

**HOUSE . . . . . No. 1169**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Martha M. Walz and Byron Rushing***

*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 protecting sunlight in certain public parks.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Martha M. Walz</i>	<i>8th Suffolk</i>	<i>1/20/2011</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>	<i>2/3/2011</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/4/2011</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>2/2/2011</i>

**HOUSE . . . . . No. 1169**

By Representatives Walz of Boston and Rushing of Boston, a petition (accompanied by bill, House, No. 1169) of Martha M. Walz, Byron Rushing and others for legislation to regulate the construction of buildings and structures that would cast shadows on certain public parks . Environment, Natural Resources and Agriculture.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Eleven**

An Act protecting sunlight in certain public parks.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect the public's access to sunlight in certain public parks, 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. Section 1 of Chapter 362 of the Acts of 1990 is hereby amended by striking  
2 the definition of “new shadow” and inserting in place thereof the following definition:-

3 “New shadow”, the casting of a shadow at any time of day on an area which is not cast in  
4 shadow at such time by a structure. New shadow shall not include a shadow cast (a) by a  
5 structure which exists; (b) by a structure for which a building permit has been granted on the date  
6 upon which application is made to a permit-granting authority for a proposed structure; or (c) by  
7 the proposed structure for which approval is being sought from a permit granting authority if  
8 such structure conforms to as-of-right height limits allowed by the Boston, Cambridge or Lynn  
9 Zoning Code, whichever is applicable, as in force on May first, nineteen hundred and ninety.

10 New shadow shall also not include a de minimis shadow cast by an antenna, fence, flagpole, sign

11 or other similar structure. If the proposed structure is proposed for a site that is or may be  
12 exempt from Boston zoning law or if said site has no as-of-right height limit, the height limit for  
13 the purpose of determining new shadow shall be the height limit for the zoning district in which  
14 the site is located.

15 SECTION 2. Said section 1 of said chapter 362 of the Acts of 1990 is hereby further  
16 amended, in the definition of “permit granting authority,” by inserting after the words  
17 “authorized to grant permits or approvals pursuant to” the following words:- chapter thirty,  
18 sections sixty one through sixty two H, inclusive,.

19 SECTION 3. Said section 1 of said chapter 362 of the Acts of 1990 is hereby further  
20 amended in the definition of “permit granting authority”, by inserting after the words “the  
21 Inspectional Services Department in the city of Boston,” the following words:- the Inspectional  
22 Services Department in the city of Cambridge,.

23 SECTION 4. Said section 1 of said chapter 362 of the Acts of 1990 is hereby further  
24 amended, in the definition of “structure”, by inserting after the words “and (ii) not located within  
25 the boundaries of the Boston Common or the Lynn Common” the following words:- or Charles  
26 River Esplanade, Christopher Columbus Park, Commonwealth Avenue Mall, Copley Square  
27 Park, Magazine Beach Park, or Back Bay Fens.

28 SECTION 5. Said section 1 of said chapter 362 of the Acts of 1990 is hereby further  
29 amended by inserting the following 6 definitions:-

30 “Back Bay Fens”, the land in the city of Boston bounded by The Fenway, Park Drive and  
31 Boylston Street.

32 “Charles River Esplanade”, the land in the city of Boston bounded by the Charles River  
33 Dam, the Boston University Bridge, so called, the Charles River, Embankment Road, and James  
34 Jackson Storrow Memorial Drive.

35 “Christopher Columbus Park”, the land in the city of Boston bounded by Atlantic  
36 Avenue, the Boston Harbor, Long Wharf, and Commercial Wharf.

37 “Commonwealth Avenue Mall”, the land in the city of Boston bounded by Arlington  
38 Street, Kenmore Street, Commonwealth Avenue (westbound) and Commonwealth Avenue  
39 (eastbound).

40 “Copley Square Park”, the land in the city of Boston bounded by Boylston Street,  
41 Clarendon Street, St. James Avenue, and Dartmouth Street, excluding therefrom the land  
42 occupied by Trinity Church.

43 “Magazine Beach Park”, the land in the city of Cambridge bounded by Memorial Drive,  
44 the Charles River, the Boston University Bridge, so called, and River Street.

45 SECTION 6. Said chapter 362 of the Acts of 1990 is hereby amended by inserting after  
46 section 2 the following section:-

47 Section 3. Notwithstanding any provision of chapter 30, sections 61 to 62H inclusive,  
48 chapter 40A, chapter 121A, or chapter 121B of the General Laws or chapter 665 of the Acts of  
49 1956, or any other general or special law to the contrary, no permit granting authority shall take  
50 any action which would authorize the construction of any structure which would cast a new  
51 shadow on the Charles River Esplanade, Christopher Columbus Park, Commonwealth Avenue  
52 Mall, Copley Square Park, Magazine Beach Park, or the Back Bay Fens; provided, however, that

53 the provisions of this section shall not apply to actions authorizing any structure which casts a  
54 new shadow upon the aforementioned lands only during the first hour after sunrise or before  
55 seven o'clock in the morning, whichever is later, or the last hour before sunset.

56 SECTION 7. Section 1 of Chapter 384 of the Acts of 1992 is hereby amended by striking  
57 the definition of "new shadow" and inserting in place thereof the following definition:-

58 "New shadow", the casting of a shadow at any time of day on an area which is not cast in  
59 shadow at such time by a structure. New shadow shall not include a shadow cast (a) by a  
60 structure which exists; (b) by a structure for which a building permit has been granted on the date  
61 upon which application is made to a permit-granting authority for a proposed structure; or (c) by  
62 the proposed structure for which approval is being sought from a permit granting authority if  
63 such structure conforms to as-of-right height limits allowed by the Boston, Cambridge or Lynn  
64 Zoning Code, whichever is applicable, as in force on May first, nineteen hundred and ninety.  
65 New shadow shall also not include a de minimis shadow cast by an antenna, fence, flagpole, sign  
66 or other similar structure. If the proposed structure is proposed for a site that is or may be  
67 exempt from Boston zoning law or if said site has no as-of-right height limit, the height limit for  
68 the purpose of determining new shadow shall be the height limit for the zoning district in which  
69 the site is located.