

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

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

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

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

33 When a neighborhood does not meet any of these criteria, but a geographic portion of that
34 neighborhood meets at least 1 those criteria, the secretary may designate that geographic part as
35 an environmental justice population upon petition of at least 10 residents of that geographic part.

36 The secretary may determine that a neighborhood, including any part, shall not be designated an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 SECTION 5. Chapter 30 of the General Laws is hereby amended by adding after section
119 62I the following 2 sections:-

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

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

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

143 The proponent of a project shall be responsible for paying all reasonable costs related to
144 improving participation at any public meeting attended by environmental justice populations. If
145 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.