

Criteria for NCCUSL International Projects

Below, please find the NCCUSL Criteria for consideration of acts. As is the case with all new projects proposed for consideration by NCCUSL's Scope and Program and Executive Committees, such projects must satisfy our traditional criteria. Specifically:

1. Who will be in support of this proposal (and how strongly), and who opposed?
2. Is the project suitable for treatment by state statute and how complex are the problems associated with developing the statutory language?
3. What is the likelihood of success when we bring the end product to state legislatures for enactment?
4. Is there funding available to support this project, and from whom?
5. Does this project meet NCCUSL's criteria, does it need to be uniformly adopted, and how rapidly does it need to be completed?
6. Would this project be suitable for collaboration with the Canadian and Mexican uniform law conferences?

In the case of projects with an international aspect, certain additional threshold considerations apply. It is necessary to establish a nexus between the goals of the project and NCCUSL's core mission to serve its member states. Section 1.2 of the NCCUSL Constitution states "[i]t is the purpose of the Conference to promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable." Such a nexus could be established if the proposed project is (1) appropriate to prevent the preemption of existing or prospective state laws, such as by the federal adoption of a conflicting international agreement; (2) would make the enactment of a related uniform law more attractive to a state which has not yet enacted it, or (3) would promote the harmonization of state laws with the law in other countries. The core mission of NCCUSL might be served by ensuring that states have representation during the development of international agreements that may be implemented by state law. Please try to address these and related nexus issues in any proposal for a specific international law project.

STATEMENT OF POLICY ESTABLISHING CRITERIA AND PROCEDURES FOR DESIGNATION AND CONSIDERATION OF ACTS (January 13, 2001)

The Conference and its committees shall conform to the following criteria and procedures in proposing or considering Acts:

1. CRITERIA.

(a) The subject matter must be appropriate for state legislation in view of the powers granted by the Constitution of the United States to the Congress. If it properly falls within the exclusive jurisdiction of the Congress, it is obviously not appropriate for legislation by the several States. However, if the subject matter is within the concurrent jurisdiction of the federal and state governments and the Congress has not pre-empted the field, it may be appropriate for action by the States and hence by the Conference.

(b) The subject matter must be such that approval of the Act by the Conference would be consistent with the objectives of the Conference, as stated in Article 1.2 of its Constitution: “to promote uniformity in the law among the several States on subjects where uniformity is desirable and practicable.”

(c) Every Act drafted by the Conference shall conform to the following requirements:

(i) there shall be an obvious reason for an Act on the subject such that its preparation will be a practical step toward uniformity of state law or at least toward minimizing its diversity;

(ii) there must be a reasonable probability that an Act, when approved, either will be accepted and enacted into law by a substantial number of jurisdictions or, if not, will promote uniformity indirectly;

(iii) the subject of the Act shall be such that uniformity of law among States will produce significant benefits to the public through improvements in the law (for example, facilitating interstate economic, social or political relations, or responding to a need common to many States as to which uniform legislation may be more effective, more efficient, and more widely and easily understood) or will avoid significant disadvantages likely to arise from diversity of state law (for example, the tendency of diverse laws to mislead, prejudice, inconvenience or otherwise adversely affect the citizens of the States in their activities or dealings in other States or with citizens of other States or in moving from State to State).

(d) Experience demonstrates that Acts to accomplish the following purposes have met with the widest acceptance by state legislatures;

(i) *Acts to facilitate the flow of commercial transactions across state lines*, such as the Uniform Commercial Code;

(ii) *Acts to avoid conflict of laws when the laws of more than one State may apply to a transaction or series of transactions*, such as the Uniform Act on Transfers to Minors, the Uniform Certification of Questions of Law Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, and the Uniform Attendance of Out of State Witnesses Act;

(iii) *Acts without substantial interstate implications but conceived and drafted to fill emergent needs, to modernize antiquated concepts, or to codify the common law*, such as the Uniform Acts on Simultaneous Death, Limited Partnership, Partnership, Limited Liability Company, Rules of Evidence, Common Trust Fund, Principal and Income, and Fraudulent Transfers.

(e) Acts may promote uniformity indirectly as well as by substantially verbatim adoptions, as, for example, by:

(i) extensive adoptions in principle, such as the Uniform Alcoholism and Intoxication Treatment Act;

(ii) impact on case law and teaching practices, such as the Uniform Rules of Evidence;

(iii) gradually increasing adoptions, either in statutes or in case law, of particular sections or parts of a Uniform or Model Act addressing specific problems within the larger area to which the Act is directed, as for example, the Uniform Acts on Intestacy, Wills and Donative Transfers, Testamentary Additions to Trusts, Disclaimer of Property Interests, Statutory Rule Against Perpetuities, International Wills, Succession without Administration, Trustee Powers, Estate Tax Apportionment, Guardianship and Protective Proceedings, Durable Power of Attorney, and Nonprobate Transfers on Death, which address specific and discrete problems within the larger area to which the Uniform Probate Code is directed.

(f) As a general rule, the Conference should consider past experience in determining future projects and should avoid consideration of subjects that are:

(i) entirely novel and with regard to which neither legislative nor administrative experience is available;

(ii) controversial because of disparities in social, economic or political policies or philosophies among the various States; and

(iii) of purely local or state concern and without substantial interstate implications unless conceived and drafted to fill emergent needs or to modernize antiquated concepts.

