

**HOUSE . . . . . No. 808**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act reducing human exposure to particulate matter pollution..

*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 18. Chapter 17 of the General Laws is hereby amended by inserting after  
2 Section 17 the following sections:—

3 “particulate matter” shall mean a broad class of chemically and physically diverse  
4 substances that exist as discrete particles in air

5 “fine particulate matter” shall mean particulate matter less than or equal to 2.5  
6 micrometers in diameter

7 “ultrafine particulate matter” shall mean particulate matter less than or equal to .1  
8 micrometers in diameter (.1 micrometers is equivalent to 100 nanometers)

9 SECTION 18A. This Act may be cited as the ‘Healthy Breathing Act of 2007’

10 SECTION 18B. This bill proposes to reduce the incidences of health problems caused or  
11 worsened by exposure to fine and ultrafine particulate matter, by limiting construction of certain  
12 facilities in areas with elevated concentrations of particulate matter pollution, or by mitigating  
13 such exposure to levels compatible with human health. In such areas, this bill prohibits the

14 construction or establishment of publicly funded or subsidized residential developments and of  
15 institutional uses occupied by individuals especially sensitive to the adverse effects of particulate  
16 matter pollution.

17 SECTION 18C. Chapter 21A of the General Laws, as appearing in the 2004 Official  
18 Edition, is hereby amended by inserting after section 18A the following section:-

19 Section 18B. The department of environmental protection, in consultation with the  
20 department of public health, shall promulgate regulations based on the best available science  
21 establishing health risk assessment guidelines for ultrafine and fine particulate matter  
22 concentrations at a development site or portion of a development site covered in subparagraph g  
23 of section 10 of chapter 28A, section 9D of chapter 40A, subsection 6 of section 7 of chapter  
24 70B, section 51 of chapter 111 or Section 71 of Chapter 111. To ensure the accuracy and  
25 completeness of the assessment, these guidelines shall set forth standard procedures for  
26 conducting air dispersion modeling; obtaining dose-response values; estimating the frequency,  
27 duration and intensity of exposure; and estimating both acute and chronic health risks.

28 SECTION 18D. Section 10 of chapter 28A of the General Laws, as so appearing, is  
29 hereby amended by adding the following paragraph:-

30 (g) The office shall not issue an original license for a school age child care program, day  
31 care center, family day care home or large family day care home which is not a part of a family  
32 day care system, family day care system, group care facility or temporary shelter facility located  
33 within 500 feet of a high-activity roadway as defined in section 1A of chapter 40A of the  
34 General Laws or a train station or train yard serving diesel locomotives unless the applicant has  
35 carried out the health risk assessment described in section 18B of chapter 21A of the General

36 Laws and the assessment results indicate that short-term and long-term exposure to air at the site  
37 will pose no significant health risk, or can and will be mitigated so as to pose no significant  
38 health risk.

39 SECTION 18E. Section 1A of chapter 40A of the General Laws, as so appearing, is  
40 hereby amended by inserting before the definition of “permit granting authority” the following  
41 definitions:-

42 “high-activity roadway” shall mean any roadway that, on an average day, has traffic in  
43 excess of 50,000 vehicles.

44 “hospital” shall mean any institution in the Commonwealth of Massachusetts, however  
45 named, whether conducted for charity or for profit, which is advertised, announced, established  
46 or maintained for the purpose of caring for persons admitted thereto and staying overnight for  
47 diagnosis or medical, surgical or restorative treatment which is rendered within said institution;  
48 but shall not include clinics, day surgery centers, dialysis centers, or other such health care  
49 facilities which do not admit patients overnight.

50 “long-term care facility” shall mean any institution whether conducted for charity or  
51 profit which is advertised, announced or maintained for the express or implied purpose of  
52 providing three or more individuals admitted thereto with long-term resident, nursing,  
53 convalescent or rehabilitative care; supervision and care incident to old age for ambulatory  
54 persons; or retirement home care for elderly persons. Long-term care facility shall include  
55 convalescent or nursing homes, rest homes, and charitable homes for the aged.

