

**HOUSE . . . . . No. 854**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand 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,  
2 is hereby 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  
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 within  
15 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, of  
20 chapter 7 and any contract awarded or executed pursuant to section 11C of chapter 25A, section  
21 39M of chapter 30, or sections 44A to 44H, inclusive, of chapter 149, which is for an amount or  
22 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, generators,  
34 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, or  
39 abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with  
40 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 entity  
43 for any final work involved in the completion of any construction program or project involving  
44 the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any  
45 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 of  
49 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 result  
69 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 of  
79 this section unless such contract permits independent monitoring of the contractor's compliance  
80 with the requirements of this section and requires that the contractor comply with section 39S of  
81 this code. If it is determined that the contractor has failed to comply with any provision of this  
82 section, any costs associated with any independent monitoring incurred by the public entity shall  
83 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 fuel;  
104 (iii) the number of such nonroad vehicles that utilized the best available technology for reducing  
105 the emission of pollutants, including a breakdown by vehicle model and the type of technology  
106 used for each vehicle; (iv) all findings and waivers, and renewals of such findings and waivers,  
107 issued pursuant to paragraph one or paragraph three of subdivision j or subdivision l of this  
108 section, which shall include, but not be limited to, all specific information submitted by a public  
109 entity or contractor upon which such findings, waivers and renewals are based and the type of  
110 such other authorized technology, if any, utilized in accordance with this section in relation to  
111 each finding, waiver and renewal, instead of the best available technology for reducing the  
112 emission of pollutants; (v) this report shall be provided annually to the joint committee on  
113 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 of  
118 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 the  
124 requirements of paragraph one of subdivision b or paragraph one of subdivision c of this section,  
125 provided that such agency or contractor in its fulfillment of the requirements of a public works  
126 contract for such agency, to the extent practicable, shall use whatever quantity of ultra low sulfur  
127 diesel fuel. Any finding made pursuant to this subdivision shall expire after sixty days, at which  
128 time the requirements of paragraph one of subdivision b and paragraph one of subdivision c of  
129 this section shall be in full force and effect unless the public entity renews the finding in writing  
130 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 terms.

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

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

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