivering IT services rather than landlord services.
2. The State could partner with the private sector to provide the capital and development expertise to construct the new consolidated data center facilities. In addition to the State transferring the new construction costs, an upfront payment to the State could be possible depending on the construction requirements and the cost of updating the platform portfolio.
3. A private investor could build, own and operate the new consolidated data center facility in exchange for a long-term lease (ten to twenty years) with the State. Through this public-private partnership, the State would gain the ability to project future budget and cost requirements through a service level contract. In addition, the new data center facility would not require a capital expenditure by the State. Development, construction and operational risk would be transferred to the private party.

The Benefit: A PPP as described above could provide the State with relief from future capital expenditure requirements, allow the redeployment of funds, and transfer redevelopment and operation risks to the private sector. It would also allow the State to focus resources on technology management while introducing private sector expertise in data center facilities management.

Furthermore, the State's current four mainframe data centers are at full capacity and at an increasing risk of failure. The buildings that house these centers are twenty to forty years old. The risk of unplanned outages, or "crashes," and the attendant loss of service, equipment and critical data, continues to increase as a result of heating, ventilating, and air conditioning (HVAC), power and other infrastructure constraints. Two of the four data centers have access to generator power and the facilities still require electrical and cooling maintenance which results in periodic, scheduled shut-downs of a site. These periodic shut-downs increase the risk of recovery failure after a shutdown and decrease the availability of New York State's mission-critical applications. Implementing any of the options described

above could result in a higher level of availability, reliability and security for the State's IT assets.

Additionally, a disaster recovery back-up facility is critically needed to protect mission critical applications for 27 State agencies. There is currently no disaster recovery back-up capability for any of the four existing mainframe data center sites. This is a major gap in the State's homeland security preparedness planning that must be addressed to assure continuity of operations. Critical operations currently running in the existing data centers include: New York State Police Information Network, Child Abuse Hotline, Medicaid, Child Health Plus, Welfare Management System, Child Support Collection, Lottery Prize Payment, Personal Income Tax Collection and Drivers License Issuance, to name a few. While the current State appropriation to construct a consolidated data center and a disaster recovery facility is about \$100 million, the total cost is at least \$302 million.

Examples from Other States

Other states, including Texas and Virginia, have utilized asset maximization strategies with the private sector to upgrade and improve all or a portion of their IT services. In Texas, for instance, IBM was awarded an \$863 million contract over seven years for consolidation of the State's thirty-one data centers, along with providing managed services. This contract is projected to result in a savings of approximately \$159 million over the life of the contract and 210,000 square feet of available space.⁴⁸ Texas has gained increased security and disaster recovery services with more predictable costs going forward. In 2005, Virginia awarded the Northrop Grumman Corporation a ten-year contract with a total value of \$2 billion to overhaul the State's IT infrastructure. The total private sector investment included \$270 million of capital to be spent by Northrop Grumman on a full service overhaul of Virginia's IT systems, including \$60 million marked for two new data centers.

Pilot Project: Universal Broadband Internet Access

"New York has not developed the technological capacity both in terms of universal Internet access and digital literacy levels needed to achieve and sustain a strong competitive edge."

– Dr. Melodie Mayberry-Stewart, New York State Chief Information Officer, Director of the Office for Technology and the Chair of the Council for Universal Broadband

Recommendation: Promote increased broadband internet access by allocating risk across the public owners and private contractors charged with constructing an expanded broadband network.

According to the Progressive Policy Institute, by the end of 2001, 53 percent of New York State citizens had access to Internet, ranking New York State 33rd among U.S. states. New

⁴⁸ Cooney, Michael. "IBM wins Texas-size data center consolidation contract," Computer World, December 1, 2006.

York's average household adoption rate is 53 percent, compared to the national average of 55 percent. In December 2007, the New York State Council on Broadband was created to put strategies into place that would ensure that by 2010, every New Yorker has affordable high-speed internet access (costing no more than thirty dollars per household per month). Among its findings were that the State needs to build collaborations between the public and private sectors, and create a State Technology Fund for joint public/private investment. Furthermore, the New York State Office for Technology, working collaboratively with the Council, launched a State-wide mapping initiative to help overcome the State's current coverage shortfall in underserved urban and rural communities. The Commission concurs that wireless broadband is an ideal area for the State to engage in public-private partnerships, and with the broadband stimulus funding available through ARRA, the State should aggressively pursue those projects that optimize funding opportunities based on public-private partnerships.

