

# LEGAL REVIEW CONCERNING THE USE OF HEALTH IMPACT ASSESSMENTS: REPORT AND TABLES

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# Project Overview

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## ▶ Acknowledgements

- ▶ Sponsored by the Health Impact Project, a collaboration of The PEW Charitable Trusts and Robert Wood Johnson Foundation
- ▶ Conducted by the Public Health Law & Policy Program at ASU's Sandra Day O'Connor College of Law



## ▶ Research Question

- ▶ How do laws at all levels of government authorize, require, facilitate, or potentially inhibit the performance and use of HIAs by public or private actors to guide decisions in non-health sectors?

## ▶ Major Topical Areas

- ▶ Environment and Energy
- ▶ Transportation
- ▶ Agriculture
- ▶ Waste Disposal and Recycling



# Key Terms

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## ▶ Health Impact Assessment (HIA)

- ▶ “A systematic process that uses an array of data sources and analytic methods, and considers input from stakeholders to determine the potential effects of a proposed policy, plan, program, or project on the health of a population and the distribution of those effects within the population. ...”



## ▶ Health Assessment (HA)

- ▶ The use of health risk assessments (HRAs), health effects studies (HESs), or other studies or methodologies to evaluate potential impacts on human health. While HAs are not synonymous with HIAs, HAs may be part of an HIA.



# Essential Premise: Laws Can Support HIAs

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Existing laws create opportunities to factor health and public health into a range of decision-making in non-health sectors.

HIAs provide a systematic way to further the purpose and spirit of these laws.

Public health officials and advocates can fully engage other sectors in efforts to improve the public's health.



