

HOUSE No. 898

By Representative Wolf of Cambridge and Senator Tolman, joint petition of Alice K. Wolf and others relative to reducing Diesel emissions from certain construction vehicles. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

Alice K. Wolf	Kay Khan
Steven A. Tolman	Mark C. Montigny
Martin J. Walsh	Edward M. Augustus, Jr.
J. James Marzilli, Jr.	Gale D. Candaras
Marie P. St. Fleur	Bruce E. Tarr
Barry R. Finegold	Kathi-Anne Reinstein
Douglas W. Petersen	Steven M. Walsh
Timothy J. Toomey, Jr.	Richard T. Moore
William N. Brownsberger	Martha M. Walz
Denise Provost	Carl M. Sciortino, Jr.
Elizabeth A. Malia	Michael F. Rush
Peter V. Kocot	Patricia D. Jehlen
Brian P. Wallace	Paul J. P. Loscocco

In the Year Two Thousand and Seven.

AN ACT REDUCING DIESEL EMISSIONS FROM NON ROAD CONSTRUCTION VEHICLES.

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. Chapter 30 of the General Laws, as appearing in the
- 2 2004 Official Edition, is hereby amended by adding after Section
- 3 39S the following new section:—
- 4 Section 39T. Use of ultra low sulfur diesel fuel and best available
- 5 technology in nonroad vehicles.
- 6 (a) For purposes of this section only, the following terms shall
- 7 have the following meanings:—
- 8 “Public entity” means the Commonwealth, or political subdivi-
- 9 sion thereof, including authority, department, or by any county, city,
- 10 town, district, or housing authority.

11 “Best Available Technology” means technology verified by the
12 United States Environmental Protection Agency or the California
13 Air Resources Board, either for nonroad or on-highway applications,
14 which reduces the emissions of diesel pollutants and achieves the
15 maximum level of reduction in particulate matter for a given engine
16 and its application; or technology verified by the United States Envi-
17 ronmental Protection Agency or the California Air Resources Board,
18 either for nonroad or on-highway applications, which has been
19 installed within the three years prior to the effective date of this
20 section.

21 “Commissioner” means the commissioner of the Department of
22 Environmental Protection.

23 “Contractor” means any person, corporation, partnership, joint
24 venture, sole proprietorship, or other entity awarded a contract pur-
25 suant to Sections 38A½ to 38O, inclusive, of Chapter 7 and any con-
26 tract awarded or executed pursuant to Section 11C of Chapter 25A,
27 Section 39M of Chapter 30, or Sections 44A to 44H, inclusive, of
28 Chapter 149, which is for an amount or estimated amount greater
29 than one hundred thousand dollars.

30 “Department” means the department of environmental protection.

31 “Motor vehicle” means any self-propelled vehicle designed for
32 transporting persons or property on a street or highway.

33 “Nonroad engine” means an internal combustion engine
34 (including the fuel system) that is not used in a motor vehicle or a
35 vehicle used solely for competition, or that is not subject to stan-
36 dards promulgated under Section 7411 or Section 7521 of title 42 of
37 the United States code, except that this term shall apply to internal
38 combustion engines used to power generators, compressors or sim-
39 ilar equipment used in any construction program or project.

40 “Nonroad vehicle” means a vehicle that is powered by a nonroad
41 engine, fifty horsepower and greater, and that is not a motor vehicle
42 or a vehicle used solely for competition, which shall include, but not
43 be limited to, excavators, backhoes, cranes, compressors, generators,
44 bulldozers and similar equipment.

45 “Person” means any natural person, co-partnership, firm, com-
46 pany, association, joint stock association, corporation or other like
47 organization.

48 “Public works contract” means a contract with a public entity for
49 a construction program or project involving the construction, demo-

50 lition, restoration, rehabilitation, repair, renovation, or abatement of
51 any building, structure, tunnel, excavation, roadway, park or bridge;
52 a contract with a public entity for the preparation for any construc-
53 tion program or project involving the construction, demolition,
54 restoration, rehabilitation, repair, renovation, or abatement of any
55 building, structure, tunnel, excavation, roadway, park or bridge; or a
56 contract with a public entity for any final work involved in the com-
57 pletion of any construction program or project involving the con-
58 struction, demolition, restoration, rehabilitation, repair, renovation,
59 or abatement of any building, structure, tunnel, excavation, roadway,
60 park or bridge.

