

SENATE No. 426

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 relative to environmental justice and toxics reduction in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/30/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/30/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/1/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/1/2017</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/1/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/2/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>2/3/2017</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>

SENATE No. 426

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 426) of James B. Eldridge, Michelle M. DuBois, Marjorie C. Decker, Jason M. Lewis and other members of the General Court for legislation relative to environmental justice and toxics reduction in the Commonwealth. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

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

An Act relative to environmental justice and toxics reduction in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 21 of the General Laws, as so appearing, is hereby amended by creating a new
2 section 68 that is to follow section 67, and inserting Section 68a as follows:-

3 SECTION 1. This Act may be cited as the ‘Environmental Justice Act.’

4 The Environmental Justice Act is intended to promote environmental justice, eliminate
5 disparities with respect to exposure to environmental toxins, ensure access to environmental
6 benefits within the Commonwealth, and implement Article 97 of the Constitution of the
7 Commonwealth, which provides that the "people shall have the right to clean air and water,
8 freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic
9 qualities of their environment; and the protection of the people in their right to the conservation,
10 development and• utilization of the agricultural, mineral, forest, water, air and other natural
11 resources is hereby declared to be a public purpose."

12 SECTION 2. Chapter 21A, Section 3 of the General Laws, as so appearing, is hereby
13 amended by inserting the following definitions, which in this chapter shall have the following
14 meanings unless the context clearly requires otherwise:-

15 "Advisory Council," the Massachusetts Environmental Justice Advisory Council.

16 "Department," the Department of Environmental Protection.

17 "Environmental justice," the right to be protected from environmental pollution
18 and to live in and enjoy a clean and healthful environment regardless of race, income, national
19 origin or English language proficiency. Environmental justice shall include the equal protection
20 and meaningful involvement of all people with respect to the development, implementation, and
21 enforcement of environmental laws, regulations, and policies and the equitable distribution of
22 environmental benefits.

23 "Environmental Benefits," access to funding, open space, enforcement, technical
24 assistance, training, or other beneficial resources disbursed by the executive secretariats and their
25 agencies and offices.

26 "Environmental Justice Population," a neighborhood in which the annual median
27 household income is equal to or less than 65 percent of the statewide median or in which
28 minorities comprise 25 percent or more of the population or in which in which 25 percent or
29 more of households lack English language proficiency or as defined by the Executive Office of
30 EEA or its subordinate agencies in an environmental justice strategy issued pursuant to this Act.

31 "Equal Protection," that no group of people, because of race, ethnicity, class, gender, or
32 handicap bears an unfair share of environmental pollution from industrial, commercial, state and

33 municipal operations or have limited access to natural resources, including waterfronts, parks
34 and open space, and water resources.

35 “Executive Office of EEA,” the Executive Office of Energy and Environmental
36 Affairs.

37 "Lacking English Language Proficiency" refers to households that, according to federal
38 census forms, do not have an adult proficient in English.

39 “MEPA,” the Massachusetts Environmental Policy Act, M.G.L. Ch.30, Sections 61-62H.

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

43 “Secretary of EEA,” the Secretary for Energy and Environmental Affairs.

44 “Secretariats,” the Executive Offices of the Commonwealth and their Secretaries,
45 inclusive of but not limited to the Executive Offices and Secretaries of Energy and
46 Environmental Affairs, Health and Human Services, and Transportation.

47 "Supplemental Environmental Project," environmentally beneficial projects, the
48 implementation of which primarily benefits public health, safety and welfare, and the
49 environment.

50 “Toxics Release Inventory,” the Toxics Release Inventory and Toxics Release Inventory
51 Program of the United States Environmental Protection Agency.

52 “TRI Facility,” any industrial or commercial facility subject to the regulations, policies,
53 or reporting requirements of the Toxics Release Inventory Program of the United States
54 Environmental Protection Agency or comparable laws or regulations of the Commonwealth for
55 the management and control of pollutants or toxins that pose a significant risk to public health or
56 the environment.