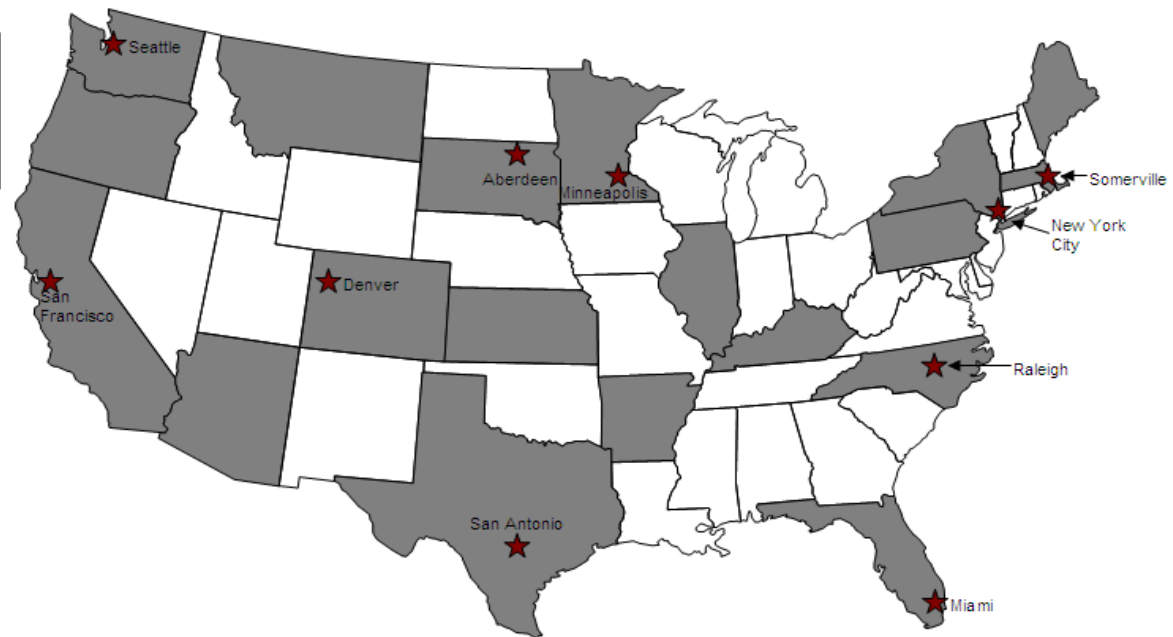
# Selected Jurisdictions for Study

Figure 1. HIA Legal Assessment – Jurisdictional Sample

■ 20 States

★ 10 Local Jurisdictions

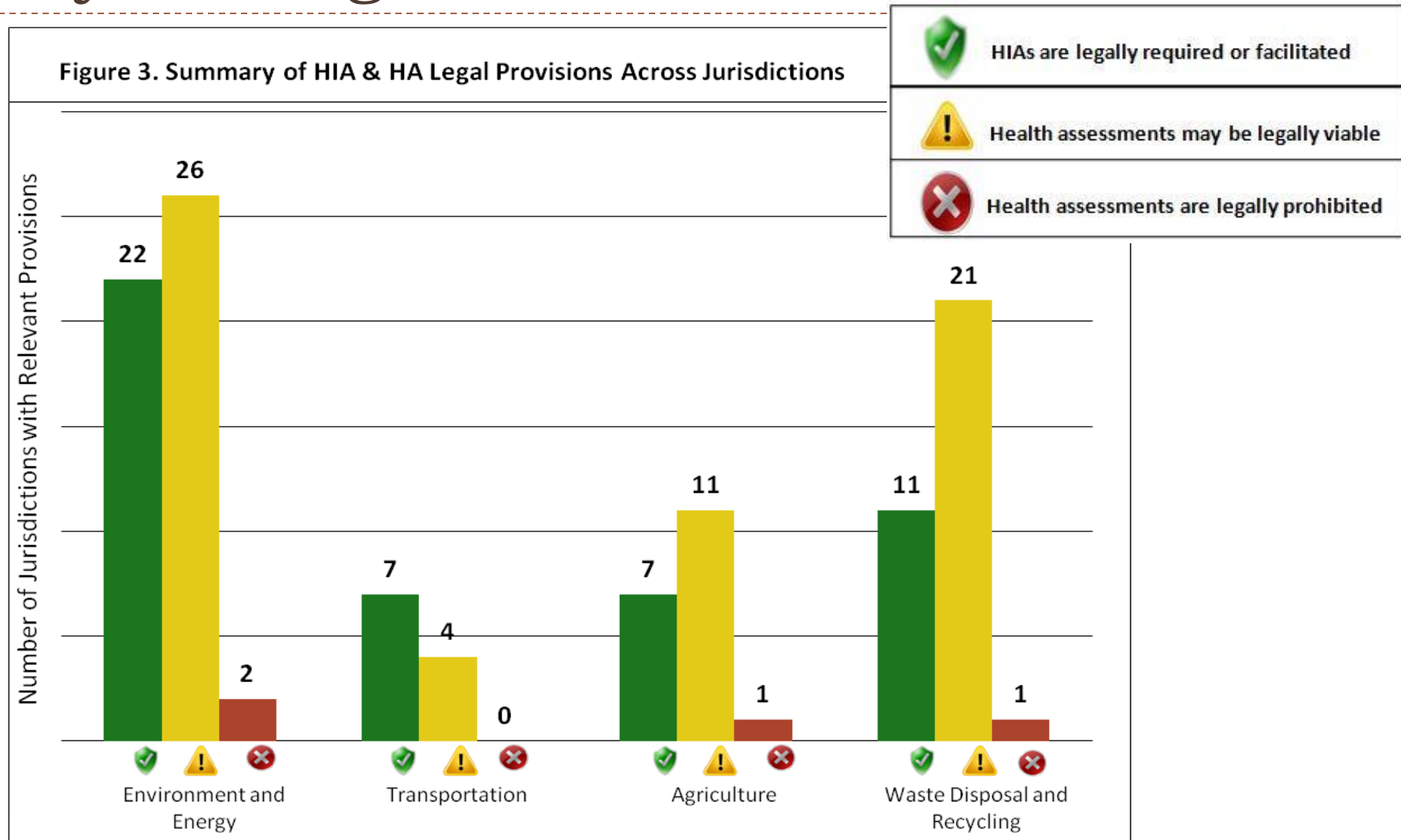
🦅 5 American Indian Tribes



- 🦅 Coquille Indian Tribe (Oregon)
- 🦅 Navajo Nation - (Arizona, New Mexico, Utah, California)
- 🦅 Prairie Band Potawatomi Nation – (Kansas)
- 🦅 Snoqualmie Indian Tribe – (Washington State)
- 🦅 White Earth Nation - (Wisconsin)