61 “Ultra low sulfur diesel fuel” means diesel fuel that has a sulfur
62 content of no more than fifteen parts per million.

63 (b) (1) Any diesel-powered nonroad vehicle that is owned by,
64 operated by or on behalf of or leased by a public entity shall be pow-
65 ered by ultra low sulfur diesel fuel.

66 (2) Any diesel-powered nonroad vehicle that is owned by, oper-
67 ated by or on behalf of or leased by a public entity shall utilize the
68 best available technology for reducing the emission of pollutants.

69 (c) (1) Any solicitation for a public works contract and any con-
70 tract entered into as a result of such solicitation shall include a speci-
71 fication that all contractors in the performance of such contract shall
72 use ultra low sulfur diesel fuel in diesel-powered nonroad vehicles
73 and all contractors in the performance of such contract shall comply
74 with such specification.

75 (2) Any solicitation for a public works contract and any contract
76 entered into as a result of such solicitation shall include a specifica-
77 tion that all contractors in the performance of such contract shall uti-
78 lize the best available technology for reducing the emission of
79 pollutants for diesel-powered nonroad vehicles and all contractors in
80 the performance of such contract shall comply with such specifica-
81 tion.

82 (d) (1) The commissioner shall make determinations, and shall
83 publish a list containing such determinations, as to the best available
84 technology for reducing the emission of pollutants to be used for
85 each type of diesel-powered nonroad vehicle to which this section
86 applies for the purposes of paragraph two of subdivision b and para-
87 graph two of subdivision c of this section. Each such determination,
88 which shall be updated on a regular basis, but in no event less than

89 once every six months, shall be primarily based upon the reduction
90 in emissions of particulate matter and nitrogen oxides associated
91 with the use of such technology and shall in no event result in an
92 increase in the emissions of either such pollutant. In determining the
93 best available technology for reducing the emission of pollutants, the
94 commissioner shall select technology from that which has been veri-
95 fied by the United States Environmental Protection Agency or the
96 California Air Resources Board for use in nonroad vehicles or
97 onroad vehicles where such technology may also be used in nonroad
98 vehicles.

99 (2) No public entity or contractor shall be required to replace best
100 available technology for reducing the emission of pollutants or other
101 authorized technology utilized for a diesel-powered nonroad vehicle
102 in accordance with the provisions of this section within three years
103 of having first utilized such technology for such vehicle.

104 (e) A public entity shall not enter into a public works contract
105 subject to the provisions of this section unless such contract permits
106 independent monitoring of the contractor's compliance with the
107 requirements of this section and requires that the contractor comply
108 with Section 39S of this code. If it is determined that the contractor
109 has failed to comply with any provision of this section, any costs
110 associated with any independent monitoring incurred by the public
111 entity shall be reimbursed by the contractor.

112 (f) (1) The provisions of paragraph one of subdivision b of this
113 section shall apply to all diesel-powered nonroad vehicles that are
114 owned by, operated by or on behalf of or leased by a public entity
115 and the provisions of paragraph one of subdivision c of this section
116 shall apply to all public works contracts six months after the effec-
117 tive date of this section.

118 (2) The provisions of paragraph two of subdivision b of this
119 section shall apply to all diesel-powered nonroad vehicles that are
120 owned by, operated by or on behalf of or leased by a public entity
121 and the provisions of paragraph two of subdivision c of this section
122 shall apply to any public works contract that is valued at two million
123 dollars or more one year after the effective date of this section.

124 (3) The provisions of paragraph two of subdivision c of this
125 section shall apply to all public works contracts eighteen months
126 after the effective date of this section.

