

**Yellow highlighted is proposed by Baker to be deleted.**

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

Section 61. 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.

**Section 62: Definitions applicable to Secs. 61 to 62L.~~61 to 62H~~**

Section 62. For the purposes of sections 61 to 62L.~~sixty-one to sixty-two H~~, 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.

**Section 62A: Notice of intent to apply; forms; certification of need for environmental impact report; application of section**

Section 62A. A person applying or intending to apply to an agency for a permit or for financial assistance for a project may, at any time prior to, but, in any event, shall no later than ten days after filing the first application for such permit or assistance notify the secretary of environmental affairs of the nature of the project and of such application, if any, on such forms as said secretary shall prescribe and shall transmit copies of said notification forms to such agency from which a permit or financial assistance is or may be sought. Any agency proposing a project may file said notification forms prior to the development of the project and shall file said forms no later than the secretary of environmental affairs shall by regulation prescribe. Within thirty days after issuance of notice of the receipt of such notification, the secretary shall consult with the person or agency proposing the project and the agency, if any, from which a permit or financial assistance is or may be sought and shall issue a certificate stating whether an environmental impact report is required. If a report is required, the secretary with the cooperation of said person and agency shall, within the above mentioned thirty day period, limit the scope of the report to those issues which by the nature and location of the project are likely to cause damage to the environment. The secretary shall determine the form, content, level of detail and alternatives required for the report. In the case of a permit application to an agency from a private person for a project for which financial assistance is not sought the scope of said report and alternatives considered therein shall be limited to that part of the project which is within the subject matter jurisdiction of the permit. Any finding required by section sixty-one shall be limited to those matters which are within the scope of the environmental impact report, if any, required by this section.

In the case of a major and complicated project, the secretary of environmental affairs, with the agreement of the agencies and persons who are proposing, providing public financial assistance for or issuing permits for a project subject to sections sixty-two to sixty-two H, inclusive, may establish a specific procedure for evaluation and review of the environmental impacts of said project. This section shall not apply to the placing, maintaining, repairing or relocating of poles, wires, conduits, cables, pipes and associated fixtures by public utility companies under section seventy-one of chapter one hundred and sixty-four and sections twenty-one to twenty-two, inclusive, of chapter one hundred and sixty-six.

**Section 62B: Environmental impact reports; preparation and submission; funding**

Section 62B. 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 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 environmental and public health damage; (iv) any adverse short-term and long-term environmental and public health consequences ~~which 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 that is not insignificant 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 that is not insignificant 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.

#### **Section 62C: Notice of availability of environmental impact statement; public and agency review**

Section 62C. Any environmental impact report shall be submitted to the secretary of environmental affairs who shall issue public notice of the availability of such report.

A reviewing agency or person, and any agency which has jurisdiction by law or special expertise with respect to any environmental impact involved may submit written comments on any draft or final environmental impact report to the secretary of environmental affairs who shall affix any such comments which are timely received to his statement on such reports. Said reports and any comments submitted in review thereof shall be public documents.

No agency shall undertake a project which is not exempted by the provisions of any law and which may cause damage to the environment or grant a permit or financial assistance for such a project until sixty days after the secretary of environmental affairs issues such notice, provided that an agency or person may undertake research, planning, design and other preliminary work necessary to describe and evaluate such projects for the purposes of sections sixty-two to sixty-two H, inclusive.

There shall be a public and agency review period of thirty days from the notice of availability of any draft or final report, provided that the secretary of environmental affairs may extend the review period for a draft report on a major and complicated project for a period not to exceed thirty days. A statement of the secretary indicating whether or not in his judgment said report adequately and properly complies with the provisions of sections sixty-two to sixty-two H, inclusive, shall be issued within seven days after the public and agency review period. The approval or disapproval of said secretary of any such report shall not be required.

At least twice per month the secretary shall issue notice of all filings and of the availability of all reports received during the preceding half month, which notice shall be in such form as the secretary shall determine is reasonably suited to informing all interested agencies and persons of the receipt of such filings and the availability of such reports.

#### **Section 62D: Permit applications; time for agency determination**

Section 62D. Agencies shall act on permit applications within ninety days following issue of notice of availability of the final environmental impact report, within ninety days following issue of notice of the determination that a report is not required, or ninety days following the permit application, whichever is latest, unless otherwise provided by law.

#### **Section 62E: Categories of projects and permits not requiring environmental impact reports; establishment**

Section 62E. 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.

### **Section 62F: Emergencies; commencement of projects; land acquisition**

Section 62F. A project may commence prior to compliance with sections sixty-two to sixty-two H, inclusive, if emergency action by a person or agency is essential to avoid or eliminate a threat to public health or safety, or a threat to any natural resources; provided, that wherever practicable, the agency or person shall obtain the prior approval of the secretary of environmental affairs. Following commencement of any such project, the agency or person shall promptly, but in any case within sixty days, commence compliance with the provisions of sections sixty-two to sixty-two H, inclusive.