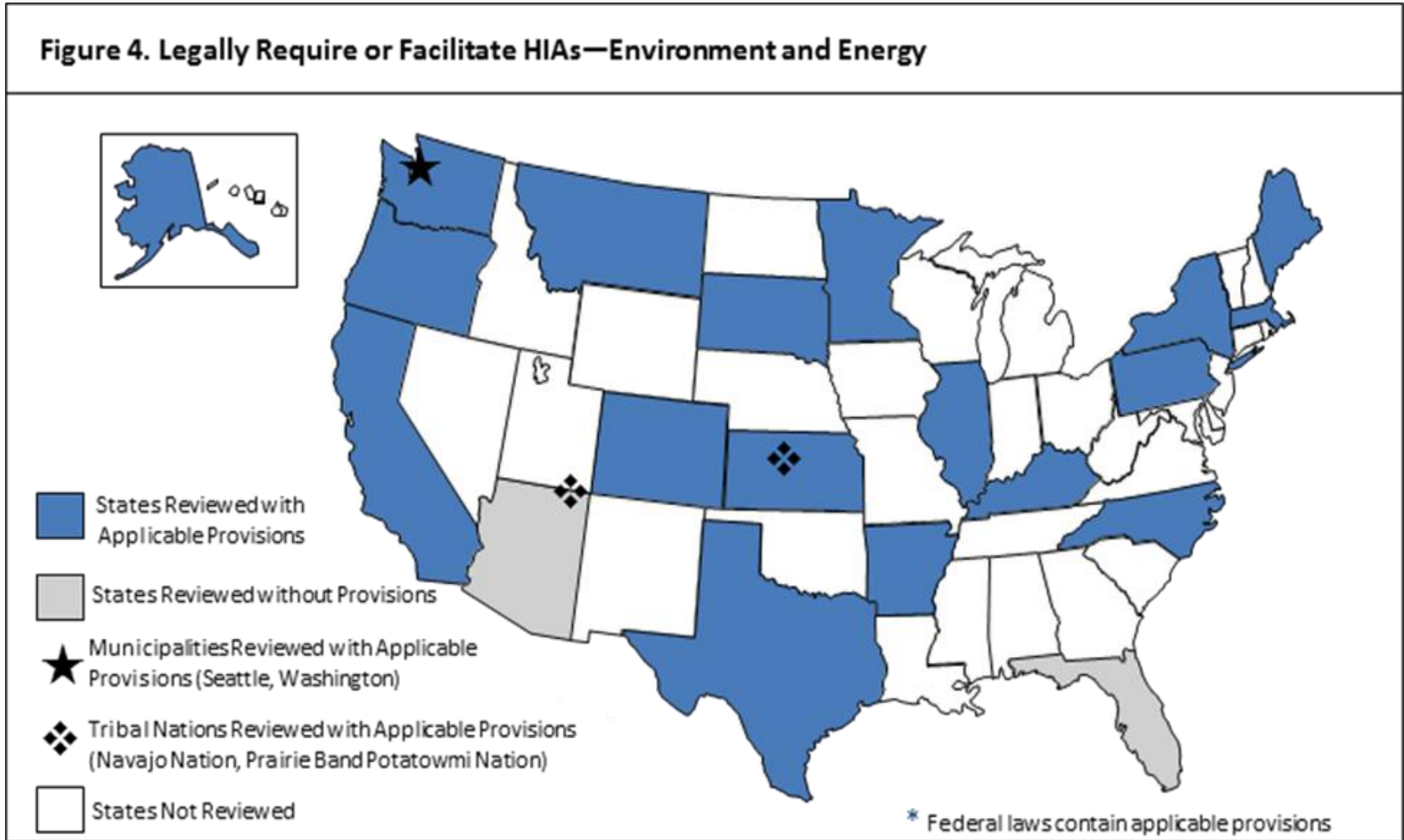


# Key Findings



# 1. Environment and Energy

Figure 4. Legally Require or Facilitate HIAs—Environment and Energy



# 1. Environment and Energy - Examples

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## ▶ California

- ▶ State Energy Resources Conservation and Development Commission must conduct assessments of all aspects of energy supply, production, distribution, and prices to develop energy policies. The assessments must account **for impacts on