

SENATE No. 1379

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>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/16/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>5/12/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>5/12/2021</i>

SENATE No. 1379

By Ms. Chang-Diaz, a petition (accompanied by bill, Senate, No. 1379) of Sonia Chang-Diaz and Patrick M. O'Connor for legislation to promote healthy communities and the environment. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 2018 Official Edition, are hereby
2 amended by inserting after chapter 111O chapter 111P:

3 Chapter 111P: 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 justice population", a neighborhood that meets 1 or more of the
16 following criteria: (i) the annual median household income is not more than 65 per cent of the
17 statewide annual median household income; (ii) minorities comprise 40 per cent or more of the
18 population; (iii) 25 per cent or more of households lack English language proficiency; or (iv)
19 minorities comprise 25 per cent or more of the population and the annual median household
20 income of the municipality in which the neighborhood is located does not exceed 150 per cent of
21 the statewide annual median household income; provided, however, that for a neighborhood that
22 does not meet said criteria, but a geographic portion of that neighborhood meets at least 1
23 criterion, the secretary may designate that geographic portion as an environmental justice
24 population upon the petition of at least 10 residents of the geographic portion of that
25 neighborhood meeting any such criteria; provided further, that the secretary may determine that a
26 neighborhood, including any geographic portion thereof, shall not be designated an
27 environmental justice population upon finding that: (A) the annual median household income of
28 that neighborhood is greater than 125 per cent of the statewide median household income; (B) a
29 majority of persons age 25 and older in that neighborhood have a college education; (C) the
30 neighborhood does not bear an unfair burden of environmental pollution; and (D) the
31 neighborhood has more than limited access to natural resources, including open spaces and water
32 resources, playgrounds and other constructed outdoor recreational facilities and venues.

33 “Environmental notification,” an environmental notification prepared pursuant to section
34 62A of chapter 30 of the Massachusetts Environmental Policy Act.

35 “Health and Economic Impact Assessment” or “HIEA,” a combination of procedures,
36 methods, and tools by which a regulation, program, or other project is assessed as to its potential
37 effects on the health and economic vitality of a population, including those related to climate
38 change preparedness and/or adaptation, and the distribution of those effects within the
39 population. A HEIA evaluates objectively the potential health and economic effects of a project
40 before it is built or implemented. A HEIA encompasses a heterogeneous array of qualitative and
41 quantitative methods and tools to focus on health and economic impacts and outcomes such as,
42 but not limited to, obesity, physical inactivity, asthma, injuries, residential and commercial
43 property values and social equity. Health and economic impacts and outcomes are the overall
44 effects of a regulation, program, or other project, directly and indirectly, on the health and
45 economic vitality of a population. A HEIA may provide recommendations to increase positive
46 health and economic outcomes and minimize adverse health and economic outcomes.

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

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

54 "Secretary", the secretary of energy and environmental affairs.

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

56 The secretary shall:

57 (a) develop enhanced public participation for any project that requires an environmental
58 notification for air, solid and hazardous waste, other than remediation projects, or wastewater
59 and sewage sludge treatment and disposal, if the project is located within 1 mile of an
60 environmental justice population, or in the case of projects exceeding said threshold for air,
61 within 5 miles of an environmental justice population; and require enhanced analysis of impacts
62 and mitigation in the scope of an environmental impact report required by sections 62A or 62B
63 of chapter 30 of the Massachusetts Environmental Policy Act if the project is located within 1
64 mile of an environmental justice population, or in the case of projects exceeding a mandatory
65 threshold for air, within 5 miles of an environmental justice population.

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

75 Section 3. Community Environmental Health Disparities Program.

76 There is hereby established in the department a community environmental health and
77 economic disparities program. The purpose of the program is to establish a communities health
78 index and require certain proposed projects to complete a health and economic impact
79 assessment to help protect the health and economic vitality of community residents. The
80 department shall adopt regulations to implement the community health disparities program and
81 create a communities health index within six months of the passage of this act.

82 Section 4. Communities Health Index.

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

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

86 (1) Primary indicators for an environmental justice population:

87 (i) Total age adjusted mortality, 25% or more above the commonwealth rate;

88 (ii) Total age adjusted emergency room visits, 10% or more above the commonwealth
89 rate;

90 (iii) Elevated blood lead levels in children age 13 and younger, 10% or more above the
91 commonwealth rate;

92 (iv) Asthma and asthma-related hospital admissions or prevalence in children age 14
93 and younger, 10% or more above the commonwealth rate; and

94 (v) Infant mortality 10% or more above the commonwealth rate

95 (2) Secondary indicators for a community:

96 (i) Total age adjusted non-congenital cardiovascular disease and stroke morbidity, 10%
97 or more above the commonwealth rate;

98 (ii) Total age adjusted heart attack hospitalizations, 10% or more above the
99 commonwealth rate;

100 (iii) Total age adjusted stroke and stroke-related hospitalizations, 10% or more above
101 the commonwealth rate; and

102 (iv) Bronchitis and bronchitis-related hospitalizations in children age 14 and younger
103 and adults age 65 and older, 10% or more above the commonwealth rate

104 (3) Other indicators for a community:

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

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

110 (c) The department shall weight the indicators, giving more weight to the primary
111 indicators than to the secondary indicators, to determine which communities' residents suffer
112 disproportionately high levels of serious disease, disability, and premature death and shall index
113 the communities from worst to best health outcomes. A community in the top 50th percentile of
114 the index for poor health outcomes is determined to have the worst health outcomes and deemed
115 to be an environmental justice population. The department may adjust the percentile up or down

116 by no more than 10 percent to identify the communities with the worst health outcomes in the
117 commonwealth.

