



## The Smart Growth Public Infrastructure Policy Act

### *Assessing its effectiveness three years after enactment*

Empire State Future examines the effect of the 2010 law on recent construction, development, and infrastructure spending in New York State, and which agencies and authorities have embraced the process involved and are actively putting the law's provisions into practice.

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## Coalition Members

The Empire State Future Coalition consists of local, regional, state, and national organizations and companies dedicated to fiscally and environmentally sustainable and equitable development statewide. Our combined mailing list reaches more than 500,000 New Yorkers from Montauk to Niagara Falls. Empire State Future and its Coalition mutually support each other's common missions. Together we are building a collective strength to achieve a more prosperous New York.

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American Farmland Trust  
American Institute of Architects – NY Chapter  
American Institute of Architects – NYS Chapter  
American Planning Association – NY Metro  
American Planning Association – NY Upstate  
Audubon – New York  
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Land Trust Alliance Northeast Program  
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Leyland Alliance  
Local Initiative Support Corporation- Buffalo  
Main Street First- Little Falls  
Metropolitan Waterfront Alliance  
Mid-Hudson Pattern for Progress  
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Partnership for the Public Good - Buffalo  
Preservation League of New York State  
Project for Public Spaces  
Reconnect Rochester  
Regional Plan Association\*  
Renaissance Downtowns LLC.  
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Rochester Regional Community Design Center  
Scenic Hudson\*  
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Smart Growth America  
Sustainable Hudson Valley  
Sustainable Long Island  
Sustainable Saratoga  
Sustainable South Bronx  
Sustainable Tompkins  
Syracuse First  
The Stakeholders Inc.  
Ticonderoga Revitalization Alliance  
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Vision Long Island\*  
WE ACT for Environmental Justice  
Wildlife Conservation Society  
W X Y architecture + urban design

\* Advisory Board Member

# EXECUTIVE SUMMARY

New York State will be changed considerably for the better if the Smart Growth Public Infrastructure Policy Act is fully implemented in a reasonable time. The potential effects are far-reaching in construction, housing, and overall economic development.

The law is designed to shape an enormous amount of capital spending, whether by the state or through its approvals of private sector projects. Spending billions of dollars the right way will lead to a more economically and environmentally sustainable and equitable New York. In 2010 Empire State Future joined others who pushed strongly for passage of the bill, and we continue to monitor implementation of this important act.

The need for law was recognized by both Republicans and Democrats in the Legislature who understood that only smart and optimized expenditures of the state's limited infrastructure resources would allow New York and its localities to prosper. Meeting the challenges of keeping our water, sewer, bridge, road, transit, and other critical systems in a state of good repair while providing funding for needed new engines of growth is a major challenge that the law is intended to address. The law was passed overwhelmingly, with all but five of our 210 legislators voting for it, with supporters thereby including the state's most conservative and rural members of the Senate and Assembly.

Under Governor Patterson who signed it and Governor Cuomo who has continued its execution, the law has migrated into the actions and decisions of hundreds of state agencies, public authorities and corporations, and municipalities. The law's intent has concurrently made substantial inroads into the thinking and planning of the numerous consultants, planners, developers and engineers who conceive of and help direct capital projects across New York. With a few exceptions, this implementation is moving forward generally well.

This report follows up on our 2012 report on the law, documenting recent progress and issues. That report showed that many state agencies had begun to take the required steps: forming stakeholder committees, conducting smart growth reviews, and issuing smart growth impact statements. This report illustrates the impact of the law at the project level including easy successes, many hard choices, and some ongoing flaws.

One clear omission identified is the lack of inclusion of the tax-credit based activities of state and local economic development agencies, which should be integrated into the program. Some economic development activities in New York are ineffective, non-transparent, not aligned or coordinated with overall infrastructure spending, and subject to inappropriate giveaways and subsidies. While the Regional Economic Development Council process has addressed much of this problem, amending the law would make it easier for the Empire State Development Corporation and the Industrial Development Agency's to make investments more in line with Smart Growth principles.

The Smart Growth Public Infrastructure Policy Act is gradually becoming a critical checkpoint to prevent sprawl through direct intervention in infrastructure funding. As state agencies and public authorities become more familiar with the requirements and smart growth impact statements established by the law, we are finding that implementation is continuing in welcome ways across the state. Outreach and education are the key to effectively achieving the results the law was intended to provide. If it's provided to agencies that may be struggling to comply or lagging behind, and to local municipalities that want to properly meet the law's requirements but are uncertain of how to do so, implementation challenges will be significantly reduced.