public health and safety**, the state's economy, resources, and the environment. CAL. PUB. RES. CODE §§ 25301, 25302.



## ▶ Oregon

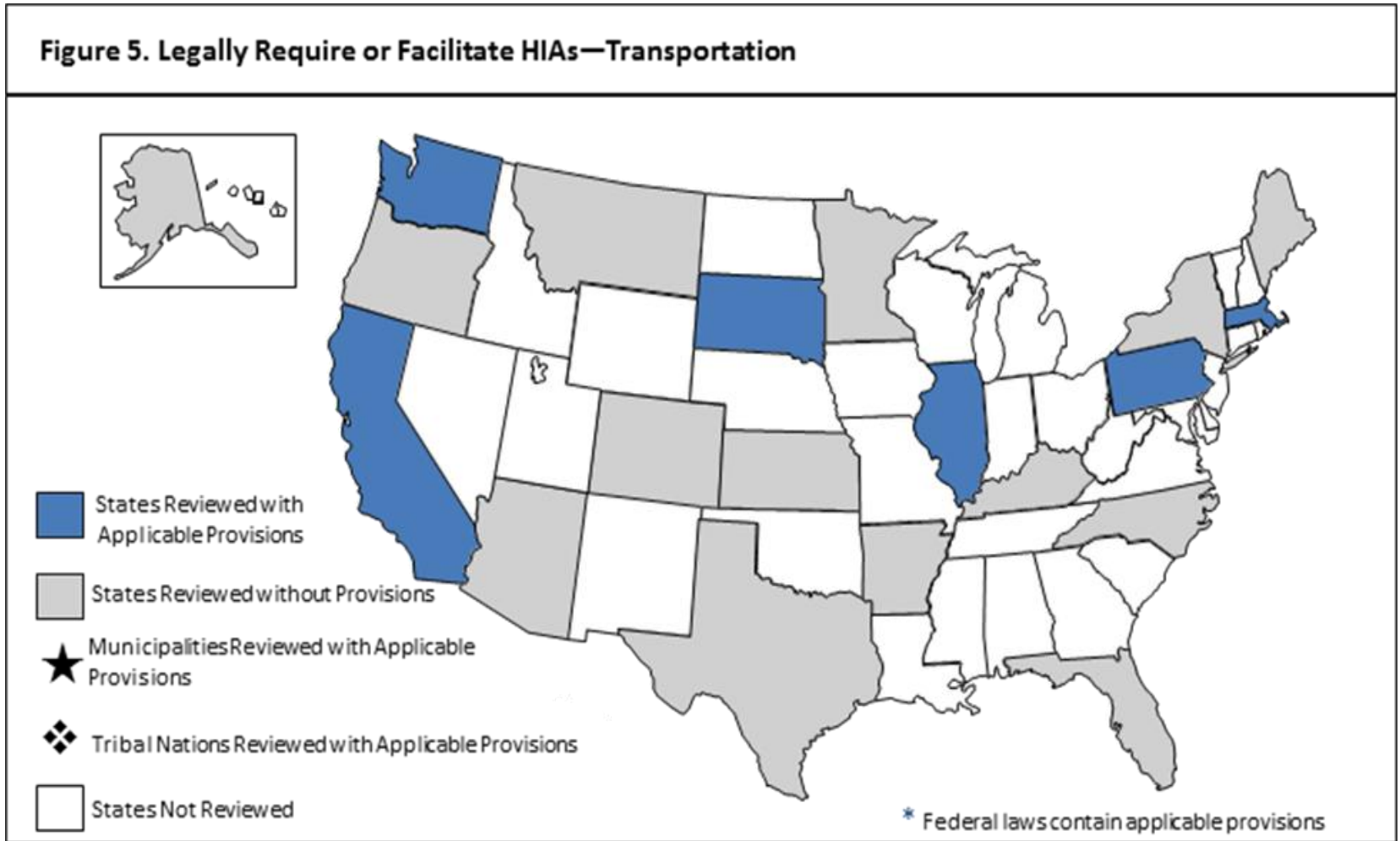
- ▶ Applicants for a permit to enter State lands to drill for oil or gas must receive approval of an environmental assessment including assessment of adverse effects on human and natural resources. Adverse effects may include scenic, recreational, **public health**, and plant and animal resources. OR. ADMIN. R. 141-070-0110.





