HOUSE DOCKET, NO. 3197 FILED ON: 1/21/2011

# HOUSE . . . . . No. 2753

## The Commonwealth of Massachusetts

PRESENTED BY:

***Denise Provost***

*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 reducing human exposure to particulate matter pollution.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Denise Provost* | *27th Middlesex* |
| *Joyce A. Spiliotis* | *12th Essex* |
| *Frank I. Smizik* | *15th Norfolk* |
| *Elizabeth A. Malia* | *11th Suffolk* |
| *Carl M. Sciortino, Jr.* | *34th Middlesex* |
| *Patricia D. Jehlen* | |
| *Kay Khan* | *11th Middlesex* |

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# HOUSE . . . . . No. 2753

By Ms. Provost of Somerville, a petition (accompanied by bill, House, No. 2753) of Denise Provost and others for legislation to reduce human exposure to particulate matter pollution. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *808* OF 2009-2010.]

## The Commonwealth of Massachusetts

**In the Year Two Thousand Eleven**

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:*

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

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

"fine particulate matter" shall mean particulate matter less than or equal to 2.5 micrometers in diameter

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

SECTION 18A. This Act may be cited as the 'Healthy Breathing Act of 2011'

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.