HOUSE DOCKET, NO. FILED ON: 1/12/2009

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

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Peter J. Koutoujian**

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*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 relative to air quality in schools and public buildings.

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PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| Peter J. Koutoujian | 10th Middlesex |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2181 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act relative to air quality in schools and public buildings.

 *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.

The General Laws are hereby amended by inserting after chapter 111K the following chapter:-

      Chapter 111L - Indoor Air Quality

      Section 2. Definitions.

      As used in this Act, the following words shall, unless a different meaning clearly appears from the context, have the following meanings:

      Act means this statute.

      Air contaminants includes but is not limited to: (a) volatile organic and inorganic compounds including, but not limited to, vapors from paint, cleaning products, chemicals, pesticides and solvents; (b) carbon monoxide; (c) particulates; (d) outdoor air pollutants; (e) biological contaminants; and (f) other airborne substances, which may affect the health of building occupants.

      Building occupant means any person who works or transacts business in or otherwise occupies a public building including but not limited to a person who is an employee of the building owner.

      Building systems include but are not limited to the HVAC system, systems providing sanitary services, plumbing, and potable water, the energy management system and all other systems in a public building which may impact the quality of the indoor environment.

      Commissioner means the Commissioner of the Division of Occupational Safety of the Department of Labor and Workforce Development or his/her designee.

      Control means the power to direct, regulate or manage the thing controlled, whether directly or indirectly.

      Designated person means a person who has been given the responsibility by the building owner to take necessary measures to assure compliance with sections 4 ff of this Act.

      Director means the Director of the Division of Indoor Environments, or his/her designee.

      Division of Occupational Safety means the Division of Occupational Safety of the Department of Labor and Workforce Development.

      HVAC system means the collective components of the entire heating, ventilation and air conditioning systems including mechanical and non-mechanical systems.

      Public Building means any building, or any portion of any building, owned, leased or operated by the Commonwealth, its agencies, authorities or political subdivisions, or any building or any portion of any building which houses a program or activity for which 85% of the funding is provided by the Commonwealth, its agencies, authorities or political subdivisions; provided, how- ever, that "public building" shall not include correctional facilities  (as defined in M.G.L. c.125, s. 1), jails, prisons, reformatories,  custodial facilities in the department of youth services, and dormitories and residential facilities subject to 105 CMR 410.

      Person means an individual, partnership, corporation, association, and the Commonwealth, including its agencies, authorities, subdivisions and legal representatives or agents.

      Renovation means building modification involving activities that include but are not limited to: installation, removal or replacement of roofs, walls, ceilings, floors, carpeting, and components such as moldings, cabinets, doors, and windows; painting, decorating, demolition, surface refinishing, removal or cleaning of ventilation ducts, additions to, replacement of or modifications to entrances and exits, and stairways and elevators and any other substantial modification of any of a public building's systems.

      Representatives of building occupants means (a) employee organizations; (b) other representatives or agents designated in writing as such by individuals employed in or occupying a public building; (c) parents organizations and other representatives of students in schools; and (d) legal guardians of building occupants who have not reached the age of majority. "Representatives of building occupants" does not include representatives of the general public who use a public building on an intermittent basis.

      Section 3. Division of Indoor Environments.

      (a) There shall be within the Department of Public Health a Division of Indoor Environments within the Center for Environmental Health. The Commissioner of the Department of Public Health shall appoint the Director of the Division of Indoor Environments.

      (b) The Division of Indoor Environments shall administer and enforce the provisions of this Act.

      (c) When the building occupant is an employee of the building owner, the Division of Occupational Safety also shall have the power to administer and enforce the provisions of this Act.

      (d) The Department of Public Health, in consultation with the Division of Occupational Safety, shall promulgate such regulations as are required by this Act as well as such regulations it deems will aid the efficient and effective implementation of this Act and the standards and procedures for which this Act provides. The Director, in consultation with the Commissioner, shall propose to the Commissioner of Public Health such regulations as the Director may, from time to time, determine are necessary for this purpose. As an aid in considering said regulations, the Commissioner of Public Health shall have access to the research and resources and seek the advice of the various divisions and pro- grams in the Department of Public Health and the Division of Occupational Safety concerned with similar issues.