# 2. Transportation

Figure 5. Legally Require or Facilitate HIAs—Transportation



## 2. Transportation - Example

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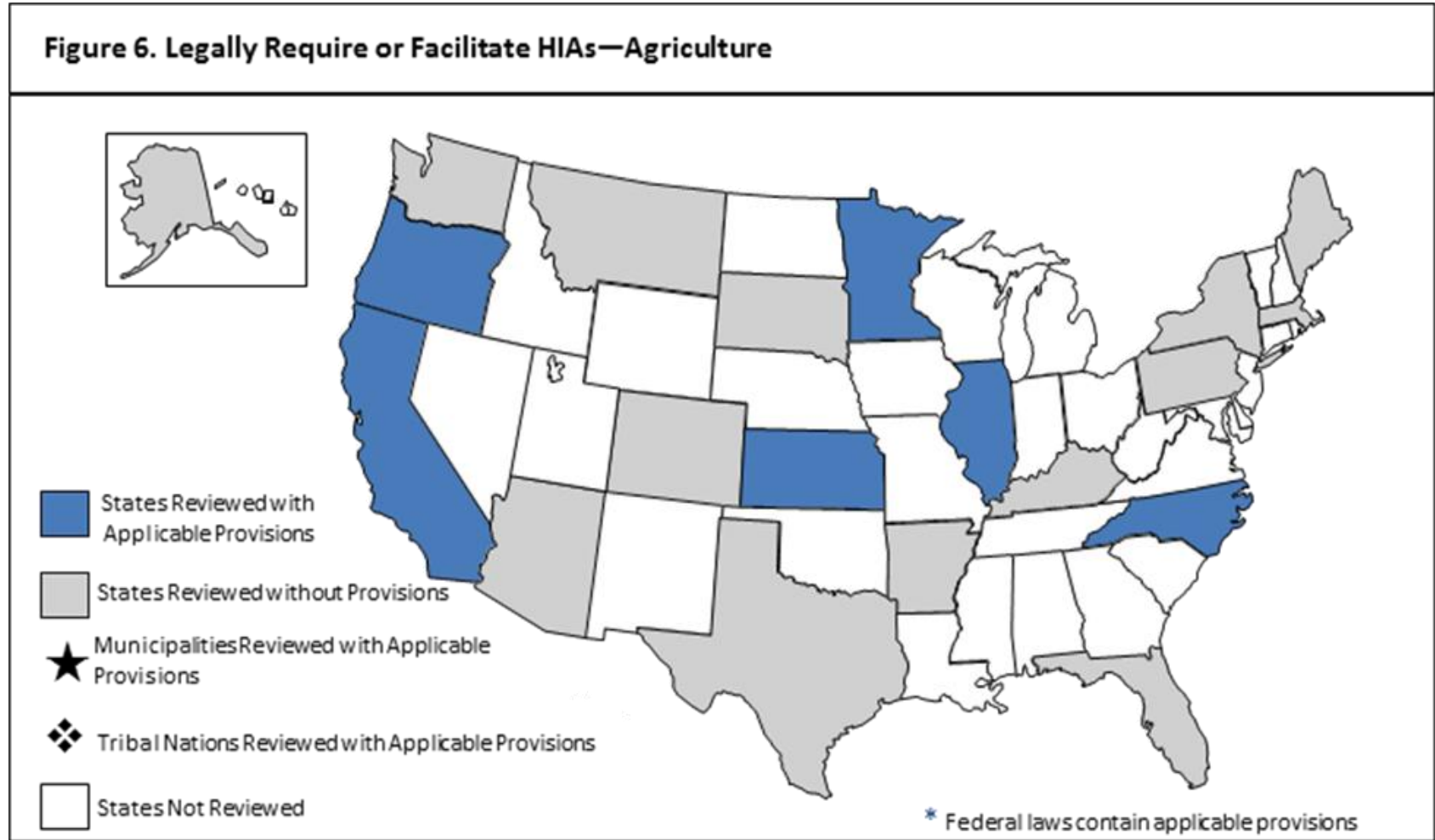
### ▶ Washington

