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## The Commonwealth of Massachusetts

#### PRESENTED BY:

### Michelle M. DuBois and Liz Miranda

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:
Michelle M. DuBois	10th Plymouth
Liz Miranda	5th Suffolk
RoseLee Vincent	16th Suffolk
James Arciero	2nd Middlesex
Ruth B. Balser	12th Middlesex
Christine P. Barber	34th Middlesex
Jennifer E. Benson	37th Middlesex
Natalie M. Blais	Ist Franklin
Joseph A. Boncore	First Suffolk and Middlesex
Michael D. Brady	Second Plymouth and Bristol
Antonio F. D. Cabral	13th Bristol
Gerard J. Cassidy	9th Plymouth
Harriette L. Chandler	First Worcester
Michelle L. Ciccolo	15th Middlesex
Mike Connolly	26th Middlesex
Edward F. Coppinger	10th Suffolk
Daniel R. Cullinane	12th Suffolk
Julian Cyr	Cape and Islands

Marjorie C. Decker	25th Middlesex
Marcos A. Devers	16th Essex
Sal N. DiDomenico	Middlesex and Suffolk
Mindy Domb	3rd Hampshire
Lori A. Ehrlich	8th Essex
James B. Eldridge	Middlesex and Worcester
Nika C. Elugardo	15th Suffolk
Tricia Farley-Bouvier	3rd Berkshire
Dylan A. Fernandes	Barnstable, Dukes and Nantucket
Carole A. Fiola	6th Bristol
Sean Garballey	23rd Middlesex
Denise C. Garlick	13th Norfolk
Carmine Lawrence Gentile	13th Middlesex
Carlos Gonzalez	10th Hampden
Tami L. Gouveia	14th Middlesex
Patricia A. Haddad	5th Bristol
James K. Hawkins	2nd Bristol
Stephan Hay	3rd Worcester
Jonathan Hecht	29th Middlesex
Natalie M. Higgins	4th Worcester
Russell E. Holmes	6th Suffolk
Kevin G. Honan	17th Suffolk
Patrick Joseph Kearney	4th Plymouth
Mary S. Keefe	15th Worcester
Kay Khan	11th Middlesex
David Henry Argosky LeBoeuf	17th Worcester
Jack Patrick Lewis	7th Middlesex
Jason M. Lewis	Fifth Middlesex
David Paul Linsky	5th Middlesex
Jay D. Livingstone	8th Suffolk
Adrian C. Madaro	1st Suffolk
Elizabeth A. Malia	11th Suffolk
Paul W. Mark	2nd Berkshire
Joan Meschino	3rd Plymouth
Christina A. Minicucci	14th Essex
Rady Mom	18th Middlesex
Brian W. Murray	10th Worcester
Tram T. Nguyen	18th Essex
Marc R. Pacheco	First Plymouth and Bristol

Alice Hanlon Peisch	14th Norfolk
Denise Provost	27th Middlesex
Rebecca L. Rausch	Norfolk, Bristol and Middlesex
Maria Duaime Robinson	6th Middlesex
David M. Rogers	24th Middlesex
Daniel J. Ryan	2nd Suffolk
Lindsay N. Sabadosa	1st Hampshire
Jon Santiago	9th Suffolk
Paul A. Schmid, III	8th Bristol
Alan Silvia	7th Bristol
Thomas M. Stanley	9th Middlesex
Walter F. Timilty	Norfolk, Bristol and Plymouth
José F. Tosado	9th Hampden
Paul F. Tucker	7th Essex
Chynah Tyler	7th Suffolk
Steven Ultrino	33rd Middlesex
Aaron Vega	5th Hampden
David T. Vieira	3rd Barnstable
Tommy Vitolo	15th Norfolk
Bud L. Williams	11th Hampden