2. DESIGNATION OF ACTS AS UNIFORM OR MODEL

The above criteria are equally applicable to Uniform and Model Acts. In determining whether an Act should be designated as a "Uniform" Act or a "Model" Act, the following procedures and criteria should be applied:

(a) The Executive Committee, in appointing a special committee for the consideration of an Act, may do so without indicating whether the product will be a "Uniform" or "Uniform Law Commissioners' Model" Act. The committee may be designated initially as the "Special Committee on [subject matter] Act" and any drafts circulated as "Uniform Law Commissioners' [subject matter] Act."

(b) Before the first reading, the Special Committee, after considering the criteria for designation, shall make a recommendation to the Executive Committee as to whether the Act should be circulated as a "Uniform" or "Uniform Law Commissioners' Model" Act.

(c) The Executive Committee shall review the recommendation of the Special Committee and decide whether the Act should be circulated as a "Uniform" or "Uniform Law Commissioners' Model" Act.

(d) After the Act's first reading, the Executive Committee shall reconsider whether the Act should be circulated as a "Uniform" or "Uniform Law Commissioners' Model" Act. A subsequent draft must be presented and circulated in the form approved by the Executive Committee.

(e) The Conference may change the designation assigned by the Executive Committee.

(f) Criteria for designation:

(i) An act shall be designated as "Uniform" if

(A) there is a substantial reason to anticipate enactment in a large number of jurisdictions; and

(B) "uniformity" of the provisions of the proposed enactment among the various jurisdictions is a principal objective.

(ii) An act shall be designated as a "Uniform Law Commissioners' Model" Act if

(A) "uniformity" may be a desirable objective, although not a principal objective;

(B) the Act may promote uniformity and minimize diversity, even though a significant number of jurisdictions may not adopt the Act in its entirety; or

(C) the purposes of the Act can be substantially achieved, even though it is not adopted in its entirety by every State.

3. ACTS RECOMMENDED BY OUTSIDE ORGANIZATIONS.

When an affiliated or responsible non-affiliated organization recommends a subject for an Act or requests the Conference to draft an Act, it should be informed of the criteria to which Acts proposed for action by the Conference must conform and be requested to demonstrate such conformity as well as to submit recommendations as to the substance of the Act.

4. PRODEDURE IN CONSIDERING PROPOSED SUBJECTS OF ACTS.

(a) *Committee on Scope and Program.* Whenever a subject for an Act is proposed to the Conference, the proposal shall first be submitted to the Committee on Scope and Program, which shall have the responsibility to determine whether the subject merits consideration by the Conference and:

(i) if so, to report that determination to the Executive Committee, together with its reasons; or

(ii) if not, to report its recommendation to the Executive Committee, together with its reasons.

(b) *Executive Committee.*

(i) The Executive Committee shall review the recommendations of the Committee on Scope and Program as to any subject for a proposed Act and either approve or disapprove its recommendations. If the Executive Committee determines that a subject for a proposed Act merits consideration by the Conference, the President of the Conference shall assign the subject to a Standing or Special Committee, as the Executive Committee directs, either for further study and recommendations or to proceed with the drafting of an Act on the subject.

(ii) Before proceeding with the drafting of an Act, the Executive Committee must find that a proposed Act:

(A) comports with the criteria of the Conference;

(B) has the potential, in comparison with other pending proposals, of substantially contributing to the objectives of the Conference; and

(C) will have adequate agenda time for its consideration.

(c) *Standing or Special Study Committee.* Unless otherwise directed by the Executive Committee, the Standing or Special Study Committee to which the President assigns the subject will be charged with the responsibility not of drafting an Act, but of studying the subject and of conducting research to determine whether, in the opinion of that Committee, the subject is one on which an Act should be drafted and whether the Act should be designated as "Uniform" or "Uniform Law Commissioners' Model". The Standing or Special Study Committee shall address the criteria and report by a given date its recommendations, based on those criteria, to the Committee on Scope and Program.

If the Standing or Special Study Committee recommends to the Committee on Scope and Program that an Act on the subject be drafted by the Conference, the Committee on Scope and Program, after addressing the Criteria of the Conference for designating Acts, shall report its recommendations to the Executive Committee for further action.

(d) *Identifying Outside Resources.* If consideration of the proposal will require outside resources in addition to the work of members, Associate Members, and staff of the Conference, reasonably promising prospects for obtaining the required resources must be identifiable.

(e) *Reference of Adverse Report to Executive Committee.* If the Standing or Special Study Committee recommends to the President that no Act be drafted on the subject, the report of the Standing or Special Study Committee shall be referred to the Executive Committee, which shall review all reasons advanced for and against an Act on the subject and determine, subject to review by the Conference, whether or not an Act should be drafted on the subject.

(f) *Procedure for Reexamination of Pending Subjects.* Each Special Drafting Committee shall report semi-annually, in accordance with Section 28.3 of the Bylaws, and at any intervening time, if so requested by the Executive Committee, on the progress of its work and its current views about

(i) whether the subject of its work meets the criteria of the Conference for considering Acts and, if so

(ii) whether the Act should be recommended as a "Uniform" Act or, instead, as a "Uniform Law Commissioners' Model" Act.

5. OBLIGATION OF COMMISSIONERS.

Approval of an Act as a Uniform Act carries with it the obligation of the Commissioners from each State to endeavor to procure consideration by the legislature of the State, unless the Commissioners deem the Act inappropriate for enactment in their State. (See Section 6.1 of the Constitution.)

"Uniform" Acts should be proposed and supported for adoption as promulgated to achieve necessary and desirable uniformity. "Uniform Law Commissioners' Model" Acts must be proposed and supported to minimize diversity and improve the law, but without the same emphasis on adhering to the verbatim text.