



THE STATE UNIVERSITY *of* NEW YORK

REVISED #3

MEMORANDUM

Office of the
Chancellor

November 18, 2008

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To: Members of the Board of Trustees

From: Dr. John B. Clark, Interim Chancellor

**Subject: 2009 Legislative Proposal
(Real and Personal Property Transactions; Public-Private Partnerships)**

I recommend that the Board of Trustees adopt the following resolution:

Whereas the State University of New York, the largest public higher education system in the country, has jurisdiction over 2,300 buildings, totaling over 78 million gross square feet of space located on over 20,000 acres of land; and

Whereas SUNY has tremendous opportunities to maximize and leverage its assets while enhancing the academic mission of SUNY and its campuses; and

Whereas the use or development of SUNY property by non-State entities presently requires enactment of specific enabling legislation and is subject to restrictive processes; and

Whereas Executive Order #11 issued by Governor Paterson on October 2, 2008 establishes the New York State Commission on State Asset Maximization to further explore what alliances the public and private sectors can increase value to both public property and services by combining private sector efficiencies with appropriate government oversight; and

Whereas with the authorization to lease and sell its land and buildings and to partner with the private sector, SUNY will be able to expand use of campus capital facilities in support of the educational and other corporate purposes of SUNY, and not in conflict with the mission of the campus to which the subject project relates, while generating much needed revenue to help advance SUNY to the highest levels of public higher education; and

Whereas the 2008 report of the New York State Commission on Higher Education re-examined higher education in the state and opined that, for SUNY and CUNY, "statutory change should be sought to lessen regulation", noting, "SUNY's Board of Trustees should have authority to lease SUNY property for purposes that support SUNY's mission without prior legislative approval"; and

Whereas SUNY seeks statutory authority to lease and sell its capital assets and to be exempt from the State statutory provisions for the disposition of surplus property in order to maximize the use of its assets in areas such as the following:

- Expand public/private partnerships to promote commercial and community based activities such as retirement communities, student housing, health care facilities, incubators, food service, telecommunications and retail facilities,
- Maximize utilization of natural resources including gas, timber, minerals and water,
- Pursue using SUNY land in creative ways such as producing bio-mass fuels, co-generation facilities, or developing solar and wind farms, and
- Maximize rental income by making facilities available for community events or conferences; now, therefore, be it

Resolved the Board endorses the attached document entitled "Asset Leveraging – SUNY Land Use Leasing Legislation and Policy"; and, be it further

Resolved that the legislative proposal relating to the State University's real and personal property transactions and public-private partnerships set forth in the document entitled "Asset Leveraging – SUNY Land Use Leasing Legislation and Policy" be, and hereby is, approved for submission to the 2009 Legislature; and, be it further

Resolved that the Chancellor, or designee, be, and hereby is authorized to take such steps for and on behalf of the Board that he deems necessary or appropriate to promote enactment and implementation of such legislative proposal.

Background

The purpose of the legislative proposal is to improve efficiency and expand opportunities in State University real property and personal property

transactions and to facilitate public-private partnerships involving the State University.

The legislation allows the State University more flexibility in putting real property under its jurisdiction to good use. Generally, the State University's enabling legislation authorizes the State University to lease its real property and capital facilities only to the State University Construction Fund and the Dormitory Authority of the State of New York. Without special legislation, the State University cannot lease property to other tenants even if doing so clearly would further the educational mission and generate revenue. Without special legislation, for example, State University campuses—unlike universities elsewhere—cannot issue ground leases to private developers to build student housing or research or other facilities. And, without authorizing legislation, State University also cannot lease—much less give—lab or office space to small research start-up companies even where doing so would advance its academic, research or public service mission. Other statutory provisions restrict the disposition of surplus property.

In addition, the legislation makes clear the authority of the State University to undertake public-private partnerships through an array of legal structures in support of the educational, research, health care and economic development missions of the State University set forth in Education Law §351.



Asset Leveraging - SUNY Land Use Leasing Legislation and Policy

Introduction

Currently, the use or development of State University of New York (SUNY) property by non-State entities requires specific enabling legislation. Similarly, lease or sale of State property or assets is unduly restrictive. SUNY seeks statutory authorization to lease and sell its capital assets and exemption from the State's provisions for the disposition of surplus property.

The 2008 report of the New York State Commission on Higher Education re-examined higher education in the state and opined that, for SUNY and CUNY, "statutory change should be sought to lessen regulation", noting, "SUNY's Board of Trustees should have authority to lease SUNY property for purposes that support SUNY's mission without prior legislative approval".

