

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

John A. Hart, Jr.

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 Relative to the Reduction of Particulate Emissions From Diesel Engines.

PETITION OF:

NAME:

John A. Hart, Jr.

DISTRICT/ADDRESS:

First Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE REDUCTION OF PARTICULATE EMISSIONS FROM DIESEL ENGINES.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make
The deferred operation of this act would tend to defeat its purpose, which is to protect public health from
the adverse impacts of particulate emissions from diesel engines, therefore it is hereby declared to be an
emergency law, necessary for the immediate preservation of the public convenience., therefore it is
hereby declared to be an emergency law, necessary for the immediate preservation of the public
convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 Chapter 30 of General Laws is hereby amended by adding, after Section 39S, the
2 following new sections:—

3
4 Section 39T. Short title. This act shall be known as the "Diesel Emissions Reduction Act of
5 2009."
6

7 Section 39U. Legislative findings and purpose. The Legislature hereby finds and declares that:

- 8 (a) The purpose of this act is to minimize the public health risks from exposure to diesel
9 particulate emissions as expeditiously as practicable
10 (b) Diesel exhaust particle pollution poses a clear and present health risk to the people of
11 the Commonwealth. Diesel exhaust is a likely human carcinogen, and a prime
12 contributor to airborne fine particle pollution that is linked to premature death and
13 other serious cardiovascular and pulmonary problems such as heart attacks, abnormal

- 14 heart rhythms, atherosclerosis, stroke, asthma attacks, permanent respiratory damage
15 and retardation of lung growth in children.
- 16 (c) The health impacts from diesel emissions especially affect children, the elderly and
17 people with weakened immune systems.
- 18 (d) Particularly high concentrations of diesel emissions often are found in densely
19 populated, urban areas, disproportionately impacting ethnic minorities and people of
20 lower economic status.
- 21 (e) Diesel exhaust also contains black carbon emissions, which contribute to global
22 climate change.
- 23 (f) Practical, cost-effective measures to substantially reduce diesel particulate emissions
24 are available today, and can be applied to many existing diesel engines. The same
25 technology that limits diesel pollution from new diesel engines can be retrofitted onto
26 existing engines or applied in new replacement engines to reduce diesel emissions by
27 85% or better.
- 28

29 Section 39V. Definitions.

30 "Best available retrofit technology" means technology, verified by the United States
31 Environmental Protection Agency or California Air Resources Board (CARB) for
32 achieving reductions in particulate matter emissions at the highest classification level for
33 diesel emission control strategies that is applicable to the particular engine and
34 application. Such technology shall not result in a net increase in nitrogen oxides.

35 "CARB" means the California Air Resources Board.

36 "Certified engine configuration" means a new, rebuilt, or remanufactured engine
37 configuration—

- 38 (1) that has been certified or verified by USEPA or CARB;
39 (2) that meets or is rebuilt or remanufactured to a more stringent set of engine emissions
40 standards, as determined by DEP; and
41 (3) in the case of a certified engine configuration involving the replacement of an
42 existing engine or vehicle, an engine configuration that replaced an engine that was
43 removed from the vehicle and returned to the supplier for remanufacturing to a more
44 stringent set of engine emissions standards or for scrappage.

45 "CMAQ" means the federal Congestion Mitigation and Air Quality Improvement
46 Program reauthorized by Congress in 2005 by Sections 1101, 1103 and 1808 of the Safe,
47 Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-
48 LU) (Pub. L. 109-59, Aug. 10, 2005).

49 "Contractor" means any person that enters into a public works contract with a public
50 agency, or any person that enters into an agreement with such person or entity, to perform
51 work or provide labor or services related to such public works contract.

52 “Defective” means a condition in which an emission control system or component is
53 malfunctioning due to age, wear, mal-maintenance or design defects.

54 “DEP” means the Massachusetts Department of Environmental Protection.

55 “DERA” means the Diesel Emission Reduction Act, enacted by Congress as sections
56 791—797 of the Energy Policy Act of 2005 (Pub. L. 109–58, Aug. 8, 2005).

