

HOUSE No. 808

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 passage of the accompanying bill:
An Act reducing human exposure to particulate matter pollution.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|--------------------------|-------------------|
| Denise Provost | 27th Middlesex |
| Cleon H. Turner | 1st Barnstable |
| William N. Brownsberger | 24th Middlesex |
| Carl M. Sciortino, Jr. | 34th Middlesex |
| Timothy J. Toomey, Jr. | 26th Middlesex |
| Elizabeth A. Malia | 11th Suffolk |
| Patricia D. Jehlen | Second Middlesex |
| David B. Sullivan | 6th Bristol |
| Richard J. Ross | 9th Norfolk |
| Cheryl A. Coakley-Rivera | 10th Hampden |
| Paul McMurtry | 11th Norfolk |
| Kevin G. Honan | 17th Suffolk |
| Sean Garballey | 23rd Middlesex |
| Benjamin Swan | 11th Hampden |
| Cory Atkins | 14th Middlesex |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 840 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
—————

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 2007’

SECTION 18B. This bill proposes to reduce the incidences of health problems caused or worsened by exposure to fine and ultrafine particulate matter, by limiting construction of certain facilities in areas with elevated concentrations of particulate matter pollution, or by mitigating such exposure to levels compatible with human health. In such areas, this bill prohibits the construction or establishment of publicly funded or subsidized residential developments and of institutional uses occupied by individuals especially sensitive to the adverse effects of particulate matter pollution.

SECTION 18C. Chapter 21A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after section 18A the following section:-

Section 18B. The department of environmental protection, in consultation with the department of public health, shall promulgate regulations based on the best available science establishing health risk assessment guidelines for ultrafine and fine particulate matter concentrations at a development site or portion of a development site covered in subparagraph g of section 10 of chapter 28A, section 9D of chapter 40A, subsection 6 of section 7 of chapter 70B, section 51 of chapter 111 or Section 71 of Chapter 111. To ensure the accuracy and completeness of the assessment, these guidelines shall set forth standard procedures for conducting air dispersion modeling; obtaining dose-response values; estimating the frequency, duration and intensity of exposure; and estimating both acute and chronic health risks.

SECTION 18D. Section 10 of chapter 28A of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

(g) The office shall not issue an original license for a school age child care program, day care center, family day care home or large family day care home which is not a part of a family day care system, family day care system, group care facility or temporary shelter facility located within 500 feet of a high-activity roadway as defined in section 1A of chapter 40A of the General Laws or a train station or train

yard serving diesel locomotives unless the applicant has carried out the health risk assessment described in section 18B of chapter 21A of the General Laws and the assessment results indicate that short-term and long-term exposure to air at the site will pose no significant health risk, or can and will be mitigated so as to pose no significant health risk.

SECTION 18E. Section 1A of chapter 40A of the General Laws, as so appearing, is hereby amended by inserting before the definition of “permit granting authority” the following definitions:-

“high-activity roadway” shall mean any roadway that, on an average day, has traffic in excess of 50,000 vehicles.

“hospital” shall mean any institution in the Commonwealth of Massachusetts, however named, whether conducted for charity or for profit, which is advertised, announced, established or maintained for the purpose of caring for persons admitted thereto and staying overnight for diagnosis or medical, surgical or restorative treatment which is rendered within said institution; but shall not include clinics, day surgery centers, dialysis centers, or other such health care facilities which do not admit patients overnight.

“long-term care facility” shall mean any institution whether conducted for charity or profit which is advertised, announced or maintained for the express or implied purpose of providing three or more individuals admitted thereto with long-term resident, nursing, convalescent or rehabilitative care; supervision and care incident to old age for ambulatory persons; or retirement home care for elderly persons. Long-term care facility shall include convalescent or nursing homes, rest homes, and charitable homes for the aged.

“public open space” shall mean space intended for use by the general public or by occupants or users of adjacent building for sports, play, recreation, relaxation, gardening, or other outdoor activities; but shall not include passive green spaces, landscaped areas, planted buffer zones, or other open spaces which are not designed for recreational activity.

SECTION 18F. Section 1A of chapter 40A of the General Laws, as so appearing, is hereby amended by inserting after the definition of “permit granting authority” the following definition:-

“school” shall mean any public or private institution primarily engaged in the education of persons aged 18 years and younger. This definition does not include institutions of higher education.

SECTION 18G. Section 9 of chapter 40A of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

No publically funded or publically subsidized residential development, hospital, long-term care facility, school, or public open space shall be permitted to be constructed as of right without a special permit issued upon the finding set forth in Section 9D of Chapter 40A (OR if the plans for such facility include either a building structure, apart from parking structures and accessory structures, or public open space) within 500 feet of a high-activity roadway or a train yard or train station serving diesel locomotives.

SECTION 18H. Said chapter 40A is hereby further amended by inserting after section 9C the following section:-

Section 9D. The permit granting authority shall not grant a permit as described in section 9 of chapter 40A, for proposed residential development, hospital, long-term care facility or school within 500 feet of a high-activity roadway or a diesel rail yard or station, unless

(a) the developer carries out the health risk assessment described in section 18B of chapter 21A of the General Laws, and

(b) the assessment results indicate that short-term and long-term exposure to air at the site poses no significant health risk, or

(c) such exposure can and will be mitigated so as to pose no significant risk to human health.

SECTION 18I: Subsection a of section 6 of chapter 70B of the General Laws, as so appearing, is hereby amended by inserting after subparagraph (6) the following paragraph:-

(7) If the school project includes structures, apart from parking structures and accessory structures, within 500 feet of a high-activity roadway as defined in Section 1A of Chapter 40A of the General Laws or a train station or train yard serving diesel locomotives, the applicant has carried out the health risk assessment described in section 18B of chapter 21A of the General Laws and the assessment results

indicate that short-term and long-term exposure to air at the site will pose no significant health risk, or that such exposure can and will be mitigated so as to pose no significant risk to human health.

SECTION 18J: Section 51 of Chapter 111 of the General Laws, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

No original license shall be issued to establish a hospital so as to place structures or public open spaces inhabited by patients within 500 feet of a high-activity roadway or a train station or train yard serving diesel locomotives unless the developer has carried out the health risk assessment described in section 18B of chapter 21A of the General Laws and the assessment results indicate that short-term and long-term exposure to air at the site will pose no significant health risk, or that such exposure can and will be mitigated so as to pose no significant risk to human health. In the case of a facility previously licensed as a hospital in which there is only a change in ownership, no such health risk assessment shall be required, in the absence of expansions or new construction.

SECTION 18K: Section 71 of Chapter 111 of the General Laws, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

No original license shall be issued to establish a convalescent or nursing home, rest home or charitable home for the aged so as to place residential structures within 500 feet of a high-activity roadway as defined in section 1 of chapter 40A or a train station or train yard serving diesel locomotives unless the developer has carried out the health risk assessment described in section 18B of chapter 21A of the General Laws and the assessment results indicate that short-term and long-term exposure to air at the site will pose no significant health risk, or that such exposure can and will be mitigated so as to pose no significant risk to human health. In the case of a facility previously licensed in which there is only a change in ownership, no such health risk assessment shall be required, in the absence of expansion or new construction.