This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see https://lpdd.org.

MODEL STATE LAW TO PRIORITIZE FUNDING OF CLEANER TRANSPORTATION ALTERNATIVES[*]

I. Introduction.

Transportation is the leading source of carbon emissions in the United States.[1] And motorized road travel accounts for approximately three-quarters of these emissions.[2] Specifically, cars and trucks generate almost 83% of greenhouse gas pollution produced by fossil fuel transport in the U.S.[3] Transportation demand is only expected to increase in the coming decades, and without changes to current transportation and land use practices, passenger and freight vehicle miles traveled are projected to steadily increase.[4] Transforming patterns of transportation (e.g., reducing miles traveled by motorized vehicles and providing safe and convenient alternatives to driving) is essential to curbing transportation pollution, improving the efficiency of the transportation system, and providing equitable access to transportation. Clean transportation is also key to many other considerations, including economic, social and equity benefits. However, most state funding processes continue to favor new and expanded roadways that encourage more driving and cause more pollution, and oftentimes such allocation process can be more opaque than transparent. All of this needs to be reversed. States need to move toward the implementation of a more transparent, objective, and quantifiable funding prioritization process that prioritizes environmental impact factors in the assessment of candidate projects for funding allocation.

II. Considerations and Legislative Proposal.

As part of the effort to reduce emissions from motorized transportation, and complementary to efforts underway to promote more efficient and cleaner vehicles, the legislative roadmap at hand provides two versions of a model state law to prioritize funding for transportation projects that reduce greenhouse gas emissions from transportation. One version is for states that have not adopted a statewide transportation funding process; the other is for states that have already adopted such a process. Specifically, the selection process that would be adopted or amended would use criteria prioritizing factors such as minimizing greenhouse gas emissions and vehicle miles traveled. Without such legislation, taxpayer dollars likely will continue to be primarily spent

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* This model was drafted by lawyers from the Goodwin Procter firm, including Wenqing Zhao, Suzanne Nguyen and Mulon Luo, with oversight by Robert Fitzgerald. Peer reviewing was contributed by the LPDD chapter author, Trip Pollard (Senior Attorney, Southern Environmental Law Center).

[1] United States Environmental Protection Agency, *Sources of Greenhouse Gas Emissions* (Aug. 25, 2023), https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions.

[2] *See* Hannah Ritchie, Cars, planes, trains: where do CO2 emissions from transport come from? Oct. 6, 2020), https://ourworldindata.org/co2-emissions-from-transport

[3] *See* Trip Pollard, *Transforming Transportation Demand*, *in* LEGAL PATHWAY TO DEEP DECARBONIZATION 328, 330 (Michael B. Gerrard and John C. Dernbach eds., 2019).

[4] *See* Trip Pollard, *Transforming Transportation Demand*, *in* LEGAL PATHWAY TO DEEP DECARBONIZATION 328, 331, n.20 (Michael B. Gerrard and John C. Dernbach eds., 2019).

to support motorized road travel without consideration of reducing greenhouse gas emissions or vehicle miles traveled.[5]

Recognizing that the legislative roadmap will need to provide flexibility for each state to adapt based on the level and type of funding available and the state's overall planning goals, the model legislation for states that have not adopted a prioritization process provides the ability for states to select the type of funding to be allocated using the prioritization process. Moreover, the model legislation also allows a state to raise or earmark additional transportation funding in parallel with the implementation of such a prioritization process.

Substantively, the legislative roadmap contains the following key components:

A. **Measurement Factors**. One critical piece of the legislative roadmap is the list of criteria used for the selection of transportation projects that advance the Funding Objectives of improving transportation system efficiency, enhancing intermodal connections, mitigating environmental impacts of transportation, advance social equity and economic development, together with a built-in process through which such selection criteria can evolve over time based on the experience with the process, research, and public feedback. The legislation provides an initial list of selection criteria called 'Measurement Factors' to evaluate a proposed transportation project. Examples include projected greenhouse gas emissions and expected vehicle miles traveled, anticipated level of public utilization of alternatives to driving, the destruction of carbon sinks (such as forests and wetlands), and impacts to local air quality index (AQI) that would result from implementing the proposed transportation project. Although designed to prioritize the assessment of the environmental impacts of proposed projects and the funding of projects with lower environmental impacts, the legislation provides flexibility for the process to evolve over time based on changing standards, experience, or public needs.