57 “Fleet” means one or more diesel vehicles or mobile or stationary diesel engines owned,
58 controlled or operated by the same person (and by any person that controls, is controlled by, or
59 has common control with such same person).

60 “Heavy-heavy duty diesel vehicle” means a motor vehicle with a gross vehicle weight
61 rating of at least 33,000 pounds that is powered by a diesel engine.

62 “Incremental cost” means the cost of a contractor’s actions to comply with the
63 requirements of section 106(a)(4)(B) and (5)(B) of this act, less the baseline cost that would
64 otherwise be incurred by the applicant or contractor in the normal course of business.
65 Incremental costs may include added lease or fuel costs as well as capital costs.

66 “Level 1 Control” means a Verified Diesel Emission Control Device that achieves a
67 particulate matter (PM) emission reduction of 25% or more from uncontrolled engine emission
68 levels.

69 “Level 2 Control” means a Verified Diesel Emission Control Device that achieves a
70 particulate matter (PM) emission reduction of 50% or more from uncontrolled engine emission
71 levels.

72 “Level 3 Control” means a Verified Diesel Emission Control Device that achieves a
73 particulate matter (PM) emission reduction of 85% or more from uncontrolled engine emission
74 levels, or that reduces emissions to less than or equal to 0.01 grams of PM per brake
75 horsepower-hour. Level 3 Control includes repowering or replacing the existing diesel engine
76 with an engine meeting USEPA’s 2007 Heavy-duty Highway Diesel Standards, or in the case
77 of a nonroad engine, an engine meeting the USEPA’s Tier 4 Nonroad Diesel Standards; Level
78 3 Control also includes new diesel engines meeting said USEPA emissions standards.

79 “Motor vehicle” means any self-propelled vehicle designed for transporting persons or
80 property on a street or highway, including an on-road diesel vehicle.

81 “Nonroad engine” means an internal combustion engine (including the fuel system) that
82 is used in a regulated nonroad vehicle.

83 “PM2.5” means particulate matter that is 2.5 micrometers or smaller in size.

84 “Primarily engaged in interstate commerce” means, with respect to a Regulated Highway
85 Diesel Vehicle, a vehicle that is not registered in the Commonwealth, is engaged in interstate
86 commerce, and during its life (or if longer than 3 years, the most recent 3 calendar years) has
87 operated for more than 50% of its travel miles outside of the Commonwealth, in accordance
88 with regulations promulgated by DEP pursuant to this act.

89 “Public agency” means a commonwealth, city, county, administration, department,
90 division, bureau, board or commission, or a corporation, institution or agency of government,
91 the expenses of which are paid in whole or in part from the public treasury.

92 “Public works contract” means a contract with a public agency for a construction
93 program or project involving the construction, demolition, restoration, rehabilitation, repair,
94 renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or
95 bridge; a contract with a public agency regarding the preparation for any construction program
96 or project involving the construction, demolition, restoration, rehabilitation, repair, renovation,
97 or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a
98 contract with a public agency for any final work involved in the completion of any construction
99 program or project involving the construction, demolition, restoration, rehabilitation, repair,
100 renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or
101 bridge.

102 “Regulated Highway Diesel Vehicle” means any of the following heavy-heavy duty
103 diesel vehicles having a model year 1994 through 2006 and operating within the
104 Commonwealth and not primarily engaged in interstate commerce, all as may be further
105 defined in an inclusive manner in regulations promulgated by DEP pursuant to this act:

- 106 (1) commercial and transit buses;
- 107 (2) waste haulers;
- 108 (3) highway and other maintenance, construction and other trucks owned by or operated
109 on behalf of public agencies, including but not limited to dump trucks, graders and
110 snow plows;
- 111 (4) freight and cargo delivery trucks with central fleet maintenance or fueling locations
112 within the State; and
- 113 (5) such other 1994-2006 model year heavy-heavy-duty highway diesel vehicles not
114 primarily engaged in interstate commerce as DEP may designate by regulation.