57 SECTION 3. Chapter 21 of the General Laws, as so appearing, is further amended by
58 inserting section 68b as follows:-

59 By no later than 180 days after the effective date of this Act, the Executive Office of EEA
60 shall convene the Massachusetts Environmental Justice Advisory Council. The Advisory Council
61 shall provide independent advice and recommendations to the Governor, the Secretary of EEA,
62 and the other Secretariats about broad, cross-cutting issues related to environmental justice and
63 on policies and practices and specific actions that the Commonwealth should implement to
64 ensure that the objectives of this Act are accomplished.

65 The Advisory Council shall consist of at least nine, but not more than 15 persons,
66 including a chair designated by the Council and approved by the Governor. No less than two
67 persons shall be appointed by the Senate President and no less than two persons by the Speaker
68 of the House of Representatives, with the remainder appointed by the Governor. The Advisory
69 Council shall be comprised of environmental justice stakeholders including: scientific or other
70 experts in environmental or public health matters holding academic position in colleges,
71 universities or other research institutions and who work regularly in, or conduct substantial
72 research regarding environmental justice concerns; representatives of the environmental
73 nonprofit sector; representatives of conservation commissions or boards of health; residents or

74 elected officials of Environmental Justice Population neighborhoods. No fewer than four of the
75 persons appointed to the Advisory Council shall be residents of Environmental Justice
76 Population neighborhoods within the Commonwealth.

77 A majority of the serving members of the Advisory Council shall be deemed a quorum.
78 The Advisory Council shall establish such rules for conducting its activities and may amend such
79 rules as it deems reasonable, subject to the Governor's approval and consistent with the
80 provisions and purposes of this Act.

81 The Advisory Council shall meet at such times and places as determined by the Advisory
82 Council and its chair and shall submit an initial report to the Governor within six months
83 following the appointment of the Council's members. Thereafter the Advisory Council shall
84 meet at least semi-annually and submit supplemental reports giving advice and recommendations
85 to the Governor and Secretary of EEA no less often than once per year.

86 The Advisory Council may hold public meetings, at its discretion or at the request of the
87 Governor or the Secretary of EEA, for the purpose of fact-finding, receiving public comments,
88 and conducting inquiries concerning environmental justice, and shall prepare for public review
89 and include in its reports a summary of the comments and recommendations made at the public
90 meetings.

91 The Governor and Secretary EEA shall provide the Advisory Council with staffing and
92 administrative support sufficient to accomplish the goals set out in this section.

93 SECTION 4. Chapter 21 of the General Laws, as so appearing, is further amended by
94 inserting section 68c as follows:-

95 By no later than 180 days after the effective date of this Act, the Department of
96 Environmental Protection (Department) shall develop and implement a strategy prioritizing
97 enforcement in neighborhoods with environmental justice populations. The Department shall
98 compile an annual report due at the end of each calendar year, detailing the number and types of
99 enforcement actions in neighborhoods with environmental justice populations.

100 The strategy shall also address ensuring equal compliance and enforcement for facilities
101 subject to environmental regulatory programs or permitting requirements and located in or near
102 Environmental Justice Population neighborhoods; establishing a process for reviewing which
103 MEPA thresholds apply for enhanced public participation and substantive review; ensuring
104 brownfield remediation in or near Environmental Justice Population neighborhoods; and creating
105 an online Environmental Justice repository of information about the Commonwealth's
106 environmental justice initiatives for the general public and project proponents.

107 In order to secure environmental justice and equal protection, the Department may issue
108 and amend, for purposes of its strategy, a definition of environmental justice population that
109 departs from the definition expressly provided in Section 3 of this Act. However, any definition
110 of Environmental Justice Population issued by the Department must, at a minimum, include
111 neighborhoods meeting any one of the following criteria or combination thereof: the annual
112 median household income is equal to or less than 65 percent of the statewide median; minorities
113 make up 25 percent or more of the population; persons lacking English language proficiency
114 make up 25 percent or more of the population.

115 SECTION 5. Said section 68 of Chapter 21, is further amended by inserting the following
116 section 68d:-

117 The Department shall establish and maintain a Supplemental Environmental Project
118 (SEP) bank. Such bank shall maintain an inventory of environmentally beneficial projects in
119 communities with environmental justice populations that may be funded by violators in lieu of
120 paying penalties associated with the settlement of enforcement actions. SEPs shall conform to
121 the Department’s policy on Supplemental Environmental Projects, ENF-07.001, as amended.
122 The Department shall establish and maintain a website portal where the public and potential SEP
123 recipients may submit potential SEP projects to be considered for future settlements.