In the case of an urban renewal project proposed under chapters one hundred and twenty-one A or one hundred and twenty-one B, the specific procedure under section sixty-two A may permit land acquisition and other actions required for land acquisition to take place prior to the publication of the final environmental impact report provided that the secretary has issued notice of availability of an interim environmental impact report which demonstrates to the satisfaction of said secretary that an urban renewal project may be carried out on the proposed land with appropriate constraints as may be necessary to minimize and prevent damage to the environment.

### **Section 62G: Federal environmental impact statements in lieu of reports**

Section 62G. In the case of projects for which an environmental impact statement is required under the National Environmental Policy Act of 1969, draft and final federal environmental impact statements may be submitted in lieu of environmental impact reports.

### **Section 62H: Action or proceeding alleging improper determination of need for environmental impact report or noncompliance with law; notice; commencement; matters raised**

Section 62H. An agency or person intending to commence an action or proceeding alleging an improper determination of whether a project requires the preparation of an environmental impact report under section sixty-two A, shall first provide notice of intention to commence such action or proceeding within sixty days of issuance of notice of such determination. An agency or person intending to commence an action or proceeding alleging that a final environmental impact report fails to comply with the requirements of sections sixty-two to sixty-two G, inclusive, shall first provide notice of intention to commence such action or proceeding within sixty days of issuance of notice of availability of said final environmental impact report pursuant to section sixty-two C. Said notices of intention shall be in such form as the secretary of environmental affairs shall prescribe, shall identify with particularity the issues to be considered in any such action or proceeding, shall be in lieu of the notice and waiting period required by section seven A of chapter two hundred and fourteen, and shall be provided to the attorney general, the agency or person proposing the project and the secretary of environmental affairs.

Any action or proceeding alleging an improper determination that a project requires the preparation of an environmental impact report under section sixty-two A shall commence no later than thirty days following the first issuance of a permit or grant of financial assistance by an agency or no later than sixty days after issuance of notice of such determination, whichever occurs later, for a private project, or no later than one hundred and twenty days after issuance of notice of such determination for a public project. Any action or proceeding alleging that a final environmental impact report fails to comply with the provisions of sections sixty-two to sixty-two G, inclusive, shall commence no later than thirty days following the first issuance of a permit or grant of financial assistance by an agency for a private project

or no later than one hundred and twenty days after issuance of notice of availability of said final environmental impact report under section sixty-two C, for a public project.

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

If a court determines that an agency or person proposing a project has knowingly concealed a material fact or knowingly submitted false information in any form or report required under sections sixty-two to sixty-two H, inclusive, limits on the manner and time in which actions or proceedings may be commenced shall not apply and the secretary of environmental affairs may require the preparation and review of such forms or reports as may be necessary to correct any deficient form or report.

The secretary of environmental affairs shall, after consultation with other secretaries of executive offices and with agencies not within executive offices, promulgate reasonable rules and regulations to carry out the purposes of sections sixty-two to sixty-two H, inclusive.

#### **Section 62I: Environmental notification forms filed on or after November 15, 2007; requirements**

Section 62I. A person who is proposing a new use or structure or modification of an existing use or structure within landlocked tidelands as defined in section 1 of chapter 91 that is otherwise required to file an environmental notification form pursuant to section 62A and files an environmental notification form on or after November 15, 2007, shall comply with the requirements of this paragraph. The environmental notification form, and an environmental impact report required pursuant to section 62B, if applicable, shall include an explanation of the project's impact on the public's right to access, use and enjoy tidelands that are protected by chapter 91, and identify measures to avoid, minimize, or mitigate any adverse impact on such rights set forth herein. If the project is located in an area where low groundwater levels have been identified by a municipality or by a state or federal agency as a threat to building foundations, the environmental notification form and an environmental impact report if the latter is required, shall also include an explanation of the project's impact on groundwater levels, and identification and commitment to taking measures to avoid, minimize, or mitigate any adverse impact on groundwater levels. Any measures identified by the secretary under this section shall be set forth in a certificate on the environmental notification form or a certificate on the environmental impact report, if the latter is applicable. Within 30 days after a certificate is issued under this paragraph, the proponent of the project shall file with the department of environmental protection a completed form notifying the department that work will be conducted within landlocked tidelands, and shall attach the Massachusetts environmental policy act certificate to the form. The person who is proposing shall comply with all obligations set forth in the certificate under this section, and the department shall have the authority to enforce such conditions consistent with this chapter.

Section 62J. 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 is significant and 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 non-significant 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.

Section 62K. 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.



Section 62L. 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.