115 “Regulated Nonroad Vehicle” means a vehicle or equipment operating within the
116 Commonwealth that is powered by a nonroad engine, seventy-five horsepower and greater, and
117 that is a crawler, tractor, dozer, backhoe, or skid-steer loader, all as may be further defined in
118 an inclusive manner in regulations promulgated by DEP pursuant to this act.

119 “Retrofit” means to equip a diesel motor vehicle or nonroad vehicle with new particulate
120 emissions-reducing parts or technology verified by USEPA or CARB after manufacture of the
121 original engine.

122 “RMV” means the Massachusetts Registry of Motor Vehicles.

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

125 “USEPA” means the United States Environmental Protection Agency.

126 “USEPA’s 2007 Heavy-duty Highway Diesel Standards” means those regulations
127 promulgated by USEPA and published in the Federal Register at 66 Fed. Reg. 5002 on January
128 18, 2001.

129 “USEPA’s Tier 4 Nonroad Diesel Standards” means those regulations promulgated by
130 USEPA and published in the Federal Register at 69 Fed. Reg. 38958 on June 29, 2004.

131 “Verified diesel emission control device” means:

- 132 (1) an emission control device or strategy that has been verified to achieve a specified
133 diesel PM reduction by USEPA or CARB; or
134 (2) replacement or repowering with an engine that is certified to specific PM emissions
135 performance by USEPA or CARB.
136

137 Section 39W. DEP Regulations.

138 Within one year of the effective date of this act, DEP shall, after written notice and public
139 hearing, promulgate regulations implementing the provisions of this act.

140

141 Section 39X. Reduction of on-road diesel emissions.

142 (a) Level 3 Controls required. Except as provided in subsections (b), (c) and (d), on and after
143 January 1, 2013, no fleet owner or operator shall operate any Regulated Highway Diesel
144 Vehicle in the Commonwealth unless that vehicle has installed Level 3 controls and unless
145 such controls are properly maintained and functioning.

146 (b) Existing controls. Any Regulated Highway Diesel Vehicle that has operational

147 Level 1 Control installed prior to the effective date of this act shall have an additional two
148 years to meet the requirements of subsection (a), and any Regulated Highway Diesel
149 Vehicle that has operational Level 2 Control installed prior to the effective date of this act
150 shall have an additional four years to meet the requirements of subsection (a).

151 (c) Small fleets. Any owner or operator of a fleet or fleets (including for the purpose of this
152 subsection any fleet or fleets owned or operated by related persons) consisting in the
153 aggregate of five or fewer Regulated Highway Diesel Vehicles, shall have an additional
154 two years to comply with the requirements of subsections (a), (b) and (d)(1).

155 (d) Exemptions.

156 (1) Level 2 Controls. Subsection (a) shall not apply to any Regulated Highway Diesel
157 Vehicle if DEP makes a written finding that no Verified diesel emissions control
158 device with Level 3 Controls exists for such vehicle, in which case such fleet owner
159 or operator shall install Level 2 Controls that are available and appropriate for such
160 vehicle as determined by DEP.

161 (2) Low-use Vehicles. Subsections (a), (b), and (d)(1) shall not apply to any Regulated
162 Highway Diesel Vehicle whose propulsion engine was operated in the
163 Commonwealth for fewer than 1,000 miles and less than 100 hours during the
164 preceding calendar year, as confirmed by engine operation data from a properly
165 functioning odometer and non-resettable hour meter.

166 (3) Emergency Vehicles. Subsections (a), (b), (d)(1) shall not apply to any vehicles that
167 are specially equipped and operated for emergency response by a state authority,
168 offices of emergency management, sheriff's office, police department or fire
169 department.

170 (e) Penalties.

171 (1) Any owner or operator of a Regulated Highway Diesel Vehicle that is found by DEP
172 to be in noncompliance with this section shall be liable to pay a civil penalty in an
173 amount assessed by DEP not to exceed \$5,000 per violation, with each day of
174 noncompliance of each vehicle constituting a separate violation, and may have the
175 registration of said vehicle revoked by RMV, all in accordance with regulations
176 promulgated by DEP, and, as appropriate, RMV.

