

HOUSE No. 854

The Commonwealth of Massachusetts

PRESENTED BY:
Alice K. Wolf

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 diesel emissions from non road construction vehicles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Alice K. Wolf	25th Middlesex
Tom Sannicandro	7th Middlesex
William N. Brownsberger	24th Middlesex
Peter v. Kocot	1st Hampshire
Michael F. Rush	10th Suffolk
Steven J. D'Amico	4th Bristol
Cory Atkins	14th Middlesex
Denise Provost	27th Middlesex
Elizabeth A. Malia	11th Suffolk
Martha M. Walz	8th Suffolk
Carl M. Sciortino, Jr.	34th Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Thomas M. Stanley	9th Middlesex
Cheryl A. Coakley-Rivera	10th Hampden
Lori Ehrlich	8th Essex
Linda Dean Campbell	15th Essex
Marie P. St. Fleur	5th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 898 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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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:

SECTION 1. Chapter 30 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding after Section 39S the following new section:

Section 39T. Use of ultra low sulfur diesel fuel and best available technology in nonroad vehicles.

(a) For purposes of this section only, the following terms shall have the following meanings:

“Public entity” means the commonwealth, or political subdivision thereof, including authority, department, or by any county, city, town, district, or housing authority.

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

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

“Contractor” means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to sections 38A½ to 38O, inclusive, of chapter 7 and any contract awarded or executed pursuant to section 11C of chapter 25A, section 39M of chapter 30, or sections 44A to 44H, inclusive, of chapter 149, which is for an amount or estimated amount greater than one hundred thousand dollars.

“Department” means the department of environmental protection.

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

“Nonroad engine” means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States code, except that this term shall apply

to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

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

“Person” means any natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

“Public works contract” means a contract with a public entity for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a public entity for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a public entity for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

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

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

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

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

(2) Any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall utilize the best available technology for reducing the emission of pollutants for diesel-powered nonroad vehicles and all contractors in the performance of such contract shall comply with such specification.

(d) (1) The commissioner shall make determinations, and shall publish a list containing such determinations, as to the best available technology for reducing the emission of pollutants to be used for each type of diesel- powered nonroad vehicle to which this section applies for the purposes of paragraph two of subdivision b and paragraph two of subdivision c of this section. Each such determination, which shall be updated on a regular basis, but in no event less than once every six months, shall be primarily based upon the reduction in emissions of particulate matter and nitrogen oxides associated with the use of such technology and shall in no event result in an increase in the emissions of either such pollutant. In

determining the best available technology for reducing the emission of pollutants, the commissioner shall select technology from that which has been verified by the United States Environmental Protection Agency or the California Air Resources Board for use in nonroad vehicles or onroad vehicles where such technology may also be used in nonroad vehicles.

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

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

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

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

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

(g) (1) On or before January 1, 2008, and every succeeding January 1, department shall publish a report on the use of ultra low sulfur diesel fuel in diesel-powered nonroad vehicles and the use of the best available technology for reducing the emission of pollutants and such other authorized technology in accordance with this section for such vehicles by public entities during the immediately preceding fiscal year. This report shall be compiled from data provided by public entities to the department. This report shall include, but not be limited to (i) the total number of diesel-powered nonroad vehicles owned by, operated by or on behalf of or leased by each public entity or used to fulfill the requirements of a public works contract for each public entity; (ii) the number of such nonroad vehicles that were powered by ultra low sulfur diesel fuel; (iii) the number of such nonroad vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology used for each vehicle; (iv) all findings and waivers, and renewals of such findings and waivers, issued pursuant to paragraph one or paragraph three of subdivision j or subdivision l of this section, which shall include, but not be limited to, all specific information submitted by a public entity or

contractor upon which such findings, waivers and renewals are based and the type of such other authorized technology, if any, utilized in accordance with this section in relation to each finding, waiver and renewal, instead of the best available technology for reducing the emission of pollutants; (v) this report shall be provided annually to the joint committee on environment, natural resources, agriculture.

(h) This section shall not apply:

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

(2) to purchases that are emergency procurements pursuant to section 8 of chapter 30B of the General Laws.

(i) Paragraph one of subdivision b and paragraph one of subdivision c, as that paragraph applies to all contractors' duty to comply with the specification, of this section shall not apply to a public entity or contractor in its fulfillment of the requirements of a public works contract for such agency where such agency makes a written finding, which is approved, in writing, by the commissioner, that a sufficient quantity of ultra low sulfur diesel fuel, is not available to meet the requirements of paragraph one of subdivision b or paragraph one of subdivision c of this section, provided that such agency or contractor in its fulfillment of the requirements of a public works contract for such agency, to the extent practicable, shall use whatever quantity of ultra low sulfur diesel fuel. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of paragraph one of subdivision b and paragraph one of subdivision c of this section shall be in full force and effect unless the public entity renews the finding in writing and such renewal is approved by the commissioner.

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

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

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

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

(l) Any finding or waiver made or issued pursuant to paragraph one of subdivision k of this section shall expire after one hundred eighty days, at which time the requirements of paragraph two of subdivision b and paragraph two of subdivision c of this section shall be in full force and effect unless the public entity

renews the finding, in writing, and the commissioner approves such finding, in writing, or the commissioner renews the waiver, in writing.

(m) All contracts that are applicable to this section, shall include an appropriate contract penalty in case of contract violations and to ensure proper enforcement, which may include withholding contract fees until the contractor is in compliance with the applicable contract terms.

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

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

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