



# HOUSE BILL 795: State Environmental Policy Act Reform

2015-2016 General Assembly

**Committee:**

**Introduced by:**

**Analysis of:** S.L. 2015-90

**Date:**

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Legislative Analyst

**SUMMARY:** *S.L. 2015-90 increases the thresholds for when the State Environmental Policy Act (SEPA) applies, increases the number of exemptions from the Act, and otherwise amends the Act.*

*The act became effective June 19, 2015, and applies to State agency action occurring on or after that date.*

## **PRIOR LAW:**

Under the State Environmental Policy Act (SEPA), a State agency must include in its recommendation on any action involving (i) expenditure of public moneys or (ii) use of public land for projects and programs significantly affecting the quality of the environment of the State, a detailed statement that sets out the following:

- The environmental impact of the proposed action.
- Significant adverse environmental effects that cannot be avoided if the proposal is implemented.
- Mitigation measures proposed to minimize the impact.
- Alternatives to the proposed action.
- The relationship between the short term uses of the environment involved in the proposed action and the maintenance and enhancement of long term productivity.
- Any irreversible and irretrievable environmental changes which would be involved in the proposed action if it is implemented.

Several types of projects are exempted from this requirement, including:

- The construction, maintenance, or removal of certain utility lines within or across the right of way of any street or highway.
- An action approved under a general permit issued by the Coastal Resources Commission for certain types of coastal development or by the Environmental Management Commission for certain activities related to water and air quality.
- A lease or easement granted by a State agency for the use of an existing building or facility, placement of a wastewater line on or under submerged lands, or a shellfish cultivation lease.
- The construction of a driveway connection to a public roadway.
- A project for which public monies are expended if the expenditure is solely for the payment of incentives for job creation or capital investment.

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- Coastal development that receives a Coastal Resources Commission major development permit.
- Certain coastal road and bridge projects when an executive order is issued waiving the environmental impact statement requirement.

## ANALYSIS:

S.L. 2015-90 increases the thresholds for when the State Environmental Policy Act (SEPA) applies, increases the number of exemptions from the Act, and otherwise amends the Act as follows:

- SEPA requirements would only apply when there are significant expenditures of public moneys. The Session Law defines "significant expenditure of public moneys" as expenditures of public funds greater than \$10,000,000.
- An environmental impact statement for a project would only include the direct environmental impacts of an action. The Session Law does not define "direct environmental impact".
- Provides that failure of an agency to provide comments on an action within the comment period or to request an extension of the comment period will be treated as a conclusion by the agency that there is no significant environmental impact.
- Provides the "use of public land" means land-disturbing activity of greater than 10 acres that results in substantial, permanent changes in the natural cover or topography of those lands. Under prior law, "use of public land" means activity that results in changes in the natural cover or topography of those lands.
- Provides that each State agency must adopt minimum criteria that include actions that have no significant long-term impact to the environment and to which the SEPA requirements will not apply. Under prior law, each State agency may adopt minimum criteria that include actions that have no significant impact to the environment and to which SEPA requirements will not apply.
- Expands existing and creates new exemptions from SEPA requirements as follows:
  - Expands the prior utility line exemption to include "similar infrastructure projects".
  - Expands the prior "action under a general permit" exemption to include actions approved under the following:
    - A Coastal Habitat Protection Plan.
    - A special order to stop water or air pollution
    - An action to address an environmental emergency.
    - Remedial action under the waste, water, air, and Brownfields programs.
    - A certificate of convenience for a public utility.
    - Industrial or pollution control project financing approved by the Secretary of Commerce.
    - Water and sewer infrastructure project financing approval.
    - A water quality certification.
  - Expands the lease or easement exemption as follows:

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- Expands the submerged lands lease or easement exemption to exempt placement of other wastewater structures or uses on or under submerged lands.
- Exempts the granting of a lease or easement for a facility for the use or benefit of a public education institution.
- Exempts the granting of a lease or easement for a health care facility financed under the State Health Care Facilities Finance Act or receiving a certificate of need.
- Expands the public incentives exemption to include use of public lands.
- Adds an exemption for facilities related to the closure of coal ash impoundments.
- Adds an exemption for any project or facility specifically required or authorized by the General Assembly.
- Adds an exemption for mitigation projects, including wetlands and buffer mitigation projects and banks, coastal protections and mitigation projects, and noise mitigation projects.

The Session Law also:

- Directs the Division of Water Resources of the Department of Environment and Natural Resources to establish an environmental assessment process for projects funded from certain State water and sewer infrastructure loan and grant funds that is sufficient to meet federal environmental assessment requirements for such projects.
- Clarifies that the changes to the SEPA statutes do not affect the requirements to prepare environmental documents for interbasin transfers.

## **EFFECTIVE DATE:**

The Session Law became effective June 19, 2015 and applies to State agency action occurring on or after that date.