SUNY believes that its campuses could generate several million dollars annually through the sale or lease of undeveloped or underutilized property. Below is proposed legislation and accompanying SUNY policy would allow SUNY to maximize the use of its assets in areas such as the following:

- Expand public/private partnerships to promote commercial and community based activities such as retirement communities, student housing, health care facilities, incubators, food service, telecommunications and retail facilities.
- Maximize utilization of natural resources including gas, timber, minerals and water.
- Pursue using SUNY land in creative ways such as producing bio-mass fuels, co-generation facilities, or developing solar and wind farms.
- Maximize rental income by making facilities available for community events or conferences.

With the authorization to lease and sell its land and buildings and to partner with the private sector, as guided by SUNY policy and Trustee oversight, SUNY will be able to expand use of campus capital facilities while generating much needed revenue to help advance SUNY to the highest levels of public higher education.

The City University of New York (CUNY) has such statutory authorization. The City University has used their authority to effectively plan and maximize opportunities to better serve their students, and save and generated substantial funds for the system in support of their campuses.

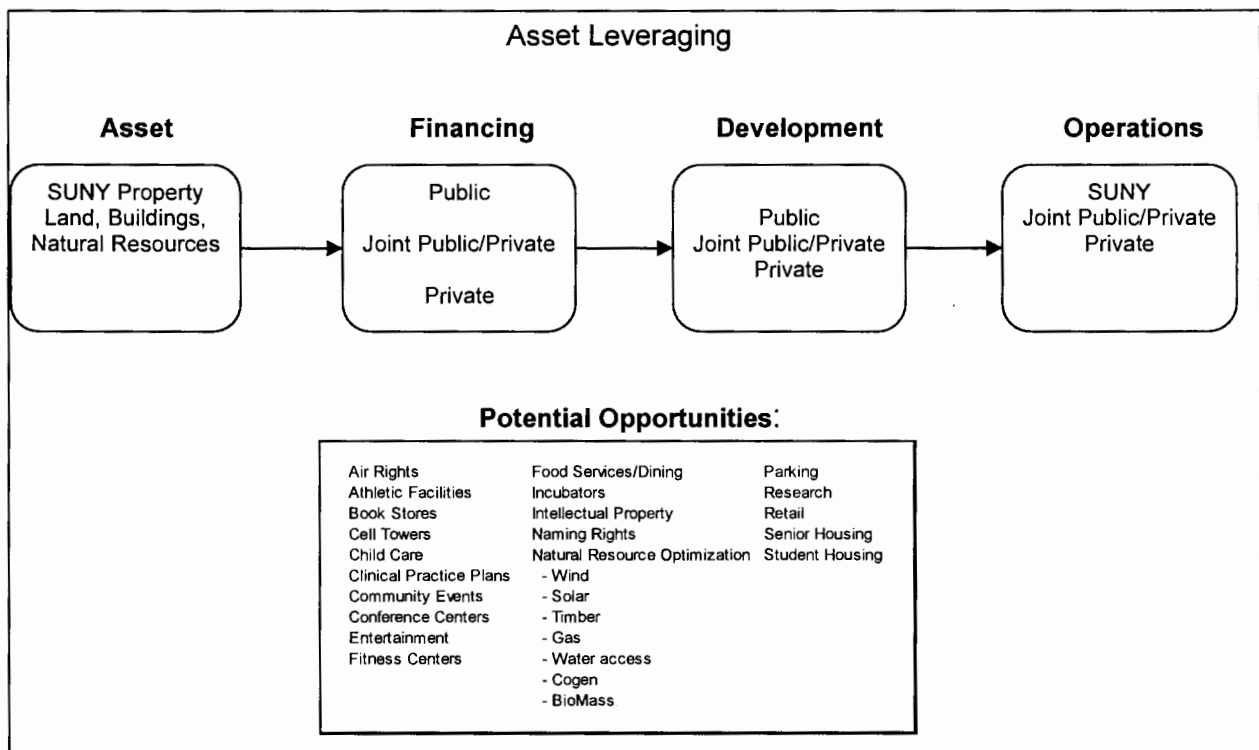
Executive Order #11 issued on October 2, 2008, establishes a commission to undertake a State asset analysis and recommend standards and legislation to maximize the value and use of such assets.

The State University of New York, the largest public higher education system in the country, has considerable assets which should be considered for maximization. SUNY has jurisdiction over 2,300 buildings, totaling over 78 million gross square feet of space located on over 20,000 acres of land. SUNY facilities have a replacement value of nearly \$27B, which represents 25% of all State owned assets excluding roads and bridges. SUNY has tremendous opportunities to

maximize and leverage these resources while enhancing the academic mission of SUNY and its campuses.

