

HOUSE No.

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

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

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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

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

5

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

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

10

11 “Best Available Technology” means technology verified by the United States Environmental Protection
12 Agency or the California Air Resources Board, either for nonroad or on-highway applications, which
13 reduces the emissions of diesel pollutants and achieves the maximum level of reduction in particulate
14 matter for a given engine and its application; or technology verified by the United States Environmental

15 Protection Agency or the California Air Resources Board, either for nonroad or on-highway applications,
16 which has been installed within the three years prior to the effective date of this section.

17

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

19

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

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26 “Department” means the department of environmental protection.

27

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

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

36

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

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

43

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

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

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

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

61

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

66

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

71

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

83

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

88

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

94

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

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

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

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108 (g) (1) On or before January 1, 2008, and every succeeding January 1, department shall publish a report
109 on the use of ultra low sulfur diesel fuel in diesel-powered nonroad vehicles and the use of the best
110 available technology for reducing the emission of pollutants and such other authorized technology in
111 accordance with this section for such vehicles by public entities during the immediately preceding fiscal
112 year. This report shall be compiled from data provided by public entities to the department. This report
113 shall include, but not be limited to (i) the total number of diesel-powered nonroad vehicles owned by,
114 operated by or on behalf of or leased by each public entity or used to fulfill the requirements of a public
115 works contract for each public entity; (ii) the number of such nonroad vehicles that were powered by ultra
116 low sulfur diesel fuel; (iii) the number of such nonroad vehicles that utilized the best available technology
117 for reducing the emission of pollutants, including a breakdown by vehicle model and the type of
118 technology used for each vehicle; (iv) all findings and waivers, and renewals of such findings and
119 waivers, issued pursuant to paragraph one or paragraph three of subdivision j or subdivision l of this
120 section, which shall include, but not be limited to, all specific information submitted by a public entity or
121 contractor upon which such findings, waivers and renewals are based and the type of such other
122 authorized technology, if any, utilized in accordance with this section in relation to each finding, waiver
123 and renewal, instead of the best available technology for reducing the emission of pollutants; (v) this
124 report shall be provided annually to the joint committee on environment, natural resources, agriculture.

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126 (h) This section shall not apply:

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

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

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

145

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

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

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

157

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

162

163 (l) Any finding or waiver made or issued pursuant to paragraph one of subdivision k of this section shall
164 expire after one hundred eighty days, at which time the requirements of paragraph two of subdivision b

165 and paragraph two of subdivision c of this section shall be in full force and effect unless the public entity
166 renews the finding, in writing, and the commissioner approves such finding, in writing, or the
167 commissioner renews the waiver, in writing.

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

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

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

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