

HOUSE No. 4264

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to environmental justice 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 SECTION 1. Section 62 of chapter 30 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting the following 8 definitions after the definition of
3 “Agency”:-

4 "Environmental benefits," the access to clean natural resources, including as applicable,
5 air, water resources, open space, and constructed playgrounds and other outdoor recreational
6 facilities and venues, and clean renewable energy sources, environmental enforcement, technical
7 assistance, training, funding and other beneficial resource, disbursed or administered by the
8 secretary of energy and environmental affairs and those agencies, including, departments,
9 divisions, boards, and offices, that the secretary has executive control and authority.

10 “Environmental burdens,” any destruction, damage, or impairment of natural resources
11 that is not insignificant, resulting from intentional or consequential causes, including but not

12 limited to, air pollution, water pollution, improper sewage disposal, unreasonable
13 dumping of solid wastes and other noxious substances, excessive noise, acts that unreasonably

intensify the effects of climate change, activities that unfairly limit access to natural resources and constructed outdoor recreational facilities and venues, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or storm water flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, open spaces, playgrounds, from private, industrial, commercial or government operations, development, construction, or other activity that contaminates or alters the quality of the environment and may pose a risk to public health.

“Environmental justice council”, a council to advise and provide recommendations to the secretary of energy and environmental affairs on relevant policies and standards to achieve the environmental justice principles as defined under this section. Said council shall consist of at least 9, but not more than 15 fifteen members, including a chair, each of whom shall be appointed, and may be removed without cause, by the governor. All members shall serve without compensation.

"Environmental justice population," a neighborhood that meets 1 or more of the following criteria: (i) the annual median household income is equal to or less than 65 per cent of the statewide median; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median income of the municipality in which the neighborhood is located does not exceed 150 per cent of the annual median statewide income.

When a neighborhood does not meet any of these criteria, but a geographic portion of that neighborhood meets at least 1 those criteria, the secretary may designate that geographic part as an environmental justice population upon petition of at least 10 residents of that geographic part. The secretary may determine that a neighborhood, including any part, shall not be designated an

environmental justice population if upon finding, the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income; a majority of persons age 25 and older in that neighborhood have a college education; and the neighborhood does not bear an unfair burden of environmental pollution and has more than limited access to natural resources, including as applicable, open spaces, water resources, and playgrounds and other constructed outdoor recreational facilities and venues.

The secretary of energy and environmental affairs shall consult with the environmental justice council before making any substantial adoptions, revisions or amendments to any regulation related to this definition.

The environmental justice council shall conduct a comprehensive analysis in the third year after this definition is enacted and thereafter, every fifth year, to ensure this definition achieves the objectives of the environmental justice principles. The analysis shall include, but not be limited to, an evaluation of this definition as compared to the demographics of environmental justice populations in the commonwealth. As part of the analysis, said council shall provide advice and make recommendations to the secretary on any needed substantial change to the percentage thresholds included in this definition and any related regulation. All future changes revising the percentage thresholds under this definition shall occur by regulation. The secretary shall consider the recommendations of the council and may adopt or revise the regulations to adjust the percentage thresholds under this definition or adopted regulation, provided however, such changes are needed to achieve and promote the environmental justice principles as defined under this section. Said proposed regulations shall be adopted only after the approval of the council by a majority vote in the affirmative of those members so voting.

The environmental justice council may recommend and provide advice to the secretary on proposed substantial legislative or regulatory changes related to this definition at any time prior to conducting a comprehensive analysis.

“Environmental justice principles”, the people’s right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency. Environmental justice is the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies, including climate change policies, and the equitable distribution of energy and environmental benefits, and environmental burdens

"Equal protection," the protection of all groups of people, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language from an unfair share or burden of environmental pollution occurring from private, industrial, commercial, governmental operations, construction or other development, or other activity that limits access to natural resources, including as applicable, open spaces, water resources and constructed playgrounds and other outdoor recreational facilities and venues.

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

"Neighborhood," a census block group as defined by the U.S. Census Bureau, excluding, people who live in college dormitories and people who are under formally authorized, supervised care or custody, including federal, state or county prisons.

SECTION 2. Section 62B of said chapter 30, as so appearing, is hereby amended by striking out the first sentence of the third paragraph and inserting, in its place thereof, the following sentence:-

An environmental impact report shall contain statements describing the nature and extent of the proposed project and its potential environmental and related public health impacts as result of any development, alteration and operation of the project; proposed studies to evaluate said potential impacts; all measures being utilized to minimize any anticipated environment and public health damage; any adverse short-term and long-term environmental and public health consequences that cannot be avoided should the project be undertaken; and reasonable alternatives to the proposed project and their environmental and public health consequences.