The State University of New York looks forward to working with the New York State Commission on State Asset Maximization to further explore what alliances with the private sector can increase value to both public property and services by combining private sector efficiencies with appropriate government oversight. We are also available to discuss opportunities to revise existing statute and regulations to provide the flexibility necessary to maximize the use of SUNY's assets and have made similar suggestions below.

The following chart identifies potential opportunities for leveraging both tangible and non-tangible assets. SUNY, in fulfilling its mission of providing higher education, touches upon a wide range of business type activities. Opportunities are available for the private sector to assist in the financing, development and operation of SUNY facilities through joint public/private initiatives. Over the years, SUNY has been involved with several such initiatives and believes that it could do more given more statutory responsibility over its assets and procurement procedures. Improvements in these areas will only bolster SUNY's role as a major economic engine in New York State.



An example of such an activity would be the lease of university property for the development of a Senior Living Community (SLC). This type of project has been successfully undertaken on college campuses nationwide for several years and has resulted in very beneficial relationships between the campus and local community. The synergistic relationships developed between the college and SLC advances the college's mission for learning and creates new opportunities for new program development and philanthropic support. It is anticipated that this type of activity has the potential to generate tens of millions of dollars annually if developed on multiple campuses.

Proposed Board of Trustee Policy on Land Use

DRAFT POLICY - It is the policy of the State University of New York to maximize the use of the capital assets, and attendant rights and interests, including air, water and mineral rights, under its jurisdiction to support the mission of the State University as set forth in Education Law §351. Accordingly, the State University supports the development and use of such assets by public, not-for-profit and for-profit entities, and the financing thereof by public and private means.

Each lease or agreement for the development and use of capital facilities under the jurisdiction of the State University by not-for-profit or for-profit entities shall be for a purpose consistent with educational and other corporate purposes of the State University, and shall not be in conflict with the mission of the campus to which it relates, and shall include the following provisions, unless waived by the State University Board of Trustees by majority vote:

- **Anti-discrimination/ Participation of Minority- and Women-owned Business Enterprises.** Such lease or agreement shall be deemed a State contract for purposes of Article 15-A of the Executive Law, and the entity entering into such contract or lease shall be deemed a State agency for purposes of Article 15-A of the Executive Law.
- **Hours/Wages/Prevailing Wage and Supplements.** Such lease or agreement for construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration or improvement shall be deemed a public works project for the purposes of Art. 8 of the Labor Law, and compliance with all the provisions of Art. 8 of the Labor Law shall be required of any lessee, sublessee, contractor or subcontractor which performs such work.
- **Indemnity.** The lessee or sublessee shall indemnify and defend the State University against all claims, suits, actions and liability to all persons arising out of lessee or sublessee's use or occupancy of the demised premises.
- **Collective Bargaining Rights.** Nothing in the lease or agreement shall be deemed to waive or impair any rights or benefits of employees of the State University that otherwise would be available to them pursuant to the terms of collective bargaining agreements. All work performed on the demised premises that ordinarily would be performed by employees subject to Art. 14 of the Civil Service Law shall continue to be performed by such employees.
- **Reverter.** Upon the expiration of the lease or agreement, the demised premises shall revert to the State University.
- **Reverter.** In the event the demise premises shall cease to be used for the purposes described in the lease or agreement, the lease or agreement shall immediately terminate, and the demised premises shall revert to the State University.

Draft Public- Private Partnership and Asset Management Legislation:

AN ACT to amend the education law in relation to real property and personal property transactions and public-private partnerships of the state university

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- §1. Paragraph a of subdivision 2 of section 355 of the education law is amended as follows:

