SENATE DOCKET, NO. 725 FILED ON: 1/20/2011

SENATE . . . . . No. 343

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:
Sonia Chang-Diaz	
Byron Rushing	*9th Suffolk*
Carl M. Sciortino, Jr.	*34th Middlesex*
Linda Dorcena Forry	*12th Suffolk*
Sal N. DiDomenico	*Middlesex and Suffolk*
James B. Eldridge	
Ellen Story	*3rd Hampshire*

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By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 343) of Sonia Chang-Diaz, Byron Rushing, Carl M. Sciortino, Jr., Linda Dorcena Forry and other members of the General Court for legislation to promote healthy communities and the environment. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *388* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after chapter 111K chapter 111L:

Chapter 111L: Section 1.Definitions.

Section 1. As used in this chapter the following words shall have the following meanings:

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

"Department," the department of public health.

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

"Health and Economic Impact Assessment" or "HIEA," a combination of procedures, methods, and tools by which a regulation, program, or other project is assessed as to its potential effects on the health and economic vitality of a population, and the distribution of those effects within the population. A HEIA evaluates objectively the potential health and economic effects of a project before it is built or implemented. A HEIA encompasses a heterogeneous array of qualitative and quantitative methods and tools to focus on health and economic impacts and outcomes such as, but not limited to, obesity, physical inactivity, asthma, injuries, residential and commercial property values and social equity. Health and economic impacts and outcomes are the overall effects of a regulation, program, or other project, directly and indirectly, on the health and economic vitality of a population. A HEIA may provide recommendations to increase positive health and economic outcomes and minimize adverse health and economic outcomes.

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

"Person," any state, public, or private corporation or authority, any individual, trust, firm, joint stock company, partnership, association, or other entity, or any group

thereof, and any officer, employee, or agent of such person, any group of persons, and any agency or political subdivision of the Commonwealth or of the federal government.

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

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

The secretary of environmental affairs shall:

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

(b) 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 of environmental affairs shall consider the extent to which the new proposal would prevent pollution and eliminate or minimize risks to public health and the environment.

Section 3. Community Environmental Health Disparities Program.

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

Section 4. Communities Health Index.

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

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

(1) Primary indicators for a most vulnerable community:

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

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

(iii) Elevated blood lead levels in children age13 and younger, 10% or more above the commonwealth rate;

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

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

(2) Secondary indictors for a community:

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

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

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

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

(3) Other indicators for a community:

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

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

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

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

(1) A community shall include at least 10,000 residents. If a municipality has fewer than 10,000 residents, the department shall cluster the municipality with one or more contiguous municipalities to create a combined community with at least 10,000 and no more than 100,000 residents.

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

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

Section 5. Notice to the department.

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

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

Section 6. Health and Economic Impact Assessment

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

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

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

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

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

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

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

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

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

(7) a submission deadline for the HEIA.

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

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

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

Section 7. Evaluating the Health and Economic Impact Assessment.

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

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

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

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

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

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

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

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

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

Section 8. Emergencies.

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

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

(a) A person intending to commence an action or proceeding alleging an improper determination of whether a project requires the preparation of a health and economic impact assessment shall first provide notice of intention to commence such action or proceeding within sixty days of issuance of notice of such determination. A person intending to commence an action or proceeding alleging that a health and economic impact assessment fails to comply with the requirements of this chapter shall first provide notice of intention to commence such action or proceeding within sixty days of approval of such assessment. Said notices of intention shall be in such form as the department shall prescribe, shall identify with particularity the issues

to be considered in any such action or proceeding, shall be in lieu of the notice and waiting period required by section seven A of chapter two hundred and fourteen, and shall be provided to the attorney general, the person proposing the project, and the department.

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

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

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

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

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