

**SENATE . . . . . No. 223**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Bruce E. Tarr, (BY REQUEST)***

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*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 to ensure the health and safety of the commonwealth’s students and educators.

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PETITION OF:

NAME:

DISTRICT/ADDRESS:

*David Frenkel*

**SENATE . . . . . No. 223**

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By Mr. Tarr (by request), a petition (accompanied by bill, Senate, No. 223) of David Frenkel for legislation to ensure the health and safety of the commonwealth’s students and educators. Emergency Preparedness and Management.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 250 OF 2021-2022.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Third General Court  
(2023-2024)**  
\_\_\_\_\_

An Act to ensure the health and safety of the commonwealth’s students and educators.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to ensure the health and safety of the commonwealth’s students, educators and communities during the 2019 novel coronavirus pandemic, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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. Chapter 149 of the General Laws is hereby amended by inserting after  
2 section 117, the following section:-

3 Section 117A: Ventilation in Schools

4 a. Definitions

5 As used in this section, the following words shall, unless a different meaning clearly  
6 appears from the context, have the following meanings:-

7 "Advanced technologies" means Ultraviolet Germicidal Irradiation (UVGI) or Bipolar  
8 ionization or other processes or devices for deactivating [airborne] viruses or [airborne] virus  
9 particles or other airborne agents of disease.

10 "ASHRAE Standard 170" means ANSI/ASHRAE/ASHE Standard 170, Ventilation of  
11 Health Care Facilities.

12 "Air changes per hour" means a measure of the fresh air volume added to or removed  
13 from a space in one hour, calculated by dividing the outdoor air supply volume in cubic feet per  
14 hour by the volume in cubic feet of the occupied space; provided, however, that said calculation  
15 may include filtered air as part of the outdoor air supply volume in an amount consistent with the  
16 efficiency rating of the filters used to condition the air.

17 "Declaration of a pandemic" means the characterization by the World Health  
18 Organization of an infectious disease outbreak as a pandemic; or a declaration related to an  
19 infectious disease outbreak by the federal Department of Health and Human Services of a public  
20 health emergency in accordance with section 319 of the Public Health Service Act (42 U.S.C.  
21 247d); or a declaration of a state of emergency related to an infectious disease outbreak by the  
22 Governor of the Commonwealth in accordance with Chapter 639 of the Acts of 1950 and Section  
23 2A of Chapter 17 of the General Laws.

24 "Department" means the Department of Labor Standards.

25 "Employee organization" means any lawful association, organization, federation, council,  
26 or labor union as defined in section 1 of chapter 150E of the General Laws.

27 "Filtered air" means air that has been a) conditioned induct, in air handling units, or in  
28 other components of a ventilation system, by filters with a MERV-13 or higher efficiency rating,  
29 or b) conditioned by a portable air cleaner.

30 "Fresh air" means outdoor air free of outdoor air pollutants, or a combination of such  
31 outdoor air and filtered air

32 Local education authority for the purpose of this section 117A means a public authority  
33 legally constituted by the state as an administrative agency to provide control of and direction for  
34 pre-kindergarten through grade 12 public educational institutions or the owners or operators of a  
35 private educational institution approved by a school committee in accordance with section 1 of  
36 chapter 76.

37 "Occupied space" means, unless otherwise specified, any area in a school building used  
38 for educational, administrative, medical, toileting, or any purpose other than storage.

39 "Outdoor air" means air introduced from outside a school building from intakes free of  
40 contaminated air.

41 "Personal protective equipment" means equipment worn to minimize exposure to hazards  
42 from infectious disease, including, but not limited to, gloves, face shields, masks, safety glasses,  
43 respirators, coveralls, or full body suits.

44 "Portable air cleaner" means a portable high-efficiency particulate air (HEPA)  
45 fan/filtration device or system with an appropriate clean air delivery rate.