      (e) The Division of Occupational Safety shall adopt all such regulations promulgated by the Department of Public Health as relate to sections 7, 9, 10, 11, 12 hereof within 90 days of their promulgation by the Department of Public Health.

      (f) Nothing in this section shall limit the powers granted to and responsibilities imposed upon the Division of Occupational Safety by Chapter 149 of the General Laws.

      Section 4. Access to Buildings and Records by the Division.

      (a) For the purpose of administering the provisions of this Act, the Director shall have access and entry at reasonable times to the premises of any public building to investigate compliance with this Act. When the building owner is the employer of some or all of the building occupants, the Commissioner shall have access and entry at reasonable times to the premises of a public building to investigate compliance with this Act. If a building owner or anyone acting on its behalf or as its agent refuses or fails to comply with a request by either of the Director or the Commissioner for access to a public building, the supreme judicial or superior court shall have jurisdiction to order compliance.

      (b) For the purpose of enforcing the provisions of this Act, a building owner shall, upon the request of the Director, permit the Director, at reasonable times, to have access to and to copy all records related to this Act or its enforcement. When the building owner is the employer of some or all of the building occupants, the building owner shall, upon the request of the Commissioner, permit the Commissioner, at reasonable times, to have access to and to copy all records related to this Act or its enforcement. If a building owner or anyone on in its behalf or as its agent refuses or fails to comply with such a request by either said Director or said Commissioner, the superior court shall have jurisdiction to order compliance.

      (c) Any person who obstructs the Director or the Commissioner in the performance of the duties described subsections (a) or (b) of this section 4 shall be punished by a fine of not less than one thousand and no more than five thousand dollars or by imprisonment for not more than six months, or both, for each instance of the offense.

      Section 5. Indoor Environmental Compliance Program.

      Within one year of the effective date of this Act, each building owner shall establish for each public building under its control a written indoor environmental compliance program which shall contain the information and documents required by section 6, and which shall contain procedures for implementing the actions and standards contained in sections 7, 8 and 9. Each building owner shall identify in its indoor environmental compliance program a designated person who shall be responsible for the day-to-day implementation of the indoor environment compliance program and for all recordkeeping responsibilities connected therewith. A copy of the indoor environmental compliance program shall be kept in said public building and be available to the public for inspection and, in addition, available electronically, wherever possible.

      Section 6. Information to be included in Indoor Environmental Compliance Program.

      Indoor environment compliance programs shall include, at a minimum, the following information:

      (a) A written narrative description of the facility's building systems;

      (b) Single-line schematics or as-built construction documents which locate major building system equipment and the areas that they serve;

      (c) Information relating to the daily operation and management of the building systems, which shall include, at a minimum, a description of all normal operating procedures, special procedures such as seasonal start-ups and shutdowns, and a list of operating performance criteria including, but not limited to minimum outside air ventilation rates, potable hot water storage and delivery temperatures, range of relative humidity, and any space pressurization requirements;

      (d) A general description of the building and its function including but not limited to, work activity, number of employees and visitors, hours of operation, weekend use, and known air contaminants released in the building;

      (e) As-built construction documents, HVAC system commissioning reports, HVAC systems testing, adjusting and balancing reports, operations and maintenance manuals, water treatment logs, and operator training materials;

      (f) A written maintenance program for the building systems, which shall be preventive in scope and reflect equipment manufacturers' recommendations and best practices as determined by the building systems maintenance industry. At a minimum, the maintenance program shall describe the equipment to be maintained, and establish maintenance procedures and frequency of performance; and

      (g) A checklist for the visual inspection of building systems that accords with the regulations promulgated by the Department of Public Health.

      Section 7. Complaints.

