Modernization of New York's Built Environment Laws: If Not Now, When?

November 12, 2014

Empire State Plaza, Albany, New York

Preface to Anthology

Over almost four decades of law practice in public finance law, a number of short papers were never published in law journals or book chapters but were used in various presentations as accompanying text. The nine papers, listed in chronological order, all deal in one respect or another with New York's antiquated procurement and finance laws. From a practice standpoint we are indifferent to the lack of efficiency or inequity these laws produce. But from a policy standpoint, we should care because it costs the taxpayers money they could put to better use than running state and local government under legal regimes which may had worked and been good policy many years ago, but which make New York a globally red lined state in the 21st century. History is important to understanding how these laws came about and why they should be replaced. The Legislature should get over preserving 19th century procurement and finance laws and policies the same as quaint 19th century historic buildings and monuments.

1 *Transforming New York Local Governments…* (2006) – provides an historic account of why New York migrated from the Empire State to a "welfare state." The state constitution and finance/procurement statutes contributed to the evolution. The discussion centers on a then-new idea of "sharing services" among municipalities and state grants to develop sharing plans. Eight years later very little has changed in sharing services or consolidating local governments.

2. *TIF Bonds in the Realm of Project/Public Finance* (2008) – is a short version of a long presentation on tax increment financing giving to an American Bar Association meeting in 2004. It discusses New York's TIF statute. In 2012 the Legislature adopted some of the proposed 2005 amendments discussed in the paper but not enough to make TIF a useful economic development tool.

3. *Scherzo to a Bond Anticipation Note* (2008) – is a presentation to the New York chapter of the City Managers Association. It discusses the then-new Great Recession and encourages sharing services and best practices for budgeting in difficult times.

4. *Testimony – Commission on State Asset Maximization* (2008) – following Gov. Spitzer's resignation from office several months into his term, Gov. Patterson got this commission going, essentially an early look at establishing a public-private partnership (P3) statutory regime (34 other states have distinctive P3 legislation). The testimony lays out familiar themes. The report of the Commission with useful recommendations was ignored by the Legislature. A comprehensive P3 bill attached to the state 2015 FY budget was scrubbed by the Assembly Speaker at the last minute.

5. *Arise All Yee on Sinking Ships…* (2009) – is the sequel presentation to the City Managers Association. It contains a brief history of how the 1938 State Constitution came about with analysis of the provisions in it which cost taxpayers a lot of money and suggests amendments should be considered at the next Constitutional Convention – in 2017 – then far off but now around the corner.

6. *Thoughts on Alternative Infrastructure Financing*…(2012) – originally written at the request of GFOA but never published, probably because of the strong words for organized public sector labor. In my view, the criticism is not strong enough. My son-in-law's father, a prominent attorney in Charleston, SC, recently commented on all the young and healthy looking retired NYC police and fire department employees living the Charleston. Thank you, taxpayers.

7. *Public Finance and Land Use…* (20212 – presented at an American Planning Association conference to demonstrate the synergy between land use planning/execution and public finance. It mentions enhancing procurement laws as a benefit to both disciplines. The solutions rand recommendations are intended to address state and local government operations in fiscal stress.

8. *What Does Detroit Mean…?* (2013) – presented to NYS GFOA in 2013 and to the Municipal Law Section of the NYSBA in 2014, this paper lays out the history of how Detroit got to Chapter 9 and how upstate New York cities could be on the same path. Conditions in New York are distinguished from the facts in Detroit which led to bankruptcy.

9. *Financial Considerations…* (2014) – is answers suggested to questions put to "advisors" at a recent Pace Law School - Land Use Center conference aimed at helping urban municipalities in the Hudson Valley succeed in attracting economic development. Note that reform of procurement and finance laws is part of the answers.

The Robert H. Jackson Center

Transforming New York Local Governments
from the 18th to the 21st Century…
The Carrot Before the Stick

October 25, 2006
Jamestown, New York

When you drive down Main Street through Canandaigua toward the lake, past the stone and brick mansions of early 20th century barons, on the left is a majestic limestone edifice set in a park-like setting. With its prominent slate dome and symmetric wings extending north and south of the columned foyer it reminds the observer of a state capital building, rather than the county courthouse of a now-modest Finger Lakes county. The building's impression, however, is not misplaced. Established in 1789, Ontario County was the seat of county government for all of western New York for most of the first half of the 19th century. As population and industrial development moved west, the other 16 western New York counties were established in the present familiar configuration. One seat of county government was all that was needed for a vast sparsely populated rural area.

New York, the Empire State, once had an important national economic empire: it was the land/water route of the Northwest Passage to the post-Civil War burgeoning central states. As Chicago, Detroit, Milwaukee and Cleveland grew, so did Buffalo and the manufacturing hubs along on the Erie Canal – Amsterdam, Utica, Syracuse and Rochester. But you will recall that in the summer of 1969, the Cuyahoga River, outside Cleveland at the mouth of Lake Erie caught fire on floating industrial waste and burned for days. That was the beginning of the end of dirty industrial manufacturing on which New York's economic empire was built. What we observe in upstate New York today is the residue of the old economic system, closed down by environmental laws, by the move of industry to the South beginning in the 1970s to capture cheap non-union labor, and in the past 10 years by the move of people and business to anywhere on the planet where taxes, regulations, labor, and all other resources are most cost effective. If you doubt that, between 1990 and 2004, the number of adults aged 25 to 34 – those who work, marry, produce offspring, buy houses and consume durable goods - declined 30 percent in the thirteen counties which include all the big upstate cities.[1]

As New York's 19th and 20th century economic empire has eclipsed in the past 30 to 40 years, valiant efforts have been made by New York's leaders to replace the old economy with a new one through state assistance. Public benefit corporations like the Dormitory Authority provide cost-effective financing for schools and colleges. County and other local industrial development agencies provide tax breaks of all kinds to small manufacturing businesses,

[1] ***NY Times***, June 13, 2006

hospitals, educational institutions, trade associations and not-for-profit institutions. Counties and municipalities have built jails, courthouses, new roads and highways. School districts have built state-of-the art educational campuses with the generous assistance of State construction aid. Drive from Schenectady to Binghamton along the Warren Anderson Highway: every new building you see from the road is a public facility – a school, college or hospital. New York's effort to lure private capital in high technology manufacturing includes the fascinating nanotechnology center in Albany – but these facilities, too, are financed primarily with public funds, not private capital. The net result from the state's response to address the decline of the old industrial market economy has been to replace it with a public service/public welfare economy. As The Business Council has pointed out, between 1990 and 2005, although 129,200 new jobs were created upstate, all but 43,200 were government jobs funded by taxpayers.[2]

Not surprisingly with employment increasing faster in the public sector than the private sector, the salaries and benefits of public sector workers have to be paid through public funds, ***i.e.,*** taxes. One might think that a state economy increasingly dependent on public sector jobs would be prudent in what it pays these workers, to encourage them to improve their fortunes in the private sector, and to avoid overburdening taxpayers with too much public sector activity. However, just the opposite is true. A 2005 report of the Citizens Budget Commission (the "CBC") points out that in 2004 the average hourly compensation, including benefits, for public sector employees in New York was over $35.00 – compared with the average hourly compensation in the private sector - $23.00 – a 47% difference.[3] No wonder so many attorneys in private practice aspire to join the bench! But that's just the beginning. What about Medicaid expenditures? Again, CBC found that in 2003 the average annual expenditure per beneficiary for Medicaid was $26,384, nearly double the national average of $13,644, making New York by far the number one state in total Medicaid expenditures. Neighboring Pennsylvania, an easy ride from the Southern Tier, pays only $8,524 per beneficiary, only slightly less than Florida ($9,827), a state where you would expect to find a larger concentration of older, less healthy persons compared to New York.[4]

It should therefore come as no surprise given the foregoing that the cost of government in New York is pretty high. No kidding. In an April, 2006 report on property taxes in New York, the State Comptroller found property taxes to comprise 79 percent of all local government taxes, with the per capita property tax burden 49 percent higher than the national average and tax levies growing at a rate of 60 percent (more than twice the rate of inflation) over the 10-year period from 1995 to 2005.[5] The CBC found that between 1990 and 2000, long-term state and local government debt and accrued public pension liability added up to 7.3 percent of personal income per capita, second only to Massachusetts (known traditionally to Republicans as "Taxachusetts").[6]

---

[2] ***Ahead of the Curve***, The Business Council of New York State, Inc, 2006
[3] ***Old Assumption, New Realties***, Citizens Budget Commission, 2005
[4] ***The Myth of the "Uncontrolables",*** Citizens Budget Commission, 2006
[5] ***Property Taxes in New York State***, Office of the NYS Comptroller, Division of Local Government Services and Economic Development, April, 2006
[6] ***Fixing New York State's Fiscal Practices***, Citizens Budget Commission, 2003, p.4

In some respects one would expect that with a market economy in decline, a public sector economy would rise in its place, at least for awhile. Let's go back to the Ontario County courthouse. At the end of the 18th century, there were far more bears and wolfs in western New York than people. As that changed, local governments became established in an orderly and logical fashion. Urban areas became villages (New York thankfully never created "boroughs" as in New Jersey and Pennsylvania which have elements of both villages and towns). The "unincorporated areas" of newly established counties were divided into towns – largely for the purpose of providing public education and roads. Then, in the 20th century, school districts became independent political subdivisions[7] and fire districts were given taxing and borrowing powers. Within towns and counties, to accommodate small population concentrations which did not meet the prerequisites of a village or a city, a procedure for establishing improvement districts was established so that the cost of certain public services (water, sewer, lighting, and libraries by special act) could be paid for by the persons and properties directly benefited from the service. This is a lot of local government, but not inordinate on a per capita basis when compared with other states[8], nor irrational in providing a uniform statutory regime for providing municipal and educational services to a large, diverse and widely distributed state population. So, during the past 30 years, if you lost your job in the private sector, you could find one in the public sector because there was a lot of state and local government established to serve the industrial empire.

However, New York's leaders have known for over a generation that the state's market-based economy is on the skids. Wouldn't it have made sense to roll up some units of local government and consolidate a few counties? Wouldn't it have made sense to consolidate back toward Canandaigua? In the recession in the early 1990s there was considerable discussion of "privatization" and "consolidation" of public services to make them less costly and more efficient. Combinations for Buffalo and Eire County and Schenectady and Schenectady County were discussed by officials and debated in the press. The Buffalo Water Authority contracted out the performance of its services to a private global water service company. Regional water, sewer and solid waste disposal authorities were created to improve the quality and reduce the cost of these services. But little or nothing came of these efforts – certainly not in reducing the cost of government or stimulating a market-based economy. At least three explanations stand out.

First, New York is a strong municipal union state. And New York's retirement and fringe benefits for state and municipal workers are exceedingly generous compared with the private sector.[9] Accordingly, no privatization or consolidation scheme will succeed without union cooperation. Since retirement benefits to government workers are guaranteed in the State Constitution,[10] any change in a collective bargain agreement immediately raises concerns about personal financial security. A few years ago, we were involved in consolidating the fire departments of two adjoining cities. Concerns over labor agreements – including concerns over

[7] because "town" boundaries were thought to be inefficient in providing public education to growing and moving populations

[8] Id, p.7

[9] 100% of New York City workers and 88% of state workers are enrolled in a "defined benefit" plan, compared with only 24% of private sector workers in New York. Fn. 3, p.5

[10] Article V, §7: pensions are a contractual benefit which cannot be diminished or impaired by the state

loss of employment and benefits - stopped the project before it began. This is actually a bigger problem now because with private sector jobs growing more slowly than those in the public sector, the loss of public sector employment upstate can mean the loss of a meaningful job to support a family.

Second, although the Court of Appeals has ruled that more state funds need to be allocated to New York City to fulfill constitutional mandates on providing education,[11] it is no secret that particularly in years when Wall Street is booming, the City sends the lions' share of the state's income taxes to Albany which in turn uses it to support the upstate public sector economy. This arrangement is unique among urbanized states with large populations. Cleveland doesn't support rural Ohio, for example (indeed, Ohio has several large industrial cities throughout the state). The City's largesse has allowed New York's leaders to continue funding the status quo without either demanding a consolidation in local governments or significant reductions in public sector costs.

Third, through the Court of Appeal's permissive interpretations of the New York's constitutional government financing restrictions,[12] the state has proliferated public benefit corporations (commonly referred to as "authorities") to borrow on a long-term basis for structural budget deficits of local governments which are poorly managed or hobbled by declining revenues (as expenses rise) from reduced private sector activity. New York is a leader is creating "appropriate-backed debt" wherein non-voted debt has no source of repayment other than an annual legislative appropriation (notwithstanding carve outs of personal income tax or sales tax). Had this practice gone on in the 19th century, it would have been ruled unconstitutional. Today's courts, and not only those in New York,[13] are disinclined to upset creative legislative financing schemes despite clear historic constitutional restraints on financing. The result has been a significant piling up of debt by authorities who have no accountability to the voters.[14] So with bond proceeds substituting for taxes and other public revenues, why worry seriously about reducing the cost of local government?

These three explanations also contribute to why existing statutes which permit municipal cooperation and consolidation are not widely used. Following the enactment of the Local Finance Law ("LFL") in 1945 to establish a uniform regime for local government financing, the Legislature enacted Title 1A of the LFL in 1960 to provide an intricate procedure whereby local governments could finance joint projects, either as joint or several indebtedness. Statutory recognition of municipal cooperation agreements came in 1976.[15] Indeed, although there is no general law applicable to consolidating local governments, current statutes authorize the consolidation of towns[16], the merger of school districts[17], and the consolidation[18] and

---

[11] ***Campaign for Fiscal Equity v. State of New York***, 100 NY2d 893 (2003), among other cases

[12] ***Wein v. State***, 39 NY2d 136 (1976***), Schultz v. State***, 676 NY2d 237 (1998).

[13] ***Lonegan et al v. New Jersey***, 176 NJ2d (2003), ***Lance v. McGreevey*** , 180 NJ2d 590 (2004)

[14] Of the total $227 billion in state and local debt in New York, $166 billion (73%) is issued by authorities without voter approval; of six (6) state bond propositions put to the voters since 1990, only two (2) have passed. ***New York's Public Authorities: Promoting Accountability and Taming Debt***, Citizens Budget Commission, 2006

[15] General Municipal Law, Article 5-G

[16] Town Law, Article 5-B

[17] Education Law, Article 31

[18] Village Law, Article 18

dissolution[19] of villages. Perhaps the greatest deficiency in rearranging New York's political subdivisions to achieve efficiency and increase services is its annexation laws which require a vote of the residents in the affected areas.[20] As a result, almost all upstate cities have become impoverished during the post-war era of suburban growth because they could not expand their boundaries and tax bases into surrounding towns. But these provisions to cooperate, consolidate and dissolve are hardly used over fear of loss of public sector jobs and benefits. Indeed, in over 30 years of bond counsel practice in New York, I have used Title 1A fewer times than I can recall. No office holder is calling for reform of annexation laws – no public sector employee wants to risk job loss or accrued benefits. Until recently, there has been no impetus from the state for local governments to cooperate, merge, consolidate or dissolve because the money keeps rolling in from Albany or borrowed funds to sustain the status quo. Which brings us to the Shared Municipal Services Incentive Grant Program (the "Grant Program")[21].

The Grant Program, at base, is a $25 million gift to local governments to act under existing law to create efficiencies in government operations. The application for a shared municipal services incentive grant, which can be downloaded on the NYS Secretary of State's website, after asking for basic information, casually asks for five years of estimated savings from the proposed shared service. While an applicant may be challenged to provide reliable predictions as to savings at the time the application is made without the assistance of an outside professional consultant, the application form reveals the true legislative concern of the Grant Program: the state can't afford the status quo so it will pay local governments to figure out how to cut government costs before the state does. The Grant Program is a carrot, and I believe the stick is not far behind.

The Grant Program allocates the $25 million appropriation to specific efforts toward cooperation or consolidation. The first $10 million (40 percent) is reserved for applications which would merge or consolidate municipalities. The reduction of the number of local governments is clearly the Legislature's principal aspiration. This priority, however well intended, cannot address the most important need of consolidating cities with counties, or expanding city boundaries, to establish modern metropolitan government for sprawling urban populations which have long since spilled out of 19th century municipal boundaries. To address metropolitan government would require new legislation altogether and an overhaul of New York's annexation laws. A second $5.5 million is allocated to "shared municipal services;" a third $4.5 million is allocated to "shared highway services"; a fourth $4.5 million is allocated to "local health insurance," *e.g.* cooperative and reciprocal health insurance plans; and the fifth and final $1.0 million is allocated to "countywide shared services." The Grant Program contains several restrictions and conditions, such as limiting the award to $200,000 per municipality and requiring a municipal cash contribution equal to 10% of any award for "shared municipal services," and requiring that "countywide shared services" be made available to at least 50% of the municipalities and school districts within the county. Although the application deadline has

[19] Village Law, Article 19

[20] General Municipal Law, Article 17. An April 11, 2004 ***New York Times*** article discusses the problems involved in the Village of Greenport's attempt to annex part of the Town of Southold to build housing for working families. The attempt must have failed: a listing in the village for a very ordinary "blue collar" two-story house with a porch asks $539,000.

[21] Chapter 50, Laws of 2006

passed for the current appropriation (October 23, 2006) there is good reason to believe the Secretary of State's office may extend the deadline.

To process applications under the Grant Program, $600,000 of the "shared municipal services" allocation is set aside for third party administration by an "academic institution" which happens to be the Government Law Center ("GLC") of Albany Law School ("ALS") (it's right in the enabling legislation). As I began preparation for my fall course in State and Local Government Finance this year, the director of the GLC hinted that I might want to weave the Grant Program into my course as a "case study lab." And so I now have law students writing hypothetical grant applications for consolidating town improvement districts, merging school districts, establishing a metropolitan tax increment area,[22] and creating a cooperative financing mechanism for future funding of GASB Statement 45 obligations.[23] The issues which arise from this exercise are daunting for the law students and one can only imagine that the efforts of municipalities and school districts to complete an application will be especially challenging.

The application makes clear that grant funds must be used to implement a cost savings, not merely study the matter or use grant funds to pay current costs of government or otherwise work as a state revenue sharing plan to help balance an annual budget or pay debt service on outstanding indebtedness. Such funds can be used to pay for studies and professionals (consultants, accountants, attorneys, etc.) but the application's requirement that five years of annual cost savings be estimated suggests that the Grant Program is doomed to failure if professionals glom onto it simply to get business and generate fee income without producing concrete objectives for cost savings. It may be several years before we know whether the $25 million carrot the Legislature is holding out actually results in significant sharing of municipal services, cost reduction, and rearranging local government structures for efficiency and cost savings.

What if the Grant Program becomes another worthy idea for good government with negligible results which fades into memory long after the $25 million is spent and the landscape of New York's local governments is essentially unchanged a few years from now? This is, of course, the semi-cynical question of a bond attorney who has practiced for many years with finance laws which have been essentially unchanged for over a century. The question raises the issue of the stick. If taxes, public employee wages and benefits, and public sector jobs keep rising faster than the revenues or the willingness of New Yorkers to pay these revenues, what device, if any, is available to force a change to make state and local governments more efficient and less expensive? There are no clear answers but there are few sticks which could be applied.

---

[22] Tax increment financing (TIF) is authorized in General Municipal Law §907-a et seq. ("municipal redevelopment law"). Comprehensive amendments (A10365) to capture the school district tax base and provide specific sources of security for payment of TIF bonds were introduced in 2006. See: www.nysedc.org/memcenter/TIF%20Paper.pdf for a comprehensive review of the subject.

[23] Statement 45 promulgated by the Governmental Accounting Standards Board requires that states and local governments account for actuarially accrued "other post employment benefits" (OPEB) in their financial statements beginning 2007 for governments with an annual budget in excess of $100 million, and for all other governments in 2008 and 2009. Accounting for the OPEB liability may require financing but the state law mechanisms to affect a financing are currently inadequate. See: ***Post-Employment Benefits: The Next Challenge***, Office of the NYS Comptroller, 40th Annual County Finance School, May, 2006.

To some extent, as mentioned earlier, the stick is already being applied: businesses and working people are leaving the state. The last time New York's leaders considered consolidation and privatization of government services in the early-mid 1990s, an exodus from upstate was a remote concern, and an improving economy throughout the decade in advance of the "Internet bubble" eventually silenced the discussion. But now, 10 to 15 years later, the Internet and globalization have changed where people live and do business. Unless you're a car mechanic, contractor or waitress, you don't have to be in or live in New York to conduct business here (law to the contrary notwithstanding). Banks, insurance companies, professionals and everyone else who does business through the Internet, can flee high-cost physical venues for more affordable ones. This "brain drain" is already evident in our colleges and universities: great institutions funded by public funds send their graduatesp to Arizona, Nevada, Florida and similar growing states to seek private sector employment. If this pattern cannot be reversed, perhaps "the people" will find high taxes and public sector benefits a "pocket book" issue sufficient to force a change in how the state and local government operates. Such action is not without precedent in New York.

Following the Civil War and numerous defaults in railroad and canal projects which had been financed by the state and certain cities, the state was forced to impose or raise taxes to pay off the debt to investors. This in turn brought the Legislature (at the demand of voters and taxpayers) to completely revise state and local government finance laws starting with the state constitution enacted in 1874 and ending with the constitutional amendments enacted from the constitutional convention in 1938. The LFL is a product of the last constitutional convention. But revisiting the state constitution since 1938 has not resulted in significant changes to the structure of local government[24] and calling a new convention is anathema with elected officials because opening the door to one area, say local finance reform, would invite reform in another, say public pension and retirement laws, which would be widely feared and opposed by those who want to maintain the status quo.

The most likely stick, however, is held by the Legislature itself. This was demonstrated last year with the enactment of the Public Authorities Accountability Act[25] which, among other things, requires training for authority personnel in ethics, procurement laws, accountability, transparency and professionalism, and establishes a Public Authorities Budget Office to monitor the operations of public authorities. This legislation came about after a scathing report by the State Comptroller[26] listed evidence of numerous abuses in the use of public funds and questionable results in public authorities granting financial assistance to companies to stimulate job growth and retain business in New York. If the structure of local government cannot become more efficient, or governments are unwilling to enter into cooperative service sharing agreements, merge, consolidate and privatize - particularly with the carrot offered by the Grant Program incentives - then the Legislature may be required to enact mandatory laws which achieve these ends. Because the upstate economy largely depends on public sector employment,

---

[24] It has been over 25 years since academics and industry leaders engaged in serious discussion of constitutional debt reform. See: ***Symposium: Proposals to Strengthen New York State Municipal Finance Laws***, Fordham Urban Law Journal, Vol III, No. 1 1979-80. Debt reform measures enacted in 1994 and 2000 did not alter the historic constitutional restraints on state debt (Article VII) or local government debt (Article VIII).

[25] Chapter 766, Laws of 2005

[26] ***Public Authority Reform: Reining in New York's Secret Government***, February 2004, Office of the NYS Comptroller.

it is hard to imagine politically what the Legislature might do – particularly in light of anticipated strong local government and municipal union opposition to reducing public sector jobs and benefits. Further, if the New York City metropolitan area, which now extends half-way up the Hudson River toward Albany, continues to experience private sector growth, the tax and revenue subsidy the City pays to the state may continue to fund ever increasing costs of local government upstate without much notice by voters or taxpayers.

At a minimum, however, the appropriation of $25 million in 2006 (opposed to $2.7 million in 2005) for the Grant Program sends a clear signal that New York's leaders acknowledge that reducing the cost of state and local government is crucial to the state's long-term economic health. We need not merge, consolidate and share services so that all western county government can once again reside under the dome of the Ontario County courthouse, but we endanger the future of the state by not trying.

Kenneth W. Bond
Squire, Sanders & Dempsey L.L.P.
New York, New York

TIF Bonds in the Realm of PUBLIC/Project Finance

Kenneth W. Bond

Tax increment financing ("TIF") has been in the statutes of several states for many years. But its application as a tool in project finance where the financial assistance of the public sector is combined with economic development initiatives of the private sector has had a checkered career, particularly in New York.

From the outset it needs to be recognized that TIF is the financing tool of optimists. The TIF concept is predicated on the idea that from a blighted, underused parcel attended by dilapidated houses and vacant commercial buildings found in older neighborhoods of older cities, economically feasible commercial and residential activity can be born. In this respect, the governmental proceedings which bring TIF to life resemble urban renewal law. A number of administrative steps must be undertaken to create a TIF area which is both the subject of the contemplated redevelopment and the source of a stream of revenues which will pay for the debt service on the new debt (i.e., TIF bonds), the proceeds of which will be applied, usually with other sources of funds, to improve the blighted parcel. The unique attribute of TIF is not that it creates new revenues in the sense of imposing a new tax, but rather it creates new debt – TIF bonds. The proceeds of that debt then improve the parcel causing it to generate incrementally greater taxes and fees compared with the parcel in its unimproved state. The increment is the revenue which pays debt service on TIF bonds. If you're not an optimist, at least about the economic activity to spring from the parcel to be improved, it's hard to get excited about TIF.

Because TIF requires incrementally greater taxes and fees to work, those persons and property owners subject to the greater taxes and assessments are afforded their due process rights

to be heard. Just as in urban renewal law, a redevelopment plan must be created and a redevelopment area needs to be determined and mapped, all subject to approval at a public hearing. Further, the limited purposes for which TIF bonds may be authorized and issued under state law needs to be considered in applying TIF bond proceeds to project costs. State oversight approval of TIF is not usually required to form the redevelopment area. However, state laws requiring making environmental impact determinations, amending zoning laws, and applying to change or close streets within the redevelopment area, among other things, require further administrative tasks in gaining government approval for TIF. Each participating local government or school district in the TIF area must approve the transaction documents and financing documents through enactment of an ordinance or form of authorizing resolution.

However, redevelopment does not happen in a vacuum. The initiative for TIF may originate from the good intentions of municipal officials and leading citizens. But the catalyst comes from a developer with the vision to see a parking ramp or a shopping center or a residential complex where blight and despair abound, and further see that in his or her lifetime he or she will earn a profit from the undertaking. The developer, usually a real estate developer with a substantially business infrastructure and proven track record of success, approaches the local government or is selected through an RFP process. Once the governmental proceedings are out of the way, the tough work of negotiating a redevelopment agreement between the developer and the local government or several local governments and issuer of TIF bonds moves in earnest.

Several elements factor into the redevelopment agreement. **First**, is the legal analysis usually overlooked by all but a few old bond lawyers, as to whether the local government with the TIF statutory authority can authorize and issue TIF bonds or enter into financing agreements for the payment of TIF bonds. Care must be taken to insure that the TIF bonds are not general obligations of the local government, or could be characterized as such. **Second**, interests in property affected by TIF need to be addressed. In a large area, acquisition of some parcels may need to be acquired through condemnation. Persons and businesses remaining in the TIF area need to be compensated for moving out or relocated. The appraisal of parcels and the fixing of the "base" value or base tax rate needs to be determined, usually with the advice of consultants knowledgeable in valuating property. **Third**, the sources of revenue to pay TIF bonds must be identified. By statute they are the real estate taxes or sales taxes in excess of a pre-determined "base" rate or appraised property value fixed at a time the parcel is in its blighted state. The number of units of government participating in the TIF program may need to be substantial. If school districts, which often levy the lion's share of real property tax, are not involved with the municipalities, incremental tax revenues may be insufficient to support TIF bond debt service. In some cases other sources of special revenues - special assessments and general local government appropriations - may be added to the incremental revenues to provide greater security for TIF bonds. **Fourth**, the priority of revenues pledged to the payment of TIF bonds needs to be clarified among parties, often with competing interests. Obviously, TIF bondholders would like a perfected first priority interest to all revenues relating to the development at all times. But revenues which are pledged to payment of local government general obligation bonds, or revenues which look like real property taxes (i.e., payments in lieu of taxes), are not part of the incremental tax. **Fifth**, the nature of the project itself must effectively bootstrap onto other adjacent economic development activity to ensure that area property values and economic activity increase as required to meet expectation of TIF bondholders. Improving a small parcel in isolation of other economic development activity may be unsuitable for TIF bonds. Rather combining several adjacent projects into a large development appears to be the popular

application of TIF where it becomes one of many financing tools employed to finance a particular aspects of the overall scheme. **Sixth**, the developer's contribution to the project is important. Local governments and school districts which are giving up valuable future tax revenues need to obtain a ***quid pro quo*** for their participation in a TIF deal. That may come in the form of developer cash contributions to local governments to soften the impact of not receiving future incremental tax, or contributions from the developer such as payments for promotional or "pouring" rights.

Finally, we come to New York where TIF bonds have been authorized (Article 18-C of the General Municipal Law) since 1984 but never used in substantial redevelopment projects for the simple reason that school districts, which contribute the lion's share of real property taxes, are not required to participate in TIF. Without the incremental school district tax, TIF bond deals are too small to matter. To address the issue of TIF bond size, major legislative changes to Article 18-C were introduced in 2006 (A2358-A, S371, known as the Schimminger-Young bill). These amendments include adding school district incremental real property taxes on a voluntary basis, providing expanded purposes for TIF bonds (*i.e.*, alternative municipal energy and brownsfield development financing), adding back-up revenues for TIF bonds (*i.e.*, assessments, sales tax and income tax carve outs), and encouraging assessors to recognize increasing values of developed property over time to keep incremental taxes at adequate levels to pay off TIF bonds. In 2008 the bill passed the Senate as originally drafted and passed the Assembly in an altered state, stripping out expanded purposes and back-up revenues. Before the Senate could take up the Assembly amendments, Joe Bruno exited stage right and the session ended.

While we have no new TIF bond law, the Legislature now recognizes the importance of enacting the TIF bond amendments nearly 25 years after passage of the original law as part of the need to make New York competitive with other states in the global economy in job growth and stimulating the upstate economy. In the words of the Governator, "we will be back."

TIF may always be a somewhat controversial financing tool because its source of repayment depends on the heart of the source of general public revenues – taxes and assessments. It will continue to be somewhat state specific because laws affecting taxes, assessments, liens, and tax levies are matters of state concern unlikely to never be pre-empted by a uniform federal law. Developers, investment bankers and bond lawyers will continue to be challenged to make TIF work in the statutory and constitutional frameworks they find themselves for one simple reason: the legal barriers between public purposes and private purposes is coming down. Today we acknowledge that economic development is as much a public purpose as paving a street or building a new jail. The financial assistance the public sector provides with TIF is an essential ingredient in large-scale development which stabilizes neighborhoods, attracts business, creates jobs and provides a decent place to live in the 21st century economy.

New York, New York

July 16, 2008

By-line: Mr. Bond is a partner in the international law firm of Squire, Sanders & Dempsey L.L.P. and an adjunct professor in state and local government finance law at Albany Law School.

