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SENATE . . . . . No. 389

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

SECTION 1. The general court finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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