127 (g) (1) On or before January 1, 2008, and every succeeding Jan-
128 uary 1, department shall publish a report on the use of ultra low
129 sulfur diesel fuel in diesel-powered nonroad vehicles and the use of
130 the best available technology for reducing the emission of pollutants
131 and such other authorized technology in accordance with this section
132 for such vehicles by public entities during the immediately pre-
133 ceding fiscal year. This report shall be compiled from data provided
134 by public entities to the department. This report shall include, but
135 not be limited to (i) the total number of diesel-powered nonroad
136 vehicles owned by, operated by or on behalf of or leased by each
137 public entity or used to fulfill the requirements of a public works
138 contract for each public entity; (ii) the number of such nonroad vehi-
139 cles that were powered by ultra low sulfur diesel fuel; (iii) the
140 number of such nonroad vehicles that utilized the best available
141 technology for reducing the emission of pollutants, including a
142 breakdown by vehicle model and the type of technology used for
143 each vehicle; (iv) all findings and waivers, and renewals of such
144 findings and waivers, issued pursuant to paragraph one or paragraph
145 three of subdivision j or subdivision l of this section, which shall
146 include, but not be limited to, all specific information submitted by a
147 public entity or contractor upon which such findings, waivers and
148 renewals are based and the type of such other authorized technology,
149 if any, utilized in accordance with this section in relation to each
150 finding, waiver and renewal, instead of the best available technology
151 for reducing the emission of pollutants; (v) this report shall be pro-
152 vided annually to the joint committee on environment, natural
153 resources, agriculture.

154 (h) This section shall not apply:—

155 (1) where federal or state funding precludes the public entity from
156 imposing the requirements of this section; or

157 (2) to purchases that are emergency procurements pursuant to
158 Section 8 of Chapter 30B of the General Laws.

159 (i) Paragraph one of subdivision b and paragraph one of subdivi-
160 sion c, as that paragraph applies to all contractors' duty to comply
161 with the specification, of this section shall not apply to a public
162 entity or contractor in its fulfillment of the requirements of a public
163 works contract for such agency where such agency makes a written
164 finding, which is approved, in writing, by the commissioner, that a
165 sufficient quantity of ultra low sulfur diesel fuel, is not available to

166 meet the requirements of paragraph one of subdivision b or para-
167 graph one of subdivision c of this section, provided that such agency
168 or contractor in its fulfillment of the requirements of a public works
169 contract for such agency, to the extent practicable, shall use what-
170 ever quantity of ultra low sulfur diesel fuel. Any finding made pur-
171 suant to this subdivision shall expire after sixty days, at which time
172 the requirements of paragraph one of subdivision b and paragraph
173 one of subdivision c of this section shall be in full force and effect
174 unless the public entity renews the finding in writing and such
175 renewal is approved by the commissioner.

176 (j) Paragraph two of subdivision b and paragraph two of subdivi-
177 sion c, as that paragraph applies to all contractors 'duty to comply
178 with the specification, of this section shall not apply:—

179 (1) to a diesel-powered nonroad vehicle where a public entity
180 makes a written finding, which is approved, in writing, by the com-
181 missioner, that the best available technology for reducing the emis-
182 sion of pollutants as required by those paragraphs is unavailable for
183 such vehicle, in which case such agency or contractor shall use
184 whatever technology for reducing the emission of pollutants, if any,
185 is available and appropriate for such vehicle; or

186 (2) to a diesel-powered nonroad vehicle that is used to satisfy the
187 requirements of a specific public works contract for fewer than five
188 calendar days.

189 (k) In determining which technology to use for the purposes of
190 paragraph one of subdivision j of this section, a public entity or con-
191 tractor shall consider the reduction in emissions of particulate matter
192 and nitrogen oxides associated with the use of such technology,
193 which shall in no event result in an increase in the emissions of
194 either such pollutant.

195 (l) Any finding or waiver made or issued pursuant to paragraph
196 one of subdivision k of this section shall expire after one hundred
197 eighty days, at which time the requirements of paragraph two of sub-
198 division b and paragraph two of subdivision c of this section shall be
199 in full force and effect unless the public entity renews the finding, in
200 writing, and the commissioner approves such finding, in writing, or
201 the commissioner renews the waiver, in writing.

202 (m) All contracts that are applicable to this section, shall include
203 an appropriate contract penalty in case of contract violations and to
204 ensure proper enforcement, which may include withholding contract

205 fees until the contractor is in compliance with the applicable contract
206 terms.

207 (n) All contracts that are applicable to this section, shall include
208 an appropriate contract penalty in case the contractor makes false
209 claims to a public entity with respect to the provisions of this
210 section.

211 (o) This section shall not apply to any public works contract
212 entered into or renewed prior to the effective date of this section.

213 (p) Nothing in this section shall be construed to limit the public
214 entity's authority to cancel or terminate a contract, deny or withdraw
215 approval to perform a subcontract or provide supplies, issue a non-
216 responsibility finding, issue a non-responsiveness finding, deny a
217 person or entity pre-qualification as a vendor, or otherwise deny a
218 person or entity public entity business.