

# 26:2C-8.26

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 219

**NJSA:** 26:2C-8.26 (Concerns regulation of fine particle diesel emissions from certain vehicles and equipment)

**BILL NO:** A3182 (Substituted for S1759)

**SPONSOR(S):** McKeon and others

**DATE INTRODUCED:** June 24, 2004

**COMMITTEE:** **ASSEMBLY:** Environment and Solid Waste; Budget  
**SENATE:**

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** June 27, 2005  
**SENATE:** June 27, 2005

**DATE OF APPROVAL:** September 7, 2005

### FOLLOWING ARE ATTACHED IF AVAILABLE:

**FINAL TEXT OF BILL** (Assembly Committee Substitute (1<sup>st</sup> Reprint) for A3182 enacted)

#### A3182

<b>SPONSOR'S STATEMENT:</b> (Begins on page 46 of original bill)	Yes	
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> Yes	5-19-2005 (Env & SW) 6-22-2005 (Budget)
	<b>SENATE:</b> No	
<b>FLOOR AMENDMENT STATEMENT:</b>	No	
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	Yes	

#### S1759

<b>SPONSOR'S STATEMENT:</b> (Begins on page 46 of original bill)	Yes	
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> No	
	<b>SENATE:</b> Yes	3-7-2005 (Environment) 5-19-2005 (Bud & App)
<b>FLOOR AMENDMENT STATEMENT:</b>	Yes	
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	Yes	

(continued)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** Yes

974.90 New Jersey. Legislature. Senate. Environment Committee.  
P777 Committee meeting on Senate bill no. 1759 held July 22, 2004, Trenton, NJ.  
2004 <http://www.njstatelib.org/digit/p777/p7772004.pdf>

**NEWSPAPER ARTICLES:** Yes

"Diesel emission reduction plan OK'd for referendum," 9-8-2005 Asbury Park Press, p.A3  
"Codey signs law to curb diesel smog," 9-8-2005 Philadelphia Inquirer, p.B3  
"Bill to slash diesel emissions gets governor's signature," 9-8-2005 The Record, p.A3

KBP

P.L. 2005, CHAPTER 219, *approved September 7, 2005*  
Assembly Committee Substitute (*First Reprint*) for  
Assembly, No. 3182

1 **AN ACT** concerning regulation of fine particle emissions from certain  
2 vehicles and equipment powered by diesel engines, and amending  
3 and supplementing various parts of statutory law.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. (New section) The Legislature finds and declares that the  
9 emissions of fine particles into the air pose an extraordinary health risk  
10 to the people of the State; that the Department of Environmental  
11 Protection has determined that 1,000 deaths and 68,000 cases of  
12 asthma in the State each year are attributed to the exceedance of the  
13 federal 2.5 micron fine particle standard in the State; that exhaust  
14 emissions from diesel-powered vehicles and equipment contribute  
15 substantially to the fine particle problem, and pose both cardiovascular  
16 and cancer risks; that the United States Environmental Protection  
17 Agency has classified diesel exhaust as likely to be carcinogenic to  
18 humans by inhalation at environmental exposures; that the United  
19 States Environmental Protection Agency has also identified diesel  
20 particle matter and diesel exhaust organic gases as a mobile source air  
21 toxic; that studies repeatedly have found links between exposure to  
22 fine particles and health effects, including premature death and  
23 increased incidents of asthma, allergies, and other breathing disorders;  
24 <sup>1</sup>and<sup>1</sup> that these studies include the examination of the health impacts  
25 of the exposure to diesel emissions for school children riding diesel-  
26 powered school buses <sup>1</sup>[; and that, based on these studies, the  
27 Department of Environmental Protection estimates that at least 370  
28 premature deaths could be avoided in the State by reduction of fine  
29 particle emissions from diesel engines]<sup>1</sup>.

30 The Legislature further finds and declares that, although some new  
31 diesel-powered vehicles and equipment operate more cleanly and may  
32 contribute less to air quality problems than their predecessors, diesel-  
33 powered trucks, buses, and off-road equipment tend to remain in  
34 service as long as 20 years or more; that, among these types of  
35 vehicles and equipment, <sup>1</sup>[the vehicles that contribute most  
36 significantly to the tonnage of fine particle emissions produced  
37 annually by on-road diesel-powered vehicles are]<sup>1</sup> diesel commercial

**EXPLANATION** - Matter enclosed in bold-faced brackets [**thus**] in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ABU committee amendments adopted June 23, 2005.

1 buses <sup>1</sup>[.]<sup>1</sup> and <sup>1</sup>[the other vehicles that most directly affect  
2 communities are]<sup>1</sup> diesel solid waste vehicles <sup>1</sup>[and] operate in  
3 significant numbers in urban areas of the State where the reduction of  
4 fine particle diesel emissions should be prioritized because fine particle  
5 diesel emissions are at the highest concentrations in these areas; that  
6 the emissions from<sup>1</sup> diesel school buses <sup>1</sup>directly impact the health of  
7 school children throughout the State<sup>1</sup>; that unless emissions from some  
8 on-road diesel-powered vehicles and off-road diesel-powered  
9 equipment currently operating in the State are controlled, all on-road  
10 diesel-powered vehicles and off-road diesel-powered equipment will  
11 continue to emit high levels of fine particles and contribute to air  
12 pollution in the State for many years to come; that filters and other  
13 devices and cleaner burning fuels are available to reduce emissions  
14 from older diesel vehicles and equipment; that retrofitting certain  
15 diesel-powered vehicles and equipment with emissions reducing  
16 devices, operating these vehicles and equipment on cleaner burning  
17 fuel, or both, could significantly improve air quality; that although  
18 such requirements impose costs, the costs are relatively small when  
19 compared with the costs of the vehicles or equipment they update or  
20 the cost of the impact on the public health from the air pollution that  
21 the requirements abate; <sup>1</sup>[that, before owners of privately owned  
22 vehicles and equipment are asked to take steps to reduce fine particle  
23 emissions, State, county, and municipal public entities should retrofit  
24 their fleets to reduce the problem;]<sup>1</sup> that by exercising discretion in  
25 the types of vehicles and equipment and the matching of technologies  
26 to vehicles and equipment, the cost of installing and using pollution-  
27 reducing devices and fuels can be minimized and the air pollution  
28 reduction and public health benefits can be maximized; and that the  
29 Department of Environmental Protection has estimated that targeting  
30 reductions of fine particles from these vehicles and equipment could  
31 remove 315 tons per year from the ambient air in the State and could  
32 prevent more than 150 premature deaths.

33 The Legislature therefore determines that it is of vital importance  
34 to the health of the people of the State to begin to reduce significantly  
35 fine particle emissions and exposure of school children to these  
36 emissions; and that this start can be most effectively and economically  
37 accomplished by requiring the use of the best available retrofit  
38 technologies for the reduction of fine particle emissions in diesel-  
39 powered commercial buses, school buses, solid waste vehicles, and  
40 publicly owned on-road vehicles and off-road equipment.

41

42 2. (New section) As used in sections 1 through 31 of P.L. , c.  
43 (C. )(now before the Legislature as this bill):

44 "Best available retrofit technology" means the equipment, retrofit  
45 device, or fuel, or any combination thereof, designated by the United  
46 States Environmental Protection Agency as a verified technology for

1 diesel retrofit programs, or by the California Air Resources Board as  
2 a verified technology for diesel emissions control, for use on or in  
3 specific makes, model years, <sup>1</sup>types,<sup>1</sup> and classes of on-road diesel  
4 vehicles or off-road diesel equipment, and that, as determined by the  
5 Department of Environmental Protection, may be used on or in  
6 regulated vehicles or regulated equipment, at a reasonable cost, to  
7 achieve substantial reduction of fine particle diesel emissions. "Best  
8 available retrofit technology" may include, but is not limited to,  
9 particle filters, diesel oxidation catalysts, flow through filters, and  
10 modified diesel fuel, provided that these diesel retrofit devices and  
11 diesel emissions control strategies are verified technologies according  
12 to the United States Environmental Protection Agency or the  
13 California Air Resources Board. <sup>1</sup>"Best available retrofit technology"  
14 shall include only those retrofit devices and fuel for which the retrofit  
15 device manufacturer or fuel manufacturer agrees, in a manner  
16 determined appropriate by the department, that the installation and use  
17 of the retrofit device or the use of the special fuel would not  
18 jeopardize the original engine warranty in effect at the time of the  
19 installation or the commencement of use of the retrofit device or fuel,  
20 and for which the retrofit device manufacturer or fuel manufacturer  
21 has provided a warranty pursuant to the rules and regulations adopted  
22 pursuant to section 3 of P.L. , c. (C. )(now before the  
23 Legislature as this bill).<sup>1</sup> "Best available retrofit technology" shall not  
24 include repowering of any vehicle or piece of equipment <sup>1</sup>, or the use  
25 of ultra-low sulfur diesel fuel;

26 "Commission" means the New Jersey Motor Vehicle Commission<sup>1</sup>;

27 "Compliance form" means a form used for ascertaining compliance  
28 with the provisions of P.L. , c. (C. )(now before the Legislature as  
29 this bill) or eligibility for reimbursement of costs associated therewith,  
30 and issued pursuant to section 6, section 7, section 16, or section 17  
31 of P.L. , c. (C. )(now before the Legislature as this bill);

32 "Constitutionally dedicated moneys" mean moneys dedicated  
33 pursuant to Article VIII, Section II, paragraph 6, subparagraph (d) of  
34 the State Constitution;

35 "Department" means the Department of Environmental Protection;

36 "Diesel commercial bus" means a diesel bus as defined pursuant to  
37 section 2 of P.L. 1995, c.157 (C.39:8-60), except that "diesel  
38 commercial bus" shall include only diesel commercial buses with a  
39 gross vehicle weight rating in excess of 14,000 pounds, and shall not  
40 include school buses;

41 "Diesel engine" means an internal combustion engine with  
42 compression ignition using diesel fuel, including the fuel injection  
43 system but excluding the exhaust system;

44 "Diesel Risk Mitigation Fund" or "fund" means the fund established  
45 pursuant to section 28 of P.L. , c. (C. )(now before the  
46 Legislature as this bill);

1 "Diesel solid waste vehicle" means any on-road diesel vehicle with  
2 a gross vehicle weight rating in excess of 14,000 pounds that is used  
3 for the purposes of collecting or transporting residential or commercial  
4 solid waste, including vehicles powered by a diesel engine used for  
5 transporting waste containers, including, but not necessarily limited to,  
6 open boxes, dumpsters or compactors, which may be removed from  
7 the tractor. "Diesel solid waste vehicle" shall include solid waste cabs  
8 and solid waste single-unit vehicles;

9 "Fine particle" means a particle emitted directly into the  
10 atmosphere from exhaust produced by the combustion of diesel fuel  
11 and having an aerodynamic diameter of 2.5 micrometers or less;

12 "Fine particle diesel emissions" means emissions of fine particles  
13 from an on-road diesel vehicle or from off-road diesel equipment;

14 "Fleet" means one or more on-road diesel vehicles or pieces of off-  
15 road diesel equipment;

16 "Off-road diesel equipment" means any equipment or vehicle, other  
17 than a diesel construction truck, powered by a diesel engine that is  
18 used primarily for construction, loading, and other off-road purposes  
19 and, when in use, is not commonly operated on a roadway except  
20 when used for roadway construction and repair, including, but not  
21 necessarily limited to, rollers, scrapers, excavators, rubber tire loaders,  
22 crawler/dozers, and off-highway trucks. "Off-road diesel equipment"  
23 shall include equipment and vehicles that are not used primarily for  
24 transportation and are considered off-road equipment and vehicles but,  
25 for the purposes of moving the equipment and vehicles from place to  
26 place on the roadways of the State, are required to have "in-transit"  
27 plates issued by the New Jersey Motor Vehicle Commission. "Off-  
28 road diesel equipment" shall not include any non-mobile equipment,  
29 such as a generator or pump, and shall not include boats or trains;

30 "On-road diesel vehicle" means any vehicle, other than a private  
31 passenger automobile, that is powered by a diesel engine and operated  
32 on the roadways of the State, and shall include, but need not be limited  
33 to, diesel buses, diesel-powered motor vehicles, and heavy-duty diesel  
34 trucks as defined pursuant to section 2 of P.L.1995, c.157 (C.39:8-  
35 60);

