

## **Policy and Procedures for Environmental Law Section Comments on Legislation, Regulations and Agency Guidance Documents**

The Environmental Law Section (the Section) represents a large and diverse group of New York lawyers with an interest and expertise in environmental law. Included among the Section's purposes, as set forth in its Mission Statement and consistent with its Bylaws, are activities "to support, promote or initiate desirable environmental law reform" and "to make recommendations for the improved integration of [environmental] laws to better effectuate protection of human health, the natural environment and the public welfare." Such activities may include submitting comments on proposed legislation, regulations or agency guidance pertaining to the setting of environmental policy and the administration of environmental law ("Comments"). The Executive Committee has adopted this policy and these procedures to facilitate a process which will achieve a high quality and timely work product. The Executive Committee also hopes that the policy and procedures will promote the consideration of diverse views within the Section, and that the Section will seek consensus when possible.

1. **Definitions.** Section Comments may intend to advocate a particular position ("Advocacy Comments) or they may intend to educate and inform without advocating a particular position ("Educational Comments"). Advocacy Comments may set forth a single recommended position on a given issue or they include majority and minority recommendations ("Multiple Position Advocacy Comments").
  
2. **Proposal to Submit Comments.** A proposal to submit Comments ("Proposal") may be made by any member or group of members of the Section, by any of the Section's Committees or Task Forces (referred to in this document as "Committees"), by the Bar Association or any subsidiary unit thereof, or by another Bar Association. A Proposal should be submitted to the Section Cabinet (directly, or through the Section's Association Staff Liaison). The Proposal will receive Section consideration pursuant to the procedures set out below. In unusual circumstances, the Cabinet may modify those procedures, taking into account, *inter alia*, any time constraints on the submission of the proposed Comments and the importance of the matter to the interests and mission of the Section.
  - A. A Proposal should be in writing, submitted electronically. If possible, a Proposal should be submitted no later than 30 days before the proposed Comments are to be submitted; a shorter time should be explained. The Proposal should contain:
    - i. A concise summary of the issues/matters to be addressed; a statement of the Section's interest in submitting the proposed Comments; and a statement whether the Proposal is for Advocacy or Educational Comments.
    - ii. Identification of the entity to which the Comments will be submitted.
    - iii. An electronic copy of, or a link to, the legislation, regulations, policy, guidance or other written matter to be commented on.
    - iv. A draft of the proposed Comments (preferred), or a detailed outline.

- v. A brief statement indicating the likelihood of consensus among Section members; if possible, identify anticipated opposition to the Proposal.
  - vi. The deadline by which the Comments must be submitted.
  - vii. The name, address, phone, fax and e-mail address of the person(s) submitting the Proposal.
- B.
- i. If a Proposal is made by a Committee, the Cabinet will refer the Proposal directly to the Executive Committee for consideration.
  - ii. If a proposal is made by the Association, or an individual member or group of members, the Cabinet will refer the Proposal to the appropriate Committee for further consideration. If, after reasonable opportunity for consideration, the Committee does not endorse the Proposal or does not express any position on the Proposal, and if the proponent(s) nevertheless request further consideration of the matter, the Cabinet will refer the Proposal to the Executive Committee for consideration. If there is no appropriate Committee, or the appropriate Committee is not prepared to consider a Proposal, the Cabinet may convene an *ad hoc* committee to consider the matter, or the Cabinet may refer the Proposal directly to the Executive Committee. In any event, the Cabinet will notify the Executive Committee of the receipt of the proposal, and how it is being handled.
3. Approval of Comments. No Comments will be submitted on behalf of the Section (or any of its Committees) without prior approval in accordance with this paragraph.
- A. The decision to approve Advocacy Comments will be made by a vote of the Executive Committee, and requires a two thirds majority of those voting.
  - B. The decision to approve Educational Comments or Multiple Position Advocacy Comments will be made by a vote of the Executive Committee, and requires a simple majority of those voting.
  - C. In the case of a Proposal for Advocacy Comments concerning which substantial disagreement exists among the Section membership the Cabinet may, without further prior notice to the Executive Committee, authorize the submission of Multiple Position Advocacy Comments notwithstanding a vote of the Executive Committee to approve Advocacy Comments, provided the proposed alternative or competing recommendations were made available to the Executive Committee in advance of that Committee's vote.
  - D. An Executive Committee vote will occur only after its members have had at least 15 days notice, so as to provide an adequate opportunity to become familiar with the matter and to share their views.
  - E. Provision of notice and dissemination of further related information will ordinarily be by email. The vote itself will be conducted either by email or at a regularly scheduled Executive Committee meeting (if consistent with the timing of the comment process).
  - F. If and when the Section submits Advocacy Comments concerning which there was not concensus among the Executive Committee, the transmission document accompanying such Comments should note that they do not reflect the views of all Section members.

4. General Policy Considerations.
- A. Consensus among Section members on a Proposal is desirable, but may not be achievable. As to some issues, members may hold strong and divergent views. Before voting on any Proposal, Executive Committee members are encouraged to consider whether –
- i. the Proposal is consistent with the Section’s Mission Statement, and with any prior Section Comments;
  - ii. the Proposal is supported with sufficient information to allow a reasoned decision;
  - iii. there has been an adequate opportunity for discussion, including the opportunity for members with opposing views to be heard;
  - iv. the Proposal is likely to be controversial or divisive within the Section;
  - v. any Section members are recusing themselves from discussions about or votes on the issue;
  - vi. approval of the Proposal could create a perception that the Section is inappropriately promoting the interests of a particular subset of its members or their clients;
  - vii. an alternative approach to the Proposal (*e.g.*, submission of Educational Comments instead of Advocacy Comments, or submission of Multiple Position Advocacy Comments) would be preferable.
- B. The integrity and quality of the Section’s Comment process is, to a great degree, dependent on the work of the relevant Committees that are drafting Proposals and Comments for Cabinet and Executive Committee review. It is the policy of the Section that, during the drafting process, the Committees should strive for a transparent process, with appropriate notice and opportunity to participate for all Committee members as well as any Executive Committee members who have expressed specific interest in the matter. The Committees should also strive for consensus where possible in their internal deliberations.

Adopted April 5, 2006