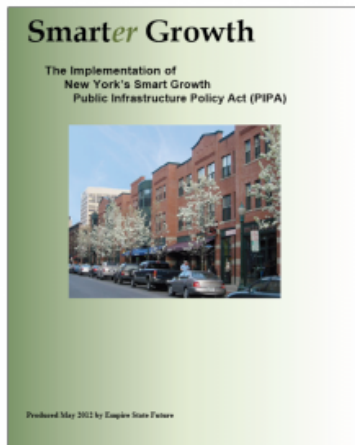
# INTRODUCTION

On September 30, 2010, the Smart Growth Public Infrastructure Policy Act went into effect. The new law, passed overwhelmingly by both the State Senate Assembly, instructs State Infrastructure Agencies, Public Authorities and Public Corporations to align their infrastructure spending with enumerated Smart Growth criteria. Its passage by an overwhelming and bi-partisan majority instantly vaulted New York into the national lead for states seeking to achieve balanced growth through smart land use, development, and infrastructure policy.

This groundbreaking law is meant to advance prosperity equitably and sustainably throughout New York by maximizing the effectiveness of state investments in public infrastructure projects in previously developed locations that:

- Promote mixed-use development
- Reduce auto-dependent growth
- Support public transit, and
- Protect working farmland and natural resources

Empire State Future, a non-profit coalition of 72 businesses, civic and environmental organizations from all corners of New York State, worked hard to see this forward-looking bill passed. By charting a path to use our valuable state infrastructure funds effectively and efficiently, this law provides a sound basis and a powerful tool to achieve growth in New York that is both fiscally and environmentally sustainable.



For three months in 2012, ESF met with and surveyed State agencies covered by the new law in regard to the progress of their implementation efforts. The report, “Smarter Growth: The Implementation of New York’s Smart Growth Public Infrastructure Policy Act (PIPA),” identified and summarized critical findings. Noteworthy among them was the fact that while several vital state agencies had made fundamental and useful changes to their efforts, a lack of other state-level compliance resulted in concurrent disjointed efforts and inadequate involvement. The 2012 report is available

through Empire State Future’s website, <http://www.empirestatefuture.org>

Empire State Future strongly believes that robust and comprehensive implementation of this law will advance Empire State Future’s mission:

*“Promoting Regionally Appropriate, Sustainable and Equitable, Community and Economic Development for New York’s Main Streets, Town Centers and Urban Areas.”*

Through our continued outreach to agencies and authorities we plan to further gauge the law’s effectiveness on infrastructure-related decision making. Three years after its inception, and a year after our previous report evaluating the implementation of PIPA, Empire State Future decided to revisit the issue with the same agencies and authorities in order to celebrate the progress – or highlight the inaction – that has taken place.

## A Primer on the Smart Growth Public Infrastructure Policy Act

The Smart Growth Public Infrastructure Policy Act is a tangible reflection of the reality that New York does not have, now or in the foreseeable future, sufficient funds to repair all of its broken infrastructure, much less build needed new engines of growth.

Smart Growth criteria, as determined by § 6-0107 of the Environmental Conservation law, are as follows:

- a.** to advance projects for the use, maintenance or improvement of existing infrastructure;
- b.** to advance projects located in municipal centers;
- c.** To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan;
- d.** to protect, preserve and enhance the state's resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources;
- e.** to foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups
- f.** to provide mobility through transportation choices including improved public transportation and reduced automobile dependence;
- g.** to coordinate between state and local government and inter-municipal and regional planning
- h.** to participate in community based planning and collaboration;
- i.** to ensure predictability in building and land use codes, and;
- j.** to promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of the future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.

The law sets in place a checklist through the Smart Growth Impact Statement in order to monitor agencies and authorities as they plan to move forward with infrastructure spending. Each covered entity must create a SGIS that can be customized to suit specific needs and circumstances. The impact statement asks whether or not the infrastructure spending is in line with the criteria as written in the law. The requesting agency or authority must explain and defend their answer, which may be “Yes,” “No,” or “N/A.” The Executive Director or Chief Executive Officer must also sign a related attestation which certifies that the infrastructure spending is not only in line with Smart Growth principles, but is also in proper observance of the law. Empire State Future notes that this agency attestation process allows for an exploitable loop-hole.