124 SECTION 6. Said section 68 of Chapter 21, is further amended by inserting the following
125 section 68e:-

126 The Secretary of EEA shall, in consultation with the other Secretariats and no less often
127 than every five years, publish a progress report on environmental justice, incorporating the
128 recommendations of the Advisory Council as appropriate, incorporating enforcement and SEP
129 activities undertaken, reporting metrics on reduction of pollution in neighborhoods with
130 environmental justice populations, and outlining further policy actions. The report shall be filed
131 with the clerk of the house or representatives, the clerk of the senate, the chairs of the joint
132 committee on environment, natural resources and agriculture, the chairs of the joint committee
133 on public health, and the chairs of the joint committee of telecommunications, utilities, and
134 energy.

135 SECTION 7. Said section 68 of Chapter 21, is further amended by inserting the following
136 section 68f:-

137 The Department shall work with the Department of Public Health, and using the best
138 available science, establish health risk assessment guidelines and develop a mapping tool,

139 accessible by the public, that helps identify Massachusetts communities most affected by sources
140 of pollution. The tool should employ environmental, health, and socioeconomic information to
141 produce scores for every census tract in the Commonwealth. The Department of Public Health
142 shall prioritize the census tracts with the highest scores for health studies and developing
143 strategies for reducing public health threats.

144 SECTION 8. Section 62B of chapter 30 of the General Laws is hereby amended by
145 deleting the first sentence of the third paragraph and inserting, in its place, the following
146 sentence:

147 An environmental impact report shall contain statements describing the nature and extent
148 of the proposed project; potential environmental impacts and public health impacts resulting
149 from the construction and operation of the proposed project; proposed studies or program of
150 studies designed to evaluate potential environmental impacts and public health impacts; all
151 measures being utilized to minimize environmental damage and public health damage; any
152 adverse short-term and long-term environmental consequences and public health consequences
153 that cannot be avoided should the project be undertaken; and reasonable alternatives to the
154 proposed project and their environmental consequences and public health consequences.

155 SECTION 9. Section 62C of chapter 30 of the General Laws is hereby amended by
156 inserting after the first paragraph, following the word “documents” the following paragraph:

157 To enable the public to participate in decisions that affect their health and safety and the
158 environment, the Executive Office of shall maximize opportunities for public involvement. Such
159 opportunities shall encourage consultation with the public early in the application processes to
160 foster a robust MEPA analysis and the active involvement of the interested or affected persons.

161 In cases where the proposed project has the potential to impact a neighborhood with an
162 environmental justice population lacking English language proficiency, said environmental
163 impact report shall be in English and in any other language spoken by the environmental justice
164 population, describing the proposed facility and its location, the range of potential environmental
165 and health impacts of each pollutant, the application and review process, and a contact person,
166 with phone number and address, from whom information will be available as the application
167 proceeds.

168 SECTION 10. Section 62E of Chapter 30 of the General Laws is hereby amended by
169 adding, after the first paragraph, the following paragraph:

170 However, no agency shall exempt any project located in an Environmental Justice
171 Population neighborhood and reasonably likely to cause damage to the environment, as defined
172 in section 61, from the provisions of sections 62 to 62H, inclusive. This paragraph shall not
173 apply to emergency actions essential to avoid or eliminate a threat to public health or safety, or a
174 threat to any natural resources, undertaken in compliance with section 62F

175 SECTION 11. Said section 68 of Chapter 21, is further amended by inserting the
176 following section 68g:-

177 By no later than 30 days after the effective date of this Act, the Secretary of EEA shall
178 direct each Department, Board, or other agency or program in the Secretariat with jurisdiction
179 over the permitting of any TRI Facility to issue recommendations for ways to substantially
180 decrease the further siting or expansion of TRI Facilities within Environmental Justice
181 Population neighborhoods.