177 (2) Monies collected in penalties will be distributed 50% to the Diesel Emissions
178 Reduction Fund, 25% to DEP as the enforcing agency, and 25% to the ticketing agency,
179 i.e. state or local police.

180 (f) Sticker Display. Each regulated highway diesel vehicle subject to the provisions of this
181 section shall display a compliance sticker clearly and conspicuously indicating its
182 installed level of emissions control

183 (g) All emissions control technology shall be operated, maintained and serviced as
184 recommended by the manufacturer.

185 (h) Ultra low sulfur diesel highway fuel required. After the effective date of this act, no
186 person shall sell, deliver or distribute diesel fuel for diesel motor vehicles within the State
187 other than ultra-low sulfur diesel fuel, and no person shall operate a diesel motor vehicle
188 within the State using diesel fuel other than ultra low sulfur diesel fuel.

189
190 Section 39Y. Public Works Contracts Environmental Performance Specifications.

191 (a) On and after six months following effective date of this act, any solicitation for a public
192 works contract, and any contract entered into as a result of such solicitation, shall include
193 the following specifications that all contractors shall comply with in the performance of
194 such contract:

195 (1) Ultra low sulfur diesel fuel or an ultra low sulfur diesel blend with a sulfur content of
196 15 ppm or less shall be used in all diesel nonroad vehicles and heavy duty diesel
197 vehicles;

198 (2) All Regulated Nonroad Vehicles on site for more than three days during the project
199 shall install and operate:

200 (A) a minimum of Level 1 Controls no later than January 1, 2011; and,

201 (B) Level 3 Controls no later than January 1, 2013;

202 (3) All heavy-heavy duty diesel vehicles on site for more than three days during the
203 project shall install and operate Level 3 Controls no later than January 1, 2011;

204 (4) Each Regulated Nonroad Vehicle and heavy-heavy duty diesel vehicle on site shall
205 display a compliance sticker clearly and conspicuously indicating its installed level of
206 emissions control; and

207 (5) All emissions control technology shall be operated, maintained and serviced as
208 recommended by the manufacturer.

209 (b) (1) Any public works contract shall provide full or partial reimbursement from the public
210 works project funds for incremental costs incurred by eligible contractors that are necessary
211 to bring Regulated Nonroad Vehicle and heavy-heavy duty diesel vehicles used on that
212 specific project into compliance with the requirements of subsections (2)(A), and (B) and
213 (3) for that specific project; provided, however, that no reimbursement shall be payable for
214 costs incurred after 18 months following the applicable compliance date. Each relevant
215 agency shall establish annually, on January 1st, the reimbursement percentage to be applied
216 to all of its public works contracts for each calendar year beginning in 2010 through 2014.
217 Eligible contractors shall apply for such reimbursement providing such information as the
218 public agency shall require. Only one reimbursement shall be provided for each Regulated
219 Nonroad Vehicle or heavy-heavy duty diesel vehicle; expenditures shall not be eligible for
220 reimbursement to the extent they were incurred to bring such vehicle into compliance with
221 a different provision of this act or any other federal or state law or regulation, or if such
222 expenditures have been previously reimbursed using funds from any other public works
223 contract or any other public agency, and each application for reimbursement shall include
224 appropriate contractor certifications concerning these prohibitions.

225 (2) The costs of compliance with subsection (a) that are reimbursed by the public agency
226 under subsection (b)(1) shall not be included in the project bid or considered by the public
227 agency in evaluating bids.

228 (c) The public agency entering into a public works contract may elect to provide
229 reimbursement for retrofits of project Regulated Nonroad Vehicle and heavy-heavy duty
230 diesel vehicles authorized under subsection (b) in the form of rebates in amounts
231 established by DEP for particular types of vehicles; provided that DEP has established by
232 regulation applicable policies, procedures and safeguards for such rebates.