Finally, the law includes a clause “grandfathering” in any projects that had existed or had been enacted prior to the law taking effect. This clause is significant as many of the major infrastructure projects have been ongoing for a number of years, and creates another opportunity to avoid the smart growth checks on infrastructure spending that the law enacts.

## The 2013 Empire State Future Report

The challenge New York faces as we move forward with fully realizing the law’s benefits is that many state agencies, public authorities, and public corporations still do not view themselves as subject to the statute. If they do find themselves subject, getting some agencies to use the impact statements or to provide them publicly remains an issue of concern.



For example, the State University of New York and the SUNY Construction Fund utilize smart growth planning principles in determining funding and feasibility for all of their projects, which is commendable. However, they do not find themselves subject to PIPA, and thus have neither produced any Smart Growth Impact Statements, nor created the necessary Smart Growth Advisory Committee. Because SUNY and the SUNY Construction Fund follow campus-specific master plans and nearly all construction projects are contained within existing campuses, these agencies support Smart Growth and incorporate it into all of their infrastructure decisions. With this in mind, adhering to PIPA must become a goal of these agencies, as their actions are already within compliance and simply lack Impact Statements. In protocol for these

decisions, along with interpretation and enforcement of PIPA, these agencies have their own internal controls. SUNY and the Construction Fund are subject to the law, although they are run by an appointed Board of Trustees and are not directly under the domain of the Executive Branch. While other agencies can be instructed on what demonstrates compliance, these agencies are effectively self-controlled. Thus, an enforcement mechanism must either be voluntary within these two agencies or must be enforced by a lawsuit or legal oversight.

These two agencies have the opportunity to set an example for other agencies that may find themselves not ‘explicitly’ covered under PIPA, but ought to operate within the confines of the Smart Growth law and smart infrastructure planning. The nature of college campuses lend themselves to cluster and infill development, and can contribute greatly to the success of PIPA and Smart Growth.

Adaptive reuse and capital repair are compliant with the spirit of the law and the small step of developing and producing a publicly-available Smart Growth Impact Statement will help both SUNY and the SUNY Construction Fund demonstrate their full commitment to moving New York forward in the right way.

**SUNY and the SUNY Construction Fund should publicly state their willingness to adhere to the Smart Growth Public Infrastructure Policy Act**

As referenced in our original report, many agencies seek more guidance as they move forward with PIPA. Those agencies and authorities that have embraced implementation are using it to the best of their ability, and tailoring the statement to specific needs.

This report seeks to analyze the numerous Smart Growth Impact Statements provided to us (or that were publicly available) to determine whether or not the law had a role in moving forward with infrastructure spending, or in blocking it.

In our earlier report, Empire State Future suggested that a more uniform Smart Growth impact statement be developed in order to ameliorate confusion among the agencies. In practice, however, we found that each agency is distinctly different in how they approach the issue, and implementing PIPA into their own procedures. Initially, there was talk of creating an across-the-board, consistent SGIS. However, it was understood that each agency has enough of a unique approach to implementing Smart Growth to develop distinctive statements.

The overall goal is to make PIPA ubiquitous and easily understood – not a law relegated primarily to lawyers’ interpretations and whose meaning becomes diluted. The law seeks to allow flexibility between agencies and authorities in order to tailor Smart Growth impact statements specifically to that purpose. Each must use the statement to their advantage, and should strive to maintain the importance of Smart Growth as a key issue.

Though the impact statements may be viewed as yet another bureaucratic step, they are in fact an opportunity for agencies to show they have engaged in a deliberative process to ensure that limited public funds were spent in the wisest possible fashion.

Our 2012 report included a brief comment on the practice of including the impact statement at the end of a project “where there may be some reluctance to make changes.” We suggested that making the impact statement an early step in applying for infrastructure funding was a best and important practice.

Empire State Future contacted the following agencies and authorities with regard to this report:

Dormitory Authority of the State of New York	New York State Thruway Authority
SUNY	NYSERDA
SUNY Construction Fund	Department of Health
Metropolitan Transportation Authority	Port Authority of NY and NJ
State Education Department	Housing and Community Renewal*
Environmental Facilities Corporation	Department of State
Department of Transportation	Empire State Development**
New York Power Authority	

\* The Housing Finance Agency and Housing Trust Fund Corporation are now the Department of Housing and Community Renewal.

\*\* Empire State Development constitutes Empire State Development Corporation, Urban Development Corporation and “all other authorities.”