36 "Owner" means any person, the State, or any political subdivision  
37 thereof, that owns any on-road diesel vehicle or off-road diesel  
38 equipment subject to the provisions of P.L. , c. (C. )(now  
39 before the Legislature as this bill);

40 "Private regulated commercial bus" means any diesel commercial  
41 bus not owned by the New Jersey Transit Corporation, and any diesel  
42 commercial bus owned by the New Jersey Transit Corporation but  
43 leased or operated by a provider of diesel commercial bus service  
44 other than the New Jersey Transit Corporation;

45 "Public regulated commercial bus" means any diesel commercial  
46 bus owned and operated by the New Jersey Transit Corporation;

1 "Regulated commercial bus" means any diesel commercial bus  
2 registered and operating in the State;

3 "Regulated equipment" means any regulated off-road diesel  
4 equipment or any piece of off-road diesel equipment that is required  
5 to use best available retrofit technology pursuant to an approved fleet  
6 averaging plan;

7 "Regulated off-road diesel equipment" means any off-road diesel  
8 equipment operating in the State that is owned by the State or any  
9 political subdivision thereof, or a county or municipality, or any  
10 political subdivision thereof;

11 "Regulated on-road diesel vehicle" means any on-road diesel  
12 vehicle registered in the State that is owned by the State or any  
13 political subdivision thereof, a county or municipality, or any political  
14 subdivision thereof;

15 "Regulated school bus" means a school bus powered by a diesel  
16 engine, and owned by a school district, nonpublic school, or school  
17 bus contractor who has entered into a contract with a school district  
18 or a nonpublic school to transport children to and from a primary or  
19 secondary school in the State, that was originally designed to carry 10  
20 or more passengers, and is in service on or after the effective date of  
21 P.L. , c. (C. )(now before the Legislature as this bill);

22 "Regulated solid waste vehicle" means any diesel solid waste  
23 vehicle registered in the State that is owned by the State or any  
24 political subdivision thereof, or a county or municipality or any  
25 political subdivision thereof, or that is owned by a person who has  
26 entered into a contract in effect on or after the effective date of  
27 P.L. , c. (C. )(now before the Legislature as this bill), with  
28 the State or any political subdivision thereof, or a county or  
29 municipality or any political subdivision thereof, to provide solid waste  
30 services;

31 "Regulated vehicle" means any regulated commercial bus,  
32 regulated on-road diesel vehicle, regulated solid waste vehicle, or any  
33 regulated school bus required to comply with any requirements  
34 pursuant to subsection b. of section 7 of P.L. , c. (C. )(now  
35 before the Legislature as this bill) from model year 2006 or a  
36 preceding model year and registered in the State, or any on-road diesel  
37 vehicle registered in the State that is required to use best available  
38 retrofit technology pursuant to an approved fleet averaging plan;

39 "Retrofit device" means a best available retrofit technology that is  
40 an after-market apparatus installed on an on-road diesel vehicle or on  
41 a piece of off-road diesel equipment;

42 "School bus" means a school bus as defined under R.S.39:1-1;  
43 <sup>1</sup>[and]<sup>1</sup>

44 "Technology" means any equipment, device, or fuel used alone or  
45 in combination to achieve the reductions in emissions required for best  
46 available retrofit technology <sup>1</sup>; and

1        "Ultra-low sulfur diesel fuel" means diesel fuel that the United  
2 States Environmental Protection Agency designates or defines as ultra-  
3 low sulfur diesel fuel<sup>1</sup> .

4  
5        3. (New section) a. The Department of Environmental  
6 Protection, no later than 270 days after the effective date of this  
7 section, shall adopt, pursuant to the "Administrative Procedure Act,"  
8 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary  
9 to implement the provisions of P.L. , c. (C. )(now before the  
10 Legislature as this bill).

11        b. The rules and regulations adopted pursuant to subsection a. of  
12 this section shall include, but not need not be limited to:

13        (1) the designation of <sup>1</sup>[best available retrofit technologies to be  
14 used on specific types, makes, models, and classes of] the required  
15 reduction in fine particle diesel emissions and choices of the best  
16 available retrofit technologies available to owners of regulated vehicles  
17 or regulated equipment to meet the required reduction for each make,  
18 model or type of<sup>1</sup> regulated vehicles or regulated equipment <sup>1</sup>,  
19 including, but not limited to, the description of the hierarchy and levels  
20 of best available retrofit technologies as they correspond to the  
21 emissions reductions anticipated from the use of each best available  
22 retrofit technology,<sup>1</sup> and the requirements for implementing the use of  
23 best available retrofit technologies by any owner of regulated vehicles  
24 or regulated equipment who elects not to submit a fleet retrofit plan,  
25 combined fleet retrofit plan, or fleet averaging plan pursuant to section  
26 7 or section 9 of P.L. , c. (C. )(now before the Legislature as  
27 this bill);

28        (2) guidelines and requirements for developing fleet retrofit plans,  
29 combined fleet retrofit plans, and fleet averaging plans, and any  
30 supplements or modifications thereto, including, but not limited to:

31        (a) a description of the components that, at a minimum, are to be  
32 included in a fleet retrofit plan;

33        (b) guidelines for use by owners of regulated vehicles or regulated  
34 equipment concerning how to develop an inventory of regulated  
35 vehicles or regulated equipment, prepare the required fleet retrofit  
36 plan, and determine the technology required for each vehicle or piece  
37 of equipment;

38        (c) the choices of the best available retrofit technologies available  
39 to owners of regulated vehicles or regulated equipment for each make,  
40 model or type of regulated vehicle or regulated equipment to achieve  
41 reductions in fine particle emissions;

42        <sup>1</sup>[(d) standards for the installation of best available retrofit  
43 technologies on or in regulated vehicles or regulated equipment;

44        (e)] (d) <sup>1</sup> information on how to select the specific best available  
45 retrofit technologies and ensure the fleet retrofit plan, combined fleet  
46 plan, or fleet averaging plan requirements are met;

1 <sup>1</sup>~~[(f)] (e)~~<sup>1</sup> procedures and provisions for the review and approval,  
2 and enforcement of fleet retrofit plans, combined fleet retrofit plans,  
3 and fleet averaging plans for regulated vehicles or regulated  
4 equipment; and

5 <sup>1</sup>~~[(g)] (f)~~<sup>1</sup> provisions ensuring, in the implementation requirements  
6 for fleet retrofit plans, combined fleet plans, or fleet averaging plans,  
7 due consideration of the efforts of owners of regulated vehicles or  
8 regulated equipment who voluntarily retrofit regulated vehicles or  
9 regulated equipment prior to the required submittal of a fleet retrofit  
10 plan, combined fleet retrofit plan, or fleet averaging plan;

11 (3) the procedures for contacting the department with questions  
12 about the requirements of, and compliance with, the provisions of  
13 P.L., c. (C. ) (now before the Legislature as this bill), and for  
14 obtaining any technical guidance needed in preparing the fleet retrofit  
15 plans, combined fleet retrofit plans, or fleet averaging plans;

16 (4) in consultation with the Department of Education, the  
17 Department of Health and Human Services, the New Jersey Motor  
18 Vehicle Commission, and the Department of Law and Public Safety,  
19 provisions concerning the idling and queuing of school buses and  
20 enforcement of violations thereof, in accordance with section 8 of  
21 P.L. , c. (C. )(now before the Legislature as this bill) and no less  
22 stringent than restrictions on idling pursuant to department rules and  
23 regulations in effect on the effective date of P.L. , c. (C. )(now  
24 before the Legislature as this bill); and

25 (5) any requirements or guidelines concerning the installation of  
26 closed crankcase technology in regulated school buses or compliance  
27 with the provisions of section 6 of P.L. , c. (C. )(now before the  
28 Legislature as this bill); <sup>1</sup>~~[and]~~<sup>1</sup>

29 (6) <sup>1</sup>~~[Any]~~ warranty provisions for best available retrofit  
30 technologies and their installation and use on regulated vehicles or  
31 regulated equipment; and

32 (7) any<sup>1</sup> other provisions the department determines necessary for  
33 the implementation of P.L. , c. (C. )(now before the  
34 Legislature as this bill).

35 c. No provision of the rules and regulations adopted pursuant to  
36 subsection a. of this section may <sup>1</sup>;

37 (1)<sup>1</sup> designate any other types, makes, models, or classes of  
38 vehicles or equipment as regulated vehicles or regulated equipment  
39 other than regulated vehicles and regulated equipment as defined in  
40 section 2 of P.L. , c. (C. )(now before the Legislature as this  
41 bill) <sup>1</sup>;

42 (2) require the installation and use of a retrofit device on a private  
43 regulated commercial bus earlier than 180 days after the owners of  
44 public regulated commercial buses have been required to install and  
45 have begun to use best available retrofit technologies that are retrofit  
46 devices on public regulated commercial buses;

1       (3) require the installation or use of a retrofit device on a regulated  
2 vehicle or piece of regulated equipment unless:

3       (a) the State Treasurer certifies that the constitutionally dedicated  
4 moneys have been deposited in the Diesel Risk Mitigation Fund for  
5 that year; and

6       (b) the Department of Environmental Protection certifies that  
7 sufficient moneys are available in the fund to pay for the cost of  
8 purchase and installation of the retrofit device required to be installed  
9 or used in that given year, by rule or regulation or by a provision of a  
10 plan submitted pursuant to section 7 or section 9 of P.L. \_\_\_\_\_, c. \_\_\_\_\_  
11 (C. \_\_\_\_\_) (now before the Legislature as this bill).

12       Provided that the State Treasurer has issued the certification  
13 required under subparagraph (a) of paragraph (3) of this subsection for  
14 that year, the department may determine the amount of moneys  
15 available in the fund for that year, require the purchase and installation  
16 of those retrofit devices in those regulated vehicles or pieces of  
17 regulated equipment for which sufficient moneys are available, and  
18 certify that sufficient moneys are available for those retrofit devices in  
19 those regulated vehicles or pieces of equipment.

20       d. The rules and regulations adopted pursuant to paragraph (6) of  
21 subsection b. of this section shall at a minimum require that:

22       (1) the manufacturer of best available retrofit technology warrant  
23 to the owner of any regulated vehicle or piece of regulated equipment  
24 the full repair and replacement cost of the best available retrofit  
25 technology, including parts and labor, if the best available retrofit  
26 technology fails to perform as verified;

27       (2) the manufacturer of best available retrofit technology warrant  
28 to the owner of any regulated vehicle or piece of regulated equipment,  
29 if the installation or use of the best available retrofit technology  
30 damages the engine or the engine components of the regulated vehicle  
31 or piece of regulated equipment, the repair or replacement of engine  
32 components to return the engine components of the regulated vehicle  
33 or piece of regulated equipment to the condition they were in prior to  
34 damage caused by the best available retrofit technology;

35       (3) the manufacturers of best available retrofit technology  
36 authorize installers of best available retrofit technology other than fuel  
37 as authorized installers of the best available retrofit technology; and

38       (4) only authorized installers of best available retrofit technology  
39 install best available retrofit technology other than fuel.

