

SENATE NO. 129



AN ACT PROMOTING HEALTHY COMMUNITIES AND THE ENVIRONMENT

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 An Act Promoting Healthy Communities and the Environment

2 WHEREAS:

3 (1) certain communities in the commonwealth are disproportionately burdened by environmental
4 hazards such as excessive air pollution, water pollution, hazardous waste and noise;

5 (2) the health, safety and quality of life of residents and workers in such communities, especially
6 children, the elderly and those with already-compromised health are negatively affected by these
7 hazards;

8 (3) concentrations of pollution sources pose a significant barrier to economic development in low-
9 income neighborhoods and communities of color, in particular;

10 (4) many of these impacted communities desire cleaner and safer development to ensure economic
11 security; and

12 (5) the commonwealth seeks to ensure equal protection of all residents, affirm human rights and
13 promote public health and environmental quality in all communities.

14 SECTION 1. The General Laws, as appearing in the 2004 Official Edition, are hereby amended by
15 inserting after chapter 111K chapter 111L:

16 Chapter 111L: Community Environmental Health Disparities

17 Chapter 111L: Section 1. Definitions.

18 Section 1. As used in this chapter the following words shall have the following meanings:

19 “Communities Health Index,” a cumulative evaluation of the health of communities based on specific
20 health outcome indicators that ranks communities based on their health status so as to identify
21 communities whose residents suffer disproportionately high rates of disease and premature death.

22 “Department,” the department of public health.

23 “Environmental notification,” an environmental notification prepared pursuant to section 62A of
24 chapter 30 of the Massachusetts Environmental Policy Act.

25 “Health Impact Assessment” or “HIA,” a combination of procedures, methods, and tools by which a
26 regulation, program, or other project is assessed as to its potential effects on the health of a population,
27 and the distribution of those effects within the population. A HIA evaluates objectively the potential
28 health effects of a project before it is built or implemented. A HIA encompasses a heterogeneous array
29 of qualitative and quantitative methods and tools to focus on health impacts and outcomes such as, but
30 not limited to, obesity, physical inactivity, asthma, injuries, and social equity. Health impacts and
31 outcomes are the overall effects of a regulation, program, or other project, directly and indirectly, on
32 the health of a population. A HIA may provide recommendations to increase positive health outcomes
33 and minimize adverse health outcomes.

34 “Most vulnerable community,” a community identified in the communities health index as being in the
35 percentiles having the worst health outcomes.

36 “Person,” any state, public, or private corporation or authority, any individual, trust, firm, joint stock
37 company, partnership, association, or other entity, or any group thereof, and any officer, employee, or
38 agent of such person, any group of persons, and any agency or political subdivision of the
39 Commonwealth or of the federal government.

40 “Project,” work, project, or activity, either directly or indirectly undertaken by a person, including the
41 adoption of a regulation or program by an agency or authority of the Commonwealth.

42 Section 2. Expedited and Enhanced Massachusetts Environmental Policy Act Review.

43 The secretary of environmental affairs shall:

44 (a) develop enhanced public participation for any project that requires an environmental notification
45 for air, solid and hazardous waste, other than remediation projects, or wastewater and sewage sludge
46 treatment and disposal, if the project is located within 1 mile of a most vulnerable community, or in
47 the case of projects exceeding said threshold for air, within 5 miles of a most vulnerable community;
48 and require enhanced analysis of impacts and mitigation in the scope of an environmental impact
49 report required by sections 62A or 62B of chapter 30 of the Massachusetts Environmental Policy Act
50 if the project is located within 1 mile of a most vulnerable community, or in the case of projects
51 exceeding a mandatory threshold for air, within 5 miles of a most vulnerable community.

52 (b) exempt site assessment grants and loans granted under the Brownfields Redevelopment Fund, as
53 well as investment tax credits for equipment, tenant fit-ups, and other post-development activities
54 administered under chapter 206 of the acts of 1998 from the category of state financial assistance for
55 the purposes of triggering Massachusetts environmental policy act review. Projects undertaken under
56 chapter 206 of the acts of 1998 that otherwise trigger Massachusetts environmental policy act review

57 may be considered environmental restoration projects and subject to expedited review. In making a
58 decision, the secretary of environmental affairs shall consider the extent to which the new proposal
59 would prevent pollution and eliminate or minimize risks to public health and the environment.

60 Section 3. Community Environmental Health Disparities Program.

61 There is hereby established in the department a community environmental health disparities program.

62 The purpose of the program is to establish a communities health index and require certain proposed
63 projects to complete a health impact assessment to help protect the health of community residents.

64 The department shall adopt regulations to implement the community health disparities program and
65 create a communities health index within six months of the passage of this act.