The following is an example of DOT’s Smart Growth Screening Tool, available publicly at <https://www.dot.ny.gov/programs/smart-planning/smartgrowth-law>

1. Will this project foster mixed land uses?  
Yes ☐ No ☐ N/A ☐
2. Will the project foster brownfield redevelopment?  
Yes ☐ No ☐ N/A ☐
3. Will this project foster enhancement of beauty in public spaces?  
Yes ☐ No ☐ N/A ☐
4. Will the project foster a diversity of housing in proximity to places of employment and/or recreation?  
Yes ☐ No ☐ N/A ☐
5. Will the project foster a diversity of housing in proximity to places of commercial development and/or compact development?  
Yes ☐ No ☐ N/A ☐
6. Will this project foster integration of all income groups and/or age groups?  
Yes ☐ No ☐ N/A ☐
7. Will the project ensure predictability in land use codes?  
Yes ☐ No ☐ N/A ☐
8. Will the project ensure predictability in building codes?  
Yes ☐ No ☐ N/A ☐

Explain: (use this space to expand on your answers above)

## IMPACT STATEMENTS THAT WORK

A number of projects have proceeded through the Smart Growth Impact Statement process and have been funded as being achievable with the law. There are, however, certain instances where infrastructure receives funding without being explicitly compliant with Smart Growth criteria.



One project that is worth examining is the Marcy Nanocenter Loop Road job built by Empire State Development. This \$12.1 million project is located within the Marcy Nanocenter site in the Town of Marcy, Oneida County. The project involved the construction of a new industrial access roadway – featuring a bikeway, storm water swales, bio-swales, and utility corridor – and provided loop access within the project site. The project is located on previously undeveloped land, and the SGIS states that “the site is less than three miles from Utica’s Central Business District and less than one mile from the City of Utica’s northerly boundary.”

The Marcy project was subject to an impact statement, like all other infrastructure projects, and was found by the Smart Growth Advisory Committee to be impracticable with the Smart Growth criteria set forth in the law.

PIPA requires that:

*“the chief executive officer of a state infrastructure agency shall attest in a written smart growth impact statement that the project to the extent practicable, meets the relevant criteria set forth in subdivision two of this section, unless in any respect the project does not meet such criteria or compliance is considered to be impracticable, which shall be detailed in a statement of justification.”*

Examined by ESD’s Smart Growth Advisory Committee in October 2012, this project had been found to be impracticable with certain smart growth criteria, including providing mobility through transportation choices and being infill or adaptive redevelopment. An accompanying statement of justification provided more information on the specific details surrounding the impracticability. However, the public benefits resulting from the project included an increase in high quality jobs. The SGIS states that “a typical fab employs 1,100-1,500 people” and that “the industry is job intensive across skill sets.”

Other possible sites were eliminated from contention during the initial planning process, and the justification of siting this near urban cores attempted to ameliorate the lack of available space within the actual urban core for such a site, stating that “the City of Utica does not have a single infill development site larger than fifteen acres, which is currently under single ownership, and is

being marketed and available for industrial development. Later, the attestation for the project claims that

“as there are no practicable alternatives within the City of Utica’s boundaries capable of serving the semiconductor industry, and since Griffiss Business and Technology Park was eliminated from contention during the SEMI NY comprehensive planning process (thereby excluding Rome’s best candidate site), it is logical from a Smart Growth perspective that one would look for a site as close to those urban cores as possible.”

In tough economic times, it is necessary to balance the pull of job creation against sprawl creation. According to the project’s website, the site itself features “close proximity to I-90, I-87, I-81” encouraging the type of vehicle-based sprawl PIPA was enacted to remedy. It may be easy to take a greenfield and develop it, but it is both preferential and mandated by PIPA to take a closer look at infill development to help combat sprawl.



The Department of Transportation) focuses on preservation of existing transportation assets. Included within the DOT correspondence was a Smart Growth Screening Tool and a Smart Growth Impact Statement for a bridge repair over the Hoosick River in the Rensselaer County Village of Schaghticoke. In line with this existing preservation strategy of the capital program, there is no category of “not in compliance” yet initiated. This reflects the spirit of the law in that no unnecessary infrastructure was to be funded. This Smart Growth screening tool provides for the criteria as determined in PIPA, and regards the “public transit” criterion as “Not

applicable” as a result of the village not being served by public transit. Also “Not Applicable” was the criteria regarding protection or preservation of agricultural land and/or forests, diversity of housing, housing near commercial development, brownfield redevelopment, land use or building codes. Because of the nature of the Department of Transportation’s infrastructure projects, many of the Smart Growth criteria will not be relevant. However, this was still an example of a successful Smart Growth Impact Statement because it is tailored to the agency’s purpose. It prevents unnecessary sprawl and promotes reuse of existing development.



