

CLI RECOMMENDATION NO. 4

Adopt Model State Environmental Act*

Model State Environmental Quality Act¹

Chapter 1: Statement of Policy and Intent

The Legislature finds and declares that it is the policy of the State to do the following:

- (A) Recognize that the State holds the environment in public trust for the benefit of all the people of the State, and therefore has an obligation to develop and maintain a high quality environment for present and future generations and to take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State;
- (B) Take all action necessary to ensure the fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation, and enforcement of all environmental laws, regulations and policies, and to provide all of the people of the State with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise, light pollution, and threats to human health;
- (C) Prevent the elimination of fish or wildlife species due to human activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities of this state;
- (D) Ensure that the restoration and long-term protection of the environment and the provision of a suitable living environment for every State citizen shall be the guiding objective of public decisions;
- (E) Create and maintain conditions under which humans and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations;
- (F) Require public agencies at all levels of government to develop standards and procedures necessary to ensure public participation in decision-making and to restore and protect environmental quality;
- (G) Require public agencies at all levels of government in making decisions that affect the environment to consider qualitative as well as quantitative social, technical and economic factors; to consider fairness to people without distinction of any kind based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status; to consider long-term as well as short-term advantages and disadvantages of proposed actions; to consider the cumulative impacts of all threats to human health and the environment; and to consider a broad range of alternatives to proposed actions affecting the environment;

* This recommendation was authored by Joseph H. Guth, Legal Director of the Science and Environmental Health Network (SEHN).

¹ For extended discussion concerning this Model Act, see Model State Environmental Quality Act 2007 on the Science and Environmental Health Network (SEHN) at http://www.sehn.org/law_models.html.

- (H) Require public agencies at all levels of government making decisions that affect the quality of the environment to act on early warnings of harm in order to restore the environment and to prevent environmental damage in this State;
- (I) Favor projects that eliminate, remediate, and reduce existing and ongoing environmental degradation and redress existing unfair treatment of people with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies; and
- (J) Deny projects as proposed if there are feasible alternatives or feasible mitigation measures available, including the option of not doing the project at all, which would substantially lessen unacceptable adverse environmental effects or unfair treatment based on based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status of such projects. The procedures required by this Act are intended to assist public agencies in systematically identifying the adverse effects on the environment and unfair treatment of proposed projects, as well as the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen unacceptable adverse effects on the environment and unfair treatment.

Chapter 2: Definitions

- (A) “Environment” means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance. The term contemplates that local environments are often interconnected with the broader environment of the State, the United States and the world, and that action taken in any particular local environment can have and contribute to adverse environmental effects in other areas as well.
- (B) “Environment Assessment” or “EA” means an informational document that shall be prepared for proposed projects. The purpose of an Environmental Assessment is to enable public agencies, in consultation with the public, to either issue a “Finding of No Significant Adverse Effect” or determine that further assessment of the project is necessary through preparation of an Environmental Impact Statement.
- (C) “Environmental Impact Statement” or “EIS” means an informational, detailed document setting forth the matters specified in this Act, which, when its preparation is required by this Act, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an Environmental Impact Statement is to provide public agencies and the public in general with detailed information about all significant adverse effects on the environment, benefits to the environment, unfair treatment or remediation of unfair treatment which a proposed project may cause; to identify and describe ways in which such significant adverse effects on the environment or any unfair treatment might be prevented, reduced, and/or minimized; and to identify and describe alternatives, including the alternative of no action, to such a project and any significant adverse effects on the environment or unfair treatment such alternatives may have.
- (D) “Finding of No Significant Adverse Effect” means a written statement by a lead agency stating in full the bases of its conclusion that an Environmental Assessment prepared by the proponent of a project establishes a reasonable certainty that the project will cause no significant adverse effect on the environment or unfair treatment.

- (E) “Lead agency” means the public agency which has the responsibility for carrying out or approving a project or taking some other action requested by the proponent of a project relating to creating, developing, building or otherwise beginning or completing the project.
- (F) “Person or corporation” means any human, organization, agency, corporation, or other entity.
- (G) “Project” means any activity which may cause either a direct physical, chemical or biological change in the environment, or a reasonably foreseeable indirect physical, chemical or biological change in the environment, and which is any of the following:
1. An activity directly undertaken by any public agency, which is therefore the proponent of the activity;
 2. An activity undertaken by a person or corporation which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or
 3. An activity that involves the issuance to a person or corporation of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Alternatives to a project should be identified by reference to the broad social objectives of the project, and include the alternative of not doing the project.

