

SENATE, No. 2572

The Commonwealth of Massachusetts



IN THE YEAR OF TWO THOUSAND AND SEVEN

AN ACT TO CREATE ENVIRONMENTAL JUSTICE

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

- 1 **SECTION 1.** The General Laws, as appearing in the 2004 Official Edition, are hereby amended
- 2 by inserting after chapter 111K chapter 111L:
- 3 Chapter 111L: Section 1. Definitions.
- 4 Section 1. As used in this chapter the following words shall have the following meanings:
- 5 “Communities Health Index,” a cumulative evaluation of the health of communities based on
- 6 specific health outcome indicators that ranks communities based on their health status so as to
- 7 identify communities whose residents suffer disproportionately high rates of disease and
- 8 premature death.
- 9 “Department,” the department of public health.

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

12 “Health Impact Assessment” or “HIA,” a combination of procedures, methods, and tools by
13 which a regulation, program, or other project is assessed as to its potential effects on the health
14 of a population, and the distribution of those effects within the population. A HIA evaluates
15 objectively the potential health effects of a project before it is built or implemented. A HIA
16 encompasses a heterogeneous array of qualitative and quantitative methods and tools to focus
17 on health impacts and outcomes such as, but not limited to, obesity, physical inactivity, asthma,
18 injuries, and social equity. Health impacts and outcomes are the overall effects of a regulation,
19 program, or other project, directly and indirectly, on the health of a population. A HIA may
20 provide recommendations to increase positive health outcomes and minimize adverse health
21 outcomes.

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

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

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

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

32 The secretary of environmental affairs shall:

33 (a) develop enhanced public participation for any project that requires an environmental
34 notification for air, solid and hazardous waste, other than remediation projects, or wastewater
35 and sewage sludge treatment and disposal, if the project is located within 1 mile of a most
36 vulnerable community, or in the case of projects exceeding said threshold for air, within 5 miles
37 of a most vulnerable community; and require enhanced analysis of impacts and mitigation in the
38 scope of an environmental impact report required by sections 62A or 62B of chapter 30 of the
39 Massachusetts Environmental Policy Act if the project is located within 1 mile of a most
40 vulnerable community, or in the case of projects exceeding a mandatory threshold for air, within
41 5 miles of a most vulnerable community.

42 (b) exempt site assessment grants and loans granted under the Brownfields Redevelopment
43 Fund, as well as investment tax credits for equipment, tenant fit-ups, and other post-
44 development activities administered under chapter 206 of the acts of 1998 from the category of
45 state financial assistance for the purposes of triggering Massachusetts environmental policy act
46 review. Projects undertaken under chapter 206 of the acts of 1998 that otherwise trigger
47 Massachusetts environmental policy act review may be considered environmental restoration
48 projects and subject to expedited review. In making a decision, the secretary of environmental
49 affairs shall consider the extent to which the new proposal would prevent pollution and
50 eliminate or minimize risks to public health and the environment.

51 Section 3. Community Environmental Health Disparities Program.

52 There is hereby established in the department a community environmental health disparities
53 program. The purpose of the program is to establish a communities health index and require
54 certain proposed projects to complete a health impact assessment to help protect the health of

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

58 Section 4. Communities Health Index.

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

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

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

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

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

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

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

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

72 (2) Secondary indicators for a community:

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

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

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

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

81 (3) Other indicators for a community:

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

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

86 (c) The department shall weight the indicators, giving more weight to the primary indicators
87 than to the secondary indicators, to determine which communities' residents suffer
88 disproportionately high levels of serious disease, disability, and premature death and shall index
89 the communities from worst to best health outcomes. A community in the top 50th percentile of
90 the index for poor health outcomes is determined to have the worst health outcomes and deemed
91 to be most vulnerable. The department may adjust the percentile up or down by no more than
92 10 percent to identify the communities with the worst health outcomes in the commonwealth.

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

94 (1) A community shall include at least 10,000 residents. If a municipality has fewer than
95 10,000 residents, the department shall cluster the municipality with one or more contiguous

96 municipalities to create a combined community with at least 10,000 and no more than 100,000
97 residents.

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

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

104 Section 5. Notice to the department.

105 (a) A person required to file an environmental notification shall provide a copy to the
106 department simultaneous with filing the environmental notification with the secretary of
107 environmental affairs.

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

112 Section 6. Health Impact Assessment

113 (a) Within 30 days after the department receives a copy of the environmental notification or
114 notice of a project it shall inform the person if a health impact assessment is required. A health
115 impact assessment is required if the proposed project is in or might affect a most vulnerable
116 community, unless the department waives the requirement upon a finding that the project would
117 have no potential impact on any of the indicators used to create the communities health index.

118 If the department intends to waive the requirement for a project in a most vulnerable
119 community, it first shall provide notice to the public and the opportunity for written public
120 comment within 30 days after the notice, and shall provide its decision of whether a health
121 impact assessment is required within 30 days of the close of the public comment period.

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

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

132 (1) consideration of evidence about the anticipated relationships between the proposed project
133 and the health of the population, including which people in the population might be affected and
134 how they might be affected;

135 (2) consideration of the opinions, experience, and expectations of those who may be affected
136 by the proposed project;

137 (3) information and analysis regarding the potential effects of the proposed project on health;

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

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

141 (6) a submission deadline for the HIA.

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

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

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

152 Section 7. Evaluating the Health Impact Assessment.

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

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

160 (c) If the health impact assessment is adequate and no mitigation or offsets are required the
161 process is completed.

162 (d) If the health impact assessment is adequate and appropriate mitigation and offsets are
163 identified and required, the process is completed, subject to the person completing the
164 mitigation and offsets identified in the assessment and required by the department. The
165 department may require monitoring and evaluation after completion to determine whether the
166 mitigation and offsets were adequate.

167 (e) If the health impact assessment is inadequate, the department shall provide an opportunity
168 to supplement the assessment to remedy the inadequacies.

169 (f) If a health impact assessment is required, a person shall not begin a project until the
170 department approves the health impact assessment.

171 (g) The department may require a fee be paid for its evaluation of an assessment.

172 (h) A person whose health impact assessment has been approved must notify the department of
173 any substantial change in the proposal so that the department may determine whether a
174 supplemental assessment or other mitigation or offsets are required.

175 Section 8. Emergencies.

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

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

184 (a) A person intending to commence an action or proceeding alleging an improper
185 determination of whether a project requires the preparation of a health impact assessment shall
186 first provide notice of intention to commence such action or proceeding within sixty days of
187 issuance of notice of such determination. A person intending to commence an action or
188 proceeding alleging that a health impact assessment fails to comply with the requirements of
189 this chapter shall first provide notice of intention to commence such action or proceeding within
190 sixty days of approval of such assessment. Said notices of intention shall be in such form as the
191 department shall prescribe, shall identify with particularity the issues to be considered in any
192 such action or proceeding, shall be in lieu of the notice and waiting period required by section
193 seven A of chapter two hundred and fourteen, and shall be provided to the attorney general, the
194 person proposing the project, and the department.

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

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

202 (d) If a court determines that a person proposing a project has knowingly concealed a material
203 fact or knowingly submitted false information in any form or report required under this chapter,
204 limits on the manner and time in which actions or proceedings may be commenced shall not
205 apply and the department may require the preparation and review of such assessments as may be
206 necessary to correct any deficient assessment.

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

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