

REGULATORY SUNSET OF ENVIRONMENTAL LIMITATION ACT

Summary: This model policy would require environmental limitations to automatically sunset after five years, unless they are reauthorized by the property owner. Environmental limitations subject to termination may be renewed for an additional term of five years without reauthorization by the property owner only if the limitation is demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest.

Section 1. Definitions

For the purposes of this Act:

- (a) “Compelling governmental interest” means a governmental interest of the highest order that cannot be achieved through less restrictive means.
- (b) “Environmental limitation” means any designation, or restriction issued by a state or local agency that restricts the use of private property, including but not limited to wetlands determinations, critical habitat restrictions, and conservation easements.
- (c) “Private property” means real property that is owned by a private person or private entity.
- (d) “Property owner” means the holder of legal title to or the right to use real property subject to an environmental permit.
- (e) “Reauthorization” means a written, affirmative renewal of the environmental permit signed by the property owner.

Section 2. Sunset of Environmental Permits



- (a) shall terminate five years after the effective date of this Act unless reauthorized by the property owner.

- (b) An environmental limitation subject to termination under this section may be renewed for an additional term of five years without reauthorization by the property owner only if the limitation is demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest.

- (c) At least one year prior to the expiration of an environmental limitation, the issuing agency shall notify the property owner in writing of the upcoming expiration. Such notice shall include:
 - (1) an explanation of the property owner's right to allow the environmental limitation to expire;

 - (2) an explanation of the circumstances in which the environmental limitation may be renewed by the issuing agency without the property owner's authorization under Section 2(c) of this Act; and

 - (3) may include a request for reauthorization by the property owner along with instructions for reauthorization.

- (e) All environmental limitations reauthorized under this section shall expire five years after the date of reauthorization, unless reauthorized for an additional five-year term under the terms of this Act.

Section 3. Enforcement.

- (a) A property owner that is subject to the reauthorization of an environmental limitation under Section 2(c) of this Act may file an action in a court of competent jurisdiction to challenge the reauthorization of the limitation.

- (b) The plaintiff shall prevail in an action filed under this section unless the agency that reauthorized the environmental limitation demonstrates to the court by clear and convincing evidence that:



- (1) the limitation is demonstrably necessary and narrowly tailored to fulfill a compelling governmental interest;
 - (2) the limitation is the least restrictive means to achieve the stated purpose of the limitation; and
 - (3) reasonable alternatives were considered and could not achieve the stated interest of the agency.
- (c) If a property owner prevails under subsection (b), the court shall permanently enjoin further enforcement of the environmental limitation and shall award reasonable attorney fees and costs.
- (d) A property owner shall not be liable for attorneys' fees or costs in favor of the government, nor shall the government require an application for a project to indemnify, defend, or hold harmless government in any manner with respect to an action brought by the applicant, or another person, alleging that the government violated the applicant's rights or deprived the applicant of benefits or protections provided by law.

Want to learn more about this model policy in your state?

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