46 "Relative humidity" means the amount of water vapor present in air expressed as a  
47 percentage of the amount needed for saturation at the same temperature.

48 "School building" means any structure used for educating pupils by a local educational  
49 authority

50 This section means Chapter 149 section 117A

51 "Ventilation" means the supply of fresh air, heat, and air conditioning (if available) to  
52 occupied space and the simultaneous removal by an exhaust system of air from an occupied  
53 space

54 "Ventilation system" means the building system and its component parts dedicated to  
55 ventilation

56 b. The Department shall, no later than 9 months after effective date of this section, in  
57 consultation with and with guidance from the Occupational Health and Safety Hazard Advisory  
58 Committee as described in section 6 ½ (c) of chapter 149, promulgate regulations related to  
59 school building ventilation consistent with sections c through f below.

60 c. Ventilation Requirements

61 1) Except as otherwise indicated in section c (2), as soon as practicable but no later than  
62 two years after the effective date of this section ventilation systems in school buildings must  
63 provide ventilation to all occupied spaces, that meets at least one of the following measures:

64 a) A minimum of 4 air changes per hour of fresh air

65 b) A minimum of 20 cubic feet per minute of outdoor air per person

66 c) A maximum of 800 parts per million of carbon dioxide

67           2) The ventilation systems of bathrooms in school buildings must comply with the  
68 current Massachusetts Building Code.

69           3) Ventilation systems in school buildings must maintain temperatures in occupied spaces  
70 between 66 degrees Fahrenheit and 78 degrees Fahrenheit.

71           d. Pandemic requirements

72           In the event of the declaration of a pandemic, school buildings must meet the following  
73 measures:

74           1) the ventilation system must provide sufficient ventilation to all occupied spaces except  
75 those specified in sections a) and b) below, to reduce the risk of airborne transmission of disease  
76 by 95%, through the use of fresh air, portable air cleaners, or advanced technologies; provided,  
77 however, that the following areas must meet additional requirements:

78           a) the ventilation system in nurses' offices and designated medical waiting areas must  
79 comply with ASHRAE Standard 170

80           b) bathrooms must have working exhaust systems capable of maintaining negative air  
81 pressure relative to the rest of the school building; exhaust systems must run constantly

82           2) the relative humidity shall be maintained at between 40% and 60%

83           3) school buildings must provide sufficient disinfectants, cleaning and handwashing  
84 areas, and personal protective equipment to comply with best practices as defined by guidance  
85 from governmental public health entities, public health research institutions, or occupational  
86 health research institutions

87 e. Testing, adjustment and balancing

88 Local education authorities shall ensure that ventilation systems in all school buildings  
89 meet and continue to meet the requirements in sections c and d above by completing the  
90 following activities:

91 1) Conduct testing, adjustments, balancing, and repairs, which shall consist of

92 a) an assessment of the ventilation system in each school building to determine if each  
93 school building meets the requirements of sections b and c above, including but not limited to  
94 measuring outdoor supply air volume, total supply air volume, exhaust air

95 volume, the volume of all occupied spaces, and calculating air changes per hour in each  
96 occupied space, and including providing an inventory of personal protective equipment currently  
97 available for use in each school building. This will be completed as soon as practicable but no  
98 later than 18 months after the effective date of this section.

99 b) The entity performing the assessment described in section (e)(1)(a) above shall issue a  
100 report of the results of the assessment, including the methods used, and results of the  
101 measurements and calculation of air changes per hour.

102 c) The report described in section (e)(1)(b) shall be a public record as defined in section  
103 10(a) of Chapter 66 and section 7, part 26 of Chapter 4, and shall be posted on the website for  
104 each school building or local education authority, and on the Department's website and on the  
105 website of the Department of Elementary and Secondary Education no later than 30 days after  
106 completion of the assessment.