Another example relates to the Local Government Efficiency Program, implemented through the New York Department of State. Traditionally, there are very few infrastructure projects funded through this method. The SGIS and a notice about the Smart Growth law were incorporated into the Request for Proposal for this program. The RFP also states that while an agency seeking funding may not necessarily be subject to PIPA at a given moment, it is important to keep its goals in mind. If an agency or authority approaches the Department of State’s LGE program in the future for infrastructure money, they will then be subject to the law. The overall intended strategy is to make smart growth ubiquitous.

**With the LGE program, agencies are exposed to the blank impact statement but are also receiving a warning: that the agency or authority should keep these smart growth principles in mind even if the agency or authority is not explicitly or directly covered. Finally, included within the RFP are ten extra bonus points out of a total of 100 if the applicant meets the criteria for Smart Growth, thereby providing a competitive advantage for any agency considering employing PIPA upfront.**

As provided within the LGE RFP, additional priority will be also given to applications that:

*“promote development that meets the principles of Smart Growth – namely, increased density, a mix of land uses, alternative mobility choices (walking, biking, transit), natural/historic resource protection, sustainability – and that is located within a “municipal center,” as defined in the New York State Smart Growth Public Infrastructure Policy Act (Environmental Conservation Law § 6-0103).”*

One of the considerations in the RFP states:

*“Smart Growth Impact: Prior to making any commitment of state funds to a public infrastructure project, the Department of State must determine that the project, to the extent practicable, meets smart growth criteria defined under Article 6 of the Environmental Conservation Law “The New York State Smart Growth Public Infrastructure Act.” These criteria are provided in Part 4 of this application. Failure to meet these criteria may result in a project being deemed ineligible for funding.”*



The Dormitory Authority of the State of New York (“DASNY”) response was available in a publicly accessible on-line database. DASNY stated that they undertake the PIPA analysis concurrent with the review required for SEQRA. Explicit standalone SGIS were not found to be publicly available; however they were embedded into negative declarations pursuant to SEQRA that cite no significant adverse effect on the environment resulting in no Draft Environmental Impact Statement being issued. Because of the incorporation of PIPA into a SEQRA review through DASNY’s approach to the law, Smart Growth becomes inherent to the projects but more relevant in negative declarations. An example of a Negative

Declaration was provided to Empire State Future in a response letter that included a detailed and useful Smart Growth impact statement assessment form. Available at the Ethelbert B. Crawford Public Library in Monticello, NY, the negative declaration provides for a SGIS and includes details that the “compatibility of the Proposed Project with the ten criteria of the *SGIPA* is detailed in the attached *Smart Growth Assessment Form* (Appendix A).” The Smart Growth Assessment Form finds that the project was developed in general consistency with the relevant Smart Growth Criteria in 2013. Again, this is another way that agencies and authorities are providing for PIPA within their own unique approach to Smart Growth compliance. ESF hopes to see more of these utilized in other projects in the future as well.

The Metropolitan Transportation Authority provided SGIS's for the following projects:

- Transfer of LIRR Property at Mitchell Field to Nassau County for Expansion of CNG Facility
- Ronkonkoma Property Acquisition
- Exchange of Property at Long Island Railroad's Wyandanch Station
- Sublease of MTA property near the MetroNorth Riverdale Station parking lot to NYC for NYCDEP's installation of drainage improvements.



It is important to note that PIPA is invoked, even for projects that are not necessarily traditional applications of Smart Growth policy compliance (i.e., rail yards should not be located in municipal centers). One of the Smart Growth impact statements provided discussed expansion of a compressed natural gas facility at an existing site. This site was not suitable for an open space, and the “continued operation of the facility at its present location protects other open space, scenic areas, and other land from development that otherwise would occur on such properties if this facility were to relocate.” The use of infill development in this scenario helps to prevent sprawl. The impact statement only provides for one inconsistent criteria: “to advance projects located in municipal centers,” as the expansion of the facility was onsite.

