

**SENATE . . . . . No. 389**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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 court finds that:

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

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

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

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

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

14 SECTION 2. Section 2 of chapter 21 of the General Laws, as appearing in the 2002  
15 Official Edition, is hereby amended by inserting after clause (7) the following clause:-

16 (7A) develop statewide policies to promote environmental justice in the commonwealth  
17 and protect and regulate the use of areas of critical environmental justice concern in the  
18 commonwealth.

19 SECTION 3. Chapter 21A of the General Laws, as so appearing, is hereby amended by  
20 adding the following sections:-

21 Section 21. As used in this section and in section 22, the following words shall have the  
22 following meanings unless the context clearly requires otherwise:

23 “Cleaner production,” a manufacturing process or approach to manufacturing production  
24 that is based on toxics use reduction and pollution prevention and that strives to incorporate the  
25 following components: waste reduction, non-polluting production, energy efficiency, safe and  
26 healthy work environments, and environmentally sound products and packaging.

27 “Disproportionate burden,” a group of people bears an unfair share of environmental  
28 pollution from industrial, commercial, state and municipal operations or have limited access to  
29 natural resources, including open space and water resources.

30 "Equal protection," no group of people, because of race, ethnicity, class, gender, or  
31 handicap bears an unfair share of environmental pollution from industrial, commercial, state and  
32 municipal operations or has limited access to natural resources, including open space and water  
33 resources.

34 "Environmental benefits," access to funding, open space, enforcement, technical  
35 assistance, training, or other beneficial resources disbursed by the secretary of environmental  
36 affairs, its agencies, and its offices.

37 "Environmental justice," the equal protection and meaningful involvement of all people  
38 with respect to the development, implementation, and enforcement of environmental laws,  
39 regulations, and policies and the equitable distribution of environmental benefits.

40 "Environmental justice population," a neighborhood where the annual median household  
41 income is equal to or less than 65 percent of the statewide median or whose population is made  
42 up 25 percent minority, foreign born, or lacking English language proficiency; or where the  
43 secretary has determined that a community has received a disproportionate burden or otherwise  
44 not received equal protection.

45 "Foreign born," individuals who identify themselves on federal census forms as not U.S.  
46 citizens at birth.

47 "Lacking English language proficiency," households that, according to federal census  
48 forms, do not have an adult proficient in English.

49 "Low income," median annual household income at or below 65 percent of the statewide  
50 median income for Massachusetts, according to federal census data.

51 "Meaningful involvement," that all neighborhoods have the right to participate in  
52 partnership with government in environmental decision-making including needs assessment,  
53 planning, implementation, enforcement, and evaluation, and that all neighborhoods are enabled

54 and administratively assisted to participate fully through education and training means, and  
55 encouraged to develop environmental stewardship.

56 "Minority," individuals who identify themselves on federal census forms as non-white or  
57 Hispanic.

58 "Neighborhood," a census block group as defined by the U.S. Census Bureau but not  
59 including people who live in college dormitories or people under formally authorized, supervised  
60 care or custody.

61 "Supplemental environmental project," the performance of environmentally beneficial  
62 projects in the settlement of environmental enforcement cases.

63 Section 22. (1) The secretary of environmental affairs shall establish an environmental  
64 justice program consisting of, but not limited to, the following components:

65 (a) A policy position entitled the director of environmental justice and brownfields  
66 redevelopment within the office of the secretary. The director will act as the initial point of  
67 contact on all environmental justice matters and shall coordinate the implementation of this  
68 policy, track progress, and prepare annual reports for public distribution. The director shall  
69 develop a workplan for the implementation of the environmental justice program within the  
70 office of the secretary.

71 (b) Identify EJ populations to be serviced by this section via geographic information  
72 systems mapping or other suitable tools, and update this map as new United States census data  
73 becomes available.

74 (c) Establish a procedure under which additional communities that do not fall under the  
75 strict demographic definition of an environmental justice population may petition for such status.  
76 The secretary shall make a finding whether the petitioner has borne a disproportionate burden or  
77 otherwise has not received equal protection.

78 (d) Establish regional agency outreach teams of liaisons from each agency and region.  
79 The teams shall, without limitation: (1) open lines of communication with local neighborhood  
80 groups through routine meetings, (2) establish specific task forces, (3) further identify languages  
81 issues, (4) identify enforcement priorities on a local basis, (5) identify a list of community  
82 improvement projects, (6) allow issues with existing facilities to be raised and addressed, (7)  
83 assist the department of environmental protection and other agencies with targeting enforcement,  
84 (8) assist the office of technical assistance and other agencies with targeting assistance; and (9)  
85 identify potential economic development opportunities that promote cleaner production and  
86 sustainable business practices.

87 (e) Establish and coordinate the efforts of an working group made up of senior-level  
88 managers from each agency within the executive office of environmental affairs, the department  
89 of economic development, the department of housing and community development, and the  
90 department of public health, as well as representatives from at least two environmental justice  
91 populations. The working group shall maximize state resources, research, and technical  
92 assistance to further the goals of this legislation to ensure environmental justice concerns are  
93 evaluated and addressed in each of the agencies' jurisdiction and programs.

94 (f) Direct agencies under the secretary to designate senior-level managers to participate in  
95 and actively support the working group and the regional agency environmental justice outreach  
96 teams.

97 (g) Direct agencies under the secretary to identify and promote agency-sponsored  
98 projects, funding decisions, rulemakings or other actions intended to further environmental  
99 justice in the commonwealth.

