

HOUSE No. 02753

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:
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>

HOUSE No. 02753

By Ms. Provost of Somerville, a petition (accompanied by bill, House, No. 2753) of Khan and others for legislation to reduce human exposure to particulate matter pollution Joint Committee on 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:

- 1 SECTION 18. Chapter 17 of the General Laws is hereby amended by inserting after
- 2 Section 17 the following sections:—
- 3 “particulate matter” shall mean a broad class of chemically and physically diverse substances
- 4 that exist as discrete particles in air
- 5 “fine particulate matter” shall mean particulate matter less than or equal to 2.5 micrometers in
- 6 diameter
- 7 “ultrafine particulate matter” shall mean particulate matter less than or equal to .1 micrometers
- 8 in diameter (.1 micrometers is equivalent to 100 nanometers)

9 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 Edition, is
18 hereby amended by inserting after section 18A the following section:-

19 Section 18B. The department of environmental protection, in consultation with the department of
20 public health, shall promulgate regulations based on the best available science establishing health
21 risk assessment guidelines for ultrafine and fine particulate matter concentrations at a
22 development site or portion of a development site covered in subparagraph g of section 10 of
23 chapter 28A, section 9D of chapter 40A, subsection 6 of section 7 of chapter 70B, section 51 of
24 chapter 111 or Section 71 of Chapter 111. To ensure the accuracy and completeness of the
25 assessment, these guidelines shall set forth standard procedures for conducting air dispersion
26 modeling; obtaining dose-response values; estimating the frequency, duration and intensity of
27 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 hereby
29 amended by adding the following paragraph:-

30 (g) The office shall not issue an original license for a school age child care program, day care
31 center, family day care home or large family day care home which is not a part of a family day
32 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 hereby
40 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 excess of
43 50,000 vehicles.

44 “hospital” shall mean any institution in the Commonwealth of Massachusetts, however named,
45 whether conducted for charity or for profit, which is advertised, announced, established or
46 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 profit which
51 is advertised, announced or maintained for the express or implied purpose of providing three or

52 more individuals admitted thereto with long-term resident, nursing, convalescent or rehabilitative
53 care; supervision and care incident to old age for ambulatory persons; or retirement home care
54 for elderly persons. Long-term care facility shall include convalescent or nursing homes, rest
55 homes, and charitable homes for the aged.

56 “public open space” shall mean space intended for use by the general public or by occupants or
57 users of adjacent building for sports, play, recreation, relaxation, gardening, or other outdoor
58 activities; but shall not include passive green spaces, landscaped areas, planted buffer zones, or
59 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 hereby
61 amended by inserting after the definition of “permit granting authority” the following definition:-

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

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

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

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

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

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

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

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

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

85 (7) If the school project includes structures, apart from parking structures and accessory
86 structures, within 500 feet of a high-activity roadway as defined in Section 1A of Chapter 40A of
87 the General Laws or a train station or train yard serving diesel locomotives, the applicant has
88 carried out the health risk assessment described in section 18B of chapter 21A of the General
89 Laws and the assessment results indicate that short-term and long-term exposure to air at the site
90 will pose no significant health risk, or that such exposure can and will be mitigated so as to pose
91 no significant risk to human health.

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

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

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

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