Scherzo to a Bond Anticipation Note

The scherzo is a musical form within a larger piece of music, like a symphony. In Italian the word means "joke" and in the context of 19th European symphonic composition it is employed as a startling and dramatic but short and often loud bridge from one long movement to the next, grabbing the listener's attention but rendering the listener exhausted at its end. My conceit in labeling a talk on conditions in the municipal bond market a "scherzo" is an overt nod to my spiritual mentor, Robert Schumann (1810-1856), whose scherzos in his symphonies and trios are among the most memorable. More important, and the reason I find Schumann fascinating, he was trained as a lawyer at the University of Heidelberg, but no doubt discouraged from practice by having to put in 2,400 chargeable hours year after year, chose to write music instead[27]. But his legal training paid off. Schumann viewed music as a form of literature. So 200 years after the master's birth, as one trained in music in my youth but having practiced law for over 30 years, it is fun to work Schumann in reverse: styling indentures and bond resolutions and talks to government leaders as musical forms.

The present global credit and financial crisis is no joke, but for the municipal securities industries it shares characteristics with the scherzo. The crisis came upon us suddenly, it is loud and dramatic, and it is leaving us exhausted, but as concerns states and local governments it may be relatively short. The long-term aspects of the financial crisis affecting local governments will be its economic effects possibly for many years to come, comparable, if you will, to a very long and dreary Bruckner symphony (Anton Bruckner -1824-1896)[28].

You have read all the various accounts of how the commercial banks, investment banks, insurance companies, and mortgage brokerages began to melt down in the summer of 2007 when everyone realized that the mortgage-backed securities and credit derivative swaps written on such securities which banks held as "capital" were, in the infamous reputed words of John Nance Garner[29], not worth a tub of warm spit. And you've all watched with dropped jaws and diminishing net worth as the Dow has today sunk over 45% from its high in October, 2007. Why and how all this happened is now current history. The question for you as city and county managers is what it means to the future of running states and local governments now and in the years to come.

Consider first the current municipal bond market. Municipal bonds and government borrowing are a relatively small part of the overall global credit system which is like a Hummer with a busted transmission – it ain't moving. After bailing out state agency issuers of "auction rate securities" earlier in 2008, we have plodded along nicely issuing bonds and notes with plenty of investor interest at very even rates of interest until the mid-September Lehman Brothers bankruptcy and the immediate crash in the Dow. Since then, government banking (issuance of short-term notes) as proceeded apace but at substantially higher interest rates with more attention from community and regional banks than the roiling global financial institutions with

[27] Daverio, ***Robert Schumann, Herald of a "New Poetic Age,"*** Oxford University Press, New York (1997), pp. 55-104.
[28] See: Finney, ***A History of Music***, Harcourt, Brace and Company, New York (1947), pp. 545-546.
[29] 33rd U.S. Vice President (1933-1941), and former Speaker of the U.S. House of Representatives, from Texas, a/k/a "Cactus Jack."

government banking operations. A test of the market occurred in mid-October when the State of California attempted to issue $7 million in revenue anticipation notes, but found investor interest for only $5 million to stave off massive government employee layoffs[30]. Long term bonds for New York municipalities are finding investor interest from the same bidders as always but at high interest rates. So what's the problem? None really because, like a well-built SAAB, the transmission on the municipal bond market works just fine for at least four reasons. First, all that money coming out of the stock market and mutual funds over the past few weeks had to go somewhere. As I have heard recently from several friends, they told their brokers to "sell everything" and "put it in municipal bonds. Why? Because munis are viewed as save and secure, if not a little boring, and most likely to pay off in full. Today's investor having been burned by the hype of a 20,000 Dow in five years, just wants to preserve capital and maintain liquidity. Second, as the Fed has lowered the discount rate and investors bulked up demand on Treasuries in the flight to safety, yields on Treasuries have declined, often close to or below zero, making munis a better yielding investment, tax exempt or otherwise. Third, as I remind my law students, state and local governments can only issue debt, not equity. They have creditors only. We can be thankful at times like this that state laws prohibit local governments from doing more than issuing tax-supported bonds and notes, keeping us out of the toxic atmosphere of credit derivative swaps and collateralized mortgage obligations, and selling off public assets to raise cash[31].

So for now, our SAAB is still moving even though we feel like the transmission is slipping. Here's why. First, the evaluation of credit of munis is becoming problematic. The major rating agencies over the years have sliced and diced municipal credits into unmanageable and indecipherable categories mimicking ratings on corporate debt. After being roundly criticized for being sloppy in rating every insured mortgage backed security as AAA, they decided in 2007 to simplify their muni ratings. But the credit crisis has put that project on hold. Investors not being sure of what a rating means will exact a premium in higher interest rates[32]. Second, we have become lazy over the past 15-20 years in selling long-term bonds with bond insurance, guarantying an insured-AAA rating for every investment grade credit and those barely investment grade. That practice ended abruptly this year with the demise of all but two of the major muni insurers, both of which are on "credit watch" for possible downgrade. That means states and local governments will be increasingly selling bonds naked – no insurance – based on their own stand-alone credit in an environment where no one is certain what a rating means, and where the SEC is calling for more disclosure at the time of issuance and throughout the term of the bonds[33]. For issuers like New York local governments which can only issue tax-supported debt where risk of default is with the taxpayer, not the investor, lack of insurance is not the end of the world. But no insurance means closer scrutiny of the issuer's underlying credit by investors – no more covering up the ugly stuff with bond insurance. Issuers with perennial deficits, declining tax revenues, unchecked rising labor costs, unfunded OPEB, thin fund balances, and nasty State Comptroller audit reports will suffer in the market. And third, the

[30] Los Angeles Times, October 11, 2008
[31] Articles VII and VIII of the NYS Constitution, respectively, restrict state and local government financing powers by requiring voter approval and imposing debt limits.
[32] See: The Bond Buyer, October 23, 2008.
[33] See: Speech by SEC Chairman Christopher Cox on July 18, 2007, referred to in U.S. Securities and Exchange Commission Release, No. 2007-148, July 26, 2007.

long-term impact of the global credit crisis – regional/national economic decline and recession – will make capital market access at all levels of government challenging and more expensive. The Schumann scherzo may be short but the dreary Bruckner symphony which follows may be really long.

As managers of your community you need to insure fiscal stability during a period we are finally beginning to acknowledge: the economic decline of the United States relative to the rest of the world. This condition is different from the global credit crisis, but the credit crisis is aiding and abetting the economic condition. We are faced with not only the well known slump in home sales and housing construction, but also increased global competition for resources of all kinds, basic infrastructure maintenance deferred to pay for foreign wars, pressure on our educational systems to better perform, the loss of domestic employment to anywhere else on the globe, all exacerbated by a world-wide recession.

As stewards of your communities here are a few things you can do to adjust to and succeed in these changing economic conditions.

Managers usually leave the budget and finance operations of their communities to the chief fiscal officer and finance committee of the legislative body. That is not a good idea going forward. You need to conduct an internal audit of your community's fiscal resources and your fiscal management capabilities.

Let's start with the budget which calendar fiscal year local governments are now in the midst of developing for 2009. Your primary source of revenue is the property tax, reserved exclusively for local governments under New York law. That's a great fiscal strength for local governments. But it's a problem because New York's property tax is the highest in the nation by any measure[34]. That means that the elasticity of the property tax – your ability to increase it without adversely affecting other economic activity - is low. High property tax has already contributed to net out-migration of families, income earners and all levels of business. While "tax revolts" are limited to turning down school budgets, rising property taxes without a perceived reciprocal benefit just infuriates voters. Keeping property taxes at affordable levels requires reducing the expense side of the budget. Given the job loss accelerating next year, future property tax collections may disappoint and those governments which guaranty collection of another government's tax roll forced into cash-flow borrowing.

Looking to increase revenues, State aid is problematic and not likely to increase as the State itself is experiencing serious declines in tax revenues, projecting its 2010 budget deficit now at $12.5 billion[35].

One-shots are a particularly attractive way to increase budget revenues, particularly land and asset sales. These revenues might have been realistic five or ten years ago with strong

[34] Citizens Budget Commission, ***The Palisades Principles: Fixing New York State's Fiscal Practices***, February, 2004, pp. 6-13.
[35] New York Times, November 12, 2008.

demand for developable property at attractive prices, but large developer activity has dried up owing to the credit crisis. And selling public sector assets to raise cash is generally illegal[36].

That leaves fees and assessments as areas where revenues may be enhanced. Parking fees, for example, can generate significant revenues but require disciplined enforcement. Assessments, particularly in villages, can be an effective way of generating non-tax revenues for a specific benefit (i.e., sidewalk assessments) but these revenues require completing administrative proceedings, such as a public hearing, which requires preparing well ahead of the budget year in which assessments can be included in the budget[37].

On the expense side, aside from reducing personnel, negotiating favorable labor contracts has to be a major focus. Hard negotiating with the unions will be increasingly important to keep wages and benefit costs under control – something easier said than done. You may want to review things like health benefits provided to existing and retired personnel to require greater employee and beneficiary contributions[38]. Earlier this year, the City of Vallejo, CA, filed for bankruptcy protection under Chapter IX of the federal bankruptcy code to alleviate oppressive labor contracts. Although an egregious procedure, this technique brought the unions back to the table after a federal bankruptcy judge approved the city's petition for bankruptcy[39]. New York has a never used bankruptcy statute (Title 6A, Local Finance Law) which would permit a federal bankruptcy filing if and when economic conditions reach the point where structural deficits are unavoidable. And section 10.10 of the Local Finance Law now authorizes a streamlined process for obtaining special legislation for financing a structural deficit under State Comptroller supervision.

To guard against cash-flow and deficit financing, you should consider establishing and funding reserves through budget appropriations. Section 6 of the General Municipal Law authorizes reserves for several purposes which may help smooth out budgets in lean years. There is also short-term (up to five year) borrowing available for routine equipment and hardware machinery which can relieve the expense side of the budget. Tax anticipation notes and revenue anticipation notes are often misused to provide cash if revenues decline during a budget year; and budget notes can do the same but should only be used if unanticipated expenses arise, not when revenues decline[40].

---

[36] Public assets can be sold only if no longer required for public use, sometimes with voter approval (69 Op. St. Comp. 1077); the sale and lease-back of public assets is generally prohibited (82 Op. St. Comp. 176); park land cannot be sold with a special act of the legislature (81 Op. A.G. 98 [Inf.]).

[37] Village Law, §22,200 et seq.; New York takes the position that "impact fees" are a local tax regime preempted by general state law and therefore unenforceable. See: ***Albany Area Builders Ass. V. Town of Guilderland***, 74 NY2d 261 (1989).

[38] See: Bond, ***The Perplexing Case of GASB 45***, NYSBA, Municipal Lawyer, Summer 2007, Vol. 21, No. 3 for a discussion of GAAP-compliant financial disclosure requirements of accrued health insurance and other benefits for retired pubic employees.

[39] ***In re City of Vallejo, California, Debtor***, Case No. 08-26813-A-9, United States Bankruptcy Court, Eastern District of California, Sacramento Division, Findings of Fact and Conclusions of Law, filed September 5, 2008.

[40] New York Law is unhelpful when taxes and state aid are below budget forecasts, as may well be expected in 2009 and beyond during a prolonged recession. Tax anticipation notes and revenue anticipation notes must be repaid with budgeted taxes and revenues, respectively, when collected (Local Finance Law §§24.00 and 25.00). Budget notes (Local Finance Law §29.00) are not intended to replace budgeted but uncollected revenues and usually must be repaid as an expense in the next succeeding budget year.

You should also review your collateral agreement with your community's depositary banks[41]. While these banks are the primary supporter of your government financing operations (i.e., purchaser of short-term notes), they are also required by law to fully collateralize your deposits in case they fail – and as Treasury Secretary Paulson said recently, "there will be more bank failures." You need to conduct due diligence on your bank before opening or maintaining a deposit account, as well as review your community's investment policy and the collateral list your banks maintain. Although eligible collateral has been expanded in New York recently to include mutual funds of eligible securities, it would not come as a surprise that some banks have substituted illiquid securities or under-collateralized municipal deposits without notice. Given the global credit crisis, you may find that your local and regional banks are in a stronger position to collateralize deposits than the international household names whose capital has been diminished from write-downs in the value of those toxic securities over the past year. If you've been told that the FDIC will insure deposits more than $100,000 or that some of the $700 billion bailout from Congress will be available to fund government operations, get independent advice from legal counsel before taking the word of banks and financial advisors.

In addition to sharpening your budget and monitoring your bank deposits, there a few other best practices you need to consider. Make sure you are employing the best professionals. Being political entities, municipalities are not immune from engaging political friends for all types of services. But today we are seeing a flight to quality for all types of financing and legal services and advice. Your bond counsel should have resources and expertise in the law of financial services, bankruptcy, litigation and access to getting something done in Albany. As in past recessions, when the private sector lays off finance and accounting personnel, this is your opportunity to hire finance professionals you couldn't afford in flush times. Some of the best municipal and school finance professionals I have worked with over the years came out of the private sector.

Beware of deals which look too good to be true. Wall Street layoffs often spawn adventurers into municipal finance who offer higher rates of return, gleaming project development concepts, and off-the-books financing schemes. If you can't clearly understand what they are talking about, it's not because they are smarter than you. It's because they see an opportunity to get paid for something from your taxpayers. Those of us who have worked in public finance for many years should not forget the lessons of Lyon Capital in the early 1980s when a fly-by-night outfit secured State Comptroller endorsements and then invested public funds for high returns only to lose most of it for lack of collateral when Lyon Capital failed.

You should focus on municipal cooperation and sharing of services – the discipline John has discussed this morning[42]. New York is blessed and burdened with thousands of units of government – many whose viability may be questionable in tough economic times. In the economic period we are entering, sharing services and consolidating local governments to reduce cost and increase efficiency needs to happen even though the process will be politically painful.

---

[41] All public funds deposits must be collateralized with "eligible securities" provided by the depository bank or trust company to protect local governments from bank failure (sound familiar?), New York General Municipal Law §10; see Op. St. Comp 95-32.

[42] John Clark, Executive Director of the New York State Commission on Local Government Efficiency and Competitiveness; see: www.nyslocalgov.org.

As you know, in the private sector, consolidation and spin-offs of businesses and corporations to attain profitability are things we take for granted. Yet such realignments in local government are fiercely opposed politically even if cost savings to taxpayers are clearly demonstrated.

Promoting economic development in your community and region can only help simulate job creation growth. Every county and many local governments have industrial development agencies which offer a wide array of tax and economic incentives. While these programs are currently under review for abuse and lack of effectiveness, when employed in coordination with the underlying local government, they do work.

Get involved in organizations like NYS C/CMA and NYS GFOA[43]. Learn about and speak out on issues which foster economic growth, but also unduly complicate municipal finance. For example, legislation to allow tax-exempt financing of health-care and higher educational facilities has been held hostage by the unions in the Legislature for over a year, making it more expensive to finance new facilities[44]. The Legislature has also failed to enact enabling legislation to provide a mechanism for OPEB funding, leaving local governments with inadequate tools to comply with GAAP standards[45]. Finally, the Senate passed but the Assembly did not, comprehensive amendments to the redevelopment law (Art. 18-C, General Municipal Law) which would put teeth in tax increment financing, a useful economic development tool used to great benefit in many other states[46].

Tell your local attorney to get active in the Municipal Law section of the NYSBA and the State and Local Government Law section of the ABA. This spring the ABA may consider a recommendation addressed to the new Administration to substantially expand federal general revenue sharing with the states and their political subdivisions for infrastructure development and budgetary stability.

So while the shock and awe of the scherzo may be leading to that long, dreary Brucknerian symphony, you need to establish fiscal balance which, predictably, will be enhanced by some form of federal financial assistance, as the economic landscape moves toward something sounding deeply serious, reverential, perhaps passionate and joyful at times, but hardly light-hearted. That would describe the classic D minor symphony of César Franck (1822-1890), the great late-19th century French organist and composer[47]. As we say of the new post-recession economy, welcome to France.

Kenneth W. Bond
Partner: Squire, Sanders & Dempsey L.L.P.;
Adjunct Professor, Albany Law School

---

[43] New York State County/County Managers Association; New York State Government Finance Officers Association

[44] The state law authority for industrial development agencies to issue tax-exempt bonds for health care and educational facilities expired in January, 2008 and has not been revived: But see: A02557 and A01569.

[45] See: A11411 and S8383 which never came up for a vote in the 2008 Legislative session.

[46] See: www.nysamcommission.org; testimony of Hon. Robin Schimminger, NYS Assembly, 140th District, on November 20, 2008, for a useful discussion of proposed amendments to strengthen tax increment financing in New York.

[47] Fn 2, pp. 530-531.

Chair, Public Finance and Economic
Development Committee, Municipal
Law Section, NYSBA

TESTIMONY OF KENNETH W. BOND
AT
HEARING BEFORE THE NYS COMMISSION ON STATE ASSET MAXIMIZATION

November 20, 2008, Albright-Knox Art Gallery Auditorium, Buffalo, New York

Chairman Hitchcock and members of the Commission, thank you for permitting me to testify at this hearing today. I am here at the invitation of the New York State Economic Development Council which represents developers and industrial development agencies (IDA) throughout New York, and which developed the amendments to the Municipal Redevelopment Law[48] relating to tax increment financing to provide a modern economic development tool. Those amendments passed the Senate this year and were reported out of committee in the Assembly in a modified version.

I am a partner in the international law firm of Squire, Sanders & Dempsey L.L.P., in the New York Office, an adjunct professor at Albany Law School where I teach the course in state and local government finance law, and chair of the Public Finance and Economic Development Committee of the Municipal Law Section of the New York State Bar Association and the chair of the Public Finance Committee of the State and Local Government Law Section (SLGLS) of the American Bar Association (ABA). Given the extraordinary challenges states and local governments face on account of the rapid and unprecedented global deleveraging now under way, I am happy to report that SLGLS this week submitted a recommendation with report to the House of Delegates of the ABA to encourage the new federal administration to reinstate the general revenue sharing program[49] to enable states and local governments to retain balanced budgets and continue their infrastructure construction and maintenance programs.

Public-private partnerships among the two sectors have existed well before the modern age[50]. When governments hire constructors to build roads, accountants to audit their books, and purchase vehicles for police cars, they form a business partnership. However, our state constitution and laws require that government owns the public facilities people use. This government monopoly is prevalent in Western society to provide basic delivery of services to all members of the public at a cost which assumes that the private sector could not provide profitably or uniformly. At least that's the theory. But in fact, the private sector often delivers public services more effectively and efficiently. Sometimes the cost of operating water and sewer systems, airports, golf courses, health care facilities, toll roads, educational institutions and

[48] New York General Municipal Law (GML), Title 18-C.
[49] From the early 1970s through the mid-1980's the federal government appropriated unrestricted funds to states and local governments to use for their purposes, thereby keeping state and local taxes reletively low.
[50] "By the beginning of the 15th century English armies were generally recruited by contract: private arrangements between the king and his suppliers…" ***The War of the Roses***, ed. E. Hallam, p.107, Weidenfeld & Nicolson, NY, NY (1988).

correctional facilities can be reduced through private sector management, including a reduction of the wages and benefits and the number of personnel commonly employed by government, particularly in a state like New York with powerful public sector unions. In addition, the technology behind certain services requires the expertise of private sector participants not usually available in the public sector. Examples include operating energy power generation plants, operating a co-generation waste-to-energy plant, turn-key construction of hi-tech public buildings for educational institutions, and congestion and subsidy pricing for toll roads and bridges.

The partnership also works to stimulate private investment in manufacturing and mixed-use developments.[51] PILOTs are a well recognized method of reducing taxes and the burden of government for new private sector projects. Tax increment financing, takes PILOTs and IDA ownership a step further by providing a new source of borrowed funds paid for from the incremental increases in real property taxes in a specific project area generated by redeveloped properties.

As with so many modern initiatives in state and local government, establishing standards for public-private partnerships beyond government's hiring and purchasing of goods and services from the private sector, is inhibited by arcane state laws which emphasize public sector ownership of public assets and competitive bidding for private sector goods and services.[52] To unlock the cash-flows, revenues and values from state assets requires a fundamental change in state law.

To begin with, New York's law simply doesn't permit the sale or mortgaging of government assets – whether state or local. The law views these activities as waste and unconstitutional debt unless the assets are found to be surplus by a public body. So selling assets to raise funds for any purpose requires a special act of the Legislature[53]. Further, the state and its local governments can raise funds for capital projects and cash-flow needs only by issuing debt. Our laws do not recognize an equity contribution by private sector participants in the construction and operation of government assets. Part of the rationale behind this exclusion of private sector ownership or equity interest is to protect the public against exclusion from basic delivery of services. For example, a privately owned toll road between New York City and Albany might charge $50.00 one-way to operate at a profit. But few members of the general public could afford to use the road[54]. The same idea applies to the cost of utilities (water, gas, electric, lighting, etc.) which if run by a private sector firm is highly regulated by the state (i.e. the Public Service Commission) to protect the public against exorbitant charges to create corporate profits.

---

[51] State and local government reduction and abatement of taxes and fees are an important element in attracting new private sector investment which creates jobs and general economic activity.

[52] For example, public assets can be sold if no longer required for public use (69 Op. St. Comp. 1077) and the sale and lease back of public assets is generally prohibited (82 Op. St. Comp, 176); the Wicks Law, GML, section 101 et seq.

[53] For example, parkland cannot be sold without a special act of the Legislature (81 Op. A.G. 98[Inf.]).

[54] One might expect that such exclusion violates the Equal Protection Clause of the U.S. Const., 14th Amendment. But under decided law, it does not. But see: ***Serrano v. Priest***, 5 Cal. 3d 584 (1971).

Another concern with including the private sector as a partner in the delivery of public services is labor issues. Historically, government was the employer of last resort. But the influence of municipal labor unions on the Legislature over several decades has created an environment where in most of upstate New York, the wages and benefits from public sector employment far exceed those of most private sector jobs[55]. Outsourcing or "privatizing" services like police, fire, corrections, and utilities, or merging and consolidating those services among public sector providers invokes the wrath of organized labor which seeks, at a minimum, to preserve extant collectively bargained wage and benefit agreements, thereby largely defeating the cost savings to taxpayers and users which privitization, merger or consolidation might achieve[56].

Related to the difficulty in fostering private-public partnerships is the state's laws for taxing and charging for public services. Public services are paid for primarily through direct general taxation (real property, sales and use, income). The concept of charging for specific services and benefits is not well established in New York. Only villages have authority to charge for special assessments. Towns and counties may establish improvement (i.e., taxing) districts for limited utility purposes. Use of toll roads is charged on a limited basis though the NYS Thruway Authority. Impact fees imposed on developers for infrastructure costs related to development are unconstitutional according to the Court of Appeals[57]. Annexation to create efficiencies in public services through consolidation is nearly impossible to achieve.[58] So if state and local government assets and services were privatized it would be difficult to generate a revenue which would generate a return to attract equity capital.

To promote private-public partnerships which monetize state and local government assets, reduce taxpayer costs, develop infrastructure more effectively at lower cost, and establish a template for charging costs of services to benefited parties, substantial reform of the state's laws is required, including potentially amending the state Constitution. Here are a couple of suggestions where changes in law require immediate attention to promote public-private partnerships.

Turn-key design-build projects should be specifically authorized for state agencies and local governments. Turn-key financing requires a specific asset to be designed and constructed for a maximum cost by a specific date. It fosters project labor agreements in lieu of the Wicks Law. It opens project financing to negotiated sales rather than requiring compliance with competitive bidding rules. It puts risk and reward on private sector participants who must achieve guaranteed outcomes. Statutes providing for the broad use of special purpose entities (not-for-profit corporations) and appropriation-backed public financing required in turn-key project structures should be enacted to provide clear legal authority without having to resort to special state legislation, or run afoul of the constitutional faith and credit pledge applicable to tax-supported debt.

---

[55] Many practicing attorneys upstate covet the financial security of a job on the bench or in state/local government.
[56] See: Report of the NYS Commission on Local Government Efficiency and Competitiveness, April, 2008.
[57] ***Albany Area Builders Ass. v. Town of Guilderland***, 74 NY2d 361 (1989).
[58] See: ***Some Observations on Annexation, and a Hearty Welcome to the Asian Century***," K. Bond, Government, Law and Policy Journal, NYSBA, Vol. 9, No 2, Winter 2007.

The cost of state and local government assets should be increasingly paid for by users and consumers rather than taxpayers. This pricing approach looks to a cost/benefit analysis in determining the feasibility of an infrastructure project, rather than the project's impact on a legal debt limit, the real property tax rate, or budget appropriations. It encourages private sector equity participation because, through technology (i.e., think EasyPass), services may be priced for delivery to users and consumers at a "profit" by targeting the time of use (i.e., think congestion pricing) and the user receiving the service (i.e., Donald Trump's limo vs. section 8 tenant's used car crossing the Tappan Zee Bridge). However, the state's laws on assessing for benefits, establishing rates and tolls, improvement districts, and prohibition on impact fees needs to be revised. While general taxation will always be an important element of financing state and local government assets and services, public-private partnership projects are best examined for financial feasibility under cost/benefit analysis.

Finally, although the Commission's charge is not to advise on ways to hold fire sales of state assets to raise money in a declining economy, the temptation to do so is always there. In prosperous times where rising taxes and public sector wages and benefits were not a public concern (i.e., the late 1940s and 1950s when most of our state laws on public finance were enacted), a discussion on "state maximizing of assets" would seem strange and irrelevant to most. Selling the public "crown jewels" (water and sewer systems, public buildings) for short term gain can have tragic consequences[59]. Any handing over of public assets – state or local – to private sector ownership, control or management should require the consent of the voters and/or a review of the transfer and the imposition of public sector oversight to ensure that the public continues to receive delivery of adequate, if not improved, public services[60].

Thank you.

Arise, All Ye on Sinking Ships, Amend the Constitution

Thanks for inviting me to address the Association again. I promise not to make allusions to music and law or public finance, except one. The title of this talk can be sung to the first line of Martin Luther's hymn (no one guessed correctly the song which fits the libretto), "A Mighty Fortress is our God," which is not entirely an accident since Luther was a reformer, as was Martin Luther King, and reform is the focus of any sustained effort which might be brought to bear on making substantial changes to the New York State Constitution (the "Constitution"). Also, Devine intervention or fortitude, however measured, wouldn't be bad tools to have at one's disposable in navigating through this severe and perhaps prolonged economic downturn, which to be honest, is having a delayed fiscal effect on states and local governments.

Many of you have financed capital projects in the last 18 months since Lehman Brothers went bankrupt and Wall Street officially acknowledged the recession. Most likely, your community has issued its tax-supported general obligation bonds and short-term notes without a

[59] In the 1980s, the City of Utica sold its regional water system and the City of Troy sold its city hall, the proceeds from which provided no long-term advantage in balancing city operating budgets.

[60] For a comprehensive analysis of public-private partnerships see yet unreleased: ***How Public-Private Partnerships Can Help New York Address Its Infrastructure Needs***, Citizens Budget Commission, expected December, 2008.

ripple in the water. The placid, almost boring, municipal bond market has lumbered through the recession with one or two surviving bond insurers, done more bond issues without insurance, and expresses very little concern over the security and reliability of property taxes and other government revenues to pay debt service. Not even California, which needs to issue billions of dollars just to pay state employees let alone build anything, has trouble finding investors.

In February, Congress passed the American Recovery and Reinvestment Act of 2009, known as the Stimulus Act or the Recovery Act, which authorized $787 billion in direct federal aid and tax cuts in 2009 and 2010 to cushion the decline in business activity and employment, provide funds for states facing growing deficits, and to encourage development of public infrastructure (water, transportation, renewable energy, housing). The tax cuts were provided not in liberalizing the use of tax-exempt bonds, which would have been welcome news to the market, but in providing a new kind of municipal bonds – tax-credit bonds: taxable bonds with a 35% - 45% interest rate subsidy available to the bond holder or paid directly to the issuer. It's been three months since tax-credit bonds were authorized but few have been issued – none in New York. Why? With declining incomes in the recession, it was becoming harder to sell tax-exempt bonds (less income to shelter). But selling tax-credit bonds to muni bond investors is even harder because tax-credit investors are limited partner equity investors, usually in housing or real estate projects. As investor groups go, muni bond investors and tax-credit investors are about as distant as China is from Bolton Landing. So in the public finance area, until the market can retool and become comfortable with tax-credit municipal bonds, the tax cuts of the Stimulus Act will be delayed. Further, given their novelty and transactional complexity compared with tax-exempt bonds, tax credit muni bonds will more costly to issue. You may see efforts to pool or aggregate the garden variety tax-credit bonds, called Build America Bonds (BABs), by a state agency or trade association. The BABs which have been issued to date are very large state agency bonds handled by major underwriters who claim that the tax credit applied to the taxable interest rate beats the tax-exempt rate. Since the tax-credit bond provisions of the Stimulus Act expire at the end of next year, public finance professionals are cautious to embrace these bonds. Like almost everything else these days, issuing tax credit bonds involves the direct participation of the Federal government. If it turns out that tax-credit bonds do not increase bond issue volume or stimulate investment in public infrastructure, they may not be renewed after 2010.

In the meantime, plain old tax-exempt bonds and notes will keep thumping along so long as interest rates on their cousins, U.S. Treasury notes, stay low: a 5% tax-exempt 20-year general obligation compares favorably on risk and return with a 3.5% taxable 10-year Treasury. But watch interest rate movements over the next several months. If the Fed's cost of borrowing increases, interest on munis will have to increase as well to remain competitive. Also, because the Stimulus Act money runs out next year, if state and local government revenues continue their decline and federal assistance like general revenue sharing does not take up the slack in 2011 and thereafter, the reliability of property taxes and government revenues will be viewed as less secure, which together with declining interest in tax-exempt investments will push interest rates up on municipal bonds.

Congress will consider a bill introduced last week by Barney Frank, Chair of the House Ways and Means Committee, to support the public finance industry. The four provisions in the bill include (i) funding $50 billion dollars in reinsurance for bonds issued in 2011 through 2015

as a substitute for the disappearance of bond insurers, (ii) a federal agency to provide liquidity for variable rate debt so the freeze in remarketing these bonds which occurred last year doesn't repeat itself, (iii) regulation of all financial advisors, no matter what size, if they engage in interstate commerce (essentially, using the U.S. Postal Service), for reasons unknown as to any problem with financial advisors other than its always gratifying to Congress to find someone new to regulate, and (iv) requiring credit rating agencies to rate municipal bonds only as to their likelihood to go into default. For tax supported debt such our communities issue, unless the issuer were likely to default on debt service – highly unlikely in New York, at this time at least – all bonds would be issued with the same underlying investment grade credit rating. It's simple and fair and makes common sense, although something this easy wouldn't be popular with the rating agencies. (PAUSE)

The very mention of the State Constitution generates abhorrence and anxiety. Most involved in government, policy and politics don't want to discuss it, and certainly not change it, out of fear that any change, especially a major top to bottom overhaul would disenfranchise important constituencies of certain benefits. To tinker with guarantied government employee pensions, for example, provided in Article V of the Constitution is a Pandora's Box no one would dare pry open. The Constitution also has a vital role in public finance, and other areas of government, where its provisions are detailed like regulations and their violation can lead to invalidly issued debt.