66 Section 4. Communities Health Index.

67 (a) No less often than once every five years the department shall create and publish a communities
68 health index using the most recent three years of health data it has available.

69 (b) The communities health index shall be based on the following:

70 (1) Primary indicators for a most vulnerable community:

71 (i) Total age adjusted mortality, 25% or more above the commonwealth rate;

72 (ii) Total age adjusted emergency room visits, 10% or more above the
73 commonwealth rate;

74 (iii) Elevated blood lead levels in children age 13 and younger, 10% or more above
75 the commonwealth rate;

76 (iv) Asthma and asthma-related hospital admissions or prevalence in children age 14
77 and younger, 10% or more above the commonwealth rate; and

78 (v) Infant mortality 10% or more above the commonwealth rate

79 (2) Secondary indicators for a community:

80 (i) Total age adjusted non-congenital cardiovascular disease and stroke morbidity,
81 10% or more above the commonwealth rate;

82 (ii) Total age adjusted heart attack hospitalizations, 10% or more above the
83 commonwealth rate;

84 (iii) Total age adjusted stroke and stroke-related hospitalizations, 10% or more
85 above the commonwealth rate; and

86 (iv) Bronchitis and bronchitis-related hospitalizations in children age 14 and
87 younger and adults age 65 and older, 10% or more above the commonwealth
88 rate

89 (3) Other indicators for a community:

90 (i) Other health outcome indicators, if any, chosen by the department to compare
91 community health; and

92 (ii) Environmental indicators (such as elevated levels of particulate matter in the
93 air), if any, chosen by the department as predictive of negative health outcomes

94 (c) The department shall weight the indicators, giving more weight to the primary indicators than
95 to the secondary indicators, to determine which communities' residents suffer
96 disproportionately high levels of serious disease, disability, and premature death and shall
97 index the communities from worst to best health outcomes. A community in the top 50th
98 percentile of the index for poor health outcomes is determined to have the worst health
99 outcomes and deemed to be most vulnerable. The department may adjust the percentile up or
100 down by no more than 10 percent to identify the communities with the worst health outcomes
101 in the commonwealth.

102 (d) For purposes of creating the communities health index:

103 (1) A community shall include at least 10,000 residents. If a municipality has fewer than
104 10,000 residents, the department shall cluster the municipality with one or more
105 contiguous municipalities to create a combined community with at least 10,000 and no
106 more than 100,000 residents.

107 (2) A community shall not exceed 100,000 residents. If a municipality has more than
108 100,000 residents, the department shall divide the municipality into geographically
109 contiguous communities of 10,000-50,000 residents.

110 (3) The department may divide municipalities of 50,000-100,000 residents into
111 geographically contiguous communities of 10,000-50,000 residents if there are distinct
112 differences in indicators within areas of the municipality.

113 Section 5. Notice to the department.

114 (a) A person required to file an environmental notification shall provide a copy to the department
115 simultaneous with filing the environmental notification with the secretary of environmental
116 affairs.

117 (b) The department may designate areas near vulnerable populations where certain projects, or the
118 cumulative impact of projects, require notice to the department when an environmental
119 notification is not required. A person proposing such a project shall notify the department on
120 forms required by the department.

121 Section 6. Health Impact Assessment

122 (a) Within 30 days after the department receives a copy of the environmental notification or notice
123 of a project it shall inform the person if a health impact assessment is required. A health
124 impact assessment is required if the proposed project is in or might affect a most vulnerable
125 community, unless the department waives the requirement upon a finding that the project

126 would have no potential impact on any of the indicators used to create the communities health
127 index. If the department intends to waive the requirement for a project in a most vulnerable
128 community, it first shall provide notice to the public and the opportunity for written public
129 comment within 30 days after the notice, and shall provide its decision of whether a health
130 impact assessment is required within 30 days of the close of the public comment period.

131 (b) The department, on petition of ten or more persons, may require a health impact assessment for
132 a project in a most vulnerable community, or that may affect a most vulnerable community,
133 that does not require an environmental notification. The department shall respond to such
134 petition within 30 days.

135 (c) Whenever a health impact assessment is required, the department shall provide public notice of
136 the proposed scope for the assessment within 30 days after its determination that an assessment
137 is required. The person and public shall have 30 days to provide written comments on the
138 proposed scope. The department shall issue the scope within 30 days of the close of the
139 comment period. The scope shall identify which effects and health outcomes to assess and at a
140 minimum shall require:

- 141 (1) consideration of evidence about the anticipated relationships between the proposed
142 project and the health of the population, including which people in the population
143 might be affected and how they might be affected;
- 144 (2) consideration of the opinions, experience, and expectations of those who may be
145 affected by the proposed project;
- 146 (3) information and analysis regarding the potential effects of the proposed project on
147 health;

148 (4) proposals for mitigation and offsets to maximize the positive and minimize the
149 potential negative health impacts, if any;

150 (5) other information and analysis identified in the scope; and

151 (6) a submission deadline for the HIA.