New York Power Authority responded favorably to our inquiries, confirming their commitment to align its infrastructure projects with PIPA Smart Growth criteria to ensure they are both fiscally and environmentally sustainable. As noted in our 2012 report, NYPA created a Smart Growth Committee, developed an implementation plan, and created a training program for relevant staff. Many of NYPA's projects were committed to before PIPA became effective and were grandfathered into the system, but NYPA has enacted a review process in accordance with PIPA for current projects. One of the statements provided discusses a shared \$5.5 million project between NYPA and Niagara University. The statement, however, while demonstrating PIPA compliance, should arguably provide greater detail in responses to Smart Growth criteria. For example, the statement appears to wholly disregard the criterion regarding the location of the public infrastructure project, even though the question states “if none apply, please complete section 2.b. or 2.c., as appropriate.” Finally, NYPA has not completed impact statements as of November 2013 because “current projects”, not directly referenced in communication between NYPA and ESF, are still under review. Empire State Future was informed that when issued, smart growth impact statements are publicly available through FOIL. A FOIL request was completed, and the only statement provided to ESF was the aforementioned Niagara University project.





New York State Environmental Facilities Corporation again demonstrated commendable compliance with PIPA and met with representatives from Empire State Future to share information, Smart Growth impact statements, and relate concerns. EFC is a key agency because it funnels Federal loans and grants for sewer and water systems to state municipalities. The extension of water or sewer pipes into undeveloped areas is a prime source of sprawl. It is also a major driver of the increasing imbalance between the amount of infrastructure and what we can afford to maintain.

EFC provided Empire State Future with a number of impact statements – some for projects that did not meet the Smart Growth criteria, though listing justification. Providing information like this provides transparency and accountability to infrastructure funding, enabling anyone to see where the money goes. The impact statements that were deemed “impracticable,” all with accompanying justifications, were frequently remedial and maintenance efforts for the Clean Water State Revolving Fund. Many of these addressed immediate health impacts associated with failed or failing rural water or private septic systems.

These statements provide another insight into the flexibility and utility of the impact statement as a tool – those provided by EFC demonstrated reuse and rehabilitation of failing infrastructure, but were not explicitly related to municipal center locations, transportation choices, and mixed uses.

The following is an excerpt from a Smart Growth Assessment, as conducted by the New York State Clean Water State Revolving Fund through the Environmental Facilities Corporation:

#### **Smart Growth Assessment**

#### **New York State Clean Water State Revolving Fund (CWSRF)**

This form should be completed by the applicant’s project engineer or other design professional. Please refer to EFC’s “Smart Growth [Guidance.](#)”<sup>1</sup>

CWSRF  
Applicant:

CWSRF  
Project #:

Is project construction complete? Yes ☐ No ☐

Project  
Description:

Project Summary: Please provide a short project summary of the project in plain language including the location of the area the project serves.

#### **SECTION 1 - SCREENING QUESTIONS**

##### **1. Prior Approvals**

a. Has the project been previously approved for CWSRF financing?

Yes ☐ No ☐

If so, what was the CWSRF project number(s) for the prior approval(s)?

b. If so, is the scope of the project substantially the same as that which was approved?

Yes

☐

No

☐

**If the project was previously approved by EFC's Board and the scope of the project has not materially changed, the project is not subject to smart growth review. Skip to signature block.**

<sup>1</sup> If project construction is complete and the project was not previously financed through the CWSRF, an authorized municipal representative may complete and sign this assessment.

The State Education Department, a named authority in § 6-0103.2 of the Environmental Conservation law that establishes PIPA, currently does not have publicly available Smart Growth impact statements corresponding with infrastructure spending. Empire State Future was told that these impact statements can be requested, but that there were no existing projects not in compliance with the law. The Office of Facilities Planning oversees Public School District Capital Construction and SGIS have been implemented as part of the approval process, since they are a requirement for successful funding. While the State Education Department informed ESF “over 97% of capital projects are reconstruction of existing facilities, provided” they did not comment on what constituted the remaining three percent of the projects. A FOIL request has been submitted by ESF to determine the remaining three percent of the capital projects.



The New York State Thruway Authority is generally maintenance, “fix it first” oriented. The Thruway is a limited access system in the present economic climate with no plans to develop additional interchanges or expansions. For much of its work and its processes the NYSTA shows a meaningful commitment to Smart Growth ideals. In regard to the several billion-dollar Tappan Zee Bridge Smart Growth Impact Statement and its supporting documents, the commitment was thin, at

best (see case study below). The Thruway strives to set an example on smart growth principles for other non-traditional applications of the law. The Authority, along with its Advisory Committee, has produced impact statements regarding a wide range of infrastructure spending, demonstrating that even limited expenditures must be in accordance with Smart Growth principles and the law.

