

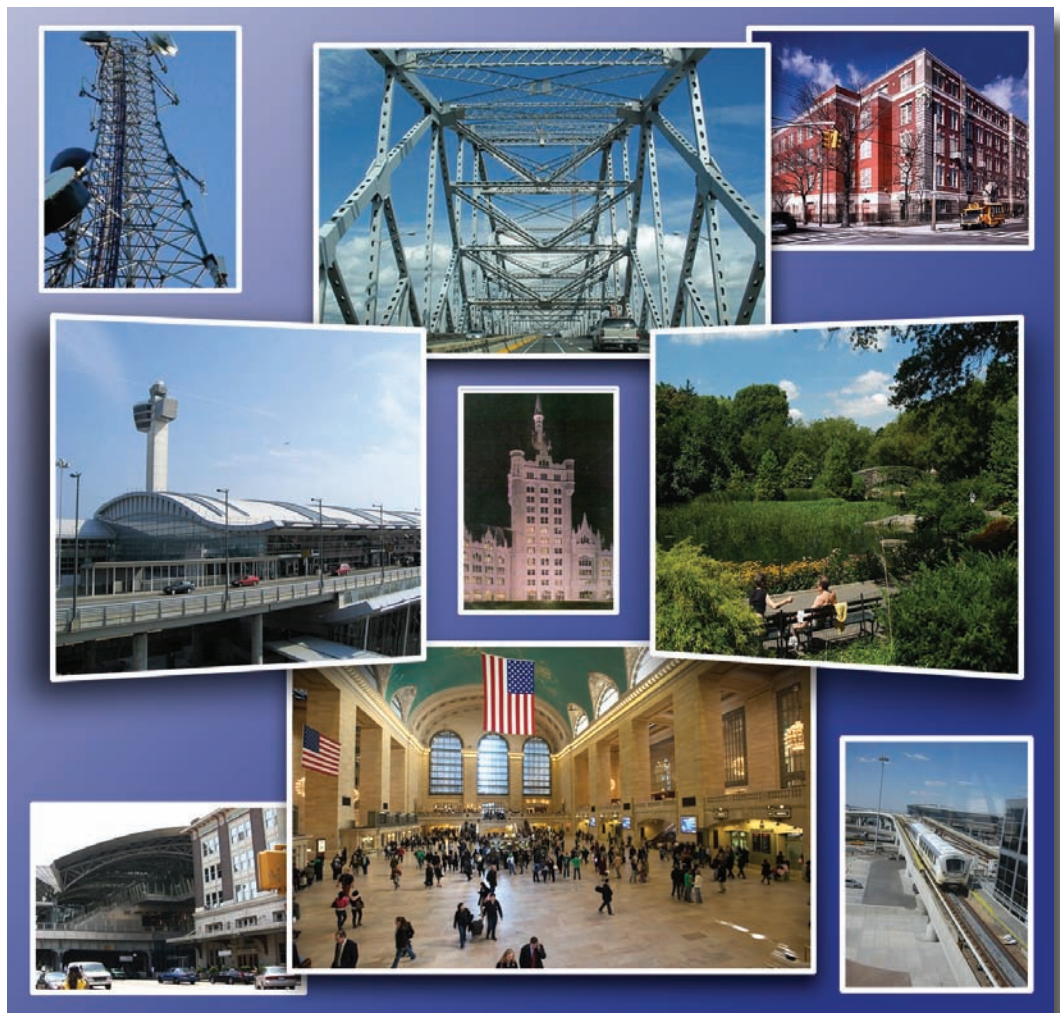


NEW YORK STATE COMMISSION ON

# SAM

STATE ASSET MAXIMIZATION

## Final Report • June 1, 2009



**NYS Commission on State Asset Maximization**

633 Third Avenue, 35th Floor | New York, NY 10017

212/803-3537 | [www.nysamcommission.org](http://www.nysamcommission.org)

## Transmittal Letter

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June 1, 2009

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

Dear Governor Paterson,

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

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

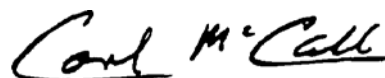
Despite the current fiscal crisis, the Commission believes the State has an incredible window of opportunity in which to act. President Obama's recent Federal stimulus package and the administration's emphasis on public-private partnerships bodes well for New York; it is our hope that this Report will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

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

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

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

Respectfully submitted,



H. Carl McCall, Chair

## Commission Members

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Hon. H. Carl McCall, Chair  
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Hon. Herman D. Farrell, Jr.  
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Hon. Thomas Libous  
David Ochoa  
Bernard Schwartz  
Alan M. Trager

### *Staff:*

Samara Barend, Executive Director  
Haley Plourde-Cole  
Joseph Simenic

### *Interns:*

Eric Anderson  
Jon Chapman  
Quentin Fogan  
Ceridwynne Lake  
Amara Levy-Moore  
Yuan Tan

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

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## Executive Summary

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

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

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

### Part I: The Rationale

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

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

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

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

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

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

## **Part II: The Commission's Framework**

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

## **Part III: Recommendations**

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

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

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

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

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

## **Transportation**

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

## **Social Infrastructure**

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

## Higher Education

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

## Energy

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

## **Information Technology**

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

## **Underutilized Property**

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

## Asset Class IV: Energy

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### Primary Challenges

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

### Overview

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

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

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

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

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<sup>44</sup> Energy Information Administration. New York State Energy Profile, 2009.  
[http://tonto.eia.doe.gov/state/state\\_energy\\_profiles.cfm?sid=NY](http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=NY).

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

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

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

### Create a Climate Conducive to Investment in Energy Infrastructure

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

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

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

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

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

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

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

### Create More Open and Accessible Markets for Trading and Moving Energy

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

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

### Develop Indigenous Energy Resources

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

<sup>45</sup> Remarks by the President and Vice President at the Signing of the American Recovery and Reinvestment Act, available at: [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-and-Vice-President-at-Signing-of-the-American-Recovery-act/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-and-Vice-President-at-Signing-of-the-American-Recovery-act/).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Create an Environment to Support Energy Goals

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

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

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