

# HOUSE . . . . . No. 1357

By Mr. Feeney of Boston, petition of Michael Paul Feeney for legislation relative to the granting of tax incentives for industrial air pollution control. Social Welfare.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Eight.

### AN ACT RELATIVE TO TAX INCENTIVES FOR INDUSTRIAL AIR POLLUTION CONTROL.

*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. Clause Thirty-ninth of section 5 of chapter 59  
2 of the General Laws, as most recently amended by chapter  
3 700 of the acts of 1966, is hereby further amended by striking  
4 out said clause and inserting the following clause:—

5 Thirty-ninth, Any structure, building device, appliance,  
6 machinery, equipment or other property, whether consisting  
7 of real or tangible personal property, or a combination of  
8 both, which is constructed, installed or placed in operation, in  
9 whole or in part, for the purpose of abating, preventing or  
10 eliminating industrial pollution of the atmosphere of the  
11 commonwealth. This exemption shall apply to facilities for  
12 the treatment, neutralization or stabilization of industrial air  
13 pollution from a point immediately preceding the point of  
14 such treatment, neutralization or stabilization to the point of  
15 disposal, including the necessary transmitting and other  
16 facilities, but excluding such facilities installed for the  
17 primary purpose of salvaging materials which are usable in  
18 the manufacturing process or are marketable. The term  
19 "industrial air pollution", as used in this section, shall mean  
20 any liquid, gaseous, solid or waste substance, or a combina-  
21 tion thereof, resulting from any process of industry, manu-  
22 facture, trade or business or from the development or recov-  
23 ery of any natural resources which may cause or might

24 reasonably be expected to cause pollution of the atmosphere  
25 of the commonwealth.

26 If any such structure, building, device, appliance, machin-  
27 ery, equipment or other property is used solely and in its  
28 entirety for the elimination or control of air pollution, the  
29 exemption granted hereunder shall be total. If, however, only  
30 a portion of such structure, building, device, appliance,  
31 machinery, equipment or other property is used for the  
32 elimination or control of air pollution, the exemption shall be  
33 prorated as follows: for structures and buildings, the ratio  
34 which the area or volume, as applicable, thereof used solely  
35 for pollution control bears to the entire area or volume; for  
36 devices, appliances, machinery, equipment or other property,  
37 the ratio which the operating time devoted solely to pollu-  
38 tion control bears to the total operating time.

39 No exemption shall be granted under this clause unless the  
40 director of the air pollution control agency in the common-  
41 wealth certifies to the assessors of the city or town involved  
42 that such structure, building, device, appliance, machinery,  
43 equipment or other property is effective in eliminating or  
44 reducing pollution to an acceptable level.

1 SECTION 2. Chapter 63 of the General Laws is hereby  
2 further amended by inserting after section 38D the following  
3 section:—

4 *Section 38E.* (a) In determining the net income subject to  
5 tax under this chapter a domestic or foreign business corpora-  
6 tion at its election, may deduct the expenditures paid or  
7 incurred during the taxable year for the construction, recon-  
8 struction, erection or improvement of industrial air pollution  
9 control facilities. The term "industrial air pollution control  
10 facilities" shall mean facilities for the treatment, neutraliza-  
11 tion or stabilization of industrial pollution from a point  
12 immediately preceding the point of such treatment, neutrali-  
13 zation or stabilization to the point of disposal, including the  
14 necessary transmitting and other facilities, but excluding  
15 such facilities installed for the primary purpose of salvaging  
16 materials which are usable in the manufacturing process or  
17 are marketable. The term "industrial air pollution" shall

18 mean any liquid, gaseous, solid or waste substance, or a  
19 combination thereof, resulting from any process of industry,  
20 manufacture, trade or business or from the development or  
21 recovery of any natural resources, which may cause or might  
22 reasonably be expected to cause pollution of the atmosphere  
23 of the commonwealth.

24 (b) Such deduction shall be allowed only—

25 (1) with respect to tangible property which is depreciable,  
26 pursuant to section one hundred and sixty-seven of the  
27 Federal Internal Revenue Code, having a situs in the com-  
28 monwealth and used in the corporation's trade or business,  
29 the construction, reconstruction, erection or improvements of  
30 which is initiated on or after January first, nineteen hundred  
31 and sixty-seven, and only for expenditures paid or incurred  
32 prior to January first, nineteen hundred and seventy-five,  
33 and

34 (2) on condition that such facilities have been certified by  
35 the director of the air pollution control agency in the com-  
36 monwealth as complying with applicable provisions of the air  
37 pollution control law and regulations, permits or orders  
38 issued by him pursuant to law, and

39 (3) on condition that the net income for the taxable year  
40 and all succeeding taxable years be computed without any  
41 deductions for such expenditures or for depreciation of the  
42 property other than the deductions allowed by this section,  
43 except to the extent that the cost or other basis of the  
44 property may be attributable to factors other than such  
45 expenditures, or in the case a deduction is allowable pursuant  
46 to this section for only a part of such expenditures, on  
47 condition that any deduction allowed under the Federal  
48 Internal Revenue Code for such expenditures or for depre-  
49 ciation of the same property be proportionately reduced in  
50 computing net income for the taxable year and all succeeding  
51 taxable years.

52 (c) If expenditures in respect to an industrial air pollution  
53 treatment facility have been deducted as provided herein and  
54 if within ten years from the end of the taxable year in which  
55 such deduction was allowed such property or any part thereof  
56 is used for the primary purpose of salvaging materials which  
57 are usable in the manufacturing process or are marketable,

58 the corporation shall report such change of use in its return  
59 for the first taxable year during which it occurs, and the  
60 commissioner may recompute the tax for the year or years for  
61 which such deduction was allowed and may assess any  
62 additional tax resulting from such recomputation within the  
63 period of assessment applicable to such return.

64 If a deduction is allowed as herein provided for expendi-  
65 tures paid or incurred during any taxable year on the basis of  
66 a temporary certificate of compliance and if the corporation  
67 fails to obtain a permanent certificate of compliance upon  
68 completion of the facilities with respect to which such tempo-  
69 rary certificate was issued, the corporation shall report such  
70 failure in its return for the taxable year during which such  
71 facilities are completed, and the commissioner may recom-  
72 pute the tax for the year or years for which such deduction  
73 was allowed and may assess any additional tax resulting from  
74 such recomputation within the period of assessment appli-  
75 cable to such return.

76 (d) In any taxable year when property is sold or otherwise  
77 disposed of, with respect to which a deduction has been  
78 allowed pursuant to this section, such deduction shall be  
79 disregarded in computing gain or loss, and the gain or loss on  
80 the sale or other disposition of such property shall be the gain  
81 or loss resulting if the deduction provided by this section had  
82 not been elected and the cost or other basis of the property  
83 had been reduced by straight-line depreciation based on the  
84 useful life of the property; provided, however, that if such  
85 sale or other disposition of such property occurs within three  
86 years of the date such property is placed in service the basis  
87 should be zero.

88 (e) An industrial air pollution treatment facility which  
89 qualifies for the deduction provided for by this section shall  
90 not be subject to taxation under the tangible property  
91 measure of the excise imposed by clause (1)(i) of subsection  
92 (a) of section thirty-two or clause (1)(i) of subsection (a) of  
93 section thirty-nine.