a. To take, hold and administer on behalf of the state university or any institution therein, real and personal property or any interest therein and the income thereof either absolutely or in trust for any educational or other purpose within the jurisdiction and corporate purposes of the state university, and to dispose of such property in such manner and upon such terms as the trustees shall determine. The trustees shall allow and regulate the use of such property for other than the corporate purposes of the state university, by permit, lease, license or other agreement, for periods not to exceed ten years, and prescribe the fees, if any, that persons, associations and corporations allowed the use of such property shall pay. The trustees may acquire property for such purposes by purchase, appropriation or lease and by the acceptance of gifts, grants, bequests and devises, and, within appropriations made therefor, may equip and furnish buildings and otherwise improve property owned, used or occupied by the state university or any institution therein. The trustees may acquire property by the acceptance of conditional gifts, grants, devises or bequests, the provisions of section 11 of the state finance law notwithstanding. Where real property is to be acquired by purchase or appropriation, such acquisition shall be in accordance with the provisions of section three hundred seven of this chapter except that the powers and duties in said section mentioned to be performed by the commissioner of education shall be performed by the state university trustees. The provisions of sections 3, 30-a and 33 of the public lands law notwithstanding, the trustees may provide for the sale, lease, transfer or conveyance of state-owned real property under the jurisdiction of the state university in such manner and upon such terms as the trustees shall determine. The foregoing notwithstanding, the trustees may provide for the lease of such real property for periods not to exceed fifty years in support of the educational and other corporate purposes of the state university, unless the subject project is in conflict with the mission of the campus to which it relates, including but not limited to the development and operation of research, incubator, community, health care, retail, food service, telecommunication, student and faculty housing, energy, governmental, senior community, hotel, conference center and recreational facilities, and for the purpose of maximizing the use of natural resources; provided, however, the state university shall provide notice of any such lease to the chairs of the senate finance committee and the assembly ways and means committee and to the director of the budget at least thirty days prior to executing such lease. The provisions of section 167 of the state finance law notwithstanding, the trustees may provide for the sale, lease, transfer or conveyance of personal property under the custody and control of the state university in such manner and upon such terms as the trustees shall determine. The provisions of section 23 of the public lands law and section 167 of the state finance law notwithstanding, the proceeds from the sale, lease transfer or conveyance of state-owned real property under the jurisdiction of the state university or of personal property under the custody and control of the state university shall be retained by the state university.

§2. Paragraph s of subdivision 2 of section 355 of the education law is amended to read as follows:

s. To lease or make available to the state university construction fund, the dormitory authority or [other public benefit corporation, the New York state teachers' retirement system or the New York state employees' retirement system] to any other public or private for-profit or non-profit entity a portion of the grounds or real property occupied by a state-operated institution or statutory or contract college for the construction, acquisition, reconstruction, rehabilitation or improvement of academic buildings, dormitories or other facilities thereon [pursuant to article eight-A of this chapter] and for the purpose of facilitating such construction, acquisition, reconstruction, rehabilitation or improvement, to enter into leases and agreements for the use of any such academic building, dormitory or other facility [in accordance with the provisions of section three hundred seventy-eight of this chapter]; provided, however, that nothing herein contained shall affect the provisions of any lease or agreement heretofore executed by the state

university with the dormitory authority. The state university trustees may also enter into agreements with the state university construction fund, the dormitory authority or [other public benefit corporation, the New York state teachers' retirement system or the New York state employees' retirement system] any other public or private for-profit or non-profit entity to furnish heat from a central heating plant to any academic building, dormitory or other facility erected by them or with moneys supplied by them. Any such academic building, dormitory or other facility shall not be subject to taxation for any purpose.

§3. Subdivision 2 of section 355 of the education law is amended by adding thereto paragraph y to read as follows:

y. In connection with public-private partnerships in support of the corporate purposes of the state university, to participate in joint and cooperative arrangements with public, non-profit and business entities as partners, joint venturers, members of non-profit corporations, members of limited liability companies and shareholders of business corporations. The state university's participation shall be subject to guidelines of the state university with respect to conflicts of interest and to article fourteen of the civil service law and the applicable provisions of agreements between the state and employee organizations pursuant to article fourteen of the civil service law. Notwithstanding any inconsistent provision in section eight of the court of claims act, the state university may include in a contract relating to such participation, other than a contract with state employees relating to terms and conditions of their employment, a provision that some or all disputes arising under or related to such contract shall be resolved by binding arbitration in accordance with the rules of a nationally-recognized arbitration association. Nothing contained in the public officers law or in any other law, rule or regulation, shall be construed or applied to prohibit state university officers and employees from engaging in activities for which no compensation is paid as designees of the state university of New York in connection with such joint and cooperative arrangements, including serving as designees of the state university as members, shareholders or as directors on boards or other governing bodies of corporations or other entities. Confidential information gained by state university officers and employees while serving as designees of the state university as members, shareholders or as directors on boards or other governing bodies of corporations or other entities in connection with such joint undertakings and arrangements shall not be considered a "record" as defined in subdivision 4 of section 86 of the public officers law.

§4. This act shall take effect immediately.

Supporting Memorandum:

1. Purpose:

To improve the ability of the State University to effect its mission.

2. Summary of Provisions:

In order to improve efficiency and expand opportunities in State University real property and personal property transactions and to facilitate public-private partnerships involving the State University, Education Law §355(2)(a) is amended as follows:

- To clarify the authority of the State University to dispose of real and personal property under the jurisdiction of the State University.
- To authorize the use of real and personal property by other entities, including not-for-profit and for-profit corporations, by permit, license, lease or other agreement, for

purposes not related to the corporate purpose of the State University for periods not in excess of ten years.