152 (d) The person proposing the project shall complete and file a health impact assessment with the
153 department according to the scope and the department is required to provide the HIA on the
154 department's website within ten days of it being filed.

155 (e) The Department of Environmental Protection cannot approve a project until the department has
156 approved the HIA and required any additional mitigation to minimize the potential negative
157 health impacts.

158 (f) Any person aggrieved by a decision of the department may, within thirty days of the
159 publication of notice of such decision, appeal under the provisions of section fourteen of
160 chapter thirty A. The department's proceedings and decision shall be deemed to be a final
161 decision in an adjudicatory proceeding.

162 Section 7. Evaluating the Health Impact Assessment.

163 (a) The department shall provide public notice of and an opportunity for public comment on a
164 health impact assessment.

165 (b) Within 30 days of the close of the public comment period, the department, with input from the
166 board of health in the municipality where the project would be located if one exists, shall
167 determine whether the health impact assessment is adequate, whether mitigation or offsets are
168 necessary, and whether the mitigation and offsets identified in the assessment would be
169 adequate.

- 170 (c) If the health impact assessment is adequate and no mitigation or offsets are required the
171 process is completed.
- 172 (d) If the health impact assessment is adequate and appropriate mitigation and offsets are identified
173 and required, the process is completed, subject to the person completing the mitigation and
174 offsets identified in the assessment and required by the department. The department may
175 require monitoring and evaluation after completion to determine whether the mitigation and
176 offsets were adequate.
- 177 (e) If the health impact assessment is inadequate, the department shall provide an opportunity to
178 supplement the assessment to remedy the inadequacies.
- 179 (f) If a health impact assessment is required, a person shall not begin a project until the department
180 approves the health impact assessment.
- 181 (g) The department may require a fee be paid for its evaluation of an assessment.
- 182 (h) A person whose health impact assessment has been approved must notify the department of
183 any substantial change in the proposal so that the department may determine whether a
184 supplemental assessment or other mitigation or offsets are required.

185 Section 8. Emergencies.

186 The hazard abatement provisions of a project in a most vulnerable community may begin before
187 approval of a health impact assessment if emergency action is essential to avoid or eliminate a threat to
188 public health or safety, or a threat to any natural resources; provided, that wherever practicable, the
189 person shall obtain the prior approval of the department. Following beginning any such project, the
190 person shall promptly, but in any case within sixty days, begin compliance with the provisions of
191 section 4.

192 Section 9. Action or proceeding alleging improper determination of need for a health impact
193 assessment or approval of such assessment or noncompliance with law.

194 (a) A person intending to commence an action or proceeding alleging an improper determination
195 of whether a project requires the preparation of a health impact assessment shall first provide
196 notice of intention to commence such action or proceeding within sixty days of issuance of
197 notice of such determination. A person intending to commence an action or proceeding
198 alleging that a health impact assessment fails to comply with the requirements of this chapter
199 shall first provide notice of intention to commence such action or proceeding within sixty days
200 of approval of such assessment. Said notices of intention shall be in such form as the
201 department shall prescribe, shall identify with particularity the issues to be considered in any
202 such action or proceeding, shall be in lieu of the notice and waiting period required by section
203 seven A of chapter two hundred and fourteen, and shall be provided to the attorney general, the
204 person proposing the project, and the department.

205 (b) An action or proceeding noticed as provided in subsection (a) of this section shall be filed
206 within sixty days after providing such notice.

207 (c) No allegation shall be made in any action or proceeding under this chapter unless the matter
208 complained of was raised at the appropriate point in the administrative review procedures;
209 provided that a matter may be raised upon a showing that it is material and that it was not
210 reasonably possible with due diligence to have raised it during such procedures or that the
211 matter sought to be raised is of critical importance to the environmental impact of the project.

212 (d) If a court determines that a person proposing a project has knowingly concealed a material fact
213 or knowingly submitted false information in any form or report required under this chapter,
214 limits on the manner and time in which actions or proceedings may be commenced shall not

215 apply and the department may require the preparation and review of such assessments as may
216 be necessary to correct any deficient assessment.

217 (e) Ten or more persons residing in a most vulnerable community may commence an action or
218 proceeding alleging that a project in said community or an approval of a health impact
219 assessment for a project in said community fails to comply with the requirements of this
220 chapter.

221 SECTION 2. The Department of Public Health shall adopt regulations to implement this act within
222 one year after the effective date of this act.