The expansion of an affordable, universal broadband network throughout the State can be achieved with the least cost and the most benefit by enforcing alignment with the State's broadband strategy. This strategy provides minimum goals for coverage, speed and targets, and enables a balance of flexibility to incentivize the private sector to design, deploy, operate and maintain broadband networks.

The Benefit: Utilizing a PPP could result in accelerated broadband development, achieve cost savings, minimize the chance of failure and increase sustainability. The State can also leverage the capacity of a new network to provide additional services through tele-medicine, distance learning, and expanded state-wide access to citizens and businesses. Further, making State-owned land available for wireless broadband expansion could accelerate capital investment by reducing the often costly and time-consuming permitting process.

Asset Class VI: Underutilized and Surplus Properties

The Primary Challenges

- No streamlined process for reuse of underutilized properties
- No statewide revenue enhancement strategy
- No comprehensive inventory of State property
- Lack of interagency communication

Overview

The State has the ability to extract tremendous value from underutilized State assets. However to maximize State properties – beyond disposition – a broader real estate-management approach is necessary. Unlocking this value will require New York State to implement an innovative program that leverages its existing human resources, operating practices and existing business expenses.

Currently, the only process clearly defined by law regarding surplus State property regards the disposition of such properties. Once property has been defined as “surplus,” the Office of General Services takes possession with the express purpose of disposition. However, OGS may not dispose of the property until it has been determined that no other State agency or municipality has an interest in the property. Since it is unclear that revenues received from a disposed property would return to the agency from which it came, agencies are not incentivized to bring forward property.

Aside from disposition, no agency is currently charged with identifying multiple options for maximizing property value across all state agencies and authorities, which could enable the State to generate additional revenue. The lack of an integrated framework imposes costs, including the opportunity cost of lost proceeds from disposals and unrealized revenues from leases and tax income.

Further, the State lacks a comprehensive and flexible database with the capability to inventory and report on leased and owned real estate assets. Key property data is currently stored across multiple systems and amongst various State agencies, providing an inaccurate picture of the State’s current real property holdings.

Pilot Project: State Property Database

Recommendation: Formalize a public-public partnership between Empire State Development Corporation and the Office of General Services to centralize authority in managing the State's real estate needs, reviewing the State's portfolio of current assets, and developing a systematic strategy for making asset management, sales, and leasing decisions in a manner that will maximize the value of State assets.

To ensure the success of this collaboration, the State should empower a manager to oversee real estate asset maximization opportunities statewide. This partnership would leverage State authorities and agencies to manage state assets rather than creating new entities and organizations.

The Benefit: Implementing an innovative program as recommended above would leverage existing human resources, operating practices and business expenses to unlock the value of New York’s real estate assets. Additionally, developing consistent cross-agency policies and transparency would promote asset maximization among both the public and private sectors, and open up new value-generating ideas on alternative uses of property.

Recommendation: Disposition of surplus property should not be the only option for revenue enhancement from underutilized assets. Creative public-private partnerships, which utilize joint ventures, license agreements, ground leases and other transaction alternatives, should be advanced to fulfill the State’s short-term needs while building long-term value.

The State should leverage its existing real estate contract expenses with the private sector (including lease administration, lease procurement and brokerage, and asset disposition programs) in a single-service contract to incorporate other services, such as the creation of a robust and transparent inter-agency inventory of underutilized assets and the development of a comprehensive portfolio review, to implement the State’s asset maximization objectives. There are tremendous efficiencies of scale in this procurement approach that would enable the State to get much more from the private sector for the same expense.

The Benefit: The State currently has significant opportunities to maximize the revenue potential of its real estate assets in the eyes of commercial wireless carriers, renewable energy firms, commercial developers, and others by entering into long-term leases for State buildings, rooftops and land holdings. One example of this type of property is 75 Morton Street, a building located the West Village of Manhattan. The costs to renovate the building are discouragingly high, yet attempts to sell the building have failed when bids came in below the appraised value. If the State were to partner with the private sector, whether in a long-term lease or some other arrangement, it could be possible to renovate the building while preserving the State’s public policy goals, by requiring that labor, environmental and community provisions are included in the contract.

Recommendation: Utilize a public-private partnership to develop an inventory evaluation system.

The Benefit: This inventory evaluation system would address the need for a comprehensive and flexible database with the capability to inventory and report on the State’s leased and owned real estate assets. Key property data is currently stored across multiple systems

and amongst various state agencies and authorities – providing an inaccurate picture of the State’s current real property holdings.