State constitutions, besides being widely ignored and their more onerous provisions the subject of legislative evasion, are not well understood. They are best viewed in contrast to the Federal constitution. The Federal constitution is relatively short and concise. It grants rights to the people to protect them from their governments in short statements: the right to a free press, the right to vote, the right to free establishment of religion, the right to enter into and enforce contracts, the right to *habeas corpus* in a criminal case, the right to due process of law, and the right to equal protection under the law. These are familiar liberties we enjoy in the United States. They protect us from the heavy hand of government control of our lives – at least in theory.

While state constitutions contain a bill of rights and universal suffrage provisions, like Articles I and II of the New York Constitution, they do not grant rights to people; they restrict actions of the state and its political subdivisions. These restrictions are an outgrowth of the Tenth Amendment of the federal constitution. The Tenth Amendment recognized that the "United States" was in fact a consolidation of thirteen separate "sovereign" states which were the former colonies of Great Britain prior to the Revolutionary War. Any power not yielded to the federal government was reserved to each of the former sovereign states. This reservation of powers to the states in the 19th century was widely viewed to give states wide powers in the areas of debt and finance, regulation of banks and business corporations, public education, the court system, and taxation and licensing. What state constitutions are supposed to do is restrict the reserved powers of the states from hurting the people who live there from excessive state spending, taxation and borrowing. State constitutions also provide for public employees against the vagaries of business and politics by assurance adequate compensation and benefits to curtail public corruption. And they provide for the defense of the state through a militia, and protect productive state assets, like the canals in the 19th century and the Thruway today, from waste.

The benefits of privatization notwithstanding, you can't sell off or place a mortgage on state and local government assets – again, to restrict the acts of state government from hurting the people.

New York's first constitution dates back to 1777, before the Revolutionary War. Within its preamble is the Declaration of Independence. It contained many of the provisions we see in the New York's present constitution, last overhauled at a constitutional convention in 1938 – over 80 years ago. It declared the power of government to vest in the "people," established a judiciary, executive branch and bicameral legislature. It had some things we don't have today – such as a lot of regulations on the state militia – keep in mind that state militias were for most of the 19th century better prepared for war than the national armed forces. It declared royal grants and charters from the British King null and void, and protected Indians nations by requiring that sale of their land be authorized by the Legislature. The governor had no veto power over the Legislature's act – instead a "committee of revisions" including the governor and two judges reviewed adopted laws and could return them to the Legislature for revision.

The second Constitution was drafted at a convention which met in Albany from August to November in 1821 and was approved by the voters that November. It placed special emphasis on the regulation of canals and the funding of the state general fund with canal tolls and revenues – the Erie and Champlain canals were big business: how else could you efficiently get to the burgeoning markets in Chicago and St. Louis except on a boat (interstate roads were at least a century away)? The 1821 Constitution also introduced state funding for common public education, organized law enforcement agencies and established the convention method for amending the Constitution.

The third Constitution was drafted at a convention which met in Albany from June to October in 1846 and was approved by the voters that November. The 1846 constitution established a bill of rights for the state and added more provisions about financing and revenues relating to canals. It also, importantly, established the first restriction on state debt – nothing over $1 million unless voted by the people – a provision which continues to this day – but in name only, and imposed the restriction of no state financial aid to any individual or corporation, the precursor to the modern prohibition on "lending or giving credit" to individuals and "lending of credit" to corporations. These state debt limits and lending of credit prohibitions were a direct reaction to the state's entanglement in financing construction of private canal and railroad companies in the 1830s, many of which went belly up during the Panic of 1837. The people did not want the state holding the bag on defaulted canal and railroad bonds. Keep in mind that all banks in mid-19th century were state banks – so what banker wasn't going to lend to the governor when he came knocking? It was good politics but bad economics for uninsured and unsecured depositors – so the Constitution was amended to stop that practice. Assessments for street car companies, the establishment of county boards of supervisors, and the segregation of state sinking funds securing debt and earmarked for certain public works were added after 1846. These provisions reinforce the Constitution as an absolute law, not easily disturbed by the Legislature, to prevent abuse by politicians which cost the taxpayers money.

The fourth Constitution was drafted at a convention which met in Albany from May to September in 1894 and was approved by the voters that November. The constitution of 1894 began to bring New York into the modern area. Counties were given greater powers as state

administrative units. Its new features included the organization of cities and villages and classification of cities, new debt limits and constraints on lending of credit for municipalities as well as the state, the authorization for water revenue bonds, and the formation of the state board of regents.

But it is the fifth Constitution of 1938, our current Constitution, hammered out in Albany between April 5 and August 26 of that year and chaired by none other than Alfred B. Smith, the governor from 1922 to 1928, and approved by the voters that November, which dramatically altered the nature of the Constitution. What had been the evolving organic law of New York with 15 articles of restraint on state actions, became a pro-active government action document with 22 articles, with completely new provisions which did not retrain state government action but rather granted expanded power to the state to serve and provide for the people of the state as well as protect it. Given that the 1938 constitution was written in the sixth year of the Great Depression, and that its mentor was the former governor from 1928 to 1932, Franklin D. Roosevelt, who had been in the White House giving life to the New Deal for five year prior to 1938, these new provisions of the 1938 Constitution should not have been a surprise; indeed, they remind me of the Stimulus Act – because state money in the form of taxation was going to be put work to soften the impact of economic hardship in the 1930s.

The guaranty of the state pension, which causes the Legislature to funds the pension in "tiers" since prior pension obligations may not be diminished, was inserted in Article V of the Constitution dealing with officers and civil departments, and placing the state comptroller, an office established in the 1894 constitution, in the position of sole trustee of the pension fund. While these provisions protect state employees from the Legislature altering pension contracts, and the sole trustee role of the comptroller intended to prevent public corruption, these provisions are out of step with current economic reality as to affordability by local governments and antithetical to modern institutional concepts of transparency and full disclosure.

Article IX of the 1938 Constitution introduced the concept of local government "home rule" reversing the state's prohibition on local or special laws in the 1894 constitution. Home Rule had the democratic intent of granting initiative powers to local governments. But its annexation provisions, giving every small village veto power, today hinders large, regional economic development, crucial to competing in the global economy. Home Rule concepts are found nowhere else in the world in the context of regional economic development. They are especially absent in the southern and western states which has helped those states outmaneuver New York and other urbanized states in attracting large-scale global manufacturers.

Article XIV preserves forests and wilderness areas, an area briefly touched on in the state finance article in the 1894 constitution. Again, Article XIV's intentions are noble buts its administrative overlay in the Adirondack Park, for example, takes a major part of the state and renders it practically useless for economic development.

Article XV deals with canals, formerly found in the state finance article. Where prior constitutions went to some length to spell out the revenue producing and financing mechanics of the canals, this article authorizes their sale, closing and handing over to the federal government. By 1938 you could get to Chicago or St. Louis faster and cheaper on a bus, train and even an

airplane. The 1938 constitution hints broadly that the state's economic base was changing and facing greater competition after 100 years as the engine of domestic growth of the United States.

Far from being a restriction on state government, new Article XVI established the power of the state to levy taxes. We would need them, and still do, to pay for the powers granted the state, particularly in two new articles I will mention next. These Great Depression articles provide for pro-active state assistance, not restraint, in providing social welfare and housing.

Article XVII provides a system of social welfare unheard of at the time – from jails, to mental health facilities, to public hospitals, to public welfare, including the construction of necessary facilities and state loans to pay for them, all of which led to today's most expensive state medical assistance system in the nation.

Article XVIII instituted public housing and nursing homes, housing authorities, state loans for low-income housing, local government debt for low-income housing and loan guaranties – in other words, housing projects. While these provisions created thousands of affordable units, the high cost of subsidies which accompany the high cost of new construction make them expensive to the taxpayers.

It is not surprising that with the mandates for social reform in the form of welfare and housing assistance contained in the 1938 Constitution, its 19th century restrictions on state and local debt, based on real property values and voter approval, would be inadequate. But did the 1938 convention delegates reform the Constitution's spending and lending provisions to fund these new social reforms? No. Image Congress enacting the New Deal but prohibiting the United States from issuing Treasury bills without voter approval. So it did not take long after the validation of the Port Authority of New York and New Jersey, established in 1921, for the Legislature to enact several authorities and agencies to build mandated state facilities without voter approval or debt limits of any kind. To illustrate, as New York City was growing and about to exceed its debt limit in the early 20th century, the Legislature enacted a constitutional amendment, approve by the voters, to increase the debt limit. It seemed the right thing to do. But in the 1990s when New York City again faced exceeding its debt limit, the Legislature simply created a separate authority for water facilities and a "temporary" agency, still quite active, to finance city infrastructure with revenue bonds secured by dipping into income taxes and sale taxes. No wonder Mayor Bloomberg wants to increase the City sales tax to 9%. There are a lot of bonds to pay for. Authorities are nowhere mentioned in the Constitution. Yet their debt amounts to the lion's share of the $51 billion of outstanding state debt – subject to no limit, or approval by any constituency other than the Legislature and a public authorities review board selected by the governor and the Legislature. Nowhere is there a discussion in the 1938 constitutional convention of granting counties and municipalities power to issue revenue bonds or to create local revenue bond authorities (like New Jersey utility districts) – in fact the local authority to issue water revenue bonds established in the 1894 Constitution was repealed. Nowhere is there an analysis in the proceedings of the convention of whether it continued to make sense measuring debt and tax limits solely on real property tax values – what about general revenues, household income, GDP, or other modern indicia of an entity's carrying capacity for debt?

Through design or inadvertence, after the approval of the 1938 Constitution, the Legislature left standing the present system of multiple overlapping municipalities, which later included school districts and fire districts, and the courts thereafter blessed the establishment of parking authorities, industrial development agencies, and urban renewal agencies of all or most of the municipalities – all with debt creation authority and administrative functions - to help carry out the new goals and aspirations of the 1938 Constitution. After several commission reports and studies, there is a current general consensus that New York is overloaded with local government. A local government system like Virginia's, in effect for over 40 years, of only contiguous counties and cities, might be more efficient and competitive today in providing government services. But the key to any lasting solution in addressing these issues and reforming state government rests with amending the Constitution, not papering over well-known problems by enacting malleable "reform legislation" in Albany.

And so for over five months, the delegates met in Albany in 1938, three elected from every senatorial district as the Constitution requires, working with the passion of making the state an agent for improving people's lives in the Great Depression, not in keeping the state off the people's back, the New Deal of the former governor firmly in their minds. They wrote out their reports in long hand on long yellow legal pads, sent them to the printer to set on hot type, proof read gallies and sent the them back for revision, and when it was perfect, bound the new constitution and their proceedings in 12 green cloth hard-spined volumes, complete with a few black and white glossies of the leading politicos, which takes up 3 feet on a book shelf. A near-perfect set of 1938 Constitution and the convention proceedings sits in my library, having been retrieved from a used book shop in Cooperstown in 1995 for the princely sum of $45.00. I recall the bookstore owner being grateful I helped make room for more interesting books.

The Constitution of 1938 and the proceedings of the convention are a noble work and a great work for its time. But the delegates didn't have copy machines, fax machines, personal computers, 24-hour TV cable news or the Internet, Twitter or Facebook. They poured over hard-spined books piled up on huge heavy wooden desks to do their research. They got to their offices in cars that ran on $.25 a gallon gas traveling on poorly lit narrow roads of macadam pavement, and took a train to travel any significant distance. Their proceedings refer to recording their work in journals and publishing notices for voter approval. Certainly, with modern technology available, we could spend 4 or 5 months centered in Albany to objectively rewrite the venerable but badly outdated Constitution.

Every organization, public or private, periodically refreshes its organic documents so that they are relevant to the shared existing conditions of its members, whether by-laws, a city code, or a corporate charter. Only works like the Bible, the Torah or the Koran we do not change because they are written by a higher authority and we strive to follow their absolute teachings. But men (and a few women) made and approved the Constitution. They can change it. The 1846 Constitution was the first to authorize a constitutional convention as a means for the people to overhaul the state's organic law. So certain that its overhaul would be required periodically, the drafters required that the proposition "Shall there be a convention to revise the constitution and amend the same?" be placed on the ballot beginning in 1916 and every 20 years thereafter. In 1996, the last 20-year cycle, we were living large in the dotcom bubble – no need to have a convention said the governor and Legislature. The next 20-year cycle will be 2016 – about six

years from now. I doubt we will be living so large then. We may be coasting on the next bubble, but like the delegates in 1938 we might be several years into difficult economic times.

Lawyers, bankers, state pensioners, public employees, businessmen, and most people might say we are on the same sinking ship – that we all have more to lose by keeping the Constitution *status quo* than we did a few years ago. After 1938, New York's economy blossomed in the wartime economy and new taxes and spending afforded the Constitution's social reform mandates. But there are no more steel mills in Lackawanna, or many manufacturers in Syracuse, or any air force bases in Plattsburgh, Rome or Newburgh. How New York survives and succeeds or fails in the global economy over the next few years may be a function of whether we collectively have the foresight and the courage to revise and amend our Constitution.

The foregoing is the text of a speech given at the Annual Training Conference of the New York County and City Managers Association, May 18, 2009, The Sagamore, Bolton Landing, New York

Thoughts on Alternative Infrastructure Financing and Public Service Delivery

The Sheriff in the Porsche Panamera

On a recent sunny Sunday afternoon while crossing the George Washington Bridge back to New York at a snail's pace, my ear caught some "boom box" music. Looking in the direction of the sound and expecting to see a car filled with teenagers, tinted windows wide open, I was surprised by a different sight: an attractive 30-something couple, the driver texting in slow traffic, his companion swinging her arms to the peppy music. Nothing unusual perhaps, except that the car was a silver Porsche Panamera (a spectacular limited edition sport sedan which retails for about $130,000) and the license plate, from New York, said "sheriff" in abbreviated letters, emblazoned with the proud orange seal of an upstate county. This magnificent, but extremely expensive automobile is apparently owned by the county sheriff or is an official government car. Either way, this illustration underscores the fact that public sector wages and benefits are alarmingly in excess of the American economy's ability to afford. And it is the ever increasing level of public sector wages and benefits which is a principal driver in developing alternative public infrastructure finance mechanisms and service delivery options.

Since the commencement of the Great Recession in 2008, private sector employment and incomes have declined. But through state laws, primarily in the East and Midwest, which grant the right of public sector employees to collectively bargain through representation by employee unions and guaranty pensions, public sector labor costs keep rising. One might expect that public officials would have long ago recognized the fiscal impossibility of maintaining this trend during a prolonged stagnant private sector economy. And perhaps they have. But the grip of public sector unions on municipal governing boards and local boards of education cannot be overstated: the unions fund the campaigns of elected officials who promote their cause. This is why, as fiscal instability spreads across America's urban local governments, local government leaders address the problem primarily by raising taxes, not reducing labor expenses.

However, the elasticity of "just raise taxes" has reached its breaking point. It will not be long before the trend away from home ownership and toward renting accelerates – not only because of

defaulting mortgages and declining real estate values, but because it is becoming less expensive to rent than maintain a home and pay taxes. Notice the trend: multi-unit housing projects once planned as condominiums are now built for rentals. There needs to be ways other than real property taxation – and state/local taxation generally - to finance and maintain public infrastructure and deliver public services lest these elements of American life decline to levels unacceptable to the consuming public and uncompetitive in the global market place.

Alternative methods being developed for infrastructure finance and service delivery - P3, asset monetization, financial reorganization, cooperation and consolidation - all emanate from and have as their goals (i) eliminating the grip of rising public labor costs and benefits and (ii) substantially reducing reliance on state/local government taxation.

The American Tradition of Public Finance

The US municipal securities business is founded on the constitutional principal of state sovereignty. State law, not federal law, authorizes state/local government debt. In the 19th century, there being no central banking system, states and local governments were regularly hijacked to fund or guaranty projects of railroad, toll road and canal developers with taxpayers holding the bag when projects failed. To address "lending state/local credit to private corporations" most states following the Civil War enacted constitutional voter requirements and debt limits as conditions to incurring state/local debt – all to protect taxpayers from the excesses of government. In the 20th century these restrictions were blown through the emergence of agency/conduit financing and permissive judicial enforcement of state constitutional protections. Nonetheless, certain characteristics of US public finance have persisted to limit private sector entanglements and protect taxpayers: (i) infrastructure is financed exclusively with debt, whether supported by taxes or project revenues, not with private sector equity; (ii) infrastructure assets are owned and regulated exclusively by the government; and (iii) these assets are designed, built, maintained and operated under rules applicable to public sector labor arrived through collecting bargaining.

The American Tradition of Public Sector Labor

Had the recent Chicago teachers strike occurred 60 years ago, its leaders would have been jailed, the teachers fired or order back to work, and Senator McCarthy would have held hearings to discover the Communists who instigated the event. How our nation has changed – because there were no public sector unions in the 1950s. There had been public sector employee strikes before that time (i.e., Governor Calvin Coolidge suppressed a Boston police strike in the early 20th century). FDR, as president, opposed them on the ground that the obligation to serve the people is paramount to personal interest (read: want to make money? Get a job in the private sector). Public sector unions got their start with New York Mayor Robert Wagner in the 1950s. Public sector employees wanted to participate in the boom times of the post-WWII economy – aspiring to drive a Packard Patrician rather than a Studebaker Lark or a Nash American, and to move to Levittown from Avenue A. President Kennedy granted federal workers the right to collectively bargain in the 1960s. And then the pension plans, health benefits, and OPEB kicked in – all good for politicians' re-election. So long as the private sector remained strong, free of regulation and prosperous, the increasing benefits inuring to public sector employees was a side show in the overall economy. Little recessions came and went, taxes went up, private sector and public sector incomes went up, and unemployment was low.

Beginning in the 1970s things changed. The high cost of automobile manufacturing driven by private sector labor unions opened the field to Datsuns (later Nissans) and Volkswagens. By the 1980s movement of manufacturing labor from the US to lower cost global venues was in full swing. And private sector union membership began its long decline still underway as globalization and virtual everything reshapes the world. In the private sector demand pricing loosened the grip of private sector unions. But in the public sector no such event has taken place – or could - because public facilities and services are provided by government monopolies and you can't avoid paying for them unless you move (i.e., New York retirees to Florida). Homeowners, businesses and ratepayers have had no choice but to absorb the increasing cost of public sector labor as the cost of living and doing business – until the Great Recession of 2008.

The Aftermath of the Great Recession and the Rise of Alternative Financing and Service Delivery

Since the collapse of Lehman, that euphemistic commencement of the Great Recession, the imbalance between state/local revenues has developed into a permanent structural gap – not easily rectified even had we enjoyed a V-shape recovery since there has been no post-recession private sector stimulus like dot com in the 1990s or real estate mortgage lending in the 2000's. Trying to close the gap by reducing government services or absorbing fund balances and reserves has limitations. Simply going broke hasn't relieved the gap: state courts are sympathetic to enforcing collectively bargained rights and are more recently unsympathetic to validating new state laws limiting those rights. Closing the gap under the cover of a federal bankruptcy judge has worked only once (Central Falls, RI) to achieve meaningful fiscal relief the Bankruptcy Code is intended to provide. In this environment, on the labor side, we continue to hear the mantra of "just raise taxes." Given the high marginal cost of public sector labor, the private sector has re-entered the domain of public finance and state/local service delivery under the rubric of "alternative" financing. The private sector is attracted to public sector projects because it believes it can now design, build, finance, operate and maintain a public facility or provide a service more efficiently and at less cost than the public sector with favorable returns on equity compared to private sector investments.

The Elements of Alternative Financing

Alternative financing and service delivery can be analyzed in four general categories: (i) P3, (ii) monetization and repurposing of facilities, (iii) governmental consolidation/cooperation, and (iv) financial reorganization. All of these concepts go against the grain of traditional American public finance. All of them require significant overhauls of state laws which limit the participation of the private sector in public finance.

Public-Private Partnerships – P3 converts the government from the owner/operator to a tenant with the P3 consortium as the landlord. First, the concept requires ownership or a controlling interest in the facility or service, either directly or through a stake in a special purpose vehicle in which the state/local government is also a stakeholder. With ownership and control comes the infusion of equity capital – money from people and institutions who intend to make a profit – but only with control over design, construction, financial and operational management of the project. Equity investors take on the financial risk of the project from the government, but the ***quid pro quo*** is that they are given the opportunity to make a profit. Second, it requires the streamlining of procurement and construction and the end of competitive bidding and separate contracts – sacred cows of public sector labor. Here the private sector provider doesn't just build a facility, get paid and move on. It lives with the project from beginning to end – providing design, construction, operation and maintenance services - with a view

that "life-cycle" economic efficiencies will generate profits to equity investors at lower costs for government service consumers. Third, the emphasis on revenue sources shifts from taxpayers to ratepayers/users/consumers so that the elasticity of costs/debt/equity/revenues is measured against the use or availability of the facility rather than property values and real property tax rates. Financing transportation facilities is the clearest example of affecting this shift. Toll rates can be set to cover annual costs and adjusted for congestion pricing, type of user and ability to pay. Fourth, the government as a stakeholder maintains regulatory control over the project, more so in the operation and maintenance phase after completion of construction to assure that the public purpose for which the project was built is carried out.

Monetization of Assets and Repurposing - Selling government assets to generate revenues to balance a budget is an old gimmick that seldom works and leads to structural deficits. Monetizing assets envisions a financing lease whereby the asset is sold to a private sector entity and leased back – the cash from the sale then applied to reserves to keep budgets in balance for a number of years. If the asset is revenue generating, like a parking ramp, the buyer may also operate the facility and net lease payments against parking revenues. Repurposing government facilities is a variation on monetization. Structures no longer needed or worn out are sold to a public or private sector entity and converted to another use. Examples abound: a school building converted to municipal offices, old government offices and buildings converted to private sector use and returned to the tax rolls. Whereas the objective of P3 is cost savings and construction/operational efficiency to deliver a facility or service at a cost affordable by the public, monetization of assets produces no new facility or service but is aimed at generating additional revenue to balance budgets.

Cooperation/Consolidation – This alternative aims at reducing costs and streamlining services. Why should a metropolitan area of 2 million have a city, three villages, two towns, a county, six school districts and a bunch of special districts (library, ambulance, fire, water, sewer and ambulance)? To provide patronage and lots of government jobs, of course. Yet, suburban residents, in particular, still defend the comfort of local accountability as thier property taxes become unaffordable. Businesses in the private sector regularly reorganize their operating units to maintain profitability. Metropolitan governments seldom have until now when cost pressures – again, largely labor wages and benefits driving up taxes – force people out of their homes. Cooperation through intergovernmental sharing of services can reduce the expense of service delivery through agreements – now a common practice. Joint financing of government facilities used by two or more units has also gained traction to save costs of separate facilities. But consolidating units in metropolitan areas is very difficult. Although some state laws permit consolidation, none mandate it and taxpayer incentives to do it are marginal at best. Wiping out an entire governing board and reconciling varying labor agreements, OPEB and pension agreements strike at the heart of local control no matter how high the cost or inefficiencies. Yet redrawing and eliminating the boundaries of political subdivisions established 150 years ago in an agrarian economy is essential to providing government services in a modern technological/service economy at affordable costs.

Financial Reorganization - Here we meet up with the sheriff in the Porsche Panamera. He has to come to the table and defend his wages, OPEB and pension benefits. For at this point the local government is insolvent, its ability to raise revenue exhausted - no money to pay its bills, fund its pensions, or pay debt service. Federal law provides a procedure for local governments (but not states) to reorganize contracts under the Bankruptcy Code. But local officials abhor the "stain of bankruptcy" and states often do not permit their political subdivisions to file in chapter 9 (such permission a legal requirement). The proceedings are expensive, can be protracted and the outcomes at the hand of a

judge uncertain. Some states provide "oversight boards" and "financing authorities" backed by state appropriations to bail out structural deficits. But financing structural deficits, particularly with annually renewed short-term notes, is just kicking the can down the road.

The Reality: The Private Sector has all the Money; Governments are Broke

A panelist at a recent P3 conference remarked "the banks have all the money but [state/local] government is broke." Just as manufacturing moved off-shore in the 1980s for less expensive labor, many of the current major P3 projects are off-shore in developing economies where labor is less expensive and deals are not hobbled with our 150-year old state/local government procurement/finance legal regimes. P3 and alternative financing techniques do attract private sector capital for well-developed public infrastructure projects. This is not to say that the municipal bond industry, protections for public sector labor, protection for investors or competitive bidding/separate contracts requirements are going away any time soon. Rather our lack of resolve to change the paradigm and embrace alternative financing for public facilities and services is keeping a lot of money in the banks when our nation's infrastructure is becoming globally uncompetitive. That financial institutions and investors find it easier to make a loan to a public official to buy a Porsche Panamera than invest risk capital in a P3 project, monetization project, or restructuring of local government finances, suggests we have some work ahead of us.

Kenneth W. Bond
Partner, Squire Sanders (US) LLP
Adjunct Professor, Albany Law School
Executive Committee, Municipal Law Section
New York State Bar Association
Council, Section of State and Local Government
Law, American Bar Association

March 22, 2012

Public Finance and Land Use in the Shadow of Fiscal Distress

By Kenneth W. Bond, partners Squire Sanders (US) LLP

Introduction

Since the Great Depression of the 1930s all recessions have been relatively short with no changes in the fundamental structures of public finance and state/local government economics – except the Great Recession of 2007. For states/local governments the Great Recession has not ended – in some sense it is ongoing. Real property values continue falling, challenging increases in real property taxes as the basic source of local government revenue. The number of persons employed by state/local governments continues to decline. State and federal mandates and pension and OPEB obligations continue to rise pressuring the ability to maintain annually balanced state/local government budgets. These trends have continued

unabated for the past four years. They show no sign of ending. There is nothing like the dot com boom (1990s) or real estate boom (2000s) in the offing which would reverse these trends.

For the first time since the end of the Second World War the fundamental structures of public finance and state/local government economics are changing to adjust to lower levels of government revenues. These changes can be observed in the areas of (i) public finance, (ii) economic development, (iii) land use planning and (iv) financial restructuring.

Public Finance

Tax-exempt municipal bonds issued by states, public authorities, local governments and special districts are the backbone of capital marshaled to construct, acquire and maintain America's infrastructure. They are authorized by governmental legislative bodies after public hearings and voter approvals. They are subject to state constitutional restraints on the amount of debt which can be outstanding if supported by real property taxes. They are sold through competitive bidding or by negotiation with a particular underwriter. Increasingly, bond proceeds are applied to projects together with federal funds granted, lent or guarantied under specific programs in the areas of transportation, energy and health care. Although in the1980s Congress tightened the rules for the tax-exemption subsidy to apply to municipal bonds, the volume of bonds issued for infrastructure purposes has continued to rise over time. Likewise, although Dodd-Frank Wall Street reform legislation has created a new duty for broker/dealers to be "fiduciaries" for issuers, the basic principal that the federal government may not regulate states and their political subdivisions in the authorization and issuance of municipal bonds under the Tower Amendment of 1975 remains in tact.

The most significant change in public finance came with the American Recovery and Reinvestment Act of 2009 (the "Stimulus Act"). The Stimulus Act authorized billions of "tax credit" bonds for education, energy and economic development purposes as well as general public purposes – so-called "Build America Bonds (BABs)." It took the municipal securities industry about 18 months to figure out the mechanics of issuing BABs and developing a reliable market. Then Congress failed to extend the program in 2011 and BABs are no more. Given the sentiment of Congress and the U.S. Treasury since the 1960s to end the tax-exempt interest subsidy on municipal bonds, BABs offered an efficient method for the feds to convert unlimited tax free bonds to limited tax credit bonds where the subsidy could be reduced and then eliminated altogether in a short number of years. Yet there is no movement to bring them back.

As the gap between revenues and expenses plus accrued liabilities became highlighted during the Great Recession, municipal bonds became attractive to finance structural deficits, pensions and OPEB costs, and guaranty debt of risky public projects like solid waste plants, utility systems and stadia. We now know that public finance is no substitute for private sector expansion and job creation. The fraud in Jefferson County, AL, the attempted bankruptcy of Harrisburg, PA, and the near insolvency of three New York City suburban counties are the direct

result of substituting bond proceeds for tax revenues from economic growth, leaving the taxpayers holding the debt bag and everyone in general poorer than we were four years ago.

Economic Development

Public finance, land use planning and fiscal stimulus converge in economic development ("ED"). ED, and its sibling, urban renewal, is the soft side of public finance in that its foundation in state law (arrest blight, create jobs, develop public use projects) flies in the face of 19th century state laws enacted to prevent tax-supported debt from being used to finance private sector projects. All states have sanctioned economic development financing as a lawful way to provide less expensive (tax-exempt) capital for manufacturing, health care, educational and other facilities whose financing with the public subsidy Congress tolerates. ED financing remains a broad public purpose under state law, but a restricted purpose under the federal tax code: Congress abhors the public subsidy of tax-exempt interest applied to bonds where the private sector profits from use and is responsible for payment even for well-established state purposes. Likewise, the exemption from registration with the SEC under federal securities laws is lost if so too is the tax exemption. Many large-scale multi-use projects developed, built and operated with the intent to make a few people rich in addition to entertaining the public gain the benefit of tax-exempt bonds by eradicating the "private" payment from the deal or hiding it in payments-in-lieu-of-taxes (non-recourse debt).

ED is not usually carried out by the state/local government directly owing to those aforementioned 19th century state laws. Instead, limited purpose public authorities established by the state or local government, and denominated as industrial development agencies, public benefit corporations, urban renewal agencies and local development corporations, engage in ED financing. Sophisticated forms of ED combine tax-exempt municipal bonds with development of public-private sector projects which eliminate blight, develop public use projects and create jobs. The most prominent is tax-increment financing (TIF) – in effect in about 40 states. TIF bonds fill the gap (or provide the equity) in capital requirements left unsatisfied by commercial lenders. But it finances only public infrastructure (roads, water, sewer, etc.) associated with the project or larger benefitted area. The "incremental" tax (could be real property or sales tax) is added to regular taxes in the benefitted area and applied to TIF bond debt service. But TIF as an ED tool for optimists. You have to believe that real property values and retail sales will rise during the term of the bonds – a premise the Great Recession negates. Land banking (LB) is another modern ED tool available in about one-third of the states. LB makes the local government the developer of decaying real property victimized by tax and mortgage foreclosures. Instead of letting the assets rot until picked up by the private sector, they are acquired by the LB, a public sector entity, preserved, bundled and marketed for future development.

Land Use Planning

Comprehensive planning is the foundation on which public finance and economic development is applied. Planning often progresses in the absence of financing considerations.

This is a mistake because the beautiful schematics of streetscapes, transits routes and mixed-use facilities will remain on paper without a means to raise the capital to finance them. Foremost in urban planning are the concepts of transit access, density, and green initiatives. These concepts, along with basic zoning laws and processes, guide state/local governments and developers as to what, where, and how to build and renovate public use projects and public infrastructure. But they also inform them about the costs of building and renovating. For example, the capital cost of a concrete road exceeds that of an asphalt road, but the life-cycle maintenance costs are substantially less. A green building's materials are more expensive than those of a building heated and cooled with fossil fuel-fired machinery, but less dependent on the cost of fuel as an operating expense during the building's useful life. Parks and bike paths which reduce density and increase livability require fewer rentable units and potentially less developer-owner profits, but attract populations who appreciate these amenities and highly value stable, quiet neighborhoods. Good roads, energy efficient buildings and garden apartments with convenience to shopping, recreation and healthcare services all contribute to lower public service requirements and lower public sector costs: the staff of the library branch pales in comparison to the policeman's compensation, pension and OPEB.

