

Smarter Growth

The Implementation of New York's Smart Growth Public Infrastructure Policy Act (PIPA)



Produced June 2012 by Empire State Future

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Coalition Members

The Empire State Future Coalition consists of local, regional, state, and national organizations and companies dedicated to smart growth and sustainable development. Our combined mailing list reaches over 370,000 New Yorkers from Montauk to Niagara Falls. Empire State Future and its Coalition support each other's common missions reciprocally; together, we are building and binding a collective effort to move smart growth ahead in New York in leaps and bounds.

Adirondack Council
American Farmland Trust
American Institute of Architects – New York
American Institute of Architects – New York State
APA – New York Upstate Chapter
Audubon – New York
Bike Walk Alliance of Westchester & Putnam
Binghamton Regional Sustainability Coalition
Building Performance Lab- CUNY
The Catskill Center
Centerstate Corporation for Economic Opportunity
East Coast Greenway Alliance
Environmental Advocates of New York
FXFowle Architects, PC
Green Options Buffalo
Green Village Consulting – Rochester
Hunt Engineers, Architects and Land Surveyors, PC.
IBI Group
Jonathan Rose Companies
Landmark Society of Western New York
League of Women Voters of New York State
The Leyland Alliance
Local Initiative Support Corporation, Buffalo
Mid-Hudson Pattern for Progress
Natural Resources Defense Council
The Nature Conservancy – New York
NeighborWorks – Rochester
New York Bicycling Coalition
New York Civic
New York League of Conservation Voters

New York Planning Federation
NYS Association of County Health Officials
New York State Urban Council
Orange County Citizens' Foundation
Parks & Trails New York
Partners for a Livable Western New York
Partnership for the Public Good-Buffalo
Preservation League of New York State
Project For Public Spaces
Reconnect Rochester
Regional Plan Association
Rochester Regional Community Design Center
Scenic Hudson
Sierra Club – Atlantic Chapter
Smart Growth America
Sustainable Hudson Valley
Sustainable Long Island
Sustainable Saratoga
Sustainable South Bronx
Sustainable Tompkins
Syracuse First
The Stakeholders, Inc.
Ticonderoga Revitalization Alliance
Tri-state Transportation Campaign
University Transportation Research Center
Urban Land Institute – New York District Council
Vision Long Island
WE ACT for Environmental Justice
Wildlife Conservation Society
W X Y Architecture + Urban Design

Table of Contents

Executive Summary	4
Introduction	5
Why Smart Growth in New York State	6
The Smart Growth Public Infrastructure Policy Act: 2010 (PIPA)	7
Roles of Key Agencies	10
Implementation by Agencies & Authorities	10
Summary of Implementation Progress	12
PIPA Education	13
Impact Statements	14
Economic Development	14
Recommendations	16
Conclusion	18

Executive Summary

In 2009, in response to President Obama's American Recovery and Reinvestment Act efforts, New York State put out a call for shovel-ready infrastructure projects. Almost \$100 billion of proposals were received, mostly for water, sewer, road, bridge, and transit capital project repairs and some for new engines of growth. Unfortunately, the billions of incremental new funding were less than 10 percent of what was proposed. So much needed work was not funded.

Today and for the foreseeable future, New York's communities will need to do far more infrastructure work than there will be funding to do the work. Consequently, it is imperative that New Yorkers seek the most efficient and effective use of any infrastructure money we do have. Future infrastructure projects will increasingly need to concurrently serve our energy, environmental protection, equity and economic growth objectives.

It is for that core need that Empire State Future is committed to the full implementation of the Smart Growth Public Infrastructure Policy Act. ESF believes that if the law is applied and implemented in the spirit determined by lawmakers in 2010 -- with the intent to use such funding as investments for the future -- New York will have gained a powerful tool to select appropriate infrastructure projects that benefit local and regional economies. This will result in a more environmentally and fiscally sustainable New York.

The Cuomo Administration and state agencies have now had roughly 18 months to commence and fully implement the law into practice. In the spirit of partnership, throughout the past six months, ESF asked to meet with the named agencies and authorities to determine what progress has been made. We also sought either a written response or a meeting with other agencies and authorities that we determined might best utilize PIPA. We sought to include all types of agencies and authorities across the state in order to determine if PIPA was being broadly implemented.