Examples from Other States

An example of this kind of inventory evaluation system is New Jersey’s Office of Management and Budget (OMB). New Jersey OMB designed and implemented the Statewide Land and Building Asset Management System (LBAM) from 2004 through 2008. LBAM requires all State agencies to perform a statewide physical inventory of their land and buildings, and to populate the system with their findings. Under New Jersey OMB enforcement, all State agencies must use LBAM as the official system of record for the State’s capital assets, including land, buildings and capital improvements. As such, LBAM plays a key role in the tracking, sale and value-maximization of all State-owned property. The system also inventories leased (revenue, operating, and capital) facilities, licensed facilities, easement/development rights, and other assets where the State holds a mortgage or reversionary right. Land or buildings owned by another governing agency but maintained by the State of New Jersey must be entered into LBAM.

In addition to its database management features, LBAM interfaces with the Department of Environmental Protection Agency’s GIS system. This interface gives each department and agency the ability to store an aerial photograph of each building in LBAM and retrieve additional data about the surrounding area. Data from this system has been also used by various State and Federal agencies including the Federal Emergency Management Authority FEMA and Homeland Security.

New Jersey has also leveraged the LBAM system to support its Space Utilization Initiative – an efficiency study of State owned and leased properties. Under this initiative, employee counts and workspace layouts for each inventoried property were added to LBAM to assist in the State’s space-usage analysis. Through this initiative, New Jersey estimates a savings of \$5.1 million from lease terminations and renegotiations during 2009 and 2010. It is expected workspace utilization will be a part of the State’s annual budgeting process beginning in 2010.⁴⁹

Recommendation: Support the establishment of a public-public partnership between the City of New York and the State to support the New York City Brownfield Cleanup Program.

Under the nation’s first municipal-led brownfields program, New York City developers could gain formal liability protection from the State in return for their willingness to cleanup and develop brownfields in accordance with State rules. Unlike the State program, however, the New York City Brownfield Cleanup Program would not require State resources, tax credits, staff, or any other form of financial support, and would provide timely financial benefits to

⁴⁹ “New Jersey 2009 Budget in Brief,” available at: <http://www.state.nj.us/treasury/omb/publications/09bib/BIB.pdf>.

all parties. While the City program does not require State resources, it would require the same liability protections guaranteed under the New York State cleanup program. Thus this recommendation would require legislative assurance that State agencies would not sue participants of the City program under existing State law.

Background

Brownfields are vacant or underutilized contaminated properties, where pollution impedes redevelopment. As such, brownfields qualify as a subset of Underutilized Property, and are included in asset maximization strategies for this asset class. Safe and responsible brownfields development can reduce urban blight while enhancing economic recovery through the generation of tax revenue and job creation.

An estimated 10,000 acres of land are deemed brownfields statewide, with at least 5,000 acres in New York City alone. Although the development of such land could raise revenue and create jobs, due to liability concerns associated with the cleanup of these properties, developers often avoid brownfields. To address this problem, in the early 1990s, the State formed a brownfields cleanup program, which offered state liability protection for developers. This program was quite successful, as enrollment and cleanups increased. In 2003, the State passed the Brownfield Cleanup Law, which provided additional tax credits for developers, ranging from ten to 22 percent of the value of developed properties. Unfortunately, the tax incentives have become costly for the State to administer, and brownfields development has slowed. In 2008, such development reached a fifteen-year low.

The Benefit: This public-public partnership would benefit developers, New York City, and New York State. The development of these properties would allow both the State and the City to accrue the economic benefits. The City would foster economic recovery and development with an increase in tax revenue and job creation. Finally, at zero cost, the State would similarly benefit from increased tax revenue and job creation, while conserving State resources through delegation of cleanup responsibilities to the municipal level. This diversion of projects from the State Brownfield Program might also allow the State to avoid some of the remaining tax credit liability.

Seen as a major economic recovery initiative, the New York City Mayor's Office has decided to fund this new program even in the midst of the current financial crisis. Over the next four years, the City plans to invest roughly \$12 million, in the form of small grants, to incentivize entry into the program. The City has already hired approximately two-thirds of a planned eighteen-member staff, which will oversee the program's implementation.

Without a State liability release, there is no alternative for developers to obtain the liability protection necessary for investment. Conversely, the program's prohibitively costly tax incentives prevent the State from adequately funding the program. In New York City, this has resulted in a loss of redevelopment opportunities, a loss of job creation opportunities, and a substantial loss in the tax revenue base. The State and the City, therefore, share a vested interest in developing strategies for the safe, responsible, and profitable development of these surplus properties. The Commission urges the State legislature to

catalyze the development of thousands of acres of surplus brownfields property by expanding liability protection to include the public-public partnership proposed by the City of New York.