B. **Benchmark Study**. Although not necessary to adopt a prioritization statute that includes an emphasis on reducing greenhouse gas pollution, the legislation suggests that the state may want to commission an initial study to evaluate how each mode measures against the Measurement Factors described above. This study can provide baseline data for the state in its consideration and development of initial Allocation Metrics, where each Measurement Factor is assigned a weight and by which each candidate project could be objectively and quantifiably assessed based on its achievement of the Funding Objectives. For example, one method by which a candidate project can be scored is based on the projected volume of people transported in a given period of time or on a given route, measured against vehicle miles traveled and projected costs as well as the environmental impacts of the project. However, some states such as Virginia have successfully developed Allocation Metrics and scoring without undertaking such a benchmark study. As a result, this is an optional recommendation.

C. Allocation Metrics. A critical piece of the proposed legislation is the development of an initial set of Allocation Metrics, or a standardized weighted formula, which can be used to

[5] *See* Trip Pollard, *Transforming Transportation Demand*, *in* LEGAL PATHWAY TO DEEP DECARBONIZATION 328, 334 (Michael B. Gerrard and John C. Dernbach eds., 2019).

help ensure that each proposed transportation project can be objectively and quantifiably scored and ranked. An illustration of such an Allocation Metrics is attached here as Appendix A. The legislation also sets forth a process through which the Allocation Metrics can be modified over time based on public feedback, research, or experience with previously funded projects, and will allow for additional measurement factors to be added, so that the prioritization process delineated by the legislation is an evolving and not a static model.

D. Project Submission and Self-Report. As part of the project submission process, applicants submitting candidate projects are required to self-score proposed transportation projects based on the Measurement Factors. Along with the self-score, applicants should provide backup data on the candidate project to enable the state evaluator to understand how the self-score is derived and perform an apples-to-apples comparison across different proposed projects to provide an objective ranking of all projects in each submission cycle.

E. Ranking and Assessment Report. Ultimately, the goal of the legislation is to provide an objective, quantifiable, and transparent process that prioritizes environmental impact factors in the assessment of candidate projects for funding allocation. For each submission cycle, the legislation envisions an assessment report produced by the state or its acting agency that would provide the score and ranking of each candidate project independent of the self-report submitted by the candidates, and identify those to receive funding. The state assessment report would be made publicly available, along with the self-reports submitted by the candidates for all candidate projects.

The model legislation for states that have already adopted a statewide prioritization process is more streamlined so that it can be adapted to fit a variety of processes that have been developed. The legislation for these states contains the following key components:

A. **Environmental Metrics**. A critical piece of the legislative roadmap that also applies to states that have already adopted a transportation funding prioritization process is to ensure that the selection of transportation projects advances the Funding Objectives of reducing carbon emissions from the transportation system, improving transportation system efficiency, enhancing intermodal connections, mitigating environmental impacts of transportation, and advancing social equity and economic development. The legislation provides a similar list of selection criteria to evaluate a proposed transportation project. Examples include projected greenhouse gas emissions and expected vehicle miles traveled, anticipated level of public utilization of alternatives to driving, the destruction of carbon sinks (such as forests and wetlands), and impacts to local air quality index (AQI) that would result from implementing the proposed transportation project.

B. **Aggregate Carbon Emissions Assessment**. Before commencing each project evaluation and ranking cycle, the legislation calls for an assessment report produced by the state or its acting agency that would assess the aggregate carbon emission amounts of the selected candidate projects in the prior cycle and determine whether these amounts meet or exceed the State's carbon emissions reduction targets.

III. Conclusion and Beyond Legislation.

While state-level legislation that prioritizes environmental measures in deciding how to allocate certain transportation funds has the potential to reduce motorized road travel, states and localities should also consider a more holistic approach to promote low-or zero-carbon transportation choices. Specifically, employing such a prioritization process should go hand-in-hand with other steps to fund and support cleaner transportation projects. Land use planning policies are also critically important, since sprawling and scattered development patterns are far less conducive to transit, walking, and cycling than more compact, mixed-use developments.[6] Land-use reforms thus are critical to the success of transportation projects that expand and promote low-or zero-carbon transportation choices. Since local governments typically make decisions on land use policies while transportation funding and planning are often carried out by state agencies, there must be coordination between local and state governments to ensure that land use planning policies are compatible with the transportation projects funded through the prioritization process.[7]

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[6] *See* Trip Pollard, *Transforming Transportation Demand*, *in* LEGAL PATHWAY TO DEEP DECARBONIZATION 328, 346 (Michael B. Gerrard and John C. Dernbach eds., 2019).

[7] *See* Trip Pollard, *Transforming Transportation Demand*, *in* LEGAL PATHWAY TO DEEP DECARBONIZATION 328, 347 n.177 (Michael B. Gerrard and John C. Dernbach eds., 2019).

Appendix A

[Separately Circulated]