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States' Environmental Justice Statutes: Massachusetts



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MA Gen L CH 30 §§ [61](#); [62](#); [62B](#); [62E](#); [62J](#); [62K](#); [62L](#)

Current through Chapter 76 of the 2022 2nd Annual Session.

§ 61. Determination of impact by agencies; damages to environment; prevention or minimization; foreseeable climate change impacts; definition applicable to this section and sec. 62

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact.

In considering and issuing permits, licenses and other administrative approvals and decisions, the respective agency, department, board, commission or authority shall also consider reasonably foreseeable climate change impacts, including additional greenhouse gas emissions, and effects, such as predicted sea level rise.

As used in this section and section sixty-two, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth and shall include but not be limited to air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, reduction of groundwater levels, impairment of water quality, increases in flooding or storm water flows, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds, or other surface or subsurface water resources; destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites. Damage to the environment shall not be construed to include any insignificant damage to or impairment of such resources.

§ 62. Definitions.

For the purposes of sections 61 to 62L, inclusive, the following words shall have the following meanings unless the context otherwise requires: --

"Agency", an agency, department, board, commission or authority of the commonwealth, and any authority of any political subdivision which is specifically created as an authority under special or general law.



“Environmental benefits”, the access to clean natural resources, including air, water resources, open space, constructed playgrounds and other outdoor recreational facilities and venues, clean renewable energy sources, environmental enforcement, training and funding disbursed or administered by the executive office of energy and environmental affairs.

“Environmental burdens”, any destruction, damage or impairment of natural resources that is not insignificant, resulting from intentional or reasonably foreseeable causes, including but not limited to, climate change, air pollution, water pollution, improper sewage disposal, dumping of solid wastes and other noxious substances, excessive noise, activities that limit access to natural resources and constructed outdoor recreational facilities and venues, inadequate remediation of pollution, reduction of ground water levels, impairment of water quality, increased flooding or storm water flows, and damage to inland waterways and waterbodies, wetlands, marine shores and waters, forests, open spaces, and playgrounds from private industrial, commercial or government operations or other activity that contaminates or alters the quality of the environment and poses a risk to public health.

“Environmental justice population”, a neighborhood that meets 1 or more of the following criteria:

- (i) the annual median household income is not more than 65 per cent of the statewide annual median household income;
- (ii) minorities comprise 40 per cent or more of the population;
- (iii) 25 per cent or more of households lack English language proficiency; or
- (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income; provided, however, that for a neighborhood that does not meet said criteria, but a geographic portion of that neighborhood meets at least 1 criterion, the secretary may designate that geographic portion as an environmental justice population upon the petition of at least 10 residents of the geographic portion of that neighborhood meeting any such criteria; provided further, that the secretary may determine that a neighborhood, including any geographic portion thereof, shall not be designated an environmental justice population upon finding that:
 - (A) the annual median household income of that neighborhood is greater than 125 per cent of the statewide median household income;
 - (B) a majority of persons age 25 and older in that neighborhood have a college education;
 - (C) the neighborhood does not bear an unfair burden of environmental pollution; and



(D) the neighborhood has more than limited access to natural resources, including open spaces and water resources, playgrounds and other constructed outdoor recreational facilities and venues.

“Environmental justice principles”, principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes:

- (i) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and
- (ii) the equitable distribution of energy and environmental benefits and environmental burdens.

“Neighborhood”, a census block group as defined by the United States Census Bureau, excluding people who live in college dormitories and people who are under formally authorized, supervised care or custody, including federal, state or county prisons.

“Permit”, a permit determination, order or other action, including the issuance of a lease, license, permit, certificate, variance, approval or other entitlement for use, granted to any person, firm or corporation, including trusts, voluntary association or other forms of business organizations by an agency for a project but shall not include a general entitlement to a person to carry on a trade or profession or to operate mechanical equipment which does not depend upon the location of such trade or operation.

“Person”, a private person, firm or corporation, or any governmental entity which is not an agency.

“Project”, work, project, or activity either directly undertaken by an agency, or if undertaken by a person, which seeks the provision of financial assistance by an agency, or requires the issuance of a permit by an agency but shall not include a grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or a third party on behalf of an individual.

§ 62B. Environmental impact reports; preparation and submission; funding.

In the case of projects directly undertaken by an agency, the environmental impact report shall be prepared and submitted by the responsible agency. If two or more agencies are responsible, a joint report shall be prepared and submitted by the agency designated by the secretary of environmental affairs. In the case of projects which require a permit or financial assistance from an agency, said report shall be prepared and submitted by the person or agency seeking the permit or financial assistance.



Public funds made available for the purpose of design of or planning or undertaking a project subject to sections sixty-two to sixty-two H, inclusive, may be expended for the research, preparation, and publication of the report and expenses incidental thereto, and said funds may be transferred or otherwise may be made available to other agencies designated by the secretary of environmental affairs to evaluate the draft or final report.

An environmental impact report shall contain:

- (i) statements describing the nature and extent of the proposed project and its environmental and public health impact as result of any development, alteration and operation of the project;
- (ii) studies to evaluate said impacts;
- (iii) all measures being utilized to minimize any anticipated environment and public health damage;
- (iv) any adverse short-term and long-term environmental and public health consequences that cannot be avoided should the project be undertaken; and
- (v) reasonable alternatives to the proposed project and their environmental consequences. The secretary shall encourage agencies and persons to commence preparation of reports during the initial planning and design phase of projects. Said report shall be prepared and disseminated to inform the originating or permitting agency, reviewing agencies, the appropriate regional planning commission, the attorney general and the public of the environmental consequences of state actions and the alternatives thereto prior to any commitment of state funds for and prior to the commencement of the project if undertaken by an agency or prior to the issuance of any permit or grant of financial assistance for the project if undertaken by a person.

