

SENATE NO. 557

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 2004 Official Edition,
2 is hereby amended by inserting after Section 39S the following new section:

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

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

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

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

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

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

23 “Department” means the department of environmental protection.

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

26 “Nonroad engine” means an internal combustion engine (including the fuel system) that
27 is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to
28 standards promulgated under section 7411 or section 7521 of title 42 of the United States code,
29 except that this term shall apply to internal combustion engines used to power generators,
30 compressors or similar equipment used in any construction program or project.

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

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

37 “Public works contract” means a contract with a public entity for a construction program
38 or project involving the construction, demolition, restoration, rehabilitation, repair, renovation,
39 or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract
40 with a public entity for the preparation for any construction program or project involving the

41 construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any
42 building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a public
43 entity for any final work involved in the completion of any construction program or project
44 involving the construction, demolition, restoration, rehabilitation, repair, renovation, or
45 abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

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

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

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

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

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

62 (d) (1) The commissioner shall make determinations, and shall publish a list containing
63 such determinations, as to the best available technology for reducing the emission of pollutants

64 to be used for each type of diesel- powered nonroad vehicle to which this section applies for the
65 purposes of paragraph two of subdivision b and paragraph two of subdivision c of this section.
66 Each such determination, which shall be updated on a regular basis, but in no event less than
67 once every six months, shall be primarily based upon the reduction in emissions of particulate
68 matter and nitrogen oxides associated with the use of such technology and shall in no event
69 result in an increase in the emissions of either such pollutant. In determining the best available
70 technology for reducing the emission of pollutants, the commissioner shall select technology
71 from that which has been verified by the United States Environmental Protection Agency or the
72 California Air Resources Board for use in nonroad vehicles or onroad vehicles where such
73 technology may also be used in nonroad vehicles.

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

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

84 (f) (1) The provisions of paragraph one of subdivision b of this section shall apply to all
85 diesel-powered nonroad vehicles that are owned by, operated by or on behalf of or leased by a

86 public entity and the provisions of paragraph one of subdivision c of this section shall apply to
87 all public works contracts six months after the effective date of this section.

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

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

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

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

114 (h) This section shall not apply:

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

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

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

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

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

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

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

144 (l) Any finding or waiver made or issued pursuant to paragraph one of subdivision k of
145 this section shall expire after one hundred eighty days, at which time the requirements of
146 paragraph two of subdivision b and paragraph two of subdivision c of this section shall be in full
147 force and effect unless the public entity renews the finding, in writing, and the commissioner
148 approves such finding, in writing, or the commissioner renews the waiver, in writing.

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

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

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

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