      Each building owner shall establish procedures for receiving and responding to reports and complaints from building occupants and building occupant representatives regarding building conditions, the indoor environment and building maintenance. Where the Department of Public Health has promulgated regulations or where the Division of Indoor Environments has established standard procedures and forms for the above, each building owner shall use the relevant procedures and forms. Building owners shall maintain a written record of all reports and complaints they receive from building occupants and the remedial actions, if any, taken to respond to the reports and complaints.

      Section 8. Reporting Building-Related Illnesses.

      Each building owner shall establish procedures for receiving reports from building occupants regarding symptoms or illnesses that may be related to conditions in a public building. Each building owner shall maintain a written record of such reports which shall include, at a minimum, information on the nature of the symptom or illness reported, the number of building occupants affected, the date of each report was received from a building occupant, and the remedial action, if any, taken to correct the source of the problem, or any other response to the report.

      Section 9. Inspections.

      Each building owner shall perform a visual inspection annually and a thorough building condition survey every five years of each public building under its control for compliance with the standards promulgated by the Division of Indoor Environments pursuant to section 10 of this Act. The five-year building condition survey shall be conducted by an independent licensed architect or engineer or other appropriately qualified professional. Within six months of the effective date of this Act, the Department of Public Health shall promulgate regulations containing the standard procedures to be followed in the performance of the visual inspection and the five-year building condition survey. The annual visual inspection shall, at a minimum, consider the following:

      (a) The building site, including utilities, paving, playgrounds, and play fields.

      (b) Roofing.

      (c) Exterior elements of the building, including walls, doors, windows, fire escapes.

      (d) Building structural elements.

      (e) Building interiors, including finishes, doors, and hardware.

      (f) Special construction, including stairs, elevators, escalators, and swimming pools.

      (g) Environmental features, including appearance, cleanliness, acoustics, lighting quality, thermal comfort, humidity, ventilation and space adequacy.

      (h) Complaints and medical reports received by the building owner pursuant to this Act since the last annual and five-year building condition survey.

      The five-year building condition survey shall, at a minimum, consider the following:

      (a) The building site, including utilities, paving, playgrounds, and play fields.

      (b) Roofing.

      (c) Exterior elements of the building, including walls, doors, windows, fire escapes.

      (d) Building structural elements.

      (e) Building interiors, including finishes, doors, and hardware.

      (f) Electrical systems, including service and distribution, lighting, communications, technology infrastructure and cabling.

      (g) Plumbing, including water distribution systems, drainage and fixtures.

      (h) Heating and cooling systems, including boilers, furnaces, terminal units, and control systems.

      (i) Ventilation systems.

      (j) Air conditioning systems, including refrigeration, terminal units, and control systems.

      (k) Special construction, including stairs, elevators, escalators, and swimming pools.

      (l) Fire protection and security systems, including alarm, detection, and fire protection.

      (m) Environmental features, including appearance, cleanliness, acoustics, lighting quality, thermal comfort, humidity, ventilation and space adequacy.

      (n) Complaints and medical reports received by the building owner pursuant to this Act since the last annual visual inspection and five-year building condition survey, as appropriate.

      Each building owner shall publish the results of each annual and five-year building condition survey on its public web site or, if such a site does not exist, as a written report that it shall make available to the public. Each building owner shall e-mail each such report within thirty days of its completion to the Director and where the building owner is also an employer of some or all of the building occupants, also to the Commissioner. The Director shall cause each such report to be published on the Department of Public Health's web site where it shall remain for at least five years. The Commissioner shall cause each such report he receives to be published on the Division of Occupation Safety's web site

269 where it shall remain for at least five years. Building owners shall keep records of annual inspections and five year building condition surveys for at least ten years.

      Section 10. Standards.

      Within six months of the effective date of this Act, the Department of Public Health, shall promulgate regulations establishing indoor environmental standards for each of the subjects listed below. Within six months of the promulgation of said standards, each building owner shall take the actions required by said standards in each public building under its control and incorporate means for implementing each standard within the indoor environmental compliance program for each said public building.