Many of the agencies and authorities that ESF spoke with are exhibiting laudable in-house efforts to implement PIPA based on agency interpretation of how the law affects their specific programs and policies. Others have clearly not done enough to utilize the policy for more efficient and effective infrastructure decisions.

Empire State Future suggests the following next steps, targeted specifically at the state level, which will lead to better environmental and fiscal infrastructure decision-making:

1. *Issue a directive from Commissioners as well as the Governor and his Secretaries to the named agencies to produce the required Smart Growth Impact Statement and Smart Growth Advisory Council;*
2. *Expand further Department of State-led education and guidance on PIPA;*
3. *Provide additional incentives for implementation and disincentives when there is a lack of compliance;*
4. *Advance new legislation that extends PIPA to the tax-credit activities of the Economic Development agencies and better defines "public infrastructure;"*
5. *Direct the Regional Economic Development Councils to voluntarily adhere to PIPA;*
6. *ESF will convene state agencies and authorities tasked with implementing PIPA to improve coordination and accelerate the sharing of best practices.*

Empire State Future believes New York spending on infrastructure and economic development, including all projects considered through the Regional Councils and the NY Works programs, should utilize PIPA as a benchmark for smart decision-making. The need to better prioritize and make capital projects and economic development more efficient should be obvious. New York has nowhere near enough infrastructure funds to meet its numerous infrastructure challenges.

Introduction

Empire State Future (ESF) is a coalition of 60 organizations working to revitalize New York’s main streets, town centers, and urban areas. Our top priority is to link smart growth principles to the far-reaching land use and development decisions that are made every day. Smart growth can help restore prosperity and maintain our quality-of-life in all of New York by building a healthy economy. Smart growth entails offering real choices in transportation, housing, and employment, while respecting farmland, open space, and natural and historic resources.

We support the widespread use of smart growth values in order to:

- *Advance sustainable and equitable growth across New York State*
- *Restore prosperity and reduce poverty by reinvesting in existing population centers*
- *Promote development organized around public transportation and pedestrian circulation in mixed-use and mixed-income urban, suburban, and rural centers*
- *Discourage urban sprawl and low-density, automobile-based development*
- *Build affordable, accessible housing for the full range of residents*
- *Strengthen rural economies by protecting open space, farmland, and water supplies*
- *Reduce greenhouse gas emissions and energy demand*
- *Maximize public return from public infrastructure investments.*

Since 2007, our non-profit advocacy group has promoted common ground between developers and environmentalists. We believe in growth that brings jobs, stability and prosperity. Growth can substantially improve our communities if it is sustainable and sensitive to context. Empire State Future supports expansion that serves all New Yorkers by turning smart growth principles into common practice.



Photo by Albany Convention & Visitors Bureau

Why Smart Growth in New York State?

New York's regions face highly varied land use and development challenges, and smart growth principles as applied are regionally distinct and appropriate. New York City, projected to add more than half a million people in a generation, will need to clean up and reuse brownfields, expand transit capacity, address housing affordability and upgrade the electric grid; all while wrestling with social equity, environmental justice and gentrification concerns. New York's fast-growing suburbs – Orange, Dutchess, Putnam and Suffolk Counties –are projected to grow rapidly over the next 25 years. Their challenges will include maintaining quality-of-life, historic village character, family farming and water quality.

Upstate's rural areas are experiencing employment and population loss, youth flight and an aging population. These ills and aging infrastructure afflict upstate's cities and many first-ring suburbs.

Faced with ongoing population stagnation and decline, it is not fiscally sustainable for New York State's numerous shrinking jurisdictions to continue to add new infrastructure. Extending roads, bridges, curbs, schools, water and sewer further into the countryside, while continuing to maintain older urban infrastructure, is counterproductive. This is highlighted when municipal services including health, education, police, and fire, are provided to small, inefficiently scaled communities spread out countywide. The result is a piling on of debt, costs and services, consequently leading to increases in property taxes or dramatic cuts in services. Neither is desirable as both extend the vicious fiscal cycle that now distresses much of upstate New York.

