

**HOUSE . . . . . No. 02021**

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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 protecting school children from environmental toxins

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>

# HOUSE . . . . . No. 02021

By Ms. Provost of Somerville, a petition (accompanied by bill, House, No. 2021) of Story and others that the Department of Environmental Protection and the Department of Public Health develop health risk assessment guidelines of proposed school construction sites

Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
 HOUSE  
 , NO. 605 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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An Act protecting school children from environmental toxins

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*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. This Act maybe cited as the 'Public School Sites Protection Act of 2011.
- 2 SECTION 2. This bill is intended to protect children and personnel of public school in
- 3 Massachusetts from exposure to environmental toxins, and consequent damage to health.
- 4 SECTION 3. Section 3 of Chapter 21A of the General Laws, as so appearing, is hereby amended
- 5 by inserting after subsection 3(e) the following section:
- 6 Section 3 (1) (i) the department of environmental protection, in consultation with the department
- 7 of public health, shall promulgate regulations based on the best available science, to establish

8 health risk assessment guidelines and procedures for evaluating proposed sites for the  
9 construction, expansion, or acquisition, by lease, purchase or otherwise, of sites for publicly-  
10 funded schools, including charter schools.

11 (ii) Such regulations shall require, at minimum, that the public body responsible for a proposed  
12 school siting conduct a public participation plan for the siting process, to be approved by the  
13 department, and that such public body conduct an Initial Environmental Assessment (IEA) for  
14 any site it proposes. The public body shall be required to hire a licensed environmental  
15 professional, with credentials to be determined by the department of environmental protection, to  
16 conduct an Initial Environmental Assessment (IEA), the scope and content of which shall be set  
17 forth in the regulations of the department, and which shall include information on current and  
18 past site uses, contamination, and potential sources of pollution, to determine whether the site  
19 was likely contaminated by hazardous substances.

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

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

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

25 Refineries, mines, scrap yards, factories, dry cleaning facilities or sites where there have been  
26 chemical spills or other significant contamination;

27 US EP A or state designated Brownfield site (even if remediated);

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

- 29 Agricultural land where pesticides and herbicides have been applied;
- 30 Dust generators such as fertilizer or cement plants, or saw mills;
- 31 Leaked gasoline or other products from underground storage tanks;
- 32 Concentrated electrical magnetic fields from high intensity power lines and cellular
- 33 communication towers;
- 34 Freeways, highways, or other roadways that, on an average day, has traffic in excess of 50,000
- 35 vehicles;
- 36 Railroad yards and beds; and
- 37 Wastewater treatment plants.

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

41 The department of environmental protection shall provide that it review the final draft of the  
42 Initial Environmental Assessment. DEP may give preliminary approval to the assessment,  
43 disapprove the assessment, request more information, or exclude the site from school use. When  
44 the final draft of the IEA is complete and has received preliminary approval by the DEP, the  
45 Public Body shall publish and otherwise disclose to the public such information as DEP shall by  
46 regulation require; proceed with its approved public participation plan, and vote on whether to  
47 continue its consideration of a site.

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

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

59 If existing contamination is discovered as at the site, the levels found should be compared to the  
60 Brownfield Cleanup Program soil cleanup standards for unrestricted use developed by the New  
61 York State Department of Environmental Conservation, or such other, similar standards as the  
62 department of environmental protection may by regulation designate.

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

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

70 approved the Preliminary Endangerment Assessment, the public body shall review the  
71 assessment and public comments received.

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

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

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

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

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

86 SECTION 6. The Massachusetts Development Finance Agency shall inform all applicants for  
87 grants or loans with the department of environmental protection's applicable regulations. The  
88 Massachusetts Development Finance Agency shall provide no financial support, whether grant,  
89 loan, loan guarantee, or any other financing or financial aid, to any school project until the

90 applicant has completed the site evaluation process provided by law, and received all required  
91 approvals.

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

95 SECTION 8. Definitions

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

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