- ▶ Washington's State Route 520 Bridge Replacement Project is one of the few examples where law specifically requires conducting an HIA. See WASH. REV. CODE § 47.01.406
- ▶ Legislation directed the Puget Sound Clean Air Agency and Seattle & King County public health agency to conduct an HIA to evaluate the project's effects on air quality, greenhouse gas emissions, and physical, mental, and social well-being.



# 3. Agriculture

**Figure 6. Legally Require or Facilitate HIAs—Agriculture**



### 3. Agriculture – Example

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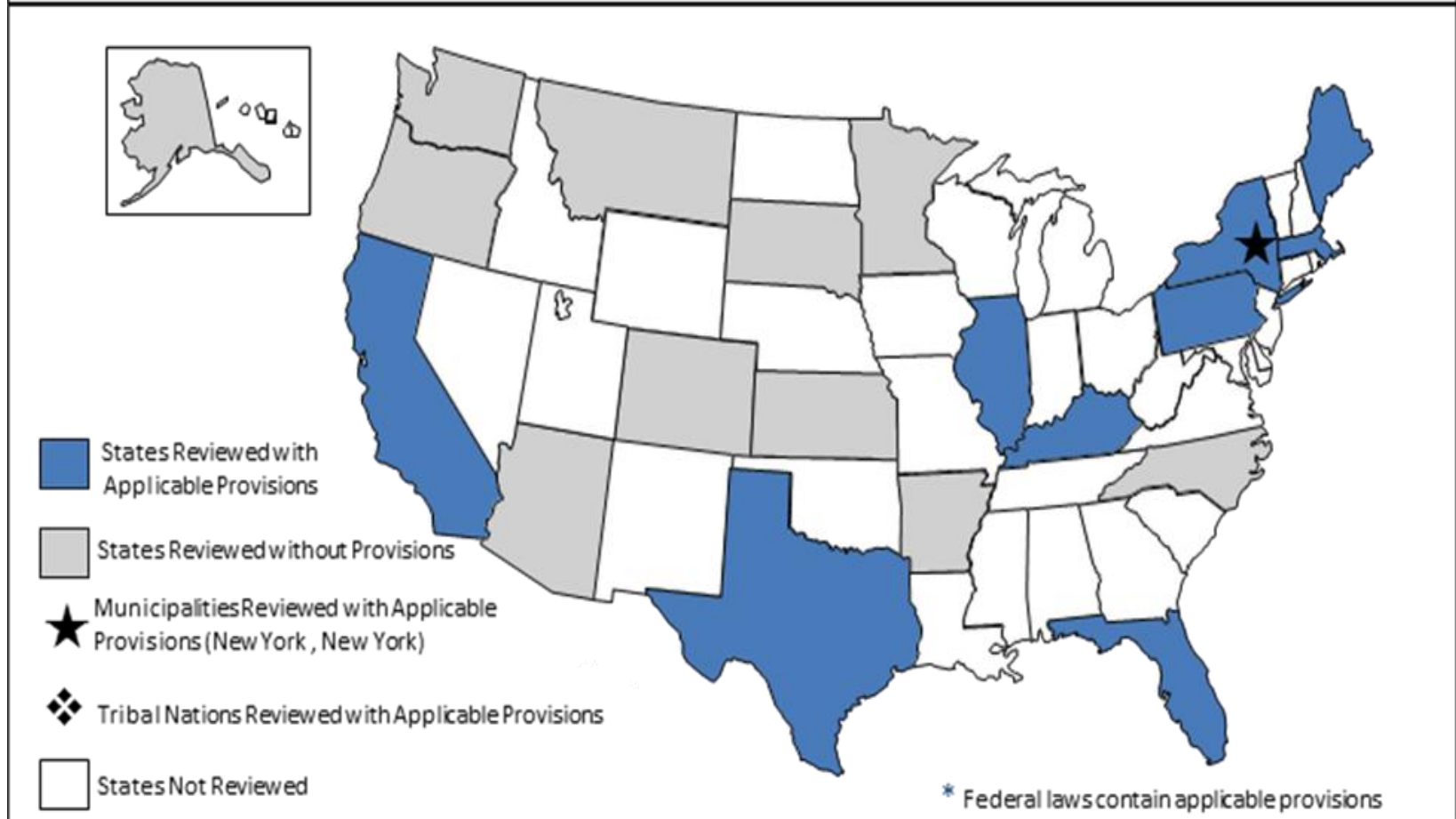
- ▶ U.S. Department of Agriculture (USDA)
  - ▶ Under federal law, USDA must assess the **risks to human health, human safety**, or the environment, and prepare a cost-benefit analysis, for every proposed regulation with a national fiscal impact greater than \$100 million (in 1994 dollars).
  - ▶ USDA's analysis must include evaluations of the **health and safety risks to persons who are disproportionately exposed or particularly sensitive**.