40       The specific provisions of these requirements and the specific  
41 provisions of any warranty may be established by the department  
42 through rules and regulations adopted pursuant to this section or  
43 under separate rules and regulations adopted pursuant to the  
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
45 seq.), including but not limited to, the period of time during which a  
46 warranty would be in effect.<sup>1</sup>

1       4. (New section) The Department of Environmental Protection  
2 shall consult with the New Jersey Motor Vehicle Commission and the  
3 New Jersey Transit Corporation when developing the provisions of the  
4 rules and regulations to be adopted pursuant to section 3 of P.L. ,  
5 c. (C. )(now before the Legislature as this bill) concerning  
6 diesel commercial buses. No later than 60 days before any proposed  
7 rules or regulations are filed for publication in the New Jersey  
8 Register, the Department of Environmental Protection shall submit for  
9 comment to the New Jersey Transit Corporation any rules or  
10 regulations concerning diesel commercial buses proposed for adoption  
11 pursuant to section 3 <sup>1</sup>[or] <sup>1</sup> section 19 <sup>1</sup>, or section 20<sup>1</sup> of P.L. ,  
12 c. (C. )(now before the Legislature as this bill). The Department  
13 of Environmental Protection, wherever possible, shall incorporate into  
14 requirements imposed on the New Jersey Transit Corporation the use  
15 of improved pollution control or fuels other than conventional diesel  
16 fuel used by the New Jersey Transit Corporation pursuant to section  
17 22 of P.L.1984, c.73 (C.27:1B-22), but may require additional  
18 controls or fuel use for diesel commercial buses operated by, or under  
19 contract to, the New Jersey Transit Corporation. No provision of  
20 section 22 of P.L.1984, c.73 (C.27:1B-22) shall be construed to  
21 supersede, or exempt the New Jersey Transit Corporation from, any  
22 requirements the Department of Environmental Protection may  
23 establish pursuant to this section. The Department of Environmental  
24 Protection shall give due consideration to the efforts and actions of the  
25 New Jersey Transit Corporation for any reduction of fine particle  
26 diesel emissions that it has achieved by the installation of retrofit  
27 equipment on on-road diesel vehicles in its fleet or the use of special  
28 fuels by its fleet to use prior to the submittal of any fleet retrofit plan,  
29 combined fleet retrofit plan, or fleet averaging plan required pursuant  
30 to P.L. , c. (C. ) (now before the Legislature as this bill).

31  
32       5. (New section) The Department of Environmental Protection  
33 shall develop and implement, in consultation with the New Jersey  
34 Motor Vehicle Commission, a public outreach program to notify and  
35 inform the owners of regulated vehicles or regulated equipment  
36 affected by the provisions of P.L. , c. (C. ) (now before the  
37 Legislature as this bill) of the provisions of the law. In developing and  
38 implementing the public outreach program, the department shall make  
39 every effort to reach those owners that can be identified with the  
40 information that is available to the department and through other State  
41 agencies or departments, but the department shall not be responsible  
42 for notifying and informing owners that could not be identified, and  
43 not the New Jersey Motor Vehicle Commission nor any other State  
44 agency or department shall be required to identify every owner.

45  
46       6. (New section) a. No later than two years after the effective

1 date of P.L. , c. (C. ) (now before the Legislature as this bill),  
2 or two years after the date on or by which both certifications required  
3 in this subsection have been made, whichever is later, every owner of  
4 a regulated school bus shall have installed on the regulated school bus  
5 closed crankcase technology as specified by the rules and regulations  
6 adopted pursuant to section 3 of P.L. , c. (C. ) (now before  
7 the Legislature as this bill).

8 No owner of a regulated school bus shall be required to install  
9 closed crankcase technology pursuant to this subsection unless:

10 (1) the State Treasurer certifies in each of the two years after the  
11 effective date of P.L. , c. (C. ) (now before the Legislature as  
12 this bill) that the constitutionally dedicated moneys have been  
13 deposited in the Diesel Risk Mitigation Fund; and

14 (2) the Department of Environmental Protection certifies that  
15 sufficient moneys are available in the fund to pay the cost of purchase  
16 and installation of the closed crankcase technology required pursuant  
17 to this subsection in that two-year period.

18 <sup>1</sup>Provided that the State Treasurer has issued the certification  
19 required under paragraph (1) of this subsection for that year, the  
20 department may determine the amount of moneys available in the fund  
21 for that year, require the purchase and installation of those retrofit  
22 devices in those regulated vehicles or pieces of regulated equipment  
23 for which sufficient moneys are available, and certify that sufficient  
24 moneys are available for those retrofit devices in those regulated  
25 vehicles or pieces of equipment.<sup>1</sup>

26 b. The Department of Environmental Protection shall provide, and  
27 each owner of a regulated school bus shall obtain from the department,  
28 a compliance form for each regulated school bus. The owner of the  
29 regulated school bus shall complete the <sup>1</sup>compliance<sup>1</sup> form, retain a  
30 copy for the owner's records, and return it to the department as soon  
31 as practicable after the installation of the closed crankcase technology  
32 <sup>1</sup>to verify compliance with the requirements of subsection a. of this  
33 section and to seek reimbursement for the cost of the closed crankcase  
34 technology<sup>1</sup>. The compliance form shall include the cost of any  
35 retrofit device installed as part of the closed crankcase technology and  
36 any cost associated with the installation of the closed crankcase  
37 technology. After the installation of the closed crankcase technology  
38 on a regulated school bus, a copy of the completed compliance form  
39 shall be kept on each regulated school bus at all times.

40 c. <sup>1</sup>[Each owner of a regulated school bus seeking reimbursement  
41 for the cost of the closed crankcase technology shall submit a copy of  
42 the compliance form obtained and completed] The department shall  
43 review the compliance forms submitted<sup>1</sup> pursuant to subsection b. of  
44 this section <sup>1</sup>and forward them<sup>1</sup> to the State Treasurer. The State  
45 Treasurer shall reimburse each owner of a regulated school bus the  
46 cost of any retrofit device installed as part of the closed crankcase

1 technology <sup>1</sup>requirement<sup>1</sup> and any cost associated with the installation  
2 of the closed crankcase technology indicated on the compliance form  
3 <sup>1</sup>, in accordance with the provisions of sections 28 through 31,  
4 inclusive, of P.L. , c. (C. )(now before the Legislature as this  
5 bill)<sup>1</sup>.

6 <sup>1</sup>[d. Commencing two years after the effective date of this act, the  
7 inspection of any regulated school bus pursuant to R.S.39:8-2 shall  
8 include confirmation that the closed crankcase technology has been  
9 installed. If the examiner is unable to identify that the closed  
10 crankcase technology has been installed on the school bus being  
11 inspected, the examiner shall record the vehicle identification number  
12 and registration information for the school bus and shall submit this  
13 information to the New Jersey Motor Vehicle Commission. The New  
14 Jersey Motor Vehicle Commission shall forward this information  
15 concerning any such school bus to the Department of Environmental  
16 Protection.

17 e.] d.<sup>1</sup> The Department of Environmental Protection shall provide  
18 any training necessary to implement the provisions of subsection d. of  
19 this section for any employees of, or persons contracted or licensed by,  
20 the New Jersey Motor Vehicle Commission, as determined necessary  
21 by the Chief Administrator of the New Jersey Motor Vehicle  
22 Commission.

23 <sup>1</sup>e. The Department of Environmental Protection and the New  
24 Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the  
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
26 seq.), rules and regulations concerning the installation of the  
27 crankcase technology required pursuant to this section and establishing  
28 the inspection requirements and procedures for verification of  
29 compliance with the crankcase technology requirement established  
30 pursuant to this section, the use of the compliance form in any  
31 inspection or as part of the inspection procedures and verification of  
32 compliance, any training necessary for any employees of, or persons  
33 contracted or licensed by, the New Jersey Motor Vehicle Commission,  
34 and the extent of that training to be provided by the Department of  
35 Environmental Protection, and in what manner that training shall be  
36 provided.<sup>1</sup>

37 f. If for any reason, the owner of the regulated school bus is  
38 unable to comply with the requirements specified in this section, the  
39 owner shall notify the department, as soon as practicable, of the  
40 inability to comply. The department shall resolve the situation with  
41 the owner as soon as practicable, and the department shall issue any  
42 necessary documentation and other information to the owner of the  
43 regulated school bus.

44  
45 7. (New section) a. Within two years after the effective date of  
46 P.L. , c. (C. )(now before the Legislature as this bill), the

1 Department of Environmental Protection shall complete a study to  
2 identify and quantify the sources of fine particles present in the cabin  
3 of a regulated school bus. The study shall:

4 (1) evaluate the relative contribution of emissions from both the  
5 crankcase and the tailpipe to in-cabin levels of fine particles; <sup>1</sup>and<sup>1</sup>

6 (2) <sup>1</sup>[evaluate the effect of idling and queuing on in-cabin fine  
7 particle levels to determine whether exposure of children to fine  
8 particles is higher during a typical commute or during morning and  
9 afternoon idling and queuing of school buses at a school; and

10 (3)]<sup>1</sup> evaluate the feasibility of requiring, <sup>1</sup> and the <sup>1</sup>  
11 environmental and health benefits of <sup>1</sup>[reducing]<sup>1</sup> the <sup>1</sup>reduction of<sup>1</sup>  
12 fine particle levels <sup>1</sup>[during a typical commute or during morning and  
13 afternoon idling and queuing of school buses at a] from<sup>1</sup> school <sup>1</sup>bus  
14 tailpipe emissions<sup>1</sup> through the use of additional retrofit devices.

15 b. If the Department of Environmental Protection finds as a result  
16 of the study conducted pursuant to subsection a. of this section that  
17 technologically feasible reductions in tailpipe emissions would  
18 significantly reduce the health risks associated with exposure of  
19 children to fine particles in the cabin of a standard school bus, the  
20 department may require the use of additional best available retrofit  
21 technologies in or on regulated school buses. <sup>1</sup>[The] If the  
22 department makes such a finding pursuant to the study, the<sup>1</sup>  
23 department shall adopt, pursuant to the "Administrative Procedure  
24 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations  
25 establishing:

26 (1) the best available retrofit technologies that regulated school  
27 buses shall be required to use, according to type, class, and other  
28 identifying vehicle information as designated by the department in  
29 these rules and regulations; and

30 (2) the requirements for submitting a fleet retrofit plan, combined  
31 fleet retrofit plan, or fleet averaging plan that are consistent with the  
32 requirements and provisions of section 9 and section 10 of P.L. , c.  
33 (C. ) (now before the Legislature as this bill) and the requirements  
34 for implementing the use of best available retrofit technologies for any  
35 owner who elects not to submit such a plan.

36 No use of additional best available retrofit technologies in or on  
37 regulated school buses may be required pursuant to this subsection for  
38 regulated school buses scheduled to be in service for less than two  
39 years on or after the date of notification pursuant to subsection d. of  
40 this section. No provision of the rules and regulations may require an  
41 owner of a regulated school bus to make a submittal to the department  
42 except as provided by this section.

43 c. No owner of a regulated school bus shall be required to  
44 <sup>1</sup>[implement any requirement] install or use a retrofit device on a  
45 regulated school bus as required<sup>1</sup> pursuant to the rules and regulations  
46 adopted pursuant to subsection b. of this section <sup>1</sup>[, submit plans

1 pursuant to subsection e. of this section,]<sup>1</sup> or <sup>1</sup>[implement] pursuant  
2 to<sup>1</sup> any part of <sup>1</sup>[such plans] a plan submitted pursuant to subsection  
3 e. of this section<sup>1</sup> unless:

4 (1) the State Treasurer certifies that the constitutionally dedicated  
5 moneys have been deposited in the Diesel Risk Mitigation Fund for  
6 that year; and

7 (2) the Department of Environmental Protection certifies that  
8 sufficient moneys are available in the fund to pay for the cost of  
9 purchase and installation of the <sup>1</sup>[best available retrofit technologies  
10 required] retrofit device<sup>1</sup> required to be used by rule or regulation or  
11 by <sup>1</sup>a provision of<sup>1</sup> a plan submitted pursuant to subsection e. of this  
12 section <sup>1</sup>in that given year.

13 Provided that the State Treasurer has issued the certification  
14 required under paragraph (1) of this subsection for that year, the  
15 department may determine the amount of moneys available in the fund  
16 for that year, require the purchase and installation of those retrofit  
17 devices in those regulated school buses for which sufficient moneys  
18 are available, and certify that sufficient moneys are available for those  
19 retrofit devices in those regulated school buses<sup>1</sup>.

20 d. The Department of Environmental Protection shall notify each  
21 owner of a regulated school bus of the adoption of the rules and  
22 regulations pursuant to subsection b. of this section and the provisions  
23 of those rules and regulations. In establishing additional requirements  
24 pursuant to subsection b. of this section, the department shall require  
25 the compliance of regulated school buses before the compliance of  
26 other vehicles and equipment required to use best available retrofit  
27 technologies pursuant to P.L. , c. (C. )(now before the  
28 Legislature as this bill). The State Treasurer shall prioritize the use of  
29 dedicated moneys in the Diesel Risk Mitigation Fund to allow for  
30 regulated school bus compliance with the provisions of this section,  
31 and shall prioritize payments made from the fund for regulated school  
32 buses complying with these additional requirements.