SECTION 3. Said section 62B of said chapter 30, as so appearing, is hereby further amended by adding the following paragraph:-

An environmental impact report shall be required for any project that is likely to cause damage to the environment that is not insignificant, located within a distance of 1 mile of an environmental justice population, unless, the project affects air quality then the distance from such project shall, be increased to within 5 miles of the environmental justice population. Said report shall contain statements about the results of an assessment of any existing unfair and inequitable environmental burden and related public health consequence affecting the environmental justice population from any prior or current, private, industrial, commercial, state, and municipal operation or project that has damaged the environment. The required assessment shall conform to the standards and guidelines, including any comparison to another community, established by the secretary by regulation or directive. If the assessment indicates an

environmental justice population is subject to an existing unfair or inequitable environmental burden or related health consequence the report shall identify any: (i) environmental and public health impact from the proposed project, however small, gradual or cumulative that would likely result in a disproportionate adverse effect on such population, and (ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on the environmental justice population. The secretary may require by regulation or directive, that an assessment be performed, with sufficient time allowed, at any stage of the review process.

SECTION 4. Section 62E of said chapter 30, as so appearing, is hereby amended by adding after the first paragraph, the following paragraph:-

However, no agency shall exempt from an environmental impact report any project that is located in a neighborhood that has an environmental justice population and is reasonably likely to cause damage to the environment, as defined in section 61. The provisions of this paragraph shall not apply to emergency actions essential to avoid or eliminate a threat to public health or safety, or threat to any natural resource, undertaken in compliance with section 62F.

SECTION 5. Chapter 30 of the General Laws is hereby amended by adding after section 62I the following 2 sections:-

Section 62J. To enable the public to assess the impact of proposed projects that affect their environment, health and safety through the project review process established under sections 61 through 62J, inclusive, and related regulations, the secretary shall provide opportunities for meaningful public involvement.

For any proposed project that requires the filing of an environmental notification form, the proponent of the project shall indicate on the document whether an environmental justice population that lacks English language proficiency within a designated geographical area is reasonably likely to be affected negatively by the project.

If a proposed project is significant and affects an environmental justice population, whether in a detrimental or beneficial manner, subject to this section, the secretary shall require additional measures to improve public participation by the environmental justice population. Except, if at the beginning of the project review process, a project is unknown to be significant or affecting an environmental justice population, then the secretary shall require additional measures when the information becomes known during the project review process. Such measures shall include, as appropriate: (i) making public notices, environmental notification forms, environmental impact reports, and other key documents related to the secretary's review and decisions of a project review available in English and any other language spoken by a significant number of the affected environmental justice population; (ii) providing translation services at public meetings for a significant portion of an affected environmental justice population that lacks English proficiency in the project's designated geographic area; (iii) require public meetings be held in accessible locations that are near public transportation; (iv) provide appropriate information about the project review procedure for the proposed project; and (vi) where feasible, establish a local repository for project review documents, notices and decisions.

The proponent of a project shall be responsible for paying all reasonable costs related to improving participation at any public meeting attended by environmental justice populations. If an agency has paid the costs related to improving public meeting participation, then the

146 proponent of such project shall reimburse the agency for said costs, including, but not limited to,
147 venue rental fees and translation services.

148 The secretary of energy and environmental affairs, by regulation or directive may require
149 such additional measures as appropriate for non-significant projects, or to improve participation
150 opportunities for persons in an environmental justice population that lack English language
151 proficiency and do not speak a dominant language spoken by such population.

152 As used in this section, the term designated geographic area shall mean an environmental
153 justice population located within a distance of 1 mile of a project, unless the project affects air
154 quality then the distance from such project shall be increased to within 5 miles of an
155 environmental justice population.

156 Section 62K. The secretary of energy and environmental affairs shall consider the
157 environmental justice principles, as defined in section 62, in making any policy or determination,
158 or taking any action relating to a project review, undertaken pursuant to sections 61 through 62J,
159 inclusive, and related regulations, to reduce the potential for inequitable affects upon an
160 environmental justice population.

161 To further the environmental justice principles the secretary shall direct its agencies,
162 including the departments, divisions, boards and offices under the secretary's executive control
163 and authority, to consider, the principles in making any policy, determination or taking any other
164 action related to a project review, or in undertaking any project, under said sections and related
165 regulations which is likely to affect environmental justice populations.

166 In addition, the secretary shall establish standards and guidelines for the implementation,
167 administration and periodic review of environmental justice principles by the executive office of
168 energy and environmental affairs and its agencies.

169 SECTION 6. The secretary shall no later than 180 days after this act takes effect, adopt
170 regulations for the requirements, administration and enforcement of this act.