Smart growth addresses this growing economic imbalance by building on the existing public investments in infrastructure and community. Doing so provides citizens with neighborhoods built in a fiscally sustainable fashion. These are places where families feel safe, a sense of community is built, homes are affordable, and schools, stores, and recreation are nearby; places that promote a healthy lifestyle; where citizens are offered the prospect of walking, riding a bike, taking public transit or driving short distances, as they choose. In short, implementing smart growth solutions creates fiscal and environmental sustainability, maintaining our livable communities.

In a distressed economy, the application of smart growth principles is essential. Taxpayer provided public funds are used wisely and conservatively when they are invested in growth that is equitable and sustainable. This is the type of growth that creates sustainable long-term jobs. Each approach must be tailored to the unique region where it is implemented, as New York is home to a diverse combination of cities, suburbs and rural areas. Smart growth allows a right-sized, regionally appropriate and distinct American Dream to thrive in a new and changing century.

The Smart Growth Public Infrastructure Policy Act: 2010 (PIPA)

History

Introduced in 2003 by then-Assemblymen Thomas DiNapoli and Sam Hoyt, the precursor to the law in place today was originally titled the State Smart Growth Public Infrastructure Policy Act. The Act was the first to establish smart growth criteria. While passing the Assembly unanimously, 141 in favor with no dissenters, it did not pass the Senate.

A second effort at a smart growth law was introduced by Sam Hoyt, A7335-A and Senator Carl Marcellino, S8612, in 2007. The act instructed state agencies to adopt and use smart growth principles. The bill passed both the Assembly and the Senate, and was subsequently vetoed by Governor David Paterson. Governor Paterson, in the veto memorandum, stated that the continuation of the “Smart Growth Cabinet”— established in December 2007 by Governor Eliot Spitzer in Executive Order 20— “will identify barriers to smart growth... and consider how to align state grants and capital programs to foster "smart growth" development in appropriate regions of the State.”

In 2010, The Smart Growth Public Infrastructure Policy Act (PIPA) was reintroduced and again sponsored in the New York State Assembly by Sam Hoyt of Buffalo. Senators Suzi Oppenheimer (Westchester), Velmanette Montgomery (Brooklyn), and Carl Marcellino (LI) sponsored the bill in the New York State Senate. Following intensive education and support from Empire State Future and other advocacy groups, the Smart Growth Infrastructure Policy Act was passed overwhelmingly in the Senate (56 to 2) and (138 to 2) in the Assembly, and signed into law by Governor David Paterson on September 29, 2010.



Saratoga Springs, NY. Photo courtesy of Skidmore College

The Law

The Smart Growth Public Infrastructure Policy Act (PIPA), Article 6 of the Environmental Conservation Law, directs New York State agencies, authorities and public corporations to screen their infrastructure programs and investments to ensure against funding inefficient, redundant, and costly sprawl. The law states that no state infrastructure agency shall approve, undertake, support or finance a public infrastructure project, including providing grants, awards, loans or assistance programs, unless, to the extent practicable, it is consistent with the following smart growth criteria:

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

PIPA requires that: “*the chief executive officer of a state infrastructure agency shall attest in a written smart growth impact statement that the project to the extent practicable, meets the relevant criteria set forth in subdivision two of this section, unless in any respect the project does not meet such criteria or compliance is considered to be impracticable, which shall be detailed in a statement of justification.*” In requiring a written Smart Growth Impact Statement, PIPA seeks to hold agencies and authorities more accountable for their infrastructure funding and development decisions.

Promoting Smart Growth through State Policy

New York is not alone in its commitment to Smart Growth principles. Other states, such as California, Maryland, New Jersey, and Utah have enacted laws in accordance with Smart Growth principles. The development and furthering of these important concepts can only serve to enhance and improve quality of life. However, the idea of development based on Smart Growth is not a new idea. Smart growth legislation dates back to the 1970s, when the state of Oregon enacted its Land Conservation and Development Act, with Hawaii and Florida soon to follow. In 1997, Maryland passed the Smart Growth Areas Act (SGAA), which has served as a guide to more recent state Smart Growth laws.