233 (d) Any public works contract shall provide for enforcement of the contract provisions
234 required by subsection (a) and penalties for noncompliance of such provisions.

235 (e) Subsections (a)(2) and (3) shall not apply to a Regulated Nonroad Vehicle or heavy-heavy
236 duty diesel vehicle where the involved public agency makes a written finding, which is
237 approved, in writing, by DEP, that no Verified diesel emissions control device with Level 3
238 Controls exists for such vehicle, in which case the vehicle may operate on the project site
239 only if it has been retrofit with Level 2 Controls that are available and appropriate for such
240 vehicle as determined by DEP; provided that if the involved public agency makes a written
241 finding, which is approved, in writing, by DEP, that no Verified diesel emissions control
242 device with Level 2 Controls exists for such vehicle, said vehicle may operate on site once
243 it has been retrofit with such Level 1 Controls that are available and appropriate for such
244 vehicle as determined by DEP. All findings made pursuant to this subsection and
245 information relating thereto shall be publicly available, and DEP shall post them on its
246 website.

247

248 Section 39Z. Diesel Emissions Reduction Funding Program
249

- 250 (a) Fund. The Diesel Emissions Reduction Fund (the “Fund”) is hereby established as an
251 account in the state treasury.
252 (1) The fund shall be administered by the state treasurer for the benefit of the Diesel
253 Emissions Reduction Funding Program (the “Program”) established under this
254 section.
255 (2) Interest earned on the fund shall be credited to the Fund.
256 (3) The Fund consists of: (1) the contributions, fees, and surcharges under: (A)
257 subsections 5-7 and 9; and (B) penalties and fees deposited in the Fund pursuant with
258 this act.
259 (4) Monies in the Fund may be used only to implement the Program, provided that a
260 maximum of two per cent of the money in the Fund may be used for administrative
261 costs incurred by the DEP and the state treasurer. Monies allocated to an eligible
262 project but not expended in any fiscal year may be carried over to succeeding fiscal
263 years.
264 (5) A surcharge is hereby imposed on the retail sale, lease, or rental of new nonroad
265 diesel vehicles in an amount equal to one per cent of the sales price or the lease or
266 rental amount.
267 (6) A surcharge is hereby imposed on every retail sale, lease or rental of every heavy
268 duty diesel vehicle that is of a model year of 1998 or earlier and that is sold or leased
269 in this state. The amount of the surcharge is 2.5% of the total consideration.
270 (7) In addition to the registration fees charged under section 33 of Chapter 90, a
271 surcharge is hereby imposed on the registration of a heavy duty diesel vehicle under
272 that section in an amount equal to ten percent of the total fees due for registration of
273 such vehicle there under. Said surcharges shall be remitted to the state treasurer for
274 deposit in the Fund.
275 (8) The bonding authority is hereby authorized to issue up to \$10,000,000 annually
276 before 2018 in bonds to be used solely to fund revolving loans to eligible diesel
277 emission reduction projects as described in this section.
278 (9) The Fund shall also consist of designated monies received by the State under DERA,
279 CMAQ, environmental penalties assessed by the director, supplemental
280 environmental project funds, and any other sources of revenue that may hereafter so
281 be designated.
282 (10)The state treasurer shall adopt any procedures needed for the collection,
283 administration and enforcement of the surcharge authorized by this subsection, and
284 shall deposit all surcharges to the credit of the Fund.

285

- 286 (b) Establishment and Administration of the Program. DEP, in consultation with the state
287 treasurer, shall establish by regulations promulgated pursuant to this act the
288 Massachusetts Diesel Emissions Reduction Funding Program in accordance with this act.
289 (1) DEP shall administer the Program and shall provide grants and low-cost revolving
290 loans from the Fund, on a competitive basis, to eligible projects to achieve significant

291 reductions of diesel particulate emissions and/or reduced exposure to diesel
292 particulate matter.