Financial Restructuring

It is a sad commentary on United States domestic policy that the $787 million appropriated and spent from the Stimulus Act since 2009 has not helped states/local governments develop projects and build infrastructure to foster private sector economic growth, but in fact made economic conditions worse. One could have expected that gleaming green buildings, alternative energy distribution systems, expanded rail transit, and substantial urban renewal were spread across the land accompanied by expansion of private sector businesses – the objects of hoped for stimulation. But such has not been the case. Instead fiscal collapse has been visited upon many local governments throughout many states. The reasons are well known: frozen bank lending, random/uncoordinated/political distribution of Stimulus Act funds, use of these funds to plug budget gaps for two or three years hoping the Great Recession would go away, and most significant, fierce resistance by organized public labor to modify personnel, pension and OPEB costs rising unabated since the 1950s and fostered by well-heeled public sector labor unions. In most small cities in urbanized states, a policeman or fireman earns at least twice the income of the average worker in the private sector. Even if this development is tolerated within our system of democratic processes, it is fiscally unsustainable – a fact now widely acknowledged. Hence, the movement toward financial restructuring of local governments as finance officers and governmental bodies lay exhausted in fighting structural deficits.

There are six techniques used in financial restructuring: (i) refinancing outstanding debt at lower interest rates; (ii) privatizing or outsourcing services; (iii) monetization of assets and P3 (private-public partnerships), (iv) streamlining procurement and financing, (v) consolidation of and cooperation among local governments, and (vi) bankruptcy or state supervised reorganization. Refinancing debt is a common technique designed to reduce debt service and hence expenses. Privatization and outsourcing are not new techniques and designed to reduce

expenses by firing the public labor force and engaging private sector labor. Since this technique would not be employed if private sector labor were not less expensive, public labor unions vigorous oppose it.

Monetizing assets is not privatizing or outsourcing. Nor is it selling off worn out or unneeded public facilities (sometimes referred to as surplus property) to raise cash. Rather it is the liquidation of the values assigned to public assets – something known through the requirements of GASB Rule 34. Although state law generally prohibits the alienation or hypothecation of the "people's property," assuming state law permits, public assets may be sold and leased back under financing leases in which a private sector entity pays for the asset and leases it back at a rate which requires the local government to make lease payments equal to the selling price plus an interest component, offset by revenues, if any, generated by the asset (i.e., a parking structure). The local government receives cash which can be applied as budgeted revenue or applied to reserves to balance future budgets plus an annual lease payment obligation. Monetization may be part of a larger P3 transaction in which the asset (i.e., a bridge or roadway) is sold to a private sector entity to design, build, maintain, operate and finance during its life-cycle with a public sector obligation to make "availability payments" to the private sector entity from asset revenues. In the P3 model, the financial, procurement and construction risks are shifted to the private sector entity while the public sector retains regulatory control to protect the public and asset users.

Streamlining procurement and financing envisions converting from a design-bid-build regime with separate contracts and limited negotiated sales of bonds, typical of 19th and 20th century enacted law, to an integrated design-build-maintain-finance (DBMF) system particularly for large and multi-use projects. In the DBMF model, the local government or state awards the project to a consortium which assumes all risks and returns a turn-key public use project. Consolidation and cooperation also streamlines government operations and is intended to reduce costs by eliminating duplicating ministerial functions and reducing unit costs of goods and services bought "in bulk." Streamlining procurement/finance and consolidation/cooperation also engender strong public labor opposition because they upset the status quo ante, eliminating non-essential public labor jobs, attracting employees from the private sector and sidestepping collectively bargained employment contracts through public labor agreements, privatization and outsourcing. These are the restructuring techniques most likely to affect land use rules. Indeed, consolidation of local governments may result in entirely new zoning and master plan.

Restructuring through Chapter 9 of the federal bankruptcy code is a last resort to stabilize finances where public labor unions will not concede terms and conditions to alleviate serious fiscal stress. To be eligible for bankruptcy protection the local government must demonstrate fiscal insolvency. To gain admission to the court a petition must be filed voluntarily by the local government and the state must consent to the filing. Once before the court, enforcement of all contracts – including collectively bargained public labor agreements – are "stayed;'" that is, they don't have to be paid and the payees can't do anything about it. After proceedings in court, the parties arrive at a "plan of reorganization" in which public labor

compensation, benefits and OPEB are reduced to levels of revenues which over the next few years can achieve balanced budgets.

Impacts of Restructuring on Land Use and Finance

A familiar phrase among public officials is that the "stain of bankruptcy" will forever banish the local government from the securities markets and developers will shun the community. Just the opposite is likely to occur. A community which kicks the can down the road with structural deficits with cash-flow borrowing while labor contract costs rise unabated will eventually attract no lenders and default – not only on its debt but in its delivery of public services. By contrast the municipality which seeks help – like any sick patient - has a better chance of recovery.

But restructuring finances will have challenging consequences. Expenses are likely to be stabilized so that maintaining or expanding services with locally derived revenues will be difficult. The interest rate on borrowing will be higher initially until the financial management team proves that the local government can live within its means. Compensation and benefits for public labor will most like be reduced with public employees required to contribute more for health care and pension benefits. If the plan of reorganization fails to keep budgets balanced, the local government will pay more to borrow and attract fewer investors.

Funds available for economic development and tax incentives for businesses may dry up. Indeed new taxes and fees, such as impact fees and benefit assessments, may be imposed on the business community as part of the plan to raise revenues. Developers will likely look favorably on fees and payments in lieu of taxes imposed on the tax-exempt non-profit establishments (churches, colleges, etc.) for municipal services as a means of fairly apportioning the cost of government among those who benefit. Yet new fees, taxes and loss of tax incentives may cool the enthusiasm of developers to commit to projects. Municipal planners may do well to reach across the globe for large-scale projects which require variances, municipal annexation and re-zoning but bring large scale development in plant facilities, public infrastructure and adequate/affordable housing with significant cash infusions and job opportunities.

End Note

The predictable world of public finance, economic development and land use planning has ended with the Great Recession. In a global economy, assumptions about economic growth, rising real property values, rising public labor costs and benefits, planned retirement communities for pensioners, and capital raises solely through tax-exempt debt need serious re-examination. If nothing else, planners, developers, government officials and finance specialists need to work together in a coordinated fashion at the early stages of project and infrastructure development so that we provide the communities future generations want to and can afford to live in.

American Planning Association conference, Washington, D.C., March, 2012

NYS Government Officers Finance Association
Downstate Holiday Seminar
December 6, 2013 – Lake Isle, Eastchester, NY

What Does Detroit Mean for New York Local Governments?

Kenneth W. Bond, Partner, Squire Sanders (US) LLP

How to Run a City into the Ground

All governments in our country are designed to operate on a break-even budget basis – expenses and revenues being equal and a zero fund balance achieved each year. The law in most states requires that the state and its political subdivisions operate with an annually balanced budget. In the late 19th and early 20th centuries break even or balanced budgets were the norm. Government services, as well as taxes, were limited. Borrowing was restricted and frowned on in the law and often subject to voter approval. Goods and services for the most part were provided by the private sector through a market regulated economy. However, recently it has been reported that Providence, RI is considering bankruptcy given significant cuts in state aid, a $110M current year deficit, an 11.5% unemployment rate, 40% of its land tax-exempt, rising pension costs even after a 10% reduction in government employment, closing 45 schools, and spending cuts in the court system. Likewise, Springfield, Ill has seen its annual pension contributions triple since 2007 and now comprise 20-25% of its annual budget.[61] Moody's Investors Service reported that more than one-half of the 50 largest cities in the US have unfunded retiree pension liabilities in excess of their annual revenues[62]. One of those cities is Detroit.

The roughly one-hundred year period from the end of the Civil War to the rise of the Civil Rights Movement began with government services provided and financed in substantial compliance with the law of balanced budgets and a thriving private sector economy, but ended with multiple exceptions to the law of balanced budgets in a government-planned, government-owned and government-regulated economy which today has resulted in serious financial problems for many large American cities and urbanized areas. Following the history of Detroit from 1865 to 1965 helps understand why the city chose protection under federal bankruptcy laws[63] to address its becoming insolvent and overburdened with debt.

Detroit started out as a fur trading post in New France in the 17th century. It's location on a "strait" ("detroit" is French for "strait") connecting Lake Huron with Lake Michigan made it an ideal site for navigable commerce. Detroit went from French control into British hands after the French and Indian War (1750s). The city (incorporated in 1806) came under American control after the Revolutionary War (1776) and briefly back into British hands after the War of

[61] The Bond Buyer, November 12, 2013
[62] Moody's Investor Service, Announcement: Some of the largest US local governments show outsized pension liabilities, September 26, 2-13
[63] Title 11, Chapter 9, US Code, US Bankruptcy Code

1812. The British abandoned the city and in the 1820s Detroit began to grow – to 45,000 persons by the beginning of the Civil War. Because of its location, in the second half of the 19th century Detroit became a center for industry, manufacturing and entrepreneurship. Immigrants from all over Europe flocked to Detroit to fill jobs in growing businesses. Wealthy industrialists built factories, mansions and churches. A city street plan was laid out resembling Paris and Washington, D.C. By 1900 most immigrants owned their own home. Its residents had secure jobs in private sector industry. Detroit was a conservative business community. President McKinley carried Detroit and Michigan over Bryan in the 1896 presidential election. Its upper- and middle-class business and civic leaders, however, were Progressives - municipal services (trollies, gas service, water) were converted from for-profit private sector corporations to government-owned and regulated monopolies to ensure adequate service to all residents and avoid waste. Big government came to Detroit along with big business.

Then came the automobile. In the 1920s Ford, GM, the Dodge Brothers and other car manufacturers were buildings offices and factories in the city. The city's population increased from 265,000 in 1900 to 1.5 million in 1930 as the demand for factory labor soared[64]. The city expanded inner-city rail transit. Apartment buildings sprang up. Skyscrapers were built in the central city. Hotels and department stores were developed, along with movie theatres, parks, a public library and government buildings.

With the rise in industry and immigrant labor came the labor movement in the 1930s spearheaded by the United Auto Workers – in part to protect white workers from the influx of blacks (prominent in Detroit since the Civil War as a safe haven for run-away and then liberated slaves). From 1942 to 1946 auto manufacturing ceased during the Second World War and Detroit became the "Arsenal of Democracy" as auto factories converted production to tanks, airplanes and the tools of war. By the 1940s Detroit was the 4th largest American city with 1.85 million residents[65]. Demand for more labor soared. Housing shortages escalated and riots between black and white workers broke out. In 1948 President Truman by executive order integrated the US armed services – the Civil Rights Movement began.

Following the war, Detroit enjoyed relative prosperity as the "Motor City" until the 1970s. From the 1950s for two decades Detroit was the 5th largest American city[66]. The city was also a destination of the Second Great Migration following the war where 5 million blacks moved from the South to the Northeast and the West in search of employment opportunities, education and a better life. While the city had an adequate public transportation system, auto workers - predominately white - preferred driving their cars to the leafy suburbs now surrounding the central city. Detroit became a hub for the Interstate Highway System while dismantling over 500 miles of electric street car lines in the 1950s. A network of freeways now linked the suburbs to the city factories. Inner-city residents - predominately black - were left to ride buses for public transportation. The city shipped its fleet of electric streetcars to Mexico

[64] Gibson, Campbell (June 1998). "POPULATION OF THE 100 LARGEST CITIES AND OTHER URBAN PLACES IN THE UNITED STATES: 1790 TO 1990". Population Division, U.S. Bureau of the Census. Retrieved on 2006-04-02
[65] Id., FN 3
[66] Id., FN 3

City where they enjoyed being in service for 30 years. White flight was in full swing – the non-Hispanic white population declined from 816,000 to 56,000 between 1950 and 2010. The seeds of Detroit's economic decline had been sown.

During the 1950s and 1960s blacks moved from 4% to 16% of the automobile work force. As former immigrants moved to the suburbs, well-paid black workers supported by labor unions bought the fleeing immigrants inner-city homes. But city leaders, still conservative, opposed urban redevelopment which might have slowed the spread of slums in areas abandoned for the suburbs. Then the city ran out of space for new factories and the automobile industry began building factories in neighboring communities close to the suburbs. The price of gasoline soared in the 1970s together with competition from more fuel efficient cars manufactured in Germany and Japan – just 30 years after the United States defeated those countries in a world war.

The economic and fiscal end of Detroit – now the 6th largest American city[67] - was in sight by the 1980s. Automobile manufacturing was moving overseas to take advantage of lower cost labor. With the decline in city employment came racial conflict, deindustrialization, lack of political vision and failure to build a new private sector-based economy. The substitute for employment in the declining auto industry was employment in the public sector. And with government jobs came generous retirement benefits. As government employment took the place of private sector employment, tax revenues stagnated and personnel expenses increased. The city's budget was difficult to balance. Unwittingly, Detroit started on the road to its bankruptcy filing by failing to attract new private sector industries and depending on government employment to stabilize the economy. A landmark US Supreme Court decision in 1974 foreclosed expanding the metropolitan footprint of the city to enhance its economic and tax base and, ultimately, hastened the city's decline.

From the 1960s, the city's public schools were *de facto* highly segregated – two-thirds of public school students in the mid-1970s were black. In the case of *Milliken v. Bradley*[68], the court overturned decisions of lower courts which ordered a metropolitan-wide desegregation busing plan which would have required participation of largely white abutting suburban school districts. The court said that unless segregation was *de jure*, i.e., an intentional policy, the courts were powerless to enforce cross-border desegregation in applying of *Brown v. Board of Education*[69], even though segregation existed in fact. The *Milliken* decision resulted in not only Detroit, but other large Northeastern cities, stranded with locked-in segregated city school districts and a highly unemployed, government dependent population which continues to the present. From *Milliken* came more white flight, central city decay, decline in population, decline in real estate values, and decline in the private sector drivers of tax revenues. By the mid-1980s 90% of Detroit public school students were black. The city's population at its peak

[67] Id., FN 3
[68] 418 US 717 (1974)
[69] 347 US 483 (1954)

size in the 1950s was 83% white, in the 1970s it was 55% white, and in the 1980s it was 34% white. In the 1990s Detroit was the 7th largest city in America[70].

The 1990s saw attempts at downtown revitalization with private sector and government funding to reinvigorate the central city economy and increase tax revenues. The Renaissance Center provided a world headquarters for GM and attracted new younger professionals to the city. Casinos were established to draw people to the central city. But it was too late. Department stores and office buildings closed. Residential areas of former middle-class working families were abandoned and became crime-ridden slums. The cost of social welfare expenses rose to provide care of all kinds for those left behind in a dying city. But the cost of valuable retirement benefits and health benefits government employees had won since the 1950s ever increased – and the city's government work force increased even as its population declined[71]. The erosion of tax bases left the city with inadequate funds to pay for the social welfare programs it was saddled with to serve its highly dependent population – beneficiaries of anti-poverty programs from the Great Society policies of the 1960s. The city borrowed heavily to pay these costs. Only 47% of property owners paid their property taxes in 2011. By 2000 Detroit was the 10th largest city and by 2010 it was the 18ths largest city - with only 700,000 residents, down from 1.85 million residents in the 1950s[72].

With $3.5 billion is pension debt owed to government workers, and a total of up to $20 billion in other debt, Detroit filed for Chapter 9 bankruptcy protection in July, 2013. The filing is the largest Chapter 9 case in history in terms of debt dollar volume and population. It followed almost two years of failed negotiations between the city, the State of Michigan and the city's creditors to reduce debt to a fraction of its face value. The state took over the financial operations of the city in February and appointed an emergency manager and "control board" pursuant to state law[73]. In May the emergency manager reported that the city was "insolvent" from a cash-flow standpoint and was looking at a $162 million current fiscal year cash-flow short fall and a current year budget deficit of $386 million. In June the city stopped making payments on its government employee retirement obligations and was promptly sued by the largest municipal pension funds.

Reaction to Detroit's bankruptcy filing has been predictable. Issues of the city's "eligibility" and "insolvency," prerequisites to filing under Chapter 9, are being litigated in state and the federal bankruptcy court. Obviously, pension funds and holders of the city's $370 million of tax-supported general obligation bonds don't want a bankruptcy judge to entertain a plan of adjustment which reduces payments on these obligations. Yields on the city's bonds jumped from 8.4% in May to 16% in July after the filing. In August, 109 objections to the filing had been filed with the bankruptcy court. Because under federal law tax-supported general obligation debt is considered "unsecured," bondholders who thought they owned a "safe" investment may be in for a surprise. Yet Mayor Dave Bing wants to go forward with a $444

[70] Id., FN 3
[71] "Detroit Overstaffed Compared to Other Cities," Detroit News, April 25, 2011
[72] Id., FN 3
[73] Michigan Public Act 436 of 2012 (Local Financial Stability and Choice Act of 2012); Local Emergency Financial Assistance Loan Board

million bond issue to build a new arena for the Detroit Red Wings to be partially tax-payer funded because it would create 8,000 new construction jobs.

Detroit Parallels in New York

Critics of Detroit cite not only decline of the auto industry employment base and population decline, but also political corruption, government inefficiency and poor bookkeeping. But government at every level can be criticized for corruption, inefficiency and lagging financial accounting and reporting. These are really symptoms of the causes, not the causes themselves[74], which continue to be the cans kicked down the road. Upstate New York followed a similar decline in private sector employment following the closing of the Erie Canal in the 1950s and the transfer of industry to other states and then to other countries in the pursuit of lower-cost labor. Like Detroit, New York's upstate cities replaced private sector employment with government employment in healthcare, public education and the SUNY system. The Erie Canal cities – Buffalo, Syracuse, Utica, and Rochester have been saddled with the social welfare costs of the unemployed and a growing population dependent on government assistance. Like Detroit, New York strives to attract private sector businesses through "economic development" solutions – reduced taxes or utility costs. In pursuit of more economic development, voters last month strongly approved a constitutional amendment authorizing casinos with full-scale gambling to be located update. Developers are in the wings ready to build several casinos to "stimulate" the economy and create jobs. New York has relied on tourism and government funding for all sorts of facilities to create construction jobs. Like Detroit, since the 1950s government employment has grown with powerful unions securing expensive retirement rights and health benefits for government employees. But, with few exceptions, nothing has replaced the private sector commercial and industrial base which has been withering away since the closing of the Erie Canal. Nothing has been substituted for closed steel mills and manufacturing plants which provided sustainable economic activity and created wealth and incomes. New York's approach to substituting the old private sector economy with one supported and funded by the government has left its upstate cities in much the same condition as Detroit. Granted, the auto industry of the 1950s is a tough act to follow, but a private sector, market driven solution would more likely produce long-term economic stability rather than random one-shot government fundings to create temporary "construction" jobs and attract tourists to gambling venues.

New York Distinguished

But there are significant differences between New York's cities and urban areas and Detroit. First, and perhaps most important, New York's cities are smaller than Detroit, having never experienced the decline of two-thirds of their population over 30 years. Thus, they have more residual resources to manage fiscal stress. Second, Detroit's massive retirement fund deficit is the product of locally operated pension funds in which fraud and corruption appear to

[74] Eroding private sector economic base, declining population, substituting private sector employment with government jobs, borrowing to pay the cost of government, economic development borrowing to create construction jobs without a plan for long-term sustained economic growth, rising retirement and health benefits for government employees, *de facto* segregation

have flourished. By contrast New York maintains a unified state-operated retirement system under the trusteeship of the State Comptroller with required annual employer contributions from local governments to maintain actuarial funding at relatively high levels so that public employee benefits guarantied in the state constitution are not jeopardized. These annual contributions become significant mandates for local governments in preparing budgets. However, the abuses and mismanagement inherent in a locally controlled public employee retirement fund, as in Detroit's case, is prevented by New York system's transparency. And the Legislature has cooled off future retirement benefits so that the long-term actuarial liability may stabilize over time. Third, the State Comptroller, while authorized to control local government spending and borrowing only in limited cases, is a strict monitor and critic of debt issuances and local government fiscal operations generally. That office has had early warning systems for fiscal distress in place for many years. Fourth, in recent years the state has funded technological enterprises to develop and encourage a well-educated and higher income population upstate. Making upstate a competitor in technology industries has benefited the Capital Region albeit with lots of public sector funding. Fifth, the SUNY system has become an economic driver for upstate communities. In contrast, the saga of the Detroit bankruptcy contains no mention of the contributions of education and healthcare institution to the city's financial stability. And sixth, the State has not abandoned its declining upstate cities. Through various aid programs the State contributes between 18 and 33% of the expense budget of the state's largest cities in support of public education.

When Bankruptcy May be Appropriate

Bankruptcy is available where a local government is insolvent – out of money. A key element to qualify for a Chapter 9 filing is a finding of "insolvency," meaning the inability to pay debts as they come due in the current fiscal year, or, based on an adopted budget, in the next fiscal year. Conceivably, a combination of increasing mandates, including retirement system contributions, and required operating expenditures could overwhelm a city's current revenues causing a technical inability to pay debts. Likewise, revenues from property taxes could deteriorate from property owners' inability to pay or state aid end on account of depleted state funds. However, local governments make liberal use of tax anticipation notes, revenue anticipation notes and budget notes to sustain recurring and cumulative deficits. In any given year, without the proceeds of such notes the local government would be insolvent. The bankruptcy court recently reviewed the application of the "insolvency" requirement where a county alleged it could not pay a judgment from revenues available in its budget. But in *In re Boise County*[75], the bankruptcy judge found the county's ability under Idaho law to borrow to pay the judgment enough to cause the insolvency requirement to fail and the petition was dismissed. New York local governments have had little difficulty in accessing capital for short-term notes. Only in an extreme case, i.e., where less than one-half the property taxes were paid as in Detroit, or where banks would not lend (as was the case in New York City in 1975 when the city attempted to review $2 billion tax and revenue anticipation notes), or state aid is

[75] US Bankruptcy Court, District of Idaho, Case No. 11-00481-TLM, September 2, 2011

unavailable, or deficit financing not authorized, would a New York local government meet the insolvency requirement.

For local governments with less than investment grade credit, the inability to borrow is a concern. Reliance on the state to provide a financial bailout is uncertain because the Legislature is hesitant to create more financial control boards with financing authority pledging revenues of the state. Further, the Detroit filing has bred "contagion" among lenders who are more likely to shy away from risky credits or exact higher interest rates.

Bankruptcy is also available to stay contracts. Several recent filings have had a primary goal to discharge labor agreements and reduce retirement benefits through a court-approved plan of adjustment. Although a filing to terminate a labor contract collectively bargained under the Taylor Law[76] would seem an extreme measure, the Triborough Amendment[77] which continues the terms of an expired contract with increased wages and benefits during impasse gives labor an incentive to avoid negotiation. Bankruptcy or the threat of it may be the only way to bring all parties to the bargaining table.

Bankruptcy is also available to stay general obligations. A debate is now raging whether tax-supported general obligation bonds are simply promises to pay which can be reduced in bankruptcy, as the US Supreme Court held in *Faitoite Iron and Steel v. Asbury Park* [78]. The Court of Appeals in *Flushing National Bank v. MACC*[79] rejected the holding in *Faitoite Iron & Steel* and honored the "first revenue" pledge in Article VIII, Section 2 of the state constitution to make local governments' "full faith and credit" general obligation bonds the equivalent of obligations secured by pledged revenues – which may not be discharged in bankruptcy. Every state has its own definition of "full faith and credit" but most link the term to an unlimited pledge of taxes or the taxing power. Such an obligation in bankruptcy, however, is considered a general credit and may be reduced in the plan of adjustment. No decision among the pending Chapter 9 cases has clarified the point. A local government with an overwhelming amount of debt may want to seek bankruptcy protection to reduce its tax-supported debt.

And it should be noted that school districts and fire districts are probably not authorized by the state to file under Chapter 9. Shortly after the *Flushing* decision, the Legislature enacted Title 6A of the Local Finance Law providing state authority (a necessary element for eligibility to file) for "municipalities" to file. That term in Chapter 9 is broad and includes school districts. But under New York law the term refers only to cities, villages, towns and counties. Not surprisingly, labor unions have urged that school districts are ineligible to file because state law does not authorize it. Whether a judge would apply the state law or federal law definition to the term to determine eligibility is unknown.

---

[76] Article 14, NYS Civil Service Law, Public Employees Fair Employment Act, defines rights and limitations of public sector unions, provides for binding arbitration and prohibits labor strikes

[77] NYS Civil Service Law, Sec, 209(a)(1)(e) – continues the terms, including increases, of an expired labor contract

[78] 316 US 502 (1942)

[79] 40 NY2d 731 (1976)

New York's Approach to Fiscal Stress

It is important to note that attempts to keep the state's local governments from insolvency and a brush with Chapter 9 do not come with substantial funding except nominal amounts for studies and analyses. Neither the Governor nor the Legislature is enthusiastic about creating new control boards and new public authorities to finance cumulative deficits, as in the case of Buffalo or Nassau County. What remains, in addition to the State Comptroller's ramped up investigation and reporting on incidences of severe fiscal stress (ACT FAST[80]), is a new Governor's program, the Financial Restructuring Board, enacted by the Legislature [81] and headed by the Director of the Budget to ward off a Chapter 9 filing. Here there is money: up to $5 million per local government from an $80 million appropriation if the Board determines fiscal stress eligibility and the local government accepts the Board's recommendations. The Board can also assist in arbitration of labor agreements but how this provision is enforceable under the Taylor Law is unclear. So far the Board has identified 389 local governments in fiscal stress which could turn to it for assistance.

In addition to New York, 18 other have enacted laws permitting state intervention laws to alleviate local government stress[82]. North Carolina's has the oldest state-intervention monitoring system. New York's Comptroller supervision is similar to North Carolina's. In Michigan, the governor can declare a financial emergency and appoint a manager to take over running the city – as happened in Detroit earlier this year. In Pennsylvania, a city can petition for financial assistance and receive it if it adheres to a plan to achieve a balanced budget.

The Stain of Bankruptcy

For many years local governments in fiscal stress have avoided even thinking about Chapter 9 out of fear that the "stain of bankruptcy" would forever damage its reputation. That risk has not turned out to be the case. When debt and cost burdens become overwhelming Chapter 9 provides relief so that the function of local government can continue without the hounding of creditors. As Chapter 9 cases unfold we will learn more about local government finance – i.e., whether staying enforcement of a pension contract is trumped by a state constitutional guaranty to pension payments, or whether tax-supported general obligation bonds are just general creditor claims subject to a plan of adjustment notwithstanding the "full and credit" pledge.

Viewed from a national and historic perspective, Chapter 9 may be a hidden resource. The Detroit bankruptcy is not a surprising event. You could see it coming for 20 years – and you can see others coming if you look closely. States and local governments exercising their sovereign powers can spend and borrow and promise the moon to public employees, developers and anyone else even as economic factors which drive public revenues disappear in

[80] Avoid Crises Tomorrow with Fiscal Awareness Strategies for Today; see: www.osc.state.ny.us
[81] Ch 67, L 2013
[82] See: "The State Role in Local Government Financial Distress," The Pew Charitable Trusts, July 2013

plain sight – that is the politics of public finance. We face the fact that to maintain a standard of living we no longer support through private sector businesses, governments at all levels borrow and spend to keep nearly everyone fed, clothed, housed, treated for medical problems, excited to go shopping or buy a new car, dine out on gourmet food, and see their favorite teams perform in the arena. The federal government can keep this up until there are no buyers for our country's debt at any price. States can borrow and spend through conduits and agencies in the face of legal prohibitions with nearly unlimited power to tax every asset and pledge every revenue in sight. But states cannot seek bankruptcy protection to adjust debts. Only local governments can seek the protection of a federal judge to correct the financial sins of the past so that they continue to serve their residents in the future.

Two bankruptcy decisions in November add to the prospects of using Chapter 9 to alleviate fiscal stress: The US 9th Circuit Court Appeals rejects the California pension fund's appeal to force San Bernardino, CA to pay a $14M pension contribution holding that Chapter 9 is the correct forum to hash out debt adjustment. And the Chapter 9 judge in the Jefferson County bankruptcy case is retaining jurisdiction over a $1.8M sewer revenue bond issue to insure that sewer rates are set at adequate levels to pay debt service on the bonds. Although this decision takes away local government power to protect investors, like a NYS control board, it also takes the political pressure off local officials if rates need to increase over time.[83]

SQUIRE PATTON BOGGS

Pace University School of Law
Land Use Law Center
Mayor's Redevelopment Roundtable
October 1, 2014
Financing Considerations

1. **What cities must do to attract market-feasibility development?**

Rehabilitate and reuse existing structures and facilities; various tax credits apply.

Engage in inter-municipal cooperation, sharing services, consolidation.

Annexation with consideration for the annexed areas.

Focus on a global industry as the foundation of private-sector growth.

Enter into PILOTs with tax-exempt entities for services to increase revenue base.

Enact local laws to create new license and regulatory fees.

2. **What are the current market trends for the lower Hudson Valley region?**

[83] Check NY Times and Bloomberg websites for stories on recent developments in pending Ch 9 cases.

Use of LDCs as revenue bond conduit; better approach, a statewide LDC, e.g.:

1. Local government and developer agree on development plan which identifies the project to be financed and the PILOTs to be paid by the developer.
2. PILOTs are authorized to be enforced in the same manner as other municipal taxes and constitutes a lien on the developer's real property.

3. Local government is authorized to assign its rights to receive PILOTs to an issuer (e.g. DASNY) that would issue bonds secured by the PILOTs to finance the improvements.

Demand for affordable housing in urban areas – a must for new private sector activity.

3. **What types of development should cities plan for to meet these trends?**

High-tech processing and manufacturing which employs a skilled workforce.

Development of local green energy generation, distribution and retrofit.

4. **What types of private market financing are available and will they support this type of development?**

Global capital is available as debt, equity and P3 where land use laws are development- friendly and operations can become profitable in 3-4 years.

Requires reform of annexation laws, procurement laws, adequate housing and strong public infrastructure.

Helpful to repeal ***Albany Area Homebuilders Assn. v. TO Guilderland***, 74 N.Y.2d 371 (1989) [holds that impact fees are a tax and may be enacted only by state legislature].

5. **If so, is private market equity and debt financing sufficient for these projects to be financially feasible?**

Yes, but the feasibility of each project is critical. This requires government economic incentives without eroding the municipal revenue base. "Tax exempt" financing is not always available as an economic incentive.

6. **If not, what kinds of public financing, subsidies and infrastructure are needed to make them feasible?**

NY's TIF statute needs to be hardened to be useable. Most other states have better TIF laws.

NY needs a uniform P3 and streamlined procurement law. Organized labor needs to cooperate or its opposition tested in the courts under the municipality's police power: ***Buffalo Teachers Federation v. Tobe***, 464 F3d 362 (2d Cir., 2006) [police power trumps contract clause].