7 U.S.C. § 2204(e); 7 C.F.R. §§ 2.29, 2.71.



# 4. Waste Disposal and Recycling

Figure 7. Legally Require or Facilitate HIAs—Waste Disposal and Recycling





# 4. Waste Disposal and Recycling – Example

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## ▶ Texas

- ▶ Solid waste permit applications must include feasibility studies that evaluate alternatives in terms of their **public health, physical, social, economic,** fiscal, environmental, and aesthetic implications.



TEX. HEALTH & SAFETY CODE §  
363.069.



# Key Legal Themes

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- ▶ Laws referring to assessments of a range of health impacts and use of study results to inform policy or program decisions may facilitate increased use of HIAs.
- ▶ NEPA and corresponding state laws often allow the incorporation of HIAs into mandated environmental impact statements.
- ▶ Laws requiring HRAs may support the use of HIAs depending on the breadth of the laws, as well as governmental actors' willingness to enhance their scope.
- ▶ Federal or state preemption in specific sectors may prevent some state or local laws from requiring or facilitating HIAs.



# Legal Themes, cont'd

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- ▶ Health assessments may be admitted as evidence by courts in litigation.
  - ▶ *Offensively* (e.g., to challenge a proposed project or action or allocate responsibility for environmental cleanup)
  - ▶ *Defensively* (e.g., to overcome a challenge to a proposed project or action by showing that negative health effects will not occur or to demonstrate compliance with health and safety requirements).
- ▶ Absent explicit legal authority to conduct HIAs, localities may (and often do) use HIAs to inform their decisions (e.g., zoning and built environment).





# Conclusion

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- ▶ Special thanks to **Erin C. Fuse Brown, JD, MPH**, and **Siena Smith** for their contributions to the report, tables, and presentation.
- ▶ For more information, contact me at [james.hodge.1@asu.edu](mailto:james.hodge.1@asu.edu)
- ▶ Questions, comments, thoughts?
- ▶ *Thank you!*