Conclusion

Over the past 180 days, the Commission has uncovered numerous opportunities for asset maximization in major asset classes, including transportation, social infrastructure, higher education, energy, information technology and underutilized properties. Through investment in our physical and social infrastructure, the recommendations of this Commission could generate billions of dollars in economic development throughout every region of the State. The various pilot projects were selected as potential demonstration projects for public-private partnerships based upon the spending need addressed, cost savings delivered, the private sector's ability to partner, and the project's regulatory and political feasibility. Each of these projects could be delivered in an accelerated time frame by utilizing the alternative financing and procurement approaches presented in this Report.

In order to realize these benefits, the State should be empowered to engage the private sector, capturing their ideas and creativity, through a mechanism that serves as a guardian of the public interest. Therefore, rather than providing State agencies with sweeping authority to undertake public-private partnerships, a State Asset Maximization Board should be created within an existing agency or authority, to bring forth a transparent oversight process that is inclusive to all relevant stakeholders, with representatives from the Governor, the Legislature, the Comptroller and the private sector. Furthermore, this Board would be required to seek input from the public before making any decisions and to adhere to a set of rigorous guidelines that ensures necessary oversight throughout the life of a project.

Public-private partnerships are not the only solution to the widening gap between resources and needs in public infrastructure; rather, they are a tool for bringing innovation, risk transfer, and incremental capital and manpower to bear on projects that would otherwise languish. These partnerships can and should always be compared to traditional public sector approaches to confirm that they provide inherent value to citizens, taxpayers, and system users alike. Given the growing out-year deficit projections for the State budget, this additional toolkit could allow the State to save money and raise new revenues. It is vital for the State to seize this opportunity to develop a new financing skill-set and to protect its economic competitiveness.

While President Obama's Federal stimulus package provides a needed boost to infrastructure spending, we must recognize that the stimulus alone is not nearly enough to address the billions in future State infrastructure needs. The recommendations of this Commission are intended to give New York additional tools to use in partnership with the private sector, stimulating economic development, increasing funding for public works projects, and maintaining New York State's competitive edge. The time to act is now; New York must seize this window of opportunity.

Appendix

Appendix A: Executive Order No. 11

EXECUTIVE ORDER NO 11: ESTABLISHING A COMMISSION TO UNDERTAKE A STATE ASSET ANALYSIS AND RECOMMEND STANDARDS AND LEGISLATION TO MAXIMIZE THE VALUE AND USE OF SUCH ASSETS

WHEREAS, alliances with the private sector can potentially increase value to both public property and services by combining private sector efficiencies with appropriate government oversight;

WHEREAS, the State has critical physical and non-physical assets, including an extensive, aging transportation infrastructure, which could be repaired, maintained, replaced, enhanced or financed through alliances with the private sector;

WHEREAS, the State must develop an infrastructure investment plan over the next ten years to ensure the safety and integrity of our existing assets;

WHEREAS, strengthening the means by which the State finances and delivers infrastructure projects will make the most of limited resources during this climate of constrained funding.

WHEREAS, the State operates valuable assets and services that could be maximized to better serve long term State needs;

WHEREAS, a recommendation should be made to the Legislature and the Governor regarding specific State assets that could be maximized through an alliance with the private sector;

WHEREAS, recommended standards must be developed for potential alliances with the private sector to ensure the greatest benefit to the State and to protect State workers and the environment;

WHEREAS, an appropriate procurement process should be recommended to the Legislature and the Governor should the State enter into an alliance with the private sector to maximize State assets.

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, including section six of the Executive Law, do hereby establish the New York State Commission on State Asset Maximization, and order as follows:

A. Definitions

1. "State agency" or "agency" shall mean any State agency, department, office, board, commission or other instrumentality of the State, other than a public authority.
2. "Public authority" or "authority" shall mean a public authority or public benefit corporation created by or existing under any State law, with one or more of its

members appointed by the Governor or who serve as members by virtue of holding a civil office of the State, other than an interstate or international authority or public benefit corporation, including any subsidiaries of such public authority or public benefit corporation.