State funding through conduits to private sector entities is available: ***Bordeleau v. State***, 18 N.Y. 3d 305 (2011) [gift by independent state conduit to private entity not the state borrowing under constitutional restraints].

Federal funding for energy projects available.

7. **What is the value of a straight-forward, formally adopted economic development plan that recognizes private market needs and available financing?**

   Not much on the local level – revised state laws are required.

   Local plan can establish industry to focus on based on community characteristics.

8. **What specifically do developers and banks need to see in such a plan to be interested in developing in a community?**

   After an industry is selected, the municipality should broadcast a global RFP inviting consortia applicants to work with the municipality to develop a specific plan.

   Aside from a general vision and a showing of commitment to make the community attractive for private sector development, the local governments should not write a detailed plan until a consortium is selected to work with the local government in writing a detailed plan.

9. **What kinds of implementation measures and strategies need to be in the plan to convey to developers and banks that projects will get the type of support necessary?**

   None but aspirational concepts. Let the selected consortia develop implementation measures and strategies in coordination with the municipality.

10. **What other advice should the cities follow? Other issues and counsel.**

    Don't do this alone. Hire advisers who have done this before.

Ken Bond 212-872-9817; 914-645-1696

Jeff Pohl 212-872-9836; 518-598-3914

Tech Valley and Beyond: Growing Sustainable Infrastructure at the Speed of Life

An Appreciative Inquiry Summit

Albany, New York | October 30th and 31st, 2013

Participant Workbook

Name: _____

ECONOMIC DEVELOPMENT LEADERSHIP FOR TECH VALLEY NORTH

ADIRONDACK GATEWAY COUNCIL

The Adirondack Gateway Council (AGC) consists of 20+ municipalities and economic organizations serving Warren, Washington, and northern Saratoga counties.

The AGC advances growth over 1,800 square miles of diverse geography:

- Hudson River watershed
- Prime industrial sites
- Urban, suburban, and rural communities
- Agricultural land
- Lower Adirondack Mountains

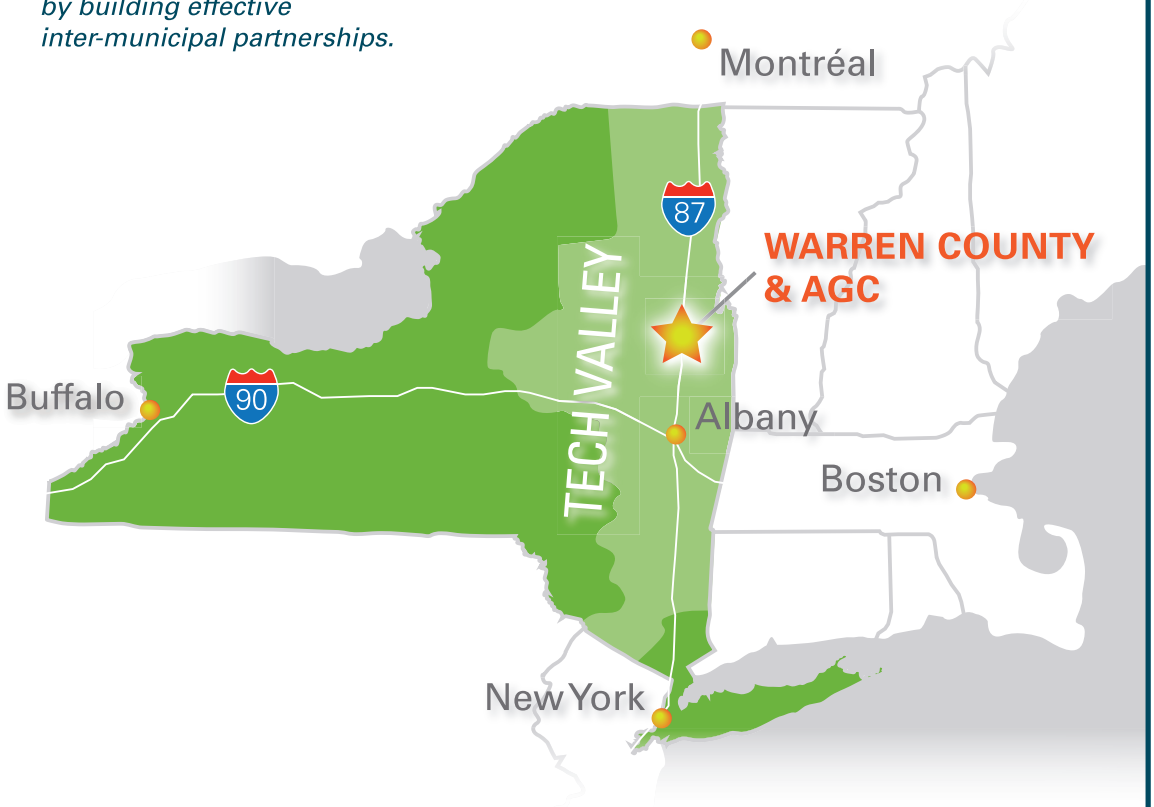
AGC facilitates regional growth by building effective inter-municipal partnerships.

EDC Warren County, NY

EDC is the economic development engine for Warren County, attracting new businesses to the area, and helping existing ones expand.

- Site selection
- Infrastructure assistance
- Funding assistance
- Data clearinghouse
- Inter-municipal facilitation
- Project management
- State government liaison

Warren County, New York: Tech Valley out the front door, pure adventure out back.



Adirondack Gateway Council and EDC Warren County
Proud sponsors of this Regional Infrastructure Forum

AGC Chair
Jack Diamond

President & CEO
Ed Bartholomew
ebartholomew@edcwc.org

EDC Chair
Charles Barton

518.761.6007 | www.edcwc.org

On behalf of the Center for Economic Growth and National Grid, we would like to welcome you to the Regional Infrastructure Forum. Tech Valley and Beyond: Growing Sustainable Infrastructure at the Speed of Life. We look forward to your participation in this two day event and working together to help all of us in the region achieve our hard infrastructure ambitions.

This effort is strongly complementary to the Regional Economic Development Council process and is similarly inclusive in convening a broad group of relevant stakeholders. It represents a promising strategy supporting a key goal of our region's Strategic Plan to "Build a Superhighway: Ensure that a 21st Century infrastructure exists so the Capital Region will become the first destination for business in New York State and be accessible to build, grow, and expand business." The Capital Region Economic Development Council and its Infrastructure sub-workgroup have identified the large-group Appreciative Inquiry (AI) Summit process as a tool to assist with the development and execution of a transformational infrastructure plan for our region.

By leveraging the strengths and assets of all stakeholders, the AI Summit process is based on a simple notion: when it comes to system-wide innovation and integration, there is nothing that brings out the best in human systems—faster, more consistently and more effectively—than the power of "the whole." A guiding principle for our Forum will be: act regionally when planning for the future of Tech Valley, and honor locally by being inclusive of all stakeholders in the eleven county region.

We invite you to participate fully in this collaboration. Our aim is clear: for our region to excel we must advance our collective future together, leverage the opportunities, investments, and vast potentials already at our door, and establish a process so the right infrastructure can be planned where it's needed, at the right time and at the right cost.

F. Michael Tucker, President & CEO, Center for Economic Growth
Cheri Warren, VP Asset Management & Innovation Officer National Grid

Our Task

Tech Valley and Beyond: Growing Sustainable Infrastructure at the Speed of Life

Our objectives involve the advancement of:

1. Clarity: Establish a Clear Vision of the Hard Infrastructure Needs in the region including:

- An operational definition of infrastructure: roads, bridges, water, sewer, gas, energy and electric, waterways, rail, telecommunications, bike trails, and public transit.
- An asset inventory of infrastructure strengths and weaknesses as well as prioritized future needs.

2. Communication: Establish a Regional Infrastructure Information Platform that:

- Promotes progress and the transfer of good ideas.
- Promotes complementary and symbiotic opportunities across projects.
- Promotes shared understanding of public and private planning and the matching of resources with needs.
- Better communicates the ripple effects and collateral benefits of projects.

3. Collaboration: Establish a Road Map of how to move forward strategically to:

- Implement critical elements of the CREDC Regional Plan with action steps related to infrastructure readiness.
- Develop an inventory that will match economic development opportunities with available infrastructure.
- Enable getting the needed funding, licensing, permits, and regulatory approvals to meet the timing and service date needs of businesses.
- Advance green leadership in sustainability via conservation and alternative technologies and energy.
- Bring good jobs to the region.

4. Coordination: Support a Regional Approach to Growth that:

- Affirms and builds on existing efforts and works to leverage complementarities.
- Advances the regulatory framework to enable the region to respond at the speed of business—ready for economic opportunities—and moves faster because of buy-in from government and business leaders and cooperation around revenue sharing.

Agenda

Tech Valley and Beyond: Growing Sustainable Infrastructure at the Speed of Life

Day One (October 30th 2013): DISCOVERY

Morning–8:00

Welcome and Opening—
F. Michael Tucker, President & CEO, Center for Economic Growth
Cheri Warren, VP Asset Management & Innovation Officer, National Grid

- Current success of the region and the challenges of great opportunities
- Why this? Why now?

Overview of Appreciative Inquiry Summit—
David L. Cooperrider, Ph. D.

- How we will be working for the next two days
- 4-D cycle, our agenda, and opening exploration

Keynote— Why Regional Collaboration Will Help Accelerate Regional Growth: Lessons From Grand Strategy for America
Col. Puck Mykleby, Senior Fellow, New American Foundation

Roundtable Groups: Discovery of Strengths, Opportunities, Aspirations

New York's Energy Future
Kenneth Daly, CFA, President of National Grid New York

Richard Kauffman, Governor Cuomo's Chairman of Energy and Finance and Chairman of the New York State Energy Research and Development Authority

---

Afternoon

Panel On Our Future Opportunities and Challenges:
Moderator: F. Michael Tucker

Bill Hart, Senior Manager, Strategic Projects, Irving Tissue / Capital Region Economic Development Council

Michael Relyea Esq., President, Luther Forest Technology Campus Economic Development Corporation

Margaret Tobin, Executive Director, New York Works Task Force

Rick Whitney, President, CEO, and Chairman of the Board, M+W U.S. Inc.

Steven Wilson A.I.C.P., Vice President, CHA / Capital Region Sustainability Plan

Roundtable Dialogues for Infrastructure Clarity: What's Best, What's Better, and What's Possible?
David Cooperrider introduces the group to a series of roundtable dialogues where 3 focal areas for planning for the right infrastructure at the right time will be explored and discussed. Key to the discussion will be the inclusion and integration of all infrastructure areas: roads, bridges, water, sewer, gas, electric, advanced energy, waterways, rail, telecommunications, bike trails and public transit.

- Everyone will have opportunity to contribute to all three areas
- Plenary reports opportunities, needs, and long term aspirations

Closing Day One: Imagine the Economic, Community, and Reputation Benefits of Infrastructure "4-C's"

5:00 pm **Adjournment**

Agenda

Tech Valley and Beyond: Growing Sustainable Infrastructure at the Speed of Life

Day Two (October 31st 2013): FROM DREAM TO DESIGN

Morning–8:00

Opening Overview and Today's Targets
David L. Cooperrider, Ph. D.

Designs for the Future: Emerging opportunity areas related to "4-Cs"

- Move into "design studios"—people vote with their feet for the opportunity areas they most want to work on
- Planning as designing—insights from the field of design thinking

Design Studio Part I - Build new groups around opportunity areas:

- Ideation and brainstorming in groups: "How might we…?"
- Clustering most promising ideas and priorities for designing

Design Studio Part II – Rapid Prototyping

- Presentations of early prototypes
- Gallery walk posting feedback on prototype proposals and initiatives – "what we like best" and "ways to strengthen"

Afternoon

Plenary: The Geography of Opportunity: New York's 20th Congressional District and the Innovation Economy
Hon. Paul D. Tonko, United States House of Representatives, Congressman - 20th District

Deploy: Action planning and Momentum
What is needed to sustain and advance momentum for moving the prototype forward? What are the next steps?

Plenary Presentations: highlights and commitments

- Each group's next steps to sustain and advance momentum
- Our "Going Forward" strategy

Reflections: Accomplishments and Our Work Together

5:00 pm

Adjournment

What is an Appreciative Inquiry (AI) Summit?

The **WHOLE SYSTEM** participates—a cross-section of as many internal and external stakeholders as possible—people and groups that care about and have a stake in the future of the organization. This means more diversity and less hierarchy than is usual in a working meeting, and a chance for each person and stakeholder group to be heard and to learn other ways of looking at the task at hand.

TASK FOCUSED—a summit is task focused, not simply an educational event or a conference. We are here to accomplish the task of building our vision and plan of action for our task:

Future scenarios are put into **HISTORICA**L and **GLOBAL** perspective. That means thinking globally together before acting locally. This enhances shared understanding and greater commitment to act. It also increases the range of potential actions.

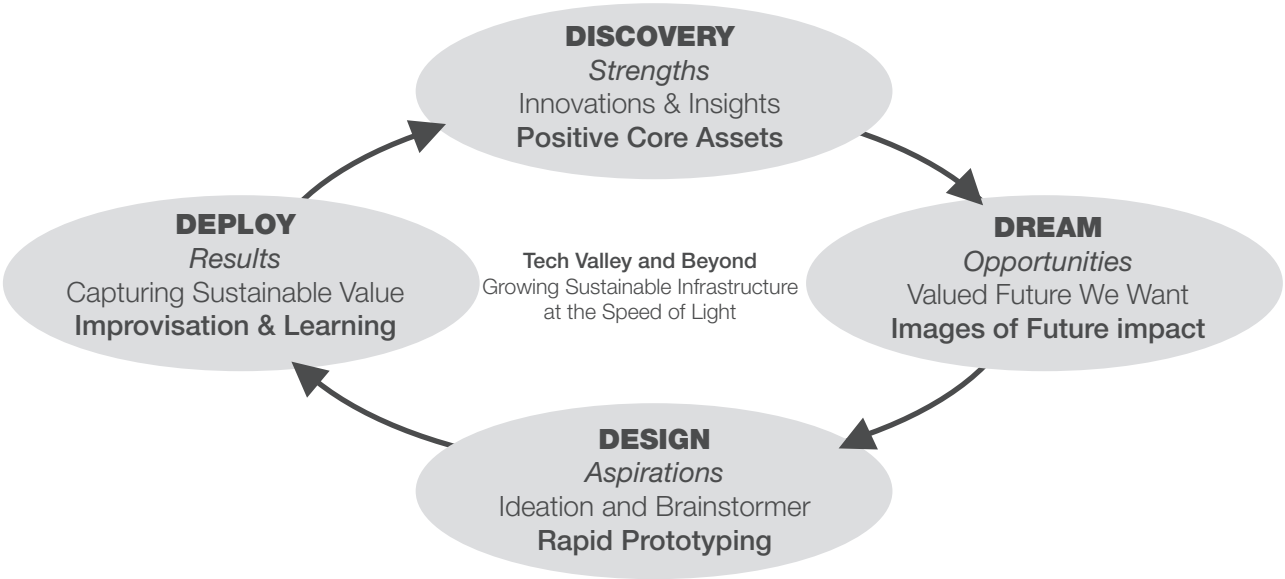
People **SELF-MANAGE** their work, and use **DIALOGUE** and I**NQUIR**Y—not "problem-solving"—as the main tool. That means helping each other do the tasks and taking responsibility for our perceptions and actions.

COMMON GROUND rather than "conflict management" is the frame of reference. That means honoring our differences and then discovering areas for action where we have strong common ground.

APPRECIATIVE INQUIRY ("AI")—To appreciate means to value—to understand those things worth valuing. To inquire means to study, to ask questions, to search. AI is, therefore, a collaborative search to identify and understand the organization's strengths, the greatest opportunities, and people's aspirations and hopes for the future.

COMMITMENT TO ACTION—Because the "whole system" is involved, it is easier to make more rapid decisions, and to make commitments to action in an open way that everyone can support and help make happen.

AI's "4-D" Cycle



Discovery

Opening Interviews and Exploration

Conversation in Pairs

To be completed by _____ o'clock

"In the new economy, conversations are the most important form of work…so much so that conversation is the organization."
—Alan Weber, "What's So New About the New Economy", *Harvard Business Review*

I. A "High Point Story" of Collaborative Leadership—insights from your leadership experiences.

1. Clarity: Establish a Clear Vision of the Hard Infrastructure Needs in the region including: Increasingly any kind of achievement requires the crossing of boundaries, often bringing together improbable partners across perspectives for a free exchange of knowledge, skills, experience, and intelligence to make a difference. In this spirit we would like you to scan your own career from the perspective successful collaborative leadership and impact—times of forging improbable partnerships for significant achievement, breakthrough, or change for the greater good.

Assuming we've all had high points and low points, we would like you to reflect first on the best or most memorable example of collaboration in your career—a high point moment for you—a time of forging extraordinary collaboration and shared leadership for some innovation or action for the greater good:

A. Please share key elements of the story: when and where were you? What happened? How did you overcome challenges? What results? Insights for us here?

B. From this story and others like it, what would you say are your most important strengths—and how might you be able to leverage those qualities and bring these into our work at this summit?

2. Magnifying our Momentum as a Tech Valley Region—spotlight on progress, trends & strengths.

Unlike many other regions, we've seen explosive, transformational growth in the Capital Region—and the opportunities for advancing the economy, jobs, and quality of life are growing every day. Assuming that we can support or serve these opportunities through anticipating effective infrastructures, then the positive momentum of jobs, sustainable growth, regional reputation and success will continue.

If you were trying to entice or attract people and organizations to establish their roots here and stay in this region, how would you tell the story?

A. List **actual examples** of our successes—things you would spotlight—**and how** we achieved the forward momentum as a region:

B. Now looking at all of our region's strengths, special or unique qualities, and things that create positive momentum—and at the same time realizing we need to change and improve—*what are 3 best things you would want us **to keep as a region**, even as we move into a new and changing future?*

3. Image of the Future: Your visions and dreams of strategic successes for our region in 2023

Let's assume that tonight we all fall into a great sleep and it lasts for around 10 years. When you wake up it is 2023. During those ten years, many advances and developments happened for the Tech Valley. The economy, ecology, jobs, and communities—they are all flourishing in ways you most wanted to see. The reputation of the region is strong and compelling—and experts all around the world point to us as a place to learn from. It's exciting to see it: hundreds of small successes and a few bolder successes combined and, like a miracle, the region became everything you most wanted to see.

So now you step into panoramic viewing of 2023—and you like what you see. You're proud. You get a tour of everything—people, economy, quality of life, good growth, an innovative region that's green, healthy, productive, and more. Now describe this scenario. Describe the region you see. **What do you see in your vision that's new, that's better, and different including the strategic successes of the region and the benefits for people, our communities, and society?**

A. Please make notes on what you see in the 2023 future—your images and hopes for:

- Your community
- Your family and career opportunities
- Our economy and job growth
- Our continuing or new "good growth" opportunities…
- Environmental leadership and sustainability in energy, waste, water, etc....
- Our reputation outside of our region…
- In sum "I will be most proud of our region in 2023 when _____?"

B. Now, with your vision in mind (and returning to today) what in your view are the three highest priority infrastructure preparedness arenas we need to now consider and anticipate ahead of time—possible infrastructure priorities from advanced energy and sewers to transportation and telecommunications—things that will be decisive for staying at the forefront and enabling of the success we want?

- If you could select just three of the highest priorities to anticipate which would you select and why: *roads, bridges, water, sewer, gas, energy and electric, waterways, rail, telecommunications, bike trails, and public transit or others?* List and define here:

4. Hopes for our work together: Anthropologist Margaret Mead famously said, “Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has.” The outcomes of this summit, and the ripples of change that it will create, start with our individual intentions, commitments and personal leadership. As we launch this important collaboration, we each bring our hopes for desired outcomes.

A. What are some of the smallest things that could come out of this summit that might have the largest impact?

B. What are three bolder or bigger things could come out of the summit —things that we may not have even considered yet?

Wrap up by sharing a few highlights from your partners comments and thank them in your own way for a great start to the summit.

Keynote Speaker

Why Regional Collaboration Will Help Accelerate Regional Growth: Lessons for a Grand Strategy for America

Col. “Puck” Mykleby, Senior Fellow, New American Foundation

Key Messages and Themes:

Forming Groups

Suggested Self-Management and Group Leadership Roles

Each small group manages its own discussion, data, time, and reports. Leadership roles can be rotated. Divide the responsibilities in any way that works best for your group. Here are useful roles for managing this work:

- **Discussion Leader:** Ensures that each person who wants to speak is heard within the time available. Keeps group on track to finish on time.

- **Time Keeper:** Keeps group aware of time. Monitors report-outs and signals time remaining to the person talking.

- **Recorder:** Writes group's output on flipcharts, using the speaker's words. Ask people to restate long ideas briefly.

- **Reporter:** Delivers report to large group in time allotted.

Discovery

Discovering the Resources in Our Community

"The task of leadership is to create an alignment of strengths in ways that make a system's weaknesses irrelevant."

—Peter Drucker

To appreciate each other and to learn about special experiences, strengths, and resources people bring to this summit, and to touch on every aspect of our "task" for the whole summit.

Note: Select a Discussion Leader, Timekeeper, Recorder, and Reporter.

1. Go around the table and introduce your interview partner in one or two minutes by sharing a couple of highlights from your interview. Share things from your partner's stories or visions that stood out most for you. Everyone introduces his or her partner.

   Next, go deeper into one of the interview questions assigned to your table. Everyone shares his or her stories and observations. Your group should listen for patterns/themes.

   - Tables 1-9 focus on the collaborative leadership question—#1
   - Tables 10-19 focus on strengths and momentum in the region—#2
   - Tables 20-29 focus on images of the future: Tech Valley in 2025—#3
   - Tables 30-38 focus on hopes and things that can come out of the summit—#4

2. Recorder will fill out the designated worksheet (see next pages) for your table's assigned question.

3. Reporter should be prepared to give a three-minute report-out, being sure to include one or two of the most powerful **stories/examples** that came from your group as well as analysis of **patterns** or themes.

Tables 1- 9: Question 1:"High Points" in Collaborative Leadership

Sharing high-point stories in collaborative leadership	Root Causes: What were the root causes or ingredients of success?	Implications: What might this mean for our work here?
Listen to each person and list stories from each member of your group from Q1. **Report-out:** Choose 1 or 2 of your group's **best stories** or real examples to share in the report out to the large group.		

Tables 10-19—Focus on Q-2: putting the spotlight on our region's progress, trends & strengths

Signs and examples of momentum in our region from Question 2	Implications What might this mean for our focus on future infrastructure opportunities—and ways to prepare and achieve complimentary synergies?

As a group, name the strengths, qualities, or values that Our Tech Valley should keep no matter how much our region changes in the future (Now, create a picture, a drawing or a metaphor of our regions valued strengths spotlighted above)

Reporter: Share the examples of momentum and your picture or metaphor depicting our region's dependable strengths—things we want to keep and preserve or magnify—even as we change.

Tables 20-29 Q3: Images of the Future

Images of the Future of Our Region in 2023
(Everyone shares visions from Q3 and listens for patterns and emerging group visions)

A. Everyone shares his or her image and visions in detail: I will be most proud of our region in 2023 when…

B. Implications for anticipating infrastructure needs…. Key priorities? What benefits?

Next, create the front page of the October 30th, 2023 edition of the Wall Street Journal or Time Magazine with a cover story dedicated to Tech Valley and our regions success. What's the important or exciting HEADLINE? What are some of the key elements at the heart of the story?

What is the Headline?

Spotlight key or most exciting or interesting features in the Tech Valley future story:

Report-out: Share your group's headline story…and describe 5 key highlights in the future story.

Tables 30-38 Q-4: Moving to Action: OUR HOPES for this Summit

What are three of the "smallest things that could have large impact"?

List at least three small things or results that might come out of this summit—small things with potentially large impact?

Bolder things to make our vision possible

List the three bolder things that might come out of our work together—things we may have never yet considered or talked about much—and why they could be of benefit:

Report-out: Share your group's top 3 "smallest things" that could have a large impact, and your group's top 3 "bolder things" that could come out of this summit. Finally, sum up your group's hopes for our work here?

Keynote Speaker

New York's Energy Future

Ken Daly, CFA, President of National Grid New York

Richard Kauffman, Governor Cuomo's Chairman of Energy and Finance and Chairman of the New York State Energy Research and Development Authority

Key Messages and Themes:

Panel

Leveraging Regional Strengths and Future Opportunities
Moderator: F. Michael Tucker, President & CEO, Center for Economic Growth

Bill Hart, *Senior Manager, Strategic Projects, Irving Tissue / Capital Region Economic Development Council*

Michael Relyea Esq., *President, Luther Forest Technology Campus Economic Development Corporation*

Margaret Tobin, *Executive Director, New York Works Task Force*

Rick Whitney, *President, CEO, and Chairman of the Board, M+W U.S. Inc.*

Steven Wilson A.I.C.P., *Vice President, CHA / Capital Region Sustainability Plan*

Key Messages and Themes:

Developing Clarity & Moving from Discovery to Dream Part 1

"Planning depends on creating a rich and complex web of conversations that cuts across previously isolated knowledge sets and creates new and unexpected combinations of insight."

—Gary Hamel, "The Search for Strategy", Fortune

To shape our collective sense of the future—what's best, what's better, and what's possible so that the right infrastructure can be planned where it's needed, at the right time and at the right cost.

Café Success Factors:

- Explore questions that matter
- Cross-pollinate and connect diverse perspectives
- Work on elements or areas of the plan that matter most to you
- Encourage everyone's contribution
- Listen for patterns, insights and deeper questions
- Harvest collective discoveries, co-intelligence
- Everyone's experience is valid

1. There are tables set up Café-style corresponding to important infrastructure preparedness topics: Regional Infrastructure Information Platform, A Road Map of How to Move Forward Strategically and Regional Approach to Growth.
2. We will have three rounds of multi-stakeholder conversation revolving around questions such as these (for more detailed exploration of these five questions see next page):
    - What's best right now: assets; strengths inventory—where, why, how?
    - What's better—what could this infrastructure area also be?
    - What's your vision or most positive scenario for our desired future— so the right infrastructure can be planned where it's needed, at the right time and at the right cost?
    - How do we get there? In ways that produce complimentary approaches? In ways that spread successes, advances communications, transparency, coordination, financial symbiosis, and moves at the speed of business?

    In summary:

    - What patterns and points of clarity are emerging right now at the intersection of our diverse perspectives and experiences?
    - What rich new questions, if explored, might help our planning and coordinating in a positive way? What's at the edge of our knowledge?
    - How might we think of this infrastructure area in relation to the others—priorities and points of complementary consideration?
3. At the end everyone is asked: "what did you appreciate most about this conversation?"

Report outs: Table "hosts" will summarize the essence of the conversations (each of the three rounds) and present back to the plenary in a way that creates a "harvest" of collective intelligence, rich questions, and emerging areas of clarity for shaping the priorities and possibilities.

Café Roundtables: Detailed Questions for Table Hosts

The inclusion and integration of all hard infrastructure areas (roads, bridges, waterways, public transit, rail, water, sewer, electric, natural gas, advanced energy, telecommunications and internet) should be included in you exploration and discussion of each topic.

Topic 1: How do we establish a Regional Infrastructure Information Platform that:

- Promotes progress and the transfer of good ideas? (i.e. How one community may have resolved revenue sharing issues to pay for needed infrastructure improvements, or pursued a wetland bank, or grant funds for wastewater issues)
- Promotes complementary and symbiotic opportunities across projects (i.e. If a road is being dug up or repaved, can it be coordinated with electric and gas expansion projects)
- Promotes shared understanding of public and private planning and the matching of resources with needs? Better communicates the ripple effects and collateral benefits of projects? (i.e. miles of roads, bike paths, water and sewer that were installed to develop Luther Forest and the opportunities, benefits, and costs to neighboring communities.)
- Provides a pipeline of information of infrastructure projects (How do we collect the information, where do we keep it and how do we share it? For example who is building what infrastructure where and when?

Topic 2: How do we establish a Road Map of how to move forward strategically to:

- Implement critical elements of the CREDC Regional Plan with action steps related to infrastructure readiness?
- Develop an asset inventory that will match economic development opportunities with available infrastructure?
- Enable getting the needed funding, licensing, permits, and regulatory approvals to meet the timing and service date needs of businesses? (Is there a way to fast track projects that will have positive transformational opportunities for communities and the region?)
- Advance green leadership in sustainability via conservation and alternative technologies and energy?
- Bring good jobs to the region?

Topic 3: How do we best support a Regional Approach to Growth that:

- Affirms and builds on existing efforts and works to leverage complementarities.
- Advances the regulatory framework to enable the region to respond at the speed of business—ready for economic opportunities-- and moves faster because of buy-in from government and business leaders and cooperation around revenue sharing

Things I Like of Value Most From the Infrastructure Conversations

(Take notes from each of the presentations)

Elements of the visions I find most important or valuable (What)	Opportunities and Possibilities for action (How)

Moving from Dream to Focused Aspiration

The inclusion and integration of all hard infrastructure areas (roads, bridges, waterways, public transit, rail, water, sewer, electric, natural gas, advanced energy, telecommunications and internet) should be included in you exploration and discussion of each topic.

Note: Select a Discussion Leader, Timekeeper, Recorder, and Reporter.

1. Review the patterns and results of the Café conversations and ask: are we ready to step back and look at the long-term picture and vision of this whole infrastructure area?
2. Now take time to look at your infrastructure area from the longer-term big picture hope and aspiration. What are your highest aspirations for this opportunity area: its ultimate value, nature and quality of execution, end result impact, and sense of purpose? As a group craft an aspiration statement for this opportunity area. Here is an example aspiration statement from a planning process at an economic development session in Northeast Ohio:

Example Aspiration Statement *(from the state of Ohio)***:**
Cleveland is surprising, amazing, and inspiring the world with its transformation to a bright green city on a blue lake. Now ranked #2 in the country for its robust local food movement, Cleveland has shifted consumer-spending budgets from a low of 5% on local foods, to 25%. This has translated into 10,000 new jobs and additional $1.5 billion annually into the regional economy. In addition, over 3,000 acres of vacant land has been turned into urban gardens and local farms, advancing the beauty of the city, creating educational sites for public schools, and building a mass community “on ramp” for participation and engagement. While the long-term health impact is being tracked and studied by researchers at the Cleveland Clinic, the programs have already eliminated an estimated 30% of the food deserts, making healthy food available throughout the city regardless of income, race, or neighborhood.

Note: an aspiration statement serves as a north star with these kinds of characteristics:

- It is something you want and desire and is stated in the present tense
- It is a stretch—it takes us beyond the status quo: it is a provocative proposition and often leaves many people saying, “I am not sure we can do it.”
- It uses energizing words and provides tangible images: we can see it and sense its value.
- It will help unify long-term focus and sense of direction anticipating the future.
- It can focus on means (aspirations for exceptional execution) and ends (benefits).
- Please write your aspiration statement on the flip chart provided and put it on the word.doc in the thumb drive at your table.

Design – Part I

Working With Key "4-C" Opportunity Areas:
Holding a "Brainstormer" in the Area You Have Most Energy For "HOW MIGHT WE?"