- (H) “Public agency” means any state or local agency, board, or commission; any county, city, and county or regional agency; or an agency of any other political subdivision.
- (I) “Significant Adverse Effect on the Environment” means an effect on the environment that causes, or contributes to, any type of degradation of the environment or damage to public health, in view of the existing and reasonably expected cumulative impacts on the environment and public health.
- (J) “Cumulative Impacts” means the total of the public health and environmental effects in a geographic area or in a population from all types of degradation and damage from all sources combined, including pollution from all emissions and discharges, whether single or multi-media, routinely, accidentally or otherwise released. The Cumulative Impacts that may be caused by a particular source of degradation of the environment or damage to public health means the total of all adverse effects to human health and the environment that the source may cause, taking into account all factors that may affect the impact of those adverse effects, including all other sources of environmental degradation or health damage, the existence of sensitive or highly exposed populations (including children and workers), and all relevant socioeconomic factors and social determinants of health including income, access to health care and health status of the affected populations.
- (K) A project causes “unfair treatment” when it causes or contributes, in view of cumulative impacts, to the inequitable treatment of people based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with respect to the development, adoption, implementation, or enforcement of any environmental law, regulation or policy.

- (L) “Monetization” of effects on the environment or unfair treatment refers to the analytical practice of converting such effects to a monetary value, a practice that is distinct from an evaluation of qualitative considerations such as justice, ethics and intergenerational equity.
- (M) “Evidence” means all information establishing facts and reasonable assumptions predicated on those facts, including evidence provided by individuals, community members and members of the public even if not presented in rigorous scientific form, as appropriate to the relevant social, economic or technical factor being evaluated. When a project raises a threat of harm to human health or the environment, that threat may preclude a conclusion that there is a reasonable certainty that the project will cause no significant adverse effect on the environment or unfair treatment even if all cause and effect relationships are not fully established scientifically.

Chapter 3: Assessment of Environmental Impacts

Section 3.1: Environmental assessments on proposed projects: significant effects: Findings of No Significant Impact

- (A) A proponent of any proposed project may prepare an Environmental Assessment demonstrating, on the basis of substantial evidence in light of a complete record, a reasonable certainty that the proposed project will cause no significant adverse effect on the environment or unfair treatment. This evidence may not constitute solely a monetized cost-benefit analysis but must also comprise identification and analysis in non-monetized terms of all significant qualitative social, technical, and economic considerations.
- (B) The lead agency shall evaluate the Environmental Assessment, in consultation with the public, and shall consider information it receives from the public, as well as qualitative and quantitative social, technical and economic factors; the public trust; advantages and disadvantages in both the short term and for future generations; whether the project raises a threat of harm to human health or the environment; and cumulative impacts. If the lead agency concludes that the Environmental Assessment has established a reasonable certainty that the proposed project will cause no significant adverse effect on the environment or unfair treatment, the agency shall prepare and issue for public comment a draft Finding of No Significant Adverse Effect; otherwise the agency must decline to issue such a Finding. Once a Finding becomes final, the Agency may then take appropriate agency action.

Section 3.2: Environmental Impact Statements on proposed projects

- (A) The proponent of any proposed project shall prepare an Environmental Impact Statement unless the lead agency has issued a Finding of No Significant Adverse Effect. In the Environmental Impact Statement, the proponent of the project shall demonstrate, on the basis of substantial evidence in light of a complete record, a reasonable certainty that the project, in view of all the alternatives, to the maximum extent feasible avoids significant adverse effects on the environment and unfair treatment. This evidence may not constitute solely a monetized cost-benefit analysis but must also comprise identification and analysis in non-monetized terms of all significant qualitative social, technical and economic considerations.
- (B) Each Environmental Impact Statement shall include a detailed statement setting forth all of the following:

1. Identification of the project and each alternative, including the no-action alternative.
2. A complete description of each project and alternative.
3. For each project and alternative:
 - a. Identification and description of all significant adverse effects on the environment and unfair treatment that may be caused by the project;
 - b. All significant adverse effects on the environment and unfair treatment that cannot be avoided if the project or alternative is implemented;
 - c. All significant adverse effects on the environment and unfair treatment that would be irreversible if the project or alternative is implemented;
 - d. An evaluation of the existing cumulative impacts and unfair treatment in the relevant environment and community;
 - e. The cumulative impacts on cultural and historic resources of the State, and any other relevant social, technical or economic impacts, caused by the project or alternative; and
 - f. Mitigation measures proposed to minimize or eliminate significant adverse effects on the environment and unfair treatment, and a description of how those measures would be implemented.
4. Identification of any and all potential adverse effects on the environment of a project that are determined to be not significant or not unfair treatment and consequently not otherwise discussed in detail in the Environmental Impact Statement, and the reasons for that determination.

Section 3.3: Best available alternative; mitigation

- (A) The lead agency shall evaluate the Environmental Impact Statement, in consultation with the public, and shall consider: information it receives from the public, as well as qualitative and quantitative social, technical, and economic factors; the public trust; advantages and disadvantages in both the short term and for future generations; whether the project raises a threat of harm to human health or the environment; and cumulative impacts.
- (B) If the lead agency determines that a feasible alternative has not been adequately discussed in the Environmental Impact Statement, the agency shall request that the proponent of the activity prepare an analysis of such additional feasible alternative for completion of the Environmental Impact Statement.
- (C) After evaluation of the completed Environmental Impact Statement in consultation with the public, the lead agency may accept for approval the project proposed by the proponent of the project, it may accept an alternative, it may impose additional conditions, restrictions or requirements, or it may deny the application. In making this determination, the lead agency shall:
 1. Ensure that the proponent of the project has demonstrated a reasonable certainty that the approved project, with any additional conditions, restrictions or requirements, to the maximum extent feasible, avoids significant adverse effects on the environment and unfair treatment;
 2. Prefer projects and alternatives that the proponent has demonstrated are reasonably certain

to provide an improvement in the quality of the air, water, soil and biodiversity of the environment over those that will not affect such quality; and prefer projects and alternatives that the proponent has demonstrated are reasonably certain not to affect such quality over those that will diminish it;

3. Ensure that if a project or alternative comprises one element that remediates existing environmental damage or unfair treatment as compensation for a significant adverse effect on the environment or unfair treatment caused by another element of the project, such remediation benefits the same community as is harmed by the significant adverse effect or unfair treatment;
4. Require a performance bond where appropriate to ensure that the proponent of the project fulfills its commitments and obligations to ensure that significant adverse effects on the environment and unfair treatment are minimized or avoided; and
5. With appropriate public participation, prepare and issue to the public a draft Approval of Environmental Impact Statement explaining in full the agency's bases for approving the project or alternative and any additional conditions, restrictions or requirements. Once the Approval becomes final, the agency may then take appropriate action requested by the proponent of the project.

Section 3.4: State Environment Department; preparation and development of guidelines

The State Environment Department shall prepare and develop proposed regulations for the implementation of this Act by public agencies. The regulations shall include objectives and criteria for the orderly evaluation of projects and the preparation of documents in a manner consistent with this Act.

- (A) The regulations shall specifically include criteria for public agencies to follow in evaluating Environmental Assessments and Environmental Impact Statements. The criteria shall require public agencies to find that the proponent of the activity has carried the burdens of proof required by this Act.
- (B) The regulations shall also include criteria for a public agency to use in determining when a proposed project is of sufficient statewide, regional, or area-wide environmental significance that it should be submitted to additional appropriate state agencies for review and comment prior to completion by the agency of its evaluation of an Environmental Assessment or Environmental Impact Statement.
- (C) The State Environment Department shall develop and prepare the proposed regulations as soon as practicable.

Section 3.5: Establishment of time limits for Environmental Assessments and Environmental Impact Statements

- (A) Each public agency shall establish, by resolution or order, time limits that do not exceed the following:
 1. Six months for completing evaluating an Environmental Assessment and, where appropriate, preparing and publishing a final Finding of No Significant Adverse Effect.