182 By no later than 180 days after the effective date of this Act, the Secretary of EEA shall
183 initiate a rule-making process that shall establish a cap on the total number of TRI Facilities that
184 may be sited or expanded within any Environmental Justice Population neighborhood. That rule-
185 making process shall prioritize and give substantial weight to achieving a substantial reduction of
186 the risk of the exposure of residents of the neighborhood to toxins listed in the TRI Inventory and
187 shall prioritize and give substantial weight to providing and preserving the access of the residents
188 of the neighborhood to a clean and healthful environment regardless of race, income, national
189 origin or English language proficiency.

190 SECTION 12. Said section 68 of Chapter 21, is further amended by inserting the
191 following section 68h:-

192 By no later than 30 days of the effective date of this Act, the Secretary of EEA shall
193 appoint a Director of Environmental Justice for the secretariat. The Director of Environmental
194 Justice shall have such duties and authority as the Secretary of EEA deems reasonable to ensure
195 that the purposes of this Act are carried out. The Director shall liaise with the Advisory Council
196 and other Secretariats and may have any other duties that the Secretary deems necessary to
197 secure environmental justice. The Secretary shall not permit the position of Director of
198 Environmental Justice to be vacant for more than sixty days.

199 SECTION 13. Said section 68 of Chapter 21, is further amended by inserting the
200 following section 68h 1/4:-

201 By no later than 30 days after the effective date of this Act, all Secretariats, other than
202 EEA, shall designate an environmental justice coordinator for each Secretariat. The
203 environmental justice coordinator shall be the main point of contact regarding environmental

204 justice matters within that Secretariat, shall liaise with the Director of Environmental Justice
205 within EEA, and shall be responsible for developing and implementing the environmental justice
206 policy or strategy of that Secretariat, as created pursuant to this Act or any other law, regulation,
207 or order.

208 SECTION 14. Said section 68 of Chapter 21, is further amended by inserting the
209 following section 68h 1/2:-

210 No later than 180 days after the effective date of this Act, and except where already
211 provided for elsewhere in this Act, each Secretariat shall develop a specific policy or strategy to
212 promote environmental justice in ways that are tailored to the specific authority, mission, and
213 programs under their jurisdiction. Secretariat strategies shall include, but not be limited to: i)
214 identification of permitting or other applicable regulatory authority over development projects,
215 brownfield remediation, industrial operations, and commercial facilities, which may impact
216 Environmental Justice Populations and description of any mechanism to ensure that
217 Environmental Justice Populations are protected in the review process; ii) identification of
218 economic development opportunities, environmental benefits, and other discretionary funding
219 programs that do, or appropriately should, consider the needs of an Environmental Justice
220 Population in the award process; and iii) an enhanced public participation plan for
221 Environmental Justice Populations potentially affected by development projects, brownfield
222 remediation, industrial operations, and commercial facilities that focuses secretariat resources on
223 outreach activities that enhance public participation opportunities in Environmental Justice
224 Populations, including a plan for communicating in multiple languages and scheduling public
225 meetings at locations and times convenient for neighborhood stakeholders. In determining
226 whether a program protects and/or considers the needs of an Environmental Justice Population,

227 the policy or strategy may use an existing definition of protected or priority population that
228 varies from the definition under this Act so long as the intent of this Act is substantially met.
229 Secretariat policies or strategies shall be reviewed every five years, and updated as needed.

230 SECTION 15. Said section 68 of Chapter 21, is further amended by inserting the
231 following section 68i:-

232 An Interagency Environmental Justice Working Group shall be established to maximize
233 state resources, research, and technical assistance to further the purposes of this Act and of
234 environmental justice in the Commonwealth. The Environmental Justice Coordinators shall
235 serve as their Secretariat representatives to the Interagency Environmental Working Group. The
236 Director of Environmental Justice of the Executive Office of Energy and Environmental Affairs
237 shall convene meetings of the Interagency Environmental Justice Working Group and serve as
238 Chair. By no later than 90 days from the effective date of this Act, the Interagency
239 Environmental Justice Working Group shall hold at least one meeting and develop a schedule for
240 subsequent meetings, which shall take place no less than once a year.