33 e. <sup>1</sup>[Each] If rules and regulations are adopted pursuant to  
34 subsection b. of this section, each<sup>1</sup> owner of a regulated school bus  
35 shall submit to the Department of Environmental Protection:

36 (1) an inventory of the diesel-powered school buses that are owned  
37 by the owner;

38 (2) notice by the owner that the owner <sup>1</sup>[elects not to submit a  
39 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan  
40 and intends to] shall comply with the requirements of P.L. , c.  
41 (C. )(now before the Legislature as this bill) through the<sup>1</sup> use <sup>1</sup>of<sup>1</sup>  
42 the best available retrofit technologies as <sup>1</sup>[specified] designated and  
43 provided for<sup>1</sup> under the rules and regulations adopted pursuant to  
44 <sup>1</sup>[P.L. , c. (C. )(now before the Legislature as this bill)] subsection  
45 b. of this section<sup>1</sup> , or that the owner <sup>1</sup>cannot comply in that manner

1 and<sup>1</sup> is submitting a fleet retrofit plan, combined fleet retrofit plan, or  
2 fleet averaging plan; and

3 (3) the fleet retrofit plan, combined fleet retrofit plan, or fleet  
4 averaging plan being submitted in lieu of <sup>1</sup>[using] complying through  
5 the use of<sup>1</sup> the best available retrofit technologies as <sup>1</sup>[specified]  
6 designated and provided for<sup>1</sup> under the rules and regulations adopted  
7 pursuant to P.L. , c. (C. ) (now before the Legislature as this  
8 bill), if the owner has elected to do so.

9 The owner shall make these submittals no later than 180 days after  
10 the effective date of the rules and regulations adopted pursuant to  
11 subsection b. of this section, or the date on or by which both  
12 certifications required pursuant to subsection c. of this section have  
13 been made, whichever is later.

14 f. No later than 180 days after the date of the submittals and  
15 notice pursuant to subsection e. of this section, the Department of  
16 Environmental Protection shall review, approve, and resolve any  
17 discrepancies concerning any submitted fleet retrofit plan, combined  
18 fleet retrofit plan, or fleet averaging plan, and shall issue final approval  
19 of the submitted plan. Any supplements or modifications to the fleet  
20 retrofit plan, combined fleet retrofit plan, or fleet averaging plan  
21 submitted pursuant to this subsection shall be made pursuant to section  
22 10 of P.L. , c. (C. ) (now before the Legislature as this bill).

23 <sup>1</sup>g. The department shall provide a one-page compliance form to  
24 each owner of a regulated school bus that submits a notice to comply  
25 pursuant to paragraph (2) of subsection e. of this section for each  
26 regulated school bus required to use best available retrofit  
27 technologies. The compliance form shall be similar to the compliance  
28 form issued pursuant to section 17 of P.L. , c. (C. ) (now before  
29 the Legislature as this bill) and shall be consistent with the provisions  
30 of subsection b. of that section. The department shall issue with the  
31 compliance form a notice of instructions describing the purpose of,  
32 and the procedures for completion of the compliance form, and the  
33 requirement to keep the compliance form with the regulated vehicle,  
34 or other vehicle included in a fleet averaging plan or modification  
35 thereto, for the life of the vehicle.

36 The owner of the regulated school bus shall complete the  
37 compliance form, retain a copy for the owner's records, and return it  
38 to the department as soon as practicable after the installation of, or  
39 commencement of the use of, the best available retrofit technologies  
40 required pursuant to the rules and regulations adopted pursuant to  
41 subsection b. of this section. The department shall review the  
42 compliance forms submitted and shall forward them to the State  
43 Treasurer, who shall reimburse each owner of a regulated school bus  
44 the cost of any retrofit device and the costs associated with the  
45 installation thereof, in accordance with the provisions of sections 28  
46 through 31, inclusive, of P.L. , c. (C. ) (now before the

1 Legislature as this bill).<sup>1</sup>

2

3 8. (New section) a. The rules and regulations adopted pursuant  
4 to paragraph (4) of subsection b. of section 3 of P.L. , c. (C. )  
5 (now before the Legislature as this bill), shall be consistent with any  
6 rules and regulations adopted pursuant to the "Air Pollution Control  
7 Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) concerning the  
8 idling of vehicles powered by diesel engines, shall be no less stringent  
9 than the restrictions on idling pursuant to department rules and  
10 regulations in effect on the date of enactment of P.L. , c. (C. )  
11 (now before the Legislature as this bill), and shall provide for the same  
12 penalties to be enforced for school bus idling as are enforced for the  
13 idling of other motor vehicles pursuant to section 2 of P.L.1966, c.15  
14 (C.39:3-70.2), except that:

15 (1) a warning shall be issued to the driver of the school bus <sup>1</sup> [ ,  
16 and] operated in violation of these provisions, to the school district  
17 if the school district is not the owner of the school bus, and the  
18 principal or administrator of the school serviced by the school bus  
19 operated in violation of these provisions, for the first violation;

20 (2) for a first violation,<sup>1</sup> a notice of violation shall be issued to <sup>1</sup> ,  
21 and the appropriate penalty imposed on,<sup>1</sup> the owner of the school bus  
22 <sup>1</sup>[, if applicable, the school district, and the principal or administrator  
23 of the school serviced by the school bus]<sup>1</sup> operated in violation of  
24 these provisions <sup>1</sup>[for the first violation]<sup>1</sup> ; and

25 <sup>1</sup>[(2)] (3)<sup>1</sup> subsequent violations shall be enforced against the  
26 <sup>1</sup>owner of the school bus operated in violation of these provisions, if  
27 other than the school district, and the<sup>1</sup> school district serviced by the  
28 school bus operated in violation of these provisions.

29 No penalties may be assessed against any driver of any school bus  
30 that is operated in violation of the rules and regulations adopted  
31 pursuant P.L. , c. (C. )(now before the Legislature as this bill).

32 b. The Department of Environmental Protection shall consult with  
33 the Department of Education, individual school districts and school  
34 administrators concerning the issue of school bus idling, and develop  
35 and assist with the implementation of policies and procedures to  
36 achieve compliance with the rules and regulations adopted pursuant to  
37 paragraph (4) of subsection b. of section 3 of P.L. , c. (C. )(now  
38 before the Legislature as this bill).

39 c. The Department of Law and Public Safety, in consultation with  
40 local law enforcement, the Department of Education, the Department  
41 of Environmental Protection, and the New Jersey Motor Vehicle  
42 Commission, shall adopt, pursuant to the "Administrative Procedures  
43 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations  
44 necessary to facilitate and ensure the enforcement of the rules and  
45 regulations adopted pursuant to paragraph (4) of subsection b. of  
46 section 3 of P.L. , c. (C. )(now before the Legislature as this bill).

1 9. (New section) a. Except as otherwise provided for in this  
2 section, any owner of a regulated vehicle or regulated equipment shall  
3 submit to the Department of Environmental Protection:

4 (1) an inventory of all on-road diesel vehicles and off-road diesel  
5 equipment owned, operated, or leased by the owner;

6 (2) notice by the owner that the owner <sup>1</sup>[elects not to submit a  
7 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan  
8 and intends to] shall comply with the requirements of P.L. , c. (C. )  
9 (now before the Legislature as this bill) through the<sup>1</sup> use <sup>1</sup>of<sup>1</sup>  
10 the best available retrofit technologies as <sup>1</sup>[specified] designated and  
11 provided for<sup>1</sup> under the rules and regulations adopted pursuant to  
12 <sup>1</sup>section 3 of<sup>1</sup> P.L. , c. (C. ) (now before the Legislature as this  
13 bill), or that the owner <sup>1</sup>cannot comply in that manner and<sup>1</sup> is  
14 submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet  
15 averaging plan; and

16 (3) the fleet retrofit plan <sup>1</sup>, combined fleet retrofit plan, or fleet  
17 averaging plan<sup>1</sup> being submitted in lieu of<sup>1</sup> [using] complying through  
18 the use of<sup>1</sup> the best available retrofit technologies as <sup>1</sup>[specified]  
19 designated and provided for<sup>1</sup> under the rules and regulations adopted  
20 pursuant to <sup>1</sup>section 3 of<sup>1</sup> P.L. , c. (C. ) (now before the  
21 Legislature as this bill), if the owner has elected to do so.

22 b. Each owner of a regulated vehicle or regulated equipment shall  
23 make the submittals required pursuant to subsection a. in accordance  
24 with the following schedule:

25 (1) for regulated solid waste vehicles, no later than 180 days after  
26 the effective date of the rules and regulations adopted pursuant to  
27 section 3 of P.L. , c. (C. ) (now before the Legislature as this  
28 bill)<sup>1</sup>[, or the date on or by which both certifications required pursuant  
29 to subsection k. of this section have been made, whichever is later]<sup>1</sup>;

30 (2) for public regulated commercial buses, no later than one year  
31 after the effective date of the rules and regulations adopted pursuant  
32 to section 3 of P.L. , c. (C. ) (now before the Legislature as this  
33 bill) <sup>1</sup>[, or the date on or by which both certifications required  
34 pursuant to subsection k. of this section have been made, whichever  
35 is later]<sup>1</sup>;

36 (3) for private regulated commercial buses, no later than one year  
37 and 180 days after the effective date of the rules and regulations  
38 adopted pursuant to section 3 of P.L. , c. (C. ) (now before the  
39 Legislature as this bill) <sup>1</sup>[, or the date on or by which both  
40 certifications required pursuant to subsection k. of this section have  
41 been made, whichever is later]<sup>1</sup>; and

42 (4) for regulated on-road diesel vehicles and regulated equipment  
43 other than regulated solid waste vehicles and regulated commercial  
44 buses, no later than two years after the effective date of the rules and  
45 regulations adopted pursuant to section 3 of P.L. , c. (C. ) (now

1 before the Legislature as this bill) <sup>1</sup>[, or the date on or by which both  
2 certifications required pursuant to subsection k. of this section have  
3 been made, whichever is later] <sup>1</sup>.

4 c. <sup>1</sup>No owner of a private regulated commercial bus shall be  
5 required to make any submittal pursuant to subsection b. of this  
6 section until the owners of public regulated commercial buses have  
7 made their submittals required pursuant to that subsection, and no  
8 installation and use of a retrofit device on a private regulated  
9 commercial bus may be required earlier than 180 days after the owners  
10 of public regulated commercial buses have been required to install and  
11 have begun the use of retrofit devices on public regulated commercial  
12 buses.

13 d. <sup>1</sup>The owner of regulated vehicles or regulated equipment who  
14 commences operation of a fleet after the effective date of the rules and  
15 regulations adopted pursuant to section 3 of P.L. , c. (C. )(now  
16 before the Legislature as this bill) shall make the submittals required  
17 pursuant to subsection a. of this section within 180 days after the date  
18 on which they began operations, <sup>1</sup>or <sup>1</sup>the date provided in subsection  
19 b. of this section, <sup>1</sup>[or the date on or by which both certifications  
20 required pursuant to subsection k. of this section have been made,] <sup>1</sup>  
21 whichever is <sup>1</sup>[latest] later <sup>1</sup>.

22 <sup>1</sup>[d.] e. <sup>1</sup>The owner of regulated vehicles or regulated equipment  
23 may coordinate or combine the development of a fleet retrofit plan  
24 with the development of a fleet retrofit plan of any other owner, or a  
25 group of owners, of regulated vehicles or regulated equipment, and  
26 with the guidance of the Department of Environmental Protection  
27 submit a combined fleet retrofit plan.

28 <sup>1</sup>[e.] f. <sup>1</sup>The fleet retrofit plan submitted pursuant to subsection  
29 a. of this section shall include a description by the owner of the best  
30 available retrofit technology and the specific regulated vehicle <sup>1</sup>or  
31 piece of regulated equipment <sup>1</sup>on which the specific best available  
32 retrofit technology would be used, as determined by the owner  
33 pursuant to the rules and regulations adopted pursuant to section 3 of  
34 P.L. , c. (C. )(now before the Legislature as this bill).

