

**SENATE . . . . . No. 817**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Anthony D. Galluccio*

*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 create environmental justice..

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Anthony D. Galluccio</i>	<i>Middlesex and Suffolk</i>	<i>1/13/2022</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Timothy J. Toomey</i>	<i>26th Middlesex</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	
<i>Richard J. Ross</i>		
<i>David B. Sullivan</i>	<i>6th Bristol</i>	

**SENATE . . . . . No. 817**

[Pin Slip]

**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:*

1 SECTION 1. The General Laws, as appearing in the 2004 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 following  
5 meanings:

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

10 “Department,” the department of public health.

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

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

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

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

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

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

33           The secretary of environmental affairs shall:

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

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

### 52 Section 3. Community Environmental Health Disparities Program.

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

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

59 Section 4. Communities Health Index.

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

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

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

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

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

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

69 (iv) Asthma and asthma-related hospital admissions or prevalence in children age 14  
70 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 morbidity,  
74 10% or more above the commonwealth rate;

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

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

79 (iv) Bronchitis and bronchitis-related hospitalizations in children age 14 and younger  
80 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 compare  
83 community health; and

84 (ii) Environmental indicators (such as elevated levels of particulate matter in the air),  
85 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  
87 indicators 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 10  
92 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  
95 than 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  
99 100,000 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  
102 geographically contiguous communities of 10,000-50,000 residents if there are distinct  
103 differences in indicators 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  
109 projects, or the cumulative impact of projects, require notice to the department when an  
110 environmental notification is not required. A person proposing such a project shall notify the  
111 department on 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  
114 notification or notice of a project it shall inform the person if a health impact assessment is  
115 required. A health impact assessment is required if the proposed project is in or might affect a  
116 most vulnerable community, unless the department waives the requirement upon a finding that

117 the project would have no potential impact on any of the indicators used to create the  
118 communities health index. If the department intends to waive the requirement for a project in a  
119 most vulnerable community, it first shall provide notice to the public and the opportunity for  
120 written public comment within 30 days after the notice, and shall provide its decision of whether  
121 a health 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  
123 assessment for a project in a most vulnerable community, or that may affect a most vulnerable  
124 community, that does not require an environmental notification. The department shall respond to  
125 such petition within 30 days.

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

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

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

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



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

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

142 (6) a submission deadline for the HIA.

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

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

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

### 153 Section 7. Evaluating the Health Impact Assessment.

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

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

159 are necessary, and whether the mitigation and offsets identified in the assessment would be  
160 adequate.

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

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

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

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

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

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

176 Section 8. Emergencies.

177 The hazard abatement provisions of a project in a most vulnerable community may begin  
178 before approval of a health impact assessment if emergency action is essential to avoid or  
179 eliminate a threat to public health or safety, or a threat to any natural resources; provided, that

180 wherever practicable, the person shall obtain the prior approval of the department. Following  
181 beginning any such project, the person shall promptly, but in any case within sixty days, begin  
182 compliance with the provisions of section 4.

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

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

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

198           (c) No allegation shall be made in any action or proceeding under this chapter unless  
199 the matter complained of was raised at the appropriate point in the administrative review  
200 procedures; provided that a matter may be raised upon a showing that it is material and that it

201 was not reasonably possible with due diligence to have raised it during such procedures or that  
202 the matter sought to be raised is of critical importance to the environmental impact of the project.

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

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

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