

SENATE No. 349

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote healthy communities and the environment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

SENATE No. 349

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 349) of Sonia Chang-Diaz, Sal N. DiDomenico and Benjamin Swan for legislation to promote healthy communities and the environment. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 343 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to promote 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 SECTION 1. The General Laws, as appearing in the 2008 Official Edition, are hereby
2 amended 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
5 following meanings:

6 "Communities Health Index," a cumulative evaluation of the health of
7 communities based on specific health outcome indicators that ranks communities based on their
8 health status so as to identify communities whose residents suffer disproportionately high rates
9 of disease and premature death.

10 "Department," the department of public health.

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

13 "Health and Economic Impact Assessment" or "HEIA," a combination of
14 procedures, methods, and tools by which a regulation, program, or other project is assessed as to

15 its potential effects on the health and economic vitality of a population, and the distribution of
16 those effects within the population. A HEIA evaluates objectively the potential health and
17 economic effects of a project before it is built or implemented. A HEIA encompasses a
18 heterogeneous array of qualitative and quantitative methods to focus on health and economic
19 impacts and outcomes such as, but not limited to, obesity, physical inactivity, asthma, injuries,
20 residential and commercial property values and social equity. Health and economic impacts and
21 outcomes are the overall effects of a regulation, program, or other project, directly and indirectly,
22 on the health and economic vitality of a population. A HEIA may provide recommendations to
23 increase positive health and economic outcomes and minimize adverse health and economic
24 outcomes.

25 “Most vulnerable community,” a community identified in the communities
26 health index as being in the percentiles having the worst health outcomes or a community where
27 the median household income is 65 percent or less than the statewide household median income
28 or whose population includes 25 percent or more residents who are minorities, foreign born, or
29 lacking English language proficiency

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

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

37 Section 2. Expedited and Enhanced Massachusetts Environmental Policy Act
38 Review.

39 The secretary of environmental affairs shall:

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

49 (b) exempt site assessment grants and loans granted under the Brownfields
50 Redevelopment Fund, as well as investment tax credits for equipment, tenant fit-ups, and other

51 post-development activities administered under chapter 206 of the acts of 1998 from the category
52 of state financial assistance for the purposes of triggering Massachusetts environmental policy
53 act review. Projects undertaken under chapter 206 of the acts of 1998 that otherwise trigger
54 Massachusetts environmental policy act review may be considered environmental restoration
55 projects and subject to expedited review. In making a decision, the secretary of environmental
56 affairs shall consider the extent to which the new proposal would prevent pollution and eliminate
57 or minimize risks to public health and the environment.

58 Section 3. Community Environmental Health Disparities Program.

59 There is hereby established in the department a community environmental
60 health and economic disparities program. The purpose of the program is to establish a
61 communities health index and require certain proposed projects to complete a health and
62 economic impact assessment to help protect the health and economic vitality of community
63 residents. The department shall adopt regulations to implement the community health disparities
64 program and create a communities health index within six months of the passage of this act.

65 Section 4. Communities Health Index.

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

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

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

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

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

80 (2) Secondary indicators for a community:

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

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

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

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

89 (3) Other indicators for a community:

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

92 (ii) Environmental indicators (such as elevated levels of particulate matter
93 in the 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
95 primary indicators than to the secondary indicators, to determine which communities' residents
96 suffer 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 outcomes
99 and deemed to be most vulnerable. The department may adjust the percentile up or down by no
100 more than 10 percent to identify the communities with the worst health outcomes in the
101 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
104 has fewer than 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 more than
106 100,000 residents.

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

110 (3) The department may divide municipalities of 50,000-100,000
111 residents into geographically contiguous communities of 10,000-50,000 residents if there are
112 distinct 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
115 copy to the department simultaneous with filing the environmental notification with the secretary
116 of environmental affairs.