The challenge remains that the language of the law is not explicitly clear on what “all other New York authorities” is meant to include, as addressed in Empire State Future’s initial report. The distinction in state law between local and state authorities, as reflected within the Public Authorities law, continues to challenge agencies throughout New York. Empire State Future believes the spirit of the law is to include all authorities in a broad and inclusive manner. The spirit of the law is being demonstrated through the Local Government Efficiency Program’s RFP through the Department of State, and we applaud the initiative demonstrated by the awarding of additional evaluation points for those applicants subjecting themselves to Smart Growth principles.

## Focus: The Tappan Zee Project (The New, NY Bridge)

In our previous report, Empire State Future highlighted the very brief impact statement for one of the state's most expensive ever infrastructure projects. Awarded in 2013 at a cost of \$3.4 billion, the Tappan Zee project would have been expected to develop a substantial impact statement to demonstrate its compliance and account for the cost. Despite the Authority's commitment to Smart Growth principles in its projects, the initial impact statement from the State Transportation Department and the Thruway Authority, and thereafter their final impact statement, lacked sufficient detail to justify such a major expenditure in the view of many observers.



### Smart Growth Impact Statement

PIN: 8T100.101

Project Name: Tappan Zee Hudson River Crossing Project

Pursuant to ECL Article 6, this project is compliant with the New York State Smart Growth Public Infrastructure Policy Act. This project has been determined to meet the relevant criteria, to the extent practicable, described in ECL See 6-0107. Specifically, the project:

- Will maintain a vital, existing link in the transportation corridor between existing population and employment centers in Westchester and Rockland counties, and maintain a major route for freight movement.
- Incorporates features consistent with local planning initiative.
- By reducing the frequency of accident and incident delays on the bridge, traffic flow would be improved, thereby reducing the pollutant emissions associated with congestion and delays.
- Will provide stormwater treatment facilities at the bridge landings. This will provide a benefit to water quality, since stormwater runoff is currently untreated at the landings.
- Will incorporate the existing public transportation services, will include a shared-use bike and pedestrian pathway, and will be designed not to preclude new transit services in the corridor.
- Will be included in the NYMTC Regional Transportation Plan prior to the NEPA Record of Decision issued by the Federal Highway Administration FHWA for the project, and has been subject to public review.
- Will promote sustainability by strengthening the link between existing population and employment centers in Westchester and Rockland counties, will improve operations and emergency access on the bridge and thereby reduce greenhouse gas emissions by fostering a reduction in accidents and congestion.
- Impacts to Historic resources are being minimized, to the extent practicable.

This publicly supported infrastructure project complies with the state policy of maximizing the social, economic and environmental benefits from public infrastructure development. The project will not contribute to the unnecessary costs of sprawl development, including environmental degradation, disinvestment in urban and suburban communities, or loss of open space induced by sprawl.

NYSDOT and NYSTA have developed strong and effective policies to ensure compliance with the Smart Growth law, including the establishment of Smart Growth Advisory Committees. The Advisory Committee at NYSDOT sets policy and direction for implementing the law, and the Advisory Committee at NYSTA reviews SGISs for projects in its contracts program. Each option for the Tappan Zee project, including No-Build and a Replacement Bridge Alternative, was evaluated for compliance. The organizations prepared a joint attestation form.

The development of the EIS and later the SGIS, was the result of a collaborative effort involving both DOT and the Thruway, with both Chief Engineers signing the attestation. The two agencies issued the same report and opted to use NYSDOT's form, previously discussed in this report. According to these agencies, the Tappan Zee Project was determined to meet the relevant criteria, to the extent practicable, of the Smart Growth law. From Empire State Future's point of view, NYSDOT/NYSTA missed an enormous opportunity.

The brief statement evaluates the project's maintenance of a vital, existing link in the transportation corridor, incorporation of features consistent with local planning initiatives, reduction of congestion and pollutant emissions, treatment of storm water runoff, and incorporation of existing public transportation. The project was found by the state agencies to be consistent with 7 of 10 Smart Growth criteria, as applicable. Three criteria were found not applicable to the project (to advance projects located in municipal centers; to foster mixed land uses and compact developments; and to ensure predictability in building and land use codes).

