

SENATE No. 464

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>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/22/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/22/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/22/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/23/2019</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>1/24/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/24/2019</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>1/28/2019</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/29/2019</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>1/30/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>1/30/2019</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/31/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/1/2019</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>2/1/2019</i>

<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/1/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/1/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/4/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/6/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>2/13/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/13/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/14/2019</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>3/27/2019</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>4/3/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>4/9/2019</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>10/10/2019</i>

SENATE No. 464

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 464) of James B. Eldridge, Carmine Lawrence Gentile, Mike Connolly, Jack Patrick 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 Ninety-First General Court
(2019-2020)**

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 SECTION 1. Chapter 21 of the General Laws, as so appearing, is hereby amended by
2 creating a new 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 and to
18 live in and enjoy a clean and healthful environment regardless of race, income, national origin or
19 English language proficiency. Environmental justice shall include the equal protection and
20 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 25 percent or more of
29 households lack English language proficiency. Where a neighborhood does not meet any of
30 those criteria, but a geographic portion of that neighborhood meets at least one of those criteria,
31 the Secretary may designate that geographic portion as an environmental justice population upon
32 petition of at least 10 residents of that geographic portion.

33 "Equal Protection," that no group of people, because of race, ethnicity, class, gender, or
34 disability bears an unfair share of environmental pollution from industrial, commercial, state and
35 municipal operations or have limited access to natural resources, including waterfronts, parks
36 and open space, and water resources.

37 "Executive Office of EEA," the Executive Office of Energy and Environmental Affairs.

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

40 "MEPA," the Massachusetts Environmental Policy Act, M.G.L. Ch.30, Sections 61-62H.

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

44 "Secretary of EEA," the Secretary of Energy and Environmental Affairs.

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

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

51 "Toxics Release Inventory," the Toxics Release Inventory and Toxics Release Inventory
52 Program of the United States Environmental Protection Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

110 The Department shall establish and maintain a Supplemental Environmental Project
111 (SEP) bank. Such bank shall maintain an inventory of environmentally beneficial projects in
112 communities with environmental justice populations that may be funded by violators in addition
113 to paying penalties associated with the settlement of enforcement actions. SEPs shall conform to
114 the Department's policy on Supplemental Environmental Projects, ENF-07.001, as amended.
115 The Department shall establish and maintain a website portal where the public and potential SEP
116 recipients may submit potential SEP projects to be considered for future settlements.

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

119 The Secretary of EEA shall, in consultation with the other Secretariats and no less often
120 than every five years, publish a progress report on environmental justice, incorporating the
121 recommendations of the Advisory Council as appropriate, incorporating enforcement and SEP
122 activities undertaken, reporting metrics on reduction of pollution in neighborhoods with
123 environmental justice populations, and outlining further policy actions. The report shall be filed
124 with the clerk of the House of Representatives, the clerk of the senate, the chairs of the joint
125 committee on environment, natural resources and agriculture, the chairs of the joint committee
126 on public health, and the chairs of the joint committee of telecommunications, utilities, and
127 energy.

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

130 The Department shall work with the Department of Public Health to establish health risk
131 assessment guidelines (using the best available science and established EPA health risk
132 assessment parameters); develop an on-line mapping tool that is accessible by the public and
133 identifies Environmental Justice populations by census tract, sources of pollution according to
134 the health risk assessment guidelines in each EJ census tracts, and identify harmful effects to
135 human health or to ecological systems resulting from exposure to each pollution source. The
136 Department of Public Health shall prioritize census tracts with the worst health risk outcomes
137 and develop strategies for reducing public health threats.

138 SECTION 8. Section 62 of Chapter 30 of the General Laws is hereby amended by
139 inserting the following definitions after the definition of “Agency”

140 “Environmental Justice,” the right to be protected from environmental pollution and to
141 live in and enjoy a clean and healthful environment regardless of race, income, national origin or
142 English language proficiency. Environmental justice shall include the equal protection and
143 meaningful involvement of all people with respect to the development, implementation, and
144 enforcement of environmental laws, regulations, and policies and the equitable distribution of
145 environmental benefits.

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

149 "Environmental Justice Population," a neighborhood in which the annual median
150 household income is equal to or less than 65 percent of the statewide median or in which
151 minorities comprise 25 percent or more of the population or in which 25 percent or more of
152 households lack English language proficiency Where a neighborhood does not meet any of those
153 criteria, but a geographic portion of that neighborhood meets at least one of those criteria, the
154 Secretary may designate that geographic portion as an environmental justice population upon
155 petition of at least 10 residents of that geographic portion.

156 "Equal Protection," that no group of people, because of race, ethnicity, class, gender, or
157 handicap bears an unfair share of environmental pollution from industrial, commercial, state and
158 municipal operations or have limited access to natural resources, including waterfronts, parks
159 and open space, and water resources.

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

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

165 SECTION 9. Section 62B of Chapter 30 of the General Laws is hereby amended by
166 inserting the following paragraph after the last paragraph:

167 An environmental impact report shall include an enhanced analysis of impacts and
168 mitigation for any project located in or within one mile of an environmental justice population,
169 and within five miles of an environmental justice population for a project that exceeds an
170 Environmental Notification Form threshold for air. An enhanced analysis shall include, at a
171 minimum, analysis of multiple air impacts; data on baseline public health conditions within the
172 affected environmental justice population; analysis of technological, site planning, and
173 operational alternatives to reduce or eliminate impacts; and proposed on-site and off-site
174 mitigation measures to reduce multiple impacts and increase environmental benefits for the
175 affected environmental justice population and to further environmental justice and equal
176 protection for that population.

