The Commonwealth of Massachusetts

PRESENTED BY:

Paul R. Feeney

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 to ensure the health and safety of the commonwealth’s students and educators.

PETITION OF:

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<tr>
<th>NAME</th>
<th>DISTRICT/ADDRESS</th>
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<tr>
<td>Paul R. Feeney</td>
<td>Bristol and Norfolk</td>
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<tr>
<td>Adam J. Scanlon</td>
<td>14th Bristol</td>
<td>2/23/2021</td>
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<td>Jack Patrick Lewis</td>
<td>7th Middlesex</td>
<td>2/24/2021</td>
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<td>Carmine Lawrence Gentile</td>
<td>13th Middlesex</td>
<td>2/24/2021</td>
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<td>Angelo J. Puppolo, Jr.</td>
<td>12th Hampden</td>
<td>2/24/2021</td>
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<td>Erika Uyterhoeven</td>
<td>27th Middlesex</td>
<td>2/27/2021</td>
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<td>James J. O'Day</td>
<td>14th Worcester</td>
<td>3/3/2021</td>
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<td>Joanne M. Comerford</td>
<td>Hampshire, Franklin and Worcester</td>
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<td>Anne M. Gobi</td>
<td>Worcester, Hampden, Hampshire and Middlesex</td>
<td>3/11/2021</td>
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<td>Patricia D. Jehlen</td>
<td>Second Middlesex</td>
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<td>Sal N. DiDomenico</td>
<td>Middlesex and Suffolk</td>
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<td>Patrick M. O'Connor</td>
<td>Plymouth and Norfolk</td>
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<td>Mary S. Keefe</td>
<td>15th Worcester</td>
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<td>Maria Duaine Robinson</td>
<td>6th Middlesex</td>
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<td>Walter F. Timilty</td>
<td>Norfolk, Bristol and Plymouth</td>
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<td>Marc R. Pacheco</td>
<td>First Plymouth and Bristol</td>
<td>5/10/2021</td>
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An Act to ensure the health and safety of the commonwealth’s students and educators.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to ensure the health and safety of the commonwealth’s students, educators and communities during the 2019 novel coronavirus pandemic, 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:

SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after section 117, the following section:-

Section 117A: Ventilation in Schools

a. Definitions

As used in this section, the following words shall, unless a different meaning clearly appears from the context, have the following meanings:-
"Advanced technologies" means Ultraviolet Germicidal Irradiation (UVGI) or Bipolar 
ionization or other processes or devices for deactivating [airborne] viruses or [airborne] virus 
particles or other airborne agents of disease.

"ASHRAE Standard 170" means ANSI/ASHRAE/ASHE Standard 170, Ventilation of 
Health Care Facilities.

"Air changes per hour" means a measure of the fresh air volume added to or removed 
from a space in one hour, calculated by dividing the outdoor air supply volume in cubic feet per 
hour by the volume in cubic feet of the occupied space; provided, however, that said calculation 
may include filtered air as part of the outdoor air supply volume in an amount consistent with the 
efficiency rating of the filters used to condition the air.

"Declaration of a pandemic" means the characterization by the World Health 
Organization of an infectious disease outbreak as a pandemic; or a declaration related to an 
infectious disease outbreak by the federal Department of Health and Human Services of a public 
health emergency in accordance with section 319 of the Public Health Service Act (42 U.S.C. 
247d); or a declaration of a state of emergency related to an infectious disease outbreak by the 
Governor of the Commonwealth in accordance with Chapter 639 of the Acts of 1950 and Section 
2A of Chapter 17 of the General Laws.

"Department" means the Department of Labor Standards.

"Employee organization" means any lawful association, organization, federation, council, 
or labor union as defined in section 1 of chapter 150E of the General Laws.
"Filtered air" means air that has been a) conditioned induct, in air handling units, or in other components of a ventilation system, by filters with a MERV-13 or higher efficiency rating, or b) conditioned by a portable air cleaner.

"Fresh air" means outdoor air free of outdoor air pollutants, or a combination of such outdoor air and filtered air

Local education authority for the purpose of this section 117A means a public authority legally constituted by the state as an administrative agency to provide control of and direction for pre-kindergarten through grade 12 public educational institutions or the owners or operators of a private educational institution approved by a school committee in accordance with section 1 of chapter 76.

"Occupied space" means, unless otherwise specified, any area in a school building used for educational, administrative, medical, toileting, or any purpose other than storage.

"Outdoor air" means air introduced from outside a school building from intakes free of contaminated air.

"Personal protective equipment" means equipment worn to minimize exposure to hazards from infectious disease, including, but not limited to, gloves, face shields, masks, safety glasses, respirators, coveralls, or full body suits.

"Portable air cleaner" means a portable high-efficiency particulate air (HEPA) fan/filtration device or system with an appropriate clean air delivery rate.

"Relative humidity" means the amount of water vapor present in air expressed as a percentage of the amount needed for saturation at the same temperature.
"School building" means any structure used for educating pupils by a local educational authority.

This section means Chapter 149 section 117A.

