

SENATE No. 1170

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>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/26/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2017</i>

SENATE No. 1170

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1170) of Sonia Chang-Diaz, Jose F. Tosado, Jason M. Lewis and Sal N. DiDomenico for legislation to promote healthy communities and the environment. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1127 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 2014 Official Edition, are hereby
2 amended by inserting after chapter 111N chapter 111O:

3 Chapter 111O: Section 1. Definitions.

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

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

9 “Climate Change Adaptation and/or Preparedness” the state of being adapted in structure,
10 location, or process in preparation for, able to withstand impacts of, designed to address, or for
11 the purpose of evaluating risks associated with climate change including rising temperatures,
12 increased storm vulnerability, rising sea levels, coastal erosion, diminished air quality, and
13 associated consequences of these risks.

14 “Department,” the department of public health.

15 “Environmental notification,” an environmental notification prepared pursuant to section
16 62A of chapter 30 of the Massachusetts Environmental Policy Act.

17 “Health and Economic Impact Assessment” or “HEIA,” a combination of procedures,
18 methods, and tools by which a regulation, program, or other project is assessed as to its potential
19 effects on the health and economic vitality of a population, including those related to climate
20 change preparedness and/or adaptation, and the distribution of those effects within the
21 population. A HEIA evaluates objectively the potential health and economic effects of a project
22 before it is built or implemented. A HEIA encompasses a heterogeneous array of qualitative and
23 quantitative methods and tools to focus on health and economic impacts and outcomes such as,
24 but not limited to, obesity, physical inactivity, asthma, injuries, residential and commercial
25 property values and social equity. Health and economic impacts and outcomes are the overall
26 effects of a regulation, program, or other project, directly and indirectly, on the health and
27 economic vitality of a population. A HEIA may provide recommendations to increase positive
28 health and economic outcomes and minimize adverse health and economic outcomes.

29 “Most vulnerable community,” a community identified in the communities health index
30 as being in the percentiles having the worst health outcomes or a community where the median

31 household income is 65 percent or less than the statewide household median income or whose
32 population includes 25 percent or more residents who are minorities foreign born, or lacking
33 English language proficiency

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

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

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

42 The secretary of environmental affairs shall:

43 (a) develop enhanced public participation for any project that requires an environmental
44 notification for air, solid and hazardous waste, other than remediation projects, or wastewater
45 and sewage sludge treatment and disposal, if the project is located within 1 mile of a most
46 vulnerable community, or in the case of projects exceeding said threshold for air, within 5 miles
47 of a most vulnerable community; and require enhanced analysis of impacts and mitigation in the
48 scope of an environmental impact report required by sections 62A or 62B of chapter 30 of the
49 Massachusetts Environmental Policy Act if the project is located within 1 mile of a most
50 vulnerable community, or in the case of projects exceeding a mandatory threshold for air, within
51 5 miles of a most vulnerable community.

52 (b) exempt site assessment grants and loans granted under the Brownfields
53 Redevelopment Fund, as well as investment tax credits for equipment, tenant fit-ups, and other
54 post-development activities administered under chapter 206 of the Acts of 1998 from the
55 category of state financial assistance for the purposes of triggering Massachusetts Environmental
56 Policy Act review. Projects undertaken under chapter 206 of the acts of 1998 that otherwise
57 trigger Massachusetts Environmental Policy Act review may be considered environmental
58 restoration projects and subject to expedited review. In making a decision, the secretary of
59 environmental affairs shall consider the extent to which the new proposal would prevent
60 pollution and eliminate or minimize risks to public health and the environment.

