

SENATE No. 00343

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 passage 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>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

SENATE No. 00343

By Ms. Chang-Diaz, petition (accompanied by bill, Senate, No. 343) of Forry, Sciortino, Rushing and other members of the General Court for legislation to promote healthy communities and the environment [Joint Committee on Environment, Natural Resources and Agriculture].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 388 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2008 Official Edition, are
2 hereby amended by inserting after chapter 111K chapter 111L:

3 Chapter 111L: Section 1. Definitions.

4 Section 1. As used in this chapter the following words shall have the following
5 meanings:

6 “Communities Health Index,” a cumulative evaluation of the health of communities
7 based on specific health outcome indicators that ranks communities based on their health status

8 so as to identify communities whose residents suffer disproportionately high rates of disease and
9 premature death.

10 “Department,” the department of public health.

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

13 “Health and Economic Impact Assessment” or “HEIA,” a combination of
14 procedures, methods, and tools by which a regulation, program, or other project is assessed as to
15 its potential effects on the health and economic vitality of a population, and the distribution of
16 those effects within the population. A HEIA evaluates objectively the potential health and
17 economic effects of a project before it is built or implemented. A HEIA encompasses a
18 heterogeneous array of qualitative and quantitative methods and tools to focus on health and
19 economic impacts and outcomes such as, but not limited to, obesity, physical inactivity, asthma,
20 injuries, residential and commercial property values and social equity. Health and economic
21 impacts and outcomes are the overall effects of a regulation, program, or other project, directly
22 and indirectly, on the health and economic vitality of a population. A HEIA may provide
23 recommendations to increase positive health and economic outcomes and minimize adverse
24 health and economic outcomes.

25 “Most vulnerable community,” a community identified in the communities health
26 index as being in the percentiles having the worst health outcomes or a community where the
27 median household income is 65 percent or less than the statewide household median income or
28 whose population includes 25 percent or more residents who are minorities foreign born, or
29 lacking English language proficiency

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

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

37 Section 2. Expedited and Enhanced Massachusetts Environmental Policy Act
38 Review.

39 The secretary of environmental affairs shall:

40 (a) develop enhanced public participation for any project that requires an
41 environmental notification for air, solid and hazardous waste, other than remediation projects, or
42 wastewater and sewage sludge treatment and disposal, if the project is located within 1 mile of a
43 most vulnerable community, or in the case of projects exceeding said threshold for air, within 5
44 miles of a most vulnerable community; and require enhanced analysis of impacts and mitigation
45 in the scope of an environmental impact report required by sections 62A or 62B of chapter 30 of
46 the Massachusetts Environmental Policy Act if the project is located within 1 mile of a most
47 vulnerable community, or in the case of projects exceeding a mandatory threshold for air, within
48 5 miles of a most vulnerable community.

49 (b) exempt site assessment grants and loans granted under the Brownfields
50 Redevelopment Fund, as well as investment tax credits for equipment, tenant fit-ups, and other
51 post-development activities administered under chapter 206 of the acts of 1998 from the category

52 of state financial assistance for the purposes of triggering Massachusetts environmental policy
53 act review. Projects undertaken under chapter 206 of the acts of 1998 that otherwise trigger
54 Massachusetts environmental policy act review may be considered environmental restoration
55 projects and subject to expedited review. In making a decision, the secretary of environmental
56 affairs shall consider the extent to which the new proposal would prevent pollution and eliminate
57 or minimize risks to public health and the environment.

58 Section 3. Community Environmental Health Disparities Program.

59 There is hereby established in the department a community environmental health
60 and economic disparities program. The purpose of the program is to establish a communities
61 health index and require certain proposed projects to complete a health and economic impact
62 assessment to help protect the health and economic vitality of community residents. The
63 department shall adopt regulations to implement the community health disparities program and
64 create a communities health index within six months of the passage of this act.

65 Section 4. Communities Health Index.

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

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

70 (1) Primary indicators for a most vulnerable community:

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

- 72 (ii) Total age adjusted emergency room visits, 10% or more above the
73 commonwealth rate;
- 74 (iii) Elevated blood lead levels in children age 13 and younger, 10% or more
75 above the commonwealth rate;
- 76 (iv) Asthma and asthma-related hospital admissions or prevalence in children age
77 14 and younger, 10% or more above the commonwealth rate; and
- 78 (v) Infant mortality 10% or more above the commonwealth rate
- 79 (2) Secondary indicators for a community:
- 80 (i) Total age adjusted non-congenital cardiovascular disease and stroke
81 morbidity, 10% or more above the commonwealth rate;
- 82 (ii) Total age adjusted heart attack hospitalizations, 10% or more above the
83 commonwealth rate;
- 84 (iii) Total age adjusted stroke and stroke-related hospitalizations, 10% or more
85 above the commonwealth rate; and
- 86 (iv) Bronchitis and bronchitis-related hospitalizations in children age 14 and
87 younger and adults age 65 and older, 10% or more above the commonwealth rate
- 88 (3) Other indicators for a community:
- 89 (i) Other health outcome indicators, if any, chosen by the department to compare
90 community health; and

91 (ii) Environmental indicators (such as elevated levels of particulate matter in the
92 air), if any, chosen by the department as predictive of negative health outcomes

93 (c) The department shall weight the indicators, giving more weight to the primary
94 indicators than to the secondary indicators, to determine which communities' residents suffer
95 disproportionately high levels of serious disease, disability, and premature death and shall index
96 the communities from worst to best health outcomes. A community in the top 50th percentile of
97 the index for poor health outcomes is determined to have the worst health outcomes and deemed
98 to be most vulnerable. The department may adjust the percentile up or down by no more than 10
99 percent to identify the communities with the worst health outcomes in the commonwealth.