107 d) If, after assessment, occupied spaces in school buildings are determined not to meet  
108 the requirements of sections c and d above, by 9 months after completion of first assessment  
109 local education authorities must complete adjustments, repairs or upgrades, and balancing  
110 sufficient to meet the requirements of section d above, and must conduct a post-remediation  
111 assessment in accordance in sections (e)(1)(a-c) above to confirm that ventilation requirements  
112 are being met and that supplies of materials described in section d (3) are adequate.

113 e) Reports documenting the repairs and upgrades made, and the confirmation through  
114 assessments that the requirements of sections d above have been met shall be public records, and  
115 shall be posted on the website for each school building or local education authority, and on the  
116 websites of the Department of Labor Standards and the Department of Elementary and  
117 Secondary Education no later than 30 days after completion.

118 2) Local education authorities shall conduct assessments that include testing, adjustments  
119 and balancing as described in section (e)(1) above no less frequently than every 2 years

120 f. Enforcement

121 1) An employee or employee organization aggrieved by a violation of this section 117A  
122 may file a complaint with the Department, which shall conduct an investigation and issue  
123 preliminary findings and orders within 30 days of receiving the complaint. The Department shall  
124 have authority to order the local education authority to make repairs or upgrades to come into  
125 compliance with this section.

126 2) If the Department has not completed its investigation and issued preliminary findings  
127 and orders within 30 days, or if the Department has completed its investigation and issued  
128 preliminary findings and orders and the employee or employee organization is still aggrieved, the



129 aggrieved employee or employee organization may, within 3 years after the violation, institute  
130 and prosecute in his/her/its own name and on his/her/its own behalf, a civil action for injunctive  
131 relief, for an order for repairs or upgrades, for any damages incurred, and for any lost wages and  
132 other benefits. An employee or employee organization so aggrieved who prevails in such an  
133 action shall be awarded the costs of the litigation and reasonable attorneys' fees.

134 SECTION 2. The second paragraph of section 150 of Chapter 149 is amended to insert  
135 after the word “sections” the following words: “6 ½, 18A,” and after the word “52E” the  
136 following words: “113, 117, [117A].

137 SECTION 3. The Massachusetts School Building Authority, in consultation with the  
138 advisory board established pursuant to section 3A of chapter 70B of the General Laws, shall

139 a) create a temporary category of major reconstruction project, as defined in section 2 of  
140 chapter 70B, to be used for the upgrade or repair of ventilation systems in public school  
141 buildings as required by section 117A of chapter 149. The new category of major reconstruction  
142 project shall be available to public school districts for period of time of 3 years from effective  
143 date of legislation. The School Building Authority shall consider all applications for funding  
144 under the new category of major reconstruction project to be applications for projects described  
145 in section 8 (1) of chapter 70B.

146 b) by 1 year from effective date of legislation promulgate regulations for design  
147 requirements of capital construction projects consistent with the ventilation requirements set  
148 forth in section 117A of chapter 149 and any regulations promulgated thereunder, including but  
149 not limited to the following:

150 1) windows must be capable of maintaining openings large enough to accommodate a  
151 box or window fan

152 2) ventilation systems must be compatible with the use of filters with a MERV-13 rating  
153 or higher

154 3) nurses' offices and medical waiting rooms must meet the requirements of ASHRAE  
155 Standard 170

156 4) occupied spaces without windows must have sufficient ventilation to achieve 6 air  
157 changes per hour of outdoor air or a combination of outdoor air and air conditioned with a filter  
158 of minimum MERV 13 efficiency

159 5) bathrooms must have exhaust fans capable of producing negative pressure relative to  
160 the rest of the school building