Maryland's SGAA restricted the use of state funding for growth to what was termed "Priority Funding Areas;" developed areas with access to public service, in an attempt to preserve open space and farmland and to use state funding to help restrict sprawl.

Numerous areas have had great successes with policies reflecting Smart Growth goals. Portland, Oregon is an example of a favorable outcome. A coalition of cities and counties established a regional government and collectively decided upon a boundary beyond which urban development was prohibited. This boundary has been periodically evaluated with regard to the region's needs, and the boundary has been flexible. Portland's vibrant downtowns and neighborhoods have made it attractive to youth, those seeking a return to more urban living, and businesses as well.

Another example of smart growth in action is the state of Washington State's Growth Management Act of 1990. It requires planning policies that designate urban growth areas and identify sites for county services. Local input addresses land use, transportation and housing. These help mitigate sprawl and encourage development in urban areas.



Photo courtesy of NYC DOT

Roles of Key Agencies

PIPA is intended to provide state agencies and authorities a tool to prioritize infrastructure spending to the projects that promote a more fiscally and environmentally sustainable New York.

Specific agencies and authorities have been named in the legislation because of their role in financing or developing the public infrastructure that serves as the backbone for land development. The State Smart Growth Public Infrastructure Policy Act names the following agencies and authorities:

Department of Transportation	Department of Education	Department of Health
Department of State	Environmental Facilities Corporation	Housing Finance Agency*
Housing Trust Fund Corporation*	Dormitory Authority	Thruway Authority
Port Authority of NY & NJ	Empire State Development Corporation**	Urban Development Corporation**

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

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

While the specific agencies and authorities that are most frequently involved in direct or indirect infrastructure decisions are named, the law does not exclude any agencies that are established under New York State law. The law also specifically mentions and includes “public corporations and authorities.” As many as 700 separate entities are thereby included.

Implementation by Agencies & Authorities

Empire State Future is committed to the full implementation of the Public Infrastructure Policy Act. ESF believes that if the Act is applied in the spirit determined by lawmakers in 2010 as a tool to select appropriate infrastructure projects that benefit local and regional economies, a more environmentally and fiscally sustainable New York will result.

Empire State Future has sought to learn what agencies and authorities have done to alter infrastructure planning procedures. The law has been on the books for roughly 18 months, and ESF waited until now to give the Cuomo Administration and the agencies ample time to commence and routinize their implementation efforts. In the spirit of partnership, ESF requested to meet with the named agencies and authorities to discuss the status of their implementation of PIPA. We have also requested either written

response or to meet with those agencies and authorities that we determine PIPA may be the most applicable to, including but not limited to municipal water and/or sewer authorities and Industrial Development Agencies (IDAs). We sought to include all types of agencies and authorities across the state in order to determine if PIPA was being broadly implemented.

The following agencies and authorities, in addition to the named parties were contacted:

Albany Municipal Water Finance Authority/Water Board*	Niagara Frontier Transportation Authority*
Capital District Transportation Authority*	NYS Energy Research & Development Authority**
Cayuga County Water and Sewer Authority**	Oneida-Herkimer Solid Waste Management Authority**
Central NY Regional Transportation Authority**	Onondaga County Solid Waste Disposal Authority**
Chautauqua IDA**	Onondaga County Water Authority*
Columbia IDA**	Power Authority of the State of New York
Erie County IDA*	Putnam County IDA**
Erie County Water Authority*	Rensselaer County Water and Sewer Authority*
Genesee County IDA**	Rochester-Genesee Regional Transportation Authority**
Harriman Research & Technology Development Corporation**	Saratoga County Water Authority*
Hempstead IDA (Vision LI)*	Saratoga IDA*
Livingston County Water and Sewer Authority**	State University Construction Fund*
Metropolitan Transportation Authority*	Upper Mohawk Valley Regional Water Finance Authority**
Monroe County Water Authority*	Westchester County IDA**
Nassau County IDA*	

*Requested to meet

** Requested to return a written response

The full set of questions asked of agencies and authorities has been included in the Appendix, which will be available on Empire State Future’s website (www.empirestatefuture.org). Empire State Future would like to highlight the following two questions as a sampling of what was being asked:

Has your agency or authority formed the required stakeholder advisory committees?