35 <sup>1</sup>[f.] g. <sup>1</sup>If the owner of regulated vehicles or regulated equipment  
36 determines that the best available retrofit technology as required under  
37 the rules and regulations adopted pursuant to section 3 of P.L. , c.  
38 (C. )(now before the Legislature as this bill) is not feasible for a  
39 specific regulated vehicle or pieces of regulated equipment, the owner  
40 may document this determination in the fleet retrofit plan and request  
41 the use of another level of best available retrofit technology to meet  
42 the requirement for that specific regulated vehicle or piece of regulated  
43 equipment, or provide documentation as to why the owner cannot use  
44 the best available retrofit technology that is required. The owner may  
45 also propose and negotiate an enforceable commitment to:

46 (1) retire the regulated vehicle or piece of regulated equipment and

1 replace it with a vehicle or piece of equipment certified to fine particle  
2 emission levels at or below the emission levels that would have been  
3 achieved by the use of the required best available retrofit technology;  
4 or

5 (2) replace the engine of the vehicle or the equipment with an  
6 engine certified to that fine particle emissions level.

7 <sup>1</sup>[g.] h.<sup>1</sup> The owner of 75 or more regulated vehicles or pieces of  
8 regulated equipment, or any group of owners who elect to develop a  
9 combined fleet retrofit plan pursuant to subsection d. of this section  
10 under which 75 or more regulated vehicles or pieces of regulated  
11 equipment would be regulated, may propose to the Department of  
12 Environmental Protection a fleet averaging plan, in lieu of a fleet  
13 retrofit plan or a combined fleet retrofit plan, for the fleet or fleets  
14 affected. The owner or owners may propose a fleet averaging plan  
15 provided that the total net percent reductions in fine particle emissions  
16 under the proposed fleet averaging plan are equivalent to the estimated  
17 reductions in fine particle emissions that would have been achieved by  
18 the owner if a fleet retrofit plan were submitted and implemented for  
19 the regulated vehicles or regulated equipment, or both, or <sup>1</sup>by<sup>1</sup> the  
20 owners <sup>1</sup>if the owners<sup>1</sup> had submitted and implemented a combined  
21 fleet retrofit plan for <sup>1</sup>[those] their regulated<sup>1</sup> vehicles or <sup>1</sup>regulated<sup>1</sup>  
22 equipment, or both, as calculated pursuant to the provisions of the  
23 rules and regulations adopted pursuant to section 3 of P.L. , c.

24 (C. )(now before the Legislature as this bill). The owner or group  
25 of owners may propose achieving fine particle emissions reductions  
26 from any on-road diesel vehicle, off-road diesel equipment, regulated  
27 vehicle, or regulated equipment owned by the owner or group of  
28 owners, or the retirement of any of those vehicles or equipment, and  
29 shall submit the proposed fleet averaging plan to the department as  
30 required by the rules and regulations adopted pursuant to section 3 of  
31 P.L. , c. (C. )(now before the Legislature as this bill).

32 <sup>1</sup>[h.] i.<sup>1</sup> A fleet averaging plan proposed pursuant to subsection  
33 g. of this section that proposes the use of retrofit devices on any on-  
34 road diesel vehicle, off-road diesel equipment, regulated vehicle, or  
35 regulated equipment shall include: (1) a description by the owner of  
36 the best available retrofit technology and the specific vehicle or  
37 equipment on which the specific best available retrofit technology  
38 would be used, the specific vehicle or equipment to be retired, and  
39 how the required fine particle reductions shall be achieved through a  
40 combination of the use of best available retrofit technology on the  
41 specific vehicles or equipment; and (2) other measures or applications  
42 of best available retrofit technology consistent with the provisions of  
43 the rules and regulations adopted pursuant to section 3 of P.L. , c.  
44 (C. )(now before the Legislature as this bill).

45 <sup>1</sup>[i.] j.<sup>1</sup> The Department of Environmental Protection shall give  
46 due consideration in the application of the fleet retrofit plan, combined

1 fleet retrofit plan, or fleet averaging plan requirements to any efforts  
 2 or actions by <sup>1</sup>[the]<sup>1</sup> owners <sup>1</sup>[to] of regulated vehicles or regulated  
 3 equipment who<sup>1</sup> voluntarily retrofit, retire, or repower vehicles or  
 4 equipment prior to the adoption of rules and regulations pursuant to  
 5 section 3 of P.L. , c. (C. )(now before the Legislature as this  
 6 bill), and may modify any of the requirements of this section for such  
 7 an owner <sup>1</sup>[or operator]<sup>1</sup> in order to provide such due consideration.

8 <sup>1</sup>[j.] k.<sup>1</sup> The Department of Environmental Protection shall  
 9 provide any technical guidance needed in preparing the fleet retrofit  
 10 plans, combined fleet retrofit plans, and fleet averaging plans required  
 11 pursuant to this section and any revisions, supplements, or  
 12 modifications thereto required pursuant to P.L. , c. (C. )  
 13 (now before the Legislature as this bill).

14 <sup>1</sup>[k.] l.<sup>1</sup> No owner of regulated vehicles or regulated equipment  
 15 shall be required to <sup>1</sup>[submit a fleet retrofit plan, combined fleet  
 16 retrofit plan, or fleet averaging plan or implement any part of such  
 17 plans] install or use a retrofit device on a regulated vehicle or  
 18 regulated equipment as required<sup>1</sup> pursuant to <sup>1</sup>the rules and  
 19 regulations adopted pursuant to section 3 of P.L. , c. (C. )  
 20 pursuant to<sup>1</sup> this section in any year unless the State Treasurer  
 21 certifies for that year that the constitutionally dedicated moneys have  
 22 been deposited in the Diesel Risk Mitigation Fund and the Department  
 23 of Environmental Protection certifies that sufficient moneys are  
 24 available in the fund to pay the cost of purchase and installation of the  
 25 <sup>1</sup>[best available retrofit technologies] retrofit devices<sup>1</sup> required to be  
 26 used by rule and regulation or <sup>1</sup>[by such plans] under an approved  
 27 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan  
 28 or supplement or modification thereto, as applicable.<sup>1</sup> by an owner in  
 29 that year.  
 30

31 <sup>1</sup>Provided that the State Treasurer has issued the certification that  
 32 the constitutionally dedicated moneys have been deposited in the fund  
 33 for that year, the department may determine the amount of moneys  
 34 available in the fund for that year, require the purchase and installation  
 35 of those retrofit devices in those regulated vehicles or pieces of  
 36 regulated equipment for which sufficient moneys are available, and  
 37 certify that sufficient moneys are available for those retrofit devices  
 38 to be purchased for, and installed in, those regulated vehicles or pieces  
 39 of regulated equipment.<sup>1</sup>  
 40

41 10. (New section) a. The department shall review, and approve  
 42 or disapprove all parts of any fleet retrofit plan, combined fleet retrofit  
 43 plan, or fleet averaging plan submitted pursuant to section 9 of P.L. ,  
 44 c. (C. )(now before the Legislature as this bill). The department  
 45 may approve or disapprove any fleet retrofit plan, combined fleet  
 46 retrofit plan, or the fleet averaging plan in part, and:

1 (1) may direct the owner to comply with the approved part or parts  
2 of the fleet retrofit plan <sup>1</sup>, the combined fleet retrofit plan.<sup>1</sup> or the fleet  
3 averaging plan <sup>1</sup>, as applicable.<sup>1</sup> prior to final approval of other parts  
4 of the fleet retrofit plan <sup>1</sup>, the combined fleet retrofit plan.<sup>1</sup> or the fleet  
5 averaging plan; or

6 (2) in the case of a fleet averaging plan, may determine that the  
7 owner or the group of owners cannot comply with the requirements of  
8 P.L. , c. (C. )(now before the Legislature as this bill) by  
9 implementing the proposed fleet averaging plan, and may require the  
10 owner to submit a fleet retrofit plan, or the group of owners of the  
11 fleets to submit a combined fleet retrofit plan or individual fleet retrofit  
12 plans.

13 Any determination made, or requirement established, pursuant to  
14 paragraph (2) of this subsection shall be made in writing and shall be  
15 provided in writing to each owner affected by the determination or  
16 requirement.

17 b. If the department exercises its authority under paragraph (2) of  
18 subsection a. of this section, the department shall issue a modified  
19 timetable for submittal of a fleet retrofit plan for the regulated vehicles  
20 or regulated equipment, a combined fleet retrofit plan for the group of  
21 owners, or individual fleet retrofit plans for the owners in the group.  
22 The department may require the submittal of these plans no earlier  
23 than 180 days after the date of the determination pursuant to  
24 paragraph (2) of subsection a. of this section, or the date on or by  
25 which both of the certifications required pursuant to subsection <sup>1</sup>[k.]  
26 l.<sup>1</sup> of section 9 <sup>1</sup>of P.L. , c. (C. )(now before the Legislature as  
27 this bill)<sup>1</sup> have been made, whichever is later. The department shall  
28 review, approve or disapprove any fleet retrofit plan or combined fleet  
29 retrofit plan submitted in accordance with this modified timetable.

30 c. Whenever the department disapproves a fleet retrofit plan <sup>1</sup>,  
31 combined fleet retrofit plan.<sup>1</sup> or <sup>1</sup>[the]<sup>1</sup> fleet averaging plan, or a part  
32 thereof, the department shall provide a detailed explanation to the  
33 owner indicating the deficiencies of the disapproved fleet retrofit plan  
34 <sup>1</sup>, disapproved combined fleet retrofit plan.<sup>1</sup> or the disapproved fleet  
35 averaging plan, or part thereof, and the recommendations of the  
36 department to correct the deficiencies.

37 d. During the review process or prior to final approval of a fleet  
38 retrofit plan <sup>1</sup>, combined fleet retrofit plan.<sup>1</sup> or fleet averaging plan,  
39 or the part thereof in question, the department may contact and enter  
40 into negotiations with the owner to resolve discrepancies between the  
41 rules and regulations adopted pursuant to section 3 of P.L. , c.  
42 (C. )(now before the Legislature as this bill), the submitted fleet  
43 retrofit plan <sup>1</sup>, combined fleet retrofit plan.<sup>1</sup> or fleet averaging plan,  
44 and any requests by the owner for alternatives pursuant to subsection  
45 <sup>1</sup>[f.] g.<sup>1</sup> of section 9 of P.L. , c. (C. )(now before the  
46 Legislature as this bill).

1 e. The owner or a group of owners whose fleet retrofit plan,  
2 combined fleet retrofit plan, or fleet averaging plan, or any part  
3 thereof, is disapproved by the department shall make the recommended  
4 revisions to the disapproved fleet retrofit plan, combined fleet retrofit  
5 plan, or fleet averaging plan, or the disapproved part thereof, within  
6 60 days after the receipt of the disapproval notification from the  
7 department, and shall submit <sup>1</sup>to the department<sup>1</sup> the final revised  
8 fleet retrofit plan, final revised combined fleet retrofit plan, or the final  
9 revised fleet averaging plan, or the final revised part thereof <sup>1</sup>[.]<sup>1</sup>  
10 that had been disapproved and revised <sup>1</sup>[, to the department]<sup>1</sup>. If the  
11 department does not take further action within 30 days after receipt of  
12 the final revised fleet retrofit plan, final revised combined fleet retrofit  
13 plan <sup>1</sup>[or],<sup>1</sup> the final fleet averaging plan, or the final revised part that  
14 had been disapproved, the fleet retrofit plan, combined fleet retrofit  
15 plan, <sup>1</sup>or fleet averaging plan,<sup>1</sup> or the part that had been disapproved  
16 and revised <sup>1</sup>,<sup>1</sup> shall be considered approved and in effect. If the  
17 department finds within 30 days after the receipt of the final revised  
18 fleet retrofit plan, final revised combined fleet retrofit plan, or the final  
19 <sup>1</sup>revised<sup>1</sup> fleet averaging plan, that the owner has not complied with  
20 the recommended revisions, the department may take further action to  
21 require compliance with this subsection, but the plan shall be in effect  
22 as of the date of the close of the 30-day period following the submittal  
23 of the final revised plan <sup>1</sup>, or part thereof<sup>1</sup>.