161 SECTION 4. Notwithstanding any general or special law, rule or regulation to the  
162 contrary, the department of elementary and secondary education, in consultation with the  
163 department of public health, shall ensure the operation of COVID-19 pooled surveillance testing  
164 programs, consistent with public health best practices and relevant guidance from the Centers for  
165 Disease Control and Prevention, in all public school districts, for students and employees, on a  
166 weekly basis or more frequently. Said testing programs, including but not limited to service  
167 provider contracts, testing supplies, follow-up individual testing, personal protective equipment,  
168 and compensation for staff associated with testing, shall be operated at no cost to the public  
169 school districts and shall be paid for by available state funds or eligible federal funds committed  
170 to the commonwealth to provide financial assistance in response to the 2019 novel coronavirus  
171 pandemic. The testing programs in each school district shall cover employees and students at the

172 elementary, middle and high school levels and shall be operated in accordance with the  
173 provisions of Chapter 150E of the General Laws. Nothing in this section shall restrict or limit  
174 more protective or stringent school district or local government mandates, policies or guidance in  
175 response to the 2019 novel coronavirus pandemic.

176 SECTION 5. Notwithstanding any general or special law, rule or regulation to the  
177 contrary, and in accordance with guidance issued by the department of elementary and secondary  
178 education, the department of public health and the Centers for Disease Control and Prevention,  
179 the department of elementary and secondary education shall ensure that employees and students  
180 in all public school districts have access to face coverings, masks and other personal protective  
181 equipment to prevent exposure to COVID-19; provided, that the district shall provide any  
182 additional personal protective equipment necessary for conducting COVID-19 testing; and  
183 provided, that said face coverings, masks, personal protective equipment, and any additional  
184 personal protective equipment necessary for conducting COVID-19 testing shall be provided at  
185 no cost to the public school districts and shall be paid for by available state funds or eligible  
186 federal funds committed to the commonwealth to provide financial assistance in response to the  
187 2019 novel coronavirus pandemic. Nothing in this section shall restrict or limit more protective  
188 or stringent school district or local government mandates, policies or guidance in response to the  
189 2019 novel coronavirus pandemic.

190 SECTION 6. Notwithstanding any special or general law to the contrary, there shall be a  
191 special commission to study ventilation in public school classrooms and facilities, including the  
192 regulation of minimum and maximum allowable air temperatures and relative humidity, as well  
193 as any relevant statistics on the number of air-conditioned public schools in Massachusetts, the  
194 impact of indoor air quality on children, including, but not limited to, children with respiratory

195 conditions or special needs, and the commonwealth’s state funding and bidding processes for  
196 installing air conditioning and heating upgrades in public schools.

197           The special commission shall consist of: the secretary of the executive office of  
198 education, or their designee, who shall serve as chair; the commissioner of the department of  
199 elementary and secondary education, or their designee; the commissioner of the department of  
200 public health, or their designee; the executive director of the Massachusetts School Building  
201 Authority; a representative of the Boston Society for Architects; a representative of the  
202 Massachusetts Facilities Administrators Association; a representative of the Massachusetts  
203 Teachers Association; a representative of the American Federation of Teachers of  
204 Massachusetts; a representative of the Massachusetts Association of School Committees; a  
205 representative of the Massachusetts Parent Teacher Association; two teachers, selected by the  
206 Massachusetts Teachers Association, who have experienced difficulties with classroom  
207 temperatures; a school nurse, selected by the Massachusetts School Nurse Organization; the  
208 president of the Massachusetts Association of School Superintendents, or their designee; two  
209 members of the House of Representatives, one of whom to be appointed by the Speaker of the  
210 House of Representatives, and the other to be appointed by the minority leader; two members of  
211 the Senate, one of whom to be appointed by the President of the Senate, and the other to be  
212 appointed by the minority leader. The chair shall commence the first meeting of the commission  
213 not later than December 1, 2023.

214           The special commission shall submit its findings and recommendations, together with  
215 drafts of any legislation, to the clerks of the House of Representatives and the Senate and the  
216 chairs of the joint committee on education not later than December 1, 2024.

217           SECTION 7. Sections 4-5 of this act shall be in effect for the duration of the governor's  
218   March 10, 2020 declaration of a state of emergency.