3. "Asset maximization" means an arrangement between the State and one or more public or private entities that relates to the development, financing, maintenance, securitization, monetization or operation of a State asset.
4. "State asset" means any infrastructure, property, real property, intellectual property, facility, revenue, payment or service owned or provided by a State agency, public authority or public benefit corporation.
5. "User fees" means rates, tolls, fares, rentals, fees, or other charges imposed for or associated with the use or operation of all or a portion of a State asset.

B. New York State Commission on State Asset Maximization

1. There is hereby established the New York State Commission on State Asset Maximization ("Commission").
2. The Commission shall be comprised of eleven members to be appointed by the Governor: one on the recommendation of the Majority Leader of the Senate, one on the recommendation of the Speaker of the Assembly, one on the recommendation of the New York State Comptroller, one on the recommendation of the New York State Attorney General, one on the recommendation of organized labor and seven without prior recommendation, one of whom shall be selected by the Governor to be the Chair.
3. A majority of the appointed members of the Commission shall constitute a quorum, and all recommendations of the Commission shall require approval of a majority of the members of the Commission. Members of the Commission shall serve without compensation, but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties. No member of the Commission shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment by virtue of his or her appointment hereunder.
4. The Governor shall appoint an Executive Director and staff to render assistance to the Commission. The Executive Director and staff shall be selected from one of the following agencies or State Authorities each of whom shall offer assistance to the Commission: the Departments of Economic Development, Transportation, Taxation and Finance, and Civil Service as well as the Urban Development Corporation and the Division of the Budget. Every State Agency and State Authority shall cooperate with the Commission.
5. The Chair of the Commission shall establish any number of advisory committees consisting of interested individuals and entities, including but not limited to civic groups, industry representatives and local governments.

C. Duties and Purpose

1. The Commission's review shall include an examination of State assets appropriate for asset maximization, including but not limited to:

- (i) transportation assets;
 - (ii) the State lottery; and
 - (iii) real property, intellectual property, recreational facilities, revenues and other State assets as the Commission deems appropriate.
2. The Commission shall accept ideas for asset maximization from private and public entities, not-for-profit institutions, research and academic institutions and the public.

D. Reporting

1. The Commission shall make recommendations to the Governor, the Legislature, agencies and State authorities regarding asset maximization, including:
 - (i) procurement process and timeline for selecting a financial advisor to assist in the selection of investment and other professionals necessary for asset maximization;
 - (ii) procurement process and timeline for selecting underwriters for asset maximization, including appropriate participation by Minority and Women-Owned Business investment banks;
 - (iii) the ability to use tax exempt financing;
 - (iv) use of proceeds;
 - (v) performance standards;
 - (vi) regulation of user fees;
 - (vii) protection of public employees;
 - (viii) prevailing wage and other labor standards;
 - (ix) non-compete clauses;
 - (x) proposed timeline for legislative approval;
 - (xi) providing a means by which the Executive can engage in asset maximization; and
 - (xii) other factors as the Commission deems appropriate.
2. No later than 90 days after the issuance of this Order, the Commission shall transmit a Preliminary Report to the Legislature and the Governor containing recommendations of State assets suitable for asset maximization through private alliances. No later than 180 days after the issuance of this Order, the Commission shall transmit to the Legislature and the Governor a Final Report containing its recommendation of standards and proposed legislation that may be required to implement asset maximization.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this second day of October in the year two thousand eight.

David A. Paterson
Governor Secretary to the Governor

Charles O'Byrne

Appendix B: Pension Funds with Defined Benefits in Infrastructure

Pension Funds with Defined Benefits in Infrastructure	Assets (\$mil)	Infrastructure Funds (Defined Benefit Managers)
Teamsters, Western Conf.	\$637	JP Morgan
I.A.M. National	\$269	Lazard (Public); Amalgamated Bank (Private)
Northrop Grumman	\$227	N/A
Illinois State Board	\$225	Alinda; Macquarie
Operating Eng. International	\$190	Macquarie; Carlyle; Global Infrastructure Partners
Washington State Board	\$167	Alinda Infrastructure Fund II
Texas Teachers	\$108	N/A
California Public Employees	\$98	N/A
Boeing	\$93	N/A
JP Morgan	\$79	Macquarie; Alinda
Missouri Public Schools	\$72	N/A
Maine State Retirement	\$32	Carlyle; Global Infrastructure Partners
Chicago Teachers	\$27	JP Morgan; Macquarie
Missouri State Employees	\$23	Alinda
Wells Fargo	\$19	N/A
New Mexico Educational	\$12	Citi Infrastructure Partners; Alinda Infrastructure Fund II
IMF	\$1	N/A
Total	\$2,279	