Have you issued the required Smart Growth Impact Statements?

For the selected agencies that we could not meet in person, Empire State Future distributed a written cursory evaluation of PIPA and its effects on the agency/authority contacted. Full discussion of the agencies contacted and their responses are also included in the Appendix, available on our website.

Our primary interest: Are we getting better projects and thereby moving New York forward cost-effectively?

One of New York State's most publicized economic development projects is the GlobalFoundries Chip plant, built in a greenfield along I-87 in Malta (Saratoga County). According to estimates, the project received \$1.4 billion in NYS subsidies — including \$665 million in cash.

In April 2012 the issue arose whether the Capital District Transportation Authority (CDTA) would be running a bus to the factory, which is not in a proximate location to any other dense job or residential centers. Carm Basile, CEO of CDTA stated: "Transportation ought to be one of the things you're looking at before you develop, not calling us afterward and saying, 'Where is the bus?'"

New York State and especially our transit authorities cannot continue to sprawl out services inefficiently without significant additional costs. PIPA can now be utilized to make sure that proposed development takes into account the needed services and infrastructure before construction begins.

Summary of Implementation Progress

From the agencies and authorities that have been responsive to our request, we have established summaries of the status of implementation, including the published documents (i.e. smart growth impact statement, guidance, meeting notes). Those agencies who have not responded had been contacted a number of times and informed of the pending release of this document in order to give them adequate opportunity to be included. Empire State Future seeks to highlight exemplary performance rather than chastise those who may require assistance in order to implement properly.

Many of the agencies and authorities that ESF spoke with are exhibiting laudable in-house efforts to implement PIPA based on agency interpretation of how the law affects their specific programs and policies. Others have clearly not done enough to utilize the policy for more efficient and effective infrastructure decisions.

Below we highlight some of the most important examples. A comprehensive summary can be found in the appendix. Any communication that we receive regarding further implementation efforts by agencies or authorities that have not responded to our request will be included on ESF's website (www.empirestatefuture.org).

The results of Empire State Future's study on PIPA implementation are mixed. With regards to utilizing PIPA and its Smart Growth Impact Statement, some agencies and authorities have taken it upon themselves and are employing it through their legal interpretation. Other agencies have yet to show full compliance with PIPA.

Named Agency/Authority	Responded to ESF Request	Advisory Council	Smart Growth Impact Statement
Department of Transportation	✓	✓	✓
Department of Education	✓	✓	✓
Department of Health	✓		✓
Department of State	✓	✓	✓
Environmental Facilities Corporation	✓	✓	✓
Housing and Community Renewal*	✓	✓	✓
Empire State Development Corporation	✓	✓	✓
New York State Dormitory Authority	✓		
Thruway Authority	✓	✓	✓
Port Authority of NY & NJ			

**New York State Housing Finance Agency/Housing Trust Fund Corporation (Housing & Community Renewal)*

EFC administers the Clean Water State Revolving Fund (CWSRF) and requires that applicants meet smart growth principles for funding assistance consideration. There is a separate Smart Growth impact statement to be filled out in consideration of financial assistance. EFC also provides an interpretation of infrastructure, repair and replacement projects. The criteria encourages intergovernmental coordination as well. Finally, EFC created a Smart Growth Advisory Committee to assist the Corporation in compliance with PIPA, with a special focus on reviewing input from affected local and environmental interests.

PIPA Education

The Department of State’s Office of Smart Growth, specifically Paul Beyer, the Director of Smart Growth, have attempted to work with agencies to fully implement PIPA through interagency calls and coordination since the law’s passage. This has helped to educate agencies and authorities on the law and smart growth principles and have assisted through the agency review process.

The Director of Smart Growth has done this, even as the cabinet was revoked under Governor Cuomo. ESF feels that PIPA implementation is weakened by the cancellation of the Smart Growth Cabinet.