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

121 Section 6. Health and Economic Impact Assessment

122 (a) Within 30 days after the department receives a copy of the
123 environmental notification or notice of a project it shall inform the person if a health and
124 economic impact assessment is required. A health and economic impact assessment is required
125 if the proposed project is in or might affect a most vulnerable community, unless the department
126 waives the requirement upon a finding that the project would have no potential impact on any of
127 the indicators used to create the communities health index. If the department intends to waive
128 the requirement for a project in a most vulnerable community, it first shall provide notice to the
129 public and the opportunity for written public comment within 30 days after the notice, and shall
130 provide its decision of whether a health and economic impact assessment is required within 30
131 days of the close of the public comment period.

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

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

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

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

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

149 (4) information and analysis regarding the potential impacts of the project
150 on economic development prospects and commercial and residential property values of the
151 surrounding communities;

152 (5) proposals for mitigation and offsets to maximize the positive and
153 minimize the potential negative health and economic impacts, if any;

154 (6) other information and analysis identified in the scope; and

155 (7) a submission deadline for the HEIA.

156 (d) The person proposing the project shall complete and file a health and
157 economic impact assessment with the department according to the scope and the department is
158 required to provide the HEIA on the department's website within ten days of it being filed. The
159 person proposing the project shall also file a copy of the HEIA with the Executive Office of
160 Housing and Economic Development.

161 (e) The Department of Environmental Protection cannot approve a project
162 until the department has approved the HEIA and required any additional mitigation to minimize
163 the potential negative health impacts.

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

168 Section 7. Evaluating the Health and Economic Impact Assessment.

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

171 (b) Within 30 days of the close of the public comment period, the
172 department, with input from the board of health in the municipality where the project would be
173 located if one exists, shall determine whether the health related components of the impact
174 assessment are adequate, whether mitigation or offsets are necessary, and whether the mitigation
175 and offsets identified in the assessment would be adequate.

176 (c) Within 30 days of the close of the public comment period, the Executive
177 Office of Housing and Economic Development, with input from the property assessor in the
178 municipality where the project would be located if one exists, shall advise the department as to
179 whether the economic related components are adequate, whether mitigation or offsets are
180 necessary, and whether the mitigation and offsets identified in the assessment would be
181 adequate.

182 (d) If the health and economic impact assessment is adequate and no
183 mitigation or offsets are required the process is completed.

184 (e) If the health and economic impact assessment is adequate and appropriate
185 mitigation and offsets are identified and required, the process is completed, subject to the person
186 completing the mitigation and offsets identified in the assessment and required by the
187 department. The department may require monitoring and evaluation after completion to
188 determine whether the mitigation and offsets were adequate.

189 (f) If the health and economic impact assessment is inadequate, the
190 department shall provide an opportunity to supplement the assessment to remedy the
191 inadequacies.

192 (g) If a health and economic impact assessment is required, a person shall
193 not begin a project until the department approves the health and economic impact assessment.

194 (h) The department may require a fee be paid for its evaluation of an
195 assessment.

196 (i) A person whose health and economic impact assessment has been
197 approved must notify the department of any substantial change in the proposal so that the
198 department may determine whether a supplemental assessment or other mitigation or offsets are
199 required.

200 Section 8. Emergencies.

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

207 Section 9. Action or proceeding alleging improper determination of need for 208 a health and economic impact assessment or approval of such assessment or noncompliance with 209 law.

210 (a) A person intending to commence an action or proceeding alleging an
211 improper determination of whether a project requires the preparation of a health and economic
212 impact assessment shall first provide notice of intention to commence such action or proceeding
213 within sixty days of issuance of notice of such determination. A person intending to commence
214 an action or proceeding alleging that a health and economic impact assessment fails to comply
215 with the requirements of this chapter shall first provide notice of intention to commence such
216 action or proceeding within sixty days of approval of such assessment. Said notices of intention

217 shall be in such form as the department shall prescribe, shall identify with particularity the issues
218 to be considered in any such action or proceeding, shall be in lieu of the notice and waiting
219 period required by section seven A of chapter two hundred and fourteen, and shall be provided to
220 the attorney general, the person proposing the project, and the department.

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

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

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

234 (e) Ten or more persons residing in a most vulnerable community may
235 commence an action or proceeding alleging that a project in said community or an approval of a
236 health and economic impact assessment for a project in said community fails to comply with the
237 requirements of this chapter.

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