56 “public open space” shall mean space intended for use by the general public or by  
57 occupants or users of adjacent building for sports, play, recreation, relaxation, gardening, or

58 other outdoor activities; but shall not include passive green spaces, landscaped areas, planted  
59 buffer zones, or other open spaces which are not designed for recreational activity.

60 SECTION 18F. Section 1A of chapter 40A of the General Laws, as so appearing, is  
61 hereby amended by inserting after the definition of “permit granting authority” the following  
62 definition:-

63 “school” shall mean any public or private institution primarily engaged in the education  
64 of persons aged 18 years and younger. This definition does not include institutions of higher  
65 education.

66 SECTION 18G. Section 9 of chapter 40A of the General Laws, as so appearing, is  
67 hereby amended by adding the following paragraph:-

68 No publically funded or publically subsidized residential development, hospital, long-  
69 term care facility, school, or public open space shall be permitted to be constructed as of right  
70 without a special permit issued upon the finding set forth in Section 9D of Chapter 40A (OR if  
71 the plans for such facility include either a building structure, apart from parking structures and  
72 accessory structures, or public open space) within 500 feet of a high-activity roadway or a train  
73 yard or train station serving diesel locomotives.

74 SECTION 18H. Said chapter 40A is hereby further amended by inserting after section 9C  
75 the following section:-

76 Section 9D. The permit granting authority shall not grant a permit as described in section  
77 9 of chapter 40A, for proposed residential development, hospital, long-term care facility or  
78 school within 500 feet of a high-activity roadway or a diesel rail yard or station, unless

79 (a) the developer carries out the health risk assessment described in section 18B of  
80 chapter 21A of the General Laws, and

81 (b) the assessment results indicate that short-term and long-term exposure to air at the site  
82 poses no significant health risk, or

83 (c) such exposure can and will be mitigated so as to pose no significant risk to human  
84 health.

85 SECTION 18I: Subsection a of section 6 of chapter 70B of the General Laws, as so  
86 appearing, is hereby amended by inserting after subparagraph (6) the following paragraph:-

87 (7) If the school project includes structures, apart from parking structures and accessory  
88 structures, within 500 feet of a high-activity roadway as defined in Section 1A of Chapter 40A of  
89 the General Laws or a train station or train yard serving diesel locomotives, the applicant has  
90 carried out the health risk assessment described in section 18B of chapter 21A of the General  
91 Laws and the assessment results indicate that short-term and long-term exposure to air at the site  
92 will pose no significant health risk, or that such exposure can and will be mitigated so as to pose  
93 no significant risk to human health.

94 SECTION 18J: Section 51 of Chapter 111 of the General Laws, as so appearing, is  
95 hereby amended by inserting after the second paragraph the following paragraph:-

96 No original license shall be issued to establish a hospital so as to place structures or  
97 public open spaces inhabited by patients within 500 feet of a high-activity roadway or a train  
98 station or train yard serving diesel locomotives unless the developer has carried out the health  
99 risk assessment described in section 18B of chapter 21A of the General Laws and the assessment

100 results indicate that short-term and long-term exposure to air at the site will pose no significant  
101 health risk, or that such exposure can and will be mitigated so as to pose no significant risk to  
102 human health. In the case of a facility previously licensed as a hospital in which there is only a  
103 change in ownership, no such health risk assessment shall be required, in the absence of  
104 expansions or new construction.

105 SECTION 18K: Section 71 of Chapter 111 of the General Laws, as so appearing, is  
106 hereby amended by inserting after the second paragraph the following paragraph:-

107 No original license shall be issued to establish a convalescent or nursing home, rest home  
108 or charitable home for the aged so as to place residential structures within 500 feet of a high-  
109 activity roadway as defined in section 1 of chapter 40A or a train station or train yard serving  
110 diesel locomotives unless the developer has carried out the health risk assessment described in  
111 section 18B of chapter 21A of the General Laws and the assessment results indicate that short-  
112 term and long-term exposure to air at the site will pose no significant health risk, or that such  
113 exposure can and will be mitigated so as to pose no significant risk to human health. In the case  
114 of a facility previously licensed in which there is only a change in ownership, no such health risk  
115 assessment shall be required, in the absence of expansion or new construction.