"Ventilation" means the supply of fresh air, heat, and air conditioning (if available) to occupied space and the simultaneous removal by an exhaust system of air from an occupied space.

"Ventilation system" means the building system and its component parts dedicated to ventilation.

b. The Department shall, no later than 9 months after effective date of this section, in consultation with and with guidance from the Occupational Health and Safety Hazard Advisory Committee as described in section 6 ½ (c) of chapter 149, promulgate regulations related to school building ventilation consistent with sections c through f below.

c. Ventilation Requirements

1) Except as otherwise indicated in section c (2), as soon as practicable but no later than two years after the effective date of this section ventilation systems in school buildings must provide ventilation to all occupied spaces, that meets at least one of the following measures:

a) A minimum of 4 air changes per hour of fresh air

b) A minimum of 20 cubic feet per minute of outdoor air per person

c) A maximum of 800 parts per million of carbon dioxide
2) The ventilation systems of bathrooms in school buildings must comply with the current Massachusetts Building Code.

3) Ventilation systems in school buildings must maintain temperatures in occupied spaces between 66 degrees Fahrenheit and 78 degrees Fahrenheit.

d. Pandemic requirements

In the event of the declaration of a pandemic, school buildings must meet the following measures:

1) the ventilation system must provide sufficient ventilation to all occupied spaces except those specified in sections a) and b) below, to reduce the risk of airborne transmission of disease by 95%, through the use of fresh air, portable air cleaners, or advanced technologies; provided, however, that the following areas must meet additional requirements:

a) the ventilation system in nurses’ offices and designated medical waiting areas must comply with ASHRAE Standard 170

b) bathrooms must have working exhaust systems capable of maintaining negative air pressure relative to the rest of the school building; exhaust systems must run constantly

2) the relative humidity shall be maintained at between 40% and 60%

3) school buildings must provide sufficient disinfectants, cleaning and handwashing areas, and personal protective equipment to comply with best practices as defined by guidance from governmental public health entities, public health research institutions, or occupational health research institutions
e. Testing, adjustment and balancing

Local education authorities shall ensure that ventilation systems in all school buildings meet and continue to meet the requirements in sections c and d above by completing the following activities:

1) Conduct testing, adjustments, balancing, and repairs, which shall consist of

   a) an assessment of the ventilation system in each school building to determine if each school building meets the requirements of sections b and c above, including but not limited to measuring outdoor supply air volume, total supply air volume, exhaust air volume, the volume of all occupied spaces, and calculating air changes per hour in each occupied space, and including providing an inventory of personal protective equipment currently available for use in each school building. This will be completed as soon as practicable but no later than 18 months after the effective date of this section.

   b) The entity performing the assessment described in section (e)(1)(a) above shall issue a report of the results of the assessment, including the methods used, and results of the measurements and calculation of air changes per hour.

   c) The report described in section (e)(1)(b) shall be a public record as defined in section 10(a) of Chapter 66 and section 7, part 26 of Chapter 4, and shall be posted on the website for each school building or local education authority, and on the Department’s website and on the website of the Department of Elementary and Secondary Education no later than 30 days after completion of the assessment.
d) If, after assessment, occupied spaces in school buildings are determined not to meet the requirements of sections c and d above, by 9 months after completion of first assessment local education authorities must complete adjustments, repairs or upgrades, and balancing sufficient to meet the requirements of section d above, and must conduct a post-remediation assessment in accordance in sections (e)(1)(a-c) above to confirm that ventilation requirements are being met and that supplies of materials described in section d (3) are adequate.

e) Reports documenting the repairs and upgrades made, and the confirmation through assessments that the requirements of sections d above have been met shall be public records, and shall be posted on the website for each school building or local education authority, and on the websites of the Department of Labor Standards and the Department of Elementary and Secondary Education no later than 30 days after completion.

2) Local education authorities shall conduct assessments that include testing, adjustments and balancing as described in section (e)(1) above no less frequently than every 2 years

f. Enforcement

1) An employee or employee organization aggrieved by a violation of this section 117A may file a complaint with the Department, which shall conduct an investigation and issue preliminary findings and orders within 30 days of receiving the complaint. The Department shall have authority to order the local education authority to make repairs or upgrades to come into compliance with this section.

2) If the Department has not completed its investigation and issued preliminary findings and orders within 30 days, or if the Department has completed its investigation and issued preliminary findings and orders and the employee or employee organization is still aggrieved, the
aggrieved employee or employee organization may, within 3 years after the violation, institute
and prosecute in his/her/its own name and on his/her/its own behalf, a civil action for injunctive
relief, for an order for repairs or upgrades, for any
damages incurred, and for any lost wages and other benefits. An employee or employee
organization so aggrieved who prevails in such an action shall be awarded the costs of the
litigation and reasonable attorneys' fees.

SECTION 2. The second paragraph of section 150 of Chapter 149 is amended to insert
after the word “sections” the following words: “6 ½, 18A,” and after the word “52E” the
following words: “113, 117, [117A].