24 f. Upon the date of final approval of the fleet retrofit plan,  
25 combined fleet retrofit plan, or fleet averaging plan, or any part  
26 thereof, the owner shall be subject to the provisions of the fleet retrofit  
27 plan, combined fleet retrofit plan, <sup>1</sup>[or]<sup>1</sup> fleet averaging plan, <sup>1</sup>, or  
28 that part thereof,<sup>1</sup> and shall be required to comply with these  
29 provisions on or after the final approval date or the date on or by  
30 which both certifications required pursuant to subsection [k.] <sup>1</sup>1<sup>1</sup> of  
31 section 9 of P.L. , c. (C. )(now before the Legislature as this  
32 bill) have been made <sup>1</sup>, whichever is later <sup>1</sup> .

33  
34 11. (New section) a. The date on which all parts of a fleet  
35 retrofit plan, combined fleet retrofit plan, or fleet averaging plan have  
36 been approved and are in effect shall serve as the anniversary date of  
37 the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging  
38 plan approval for the purposes of this subsection. On each annual  
39 anniversary of the date of the fleet retrofit plan, combined fleet retrofit  
40 plan, or fleet averaging plan approval, <sup>1</sup>or 90 days after the date of the  
41 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan  
42 approval, or the approval of the most recent supplement or  
43 modification thereto, as applicable, whichever is later,<sup>1</sup> each owner of  
44 regulated vehicles or regulated equipment shall submit a supplement  
45 to the fleet retrofit plan or combined fleet retrofit plan, or a  
46 modification of the fleet averaging plan, as applicable, indicating any

1 changes to the fleet that have been made.

2 b. A supplement submitted pursuant to subsection a. of this  
3 section shall include:

4 (1) a description of any on-road diesel vehicles or off-road diesel  
5 equipment owned, operated, or leased by the owner added or removed  
6 from the fleet since the submission of the fleet retrofit plan or  
7 combined fleet retrofit plan, or the last supplement thereto; and

8 (2) for the regulated vehicles or regulated equipment added to the  
9 fleet, a description of the best available retrofit technology and the  
10 specific vehicle or piece of equipment on which the specific best  
11 available retrofit technology would be used.

12 c. A modification to a fleet averaging plan submitted pursuant to  
13 subsection a. of this section shall include:

14 (1) a description of any on-road diesel vehicles or off-road diesel  
15 equipment owned, operated, or leased by the owner or removed from  
16 the fleet since the submission of the fleet averaging plan or the last  
17 modification, thereto;

18 (2) for the regulated vehicles or regulated equipment added to the  
19 fleet, a description of the best available retrofit technology and the  
20 specific vehicle or piece of equipment on which the specific best  
21 available retrofit technology would be used that was not described in  
22 the fleet averaging plan or <sup>1</sup>the<sup>1</sup> last modification thereto; and

23 (3) a description of how the required fine particle reductions shall  
24 be achieved through a combination of the use of best available retrofit  
25 technology on specific regulated vehicles and other on-road diesel  
26 vehicles, or on specific regulated equipment and other off-road diesel  
27 equipment, and other measures or applications of best available retrofit  
28 technology consistent with the provisions of the rules and regulations  
29 adopted pursuant to section 3 of P.L. , c. (C. )(now before the  
30 Legislature as this bill).

31 d. The department shall review, and approve or disapprove all  
32 parts of the supplement or the modification no later than one year after  
33 its submittal date. The department may approve or disapprove any  
34 supplement <sup>1</sup>or modification<sup>1</sup> to any <sup>1</sup>[fleet retrofit]<sup>1</sup> plan in part, and  
35 require the owner <sup>1</sup>of the regulated vehicles or regulated equipment<sup>1</sup>  
36 to comply with the approved part or parts of the supplement <sup>1</sup>or  
37 modification<sup>1</sup> prior to final approval of other parts of the supplement  
38 or the modification.

39 e. Whenever the department disapproves a supplement to a fleet  
40 retrofit plan, combined fleet retrofit plan, or a modification to a fleet  
41 averaging plan, or a part thereof, the department shall provide a  
42 detailed explanation to the owner or operator of the fleet indicating  
43 the deficiencies of the disapproved supplement <sup>1</sup>or modification,<sup>1</sup> or  
44 part thereof, and the recommendations of the department to correct  
45 the deficiencies. The owner or a group of owners who receive  
46 disapproval of a supplement to a fleet retrofit plan<sup>1</sup>[,] or<sup>1</sup> combined

1 fleet retrofit plan, or <sup>1</sup>of a modification to a<sup>1</sup> fleet averaging plan, or  
2 a part thereof, shall make the recommended revisions to the  
3 supplement or the modification within 60 days after the receipt of the  
4 disapproval notification from the department, and submit the final  
5 revised supplement or modification, or the revised part that had been  
6 disapproved, to the department. If the department does not take  
7 further action within 30 days after receipt of the final revised  
8 supplement or modification, or the revised part that had been  
9 disapproved, the revised supplement to the fleet retrofit plan <sup>1</sup>[.] or<sup>1</sup>  
10 combined fleet retrofit plan, or modification to the fleet averaging  
11 plan, or the revised part that had been disapproved shall be considered  
12 approved and in effect. If the department finds within 30 days after  
13 the receipt of the final revised supplement or modification or the final  
14 revised part that had been disapproved, that the owner <sup>1</sup>[, operator  
15 or lessee]<sup>1</sup> has not complied with the recommended revisions, the  
16 department may take further action to require compliance with this  
17 subsection, but the supplement or modification shall be in effect as of  
18 the date of the close of the 30-day period after the receipt of the final  
19 revised supplement or modification.

20 f. Upon the date of final approval of the applicable part, and the  
21 date the final supplement or modification is in effect, the owner shall  
22 be subject to the provisions of the fleet retrofit plan or combined fleet  
23 retrofit plan, and the supplement thereto, or the fleet averaging plan  
24 and the modification thereto, except as may otherwise be provided  
25 pursuant to subsection e. of section 10 of P.L. , c. (C. )(now  
26 before the Legislature as this bill).

27 g. No owner of a regulated vehicle or regulated equipment shall  
28 be required to <sup>1</sup>[submit a supplement to a fleet retrofit plan or a  
29 combined fleet retrofit plan, or a modification of a fleet averaging plan  
30 pursuant to this section, or implement] install or use a retrofit device  
31 on a regulated vehicle or piece of regulated equipment as required  
32 pursuant to a supplement to a fleet retrofit plan or combined fleet  
33 retrofit plan, or a modification to a fleet averaging plan or,<sup>1</sup> any part  
34 of such a supplement or a modification, in any year unless the State  
35 Treasurer certifies for that year that the constitutionally dedicated  
36 moneys have been deposited in the Diesel Risk Mitigation Fund, and  
37 the Department of Environmental Protection certifies that sufficient  
38 moneys are available in the fund to pay the cost of purchase and  
39 installation of the <sup>1</sup>[best available retrofit technologies] retrofit  
40 devices<sup>1</sup> required to be used by an owner by rule or regulation or by  
41 the supplement to a fleet retrofit plan or combined fleet retrofit plan  
42 or the modification to a fleet averaging plan <sup>1</sup>in that year<sup>1</sup> .

43 <sup>1</sup>Provided that the State Treasurer has issued the certification that  
44 the constitutionally dedicated moneys have been deposited in the fund  
45 for that year, the department may determine the amount of moneys  
46 available in the fund for that year, require the purchase and installation

1 of those retrofit devices in those regulated vehicles or pieces of  
2 regulated equipment for which sufficient moneys are available, and  
3 certify that sufficient moneys are available for those retrofit devices to  
4 be purchased for, and installed in, those regulated vehicles or pieces  
5 of regulated equipment.<sup>1</sup>

6  
7 12. (New section) Notwithstanding the provisions of P.L. , c.  
8 (C. ) (now before the Legislature as this bill), or any rule or  
9 regulation adopted pursuant thereto, to the contrary, no best available  
10 retrofit technology shall be required by the department to be used on  
11 any regulated on-road diesel vehicle manufactured and certified to  
12 meet a federal standard of 0.01 grams per brake-horsepower-hour of  
13 fine particle emissions, or on any regulated off-road diesel equipment  
14 manufactured and certified to meet a federal standard of 0.015 grams  
15 per brake-horsepower-hour of fine particle emissions.

16  
17 13. (New section) Notwithstanding the provisions of P.L. , c.  
18 (C. ) (now before the Legislature as this bill), or any rule or  
19 regulation adopted pursuant thereto, to the contrary, no owner of any  
20 on-road diesel vehicle or piece of off-road diesel equipment may be  
21 required by the department to repower any on-road diesel vehicle or  
22 piece of off-road diesel equipment, or to replace or rebuild an engine  
23 in any on-road diesel vehicle or piece of off-road diesel equipment,  
24 unless the owner has voluntarily agreed to do so. The owner of any  
25 on-road diesel vehicle or piece of off-road diesel equipment may  
26 repower the on-road diesel vehicle or piece of off-road diesel  
27 equipment, or replace or rebuild its engine, to comply with the  
28 requirements of P.L. , c. (C. )(now before the Legislature as  
29 this bill).

30  
31 14. (New section) a. Each owner of regulated vehicles or  
32 regulated equipment shall keep, at the place of business of the owner  
33 a record listing for each regulated vehicle or piece of regulated  
34 equipment <sup>1</sup>[with]<sup>1</sup> the following identifying information and records  
35 for the regulated vehicle <sup>1</sup>or piece of regulated equipment<sup>1</sup> : (1) the  
36 compliance form issued for each regulated vehicle or piece of  
37 regulated equipment provided pursuant to section 6, section 7, section  
38 16, or section 17 of P.L. , c. (C. ) (now before the Legislature as  
39 this bill)<sup>1</sup>or any other document for the verification of compliance that  
40 may be issued or required pursuant to section 20 of P.L. , c. (C. )  
41 (now before the Legislature as this bill)<sup>1</sup>; (2) maintenance records for  
42 the emissions control system or best available retrofit technology; (3)  
43 the records of the two most recent calendar years of fuel purchases for  
44 each vehicle <sup>1</sup>or piece of regulated equipment<sup>1</sup> required to use  
45 modified fuel or fuel additives <sup>1</sup>[under] pursuant to rules and  
46 regulations adopted pursuant to section 3 of P.L. , c. (C. )(now

1 before the Legislature as this bill), or<sup>1</sup> the approved fleet retrofit plan,  
2 combined fleet retrofit plan, or fleet averaging plan, or approved<sup>1</sup>  
3 supplement or approved<sup>1</sup> modification thereto, as applicable; (4) the  
4 original, approved fleet retrofit plan, combined fleet retrofit plan, or  
5 fleet averaging plan, any exemption requests, and approvals or  
6 disapprovals of the requests, plans, supplements, or modifications, as  
7 applicable; and (5) any other documentation pertinent to fleet  
8 averaging plans that may be otherwise required under rule or  
9 regulations adopted pursuant to section 3 of P.L. , c. (C. )(now  
10 before the Legislature as this bill). The Department of Environmental  
11 Protection shall have the authority to inspect these records upon  
12 request. The Department of Environmental Protection may call upon  
13 the Superintendent of State Police and the State Police to assist with  
14 inspections pursuant to this subsection if necessary.

15 b. The owner of the fleet shall keep on each regulated vehicle or  
16 piece [or] of<sup>1</sup> regulated equipment, and on each vehicle or piece of  
17 equipment that is required to use best available retrofit technologies  
18 pursuant to an approved fleet averaging plan, or modification thereto,  
19 the current, updated compliance form issued pursuant to section 6,  
20 section 7,<sup>1</sup> section 16 or section 17 of P.L. , c. (C. )(now  
21 before the Legislature as this bill), and a copy thereof with the records  
22 required pursuant to subsection a. of this section.

23

24 15. (New section) Each retrofit device that is installed in the State  
25 shall be labeled with a legible and durable label affixed to the device.  
26 The label shall provide a unique identification number to be matched  
27 to the specific retrofit device and the specific vehicle required to use  
28 the retrofit device. No retrofit device may be sold or installed for  
29 use<sup>1</sup> in the State unless it complies with the requirements of this  
30 section.