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

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

123 (2) A community shall not exceed 100,000 residents. If a municipality has more than
124 100,000 residents, the department shall divide the municipality into geographically contiguous
125 communities of 10,000-50,000 residents.

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

129 Section 5. Notice to the department.

130 (a) A person required to file an environmental notification shall provide a copy to the
131 department simultaneous with filing the environmental notification with the secretary .

132 (b) The department may designate areas near an environmental justice population where
133 certain projects, or the cumulative impact of projects, require notice to the department when an
134 environmental notification is not required. A person proposing such a project shall notify the
135 department on forms required by the department.

136 Section 6. Health and Economic Impact Assessment

137 (a) Within 30 days after the department receives a copy of the environmental
138 notification or notice of a project it shall inform the person if a health and economic impact
139 assessment is required. A health and economic impact assessment is required if the proposed
140 project is in or might affect an environmental justice population, unless the department waives
141 the requirement upon a finding that the project would have no potential impact on any of the
142 indicators used to create the communities health index. If the department intends to waive the
143 requirement for a project in an environmental justice population, it first shall provide notice to
144 the public and the opportunity for written public comment within 30 days after the notice, and
145 shall provide its decision of whether a health and economic impact assessment is required within
146 30 days of the close of the public comment period.

147 (b) The department, on petition of ten or more persons, may require a health and
148 economic impact assessment for a project in an environmental justice population, or that may
149 affect an environmental justice population, that does not require an environmental notification.
150 The department shall respond to such petition within 30 days.

151 (c) Whenever a health and economic impact assessment is required, the department
152 shall provide public notice of the proposed scope for the assessment within 30 days after its
153 determination that an assessment is required. The person and public shall have 30 days to
154 provide written comments on the proposed scope. The department shall issue the scope within
155 30 days of the close of the comment period. The scope shall identify which effects and health
156 outcomes to assess and at a minimum shall require:

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

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

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

164 (4) information and analysis regarding the potential impacts of the project on
165 economic development prospects and commercial and residential property values of the
166 surrounding communities;

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

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

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

173 (8) a submission deadline for the HEIA.

174 (d) The person proposing the project shall complete and file a health and economic
175 impact assessment with the department according to the scope and the department is required to
176 provide the HEIA on the department's website within ten days of it being filed. The person

177 proposing the project shall also file a copy of the HEIA with the Executive Office of Housing
178 and Economic Development.

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

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

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

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

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

194 (c) Within 30 days of the close of the public comment period, the Executive Office of
195 Housing and Economic Development, with input from the property assessor in the municipality
196 where the project would be located if one exists, shall advise the department as to whether the

197 economic related components are adequate, whether mitigation or offsets are necessary, and
198 whether the mitigation and offsets identified in the assessment would be adequate.

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

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

205 (f) If the health and economic impact assessment is adequate and appropriate mitigation
206 and offsets are identified and required, the process is completed, subject to the person completing
207 the mitigation and offsets identified in the assessment and required by the department. The
208 department may require monitoring and evaluation after completion to determine whether the
209 mitigation and offsets were adequate.

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

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

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

215 (j) A person whose health and economic impact assessment has been approved must
216 notify the department of any substantial change in the proposal so that the department may

217 determine, prior to the implementation of the change, whether a supplemental assessment or
218 other mitigation or offsets are required.

219 Section 8. Emergencies.

220 The hazard abatement provisions of a project in an environmental justice population may
221 begin before approval of a health and economic impact assessment if emergency action is
222 essential to avoid or eliminate a threat to public health or safety, or a threat to any natural
223 resources; provided, that wherever practicable, the person shall obtain the prior approval of the
224 department. Following beginning any such project, the person shall promptly, but in any case
225 within sixty days, begin compliance with the provisions of Section 6.

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

228 (a) A person intending to commence an action or proceeding alleging an improper
229 determination of whether a project requires the preparation of a health and economic impact
230 assessment shall first provide notice of intention to commence such action or proceeding within
231 sixty days of issuance of notice of such determination. A person intending to commence an
232 action or proceeding alleging that a health and economic impact assessment fails to comply with
233 the requirements of this chapter shall first provide notice of intention to commence such action
234 or proceeding within sixty days of approval of such assessment. Said notices of intention shall
235 be in such form as the department shall prescribe, shall identify with particularity the issues to be
236 considered in any such action or proceeding, shall be in lieu of the notice and waiting period
237 required by section seven A of chapter two hundred and fourteen, and shall be provided to the
238 attorney general, the person proposing the project, and the department.

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

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

246 (d) If a court determines that a person proposing a project has knowingly concealed a
247 material fact or knowingly submitted false information in any form or report required under this
248 chapter, limits on the manner and time in which actions or proceedings may be commenced shall
249 not apply and the department may require the preparation and review of such assessments as may
250 be necessary to correct any deficient assessment.

251 (e) Ten or more persons residing in an environmental justice population may
252 commence an action or proceeding alleging that a project in said community or an approval of a
253 health and economic impact assessment for a project in said community fails to comply with the
254 requirements of this chapter.

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