An environmental impact report shall be required for any project that is likely to cause damage to the environment and is located within a distance of 1 mile of an environmental justice population; provided, that for a project that impacts air quality, such environmental impact report shall be required if the project is likely to cause damage to the environment and is located within a distance of 5 miles of an environmental justice population. Said report shall contain statements about the results of an assessment of any existing unfair or inequitable environmental burden and related public health consequences impacting the environmental justice population from any prior or current private, industrial, commercial, state, or municipal operation or project that has damaged the environment. The required assessment shall conform to the standards and guidelines established by the secretary. If the assessment indicates an environmental justice population is subject to an existing unfair or inequitable environmental burden or related health consequence the report shall identify any:

- (i) environmental and public health impact from the proposed project that would likely result in a disproportionate adverse effect on such population; and



(ii) potential impact or consequence from the proposed project that would increase or reduce the effects of climate change on the environmental justice population. The secretary may require that an assessment be performed at any stage of the review process.

§ 62E. Categories of projects and permits not requiring environmental impact reports; establishment; application.

With the approval of the secretary of the executive office having jurisdiction over an agency, or if an agency is not within an executive office, with the approval of such agency, the secretary of environmental affairs shall establish general and special categories of projects and permits which shall or shall not require environmental impact reports based upon the scope and duration of potential impacts from the nature, size and location of said projects or portions thereof which require permits.

No agency shall exempt from an environmental impact report any project that is located in a neighborhood that has an environmental justice population and is reasonably likely to cause damage to the environment, as defined in section 61. The provisions of 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 resource undertaken in compliance with section 62F.

§ 62J. Opportunities for public to assess impact of proposed projects; impact on environmental justice population; measures to improve public participation; meaning of designated geographic area.

To enable the public to assess the impact of proposed projects that affect their environment, health and safety through the project review process established under sections 61 through 62J, inclusive, the secretary shall provide opportunities for meaningful public involvement.

For any proposed project that requires the filing of an environmental notification form, the proponent of the project shall indicate on the document whether an environmental justice population that lacks English language proficiency within a designated geographical area is reasonably likely to be affected negatively by the project.

If a proposed project affects an environmental justice population, the secretary shall require additional measures to improve public participation by the environmental justice population. Such measures shall include, as appropriate:

- (i) making public notices, environmental notification forms, environmental impact reports, and other key documents related to the secretary's review and decisions of a project review available in English and any other language spoken by a significant number of the affected environmental justice population;
- (ii) providing translation services at public meetings for a significant portion of an affected environmental justice population that lacks English proficiency in the project's designated geographic area;



(iii) requiring public meetings be held in accessible locations that are near public transportation;

(iv) providing appropriate information about the project review procedure for the proposed project; and (v) where feasible, establishing a local repository for project review documents, notices and decisions.

The secretary of energy and environmental affairs may require such additional measures as appropriate for projects that do not require the filing of an environmental notification form pursuant to section 62A, or to improve participation opportunities for persons in an environmental justice population that lack English language proficiency and do not speak a dominant language spoken by such population.

As used in this section, the term designated geographic area shall mean an environmental justice population located within a distance of 1 mile of a project, unless the project affects air quality then the distance from such project shall be increased to within 5 miles of an environmental justice population.

§ 62K. Consideration of environmental justice principles; establishment of standards and guidelines.

The secretary shall consider the environmental justice principles, as defined in section 62, in making any policy or determination, or taking any action relating to a project review, undertaken pursuant to sections 61 through 62J, inclusive, to reduce the potential for unfair or inequitable effects upon an environmental justice population.

To further the environmental justice principles the secretary shall direct its agencies, including the departments, divisions, boards and offices under the secretary's control and authority, to consider the environmental justice principles in making any policy, determination or taking any other action related to a project review, or in undertaking any project pursuant to said sections 61 through 62J, inclusive, and related regulations that is likely to affect environmental justice populations.

In addition, the secretary shall establish standards and guidelines for the implementation, administration and periodic review of environmental justice principles by the executive office of energy and environmental affairs and its agencies.

§ 62L. Environmental justice council; membership; duties; recommendations.

There shall be an environmental justice council to advise and provide recommendations to the secretary of energy and environmental affairs on relevant policies and standards to achieve the environmental justice principles. The council shall consist of not less than 9, but not more than 15, members appointed by the governor, who shall designate a chair. Members may be removed without cause, by the governor. All members shall serve without compensation.



The secretary of energy and environmental affairs shall consult with the environmental justice council before making any substantial adoptions, revisions or amendments to any regulation related to the definition of environmental justice population as defined in section 62.

The environmental justice council shall conduct a comprehensive analysis by not later than July 31, 2022, and every fifth year thereafter, to ensure the definition of environmental justice population achieves the objectives of the environmental justice principles, pursuant to the definitions of environmental justice population and environmental justice principles contained in section 62. The analysis shall include, but not be limited to, an evaluation of this definition as compared to the demographics of environmental justice populations in the commonwealth. As part of the analysis, said council shall provide advice and make recommendations to the secretary on any necessary changes to the percentage thresholds included in this definition and any related regulation. The secretary shall consider the recommendations of the council regarding any proposed changes to the percentage thresholds under this definition; provided, however, that such changes are needed to achieve and promote the environmental justice principles as defined under said section 62. Proposed regulations shall be adopted only after the approval of the council by a majority vote in the affirmative of those members so voting.

The environmental justice council may recommend and provide advice to the secretary on proposed substantial legislative or regulatory changes related to this definition at any time prior to conducting a comprehensive analysis.