      (a) The maintenance and operation of HVAC systems.

      (b) Ventilation of point sources of contaminants.

      (c) Humidity.

      (d) Heating.

      (e) Air exchange.

      (f) Ventilation of buildings without mechanical ventilation systems.

      (g) Maintenance of non-ducted air plenums.

      (h) Storage of hazardous materials.

      (i) Asbestos.

      (j) Fiberglass.

      (k) Lead paint

      (l) Outdoor air contaminants.

      (m) Water intrusion.

      (n) Microbial contamination.

      (o) Cleaning.

      (p) Building entrances and exits.

      (q) Sound levels.

      (r) Light levels.

      (s) Sanitary facilities.

      (t) Potable water.

      (u) Protective equipment and training for maintenance workers and custodians.

      (v) Procedures and forms for implementing section 7 of this Act.

      Section 11. Hazardous Chemicals.

      Each building owner shall evaluate any hazardous substances or chemicals currently in use in a public building under its control and maintain an inventory of the same. Each building owner shall assure that each such substance or chemical is the least toxic alternative feasible for the purpose for which it is intended. Each building owner shall assure for each public building under its control that cleaning and maintenance chemicals, pesticides, and other hazardous substances are used and applied according to the relevant manufacturers' recommendations and material safety data sheets, and shall post notices in clear sight in areas to be treated with potentially hazardous substances at least 24 hours prior to application. Said notices shall include information of the identity of substances intended to be applied and any precautions that should be taken by occupants in those areas. The requirements of this section 11 are in addition to the requirements established by G.L. c. 111F, c. 132B and other applicable statutes and regulations.

      Section 12. Renovations.

      Whenever a public building is renovated while continuing to be occupied, the building owner shall take such measures as are needed to assure that the indoor environment experienced by building occupants is not degraded during the renovation as a result of activities or products used in work sites or from any other cause related to the renovation. Such measures shall include, but not be limited to the following:

      (a) Except in emergencies, the building owner shall provide notice to occupants and the representatives of building occupants of the renovations, including a description of their scope and timing. In the case of emergencies, such notice shall be provided as soon as reasonably possible.

      (b) Before renovation or similar activities are begun, the building owner, together with representatives of building occupants, shall meet with the contractor or individual(s) performing the work and shall develop and implement a work plan designed to prevent the entry of air contaminants into occupied areas of the building during and after the performance of the work.

      (c) At a minimum, the work plan shall provide for:

      (i) the continued effective functioning of the HVAC systems in the occupied portions of the building during the renovation;

      (ii) isolation of work areas from the occupied portions of the building and appropriate negative pressure containment;

      (iii) air contaminant suppression controls and/or auxiliary air filtration/cleaning within the occupied portions of the building;

      (iv) controls to prevent air contaminant entry into the HVAC air distribution system;

      (v) measures to minimize the impact of noise or vibration from the renovation on the occupied parts of the building;

      (vi) measures to ensure that all building materials and furnishings are kept dry before they are installed or used in the building;

      (vii) augmented cleaning in occupied parts of the building during the renovation project;

      (viii) measures for maintaining adequate heat in the occupied portions of the building;

      (ix) the identity and contact information of the person responsible for complying with this section of the Act;

      (x) regular public posted notices of scheduled renovation activi363 ties, and

      (xi) emergency procedures, including a plan for evacuating occupants from the building.

      Section 13. Recordkeeping.

      (a) Maintenance records. Each building owner shall maintain the inspection and maintenance records required by this Act, which shall include the specific remedial or maintenance actions taken, the name and affiliation of the individual performing the work, and the date of the inspection or maintenance activity.

      (b) Complaints and Reports of Illnesses. The building owner shall maintain a record of building occupant complaints and reports of illnesses or symptoms that may be associated with public building conditions in accordance with sections 7 and 8 of this Act, and of other communications received from or sent to building occupants regarding building conditions or symptoms or illnesses related to public building conditions. All complaints shall be promptly transmitted to the designated person for resolution.