Training is a major aspect of the Department of State’s role in PIPA implementation. The Department of State has implemented an educational presentation on PIPA as part of their local land use training for local municipalities as well as planning and zoning board officials. In addition to providing an overview

on PIPA, DOS attempts to show municipalities why it is in their best interest to include these criteria into local policies.

The Department of State works to establish consistency and help agencies work through their review. Although PIPA is not a planning act, the DOS educates municipalities about how to include these criteria into local policies, and why it is in their best interest to do so to achieve both short and long term goals. It will be necessary that the Department of State, Empire State Future, New York Planning Federation, Regional Plan Association and others continue to reach out to towns, villages, etc. as well as planning and zoning boards, to make them aware of PIPA and the importance of considering smart growth as they develop and manage land use regulations.

Impact Statements

ESF has found that a majority of the named agencies and authorities have produced an impact statement. Of the agencies and authorities that responded to our request, we have found that there is a lack of uniformity on when the smart growth impact statement is developed. This can create confusion for applicants. Many have included the impact statement at the end of the project, where there may be some reluctance to make changes. Including the impact statement as an early step in applying for infrastructure funding or assistance was identified as a best practice.

Looking forward, the Consolidated Funding Application (CFA) appears to be a process that could lead to more uniformity in how PIPA is applied. The CFA aims to streamline and expedite the process, with the applicant able to access the multiple funding opportunities with a single application. Electronic submission of an application aims to recognize projects that may fall under PIPA and direct the applicant in the appropriate manner.

There are ten categories that funding is available through, ranging from affordable housing to transportation, municipal and public infrastructure. Energy and environmental improvements are also included. If an applicant indicates they are applying for infrastructure funding while completing the CFA, they are prompted to complete questions regarding PIPA that will be used to produce the required Smart Growth Impact Statement.

Economic Development

Empire State Future conducted a conference call in May 2012 with three of the members of the Empire State Development Corporation's (ESD) Smart Growth Advisory Committee for an update on implementation. ESD initially established the advisory committee in October of 2010 to review ESD projects that included infrastructure investments. The Smart Growth Advisory Committee is comprised of seven ESD employees with a diverse set of planning, environmental, industry and business development and governmental roles. The Advisory Committee's role is to review the project and provide feedback on how to improve the SGIS.

Since inception, the advisory committee has evaluated Smart Growth Impact Statements (SGIS) for seven projects. Each SGIS was made available to ESF. The statements are thorough, fair assessments and demonstrate interagency cooperation. Of the seven, only one of the projects evaluated, The Western New York Science Technology Advanced Manufacturing Park (STAMP) project—funded through over \$1m in grants from the NYS Senate and that occupies 1,340 acres in Alabama, New York—was deemed inconsistent with PIPA resulting in a justification statement.

When asked whether ESD considered reducing or prohibiting funding for projects that are not consistent with PIPA, ESD explained that the Advisory Committee’s role is not to determine if the agency will or will not fund a project, rather it is to review and assist with improving the SGIS. Similar to what was expressed during our meeting with the Dormitory Authority (DASNY), ESD does not always initiate projects, and by the time the projects are requesting funding they are often fully formed and planned. This makes it difficult to require significant changes.

Other projects, such as WNY STAMP, are legislated member items – introduced through the legislature, rather than by agency or authority procedure. It was expressed that ESD has little opportunity to influence these projects, as they are primarily serving as a regulatory approval of legislatively approved funds. The SUNY Construction Fund also expressed that this is how projects are selected for development at SUNY campuses.

ESD’s definition of public infrastructure was summarized as new or expanded transportation, sewer and waste water treatment, water, education, housing and other publicly supported infrastructure. ESD representatives indicated that if ESD programs are provided to a project that is building or improving infrastructure solely on private land it is not considered to be public infrastructure and would not be subject to a smart growth impact statement.

Through the call it was pointed out that the majority of the projects are now aligned with smart growth criteria – especially that which is being produced through the Regional Economic Development Councils. The review process by the REDCs can be an important evaluation point to identify projects not consistent with PIPA.