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

101 (1) A community shall include at least 10,000 residents. If a municipality has
102 fewer than 10,000 residents, the department shall cluster the municipality with one or more
103 contiguous municipalities to create a combined community with at least 10,000 and no more than
104 100,000 residents.

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

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

111 Section 5. Notice to the department.

112 (a) A person required to file an environmental notification shall provide a copy to
113 the department simultaneous with filing the environmental notification with the secretary of
114 environmental affairs.

115 (b) The department may designate areas near vulnerable populations where certain
116 projects, or the cumulative impact of projects, require notice to the department when an
117 environmental notification is not required. A person proposing such a project shall notify the
118 department on forms required by the department.

119 Section 6. Health and Economic Impact Assessment

120 (a) Within 30 days after the department receives a copy of the environmental
121 notification or notice of a project it shall inform the person if a health and economic impact
122 assessment is required. A health and economic impact assessment is required if the proposed
123 project is in or might affect a most vulnerable community, unless the department waives the
124 requirement upon a finding that the project would have no potential impact on any of the
125 indicators used to create the communities health index. If the department intends to waive the
126 requirement for a project in a most vulnerable community, it first shall provide notice to the
127 public and the opportunity for written public comment within 30 days after the notice, and shall
128 provide its decision of whether a health and economic impact assessment is required within 30
129 days of the close of the public comment period.

130 (b) The department, on petition of ten or more persons, may require a health and
131 economic impact assessment for a project in a most vulnerable community, or that may affect a
132 most vulnerable community, that does not require an environmental notification. The
133 department shall respond to such petition within 30 days.

134 (c) Whenever a health and economic impact assessment is required, the
135 department shall provide public notice of the proposed scope for the assessment within 30 days
136 after its determination that an assessment is required. The person and public shall have 30 days
137 to provide written comments on the proposed scope. The department shall issue the scope within
138 30 days of the close of the comment period. The scope shall identify which effects and health
139 outcomes to assess and at a minimum shall require:

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

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

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

147 (4) information and analysis regarding the potential impacts of the project on
148 economic development prospects and commercial and residential property values of the
149 surrounding communities;

150 (5) proposals for mitigation and offsets to maximize the positive and minimize
151 the potential negative health and economic impacts, if any;

152 (6) other information and analysis identified in the scope; and

153 (7) a submission deadline for the HEIA.

154 (d) The person proposing the project shall complete and file a health and economic
155 impact assessment with the department according to the scope and the department is required to
156 provide the HEIA on the department's website within ten days of it being filed. The person
157 proposing the project shall also file a copy of the HEIA with the Executive Office of Housing
158 and Economic Development.

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

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

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

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

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

174 (c) Within 30 days of the close of the public comment period, the Executive Office
175 of Housing and Economic Development, with input from the property assessor in the
176 municipality where the project would be located if one exists, shall advise the department as to
177 whether the economic related components are adequate, whether mitigation or offsets are
178 necessary, and whether the mitigation and offsets identified in the assessment would be
179 adequate.

180 (d) If the health and economic impact assessment is adequate and no mitigation or
181 offsets are required the process is completed.

182 (e) If the health and economic impact assessment is adequate and appropriate
183 mitigation and offsets are identified and required, the process is completed, subject to the person
184 completing the mitigation and offsets identified in the assessment and required by the
185 department. The department may require monitoring and evaluation after completion to
186 determine whether the mitigation and offsets were adequate.

187 (f) If the health and economic impact assessment is inadequate, the department
188 shall provide an opportunity to supplement the assessment to remedy the inadequacies.

189 (g) If a health and economic impact assessment is required, a person shall not
190 begin a project until the department approves the health and economic impact assessment.

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

192 (i) A person whose health and economic impact assessment has been approved
193 must notify the department of any substantial change in the proposal so that the department may
194 determine whether a supplemental assessment or other mitigation or offsets are required.

195 Section 8. Emergencies.

196 The hazard abatement provisions of a project in a most vulnerable community may
197 begin before approval of a health and economic impact assessment if emergency action is
198 essential to avoid or eliminate a threat to public health or safety, or a threat to any natural
199 resources; provided, that wherever practicable, the person shall obtain the prior approval of the
200 department. Following beginning any such project, the person shall promptly, but in any case
201 within sixty days, begin compliance with the provisions of section 4.

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

205 (a) A person intending to commence an action or proceeding alleging an improper
206 determination of whether a project requires the preparation of a health and economic impact
207 assessment shall first provide notice of intention to commence such action or proceeding within
208 sixty days of issuance of notice of such determination. A person intending to commence an
209 action or proceeding alleging that a health and economic impact assessment fails to comply with
210 the requirements of this chapter shall first provide notice of intention to commence such action
211 or proceeding within sixty days of approval of such assessment. Said notices of intention shall
212 be in such form as the department shall prescribe, shall identify with particularity the issues to be
213 considered in any such action or proceeding, shall be in lieu of the notice and waiting period
214 required by section seven A of chapter two hundred and fourteen, and shall be provided to the
215 attorney general, the person proposing the project, and the department.

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

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

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

228 (e) Ten or more persons residing in a most vulnerable community may commence
229 an action or proceeding alleging that a project in said community or an approval of a health and
230 economic impact assessment for a project in said community fails to comply with the
231 requirements of this chapter.

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