100 (h) Target resources to create, restore, and maintain open spaces located in  
101 neighborhoods where environmental justice populations reside. At a minimum the interagency  
102 land committee which includes the department of conservation and recreation, the division of  
103 fisheries and wildlife, together with the office of environmental law enforcement in the office of  
104 the secretary, shall make it a priority to promote preserving and restoring open spaces in  
105 neighborhoods where environmental justice populations reside.

106 (i) Provide an introductory environmental justice training program for employees in the  
107 executive office of environmental affairs, watershed teams, and municipalities applying for grant  
108 programs or for any other resources prioritized or focused on neighborhoods where  
109 environmental justice populations reside. Staff serving on regional agency environmental justice  
110 outreach teams; employees or organizations disbursing state funds to municipalities, individuals,  
111 and organizations for the provision of open space, river maintenance or restoration, education,  
112 and technical assistance; environmental policy staff; and the environmental justice working  
113 group shall receive such training.

114 (j) Develop fact sheets describing programs directly relevant to obtaining funding or  
115 additional resources for environmental justice populations, including but not limited to the urban

116 self help program, Massachusetts Environmental Trust, and the Massachusetts environmental  
117 policy act. These fact sheets shall be made available in languages other than English.

118 (k) Develop a distribution list of interested members of environmental justice  
119 populations, non-profit organizations, and others to be incorporated into mailing lists for  
120 newsletters and other general outreach information.

121 (l) Develop and maintain a list of alternative information outlets that service  
122 environmental justice populations for the purpose of seeking public comments or publishing  
123 public notices.

124 (m) Establish multiple information repositories in neighborhoods where environmental  
125 justice populations reside.

126 (n) Direct agencies to develop a Public Participation Strategy that focuses agency  
127 resources on outreach activities to enhance public participation opportunities for agency  
128 activities that potentially affect environmental justice populations, including but not limited to:  
129 (1) scheduling public meetings or hearings at locations and times convenient for neighborhood  
130 stakeholders; (2) translating public notices into other languages; (3) offering interpreters and  
131 translated documents at public meetings; (4) providing notices as early as possible to all  
132 neighborhoods potentially impacted by a decision; and (5) assisting environmental justice  
133 populations with grant applications and questions about environmental regulations to assist them  
134 with compliance and sustainability.

135 (o) Work with other agencies as necessary to maximize site remediation and  
136 redevelopment programs under chapter 206 of the acts of 1998 and to promote nonpolluting  
137 development in neighborhoods where environmental justice populations reside.

138 (p) Direct the Massachusetts watershed initiative teams to identify and address  
139 environmental justice issues and to identify and reclaim brownfields sites identified under  
140 chapter 206 of the acts of 1998 within each watershed.

141 (q) Direct the Massachusetts environmental policy act office to (1) develop enhanced  
142 public participation for any project that exceeds an Environmental Notification Form threshold  
143 for air, solid and hazardous waste (other than remediation projects), or wastewater and sewage  
144 sludge treatment and disposal, if the project site is located within one mile of an environmental  
145 justice population (or in the case of projects exceeding said threshold for air, within 5 miles of an  
146 environmental justice population); and require enhanced analysis of impacts and mitigation for  
147 an Environmental Impact Report scope if the project exceeds a mandatory Environmental Impact  
148 Report threshold for air, solid and hazardous waste (other than remediation projects), or  
149 wastewater and sewage sludge treatment and disposal, and the project site is located within one  
150 mile of an environmental justice population (or in the case of projects exceeding a mandatory  
151 threshold for air, within 5 miles of an environmental justice population). Thresholds for the  
152 forms and reports identified in this subsection are codified at 310 CMR 11.00 et seq.

153 (2) Exempt site assessment grants and loans granted under the Brownfields  
154 Redevelopment Fund, as well as investment tax credits for equipment, tenant fit-ups, and other  
155 post-development activities administered under chapter 206 of the acts of 1998 from the category  
156 of state financial assistance for the purposes of triggering Massachusetts environmental policy  
157 act review. Projects undertaken under chapter 206 of the acts of 1998 that otherwise trigger  
158 Massachusetts environmental policy act review may be considered environmental restoration  
159 projects and subject to expedited review. In making a decision, the secretary will consider the



160 extent to which the new proposal would prevent pollution and eliminate or minimize risks to  
161 public health and the environment.

162 (r) Direct the department of environmental protection to (1) prioritize neighborhoods  
163 where environmental justice populations reside when selecting sectors and facilities for  
164 inspection and monitoring, prosecuting non-compliance, providing compliance assistance and  
165 allocating resources; (2) prioritize municipal outreach for sites identified under chapter 21E to  
166 neighborhoods with environmental justice populations; (3) incorporate environmental justice as a  
167 criterion for awarding technical assistance grants to non-profit organizations; (4) prioritize  
168 technical assistance to environmental justice populations in neighborhoods with hazardous waste  
169 sites identified under chapter 21E; (5) communicate with the list of community-based  
170 organizations in neighborhoods where environmental justice populations reside in addressing  
171 compliance matters; (6) consider environmental justice as a factor in establishing priorities for  
172 activity use limitation audits under chapter 21E; (7) incorporate environmental justice as a  
173 criterion in prioritizing the investigation of sites, negotiating cost recovery under chapter 21E;  
174 (8) provide for commensurate cost recovery to municipalities for “back taxes” (exclusive of  
175 interest and penalties) on sites identified under said chapter 21E and located in neighborhoods  
176 where environmental justice populations reside; and (9) meet regularly with the executive office  
177 of environmental affairs and the department of public health to coordinate on environmental  
178 issues potentially affecting public health, including matters related to exposures from multiple  
179 sources of pollution.

180 SECTION 4. The executive office of environmental affairs shall adopt the initial  
181 regulations required by clause (7A) of section 2 of chapter 21A within 90 days after the effective  
182 date of this act.