      (c) Indoor Environmental Compliance Program. Each building owner shall maintain all other records generated as a result of the indoor environmental compliance program applicable to a public building under its control or as a result of any action taken with regard to this Act.

      (d) Retention of records. Records required to be kept under section 6 shall be maintained in perpetuity. The building owner shall retain all other records required to be maintained under this section for a minimum of ten years, unless the record is required to be maintained for a longer period of time by some other statute.

      (e) Availability. The records subject to this section shall be available on request to building occupants and their representatives for examination and copying within three business days of a request made.

      Section 14. Building Occupant's Right to Request an Inspection.

      (a) Any building occupant or representative of a building occupant who believes that a violation of this Act exists in any public building may request an inspection of such workplace by the Director by giving written notice of the alleged violation to said Director setting forth the grounds for the notice. When a building occupant is the employee of the building owner, the building occupant also may request an inspection by the Division of Occupational Safety by giving written notice of the alleged violation to the Commissioner setting forth the grounds for the notice. For the purpose of this section "inspection" shall include an inspection of any public building, or an inspection of the records required to be kept by this Act. The identity of any person requesting such an inspection shall be kept confidential unless said person waives his right to confidentiality in writing.

      (b) If, upon receipt of notification of a request for inspection, the Director or the Commissioner, depending on which received the request for inspection, determines that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as necessary to prevent immediate harm to building occupants or otherwise as soon as practicable to determine if the alleged or any other violation exists.  Inspections under this section need not be limited to matters referred to in the complaint.

      (c) Within thirty days of the completion of said inspection, the Director or the Commissioner, depending on which received the request for inspection, shall issue a report detailing its findings and recommendations, and provide copies to the building occupant or representative of a building occupant who requested the inspection, and to the building owner.

      Section 15. No Retaliation.

      No person shall retaliate or discriminate in any manner against a building occupant or a representative of a building occupant because the building occupant or the representative of a building occupant has filed a complaint, initiated or caused to be initiated any proceeding under or related to this Act, has testified or is about to testify in any proceeding related to or arising out of this Act or has taken any action permitted by this Act or exercised on behalf of himself or others any right afforded by this Act.

      Section 16. Enforcement.

      (a) The Director or the Commissioner, depending on who received the request for inspection, shall review the report resulting from an inspection performed pursuant to section 14.

      (b) If, on the basis of the report, the Director or Commissioner, depending on which received the request for inspection, concludes that the building owner has violated any portion of this Act, he shall issue an order requiring the building owner to remedy the violations. Such order shall include a timeline for implementation for each remedy ordered. If the building owner does not take the actions prescribed by the order within the time prescribed by the order, the superior court for the county in which the public building subject to the report is located shall have jurisdiction to compel compliance upon the request of said Director, Commissioner, or an occupant of the affected building.

      (c) The Director or Commissioner, depending on which received the request for inspection, shall provide the building occupant or representative of a building occupant who requested the inspection with a copy of the order to comply with this Act, or, if he has determined that there has been no violation, with written notification of his determination that there is no violation and the reasons therefor, within 48 hours of the issuance of the order or the making of the determination that there has not been a violation of the Act.

      (d) Any person aggrieved by an action or the lack thereof of the Director or the Commissioner concerning sections 14 and 16 of this Act may appeal such action to the superior court for the county in which the public building subject to the action or lack thereof is located.

      (e) The Director may order the evacuation of a building at any time if he determines with or without an inspection having been performed that an emergency exists that presents an immediate danger to the health or safety of building occupants as a result of a violation of the requirements of this Act. Where the building owner is the employer of some or all of the building occupants, the Commissioner may order the evacuation of a building at any time if he determines, with or without an inspection having been performed, that an emergency exists that presents an immediate danger to the health or safety of building occupants, who are employees of the building owner, as a result of a violation of the requirements of this Act. The superior court for the county in which the public building subject to the evacuation order is located shall have jurisdiction to compel compliance.