Two notable examples of Smart Growth Impact Statements (SGIS) are the Tappan Zee statement and ESD’s Western NY STAMP project. The STAMP project—funded through over \$1m in grants from the NYS Senate, occupies 1,340 acres in Alabama, New York—was an example of a project that was not consistent with the Smart Growth criteria set forth in PIPA, but a justification was produced. This project, also involving Genesee Regional Economic Development Center (GCEDC), did not utilize or improve existing infrastructure. Because this project was an act of the legislature, it did not originate from a single agency or authority. This SGIS was very thorough, and offered detailed reasoning for noncompliance with PIPA.

The Tappan Zee smart growth impact statement, however, is very brief, and regards most of the criteria as not applicable. The New York State Thruway Authority’s SGIS for a \$5 billion+ infrastructure project was little over a page, compared to ESD’s twelve page smart growth impact statement for the STAMP project. *Both impact statements are available in the online appendix at www.empirestatefuture.org.*

Recommendations for further implementation:

While some agencies and authorities are taking positive steps toward implementing PIPA, critical agencies and authorities have not demonstrated compliance with the law. Empire State Future suggests the following “next steps,” targeted specifically at the state level, which will lead to better environmental and fiscal infrastructure decision-making:

1. *Issue a directive from Commissioners as well as the Governor and his Secretaries to the named agencies to produce the required Smart Growth Impact Statement and Smart Growth Advisory Council;*
2. *Expand further Department of State-led education and guidance on PIPA;*
3. *Provide additional incentives for implementation and disincentives when there is a lack of compliance;*
4. *Advance legislation that extends PIPA to the tax-credit activities of the Economic Development agencies and better defines “public infrastructure;”*
5. *Direct the Regional Councils to voluntarily adhere to PIPA;*
6. *ESF will convene a conference with state agencies and authorities tasked with implementing PIPA.*

While ESF seeks to fully assist those agencies and authorities in complying with PIPA, there must also be direction from Commissioners as well as the Governor and his Secretaries. Through our meetings it was indicated to us that there has been very little to no obvious guidance over the implementation process. The agencies and authorities that have complied did so based on their own interpretation of the law.

Direct attention from the Administration in the implementation of the law would lead to more efficient use of public infrastructure dollars from all the agencies and authorities. Some of the agencies are still not fully compliant with the law, almost 18 months since the legislation was passed. The administration should find means to incentivize the agencies and authorities producing the best smart growth results. Incentives could include a greater role in coordination of large-scale infrastructure projects, recognition for best practices and budgetary considerations for innovative compliance. The Administration and the Comptroller may consider acting on lack of compliance. The Comptroller may consider an audit on all impacted agencies and authorities that have yet to fully comply with the requirements of PIPA.

Currently, the U.S. Environmental Protection Agency recognizes communities for smart growth successes with their National Award for Smart Growth Achievement. They recognize five categories—overall excellence; growth and green building; programs, policies, and regulations; rural smart growth; and civic places. Recognition of smart growth principles for agencies and authorities could further increase the participation by serving as an incentive.

The term “public infrastructure” was left undefined in the law, producing questions among the agencies and authorities on which of their programs are classified as “public infrastructure.” Empire State Future believes “public infrastructure” should be defined as:

Any substructure or underlying foundation or network used for providing goods and services; especially the basic installations and facilities on which the continuance and growth of a community, State, etc., depend. Examples include roads, water systems, communications facilities, sewers, sidewalks, cable, wiring, schools, power plants, and transportation and communication systems. (U.S. EPA, Office of Grants and Debarment Definition of “Infrastructure” for purposes of the American Recovery and Reinvestment Act of 2009). ESF believes that the definition of public infrastructure should also include the use of any public funds for public good economic development goals such as tax credits, PILOTS, or other economic development incentives.

Much of our interpretation is drawn from the language of the American Recovery and Reinvestment Act of 2009, which helps to clarify the meaning of infrastructure, as well as from Governor Cuomo, with his recently launched NY Works program, where he furthers the interconnectedness between infrastructure and economic development spending.

