

SENATE No. 817

The Commonwealth of Massachusetts

PRESENTED BY:

Anthony D. Galluccio

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 create environmental justice.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Mark C. Montigny	Second Bristol and Plymouth
James B. Eldridge	Middlesex and Worcester
Timothy J. Toomey, Jr.	26th Middlesex
Denise Provost	27th Middlesex
Richard J. Ross	9th Norfolk
David B. Sullivan	6th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO CREATE ENVIRONMENTAL JUSTICE.

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 2004 Official Edition, are hereby
2 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 meanings:

5 “Communities Health Index,” a cumulative evaluation of the health of communities based on
6 specific health outcome indicators that ranks communities based on their health status so as to
7 identify communities whose residents suffer disproportionately high rates of disease and
8 premature death.

9 “Department,” the department of public health.

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

12 “Health Impact Assessment” or “HIA,” a combination of procedures, methods, and tools by
13 which a regulation, program, or other project is assessed as to its potential effects on the health
14 of a population, and the distribution of those effects within the population. A HIA evaluates
15 objectively the potential health effects of a project before it is built or implemented. A HIA
16 encompasses a heterogeneous array of qualitative and quantitative methods and tools to focus on
17 health impacts and outcomes such as, but not limited to, obesity, physical inactivity, asthma,
18 injuries, and social equity. Health impacts and outcomes are the overall effects of a regulation,
19 program, or other project, directly and indirectly, on the health of a population. A HIA may

20 provide recommendations to increase positive health outcomes and minimize adverse health
21 outcomes.

22 “Most vulnerable community,” a community identified in the communities health index as being
23 in the percentiles having the worst health outcomes.

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

28 “Project,” industrial work, project, or activity, either directly or indirectly undertaken by a
29 person, including the adoption of a regulation or program by an agency or authority of the
30 Commonwealth.

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

32 The secretary of environmental affairs shall:

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

42 (b) exempt site assessment grants and loans granted under the Brownfields Redevelopment Fund,
43 as well as investment tax credits for equipment, tenant fit-ups, and other post-development
44 activities administered under chapter 206 of the acts of 1998 from the category of state financial
45 assistance for the purposes of triggering Massachusetts environmental policy act review. Projects
46 undertaken under chapter 206 of the acts of 1998 that otherwise trigger Massachusetts
47 environmental policy act review may be considered environmental restoration projects and
48 subject to expedited review. In making a decision, the secretary of environmental affairs shall

49 consider the extent to which the new proposal would prevent pollution and eliminate or minimize
50 risks to public health and the environment.

51 Section 3. Community Environmental Health Disparities Program.

52 There is hereby established in the department a community environmental health disparities
53 program. The purpose of the program is to establish a communities health index and require
54 certain proposed projects to complete a health impact assessment to help protect the health of
55 community residents. The department shall adopt regulations to implement the community
56 health disparities program and create a communities health index within six months of the
57 passage of this act.

58 Section 4. Communities Health Index.

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

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

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

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

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

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

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

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

70 (2) Secondary indicators for a community:

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

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

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

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

79 (3) Other indicators for a community:

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

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

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

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

92 (1) A community shall include at least 10,000 residents. If a municipality has fewer than
93 10,000 residents, the department shall cluster the municipality with one or more contiguous
94 municipalities to create a combined community with at least 10,000 and no more than 100,000
95 residents.

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

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

102 Section 5. Notice to the department.

103 (a) A person required to file an environmental notification shall provide a copy to the
104 department simultaneous with filing the environmental notification with the secretary of
105 environmental affairs.

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

110 Section 6. Health Impact Assessment

111 (a) Within 30 days after the department receives a copy of the environmental notification or
112 notice of a project it shall inform the person if a health impact assessment is required. A health
113 impact assessment is required if the proposed project is in or might affect a most vulnerable
114 community, unless the department waives the requirement upon a finding that the project would
115 have no potential impact on any of the indicators used to create the communities health index. If
116 the department intends to waive the requirement for a project in a most vulnerable community, it
117 first shall provide notice to the public and the opportunity for written public comment within 30
118 days after the notice, and shall provide its decision of whether a health impact assessment is
119 required within 30 days of the close of the public comment period.

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

124 (c) Whenever a health impact assessment is required, the department shall provide public
125 notice of the proposed scope for the assessment within 30 days after its determination that an
126 assessment is required. The person and public shall have 30 days to provide written comments
127 on the proposed scope. The department shall issue the scope within 30 days of the close of the
128 comment period. The scope shall identify which effects and health outcomes to assess and at a
129 minimum shall require:

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

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

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

136 (4) proposals for mitigation and offsets to maximize the positive and minimize the potential
137 negative health impacts, if any;

138 (5) other information and analysis identified in the scope; and

139 (6) a submission deadline for the HIA.

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

143 (e) The Department of Environmental Protection cannot approve a project until the department
144 has approved the HIA and required any additional mitigation to minimize the potential negative
145 health impacts.

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

150 Section 7. Evaluating the Health Impact Assessment.

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

153 (b) Within 30 days of the close of the public comment period, the department, with input from
154 the board of health in the municipality where the project would be located if one exists, shall
155 determine whether the health impact assessment is adequate, whether mitigation or offsets are
156 necessary, and whether the mitigation and offsets identified in the assessment would be
157 adequate.

158 (c) If the health impact assessment is adequate and no mitigation or offsets are required the
159 process is completed.

160 (d) If the health impact assessment is adequate and appropriate mitigation and offsets are
161 identified and required, the process is completed, subject to the person completing the mitigation
162 and offsets identified in the assessment and required by the department. The department may
163 require monitoring and evaluation after completion to determine whether the mitigation and
164 offsets were adequate.

165 (e) If the health impact assessment is inadequate, the department shall provide an opportunity
166 to supplement the assessment to remedy the inadequacies.

167 (f) If a health impact assessment is required, a person shall not begin a project until the
168 department approves the health impact assessment.

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

170 (h) A person whose health impact assessment has been approved must notify the department of
171 any substantial change in the proposal so that the department may determine whether a
172 supplemental assessment or other mitigation or offsets are required.

173 Section 8. Emergencies.

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

180 Section 9. Action or proceeding alleging improper determination of need for a health impact
181 assessment or approval of such assessment or noncompliance with law.

182 (a) A person intending to commence an action or proceeding alleging an improper
183 determination of whether a project requires the preparation of a health impact assessment shall
184 first provide notice of intention to commence such action or proceeding within sixty days of
185 issuance of notice of such determination. A person intending to commence an action or
186 proceeding alleging that a health impact assessment fails to comply with the requirements of this
187 chapter shall first provide notice of intention to commence such action or proceeding within sixty
188 days of approval of such assessment. Said notices of intention shall be in such form as the

189 department shall prescribe, shall identify with particularity the issues to be considered in any
190 such action or proceeding, shall be in lieu of the notice and waiting period required by section
191 seven A of chapter two hundred and fourteen, and shall be provided to the attorney general, the
192 person proposing the project, and the department.

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

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

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

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

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