To brainstorm as many ideas as possible related to your group's opportunity area. Think of ideas that can move Tech Valley in the direction of our future visions and opportunities for *Growing Sustainable Infrastructure at the Speed of Life*.

Assuming anything imaginable is possible in relation to your opportunity area. "How might we…"?

Brainstorming rules:

- Defer judgment—don't dismiss any ideas
- Encourage wild ideas—be radical
- Build on the ideas of others—no "buts" only "ands"
- Stay focused on the topic
- Hold one conversation at a time
- Be visual
- Go for quantity

1. Each breakout group manages its own discussion, data, time, and reports. Leadership roles can be rotated. Divide the responsibilities in any way that works best for your group. Here are useful roles for self-managing this work:

    - BRAINSTORM RADICAL – Assures that the group is challenged to contribute bold, wild ideas.
    - TIMEKEEPER – Keeps group aware of time left.
    - BRAINSTORM FACILITATOR – Facilitates the brainstorming session by upholding the brainstorming rules and raises questions to keep the brainstorming moving. Challenges the group to go for quantity. Try to get as many ideas and "post its" as possible on the board.

Design – Part II

Rapid Prototyping

"All Life is an experiment. The more experiments you make the better."

—Ralph Waldo Emerson

To focus in on and take the most promising areas from the brainstorming session and build and design a prototype or model of action (an initiative or pathway) that can be brought into Tech Valley to help us realize our visions. The goal is to begin prototyping an initiative that has strategic value in relation to our visions and our task: "Tech Valley and Beyond: Growing Sustainable Infrastructure at the Speed of Life."

Note: Select a Discussion Leader, Timekeeper, Recorder, and Reporter.

1. Do a quick read of the promising ideas or combination of ideas from the brainstorming session. Think about ideas that can be designed into something that is tangible initiative or pathway forward.
2. For the sake of building at least one prototype or initiative taking us forward, narrow and prioritize the brainstormed list. One way to do this is to use colored "dots" and have each group member take five dots and place them on the items they most want to work on (someone could put all five dots on one item, or they could vote for five different items).
3. If the prototype has several discrete elements you might want to form subgroups to work on different pieces.
4. Build the prototype and make it visual, for example:
    - A drawing
    - A storyboard
    - A three dimensional model
    - A creative portrayal or skit: a before and after; a breaking news special; etc.
5. Be prepared to do a 3-5 minute presentation of the prototype to the whole group. After your demonstration, we'll ask you to name the discrete design elements or big ideas you included. Be ready to make the economic and "benefit to our region" case.

Keynote Speaker

The Geography of Opportunity: New York's 20th Congressional District and the Innovation Economy

Hon. Paul D. Tonko, United States House of Representatives, Congressman - 20th District

Key Messages and Themes:

Deployment – Part I

Action Planning

"The best plan is the plan you do."

To refine the prototype and build an action plan to find the quickest, cheapest, and lowest-risk ways to put the prototype, initiative or pathway forward into practice.

Note: Select a Discussion Leader, Timekeeper, Recorder, and Reporter.

1. Steps:
   - Name your prototype.
   - Identify your key objectives; describe clearly your initiative and what it is intended to accomplish in relation to one (or all) of the 4-C's (see page 3—summit objectives.)
   - Determine whose input or partnership (some structure or group in the organization or with external stakeholders we should collaborate with) would be most valuable at this stage of development.
   - Assess the benefits and economic/development logic: will this have positive impact on the region's capacity and attractiveness? Is there good economic logic? Will it help us attract value and respond to opportunity? Which stakeholders will see the value?
   - Identify challenges and requirements for execution or good implementation.
   - Determine how you will measure success: what indicators?
   - What is your action plan: early steps, moderate term stages, and longer-term steps? See worksheet on next page.
   - Name the group members who will help advance and continue with this initiative and their contact information—and others you would like to invite.
2. Reporters will present the highlights for your final (2 minute) presentation. Choose what motivates you most. Make the case for it. Why is it important? We cannot get into details; so hit the highlights with speed. Then share your next step(s) to illustrate how this initiative can move forward.

Note: it's only 2-minute report. Hit the high notes!

Moving to Action

Moving to Action for _____ (name the initiative or pathway forward)

What will Be done (Stages and steps)	Persons responsible (Name group and point person or chairperson)	Completion date	Help needed from specific others

Deployment – Part II

Ambassadors for Success, Innovation, and Inspiration at Tech Valley

With your original interview partner (if available) or another team member, discuss the following:

1. Name the three most important things that happened at this Summit.
   - One key area of learning for me was

     _____

   - One high point in the summit for me was

     _____

   - One of the most important outcomes in my view was

     _____

2. What one message of innovation or inspiration will you take out from this summit and spread to others to ensure the success of Tech Valley?
   -

     _____

3. What are your personal commitments and to do's:
   -

     _____

   -

     _____

   -

     _____

Our Facilitator

David L. Cooperrider, Ph. D.

David L. Cooperrider is the Fairmount Minerals Professor of Social Entrepreneurship at the Weatherhead School of Management, Case Western Reserve University. Professor Cooperrider is past President of the National Academy of Management's OD Division and has lectured and taught at Harvard, Stanford, University of Chicago, and Katholieke University in Belgium, MIT, University of Michigan, Cambridge and the Drucker School of Management. David is Faculty Chair of the Fowler Center for Sustainable Value.

David has served as an advisor to senior executives in business and societal leadership roles, including projects with five Presidents and Nobel Laureates. David's ideas have supported the success of a wide variety of organizations including the Boeing Corporation, Sloan-Kettering, Fairmount Minerals, Green Mountain Coffee Roasters, PWC, Parker Hannifin, Sherwin Williams, Dealer Tire, Wal-Mart as well as American Red Cross, American Hospital Association, Cleveland Clinic, and World Vision. Most of the work has been inspired by the Appreciative Inquiry (AI) methodology for which Professor Cooperrider is best known. His founding theoretical work in this area has created a positive revolution in the field of change; it is helping institutions all over the world discover the power of the strength-based approaches to multistakeholder innovation and sustainable design. Admiral Clark, the CNO of the Navy, for example brought AI into the Navy for a multiyear project on "Bold and Enlightened Naval Leadership."

In a like manner, Cooperrider was asked by the United Nations to design a historic Summit and meeting between Kofi Annan and 500 CEOs to "unite the strengths of markets with the authority of universal ideals to make globalization work for everyone."

Cooperrider's work—focusing on the question of change at the scale of the whole-- is especially unique because of its ability to enable positive change, innovation, and sustainable design in systems of large and complex scale. At the recent international conference on Appreciative Inquiry hundreds of organizations such as Hewlett-Packard, IDEO, Yahoo! and US Cellular shared the breakthrough results they are experiencing as a result of becoming "strengths-based organizations." !

David's often serves as meeting speaker and leader of large group, interactive summit events. His dynamic ideas have been published in journals such as Administrative Science Quarterly, Organization and Environment, Human Relations, Journal of Applied Behavioral Science, Management Inquiry, The OD Practitioner, and in research series such as Advances in Strategic Management. More popularly, Professor Cooperrider's work has been covered by The New York Times; Forbes; NPR; Science, Fast Company, Fortune, Christian Science Monitor, Washington Post, Biz Ed and others. He has been recipient of Best Paper of the Year Awards at the Academy of Management and was named top researcher of the year at Case Western Reserve University in 2005.

Among his highest honors, David was invited to design a series of dialogues with the world's top religious leaders, initiated by His Holiness the Dalai Lama who said, "If only the world's religious leaders could just know each other, the world will be a better place." Using AI, the group held meetings in Jerusalem and at the Carter Center with President Jimmy Carter.

Our Facilitator cont.

David was recognized in 2000 as among “the top ten visionaries” in the field by Training Magazine and in 2004 received ASTD’s highest award for “distinguished contribution to the field” of organizational learning. David also received the 2004 Porter Award for best writing from the OD Network, and was named 2007 Faculty Pioneer for his impact in the field of sustainability by the Aspen Institute.

In 2010 David was awarded the Peter F. Drucker Distinguished Fellow by the Drucker School of Management—a designation recognizing his contribution to management thought.

David has published 15 books and authored over 50 articles. Cooperrider’s volumes include Handbook of Transformative Cooperation (with Sandy Piderit and Ron Fry); a series of books and handbooks on Appreciative Inquiry including Appreciative Inquiry: A Positive Revolution in Change (with Diana Whitney); The Organization Dimensions of Global Change (with Jane Dutton); Organizational Courage and Executive Wisdom (with Suresh Srivastva). David is editor of the research book series Advances in Appreciative Inquiry (with Michel Avital) published by Emerald, which is currently going to press with its fourth volume.

David’s wife Nancy is an artist. His son Daniel just graduated from University of Chicago graduate school where he studied the world’s religions; Hannah is a design student at Miami University of Ohio and Matt is doing his graduate work at Yale in environmental management and business.

Key websites: http://appreciativeinquiry.case.edu/
http://worldbenefit.cwru.edu/

Speaker Bios

Kenneth Daly

Kenneth D. Daly, CFA, is the President of the New York business of National Grid. He recently served as Global Financial Controller, based in London, and has held numerous positions in Finance, Human Resources, and Customer Relations throughout his 25 year career with the company. Ken previously served as Chief Financial Officer, Global Gas Distribution and Vice President of Financial and Employee Related Services. Ken graduated from St. Francis College with a BA in English and has earned both an MBA in Finance from St. John's University, an MS in Human Resource Management from New York University and achieved the distinguished Chartered Financial Analyst (CFA) designation in 2002. He is a member of the (SFC) Saint Francis College Board of Trustees and has been an adjunct professor at SFC, teaching human resource, business and finance courses for 20 years. He has been the Director of the St. John's University Executive-in-Residence Program since 1992. He is the past Chairman of the Kingsborough Community College Board of Directors and a former member of Junior Achievement Board of Directors. Ken is also a member of the David Rockefeller 'Fellows Program,' the Long Island Energeia Partnership, and the British American Business Council Board.

Bill Hart

Bill Hart is the Sr. Manager of Strategic Projects with Irving Tissue, a privately owned Tissue manufacturer located in Fort Edward, NY. Irving Tissue has undergone transformative growth and expansion since being acquired in August of 1996, having invested over 300 million dollars and executed 4 major site expansion projects. Every expansion undertaken by Irving Tissue has been met with a different infrastructure challenge, and Bill in his various roles with the company has been responsible for managing those challenges with solutions to ensure the viability and success of the projects. It is from those experiences that Bill was asked to sit on the Capital Region Economic Development Council. Bill is currently a member of the CREDC Executive Committee, and chairs the Infrastructure Subcommittee for the Council. He is a also a lifelong resident of the Capital Region, having attended SUNY Adirondack, SUNY Institute of Technology in Utica/Rome, and ultimately earned his MBA from the College of St. Rose.

Richard Kauffman

Richard Kauffman joined the administration of New York State Governor Andrew M. Cuomo in February 2013 as the Chairman for Energy and Finance. In this capacity he oversees and coordinates energy policy through a subcabinet of energy agencies and public authorities. His mission is to develop and implement a strategic plan for the clean energy economy by developing financial, legislative and regulatory policies that focus on scaling clean energy while ensuring a resilient and reliable energy infrastructure. He has worked in energy and finance at some of the highest levels of both the public and private sector. Prior to his current appointment, Mr. Kauffman served as Senior Advisor to Secretary Steven Chu at the U.S. Department of Energy. In his private sector career, he was Chief Executive Officer of Good Energies, Inc., a leading investor in renewable energy and energy efficiency technologies, a partner of Goldman Sachs where he chaired the Global Financing Group, and vice chairman of Morgan Stanley's Institutional Securities Business and co-head of its Banking Department. Mr. Kauffman has served as Board Chairman of Levi Strauss & Co., as well as on the boards of several organizations, including the Brookings Institution and the Wildlife Conservation Society. Mr. Kauffman earned a bachelor's degree from Stanford University, a master's degree in international relations from Yale University and a master's in public and private management from the Yale School of Management. He is a member of the Council on Foreign Relations.

Speaker Bios

Mark "Puck" Mykleby

Mark "Puck" Mykleby graduated from the Naval Academy and began his career as an F/A-18 pilot. From there he led numerous squadrons until he ended his Marine career as special strategic assistant to the Chairman of the Joint Chiefs of Staff. In that capacity, he co-authored with Navy Captain Wayne Porter A National Strategic Narrative, a concept and vision for a 21st Century grand strategy for the nation. He is now a senior fellow at the New America Foundation where he continues to follow his passion for implementing a vision for a 21st Century grand strategy and achieving sustainability for the nation. He has stood up regional efforts much like what we are proposing in Tech Valley. Mark graduated from the United States Naval Academy with distinction in 1987. He earned a Masters of Military Studies from the Marine Corps Command and Staff College in 1999. In May 2007, he graduated from the Air War College with distinction and earned a Masters of Strategic Studies.

Mike Relyea

As the former President of the Luther Forest Technology Campus Economic Development Corporation (LFTCEDC), Mike led the development of Luther Forest Technology Campus (LFTC), one of the largest public-private economic development projects in the United States. He provided overall project leadership and established strategic direction. Overseeing operations, financing and construction, he worked closely with the numerous federal, state and local agencies, public organizations and privately-held businesses to bring the campus to fruition. Before joining the Luther Forest project, Mike served as Executive Director of the New York State Office of Science, Technology and Academic Research (NYSTAR), Vice President of Mercury Public Affairs, Legislative Director for the NYS Senate, and as Counsel to the Governor's Appointment Secretary. Mr. Relyea received his degree from the State University of New York at Plattsburgh and then received his Juris Doctorate from Albany Law School at Union University. He is currently a strategic and tactical advisor for significant public-private developments and is a frequent expert speaker on global high-technology economic development initiatives.

Margaret Tobin

Margaret Tobin is the Executive Director of the New York Works Task Force. Ms. Tobin joined the Office of Governor Andrew M. Cuomo after a 25 year career in economic development, finance, large scale public works projects and real estate development. Most recently, she founded a real estate consulting practice working with a variety of organizations on real estate matters. In the private sector, Ms. Tobin was the Executive Vice President for Development at Thor Equities, a national private equity real estate fund, where she oversaw hotel, retail, office and mixed-use development projects. Prior to Thor Equities, Ms. Tobin was a Vice President at Vornado Realty Trust. In the public sector, she was the Executive Vice President and CFO of the Hudson River Park Conservancy, and also served under Mayor Dinkins in the Office of the Deputy Mayor for Finance and Economic Development.

Speaker Bios

Congressman Paul Tonko

Congressman Paul Tonko, a third term representative of the US House of Representatives, represents NY's 20th Congressional District, including the cities of Albany, Schenectady, Saratoga Springs and his hometown of Amsterdam. Paul serves of the Energy and Commerce Committee, the oldest standing committee in the House, created in December of 1795. The committee has jurisdiction over national energy policy, public and mental health policy and regulation of interstate and foreign commerce, giving it the broadest jurisdiction of any authorizing committee in the House. Paul previously served on the Science, Space and Technology Committee as the Ranking Member on the Investigations and Oversight Subcommittee, on the Energy and Environment Subcommittee, Education and Workforce Committee, and the Budget Committee. Prior to joining Congress, Paul was the President and CEO of the NYS Energy and Research Development Authority (NYSERDA) and served in the NYS Assembly for 25 years. He graduated from Clarkson with a degree in mechanical and industrial engineering.

F. Michael Tucker

F. Michael Tucker was appointed President of the Center for Economic Growth (CEG) in March 2007. CEG is a regional, not-for-profit, private-sector economic development organization promoting growth through accomplishment of strategic initiatives, industry attraction and regional outreach. Prior to joining CEG, Mike served as President of the Harriman Research and Technology Development Corporation where he was responsible for initiating and overseeing the redevelopment of the 300-acre W.A. Harriman State Office Campus into a world class Research and Technology Park. For 25 years prior to that he was a principal with Mercer Companies, Inc. where he oversaw the development, financing and operation of Mercer's commercial office, senior housing and hydroelectric projects throughout New York State. He was also responsible for Mercer's property management and real estate brokerage services. Mike graduated from Villanova University and the Villanova School of Law. He is an attorney and a licensed real estate broker. He is active in legal, real estate and economic development organizations at the local, state and national levels. He currently serves as a Director of the New York State Economic Development Council and is on the boards of numerous not-for-profit organizations throughout Tech Valley. He served as the Chairman of the Town of Bethlehem Industrial Development Agency, is a Trustee of Ulster Savings Bank, and is a member of the MedTech Board of Directors' Advisory Council. He is also a member of Governor Cuomo's Capital Region Economic Development Council.

Rick Whitney

Rick Whitney is President, Chief Executive Officer and Chairman of the Board of M+W U.S. Inc. In his role, he is responsible for the strategic leadership and operational performance of all M+W Group business units in the United States, Canada and Mexico. M+W U.S. is headquartered in Watervliet, NY. He is also the founding executive and current Chief Executive Officer of Total Facility Solutions (TFS), a wholly owned subsidiary of M+W U.S., Inc. Rick is a Board member at the CNSE Children's Museum of Science and Technology in Albany, NY – one of the nations "Top 20 Science Centers" for children. He is also a member of the Incident and Injury Free CEO Forum made up of Construction Industry CEOs who are committed to promoting a safety culture within their industry. Rick holds a BS in Civil Engineering from The Citadel Military College of South Carolina, and an MBA in Finance from the University of South Carolina.

Speaker Bios

Steve Wilson

Steve is a senior project manager in CHA's Planning Group. He brings more than 20 years' experience in the fields of community planning, public engagement, sustainability, environmental and infrastructure planning and economic development. Steve has successfully worked with villages, towns and cities throughout the eastern United States on a variety of planning and development related initiatives. Recently, Steve oversaw the preparation of the eight county Capital Region Sustainability Plan.The aggressive plan covers a broad spectrum of issues including economic development, climate adaptation, solid waste, infrastructure and energy. Steve graduated from the State University of New York College of Environmental Science and Forestry in Syracuse. He is a member of numerous organizations including the American Planning Association, Congress for New Urbanism, and the American Institute of Certified Planners. He sits on the Board of Directors for the Capital District Habitat for Humanity.

Cheri Warren

Cheri is currently the Vice President of Asset Management and Innovation Officer at National Grid. Her portfolio includes not only smart grid, which has been rebranded as Utility of the Future, but also the US Transmission and Distribution (T&D) electric assets ($1B invested annually). She and her team develop the capital plans for 1-15 years for all four jurisdictions in which they serve (NY, MA, RI, & NH). These plans feed the business plan and all regulatory rate cases. They also develop the maintenance policies and strategies, define governance for all asset information, develop complex geospatial models for predicting performance, do RD&D, and set the future direction for assets via smart grid and system strategies. Cheri Warren holds a BSEE ('87) and MSE ('90) from Union College. She has worked at GE, Central Hudson Gas and Electric, Power Technologies Inc., Navigant Consulting and National Grid. She is also on the IEEE Board of Directors.

References

Capital District Regional Transportation Committee:

The Capital District Transportation Committee (CDTC) is the designated "Metropolitan Planning Organization" for a defined metropolitan area that includes the Albany and Saratoga Springs urbanized areas. A key responsibility of every MPO is the maintenance of a long-range regional transportation plan. All federally-funded or federally-approved transportation actions such as highway or transit capital projects must derive from the regional plan. The USDOT will not approve metropolitan transportation projects unless they are on the MPO's program.

The Executive Director of the CDTC is Michael Franchini and with a small professional staff funded primarily with FHWA, FTA and county funds devoted to this purpose, and with the assistance of other member agencies, it investigates issues critical to the future of the Capital District. Its planning efforts are intended to be action-oriented, answering questions such as: "How will the expectations and role of the transportation system be different in the year 2015 from what they are today? What type of future development pattern should be encouraged through strategic transportation investments? How can the transportation system be managed or improved to enhance the quality of life, protect the environment and sustain economic vitality in the region? What are the financial requirements to provide the desired system and how can they be secured?" To read CDTC's New Visions 2035 Plan Update, please visit: **www.cdtcmpo.org**

The Adirondack Glens Falls Transportation Council (AGFTC) is the MPO for Warren County, Washington County and the Town of Moreau. The Director is Aaron Frankenfeld and the Senior Planner is Kate Mance. To view its long range plan for that area: 2035 Ahead, please visit: **www.agftc.org**

Capital Region Economic Development Council:

In an effort to redesign the relationships between state government and businesses, stimulate economic development and create jobs, Governor Andrew Cuomo launched the Regional Economic Development Councils (REDC) in the 10 regions across New York in 2011. The Councils bring together stakeholders in every region to serve as a coordinated point of contact for economic development. Each Regional Council is chaired by Lieutenant Governor Robert Duffy and is led by two Regional Co-Chairs from the business and academic community. Additional membership is comprised of local leaders from business, academia, labor, agriculture, nonprofits, and community-based organizations. Each region has put together a plan for the development of their region.

The Capital Region Economic Development Council is currently led by Jim Barba, CEO of Albany Medical Center (the regions largest general and surgical hospital which serves northeastern NY and western New England) and Dr. Robert Jones, President of the University at Albany. It has several work groups organized around several different areas. They are: Pipeline to Project (includes Technology & Innovation, Infrastructure & Transportation, and Agriculture), Public Engagement, Metrics and Monitoring, Arts, Culture and Tourism and Workforce and Education. Bill Hart, Sr. Manager, Strategic Projects for Irving Tissue, is the Group Leader for the Pipeline to Project Work Group and also chairs the Infrastructure Sub-Group. The mission of the Infrastructure Subgroup is to help the region build smart, modern infrastructure with a focus on preparing our community for sustainable growth and creation of wealth. The Capital Region is known as the center of the state's "Tech Valley" based on its history of innovation and invention. At the region's core is strategic investment in its industry clusters: bio life sciences, nanotechnology, chemical manufacturing, semiconductor development and energy production. Additionally, the region has very strong agricultural assets. For additional information: **http://regionalcouncils.ny.gov/content/capital-region**

References

The Center for Economic Growth:

The Center for Economic Growth (CEG) is an active participant in the Regional Council, a strong partner in economic development initiatives with National Grid, and the leading economic development organization in the Capital Region. It is a not-for-profit membership based organization which works through partnerships to shape the future of the communities in the region and provide pathways necessary to make those goals become reality. It works to advance visionary policies and advocate for transformational change. The organization is led by Mike Tucker, President and Bob Blackman, Chairman of the Board. CEG is a partner in organizing the Tech Valley Infrastructure Forum.
CEG serves as the Capital Region's designated Regional Technology Development Center (RTDC). A private, non-profit, membership-based organization, CEG drives economic growth by working with partners in business, government, and education on strategic initiatives to grow local companies, attract new industry and investment, and prepare communities for future growth.

CEG receives significant financial support from Empire State Development's Division of Science, Technology and Innovation, which works to facilitate the integration of innovation and technology throughout New York's economic development efforts, the National Institute of Standards and Technology (NIST) / Manufacturing Extension Partnership (MEP), and National Grid. As the designated RTDC for the New York State's Capital Region and one of nearly 350 MEP locations across the country, CEG is charged with assisting local manufacturing and technology companies generate new sales, create stronger operational infrastructure, and overcome barriers to growth. Visit **www.ceg.org**.

Cleaner, Greener Communities:

Announced by Governor Cuomo in his 2011 and administered by the New York State Energy Research and Development Authority, the Cleaner Greener Communities Program, empowers regions to create more sustainable communities by funding smart growth practices. Planning teams partnered with public and private experts across a wide range of fields, along with community residents, to lead the development of regional sustainability plans.

The Capital District Sustainability Plan's goals and targets are categorized by the following focus areas: Transportation, Land Use, Energy, Water Management, Waste Management, Economic Development, Climate Change Adaptation, Agriculture and Food Systems.

More detailed descriptions of each goal, target and indicator can be found in the regional sustainability plan at: **www.nyserda.ny.gov/Statewide-Initiatives/Cleaner-Greener-Communities/Regional-Sustainability-Plans/Capital-Region.aspx**

National Grid:

National Grid (LSE: NG; NYSE:NGG) is an electricity and gas company that connects consumers to energy sources through its networks. The company is at the heart of one of the greatest challenges facing our society - to create new, sustainable energy solutions for the future and developing an energy system that underpins economic prosperity in the 21st century. National Grid holds a vital position at the center of the energy system and it "joins everything up."

In the northeast US, we connect more than seven million gas and electric customers to vital energy sources, essential for our modern lifestyles. In Great Britain, we run the gas and electricity systems that our society is built on, delivering gas and electricity across the country. National Grid delivers electricity to more than 3 million customers in Massachusetts, New York and Rhode Island. It manages the electricity network on Long Island under an agreement with the Long Island Power Authority (LIPA), and owns over 4,000 megawatts of contracted electricity generation, providing power to over one million LIPA customers. It is the largest distributor of natural gas in northeastern U.S., serving more than 3 million customers in New York, Massachusetts and Rhode Island.

References

National Grid is the primary electric and gas utility for the Capital Region and is a strategic partner in helping the communities and customers we serve grow and prosper. Through direct assistance and partnerships, we provide assistance in marketing, site and building development, electric and gas infrastructure development, energy efficiency, manufacturing productivity, and even emergency programs for business redevelopment after major storms. We as a company continue to invest in our infrastructure and are keenly interested in creating new, sustainable energy solutions for the future and developing an energy system that underpins economic prosperity in the 21st century. Ken Daly is President of National Grid New York Jurisdiction; Cheri Warren is Vice President of Asset Management. Bill Flaherty is Director of Community and Customer Management for the Capital Region and Linda Hill is Lead Economic Development Representative. For more information: **www.nationalgrid.us.com** or **www.shovelready.com**

New York Works Task Force

The NY Works Task Force brings together leading finance, labor, planning, and transportation professionals to coordinate a statewide infrastructure plan that will more effectively and strategically allocate New York's capital investment funding, creating tens of thousands of jobs. Margaret Tobin is the Executive Director of the NY Works Task Force. For detailed information on the Task Force and current project information: **http://nyworkstaskforce.ny.gov/**

Regional Planning Commissions:

Capital District Regional Planning Commission (CDRPC) is a regional planning and resource center serving Albany, Rensselaer, Saratoga, and Schenectady counties. CDRPC provides objective analysis of data, trends, opportunities, and challenges relevant to the Region's economic development and planning communities. CDRPC serves the best interests of the public and private sectors by promoting intergovernmental cooperation; communicating, collaborating, and facilitating regional initiatives; and sharing information and fostering dialogues on solutions to regional problems. In addition to its wide variety of comprehensive planning services, CDRPC has also assumed the functions of aviation system planner, crime control coordinator, data and information center, Economic Development District, and Foreign-Trade Zone administrator. The Executive Director is Rocco Ferraro. To view all the services of CDRPC and their most recent regional plan, please visit: **www.cdrpc.org**.