177 SECTION 10. Section 62C of chapter 30 of the General Laws is hereby amended by
178 inserting after the first paragraph, following the word "documents" the following paragraph:

179 To enable the public to participate in decisions that affect their health and safety and the
180 environment, the Secretary shall maximize opportunities for public involvement. Such
181 opportunities shall encourage consultation with the public early in the application processes to

182 foster a robust analysis and the active involvement of the interested or affected persons. In cases
183 where the proposed project has the potential to impact a neighborhood with an environmental
184 justice population lacking English language proficiency, said environmental impact report shall
185 be in English and in any other language spoken by the environmental justice population,
186 describing the proposed facility and its location, the range of potential environmental and health
187 impacts of each pollutant, the application and review process, and a contact person, with phone
188 number and address, from whom information will be available as the application proceeds. There
189 shall be enhanced public participation for any project located in or within one mile of an
190 environmental justice population, and within five miles of an environmental justice population
191 for a project that exceeds a mandatory Environmental Impact Report threshold for air. Enhanced
192 public participation may include use of alternative media such as community and ethnic
193 newspapers and other media, use of alternative information repositories, and translation of
194 materials or interpretation services prior to and during public meetings where a significant
195 portion of the relevant environmental justice population uses a primary language other than
196 English in their home. When scheduling public meetings, the Secretary shall recommend and
197 may require that project proponents consider the time of the meeting, availability of public
198 transportation, and whether the locations are child-friendly and culturally appropriate. To the
199 extent feasible, meetings should be held in places that community members already routinely use
200 and feel comfortable visiting. Additionally, the Secretary shall recommend that project
201 proponents consider whether outreach efforts should include an educational component to ensure
202 that community members have the information necessary to evaluate a project's potential
203 impacts.

204 SECTION 11. Section 62E of Chapter 30 of the General Laws is hereby amended by
205 adding, after the first paragraph, the following paragraph:

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

211 SECTION 12. Said section 68 of Chapter 21, is further amended by inserting the
212 following section 68g:-

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

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

226 SECTION 13. Said section 68 of Chapter 21, is further amended by inserting the
227 following section 68h:-

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

235 SECTION 14. Said section 68 of Chapter 21, is further amended by inserting the
236 following section 68h 1/4:-

237 By no later than 30 days after the effective date of this Act, all Secretariats, other than
238 EEA, shall designate an environmental justice coordinator for each Secretariat. The
239 environmental justice coordinator shall be the main point of contact regarding environmental
240 justice matters within that Secretariat, shall liaise with the Director of Environmental Justice
241 within EEA, and shall be responsible for developing and implementing the environmental justice
242 policy or strategy of that Secretariat, as created pursuant to this Act or any other law, regulation,
243 or order.

244 SECTION 15. Said section 68 of Chapter 21, is further amended by inserting the
245 following section 68h 1/2:-

246 No later than 180 days after the effective date of this Act, and except where already
247 provided for elsewhere in this Act, each Secretariat shall develop a specific policy or strategy to

248 promote environmental justice in ways that are tailored to the specific authority, mission, and
249 programs under their jurisdiction. Secretariat strategies shall include, but not be limited to: i)
250 identification of permitting or other applicable regulatory authority over development projects,
251 brownfield remediation, industrial operations, and commercial facilities, which may impact
252 Environmental Justice Populations and description of any mechanism to ensure that
253 Environmental Justice Populations are protected in the review process; ii) identification of
254 economic development opportunities, environmental benefits, and other discretionary funding
255 programs that do, or appropriately should, consider the needs of an Environmental Justice
256 Population in the award process; and iii) an enhanced public participation plan for
257 Environmental Justice Populations potentially affected by development projects, brownfield
258 remediation, industrial operations, and commercial facilities that focuses secretariat resources on
259 outreach activities that enhance public participation opportunities in Environmental Justice
260 Populations, including a plan for communicating in multiple languages and scheduling public
261 meetings at locations and times convenient for neighborhood stakeholders. In determining
262 whether a program protects and/or considers the needs of an Environmental Justice Population,
263 the policy or strategy may use an existing definition of protected or priority population that
264 varies from the definition under this Act so long as the intent of this Act is substantially met.
265 Secretariat policies or strategies shall be reviewed every five years, and updated as needed.

266 SECTION 16. Said section 68 of Chapter 21, is further amended by inserting the
267 following section 68i:-

268 An Interagency Environmental Justice Working Group shall be established to maximize
269 state resources, research, and technical assistance to further the purposes of this Act and of
270 environmental justice in the Commonwealth. The Environmental Justice Coordinators shall

271 serves as their Secretariat representatives to the Interagency Environmental Working Group. The
272 Director of Environmental Justice of the Executive Office of Energy and Environmental Affairs
273 shall convene meetings of the Interagency Environmental Justice Working Group and serve as
274 Chair. By no later than 90 days from the effective date of this Act, the Interagency
275 Environmental Justice Working Group shall hold at least one meeting and develop a schedule for
276 subsequent meetings, which shall take place no less than once a year.