

# ELIMINATING AS-OF-RIGHT STATUS OF POLLUTING FACILITIES IN EJ AREAS

This model bill aims to limit the development of new polluting facilities and their associated environmental and public health effects in environmental justice communities.

## HEALTH IMPACTS

Exposure to toxic pollutants has been linked to a number of serious negative health effects, including cancer, cardiovascular and respiratory disease, infertility, asthma, and neurological and developmental disorders. These effects are compounded when a person is exposed to multiple sources and types of environmental pollution, and these types of overlapping burdens are more likely to exist in low-income communities and communities of color.

To address this issue, this bill limits as-of-right zoning in designated environmental justice areas. As-of-right zoning is development that is permitted without any discretionary approval needed from land use authorities, which can allow potentially harmful facilities to be located in environmental justice areas without significant oversight from local authorities or communities.



## STATISTICS

African American and low-income communities are disproportionately affected by air pollution. Each year, the U.S. Oil and Gas Industry releases about 9 million tons of methane gas and other toxic chemicals into the atmosphere.



**1 MILLION+**

African Americans live within a half-mile of natural gas facilities and face a “cancer risk above EPA’s level of concern” due to unclean air



## TARGETED APPROACH

This statewide bill overrides local land use laws to require authorities to consider the impact of a proposed development on the surrounding area before it's permitted to move forward, creating an important check on the proliferation of polluting facilities in areas that are more likely to bear existing environmental and public health stressors. Rather than eliminating as-of-right zoning entirely, this bill takes a targeted approach:



**Only applies to land uses that have the potential to produce a variety of sources and forms of pollution when these impacts may affect designated environmental justice areas experiencing disproportionate environmental harms.**

**It does not foreclose developments like small-scale residential buildings constructed to address the need in many jurisdictions for new affordable housing stock.**

## MINIMIZING NEGATIVE IMPACTS

Under the bill, the agency may approve a proposed land use if it finds that the use will not contribute to any negative environmental impacts in the area or if it finds that the use is necessary for the public interest and no suitable alternative exists. In assessing whether the use is necessary for the public interest, the agency can take into account whether the benefits of the use to the impacted community will outweigh the negative environmental impact generated by the use, and may look to the existence of a community benefit agreement as evidence of the needs and interests of the community.



This provision is designed to prevent the siting of burdensome development based on past siting decisions allowing such development and vague promises of potential benefits for the environmental justice area. In approving the land use, the agency must also place conditions on the facility to minimize the negative environmental impacts on the community.