Lake Champlain Lake George Regional Planning Board (LCLCRPB) covers the five counties of Clinton, Essex, Hamilton, Warren, and Washington. The Board serves as a vital link between local communities & businesses and federal & state funding agencies. The Regional Planning Board system was created to streamline the process by which local communities apply for economic development grants. Programs address a wide range of services including economic development, transportation, community development, land use, water resources and small business development. The Director is Walter Young. To view available assistance and latest comprehensive strategy, go to: **www.lclgrpb.org**

References

Transportation Authorities:

Capital District Transportation Authority (CDTA) works in partnership with state, regional and local agencies to advocate for transit-oriented development in the Capital Region and is advancing infrastructure that will meet current and future mobility needs. It is a public benefit corporation which provides regional transportation services by rail, bus, water and air. As the premier multi-modal transportation provider in the Capital Region, it provides regular route bus service, shuttle systems and para-transit services. CDTA subsidiaries own and operate the Rensselaer Rail and Saratoga Springs Train Stations. CDTA also operates the Northway Xpress Commuter Service between Saratoga County and downtown Albany. Carm Basile is the Chief Executive Officer. For more information regarding how CTDA is helping to mold and grow the regional transportation network, visit **www.cdta.org**

Greater Glens Falls Transit (GGFT) provides safe, reliable, low cost public transit services to the greater Glens Falls area (Warren County, Washington County, South Glens Falls and Moreau) year round, Monday through Saturday (seven days per week during the Lake George summer tourist season). It is a department of the City of Glens Falls. Services are funded in part with funds from the Federal Transit Administration and the NYS Department of Transportation. Scott Sopczyk is the Transportation Director. For more information on services, please visit: **www.agftc.org**

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Air	ESD	Transportation Capital Assistance Program		ESD administers the Transportation Capital Assistance Program for the New York State Department of Transportation (NYSDOT). The program provides government contractor working capital loans to small business enterprises and NYS-certified minority and women-owned business enterprises (MWBEs) that have transportation-related construction contracts with NYSDOT or who are subcontractors of contractors having transportation-related contracts with NYSDOT.	http://www.esd.ny.gov/businessprograms.html
Bicycle/ Pedestrian	A/GFTC		Make the Connection Program	The program is designed to assist project sponsors to fund small-scale projects that will improve the region's bicycle and pedestrian travel network, either through addressing issues of bicycle and pedestrian space at specific locations or by making regional destinations more conducive to alternative transportation. A total of $160,000 federal funds are available from the Surface Transportation Program. A minimum local match of 20% is required, and overmatching on behalf of the sponsoring municipality is encouraged.	http://www.agftc.org/asp/DocumentDetails.asp?DocumentID=456
	Canal Corp	Canalway Grant Program		The Canal Corporation Capital Program funds programmed canal and canalway trail infrastructure repairs as approved by the NYS Thruway Authority/Canal Corporation Board. This program may present opportunities to link related community infrastructure projects to ongoing Capital Program expenditures for potential savings and coordinated construction activities.	http://www.canals.ny.gov/community/grant.html
	DOS	EPF Local Waterfront Revitalization Program		Planning, feasibility studies and implementation for land and water based trails.	http://www.dos.ny.gov/communitieswaterfronts/WFRevitalization/index.html
	HRVG		Greenway Communities Grant/Program	Greenway Communities Grant Program provides grant funding to help communities develop and implement a vision for their future that balances Greenway criteria of economic development considerations with resource protection and promotion objectives.	www.hudsongreenway.ny.gov/GrantFunding/CommunityGrants.aspx
			Greenway Compact Grant/Program	The Compact Grant Program provides 50% matching grants, on a reimbursement basis, for municipalities that develop, approve and implement a regional compact strategy that is consistent with the Greenway criteria and the Greenway Act. The 50% local match may be provided in the form of an in-kind or other non-monetary contribution.	www.hudsongreenway.ny.gov/GrantFunding/CompactGrants.aspx
			Greenway Conservancy for the Hudson River Valley Small Grant Program	The Hudson River Valley Greenway Conservancy Grants Program is dedicated to funding recreational trail projects. This annual grant program is generally announced in June with applications due in August. Special consideration is given to projects that seek to implement the Greenway Trail Vision Plan. Eligible project categories include: trail planning and design; trail construction and rehabilitation; education and interpretation.	www.hudsongreenway.ny.gov/GrantFunding/ConservancyGrant.aspx
	OPRHP	EPF Recreational Trails Program		The Recreational Trails Program (RTP) provides and maintains recreational trails for both motorized and non-motorized recreational trail use. The federal RTP legislation requires that States use 40% of their funds apportioned in a fiscal year for diverse recreational trail use, 30% for motorized recreation, and 30% for non-motorized recreation.	http://nysparks.com/grants/recreational-trails/default.aspx

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Energy	ESD	Business Programs		Empire State Development provides a variety of assistance aimed at helping businesses - both international companies looking to make a move or small businesses wanting to access capital.	http://www.esd.ny.gov/businessprograms.html
	HRVG		Greenway Communities Grant/ Program	The Hudson River Valley Greenway works with communities on a voluntary basis to assist in the development of local land use plans and programs related to the Greenway criteria. Greenway community planning projects can be undertaken by a single community to address local issues or a group of communities working together to address both local and regional issues. Greenway Communities Grant Program provides grant funding to help communities develop and implement a vision for their future that balances Greenway criteria of economic development considerations with resource protection and promotion objectives.	http://www.hudsongreenway.ny.gov/GrantFunding/CommunityGrants.aspx
			Greenway Compact Grant/ Program	The Compact Grant Program provides 50% matching grants, on a reimbursement basis, for municipalities that develop, approve and implement a regional compact strategy that is consistent with the Greenway criteria and the Greenway Act. The 50% local match may be provided in the form of an in-kind or other non-monetary contribution.	http://www.hudsongreenway.ny.gov/GrantFunding/CompactGrants.aspx
	National Grid		Capital Investment Incentive	Program provides funds to help offset the customer costs associated with upgrading utility infrastructure to accommodate a business expansion or new construction project in National Grid's upstate New York service territory. The applicant must be a manufacturer, warehouse, R&D, data center, back office, or agribusiness. Maximum award $500,000.	http://www.shovelready.com/documents/CAPITAL%20INVESTMENT %20INCENTIVE.pdf
			Gas Incentive Investment	Funds to offset customer's costs to upgrade natural gas infrastructure for expansion or attraction project. Maximum Award: $500,000.	http://www.shovelready.com/documents/3-PHASE%20POWER%20INCENTIVE.pdf
			3 Phase Power Incentive	The 3-Phase Power Incentive program provides grants to help fund the extension of 3-phase electric service to eligible National Grid customers: manufacturer, warehouse/distribution, R&D, agribusiness, tourism destination. Maximum Award $50,000. With renewable technologies: Maximum Award $150,000.	http://www.shovelready.com/documents/3-PHASE%20POWER%20INCENTIVE.pdf
			Brownfield Redevelopment Assistance:	Program provides grants to fund utility related infrastructure improvements, demolition, and other costs that are necessary to progress the redevelopment of a brownfield site or abandoned building. Maximum Award: $300,000.	http://www.shovelready.com/documents/BROWNFIELD%20REDEVELOPMENT%20ASSISTANCE%20PROGRAM.pdf
			Shovel Ready Infrastructure	Program provides grants of up to $125,000 for engineering and planning and $250,000 for the installation of electric and natural gas infrastructure to at designated BuildNow NY, and Shovel-Ready Certified Sites served by National Grid, and for engineering studies that will advance a site in the Shovelready development process.	http://www.shovelready.com/documents/SHOVEL%20READY%20INCENTIVE.pdf
			Renewable Energy and Economic Development	Matching grants of up to $750,000 for collaborative projects that involve an Upstate research institution, one or more renewable energy, energy storage or clean transportation technology partners, and a regional economic development sponsor. Eligible generation technologies include, but are not limited to, solar, photovoltaic, geothermal, biomass, and anaerobic digestion.	http://www.shovelready.com/documents/Renewable%20Energy%20and%20Economic%20Development.pdf
			Sustainable Gas and Economic Development	Funds a limited number of projects that demonstrate sustainable gas technologies and produce pipeline quality gas and provide significant economic development in National Grid service territory. Maximum Award: $250,000.	http://www.shovelready.com/programs.asp

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Energy cont.	NYSEG		Capital Investment Incentive	Up to $300,000 per project for capital investments of $1 million or more; to fund electric-related infrastructure improvements on either NYSEG-owned or customer-owned equipment. Minimum monthly incremental demand after improvements must be at least 100 kilowatts.	http://www.lookupstateny.com/AssistanceAndIncentivePrograms/nysegprograms.html
			Utility Infrastructure Investment	Up to $400,000, on a per-project basis, for new electric-related facilities for existing or prospective customers with load of 100 kilowatts or more - if a minimum of $1 million has been invested in a new or expanding facility.	
			Brownfield/Building Redevelopment	Up to $500,000 for electric-related infrastructure improvements to progress redevelopment of a brownfield site or vacant building.	
			Agriculture Capital Investment Incentive	Up to $100,000 per project for smaller farms toward electric-related infrastructure improvements on either NYSEG-owned or customer-owned equipment. Each project must involve capital investment of at least $50,000 and have a monthly incremental electric demand after capital investment of at least 25 kilowatts.	
			Gas Infrastructure Investment	NYSEG will invest in new gas delivery related facilities to manufacturing or certain non-retail commercial customers making a minimum capital investment of at least $250,000 and increasing gas usage by at least 50 therms per hour.	
	NYSERDA	FlexTech Program		NYSERDA's aim is to help New York meet its energy goals: reducing energy consumption, promoting the use of renewable energy sources, and protecting the environment. The FlexTech Program provides eligible NYS commercial, industrial, and institutional end users with objective and customized studies and engineering analysis to help make informed energy decisions.	http://www.nyserda.ny.gov
Environmental	DOS		Brownfield Opportunity Areas Program	The Brownfield Opportunity Areas (BOA) Program provides communities with guidance, expertise and financial assistance, up to 90 percent of the total eligible project costs, to complete revitalization and implementation strategies for neighborhoods or areas affected by brownfields or economic distress.	http://www.dos.ny.gov/communitieswaterfronts/brownFieldOpp/index.html
		EPF Local Waterfront Revitalization Program		Preparation of watershed management plans. Protection and restoration of water quality and habitats.	http://www.dos.ny.gov/communitieswaterfronts/WFRevitalization/index.html
	HCR	Community Development Block Grant		The NYS CDBG program provides financial assistance to eligible cities, towns, and villages with populations under 50,000 and counties with an area population under 200,000 to develop viable communities by providing decent, affordable housing, and suitable living environments, as well as expanding economic opportunities, principally for persons of low and moderate income.	http://www.nyshcr.org/programs/nys-cdbg
	HRVG		Greenway Communities Grant/Program	Greenway Communities Grant Program provides grant funding to help communities develop and implement a vision for their future that balances Greenway criteria of economic development considerations with resource protection and promotion objectives.	http://www.hudsongreenway.ny.gov/GrantFunding/CommunityGrants.aspx
			Greenway Compact Grant/Program	The Compact Grant Program provides 50% matching grants, on a reimbursement basis, for municipalities that develop, approve and implement a regional compact strategy that is consistent with the Greenway criteria and the Greenway Act. The 50% local match may be provided in the form of an in-kind or other non-monetary contribution.	http://www.hudsongreenway.ny.gov/GrantFunding/CompactGrants.aspx

Capital Region Economic Development Council Infrastructure Resource Matrix

Green Infrastructure

Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
DEC		Water Quality Improvement Project Program	The NYS DEC supports water quality improvements through the Water Quality Improvement Project (WQIP) Statewide Grant Program. The WQIP program is a competitive, reimbursement grant program that directs funds from the NYS Environmental Protection Fund to projects that reduce polluted runoff, improve water quality and restore habitat in New York's waterbodies.	http://www.dec.ny.gov/pubs/4774.html
DOS	EPF Local Water-front Revitalization Program		Design and construction of stormwater treatment systems to protect and improve water quality, to implement existing watershed management plans.	http://www.dos.ny.gov/communitieswaterfronts/WFRevitalization/index.html
EFC	Green Innovation Grant Program		The Green Innovation Grant Program (GIGP) supports projects that incorporate unique ideas for stormwater management, utilizing innovative green infrastructure design and cutting-edge green technologies, ranging from simple rain gardens to large-scale wastewater treatment sites. Recipients may be small or large municipalities, private or public institutions, small businesses, or non-profits.	http://www.nysefc.org/Default.aspx?tabid=461
ESD	Business Programs		Empire State Development provides a variety of assistance aimed at helping businesses - both international companies looking to make a move or small businesses wanting to access capital.	http://www.esd.ny.gov/businessprograms.html
HRVG		Greenway Communities Grant/Program	Greenway Communities Grant Program provides grant funding to help communities develop and implement a vision for their future that balances Greenway criteria of economic development considerations with resource protection and promotion objectives.	http://www.hudsongreenway.ny.gov/GrantFunding/CommunityGrants.aspx
		Greenway Compact Grant/Program	The Compact Grant Program provides 50% matching grants, on a reimbursement basis, for municipalities that develop, approve and implement a regional compact strategy that is consistent with the Greenway criteria and the Greenway Act. The 50% local match may be provided in the form of an in-kind or other non-monetary contribution.	http://www.hudsongreenway.ny.gov/GrantFunding/CompactGrants.aspx
		Greenway Conservancy for the Hudson River Valley Small Grant Program	The Hudson River Valley Greenway Conservancy Grants Program is dedicated to funding recreational trail projects. This annual grant program is generally announced in June with applications due in August. Special consideration is given to projects that seek to implement the Greenway Trail Vision Plan. Eligible project categories include: trail planning and design; trail construction and rehabilitation; education and interpretation.	http://www.hudsongreenway.ny.gov/GrantFunding/ConservancyGrant.aspx
NYSERDA	Cleaner, Greener Communities Program		Funds sustainability development and smart growth practices at the regional level. Up to $1m per region has been awarded for PHASE I provides nearly $10 million in funding to regional planning teams to create comprehensive sustainability plans or to expand the scope of existing sustainability plans. PHASE II provides up to $90 million toward regional projects that support the regional sustainability goals identified during the planning process. Phase II is expected to launch in 2013.	http://www.nyserda.ny.gov/cleaner-greener

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Highways	A/GFTC		Unified Planning Work Program *	The Unified Planning Work Program (UPWP) outlines the transportation planning and programming activities is developed to advance the coordination of transportation and transportation-related planning activities in the region. The necessary funds that allow the Council to pursue the tasks listed in the UPWP are provided by the Federal Highway Administration and the Federal Transit Administration. The tasks will be conducted by staff working in the A/GFTC offices in Glens Falls. Some additional technical assistance will be provided by staff at the NYSDOT Region One Office of Planning and Program Management in Albany and from Council members and their respective agencies. In addition, technical work may be carried out under contract with private consulting firms.	http://www.agftc.org/asp/DownloadDocument.asp?DocumentID=471&Rand=3%2F7%2F2013+9%3A24%3A52+AM&Filename=2013-14%20upwp_agftc.pdf
			Unified Planning Work Program Task 2.80 Local Transportation Planning and Engineering Assistance Program	A/GFTC staff will provide access to transportation planning and engineering expertise on an as-needed basis for eligible municipal transportation projects and proposals that are consistent with A/GFTC goals and on an as-needed basis to supplement ongoing Metropolitan Planning Organization activities and address performance measurement requirements.	http://www.agftc.org/asp/DownloadDocument.asp?DocumentID=471&Rand=3%2F7%2F2013+9%3A24%3A52+AM&Filename=2013-14%20upwp_agftc.pdf
Housing	HCR		Housing Development Fund		
		Community Development Block Grant		The NYS CDBG program provides financial assistance to eligible cities, towns, and villages with populations under 50,000 and counties with an area population under 200,000, in order to develop viable communities by providing decent, affordable housing, and suitable living environments, as well as expanding economic opportunities, principally for persons of low and moderate income.	http://www.nyshcr.org/Programs/NYS-CDBG/
		New York Main Street Program		The program provides funds and technical assistance to units of local government, business improvement districts, and other not-for-profit organizations that are committed to revitalizing historic downtowns, mixed-use neighborhood commercial districts, and village centers. Funds are targeted for commercial/residential improvements such as façade renovations, interior commercial and residential building upgrades, and streetscape enhancements. Funds are not available for new construction.	http://www.nyshcr.org/Programs/NYMainStreet/
		Rural Area Revitalization Program		The purpose of the RARP program is to provide financial/technical resources to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in rural areas of the state. Provides grants to not-for-profit community based organizations and charitable organizations that have a direct interest in improving the health, safety and economic viability of a rural area or other aspects of the area environment that are related to community preservation or renewal activities.	http://www.nyshcr.org/Programs/RARP/
		Urban Initiatives Program		The purpose of the Urban Initiatives program is to provide -financial/technical resources to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in urban neighborhoods. This program will provide grants to not-for-profit community based organizations and charitable organizations that have a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood or other aspects of the area environment that are related to community preservation or renewal activities.	http://www.nyshcr.org/Programs/UrbanInitiatives/

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Housing cont.	HCR		Low Income Housing Trust Fund Program	HTFC provides funding to eligible applicants to construct low-income housing, to rehabilitate vacant, distressed or underutilized residential property (or portions of a property), or to convert vacant or underutilized non-residential property to residential use for occupancy by low-income homesteaders, tenants, tenant-cooperators or condominium owners. HTF can also provide seed funding to eligible non-profit applicants who need financial assistance in developing a full HTF project application.	http://www.nyshcr.org/Programs/HousingTrustFund/
			Federal Low Income Housing Tax Credit	The Low-Income Housing Credit Program (LIHC) provides a dollar-for-dollar reduction in federal income tax liability for project owners who develop rental housing that serves low-income households with incomes up to 60% of area median income. Federal subsidies such as the Community Development Block Grant (CDBG), HOME and USDA RHS 515 have been used in conjunction with the LIHC. On the State level, the LIHC has been allocated to projects employing Housing Trust Fund and New York State HOME Program subsidies.	http://www.nyshcr.org/Programs/LIHC/
			State Low Income Tax Credit	Project owners use the LIHC allocation as a gap-filler in their development budgets. The LIHC is turned into equity to fill the project gaps through the sale of the project and the credit to investors. DHCR is the lead Housing Credit Agency for New York State. Other Housing Credit Agencies are the New York State Housing Finance Agency, the New York City Department of Housing Preservation and Development and the Development Authority of the North Country.	http://www.nyshcr.org/Programs/SLIHC/
			HOME Investment Partnership Program	The HOME Program funds a variety of activities through partnerships with counties, towns, cities, villages, private developers, and community-based non-profit housing organizations. The program provides funds to acquire, rehabilitate, or construct housing, or to provide assistance to low-income home-buyers and renters.	http://www.nyshcr.org/Programs/NYSHome/
			Homes for Working Families	The Homes for Working Families Program (HWF) provides gap financing through low-interest loans for capital costs and related acquisition and soft costs associated with the new construction or rehabilitation of affordable housing. The primary financing sources for HWF projects must be tax-exempt bonds which are allocated from the State's Private Activity Bond Volume Cap and 4% Low-Income Housing Tax Credit issued in conjunction with the bonds.	http://www.nyshcr.org/Topics/Developers/MultifamilyDevelopment/HomesForWorkingFamilies/
			80/20 New Constrction Housing Program	NYS Housing Finance Agency (HFA) offers tax-exempt financing to multifamily rental developments in which at least 20% of the units are set aside for low-income residents-so-called "80/20" projects.	http://www.nyshcr.org/Topics/Developers/MultifamilyDevelopment/8020HousingProgram.htm
			Access to Home Program	The Program provides financial assistance to property owners to make dwelling units accessible for low- and moderate income persons with disabilities.Grants are to be made to municipalities and eligible not-for-profit entities that have substantial experience in adapting or retrofitting homes for persons with disabilities. Adaptation work must meet the needs of those with physical disabilities and seniors with an age-related disability.	http://www.nyshcr.org/Programs/AccessToHome/
			RESTORE Program	Residential Emergency Services to Offer (Home) Repairs to the Elderly (RESTORE) Program funds may be used to pay for the cost of emergency repairs to eliminate hazardous conditions in homes owned by the elderly when the homeowners cannot afford to make the repairs in a timely fashion. Eligible applicants are permitted to design programs as grants, loans, or both. Eligible program administrator applicants are not-for-profit corporations and municipalities.Funds must be used for one- to four-unit dwellings that are owned and occupied by eligible households, and work undertaken cannot exceed $5,000 per building.	http://www.nyshcr.org/Programs/RESTORE/

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Housing cont.	HCR		AHC Homeownership Program	The Affordable Home Ownership Development Program (AHOD Program) provides grants to governmental, not-for-profit and charitable groups to build, acquire/rehabilitate or improve homes for low and moderate income families. The Program has two primary goals: to promote home ownership among families of low and moderate income for whom there are few affordable home ownership alternatives in the private market; and to stimulate the development, stabilization and preservation of New York communities. Grants are not made directly to individual homebuyers or homeowners, but to government and non-government sponsors (Grantees) that develop affordable housing or assist homeowners in funding necessary repairs.	http://www.nyshcr.org/Topics/Municipalities/AHCGrants/
			Weartherization Assistance Program	The Weatherization Assistance Program assists income-eligible families and individuals by reducing their heating/cooling costs and improving the safety of their homes through energy efficiency measures. Energy efficiency measures performed through the program include air sealing (weatherstripping, caulking), wall and ceiling insulation, heating system improvements or replacement, efficiency improvements in lighting, hot water tank and pipe insulation, and refrigerator replacements with highly efficient Energy Star rated units. Both single-family and multi-family buildings are assisted.	http://www.nyshcr.org/Programs/Weatherization Assistance/
			SONYMA	The State of New York Mortgage Agency (SONYMA) offers five mortgage programs to assist first-time homebuyers with the purchase of a home in New York State. Our five mortgage programs feature competitive interest rates, low down payment requirements, flexible underwriting guidelines, no prepayment penalties and down payment assistance.	http://www.nyshcr.org/Topics/Home/Buyers/SONYMA/SONYMAProductsfor FirstTimeHomebuyers.htm
			SONYMA Mortgage Insurance	SONYMA's Mortgage Insurance Fund (MIF) promotes the preservation and revitalization of communities across the State of New York by providing insurance on mortgage loans that encourages investment of capital by commercial and public lenders.	http://www.nyshcr.org/Agencies/MIF/
			Taxable Mortgage Initiative	The Taxable Mortgage Initiative (TMI), reduces the time, cost and complexity of taxable first mortgage debt financing by eliminating the need to issue taxable bonds to finance affordable housing. The TMI is designed to provide affordable housing opportunities to persons of low, moderate and middle income. Therefore, income is restricted to 60% of Area Median Income (AMI) on projects receiving a 9% Low Income Housing Tax Credit (LIHTC) allocation.	http://www.nyshcr.org/Topics/Developers/Multifamily Development/Taxable MortgageInitiative.htm
			Second Mortgage Subsidy Loans	The NYS Housing Finance Agency (HFA) offers Second Mortgage "Subsidy Loans" to developers that receive construction or permanent financing from HFA. Subsidy Loans are subordinate, low interest rate loans available to projects that require subsidies to maximize the number of affordable units and to reach lower income or special needs populations. A Subsidy Loan may be used in conjunction with subsidies provided by other federal, state or local agencies.	http://www.nyshcr.org/Topics/Developers/Multifamily Development/Second MortgageSubsidyLoans.htm
			501(c)(3) Bond Financing	The 501(c)(3) Bond Financing Program offers financing to not-for-profit organizations for the creation and rehabilitation of affordable housing. Eligible projects include those acquired from a not-for-profit owner or those acquired from another not-for-profit organization. All financings must further the Agency's public purpose, which is to maximize the benefits to low, moderate and middle income persons. Subsidy financing, which may take the form of a subordinate loan or grant, may be available from federal, state and local sources. Low Income Housing Tax Credits are not available under this program.	http://www.nyshcr.org/Topics/Developers/
			Public Housing Modernization Program	NYS's Public Housing Modernization Program provides grants to public housing developments where rental income is insufficient and funds are unavailable from other sources for needed repairs and improvements. Only State-aided developments not receiving federal operating subsidies are eligible for grants. Funds are appropriated on an annual basis.	http://www.nyshcr.org/Programs/Modernization/

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Water/Sewer	DEC		Water Quality Improvement Project Program	Wastewater Facilities. The NYS DEC supports water quality improvements through the Water Quality Improvement Project (WQIP) Statewide Grant Program. The WQIP program is a competitive, reimbursement grant program that directs funds from the NYS Environmental Protection Fund to projects that reduce polluted runoff, improve water quality and restore habitat in New York's waterbodies.	http://www.dec.ny.gov/pubs/4774.html
	DEC / EFC	Clean Water State Revolving Fund Engineering Planning Grant		Provides low-interest financing of wastewater infrastructure projects. NYS EFC, in conjunction with NYS DEC, will offer grants to municipalities to help pay for the initial planning of eligible Clean Water State Revolving Fund (CWSRF) water quality projects. Up to $2 million has been made available for this program. The CWSRF Engineering Planning Grant will assist municipalities facing economic hardship with the engineering and planning cost of CWSRF eligible water quality projects. Grants of up to $30,000 (with a 20% required local match) will be provided to finance activities including engineering and/or consultant fees for engineering and planning services for the production of an engineering report. Successful applicants will use the engineering report when seeking financing through the CWSRF program to further pursue the identified solution.	http://www.dec.ny.gov/pubs/81196.html
			Clean Water State Revolving Fund	The Clean Water State Revolving Fund (CWSRF), provides low-interest rate financing to municipalities to construct water quality protection projects such as sewers and wastewater treatment facilities. A variety of publicly-owned water quality improvement projects are eligible for financing. Eligible projects include point source projects such as wastewater treatment facilities and nonpoint source projects such as stormwater management projects and landfill closures, as well as certain habitat restoration and protection projects in national estuary program areas.	http://www.efc.ny.gov/Default.aspx?tabid=82
	DOH / EFC		Drinking Water State Revolving Fund	Provides low-interest financing of drinking water infrastructure projects. The program provides a significant financial incentive for public and private water systems to finance needed drinking water infrastructure improvements (e.g. treatment plants, distribution mains, storage facilities, etc.) The DWSRF provides market rate financing, subsidized low-interest rate financing and limited grants for construction of eligible water system projects. For communities with demonstrated hardship, interest rates can be reduced to as low as zero percent. In the event of severe financial hardship, financial hardship grants pursuant to the Federal Safe Drinking Water Act may be available.	http://www.efc.ny.gov/Default.aspx?tabid=83
	DOS		Local Governement Efficiency Program	The Local Government Efficiency (LGe) Program provides technical assistance and competitive grants to local governments for the development of projects that will achieve savings and improve municipal efficiency through shared services, cooperative agreements, mergers, consolidations and dissolutions. NYS is committed to working with local governments to control costs while maintaining the quality service delivery provided by New York's local governments.	http://www.dos.ny.gov/lg/lge/
		EPF Local Waterfront Revitalization Program		Preparation of watershed management plans. Protection and restoration of water quality and habitats. Feasibility studies, sewer system mapping, stormwater treatment.	http://www.dos.ny.gov/communitieswaterfronts/WFRevitalization/index.html

Capital Region Economic Development Council Infrastructure Resource Matrix

Water/Sewer cont.

Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
EFC / DEC / DOH		EFC / DEC - Clean Water State Revolving Fund (Engineering Planning Grant) DOH / EFC - Drinking Water State Revolving Fund	Grants to prepare engineering reports for CWSRF projects. The Drinking Water State Revolving Fund (DWSRF) is administered jointly by EFC and DOH, providing a significant financial incentive for public and private water systems to finance needed drinking water infrastructure improvements (e.g. treatment plants, distribution mains, storage facilities, etc.) The DWSRF provides market rate financing, subsidized low-interest rate financing and limited grants for construction of eligible water system projects. For communities with demonstrated hardship, interest rates can be reduced to as low as zero percent. In addition, in the event of severe financial hardship, financial hardship grants pursuant to the Federal Safe Drinking Water Act may be available. Complete applications for the DWSRF financing are submitted to EFC, the financing is obtained through EFC, and repayments are made to EFC. DOH manages the technical review for DWSRF projects and regulates the safety and adequacy of drinking water delivered by public water systems in New York State.	http://www.efc.ny.gov http://www.dec.ny.gov/pubs/81196.html
DOH / EFC		Drinking Water State Revolving Fund	Drinking Water Facilities. Provides low-interest financing of drinking water infrastructure projects. The Drinking Water State Revolving Fund (DWSRF), administered jointly by EFC and NYSDOH, provides a significant financial incentive for public and private projects.	http://www.efc.ny.gov/Default.aspx?tabid=83
ESD	Business Programs		Empire State Development provides a variety of assistance aimed at helping businesses - both international companies looking to make a move or small businesses wanting to access capital.	http://www.esd.ny.gov/businessprograms.html
HCR	Community Development Block Grant		The NYS CDBG program provides financial assistance to eligible cities, towns, and villages with populations under 50,000 and counties with an area population under 200,000, in order to develop viable communities by providing decent, affordable housing, and suitable living environments, as well as expanding economic opportunities, principally for persons of low and moderate income.	http://www.nyshcr.org/programs/nys-cdbg
HRVG		Greenway Communities Grant/Program	Greenway Communities Grant Program provides grant funding to help communities develop and implement a vision for their future that balances Greenway criteria of economic development considerations with resource protection and promotion objectives.	http://www.hudsongreenway.ny.gov/GrantFunding/CommunityGrants.aspx
		Greenway Compact Grant/Program	The Compact Grant Program provides 50% matching grants, on a reimbursement basis, for municipalities that develop, approve and implement a regional compact strategy that is consistent with the Greenway criteria and the Greenway Act. The 50% local match may be provided in the form of an in-kind or other non-monetary contribution.	http://www.hudsongreenway.ny.gov/GrantFunding/CompactGrants.aspx
OCR	Community Development Block Grant		The Office of Community Renewal administers the Community Development Block Grant (CDBG) program for the State of New York. The NYS CDBG program provides financial assistance to eligible cities, towns, and villages with populations under 50,000 and counties with an area population under 200,000, in order to develop viable communities by providing decent, affordable housing, and suitable living environments, as well as expanding economic opportunities, principally for persons of low and moderate income.	http://www.nyshcr.org/Programs/NYS-CDBG/

Capital Region Economic Development Council Infrastructure Resource Matrix

	Agency	CREDC CFA Funding Programs	Non CREDC CFA Funding Programs	Program Description	Web link
Water/Sewer cont.	USEDA		Green Growth: Environmentally Sustainable Economic Development	By encouraging environmentally-sustainable economic development, EDA helps to cultivate innovations that can fuel green growth in communities suffering from economic distress. Through investments in emerging regional clusters related to energy, cutting-edge environmental technologies, green building practices, and sustainable communities that connect jobs to workers through smart location choices, EDA is well-positioned to foster job creation by limiting the Nation's dependence on fossil fuels, enhancing energy efficiency, curbing greenhouse gas emissions, and protecting natural systems.	http://EDA.gov
	USDA		Rural Development	Water and Environmental Programs (WEP) provides loans, grants and loan guarantees for drinking water, sanitary sewer, solid waste and storm drainage facilities in rural areas and cities and towns of 10,000 or less. Public bodies, non-profit organizations and recognized Indian tribes may qualify for assistance. WEP also makes grants to nonprofit organizations to provide technical assistance and training to assist rural communities with their water, wastewater, and solid waste problems.	http://www.rurdev.usda.gov/uwep_HomePage.html
Waterways	Canal Corp	Canalway Grant Program		The Canal Corporation Capital Program funds programmed canal and canalway trail infrastructure repairs as approved by the NYS Thruway Authority/Canal Corporation Board. This program may present opportunities to link related community infrastructure projects to ongoing Capital Program expenditures for potential savings and coordinated construction activities.	http://www.canals.ny.gov/community/grant.html
	DEC		Water Quality Improvement Project Program	The NYS DEC supports water quality improvements through the Water Quality Improvement Project (WQIP) Statewide Grant Program. The WQIP program is a competitive, reimbursement grant program that directs funds from the NYS Environmental Protection Fund to projects that reduce polluted runoff, improve water quality and restore habitat in New York's waterbodies - nonpoint source projects like stream bank restoration and aquatic habitat restoration.	http://www.dec.ny.gov/pubs/4774.html
	DOS	EPF Local Waterfront Revitalization Program		Planning, feasibility studies and implementation for land and water based trails.	http://www.dos.ny.gov/communitieswaterfronts/WFRevitalization/index.html

*note: The A/GFTC UPWP is not a funding program, per se. However, municipalities may request that A/GFTC include a planning or conceptual design project on the UPWP. This must be related to transportation, but can also include other related topics as well. All A/GFTC member municipalities receive an annual solicitation for the UPWP. Task 2.8 allows for small-scale planning/engineering projects, to be completed by on-call engineers, with a project maximum value of $20,000. The engineering assistance program is an open solicitation; member municipalities may request these projects at any time, until annual funding runs out.

Capital Region Economic Development Council
Project Information Worksheet

Organization Name:

Project Name:

Organization Website:

Project Location/Address:

Project Point Person:

Point Person Phone Number:

Point Person Email:

CFA # (if Applicable):

PROJECT BUDGET

Use of Funds	Expended (Y/N)	Amount	Source of Funds	Committed (Y/N)	Amount

PROJECT DESCRIPTION

(Include specific project activities, deliverables and other project participants)

ALIGNMENT WITH CREDC'S STRATEGIC VISION

ORGANIZATION BACKGROUND

PROJECT STATUS (Check statement that applies)

- ❒ Not started.
- ❒ The project does not have permits and approvals but implementation can be achieved within 18 months. Project has a valid Business Plan or Market Study.
- ❒ The project has permits and approvals, or is under design and can be achieved within 18 months. Project has valid Business Plan or Market Study.
- ❒ The project is currently underway and will be completed within 18 months.
- ❒ The project is complete.

CREDC Project Information Worksheet *cont.*

CHALLENGES AND/OR POTENTIAL OBSTACLES

(Address regional and state-level regulatory and legislative obstacles. e.g., zoning, state regulatory or policy constraints and describe actions needed to advance the project. What action/project/policy change is proposed and how will the change be implemented?)

JOB CREATION AND/OR RETENTION

Number of jobs created as a result of the project:		Number of jobs in jeopardy (retained) if the project does not proceed:	
Total Payroll of jobs created:		Total payroll of jobs retained:	

COMMUNITY DEVELOPMENT BENEFIT

(Describe how the project improves the Capital Region community. Include a discussion of whether the project, by itself or in combination with other proposed projects, will benefit underserved communities and have an impact on distressed areas.)

FEASIBILITY

(If you are or will be seeking state funding, describe the need for the funding request. Also, describe how the project will proceed if state financial assistance is not awarded.)