293 (2) In administering the Program and in accordance with the requirements of this act,
294 DEP shall:

295 (A) manage Program funds and oversee the Program;
296 (B) produce guidelines, protocols, and criteria for eligible projects;
297 (C) develop methodologies for evaluating project benefits and cost-effectiveness;
298 (D) develop procedures for monitoring whether the emissions reductions projected for
299 projects awarded grants under this chapter are actually achieved;
300 (E) prepare reports regarding the progress and effectiveness of the Program; and
301 (F) take all appropriate and necessary actions so that emissions reductions achieved
302 through the Program may be credited by USEPA to the appropriate emissions
303 reduction objectives in the state implementation plan.

304 (c) Applications.

305 (1) To receive a grant or loan under the Program, the applicant shall submit to DEP
306 an application at a time, in a manner, and including such information DEP may
307 require.

308 (2) An application under this subsection shall include--

309 (A) a description of the air quality of the area in which the project fleets will
310 operate;

311 (B) a description of the project proposed by the applicant, including--

312 i. any certified engine configuration or verified technology proposed to be
313 used or funded in the project; and

314 ii. the means by which the project will achieve a significant reduction in
315 diesel emissions;

316 (C) an evaluation of the quantifiable and unquantifiable benefits of the emissions
317 reductions of the proposed project;

318 (D) an estimate of the cost of the proposed project;

319 (E) a description of the age and expected lifetime control of the equipment to be
320 used or funded in the proposed project;

321 (F) a description of the diesel fuel available in the areas to be served by the
322 proposed project, including the sulfur content of the fuel;

323 (G) provisions for the monitoring and verification of the project; and
324 (H) such other information as may be required by DEP.

325 (d) Eligibility.

326 (1) A proposed project must meet the requirements of this section to be eligible for a
327 grant or loan under the Program.

328 (2) DEP may consider for funding the following types of projects --

329 (A) Installation of a retrofit technology, including any incremental costs of a
330 repowered or new diesel engine, that significantly reduces particulate
331 emissions through development and implementation of a certified engine
332 configuration or a verified diesel emission control device for (i) a bus; (ii) a
333 medium-duty truck or a heavy-duty truck; (iii) a commercial marine engine;
334 (iv) a locomotive; or (v) a nonroad diesel engine or vehicle used in
335 construction, handling of cargo, including at a port or airport, agriculture,
336 mining, or energy production; or

337 (B) programs or projects to reduce long-duration idling using verified technology
338 involving a vehicle or equipment described in subsection (A).

339 (3) In providing a grant or loan under the Program, and subject to the provisions of
340 subsection (c), DEP shall give priority to otherwise eligible projects that, as
341 determined by DEP--

342 (A) maximize public health benefits;

343 (B) are the most cost-effective;

344 (C) serve areas (i) with the highest population density;(ii) that are poor air quality
345 areas, including areas identified by DEP as in nonattainment or maintenance
346 of national ambient air quality standards for a criteria pollutant, Federal Class
347 I areas; or areas with toxic air pollutant concerns; (iii) that receive a
348 disproportionate quantity of air pollution from a diesel fleets, including
349 truckstops, ports, rail yards, terminals, and distribution centers; or (iv) that use
350 a community-based multistakeholder collaborative process to reduce toxic
351 emissions;

352 (D) include a certified engine configuration or verified technology that has a long
353 expected useful life;

354 (E) will maximize the useful life of any certified engine configuration or verified
355 technology used or funded by the project; and,

356 (F) conserve diesel fuel

357 (4) For a proposed project to be eligible for Program funding, other than a project
358 involving a marine vessel or engine, not less than 75 percent of vehicle miles
359 traveled or hours of operation projected for the five years immediately following
360 the award of a grant must be projected to take place in this state. For a proposed
361 project involving a marine vessel or engine, the vessel or engine must be operated
362 in the intercoastal waterways or bays adjacent to this state for a sufficient amount
363 of time over the lifetime of the project, as determined by DEP, to meet the cost-
364 effectiveness requirements of subsection (e).

365 (5) Each proposed project must meet the cost-effectiveness requirements of
366 subsection (e).