- To authorize the State University to accept conditional gifts, grants, devises or bequests.
- To authorize the State University to sell, lease, transfer or convey real property under the jurisdiction of the State University in such manner and upon such terms as the State University shall determine.
- To authorize the State University, upon notice to the legislative fiscal committees and the Division of the Budget, to lease real property to other entities for purposes in support of the educational and other corporate purposes of the State University, unless the subject project is in conflict with the mission of the related campus, for periods not in excess of fifty years.
- To authorize the State University to dispose of personal property in such manner and upon such terms as the State University shall determine.
- To provide that the State University shall retain the proceeds of the sale, lease, transfer or conveyance of real and personal property under its jurisdiction.
- To clarify the authority of the State University to participate in joint and cooperative arrangements with public, non-profit and business entities as partners, joint venturers, members of non-profit corporations, members of limited liability companies and shareholders of business corporations.

3. Existing Law:

The conveyance of surplus real property under the jurisdiction of the State University is subject to Public Lands Law §§3, 30-a and 33 that provide, generally, that conveyance is subject to the approval of the Commissioner of General Services who shall sell or lease surplus property by public process.

Pursuant to Education Law §355(2)(i) and (s), State University may lease or otherwise make available real property under its jurisdiction to the State University Construction Fund and the Dormitory Authority of the State of New York for the development of academic buildings, dormitories and other facilities, and may lease real property to alumni associations of the State University for the development of dormitories.

State Finance Law §167 restricts disposal of personal property, generally, to transfer to other State entities and to sale by public process.

While Public Lands Law §23 provides that the proceeds of the sale of State land are deposited into the State Treasury, for the past several years language in State University operating appropriations has authorized State University to retain proceeds of the sale of real property under its jurisdiction. Pursuant to State Finance Law §167(1), proceeds of the sale by the State University of personal property must be deposited in the State's General Fund.

State Finance Law §11 prohibits a State entity from accepting a conditional gift, grant, devise or bequest unless specific statutory authority authorizes acceptance.

Education Law §355(16) authorizes the State University's health care facilities to enter into joint and cooperative arrangements with public, non-profit and business entities.

4. Legislative History:

None.

5. Statement in Support:

The 1985 Independent Commission on the Future of the State University of New York identified over-regulation as an impediment to the State University's effectiveness in fulfilling its mission. The Commission concluded as follows:

What we criticize is a tradition of over-regulation that has its roots in the legal conception of SUNY as a state agency, a tradition that dates from 1948 but which, the Commission is convinced, SUNY has now outgrown Over-regulation pervades every aspect of SUNY's operation, in ways large and small. (The Challenge & The Choice, pp. 32-33 (1985)).

The observations of the Commission are as apt today as in 1985, despite the enactment of flexibility provisions in 1985. Many government agencies have approval authority over the State University's day-to-day operations, principally because State University continues to be treated as a State agency. The State University's interests as an academic institution are not given priority over general State process issues by control agencies in New York State government and the Legislature. The legislation addresses these concerns with respect to the use and disposal of real and personal property.

The 2008 report of the New York State Commission on Higher Education re-examined higher education in the state and opined that, for SUNY and CUNY, "statutory change should be sought to lessen regulation", noting, "SUNY's Board of Trustees should have authority to lease SUNY property for purposes that support SUNY's mission without prior legislative approval".

The legislation allows the State University more flexibility in putting real property under its jurisdiction to good use. Generally, the State University's enabling legislation authorizes the State University to lease its real property and capital facilities only to the State University Construction Fund and the Dormitory Authority of the State of New York. Without special legislation, the State University cannot lease property to other tenants even if doing so clearly would further the educational mission and generate revenue. Without special legislation, for example, State University campuses—unlike universities elsewhere—cannot issue ground leases to private developers to build student housing or research or other facilities. And, without authorizing legislation, State University also cannot lease—much less give—lab or office space to small research start-up companies even where doing so would advance its academic, research or public service mission. Other statutory provisions restrict the disposition of surplus property.

In addition, the legislation makes clear the authority of the State University to undertake public-private partnerships through an array of legal structures in support of the educational, research, health care and economic development missions of the State University set forth in Education Law §351.

6. Possible Objections:

None known.

7. Other State Agencies Interested:

Office of the State Comptroller; Attorney General; Office of General Services.

8. Known Positions of Others:

None.

9. Budget Implications:

The proposal should generate revenues for and reduce costs of the State University.

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