

HOUSE No. 605

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act protecting school children from environmental toxins..

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. This Act maybe cited as the 'Public School Sites Protection Act of 2009.

2 SECTION 2. This bill is intended to protect children and personnel of public school in
3 Massachusetts from exposure to environmental toxins, and consequent damage to health.

4 SECTION 3. Section 3 of Chapter 21A of the General Laws, as so appearing, is hereby
5 amended by inserting after subsection 3(e) the following section:

6 Section 3 (1) (i) the department of environmental protection, in consultation with the
7 department of public health, shall promulgate regulations based on the best available science, to
8 establish health risk assessment guidelines and procedures for evaluating proposed sites for the
9 construction, expansion, or acquisition, by lease, purchase or otherwise, of sites for publicly-
10 funded schools, including charter schools.

11 (ii) Such regulations shall require, at minimum, that the public body responsible for a
12 proposed school siting conduct a public participation plan for the siting process, to be approved
13 by the department, and that such public body conduct an Initial Environmental Assessment (IEA)

14 for any site it proposes. The public body shall be required to hire a licensed environmental
15 professional, with credentials to be determined by the department of environmental protection, to
16 conduct an Initial Environmental Assessment (IEA), the scope and content of which shall be set
17 forth in the regulations of the department, and which shall include information on current and
18 past site uses, contamination, and potential sources of pollution, to determine whether the site
19 was likely contaminated by hazardous substances.

20 Such regulations shall require that the IEA identify any of the following sources of
21 contamination within two miles of a proposed school site:

22 Any known or suspected hazardous, industrial, or municipal waste disposal site;

23 Any private, commercial, industrial, military, or government facility where toxic
24 chemicals were used, stored or disposed of;

25 Refineries, mines, scrap yards, factories, dry cleaning facilities or sites where there have
26 been

27 chemical spills or other significant contamination;

28 US EP A or state designated Brownfield site (even if remediated);

29 Facilities found on EPA's Toxic Release Inventory (TRI);

30 Agricultural land where pesticides and herbicides have been applied;

31 Dust generators such as fertilizer or cement plants, or saw mills;

32 Leaked gasoline or other products from underground storage tanks;

33 Concentrated electrical magnetic fields from high intensity power lines and cellular
34 communication towers;

35 Freeways, highways, or other roadways that, on an average day, has traffic in excess of
36 50,000 vehicles;

37 Railroad yards and beds; and

38 Wastewater treatment plants.

39 If a proposed site was previously used for hazardous or garbage waste disposal, or for
40 disposal of construction and demolition materials, or if it is within 1,000 feet of any property
41 used for these purposes, then the site shall be excluded from consideration for use as a school.

42 The department of environmental protection shall provide that it review the final draft of
43 the Initial Environmental Assessment. DEP may give preliminary approval to the assessment,
44 disapprove the assessment, request more information, or exclude the site from school use. When
45 the final draft of the IEA is complete and has received preliminary approval by the DEP, the
46 Public Body shall publish and otherwise disclose to the public such information as DEP shall by
47 regulation require; proceed with its approved public participation plan, and vote on whether to
48 continue its consideration of a site.

49 If a proposed site is within 1,000 feet of any potential source of contamination including
50 those listed as items A-L above, the department shall by regulation require that a Preliminary
51 Endangerment Assessment (PEA), be conducted. A PEA shall also be required if any data or
52 information collected in the Initial Environmental Assessment reveals that the site, or any portion
53 of the site, is subject to serious hazardous chemical exposures from any source.

54 If a PEA is not otherwise required as stated above, then the licensed environmental
55 professional shall determine whether a PEA is warranted for a proposed site, and shall state in
56 writing the facts that provide the basis for this determination. DEP shall by regulation provide for
57 the scope and content of the PEA, including risk assessment methodologies, descriptions of all
58 pathways of exposure to any toxic substances on or near the site, and description of the health
59 consequences of exposure to such substance.

60 If existing contamination is discovered as at the site, the levels found should be compared
61 to the Brownfield Cleanup Program soil cleanup standards for unrestricted use developed by the
62 New York State Department of Environmental Conservation, or such other, similar standards as
63 the department of environmental protection may by regulation designate.

64 If contaminant levels exceed any of these values, a PEA shall be conducted. If any
65 portion of a proposed site is contaminated, then the entire site must undergo a PEA.

66 The department of environmental protection will review all comments received on the
67 Preliminary Endangerment Assessment, and will then accept or reject the conclusion of the
68 assessment, and recommend whether the site can be used without further remediation or study,
69 whether the site is categorically excluded for use as a school, or whether further study is
70 required. DEP shall explain its reasons for accepting or rejecting the assessment. Once DEP has
71 approved the Preliminary Endangerment Assessment, the public body shall review the
72 assessment and public comments received.

73 The Public Body shall then, subject to its approved public participation plan, consider the
74 PEA and comments on it. It shall then vote whether to abandon the site, proceed with a
75 remediation plan, or to consider an alternative site.

76 DEP shall, by regulation, adopt criteria and methodologies for the cleanup of
77 contaminated sites and mitigation of health hazards on sites deemed otherwise suitable for use as
78 schools.

79 SECTION 4. Mass DEP shall publish testing reports on its website all Initial
80 Environmental Assessments and Preliminary Endangerment Assessments submitted to it, and
81 otherwise make them available to the public.

82 SECTION 5. Section 3 Chapter 70B of the General Laws, so as appearing, is hereby
83 amended by inserting the following paragraph:

84 The Massachusetts School Building Authority shall provide all applicants with the DEP's
85 applicable regulations. MSBA shall neither approve nor provide financial support to a project
86 until it has completed the site evaluation process provided by law, and received all required
87 approvals.

88 SECTION 6. The Massachusetts Development Finance Agency shall inform all
89 applicants for grants or loans with the department of environmental protection's applicable
90 regulations. The Massachusetts Development Finance Agency shall provide no financial support,
91 whether grant, loan, loan guarantee, or any other financing or financial aid, to any school project
92 until the applicant has completed the site evaluation process provided by law, and received all
93 required approvals.

94 SECTION 7. The department of environmental protection, or any group of ten aggrieved
95 citizens, may apply to the superior court for relief for any alleged violation of this act, and the
96 regulations adopted pursuant to it.

97 SECTION 8. Definitions

98 "school" shall mean an educational facility, from pre-kindergarten through grade 12,
99 which is funded in whole or in part by public funds, including charter schools.

100 "public body" shall mean a school committee, regional school district, board of directors
101 of a charter school or any other lawfully constituted body authorized to locate, re-locate, build,
102 reconstruct, expand, or renovate a school within the Commonwealth of Massachusetts.