367 (6) A proposed project based on the use of a certified engine configuration or verified
368 technology must document, in a manner acceptable to DEP, a reduction in
369 particulate emissions of at least 50 percent compared with the baseline emissions
370 adopted by DEP for the relevant engine year and application. After study of
371 available emissions reduction technologies, after public notice and comment, DEP
372 may revise the minimum percentage reduction in particulate emissions required
373 by this subsection to improve the ability of the program to achieve its goals.

374 (7) If a baseline emissions standard does not exist for on-road or non-road diesels in a
375 particular category DEP, for purposes of this section, shall establish an
376 appropriate baseline emissions level for comparison purposes.

377 (8) DEP may approve payments to offset the incremental cost, over the expected
378 lifetime of the vehicle, of the use of qualifying fuel in a on-road or non-road
379 diesel vehicle if the proposed project as a whole, including the incremental fuel
380 cost, meets the requirements of this subchapter. DEP shall develop an appropriate
381 method for converting incremental fuel costs over the lifetime of the non-road

382 diesel into an initial cost for purposes of determining cost-effectiveness as
383 required by subsection (e).

384 (e) Cost-effectiveness

- 385 (1) For purposes of this section, “cost-effectiveness” means the total dollar amount
386 divided by the total number of tons of particulate matter reduction attributable to
387 that expenditure. In calculating cost-effectiveness, one-time grants of money at
388 the beginning of a project shall be annualized using a time value of public funds
389 or discount rate determined for each project by DEP, taking into account the
390 interest rate on bonds, interest earned by state funds, and other factors DEP
391 considers appropriate.
- 392 (2) DEP shall establish reasonable methodologies for evaluating project cost-
393 effectiveness consistent with subsection (e)(1) and with accepted methods.
- 394 (3) Except as provided by subsection (e)(7), DEP may not award a grant for a
395 proposed project the cost-effectiveness of which, calculated in accordance with
396 subsections (e)(1) and (2) and criteria developed thereunder, exceeds \$135,000
397 per ton of PM10 emissions. This subsection does not restrict DEP authority under
398 other law to require emissions reductions with a cost-effectiveness that exceeds
399 \$135,000 per ton.
- 400 (4) DEP may not award a grant that, net of taxes, provides an amount that exceeds the
401 incremental cost of the proposed project.
- 402 (5) DEP shall adopt guidelines for capitalizing incremental lease costs so those costs
403 may be offset by a grant under this section.
- 404 (6) In determining the amount of a grant under this section, DEP shall reduce the
405 incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on
406 equipment project by the value of any existing financial incentive that directly
407 reduces the cost of the proposed project, including tax credits or deductions, other
408 grants, or any other public financial assistance.
- 409 (7) Adjustment of cost-effectiveness. Based upon a study of available emissions
410 reduction technologies and costs and after public notice and comment, DEP may
411 change the values of the maximum grant award criteria established in subsection
412 (e)(3) to account for inflation or to improve the ability of the program to achieve
413 its goals.

414

415 Section 39AA. Miscellaneous.

- 416 (a) Reporting. Persons subject to this act, including owners and operators of Regulated
417 Highway Diesel Vehicles and Regulated Nonroad Vehicles, shall provide such
418 information, reporting and monitoring as DEP may require by regulations promulgated
419 pursuant to this act for the purpose of implementing the provisions of this act.
- 420 (b) Equitable Relief Authorized. In addition to other remedies provided in this act, DEP may
421 seek injunctive relief in any court of competent jurisdiction to enforce any provision of
422 this act.
- 423 (c) Severability. If any clause, sentence, paragraph, section or provision of this act shall be
424 adjudged by any court of competent jurisdiction to be invalid, such judgment shall not
425 affect, impair or invalidate the remainder of this act, but shall be confined in its operation
426 to the clause, sentence, paragraph, section or provision of this act directly involved in the
427 controversy in which the judgment shall have been rendered.

(d) Effective Date. This act shall take effect immediately upon enactment.