31

32 16. (New section) a. The Department of Environmental Protection  
33 shall develop and issue to each owner of regulated equipment  
34 compliance forms for the regulated equipment no later than 180 days  
35 after the submittal of a notice to comply pursuant to paragraph (2) of  
36 subsection a. of section 9 of P.L. , c. (C. )(now before the  
37 Legislature as this bill), or 180 days after the date of<sup>1</sup> the final  
38 approval of the fleet plan, combined fleet plan, fleet averaging plan, or  
39 supplement or modification thereto, as applicable. The compliance  
40 form shall include a section for providing the cost of any retrofit  
41 device installed and any cost associated with the installation of the  
42 required best available retrofit technology for the regulated equipment.

43 b. As soon as practicable after the required best available retrofit  
44 technologies have been installed on the regulated equipment, the  
45 owner of regulated equipment shall complete the compliance form,  
46 retain a copy of the owner's records, and return it to the Department

1 of Environmental Protection. Thereafter, a current copy of the  
2 completed compliance form shall be kept on each piece of regulated  
3 equipment at all times.

4 c. Each owner of regulated equipment seeking reimbursement for  
5 the cost of any retrofit device installed and any cost associated with  
6 the installation of the required best available retrofit technology for the  
7 regulated equipment shall submit a copy of the completed compliance  
8 form to the <sup>1</sup>[State Treasurer. The] Department of Environmental  
9 Protection. The department shall review the submitted compliance  
10 form and forward it to the<sup>1</sup> State Treasurer <sup>1</sup>, who<sup>1</sup> shall reimburse the  
11 owner the costs indicated on the completed compliance form.

12

13 17. (New section) a. No later than 180 days after <sup>1</sup>the date on  
14 which the owner of regulated vehicles or regulated equipment submits  
15 a notice to comply pursuant to paragraph (2) of subsection a. of  
16 section 9 of P.L. , c. (C. )(now before the Legislature as this bill),<sup>1</sup>  
17 the date on which the fleet retrofit plan, the combined fleet retrofit  
18 plan, or the fleet averaging plan is in effect pursuant to section 7 of  
19 P.L. , c. (C. )(now before the Legislature as this bill), the date on  
20 which the fleet retrofit plan, the combined fleet retrofit plan, or the  
21 fleet averaging plan is in effect pursuant to section 10 of P.L. , c.  
22 (C. )(now before the Legislature as this bill), or the date on which any  
23 supplement to the fleet retrofit plan or the combined fleet retrofit plan,  
24 or modification to the fleet averaging plan is in effect pursuant to  
25 section 11 of P.L. , c. (C. )(now before the Legislature as this bill),  
26 the department shall issue to the owner of a <sup>1</sup>[fleet or each owner of  
27 a fleet in a group of fleets,] regulated vehicle or piece of regulated  
28 equipment<sup>1</sup> a one-page compliance form for each regulated vehicle  
29 <sup>1</sup>[in the fleet, or, in the case of a fleet averaging plan, each regulated  
30 vehicle and other vehicle that is required to use best available retrofit  
31 technologies pursuant to the approved plan, or fleet averaging plan, as  
32 the case may be,] or piece of regulated equipment required to use best  
33 available retrofit technologies pursuant to the approved fleet retrofit  
34 plan or combined fleet retrofit plan,<sup>1</sup> or the <sup>1</sup>approved<sup>1</sup> supplement  
35 <sup>1</sup>[or modification] thereto. In the case of an approved fleet  
36 averaging plan, the department shall also issue a one-page compliance  
37 form for each <sup>1</sup>regulated<sup>1</sup> vehicle <sup>1</sup>[in the fleet], piece of regulated  
38 equipment, and other on-road diesel vehicle or piece of off-road  
39 diesel equipment<sup>1</sup> that is required to use best available retrofit  
40 technologies pursuant to the <sup>1</sup>approved<sup>1</sup> fleet averaging plan <sup>1</sup>, or the  
41 approved modification thereto<sup>1</sup> .

42 b. The compliance form issued by the Department of  
43 Environmental Protection pursuant to subsection a. of this section  
44 shall be no longer than one page and shall have printed on the form:  
45 (1) the name and business address of the owner <sup>1</sup>[responsible for  
46 submitting and updating the fleet retrofit plan or fleet averaging plan

1 in which the specific regulated vehicle is required to use best available  
2 retrofit technologies] of the regulated vehicle or piece of regulated  
3 equipment<sup>1</sup>; (2) the vehicle identification number for the regulated  
4 vehicle <sup>1</sup>or the serial number for the piece of regulated equipment<sup>1</sup>  
5 that is required to use best available retrofit technologies pursuant to  
6 <sup>1</sup>the rules and regulations adopted pursuant to section 3 of P.L. \_\_\_\_\_,  
7 c. (C. \_\_\_\_\_)(now before the Legislature as this bill, or<sup>1</sup> the approved  
8 fleet retrofit plan <sup>1</sup>, combined fleet retrofit plan,<sup>1</sup> or the fleet  
9 averaging plan; (3) a description of the best available retrofit  
10 technologies that may be used by the specific regulated vehicle <sup>1</sup>or  
11 piece of regulated equipment<sup>1</sup> and the requirement under the approved  
12 fleet retrofit plan <sup>1</sup>, combined fleet retrofit plan,<sup>1</sup> or fleet averaging  
13 plan; (4) a description of the best available retrofit technology  
14 required for the vehicle <sup>1</sup>or piece of equipment<sup>1</sup> pursuant to the <sup>1</sup>rules  
15 and regulations, the<sup>1</sup> fleet retrofit plan, combined fleet retrofit plan, or  
16 fleet averaging plan, as the case may be; (5) an identified space for the  
17 label number for a required retrofit device to be entered into the form;  
18 (6) an identified space for the owner <sup>1</sup>[of the fleet]<sup>1</sup> responsible for  
19 the submittal <sup>1</sup>of the notice to comply by rules and regulations or the  
20 submittal<sup>1</sup> and update of the fleet retrofit plan, combined fleet retrofit  
21 plan, or fleet averaging plan to certify that any required retrofit  
22 devices have been installed, and the date of that compliance; (7) an  
23 identified space for the examiner of the regulated vehicle to certify that  
24 the vehicle identification number that appears on the form corresponds  
25 to the vehicle on which the required retrofit device has been installed,  
26 and that the label identification number on the required retrofit device  
27 corresponds to the label identification number entered on the form of  
28 the regulated on-road diesel vehicle or other on-road diesel vehicle on  
29 which the required retrofit device has been installed; and (8) an  
30 identified space for the owner to record the cost of the retrofit device  
31 and its installation.

32 c. The Department of Environmental Protection shall issue with the  
33 forms sent to the owner of the fleet a notice of instructions describing  
34 the purpose of, and the procedures for completion of the compliance  
35 form, and the requirement to keep the compliance form with the  
36 regulated vehicle, or another vehicle included in a fleet averaging plan  
37 or modification thereto, for the life of the vehicle.

38  
39 18. (New section) a. Upon receipt of the compliance form for a  
40 vehicle or piece of equipment required to use best available retrofit  
41 technology pursuant to department rules and regulations, an approved  
42 fleet plan, combined fleet plan, fleet averaging plan, or supplement or  
43 modification thereto, as applicable, the owner of the vehicle or piece  
44 of equipment shall retain the form on the vehicle or piece of equipment  
45 for which it was issued, and a copy of the current form in the business  
46 records of the owner, at all times.

1        b. As soon as practicable after the requirement to implement the  
2 use of best available retrofit technologies for a specific vehicle or piece  
3 of equipment as provided in department rules and regulations, the  
4 approved regulated fleet retrofit plan, combined regulated fleet retrofit  
5 plan, or fleet averaging plan, or supplement or modification thereto,  
6 as applicable, has been complied with, the owner shall complete the  
7 appropriate portion of the form provided pursuant to section 6, section  
8 7, section 16, or section 17 <sup>1</sup>of P.L. , c. (C. )(now before the  
9 Legislature as this bill)<sup>1</sup> . The owner, shall: (1) indicate the choice of  
10 best available retrofit technology that has been used to fulfill the  
11 requirement; (2) enter into the identified space on the compliance form  
12 the label identification number for any retrofit device that has been  
13 installed on the regulated vehicle or regulated equipment; (3) certify  
14 that the requirement on the form has been met for the regulated  
15 vehicle <sup>1</sup>or piece of regulated equipment<sup>1</sup> whose vehicle identification  
16 number <sup>1</sup>or serial number, as applicable<sup>1</sup> is printed on the form; and  
17 (4) provide and certify the date that the installation was done or  
18 compliance began on the compliance form.

19        c. For any regulated vehicle that is not required to be inspected  
20 under the periodic inspection program established pursuant to  
21 P.L.1995, c.157 (C.39:8-59 et seq.), the owner shall have the  
22 regulated vehicle inspected by a diesel emissions inspection center  
23 licensed pursuant to P.L.1995, c.157 (C.39:8-59 et seq.) for the  
24 presence of the required retrofit device and compliance with the  
25 requirement described on the compliance form issued pursuant to  
26 section 6, section 7, or section 17 of P.L. , c. (C. )(now before  
27 the Legislature as this bill), as soon as practicable after the  
28 requirements of subsection b. of this section have been met for the  
29 regulated vehicle.

30        d. For any regulated vehicle that is subject to inspection under the  
31 periodic inspection program pursuant to P.L. 1995, c.157 (C.39:8-59  
32 et seq.), the owner, after complying with the provisions of subsection  
33 b. of this section, shall have the regulated vehicle inspected for  
34 compliance with the requirement printed on the form issued pursuant  
35 to section 6, section 7, or section 17 of P.L. , c. (C. )(now  
36 before the Legislature as this bill) at the next annual periodic  
37 inspection scheduled for the vehicle, or as soon as practicable after  
38 complying with the provisions of subsection b. of this section. No  
39 provision of this subsection shall be construed as requiring the owner  
40 to have any vehicle subject to a periodic inspection to have that vehicle  
41 registered at any scheduled periodic inspection.

42        e. A diesel emissions inspection center licensed pursuant to  
43 P.L.1995, c.157 (C.39:8-59 et seq.) shall inspect any regulated vehicle  
44 presented to it for inspection for compliance with the requirement on  
45 the form issued for the regulated vehicle pursuant to section 6, section  
46 7, section 16, or section 17 of P.L. , c. (C. )(now before

1 the Legislature as this bill). The person performing the inspection  
2 shall verify the presence of the required retrofit device, the match of  
3 the label identification number on the form with the device in the  
4 vehicle, and shall certify that the requirement has been met based on  
5 the presence of the required retrofit device and the match of the label  
6 identification number on the form to the label identification number on  
7 the retrofit device on the vehicle, and the correct vehicle identification  
8 number on the form. No provision of this subsection shall be  
9 construed to require the diesel emissions inspection center to verify the  
10 functioning or the correct installation of the retrofit device, or to test  
11 for the level of emissions reduction attributed to the use of the retrofit  
12 device.

13 f. If the owner of the regulated vehicle is a licensed diesel  
14 inspection center or is otherwise authorized to self-inspect the vehicles  
15 owned by the owner, the owner may perform the inspection and  
16 provide the certification required pursuant to subsections d. and e. of  
17 this section.

18 g. Only one inspection per vehicle is required pursuant to this  
19 section.

20

21 19. (New section) a. No later than two years after the effective  
22 date of P.L. , c. (C. )(now before the Legislature as this bill),  
23 the New Jersey Motor Vehicle Commission shall adopt, pursuant to  
24 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
25 seq.), any rules or regulations necessary for the provision of a one-  
26 time confirmation of compliance with approved regulated fleet retrofit  
27 plans, combined fleet retrofit plans, or fleet averaging plans, or  
28 supplements or modifications thereto, as applicable. As necessary, the  
29 New Jersey Motor Vehicle Commission shall provide for the  
30 inspection of regulated vehicles, including, but not limited to, the  
31 inspection of regulated vehicles that were not required to be inspected  
32 on the date of enactment of P.L. , c. (C. )(now before the  
33 Legislature as this bill), and the verification of compliance and  
34 completion of the compliance form by examiners, mechanics,  
35 technicians, or other knowledgeable persons involved in the  
36 maintenance and repair of the regulated vehicles.