Notes

Sponsors


ADIRONDACK
GATEWAY
COUNCIL


EDC
Warren County, NY


ARCC


ALBANY-COLONIE
REGIONAL
CHAMBER
CAPITAL REGION SMART


COLUMBIA COUNTY
Chamber
of commerce


THE
CHAMBER OF
SCHENECTADY COUNTY
Champion for Business


THE
SARATOGA
COUNTY
CHAMBER
www.saratoga.org


Fulton Montgomery
REGIONAL CHAMBER OF COMMERCE


RENSSELAER COUNTY
REGIONAL
CHAMBER of COMMERCE
SINCE 1900


GREAT NORTHERN CATSKILLS
chamber of commerce


CDTA


The
Desmond
Hotel & Conference Center


modern mix
marketing


GLOBALFOUNDRIES®


KeyBank


HARRIS BEACH PLLC
ATTORNEYS AT LAW


CDTC
CAPITAL DISTRICT
TRANSPORTATION COMMITTEE

Special Thanks to the Steering Committee

Steven Axelrod, Northern Rivers Family Services
James Baldwin, Questar III BOCES
Edward Bartholomew, Warren County EDC
Dennis Brobston, Saratoga County EDC
Bryant Cassella, Key Bank
David Cooperrider, Case Western Reserve University
Joseph Corr, North Colonie Central School District
Deborah Devine, NYS Homes & Community Renewal
Michael DiAcetis, National Grid
Mark Eagan, Albany Colonie Regional Chamber of Commerce
Bill Hart, Irving Tissue
Stacey Fantauzzi, Socha Management
Rocky Ferraro, Capital District Regional Planning Commission
William Flaherty, National Grid
Michael Franchini, Capital District Transportation Committee
Richard Hendrick, Albany Port Commission
Linda Hill, National Grid
Monica Kurzejeski, City of Troy
Jeff Lawrence, Center for Economic Growth
Sharon Leighton, NYS Canal Corporation
Gary Male, C.T. Male & Associates
Thomas McCarroll, St. Peters Healthcare
Douglas Melnick, City of Albany
Jacki Meola, Montgomery Business Development Center
Amber Mooney, Center for Economic Growth
Robert Pasinella, Rensselaer County IDA
Michael Perrin, Governor's Office, NY Works Taskforce
Suzanna Randall, NYS Environmental Facilities Corporation
David Rooney, HelioSage Energy
Dr. Laura Schweitzer, Union Graduate College
Sean Shortell, Office of Congressman Paul Tonko
Emily Smaldino, National Grid
James E. Spencer, Rensselaer Technology Park
Richard Straut, Barton & Loguidice, P.C.
Charles Steiner, Schenectady County Chamber of Commerce
F. Michael Tucker, Center for Economic Growth
Jeff Stone, Kinderhook Bank
Cheri Warren, National Grid
James White, Rensselaer County Planning & Economic Development
Arnie Will, Empire State Development
Steve Wilson, CHA

WEATHERHEAD SCHOOL OF MANAGEMENT
CASE WESTERN RESERVE UNIVERSITY

Created In Collaboration With Professor David L. Cooperrider
www.DavidCooperrider.com

CM5558 (10/13)

Tech Valley and Beyond Action Teams

NY Sites Action Team: The NY Sites Action Team was formed to facilitate the creation of a single, centralized, easily accessible online resource for Tech Valley businesses, municipalities, students, developers and residents to access the infrastructure information they need about their neighborhoods, cities and towns to help plan, visualize, analyze and take action through one mapping application portal/viewer (MAP).

Resource Recovery Action Team: The Resource Recovery Action Team's vision is to develop sustainable water and wastewater infrastructure through improving, fixing and expanding water and sewer capacity. They plan to implement their vision by creating a Tech Valley Resource Recovery Consortium that facilitates innovation in transforming wastes to revenue and generating commodities.

21st Century Grid Action Team: The 21st Century Grid Action Team was formed to develop a sustainable and cost effective system of utilities which advances innovative technologies, cleaner energy, reliable service and drives economic growth to the residents and businesses in Tech Valley.

Communications Action Team: The Communications Action Team was formed to create a comprehensive Communications plan for the 8-county region (Albany, Schenectady, Rensselaer, Greene, Columbia, Saratoga, Washington, Warren).

Transportation and Walkability Action Team: The Transportation and Walkability Action Team was formed to create a full spectrum transportation and mobility strategy for Tech Valley.

WaterWorks H2O Action Team: The WaterWorks H20 Action Team was formed to implement Water "Works" History 2 Opportunity, a region wide public-private alliance that is built on the vibrant history of our region's waterfront to create a world class destination. The team's vision is to develop sustainable infrastructure that will connect our region to renowned natural and historic resources.

Fast Lane for Approvals Action Team: Accelerated Regulatory Quantified Efficient System (ARQES): The Fast Lane for Approvals Action Team was formed to create a system designed to improve and expedite the approval process for Developer Projects at all municipal levels -- Village, Town or City.

Orange Action Team (Capital Region United): The purpose of Capital Region United is to leverage, promote, and celebrate the heritage, resources and potential of the Capital Region with the goal of championing a solid platform of principles and practices for sustainable growth that benefits individuals, communities, enterprises and the environment across the region and "beyond".

Students Action Team (Capital Region Youth Infrastructure Council): The Students Action Team was created to form The Capital Region Youth Infrastructure Council (CRYIC). The goal of CRYIC is to promote youth study fields related to sustainable infrastructure.

Action Team Updates

The **NY Sites Action Team** has been busy identifying the most commonly desirable infrastructure information needed and how to present this information in a way that provides a competitive advantage for the region, helps grow sustainable communities and becomes one of the core information assets that set Tech Valley apart.

The **Resource Recovery Action Team** recently supported a CFA application by MICROrganic Technologies, Inc. The application was for completion of a Regional Organic Waste Market Study. The benefit of the study will help identify organic waste streams that can be used as resources to convert waste to energy or other usable products. The team is focusing on building relationships and exploring opportunities with the MicroGrid team, the Albany County Anaerobic Digester project and the Adirondack Gateway Council communities in advancing their regional sewer project.

The **21st Century Grid Action Team** intends to develop actions in the eight-county region (Albany, Schenectady, Rensselaer, Greene, Columbia, Saratoga, Washington, Warren) which can be adapted for other regions. The team is focusing on power generation, transmission, distribution, usage, and regulations and will endeavor to identify ways to invest in the regional infrastructure of energy networks in ways that can enhance innovation while reducing the stress placed on the environment, natural resources and public health.

The **Communications Action Team** has identified potential partners, data sources, action items, and funding resources to enhance communications. They plan to continue making connections and identifying resources needed to implement a broadband Urban Plan. They plan to connect with the 21st Century Grid and NY Sites Action Teams.

The **Transportation and Walkability Action Team** is working on increasing the amount of multi-use trails throughout the region, implementing Complete Streets Policies and Practices throughout Tech Valley and assisting in the development of Bus Rapid Transit Route Network. The Transportation and Walkability team has been working closely with Capital District Transportation Committee's (CDTC) long established Pedestrian and Bike Committee.

The **WaterWorks H20 Action Team** is seeking to inventory waterfront plans through working with local educational institutions on an internship based program. Goals of this inventory will include identifying commonalities of municipalities, assessing sustainability goals of the region and prioritizing plan recommendations on a regional impact and providing a baseline inventory of existing land uses. The team is also working on identifying stakeholders within the eleven county region that can help promote and complement the Mighty Waters Initiative developed under Congressman Paul Tonko as well as the Regional Economic Development Councils (REDC) and organizations doing similar work.

The **Fast Lane for Approval Action Team** plans to research ways to consolidate processes, allow for simultaneous processing, and reduce or eliminate additive subjective requirements at the local levels. They plan to seek input from State, County, and Local municipal agencies and/or departments, planning experts, developers and other officials.

The **Orange Action Team/Capital Region United** plans to develop an innovative research based approach to economic (enterprise) development that can be shared by numerous stakeholders across the region, create an inventory or catalog/clearinghouse of the numerous ongoing or planned infrastructure investments, establish a clear communications plan and implement criteria-based measures that provide a balanced view of the success of the many efforts.

The Students Action Team plans to develop a regional incubator program, new courses at college and high school levels in infrastructure design and a website that serves as a clearinghouse for regulatory approvals and a way to share best practices and mapping assets.

Welcome

Cheri Warren, National Grid
F. Michael Tucker, CEG

January 6, 2014
National Grid

Conference Highlight Video

[Video]

Website Overview

Connecting Bold Ideas to Current Projects & Activities

Kimberly Finnigan, Cooper Erving & Savage
Alyson Slack, CEG

Tech Valley & Beyond Infrastructure Forum Accountability Structure

Plenary
- Champion Vision; Affirm Direction; Advocate for What Works; Promote and Report Data/Results
- Meets annually

Bold Idea Action Team A | **Bold Idea Action Team B** | **Bold Idea Action Team C**

Coordinating Committee
- Provide recommendations for process, scope and strategy
- Engage and support action teams
- Marshal resources
- Support structure through staffing, convening and sustaining
- Communicates progress back to broader constituencies
- Meets monthly initially

Leadership Council
- Strategic Guidance; Commit organizational resources
- Break down organizational/political barriers
- Meets quarterly

Bold Idea Action Team

- Practitioners and experts
- Passion for the topic
- Uses detailed analysis to determine specific strategies
- Adopts and scales data-driven practices ratified by the CC and LC
- Works together to implement and support strategic priorities

Action Team

- Develops a Team Charter and Action Plan to obtain stated result
- Shares plans with CC for review/feedback
- Shares and uses relevant data, resources, and expertise
- Elevates issues/concerns to the CC (e.g. policy, systems, data needs, etc.)
- Helps to ensure the right members are involved

Action Team Charter

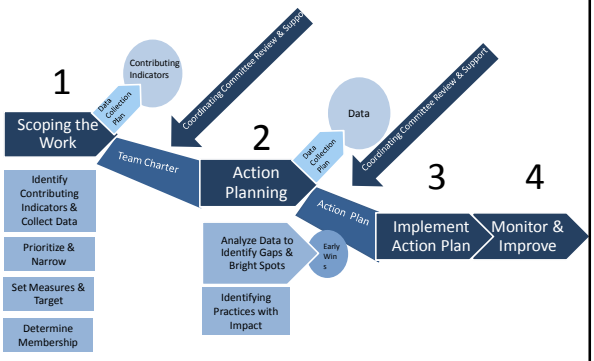
- Tool for Action Team members to be accountable to each other and to the Forum
- Living document that Team members agree to and is periodically revisited as the Team gets deeper into analysis and progresses further
- Components include: purpose statement, problem statement, project scope, measurement and targets, membership, operating principles
- Sample and template to be provided

Action Plan

- Outlines strategies the Team will work on during a given time frame
- Usually covers at least one year to allow for implementation and data collection
- All Team meetings will be based around the plan and progress measured against its elements
- Components include: strategies, action steps, responsibilities, timelines, resources
- Sample and template to be provided

10

Collaborative Action Process



Q & A

Action Teams

Wrap Up / Adjourn

Looking Smart?

Community Development Institute
Water Resources Infrastructure – A Critical Piece of Community Development
NYS and Smart Growth: Policy Triangulations, Coherence, Tensions
Honors Haven Resort, Ellenville NY
10:45-12 September 18

David Kay
CaRDI
dlk2@cornell.edu

Smart Growth – What is It?

"**Smart growth** is ***well-planned*** development that protects open space and farmland, revitalizes communities, keeps housing affordable and provides more transportation choices."

(one definition of many)

Smart Growth America

Smart Growth – NY Infrastructure Law (SGPIPA)

The "Where Should Infrastructure Development Be Focused" Criteria

- **Initiate projects near municipal centers**
- **Bolster projects in developed areas**

- ***Support downtown revitalization***
- ***Encourage brownfield redevelopment***
- ***Improve existing infrastructure***
- ***Bolster projects in areas designated for development***

Smart Growth – NY Law (SGPIPA)

Transportation Criteria

- **Reduce automobile dependency**
- ***Improve public transportation***

Land Use Diversity Criteria

- **Encourage mixed land uses**
- ***Promote diversity and affordability of housing***

Procedural, Inclusion Criteria

- ***Community based* planning and collaboration**
- **Building and land use codes fair and predictable**
- ***Coordinate between state and local government***

Smart Growth – NY Law (SGPIPA)

Aesthetic criterion

- ***Beautification of public spaces***

Stewardship/sustainability criteria

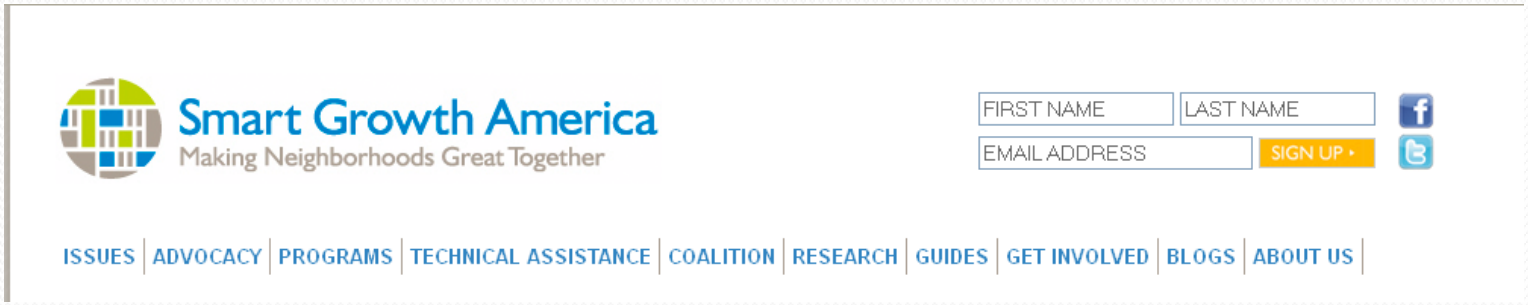
- **Protect the state's resources**
- ***Reduce greenhouse gas emissions***
- ***Consider the needs of future generations***

Smart Growth and Water and Sewer Infrastructure

The infrastructure – growth relationship:

- ✓ Infrastructure impacts growth (induces/enables/restricts)
  - ✓ lowers cost/increases feasibility of development
- ✓ Growth impacts infrastructure
  - ✓ Service demand vs. capacity limits
  - ✓ Efficiency and costs per household
  - ✓ Influences water quality, scale/type of WW management

Smart Growth and Water and Sewer Infrastructure



"Where and how drinking water and wastewater infrastructure is designed, approved and built largely governs where and how growth occurs."

Smart Growth and Water and Sewer Infrastructure

Smart Growth:

- ✓ prioritizes development to places where infrastructure capacity is underutilized by existing population (infill)
- ✓ privileges investment in existing systems over building of new systems

Smart Growth: The Role of States

Effective comprehensive planning is "the primary means of implementing policies" that embody smart growth priorities

(The American Planning Association's formal policy guide on smart growth, 2012).

Many authors: key state role is in mandating and/or incentivizing comprehensive planning

In NY, no mandate but at least some version of a comprehensive plan now exists in about three-fourths of the State's cities, towns and villages (Kay 2009)

Smart Growth: The Role of States

Smart Growth America
Making Neighborhoods Great Together

FIRST NAME | LAST NAME
EMAIL ADDRESS | SIGN UP

ISSUES | ADVOCACY | PROGRAMS | TECHNICAL ASSISTANCE | COALITION | RESEARCH | GUIDES | GET INVOLVED | BLOGS | ABOUT US

POLICY GUIDE

State and Regional Policy Guide

Comprehensive Approaches
Agriculture
Economic Development

Change the criteria for water and wastewater infrastructure

Action

Where and how drinking waterdrinking water and wastewater infrastructure is designed, approved and built largely governs where and how growth occurs. States should mandate that water and wastewater infrastructure project approvals be prioritized to place smart growth development in line ahead of more conventional development. Some states inadvertently penalize more desirable projects by limiting public funding for sewer expansions that are needed to support infill development.

ENVIRONMENTAL POLICIES

1. Adopt a green infrastructure approach to open space, habitat and water resources
2. Identify natural lands and open space for preservation
3. Establish dedicated state funding for land conservation

State agencies can give preference to water and wastewater projects that will serve higher-density development located in or near existing developed areas, near public transportation and separated from critical environmental resources…

Smart Growth: The Role of States

"The recent history of smart growth suggests that committed leadership, as well as the use of the bully pulpit, is important if policies are to have an impact… States such as Oregon and Maryland — with dedicated, high-profile, statewide smart growth programs — were able to see results…

Anthony Flint. 2011. Despite the Bay State's compact cities and outstanding history, sustainable development isn't always a sure thing there. Planning, Jan issue.

"While there has been significant movement over the years among some states to undertake top-down legislative initiatives on this growth management/smart growth topic, state-level engagement in local planning is highly controversial and potentially unlikely in many other states"

MA: The focus…is on empowering communities to implement smart growth goals rather than smart growth panning itself.

Hamin et al. 2006. Implementing Growth Management: The Community Preservation Act. J of Planning Education & research 26.

Smart Growth: The Role of New York State

- Policy advances are approached pragmatically, incrementally, disjointedly, weighted towards achievable goals rather than overarching high profile policy (see Lindblom 1965)
- Overall, works within existing balance of authority in a local home rule *and* Dillon's rule state
- Smart Growth priorities integrated into other business as usual, branding per se not prominent
  - "weave of policies and legislation that have been drawn through New York's existing institutional fabric"
- Is the longer way round the shorter way home?

Smart Growth Threads: Policy Suite of the State

The Smart Growth Public Infrastructure Policy Act - 2010

- Complete Streets Act – 2011 (transportation choice)
- Land Bank Act – 2011 (revitalize muni centers)
- Historic Preservation Tax Credit – 2006/13 (revitalize muni centers)
- Tax Increment Financing – revision enabling school districts to contribute, address "blight"(revitalize muni centers)
- Community Risk and Resiliency Act pending – SGPIPA amendment to require consideration of resiliency/climate risk

Smart Growth Threads: Policy Suite of the State

- Cleaner Greener funding for sustainability (including smart growth) planning & project implementation
- New York Rising Community Reconstruction funding (sustainability)
- New York Energy Planning Board - smart growth, "location efficiency" prominently featured (GHG reductions, sustainability)
- Climate Action Council & Exec Order 24 (GHG reductions, sust.)
- Interagency/Intra-agency Smart Growth coordination (formal/informal)
- Addition of GHG and Smart Growth questions to revised DEC EA forms
- Regional Economic Development Councils/CFA integration of SGPIPA criteria
- DOT upstream Smart Growth evaluation, eg. Screening Tool
- Etc.

Older:

- Farmland Protection Grants Programs, Agricultural Districts Law, Agricultural Assessment programs, etc.
- Regional land use controls, funding and/or technical assistance (Adirondacks, Tug Hill Commission, Catskills)
- Etc.

Local Government & Smart Growth

- State-mandated measures need to be implemented at the local level. If at the local level there is no political support for the state-mandated measures, regardless of how significant and comprehensive those measures are, their implementation will be weak.

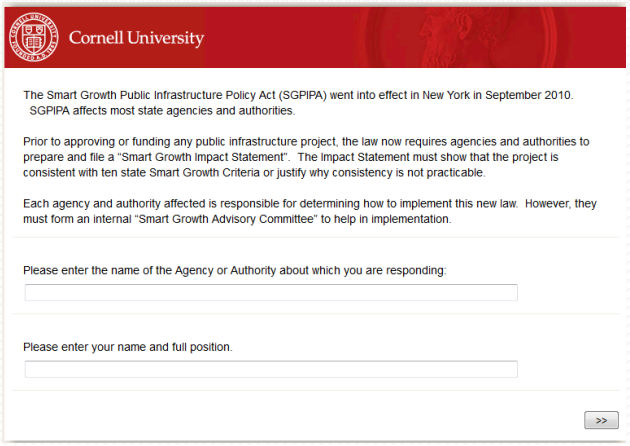
  Jerry Anthony. 2004. Do State Growth Management Regulations Reduce Sprawl? Urban Affairs Review 2004 39: 376

- A preference by states for a grassroots approach over the more strongly state-led initiatives should… address one or more of three goals or preferences:
  - political feasibility/match to state culture
  - overall effectiveness, and/or
  - a response to the difficulty of state-led approaches to effectively address the variability of local needs (flexibility).

  Hamin, Steere and Sweetser 2006. Implementing Growth Management: The Community Preservation Act, Journal of Planning Education and Research 26: 53

Results of local government survey focused on SGPIPA awareness

- Scientifically selected representative sample of 171 of New York's cities, towns and villages (excluding New York City)
- 48% response rate
- Mayors, Supervisors or their immediate deputies comprised 79% of the respondents



Cornell University

The Smart Growth Public Infrastructure Policy Act (SGPIPA) went into effect in New York in September 2010. SGPIPA affects most state agencies and authorities.

Prior to approving or funding any public infrastructure project, the law now requires agencies and authorities to prepare and file a "Smart Growth Impact Statement". The Impact Statement must show that the project is consistent with ten state Smart Growth Criteria or justify why consistency is not practicable.

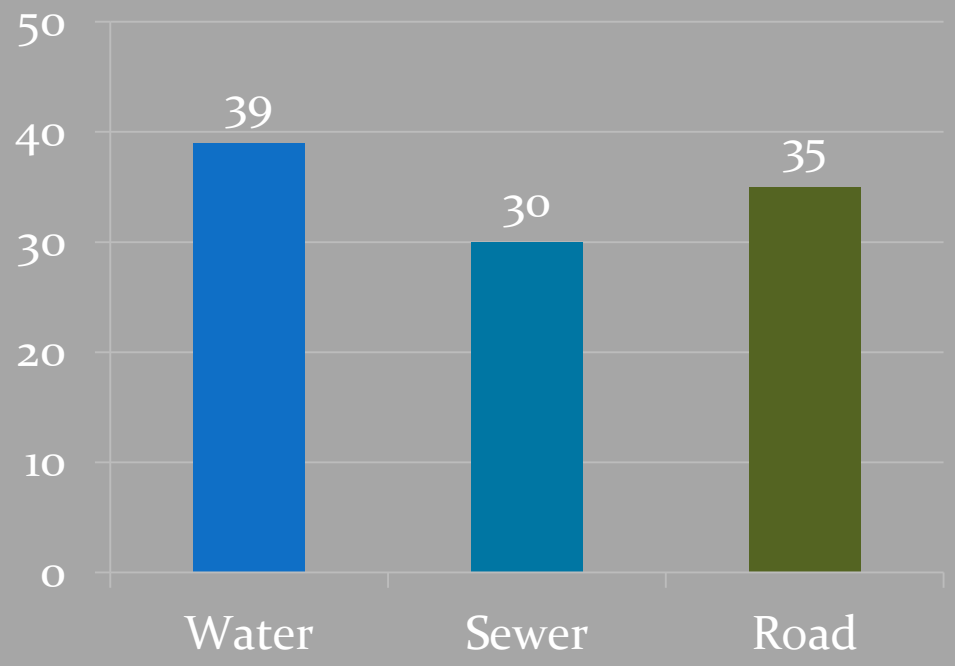
Each agency and authority affected is responsible for determining how to implement this new law. However, they must form an internal "Smart Growth Advisory Committee" to help in implementation.

Please enter the name of the Agency or Authority about which you are responding:

Please enter your name and full position.

>>

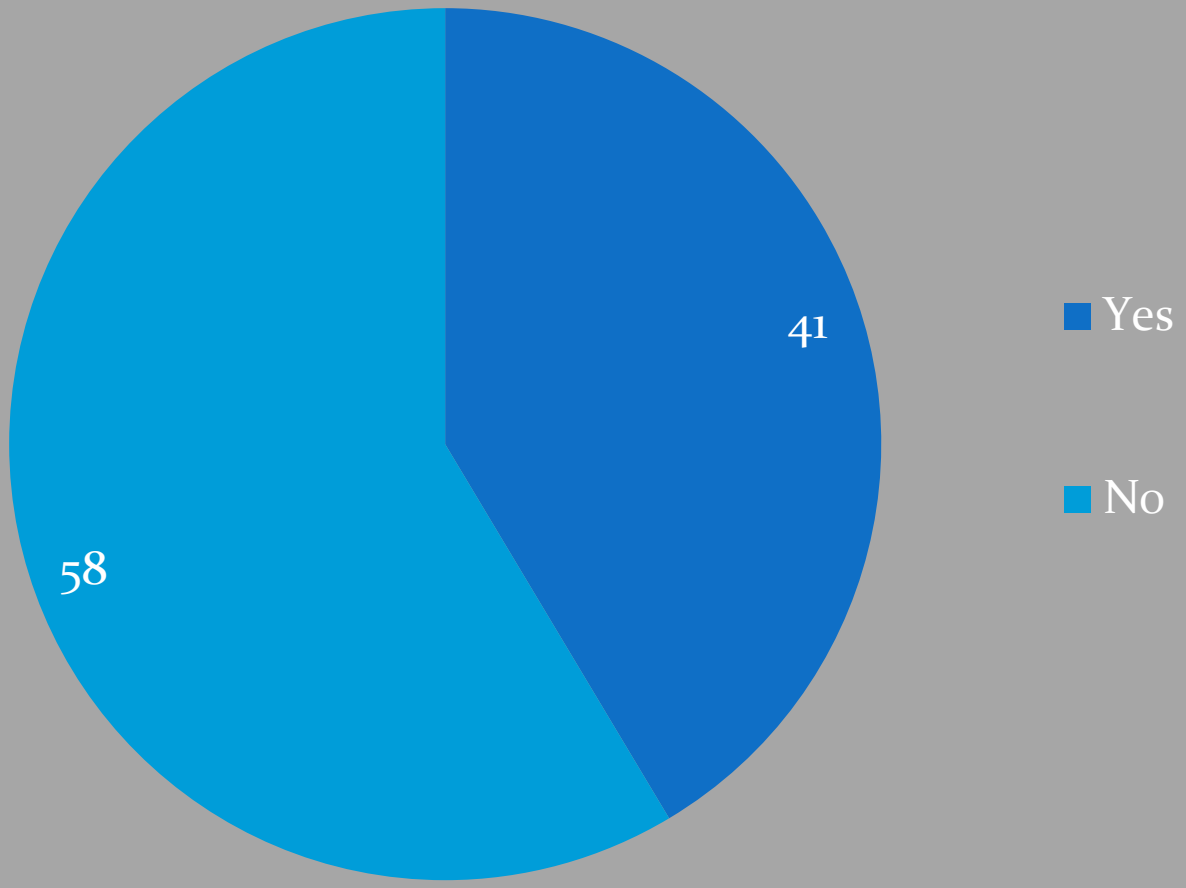
How likely is it that your municipality will seek state financing for any water, sewer, or road infrastructure projects during the next five years? (% saying VERY likely)



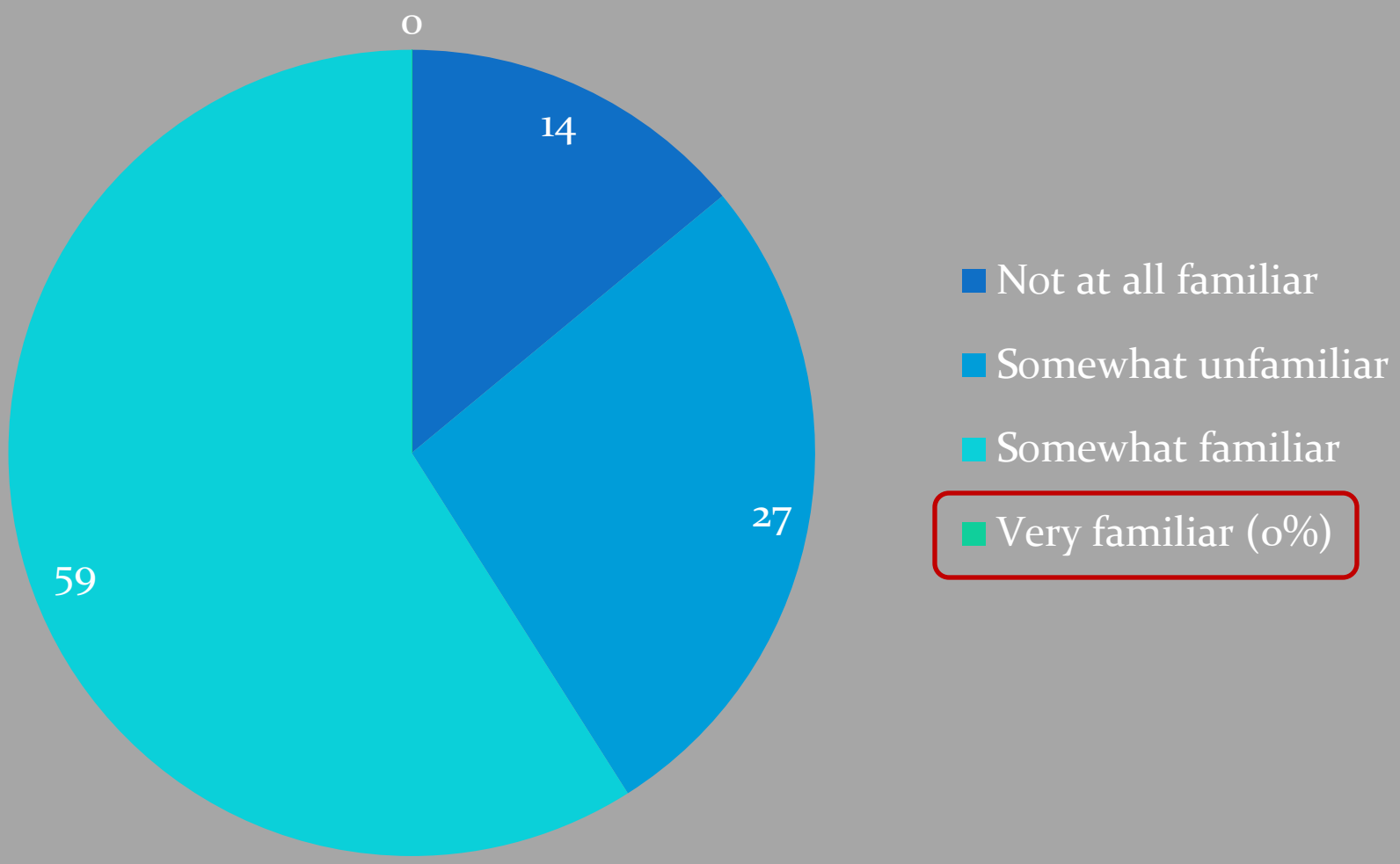
32% : municipality had adopted some kind of policy or law intended to address sprawl.

23%: local policy prioritizes the use of existing infrastructure

Before today, were you aware of the State Smart Growth Act?



(If among the 41% aware), please rate how familiar you are personally with the State Smart Growth Act?



CaRDI/WRI Reports

- Smart Growth in New York State: **Overview**
- **Integration of Smart Growth into New York State Policy and Programs**

SGPIPA

- The Smart Growth Public Infrastructure Policy Act and New York's **Local Governments *(survey responses)***
- Water and Sewer Infrastructure: ***Economic Development Funding*** *and NY's Smart Growth Public Infrastructure Policy Act*
- Water and Sewer Infrastructure: ***Empire State Development, the Western New York Science & Technology Advanced Manufacturing Plant*** *and NY's Smart Growth Public Infrastructure Policy Act*
- Water and Sewer Infrastructure: Implementation of *NY's Smart Growth Public Infrastructure Policy Act Through the* ***Clean Water and Drinking Water State Revolving Funds***

- Contact dlk2@cornell.edu