

**SENATE . . . . . No. 942**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael O. Moore***

*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 relative to fair share contribution appeals..

PETITION OF:

| NAME:                        | DISTRICT/ADDRESS:    |
|------------------------------|----------------------|
| <i>Michael O. Moore</i>      |                      |
| <i>Harriette L. Chandler</i> |                      |
| <i>James B. Eldridge</i>     |                      |
| <i>Carolyn C. Dykema</i>     | <i>8th Middlesex</i> |
| <i>Michael J. Rodrigues</i>  |                      |
| <i>Bruce E. Tarr</i>         |                      |

**SENATE . . . . . No. 942**

By Mr. Moore, a petition (accompanied by bill, Senate, No. 942) of Michael O. Moore, Harriette L. Chandler, James B. Eldridge, Carolyn C. Dykema and other members of the General Court for legislation relative to fair share contribution appeals. Labor and Workforce Development.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Eleven**

An Act relative to fair share contribution appeals..

*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 188 of chapter 149 of the General Laws, as appearing in the 2010  
2 Official Edition, is hereby amended by adding the following subsections:-

3 (f) The Division of Unemployment Assistance and the Division of Health Care Finance  
4 and Policy may waive or mitigate an employer’s Fair Share Contributions, Free Rider  
5 Surcharges, fines, interest, and related fees.

6 (g) The Division of Health Care Finance and Policy shall create and implement a  
7 hardship appeal and waiver process for employers for the Fair Share Contribution (“FSC”)  
8 requirement and the Division of Unemployment Assistance may waive or reduce an employer’s  
9 fair share contributions, fines, interest, or related fees. Pending an appeal decision, the Division  
10 of Unemployment Assistance shall not continue to accrue or collect interest, penalties or fees on  
11 the Fair Share Contribution.

12 (h) The Division of Health Care Finance and Policy shall create and implement a  
13 hardship appeal and waiver process for employers for the Free Rider Surcharge. The  
14 Commonwealth Health Insurance Connector Authority, DUA and DHCFP will post  
15 downloadable versions of the FSC and Free Rider Surcharge hardship and waiver processes and  
16 relevant forms on their websites in an easy to find place and shall make available hardcopies of  
17 the instructions and forms. These forms shall be sent by DUA and DHCFP to all employers that  
18 are past due on payments regarding the Fair Share Contributions or Free Rider Surcharge.

19 (i) The FSC and Free Rider Surcharge appeals and waiver processes shall also take the  
20 following into consideration when determining when to waive or mitigate any fair share  
21 contribution or Free Rider Surcharge moneys owed by employers:

22 (1) If the employer is experiencing hardship such as but not limited to eviction, utility  
23 shut off, a medical emergency, death in their immediate family, a sickness or a short term  
24 disability that prevents the employer from working or running their business.

25 (2) If the employer's business has experienced a major disaster either natural or  
26 manmade such as but not limited to a fire, flooding, major wind damage, major theft, or the long  
27 term loss of electricity, water, or heat due to storms or other such causes.

28 (3) If the employer's business is a nonprofit organization that has a valid IRS letter of  
29 determination, the Division of Unemployment Assistance and the Division of Health Care  
30 Finance and Policy shall determine and acknowledge if any of moneys held by the business are  
31 bound by legal contractual obligations and therefore prohibits the employer from using said  
32 moneys to pay their assessed fines, interest, and related fees for the FSC and the Free Rider  
33 Surcharge.

34 (4) If the employer made a good faith effort to comply with Chapter 149: Section 188  
35 during the first year of the implementation of Chapter 58 or during their first year of business,  
36 whichever occurred last.

37 (j) If an employer is found liable for the Fair Share Contribution and/or the Free Rider  
38 Surcharge and if the employer relied on a paid/contracted outside third party's error, the third  
39 party will be entirely responsible for the said financial obligations.

40 (k) DUA or any entity of the Commonwealth shall not take any funds out of an  
41 employer's bank account if the employer has filed a FSC appeal, hardship appeal/waiver or is in  
42 the process of mediation and is awaiting a decision.

43 (l) The Division of Unemployment Assistance's help center staff shall not request  
44 identifying information from an employer that is seeking assistance from the Division of  
45 Unemployment Assistance helpline nor shall the staff share customer information with the audit  
46 department staff. No information recorded by the helpline may be used in an audit proceeding or  
47 be used to initiate an audit.

48 (m) For the purposes of Chapter 149: Section 188, an offer of insurance shall mean that  
49 the company has a group health insurance plan that is active or has made an offer of a group  
50 health insurance plan that can be put in place on the first day of the month that an eligible  
51 employee requests it. The offer of health insurance must be from an insurance carrier that is  
52 licensed by DOI to conduct business in the Commonwealth. All offers of group health insurance  
53 must have the date of the when request was made and the date or dates the plan can be activated.

54 (n) The Division of Health Care Finance and Policy, the Commonwealth Health  
55 Insurance Connector Authority, and the Division of Unemployment Assistance shall hold joint

56 quarterly meetings with the small businesses and small nonprofit advocates. The meetings times  
57 and places must be posted on their websites at least two weeks prior to the meeting.

58 (o) An employer aggrieved by a determination of the Director with respect to its liability  
59 for the fair share employer contribution or with respect to the amount it must pay may appeal  
60 such determination within 60 days and in the form and manner as specified by the Director.

61 (p) Upon completion of a hearing on an appeal with respect to an employer's liability for  
62 the fair share employer contribution or to the amount it must pay, the Division of Health Care  
63 Finance and Policy shall render a written decision within 90 days for an employer with more  
64 than 50 full-time equivalent employees and within 30 days for an employer with 50 or fewer full-  
65 time equivalent employees.