There also appears to be questions on which Authorities are actually “named” under PIPA. The language “all other New York authorities” has been interpreted by many Industrial Development Authorities (IDAs) and other local Authorities to preclude them from PIPA. ESF believes the spirit of the act was to include all authorities, local or state, that develop or have a role in financing public infrastructure. ESF believes that all of New York’s regions would benefit from incorporating PIPA review into all infrastructure and economic development decision making and would suggest that this is the approach taken. ESF would also find it prudent to include the use of any public agency or authority under the interpretation of public infrastructure.

The role of the Governor in coordinating smart growth has greatly increased since the termination of the Smart Growth Cabinet. The Governor and his leadership team have the opportunity to utilize the law to bring together the agencies and authorities, similar to the coordination that has transpired out of the successful federal Partnership for Sustainable Communities: Housing and Urban Development (HUD), Department of Transportation (DOT), and the U.S. Environmental Protection Agency (EPA). The Governor’s other key initiatives, The NY Works program and the Regional Economic Development councils appear to be vehicles to propel forward smart growth goals. Both are aimed at streamlining and prioritizing regionally significant infrastructure projects. By sponsoring interagency communication on PIPA, the Governor has a real opportunity to advance 21st Century infrastructure projects that will build stronger New York communities and a robust economy, while also improving agency interaction, efficiency and transparency.

Finally, all New York spending on infrastructure and economic development, including all projects considered through the Regional Councils and the NY Works programs, should utilize PIPA as a benchmark for smart decision-making. The need to better prioritize and make capital projects and economic development more efficient should be obvious. New York has nowhere near enough infrastructure funds to meet its numerous infrastructure challenges.

Through our meetings with agencies and authorities impacted by the act, it was suggested that ESF convene a conference of the state agencies tasked with implementing PIPA. ESF stands ready to do this as a step toward progress, and would call on the Administration to work with ESF to bring together affected parties. This meeting can provide a meaningful occasion for the Administration and advocates to reinforce their views on PIPA and smart growth, and serve as an opportunity to share best practices among agencies.

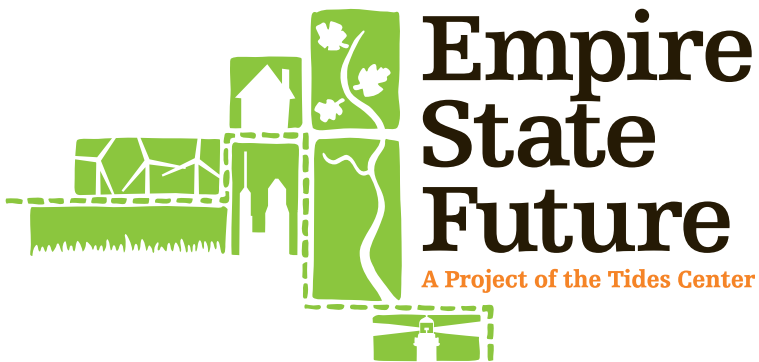
Conclusion

The results of our examination into PIPA and its implementation throughout New York's agencies and authorities reflect the mixed actions taken by the agencies and authorities subject to the law. Many of the named agencies have taken steps to fully comply with the spirit of the law, and a number of smaller agencies and authorities are actively seeking to learn more about PIPA and what it means to them. Unfortunately, there are still agencies and authorities yet to be compliant with the law.

Further education and communication between agencies and from the Administration will be needed to implement the law effectively. Guidance from the Department of State can elucidate proper procedures in the formation of a Smart Growth Advisory Committee, and the articulation of a clear and productive Smart Growth Impact Statement. Utilizing new tools such as the CFA, Regional Councils, and the NY Works task force presents the opportunity to promote the goals expressed in PIPA. Finally, clarification on the state's smart growth goals will lead to a better understanding of PIPA and how it can be an asset for New York's agencies and authorities.

As the law has been interpreted, technically only 'state' agencies and authorities are subjected to the law. An analysis in the spirit of the law would imply that any agency or authority within the state would be subject to implementing the smart growth goals. The inclusion of the Smart Growth Impact Statement as a principal step in planning a project, rather than its submission at the end of a project, can also facilitate efficiency along with providing an initial look at smart growth criteria.

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



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