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By Representatives DuBois of Brockton and Miranda of Boston, a petition (accompanied by bill, House, No. 761) of Michelle M. DuBois and others relative to exposure to environmental toxins. 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	Chapter 21 of the General Laws, as so appearing, is hereby amended by creating a new
2	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
23 24	"Environmental Benefits," access to funding, open space, enforcement, technical assistance, training, or other beneficial resources disbursed by the executive secretariats and their
24	assistance, training, or other beneficial resources disbursed by the executive secretariats and their
24 25	assistance, training, or other beneficial resources disbursed by the executive secretariats and their agencies and offices.
24 25 26	assistance, training, or other beneficial resources disbursed by the executive secretariats and their agencies and offices. "Environmental Justice Population," a neighborhood in which the annual median
24 25 26 27	assistance, training, or other beneficial resources disbursed by the executive secretariats and their agencies and offices. "Environmental Justice Population," a neighborhood in which the annual median household income is equal to or less than 65 percent of the statewide median or in which
24 25 26 27 28	assistance, training, or other beneficial resources disbursed by the executive secretariats and their agencies and offices. "Environmental Justice Population," a neighborhood in which the annual median household income is equal to or less than 65 percent of the statewide median or in which minorities comprise 25 percent or more of the population or in which 25 percent or more of
24 25 26 27 28 29	assistance, training, or other beneficial resources disbursed by the executive secretariats and their agencies and offices. "Environmental Justice Population," a neighborhood in which the annual median household income is equal to or less than 65 percent of the statewide median or in which minorities comprise 25 percent or more of the population or in which 25 percent or more of households lack English language proficiency. Where a neighborhood does not meet any of
24 25 26 27 28 29 30	assistance, training, or other beneficial resources disbursed by the executive secretariats and their agencies and offices. "Environmental Justice Population," a neighborhood in which the annual median household income is equal to or less than 65 percent of the statewide median or in which minorities comprise 25 percent or more of the population or in which 25 percent or more of households lack English language proficiency. Where a neighborhood does not meet any of those criteria, but a geographic portion of that neighborhood meets at least one of those criteria,

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.
43 44	care or custody such as federal or state prisons. "Secretary of EEA," the Secretary of Energy and Environmental Affairs.
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44 45	"Secretary of EEA," the Secretary of Energy and Environmental Affairs. "Secretariats," the Executive Offices of the Commonwealth and their Secretaries,
44 45 46	"Secretary of EEA," the Secretary of Energy and Environmental Affairs. "Secretariats," the Executive Offices of the Commonwealth and their Secretaries, inclusive of but not limited to the Executive Offices and Secretaries of Energy and
44 45 46 47	"Secretary of EEA," the Secretary of Energy and Environmental Affairs. "Secretariats," the Executive Offices of the Commonwealth and their Secretaries, inclusive of but not limited to the Executive Offices and Secretaries of Energy and Environmental Affairs, Health and Human Services, and Transportation.
44 45 46 47 48	"Secretary of EEA," the Secretary of Energy and Environmental Affairs. "Secretariats," the Executive Offices of the Commonwealth and their Secretaries, inclusive of but not limited to the Executive Offices and Secretaries of Energy and Environmental Affairs, Health and Human Services, and Transportation. "Supplemental Environmental Project," environmentally beneficial projects, the
44 45 46 47 48 49	<ul> <li>"Secretary of EEA," the Secretary of Energy and Environmental Affairs.</li> <li>"Secretariats," the Executive Offices of the Commonwealth and their Secretaries, inclusive of but not limited to the Executive Offices and Secretaries of Energy and Environmental Affairs, Health and Human Services, and Transportation.</li> <li>"Supplemental Environmental Project," environmentally beneficial projects, the implementation of which primarily benefits public health, safety and welfare, and the</li> </ul>

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:-

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

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

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

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

SECTION 6. Said section 68 of Chapter 21, is further amended by inserting the followingsection 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.

SECTION 7. Said section 68 of Chapter 21, is further amended by inserting the followingsection 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 by139 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.

"Environmental Justice Population," a neighborhood in which the annual median household income is equal to or less than 65 percent of the statewide median or in which minorities comprise 25 percent or more of the population or in which in which 25 percent or more of households lack English language proficiency Where a neighborhood does not meet any of those criteria, but a geographic portion of that neighborhood meets at least one of those criteria, the Secretary may designate that geographic portion as an environmental justice population upon 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 federal161 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 by166 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 by178 inserting after the first paragraph, following the word "documents" the following paragraph:

To enable the public to participate in decisions that affect their health and safety and the environment, the Secretary shall maximize opportunities for public involvement. Such 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 by205 adding, after the first paragraph, the following paragraph:

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

SECTION 12. Said section 68 of Chapter 21, is further amended by inserting thefollowing section 68g:-

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

SECTION 13. Said section 68 of Chapter 21, is further amended by inserting thefollowing section 68h:-

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

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

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

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

No later than 180 days after the effective date of this Act, and except where already
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.

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

An Interagency Environmental Justice Working Group shall be established to maximize state resources, research, and technical assistance to further the purposes of this Act and of 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
- 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
- subsequent meetings, which shall take place no less than once a y