61 Section 3. Community Environmental Health Disparities Program.

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

68 Section 4. Communities Health Index.

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

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

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

- 73 (i) Total age adjusted mortality, 25% or more above the commonwealth rate;
- 74 (ii) Total age adjusted emergency room visits, 10% or more above the commonwealth
75 rate;
- 76 (iii) Elevated blood lead levels in children age 13 and younger, 10% or more above the
77 commonwealth rate;
- 78 (iv) Asthma and asthma-related hospital admissions or prevalence in children age 14
79 and younger, 10% or more above the commonwealth rate; and
- 80 (v) Infant mortality 10% or more above the commonwealth rate
- 81 (2) Secondary indicators for a community:
- 82 (i) Total age adjusted non-congenital cardiovascular disease and stroke morbidity, 10%
83 or more above the commonwealth rate;
- 84 (ii) Total age adjusted heart attack hospitalizations, 10% or more above the
85 commonwealth rate;
- 86 (iii) Total age adjusted stroke and stroke-related hospitalizations, 10% or more above
87 the commonwealth rate; and
- 88 (iv) Bronchitis and bronchitis-related hospitalizations in children age 14 and younger
89 and adults age 65 and older, 10% or more above the commonwealth rate
- 90 (3) Other indicators for a community:

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

93 (ii) Environmental indicators (such as elevated levels of particulate matter in the air,
94 increases in sea level, and/or land loss), if any, chosen by the department as predictive of
95 negative health outcomes

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

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

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

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

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

114 Section 5. Notice to the department.

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

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

122 Section 6. Health and Economic Impact Assessment

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

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

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

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

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

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

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

153 (5) information and analysis regarding the potential impact on climate change
154 adaptation and/or preparedness of surrounding communities;

155 (6) proposals for mitigation and offsets to maximize the positive and minimize the
156 potential negative health, economic, and climate change adaptation and/or preparedness impacts,
157 if any;

158 (7) other information and analysis identified in the scope; and

159 (8) a submission deadline for the HEIA.

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

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

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

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

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

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

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

185 (d) Within 30 days of the close of the public comment period, the Office of Energy and
186 Environmental Affairs shall advise the department as to whether the climate change adaptation
187 and/or preparedness components are adequate, whether mitigation or offsets are necessary, and
188 whether the mitigation and offsets identified in the assessment would be adequate.

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

191 (f) If the health and economic impact assessment is adequate and appropriate mitigation
192 and offsets are identified and required, the process is completed, subject to the person completing
193 the mitigation and offsets identified in the assessment and required by the department. The

194 department may require monitoring and evaluation after completion to determine whether the
195 mitigation and offsets were adequate.

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

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

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

201 (j) A person whose health and economic impact assessment has been approved must
202 notify the department of any substantial change in the proposal so that the department may
203 determine, prior to the implementation of the change, whether a supplemental assessment or
204 other mitigation or offsets are required.

205 Section 8. Emergencies.

206 The hazard abatement provisions of a project in a most vulnerable community may begin
207 before approval of a health and economic impact assessment if emergency action is essential to
208 avoid or eliminate a threat to public health or safety, or a threat to any natural resources;
209 provided, that wherever practicable, the person shall obtain the prior approval of the department.
210 Following beginning any such project, the person shall promptly, but in any case within sixty
211 days, begin compliance with the provisions of Section 6.

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

214 (a) A person intending to commence an action or proceeding alleging an improper
215 determination of whether a project requires the preparation of a health and economic impact
216 assessment shall first provide notice of intention to commence such action or proceeding within
217 sixty days of issuance of notice of such determination. A person intending to commence an
218 action or proceeding alleging that a health and economic impact assessment fails to comply with
219 the requirements of this chapter shall first provide notice of intention to commence such action
220 or proceeding within sixty days of approval of such assessment. Said notices of intention shall
221 be in such form as the department shall prescribe, shall identify with particularity the issues to be
222 considered in any such action or proceeding, shall be in lieu of the notice and waiting period
223 required by section seven A of chapter two hundred and fourteen, and shall be provided to the
224 attorney general, the person proposing the project, and the department.

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

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

232 (d) If a court determines that a person proposing a project has knowingly concealed a
233 material fact or knowingly submitted false information in any form or report required under this
234 chapter, limits on the manner and time in which actions or proceedings may be commenced shall

235 not apply and the department may require the preparation and review of such assessments as may
236 be necessary to correct any deficient assessment.

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

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