SECTION 3. The Massachusetts School Building Authority, in consultation with the
advisory board established pursuant to section 3A of chapter 70B of the General Laws, shall
a) create a temporary category of major reconstruction project, as defined in section 2 of
chapter 70B, to be used for the upgrade or repair of ventilation systems in public school
buildings as required by section 117A of chapter 149. The new category of major reconstruction
project shall be available to public school districts for period of time of 3 years from effective
date of legislation. The School Building Authority shall consider all applications for funding
under the new category of major reconstruction project to be applications for projects described
in section 8 (1) of chapter 70B.

b) by 1 year from effective date of legislation promulgate regulations for design
requirements of capital construction projects consistent with the ventilation requirements set
forth in section 117A of chapter 149 and any regulations promulgated thereunder, including but
not limited to the following:
1) windows must be capable of maintaining openings large enough to accommodate a
   box or window fan

2) ventilation systems must be compatible with the use of filters with a MERV-13 rating
   or higher

3) nurses’ offices and medical waiting rooms must meet the requirements of ASHRAE
   Standard 170

4) occupied spaces without windows must have sufficient ventilation to achieve 6 air
   changes per hour of outdoor air or a combination of outdoor air and air conditioned with a filter
   of minimum MERV 13 efficiency

5) bathrooms must have exhaust fans capable of producing negative pressure relative to
   the rest of the school building

SECTION 4. Notwithstanding any general or special law, rule or regulation to the
contrary, the department of elementary and secondary education, in consultation with the
department of public health, shall ensure the operation of COVID-19 pooled surveillance testing
programs, consistent with public health best practices and relevant guidance from the Centers for
Disease Control and Prevention, in all public school districts, for students and employees, on a
weekly basis or more frequently. Said testing programs, including but not limited to service
provider contracts, testing supplies, follow-up individual testing, personal protective equipment,
and compensation for staff associated with testing, shall be operated at no cost to the public
school districts and shall be paid for by available state funds or eligible federal funds committed
to the commonwealth to provide financial assistance in response to the 2019 novel coronavirus
pandemic. The testing programs in each school district shall cover employees and students at the
elementary, middle and high school levels and shall be operated in accordance with the provisions of Chapter 150E of the General Laws. Nothing in this section shall restrict or limit more protective or stringent school district or local government mandates, policies or guidance in response to the 2019 novel coronavirus pandemic.

SECTION 5. Notwithstanding any general or special law, rule or regulation to the contrary, and in accordance with guidance issued by the department of elementary and secondary education, the department of public health and the Centers for Disease Control and Prevention, the department of elementary and secondary education shall ensure that employees and students in all public school districts have access to face coverings, masks and other personal protective equipment to prevent exposure to COVID-19; provided, that the district shall provide any additional personal protective equipment necessary for conducting COVID-19 testing; and provided, that said face coverings, masks, personal protective equipment, and any additional personal protective equipment necessary for conducting COVID-19 testing shall be provided at no cost to the public school districts and shall be paid for by available state funds or eligible federal funds committed to the commonwealth to provide financial assistance in response to the 2019 novel coronavirus pandemic. Nothing in this section shall restrict or limit more protective or stringent school district or local government mandates, policies or guidance in response to the 2019 novel coronavirus pandemic.

SECTION 6. Notwithstanding any special or general law to the contrary, there shall be a special commission to study ventilation in public school classrooms and facilities, including the regulation of minimum and maximum allowable air temperatures and relative humidity, as well as any relevant statistics on the number of air-conditioned public schools in Massachusetts, the impact of indoor air quality on children, including, but not limited to, children with respiratory
conditions or special needs, and the commonwealth’s state funding and bidding processes for installing air conditioning and heating upgrades in public schools.

The special commission shall consist of: the secretary of the executive office of education, or their designee, who shall serve as chair; the commissioner of the department of elementary and secondary education, or their designee; the commissioner of the department of public health, or their designee; the executive director of the Massachusetts School Building Authority; a representative of the Boston Society for Architects; a representative of the Massachusetts Facilities Administrators Association; a representative of the Massachusetts Teachers Association; a representative of the American Federation of Teachers of Massachusetts; a representative of the Massachusetts Association of School Committees; a representative of the Massachusetts Parent Teacher Association; two teachers, selected by the Massachusetts Teachers Association, who have experienced difficulties with classroom temperatures; a school nurse, selected by the Massachusetts School Nurse Organization; the president of the Massachusetts Association of School Superintendents, or their designee; two members of the House of Representatives, one of whom to be appointed by the Speaker of the House of Representatives, and the other to be appointed by the minority leader; two members of the Senate, one of whom to be appointed by the President of the Senate, and the other to be appointed by the minority leader. The chair shall commence the first meeting of the commission not later than December 1, 2021.
The special commission shall submit its findings and recommendations, together with drafts of any legislation, to the clerks of the House of Representatives and the Senate and the chairs of the joint committee on education not later than December 1, 2022.

SECTION 7. Sections 4-5 of this act shall be in effect for the duration of the governor’s March 10, 2020 declaration of a state of emergency.