Source: Pensions and Investments as of September 30, 2008

Appendix C: Acknowledgements

AECOM
AIA New York State
Albany Parking Authority
Albright Knox Art Gallery
Alcatel-Lucent
Allen & Overy LLP
Alliance for Clean Energy New York, Inc.
American Council of Engineering Companies
American Water Enterprises, Inc.
AON Corporation
Assemblyman Robin Schimminger
Associated General Contractors of New York State
Barbara W. Reese, Office of the Governor of Virginia
Barclays Capital
Bergmann Associates
Borough of Manhattan Community College
BQ Energy
Buffalo Niagara Partnership
Buffalo Public Schools
Building Trades Employers' Association
Business Council of New York State
Calyon Americas
Capital Partners
CB Richard Ellis
CGI Group Inc.
Citigroup
Citizens Budget Commission
Civil Service Employees Association
Local 1000
Cintra Developments, LLC
Congressman Jerrold Nadler
Construction Industry Council
CUNY Vice Chancellor's Office for Facilities Planning, Construction and Management
David Crane, Office of the Governor of California
DEPFA First Albany Securities LLC
Dormitory Authority of the State of New York
Downtown Brooklyn Partnership
Empire State Development Corporation
Empire State Transportation Alliance
Energy Answers International, Inc.
Enernoch
Environmental Defense Fund
Federal Highway Administration
First Southwest Company
Fiscal Policy Institute
FIVEOREPORTS
Fluor Corporation
Freshfields Bruckhaus Deringer LLP
Fulbright & Jaworski LLP
General Building Contractors of New York State
General Contractors Association of New York
Gilbane Building Company
Goldman Sachs
Halcrow Group
Harris Beach, PLLC
HDR Decision Economics
Hudson Valley Clean Energy
Hunter College, CUNY
Infrastructure Ontario
International Brotherhood of Teamsters Local 72
J.P. Morgan
Jones Lang LaSalle Americas, Inc.
Kathleen Nolan, MD, MSL
KPMG
Legislative Committee for AAA New York State
Long Island Contractors' Association
Long Island MidSuffolk Business Action
Long Island Power Authority
LP Ciminelli
Kirkland & Ellis LLP
Macquarie Capital Advisers
Maglev 2000
Mary Jane Shimsky, Office of Assemblyman Richard Brodsky
McKenna Long & Aldridge LLP
Merrill Lynch
Morgan Stanley

Moving America Forward
 New York Building Congress
 New York City Bar Association
 New York City Department of Design and
 Construction
 New York City Department of Transportation
 New York City Mayor's Office of Contract
 Services
 New York City Health and Hospitals
 Corporation (HHC)
 New York State Association of Counties
 New York State Board for Architecture
 New York State Board for Landscape
 Architecture
 New York State Department of Environmental
 Conservation
 New York State Department of
 Transportation
 New York State Division of the Budget
 New York State Higher Education Initiative
 New York State Insurance Fund
 New York State Office for Technology
 New York State Parks Department
 New York State Telecommunications
 Association
 New York State Thruway Authority
 NKF Consulting
 Nick Rostow, University Counsel and Vice
 Chancellor for Legal Affairs, SUNY
 Nossaman LLP
 NYSERNet
 NYU Rudin Center for Transportation Policy
 and Management
 Partnership for New York City
 Partnerships British Columbia
 Peckar & Abramson, P.C.
 Port Authority of New York and New Jersey
 Preservation League of New York State
 PriceWaterhouseCoopers
 Public Employees Federation
 Public Finance Management, Inc.
 Rausch Foundation
 Regional Planning Association
 Reis, Inc.
 Reunion Power LLC
 RMJM
 Rothschild, Inc.
 Ruskin Moscou Faltischek, P.C.
 Roosevelt & Cross, Inc.
 Scott Balice Strategies
 Southern Tier West Regional Planning &
 Development Board
 Squire, Sanders & Dempsey L.L.P.
 State University Construction Fund
 Stephen F. Mayer, Ph.D., P.E.
 Suffolk County Executive's Office
 SUNY Albany
 SUNY Buffalo
 SUNY Old Westbury
 SUNY Purchase
 T-Mobile
 Tania L. Askins
 Tetra Tech, Inc.
 The FAIR Committee of Western New York
 The Heartland Project
 The West Firm, PLLC
 TR Advisors
 UBS Investment Bank
 University Transportation Research Center
 Westchester County Center
 White Acre Equities, LLC