ESF notes that the TZB project is in its essence, a "fix-it-first" effort of a vital facility. ESF also notes that technically, the TZB SGIS is accurate. That said, the design for this enormously expensive, once in a lifetime, project, proposed way too little to change the unsustainable and inequitable land use and development patterns that now exist on either side of the bridge.

## REGIONAL COUNCILS

The Regional Economic Development Councils frequently invoke tax credit incentives to spur development in local communities. However, these tax credit incentives are not subject to PIPA. Empire State Future feels that the tax credit activities of the REDCs should be covered because these activities have a sizeable impact on the infrastructure funding and spending in communities.



Our 2012 report briefly discussed the use of the Consolidated Funding Application. This Cuomo Administration initiative simplifies and directs requests for infrastructure funding toward PIPA and impact statements. Requests for funding channeled through a CFA trigger PIPA if certain questions are selected, helping address the problem.

Empire State Future has also covered the Cleaner Greener Communities Sustainability Plans in the past. ESF has supported the progress made by the Regional Economic Development Councils in moving towards job creation and economic development that reflect Smart Growth in action. Again, Empire State Future strongly supports the promotion of these plans if done right, understanding that each region will face separate challenges that must be addressed. Importantly, we feel it's appropriate to invoke PIPA with regard to the tax credit incentives in order to provide a further check on indiscriminate funding of inefficient infrastructure.

## CONCLUSIONS

The Smart Growth Public Infrastructure Policy Act law is slowly becoming a critical checkpoint to prevent sprawl through direct intervention in infrastructure funding. Its progress is welcome, and more is needed.

There is certainly a learning curve associated with implementing most new laws, and improved attention will prove most beneficial as the law's required impact statements become more familiar to involved parties.

State agencies and authorities are becoming become more familiar with the law's requirements and Smart Growth impact statements, and we are finding that it is being implemented more effectively across the state. Additional outreach and education is imperative and must continue to be provided to agencies that are struggling or lagging behind, however, and to those local agencies that seek to implement the law but are uncertain about how to do so.

The more the Smart Growth Public Infrastructure Policy Act is used by agencies and authorities, the word that it's here to stay will get out into the involved constituencies – the engineers, consultants, other agencies. And that from the very beginning construction and development proposals must reflect Smart Growth standards.

What Empire State Future has been able to determine with this analysis is that the law is a helpful tool, albeit sometimes an unfamiliar one. For those agencies that have been employing it a layer of transparency for infrastructure funding emerges that helps protect from costly or wasteful spending. The law's requirement for Smart Growth Impact Statements can also be viewed as a template of sorts, allowing an agency, authority, or municipality to exclude spending on noncompliant projects – and also allowing decision makers and stakeholders to have a method to determine what noncompliant means.

We applaud the progress evident since our initial report last year, and hope that the areas of noncompliance receive the proper focus and intervention required. We urge continued progress through increased outreach education and awareness at all levels of government.

## RECOMMENDATIONS

With this report Empire State Future has sought to reinforce a number of important points regarding the implementation of the Smart Growth Public Infrastructure Policy Act and how it must be enforced fully and equally.

We continue to emphasize the proposition that the Smart Growth Law is critical to the effective allocation of infrastructure spending, and to providing the essential transparency of public expenditures in the challenging economic climate of today. Only by using the Law as a benchmark for smart spending will its original intent and goals be realized.

As we move into the third year of meeting the requirements of the Law, Empire State Future recommends continuation of the progress made to date by adopting these additional steps that will improve the Law's effectiveness:

- Including coverage of all public agencies and authorities in the requirements of the Smart Growth Infrastructure Policy Act
- Specifically, the SUNY Construction Fund and other similar agencies, as well as the Regional Economic Development Councils, should be subject to the Smart Growth Law.
- Similarly, the actions of tax credit-granting organizations such as local Economic Development Authorities should be brought under the requirements of the Law
- Incorporate the financing activities of “pass through agencies” such as the New York State Dormitory Authority and similar organizations that provide funding for state supported construction (these organizations are critical to actually building hundreds of millions in construction annually in New York, but they currently escape notice because of their position that they do not decide the fate of projects, and only supply financing).
- Require State Agencies to affirmatively demonstrate their compliance with PIPA, specifically in regard to infrastructure spending and tax credits not related to state of good repair capital work.

We hope this report will prove useful as government and the private sector continue to recalibrate their responsibilities and activities regarding the enormous annual expenditures of public infrastructure funds in New York.

*Working to revitalize New York's main streets, town centers, and urban areas*



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