2. One year for evaluating an Environmental Impact Statement and, where appropriate, preparing and publishing a final Approval of Environmental Impact Statement.
 3. The time limits specified in this section shall apply only to those circumstances in which the public agency is the lead agency for a project. The resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the public agency. The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time.
- (B) If an evaluation of an Environmental Assessment or Environmental Impact Statement is prepared under a contract to a public agency, the contract shall be executed within 45 days from the date on which the public agency sends a notice of preparation. The public agency may take longer to execute the contract if there is an extension of the time limit provided by this subsection.

Section 3.4: Notice; opportunity to comment; availability to legislature and general public

- (A) Whenever a public agency approves a project, including projects for which it is the proponent, it shall file notice of that approval with the State's Office of Planning and Research.
1. The notice shall indicate the determination of the public agency on whether the project will, or will not, provide an improvement or significant adverse effect on the environment, or cause or remediate unfair treatment, and shall indicate whether an Environmental Assessment, Finding of No Adverse Effect, Environmental Impact Statement and Approval of Environmental Impact Statement have been prepared pursuant to this Act.
 2. All notices filed pursuant to this section shall be available for public inspection.
- (B) Lead agencies shall solicit and consider comments from the public and public agencies on environmental documents, including, but not limited to, Environmental Assessments, draft Finding of No Adverse Effects, Environmental Impact Statements and draft Approval of Environment Impact Statements, in order to help the lead agencies identify significant adverse effects on the environment and unfair treatment that may be caused by a project, as well as alternatives, mitigation measures which would substantially reduce those adverse effects and unfair treatment, and steps that may remediate existing adverse effects on the environment and unfair treatment.
- (C) The lead agency shall make available on a publicly accessible website each Environmental Assessment, Environmental Impact Statement, Finding of No Adverse Effect and Approval of Environmental Impact Statement, and drafts intended for public review, and make copies available to the following:
1. The State Legislature. It shall include the Environmental Assessment, Environmental Impact Statement, Finding of No Adverse Effect and Approval of Environmental Impact Statement, and drafts intended for public review, as a part of the regular project statement used in the existing review and budgetary process.

2. The general public. Also, any member of the general public may secure a copy thereof by requesting a copy from the lead agency.
3. The appropriate local planning agency or agencies of any city, county, or city and county which will be affected by the project.

Chapter 4: Proceedings

Section 4.1: Enforcement; commencement of actions or proceedings

- (A) Any person or corporation may enforce the provisions of this Act.
- (B) Any action or proceeding to challenge, review, set aside, void, or annul the following acts on the grounds of noncompliance with this Act shall be commenced as follows:
 1. An action or proceeding alleging that a person or corporation is carrying out or has approved a project which may cause a significant adverse effect on the environment or unfair treatment without obtaining or issuing a Finding of No Adverse Effect or an Approval of Environmental Impact Statement shall be commenced within 180 days from the date the public agency notified the public of its decision to carry out or approve the project, or, if a project is undertaken without a decision by a public agency, at any time after the commencement of the project.
 2. Any action or proceeding alleging that a public agency has improperly determined whether a project may cause a significant adverse effect on the environment or unfair treatment shall be commenced within 180 days from the date of the filing of the notice required by this Act.
 3. Any action or proceeding alleging that an Environmental Assessment, Finding of No Adverse Effect, Environmental Impact Statement or Approval of Environmental Impact Statement does not comply with this Act shall be commenced within 180 days from the date of the filing of the notice required by this Act.

Section 4.2: Settlement meetings; settlement conference

- (A) Not later than 20 days from the date of service upon a public agency of a petition or complaint, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.
- (B) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

- (C) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.
- (D) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

Section 4.3: Noncompliance with Act; court orders

If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this Act, the court shall enter an order that includes one or more of the following:

- (A) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
- (B) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision, into compliance with this Act.
- (C) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this Act.
- (D) A mandate that the public agency pay attorneys' fees and expenses to plaintiff unless the plaintiff is or acts on behalf of the proponent of the project. In any proceeding challenging a determination, finding or decision of a public agency, if the plaintiff is or acts on behalf of the proponent of the project, the court shall enter an order that includes a mandate that the plaintiff pay attorneys' fees and expenses to the public agency.

Chapter 5: Effective Date

Unless otherwise specified, this Act shall become effective six months from enactment.

Chapter 6: Funding

All expenses born from implementing this Act shall be that undertaken by each agency.

Chapter 7: Severability

If any provision of this Act or the application thereof to any person or corporation or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provision of this Act are severable.