HOUSE DOCKET, NO. 3087 FILED ON: 1/18/2013

HOUSE . . . . . No. 789

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 protecting school children from environmental toxins.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Denise Provost	*27th Middlesex*
James B. Eldridge	*Middlesex and Worcester*
Patricia D. Jehlen	*Second Middlesex*
Carl M. Sciortino, Jr.	*34th Middlesex*
Ellen Story	*3rd Hampshire*
Kay Khan	*11th Middlesex*
Cory Atkins	*14th Middlesex*
Jonathan Hecht	*29th Middlesex*

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By Ms. Provost of Somerville, a petition (accompanied by bill, House, No. 789) of Denise Provost and others that the Department of Environmental Protection and the Department of Public Health be directed to develop health risk assessment guidelines for proposed school construction sites. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2021* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

SECTION 1. This Act maybe cited as the 'School Protection Act.'

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

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

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

(ii) Such regulations shall require, at minimum, that the public body responsible for a proposed school siting conduct a public participation plan for the siting process, to be approved by the department, and that such public body conduct an Initial Environmental Assessment (IEA) for any site it proposes. The public body shall be required to hire a licensed environmental professional, with credentials to be determined by the department of environmental protection, to

conduct an Initial Environmental Assessment (IEA), the scope and content of which shall be set forth in the regulations of the department, and which shall include information on current and past site uses, contamination on the site, and in its vicinity, and potential sources of pollution, to determine whether the site was likely contaminated by hazardous substances.

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

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

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

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

chemical spills or other significant contamination;

US EPA or state designated Brownfield site (even if remediated); or a site all of part of which is subject to an Activity and Use Limitation;

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

Agricultural land where pesticides and herbicides have been applied;

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

Leaked gasoline or other products from underground storage tanks;

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

Freeways, highways, or other roadways that have 50,000 or more motor vehicles trips on an average day;

Railroad yards and beds; and

Wastewater treatment plants.

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

The department of environmental protection shall provide that it review the final draft of the Initial Environmental Assessment. DEP may give preliminary approval to the assessment, disapprove the assessment, request more information, or exclude the site from school use. When

the final draft of the lEA is complete and has received preliminary approval by the DEP, the Public Body shall publish and otherwise disclose to the public such information as DEP shall by regulation require; proceed with its approved public participation plan, and vote on whether to continue its consideration of a site.

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

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

If existing contamination is discovered as at the site, the levels found should be compared to the Brownfield Cleanup Program soil cleanup standards for unrestricted use developed by the New York State Department of Environmental Conservation, or such other, similar standards as the department of environmental protection may by regulation designate. Air pollution sources shall be monitored on multiple days for comparison with UP EPA 24-hour exposure limits for the relevant pollutant.

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

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

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

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

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

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

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

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

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

SECTION 8. Definitions

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

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