

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:

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

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

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

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

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

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

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

19 “Department” means the department of environmental protection.

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

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

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

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

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

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

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

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

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

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

54 (d) (1) The commissioner shall make determinations, and shall publish a list containing such
55 determinations, as to the best available technology for reducing the emission of pollutants to be used for
56 each type of diesel- powered nonroad vehicle to which this section applies for the purposes of paragraph
57 two of subdivision b and paragraph two of subdivision c of this section. Each such determination, which
58 shall be updated on a regular basis, but in no event less than once every six months, shall be primarily
59 based upon the reduction in emissions of particulate matter and nitrogen oxides associated with the use of
60 such technology and shall in no event result in an increase in the emissions of either such pollutant. In
61 determining the best available technology for reducing the emission of pollutants, the commissioner shall
62 select technology from that which has been verified by the United States Environmental Protection
63 Agency or the California Air Resources Board for use in nonroad vehicles or onroad vehicles where such
64 technology may also be used in nonroad vehicles.

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

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

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

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

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

84 (g) (1) On or before January 1, 2008, and every succeeding January 1, department shall publish a report
85 on the use of ultra low sulfur diesel fuel in diesel-powered nonroad vehicles and the use of the best
86 available technology for reducing the emission of pollutants and such other authorized technology in
87 accordance with this section for such vehicles by public entities during the immediately preceding fiscal
88 year. This report shall be compiled from data provided by public entities to the department. This report
89 shall include, but not be limited to (i) the total number of diesel-powered nonroad vehicles owned by,
90 operated by or on behalf of or leased by each public entity or used to fulfill the requirements of a public
91 works contract for each public entity; (ii) the number of such nonroad vehicles that were powered by ultra
92 low sulfur diesel fuel; (iii) the number of such nonroad vehicles that utilized the best available technology
93 for reducing the emission of pollutants, including a breakdown by vehicle model and the type of
94 technology used for each vehicle; (iv) all findings and waivers, and renewals of such findings and
95 waivers, issued pursuant to paragraph one or paragraph three of subdivision j or subdivision l of this
96 section, which shall include, but not be limited to, all specific information submitted by a public entity or
97 contractor upon which such findings, waivers and renewals are based and the type of such other
98 authorized technology, if any, utilized in accordance with this section in relation to each finding, waiver
99 and renewal, instead of the best available technology for reducing the emission of pollutants; (v) this
100 report shall be provided annually to the joint committee on environment, natural resources, agriculture.

101 (h) This section shall not apply:

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

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

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

115 paragraph one of subdivision c of this section shall be in full force and effect unless the public entity
116 renews the finding in writing and such renewal is approved by the commissioner.

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

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

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

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

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

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

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

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

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