37 b. The commission shall include, in its inspection of a diesel  
38 commercial bus pursuant to P.L.1995, c.157 (C.39:8-59 et al.), an  
39 inspection of any regulated commercial bus required to install a  
40 retrofit device pursuant to a regulated fleet retrofit plan, combined  
41 regulated fleet retrofit plan, or fleet averaging plan, after the retrofit  
42 device has been installed, to determine that the installation of the  
43 required best available retrofit technology has occurred as required  
44 pursuant to the approved regulated fleet retrofit plan, combined  
45 regulated fleet retrofit plan, or fleet averaging plan for the diesel  
46 commercial bus being inspected, or shall provide for such an

1 inspection at a separate time requested by the owner, operator, or  
2 lessee of the regulated fleet of which the diesel commercial bus is a  
3 part. This inspection is required to be performed only once and after  
4 the required retrofit device has been installed. The owner, operator, or  
5 lessee of the regulated fleet containing the diesel commercial buses  
6 shall notify the New Jersey Motor Vehicle Commission that the  
7 required installation has been done for the diesel commercial bus being  
8 inspected as required pursuant to this subsection.

9 c. The owner of a regulated vehicle subject to inspection pursuant  
10 to subsection a. or subsection b. of this section shall present to the  
11 person performing the inspection the form for the regulated vehicle  
12 issued pursuant to section 6, section 7, or section 17 of P.L. , c.  
13 (C. )(now before the Legislature as this bill). The person performing  
14 the inspection pursuant to subsection a. or subsection b. of this section  
15 shall check for the presence of the required retrofit device, the match  
16 of the label identification number in the form and or the device in the  
17 vehicle, and shall certify that the requirement has been met based on  
18 the presence of the required retrofit device and the match of the label  
19 identification number to the form for the vehicle with the vehicle  
20 identification number on the form.

21 d. The Department of Environmental Protection shall provide any  
22 training necessary to implement the provisions of this section for any  
23 employees of, or persons contracted or licensed by, the New Jersey  
24 Motor Vehicle Commission, as determined necessary by the Chief  
25 Administrator of the New Jersey Motor Vehicle Commission.

26 e. No provision of this section shall be construed to require the  
27 New Jersey Motor Vehicle Commission to verify the functioning of the  
28 retrofit device, or its correct installation, or to test the function of the  
29 retrofit device for any level of emissions reduction attributed to the  
30 use of the retrofit device.

31

32 <sup>1</sup>[20. (New section) In addition to, or in lieu of, the procedures  
33 and inspection requirements established pursuant to the provisions of  
34 section 18 and section 19 of P.L. , c. (C. )(now before the  
35 Legislature as this bill), the Department of Environmental Protection  
36 may develop, establish, and implement alternative approaches for  
37 addressing the inspection of regulated vehicles or regulated equipment  
38 and confirmation of compliance with the provisions of P.L. , c.  
39 (C. )(now before the Legislature as this bill), if the department  
40 determines such alternative approaches are feasible and more cost  
41 effective. No provision of this section shall be construed to allow  
42 requirements to be imposed on the New Jersey Motor Vehicle  
43 Commission beyond those established in section 18 of P.L. , c.  
44 (C. )(now before the Legislature as this bill), or to diminish the  
45 responsibility of the department pursuant to subsection d. of that  
46 section.]<sup>1</sup>

1 20. (New section) a. The provisions of section 6, section 7,  
2 section 14, sections 16 through 19, inclusive, and sections 29 through  
3 31, inclusive, of P.L. , c. (C. )(now before the Legislature as  
4 this bill) affecting the reimbursement of owners of regulated vehicles  
5 or regulated equipment for the costs associated with the purchase and  
6 installation of retrofit devices, to the contrary notwithstanding, the  
7 Department of Environmental Protection may develop an alternative  
8 approach for reimbursement of these costs to the owners if the  
9 department determines that an alternative approach is feasible, cost-  
10 effective, and efficient. The alternative approach may include, but  
11 shall not be limited to, directly reimbursing the entity performing the  
12 actual installation of the retrofit device in lieu of reimbursing the  
13 owner of the regulated vehicle or regulated equipment. If the  
14 department determines that an alternative approach is feasible, cost-  
15 effective, and efficient and chooses to implement the alternative  
16 approach, the department shall establish and implement the alternative  
17 approach pursuant to rules and regulations adopted pursuant to the  
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
19 seq.). No such rule or regulation may modify any procedure performed  
20 by, or any responsibility or requirement imposed on, the New Jersey  
21 Motor Vehicle Commission, its employees, or any persons licensed or  
22 contracted by the New Jersey Motor Vehicle Commission, unless the  
23 rule or regulation is adopted jointly adopted by the New Jersey Motor  
24 Vehicle Commission and the Department of Environmental Protection  
25 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
26 (C.52:14B-1 et seq.).

27 b. No provision of subsection a. of this section or any other rule  
28 or regulation adopted pursuant thereto, shall be construed to  
29 supersede or modify, the provisions of section 3, section 4, subsection  
30 a. or subsections d. through f., inclusive, of section 6, subsections a.  
31 through c. or subsections e. through f., inclusive, of section 7, sections  
32 8 through 13, inclusive, subsections d. or e of section 19, section 21,  
33 section 26, section 27, section 28, subsection a. of section 29, or  
34 subsection b. of section 30 of P.L. , c. (C. )(now before the  
35 Legislature as this bill).

36 c. No entity performing the actual installation of a retrofit device  
37 who is reimbursed for the costs associated with the purchase and  
38 installation of retrofit devices pursuant to rules and regulations  
39 adopted pursuant to subsection a. of this section may impose any  
40 charge on any owner of a regulated vehicle or piece of regulated  
41 equipment for any cost associated with the purchase and installation  
42 of retrofit devices required pursuant to P.L. , c. (C. )(now  
43 before the Legislature as this bill). No State agency, department, or  
44 political subdivision thereof may impose any charge on any owner of  
45 a regulated vehicle or piece of regulated equipment for any cost  
46 associated with the purchase and installation of retrofit devices

1 required pursuant to P.L. , c. (C. )(now before the Legislature  
2 as this bill) if entities performing the actual installation of a retrofit  
3 device are reimbursed for the costs pursuant to rules and regulations  
4 adopted pursuant to subsection a. of this section.<sup>1</sup>

5  
6 21. (New section) <sup>1</sup>[ a. Any person who inspects a vehicle  
7 pursuant to the periodic inspection program or the roadside inspection  
8 program established pursuant to P.L.1995, c.157 (C.39:8-59 et al.), or  
9 who repairs any vehicle because of its failure under the periodic  
10 inspection program or roadside inspection program, shall not perform  
11 initial inspections or reinspections or make repairs unless qualified by  
12 the completion of training prescribed by the Department of  
13 Environmental Protection, through rules and regulations adopted  
14 pursuant to subsection b. of this section.

15 b.]<sup>1</sup> The Department of Environmental Protection <sup>1</sup>and the New  
16 Jersey Motor Vehicle Commission <sup>1</sup> shall adopt <sup>1</sup>jointly<sup>1</sup> , pursuant to  
17 the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et  
18 seq.), rules and regulations <sup>1</sup>[that establish] providing for the training  
19 with respect to emissions testing and inspection required for persons  
20 who inspect or reinspect a vehicle pursuant to the periodic inspection  
21 program or the roadside inspection program established pursuant to  
22 P.L.1995, c.157 (C.39:8-59 et al.), or who repair any vehicle because  
23 of its failure of emissions testing under the periodic inspection  
24 program or roadside inspection program, including, but not limited to,  
25 the extent of the training,<sup>1</sup> standards<sup>1</sup> with respect to emissions testing  
26 and inspection<sup>1</sup> for the training and certification of mechanics  
27 employed for the purposes of inspecting vehicles under the periodic  
28 inspection program or the roadside inspection program, or for the  
29 repair of vehicles that fail inspections under the periodic inspection  
30 program and the roadside enforcement program <sup>1</sup>,<sup>1</sup> and <sup>1</sup>[prescribe]  
31 the<sup>1</sup> training to meet these standards<sup>1</sup>, including but not limited to,  
32 the length, convenience and affordability to the trainee, and the cost,  
33 if any of that training<sup>1</sup> .

34  
35 22. (New section) <sup>1</sup>[The] Except as may otherwise be provided  
36 in rules and regulations jointly adopted pursuant to subsection e. of  
37 section 6, and section 21 of P.L. , c. (C. )(now before the  
38 Legislature as this bill), the<sup>1</sup> New Jersey Motor Vehicle Commission  
39 shall consult with the Department of Environmental Protection and the  
40 Department of Law and Public Safety when adopting rules and  
41 regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure  
42 the proper coordination between the periodic inspection program and  
43 the roadside enforcement program and the implementation and  
44 enforcement of the provisions of P.L. , c. (C. )(now before  
45 the Legislature as this bill).

1       23. (New section) <sup>1</sup>~~1~~[The] Except as otherwise provided in rules  
2 and regulations jointly adopted pursuant to subsection e. of section 6,  
3 and section 21 of P.L. , c. (C. ) (now before the Legislature as  
4 this bill). <sup>1</sup> The Department of Environmental Protection shall consult  
5 with the New Jersey Motor Vehicle Commission and the Department  
6 of Law and Public Safety when adopting rules and regulations  
7 pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper  
8 coordination between the periodic inspection program and the  
9 roadside enforcement program and the implementation and  
10 enforcement of the provisions of P.L. , c. (C. ) (now before  
11 the Legislature as this bill).

12

13       24. (New section) The Department of Law and Public Safety shall  
14 consult with the Department of Environmental Protection and the New  
15 Jersey Motor Vehicle Commission when adopting rules and  
16 regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure  
17 the proper coordination between the periodic inspection program and  
18 the roadside enforcement program and the implementation and  
19 enforcement of the provisions of P.L. , c. (C. ) (now before  
20 the Legislature as this bill).

21

22       25. (New section) a. <sup>1</sup>~~1~~[Except as provided in subsection b. of  
23 this section, no] No<sup>1</sup> on-road diesel vehicle may operate in the State  
24 using any fuel other than ultra-low sulfur diesel fuel <sup>1</sup>[, as defined by  
25 the Department of Environmental Protection and the United States  
26 Environmental Protection Agency]<sup>1</sup> , on or after <sup>1</sup>[September 1,  
27 2006, as required ] October 15, 2006, or the date set by the United  
28 States Environmental Protection Agency as the retail compliance date  
29 for the sale of ultra-low sulfur diesel for use in on-road diesel vehicles<sup>1</sup>  
30 pursuant to federal law and regulation.

31       b. <sup>1</sup>[On or before March 1, 2006,] No sooner than July 15, 2006,  
32 and<sup>1</sup> following a public hearing held by the Department of  
33 Environmental Protection on the availability of ultra-low sulfur diesel  
34 fuel in the State, the department shall determine and issue a written  
35 notice of its determination as to whether sufficient supplies of ultra-  
36 low sulfur diesel fuel <sup>1</sup>[, as defined by the department and the United  
37 States Environmental Protection Agency,]<sup>1</sup> are available in the State  
38 to require only ultra-low sulfur diesel fuel to be sold in the State <sup>1</sup>[on  
39 and after September 1, 2006,] on and after January 15, 2007.<sup>1</sup>  
40 without significant disruption of, or significant price increases in, the  
41 wholesale and retail fuel market. If the department determines that  
42 supplies would be sufficient, no diesel fuel other than ultra-low sulfur  
43 diesel fuel <sup>1</sup>[, as defined by the Department of Environmental  
44 Protection and the United States Environmental Protection Agency,]<sup>1</sup>  
45 may be sold in the State on or after <sup>1</sup>[September 1, 2006, whether

1 used in an on-road diesel vehicle or in off-road diesel equipment,  
2 except that no such requirement shall go into effect until six months]  
3 the 180th day<sup>1</sup> after the date on which<sup>1</sup> the department issues a  
4 written determination that supplies would be sufficient <sup>1</sup>, or three  
5 months after the retail compliance date for the sale of ultra-low sulfur  
6 diesel fuel for use in on-road diesel vehicles implemented by the  
7 United States Environmental Protection Agency, whichever is later.  
8 c<sup>1</sup>. If the department determines that sufficient supplies are not  
9 available <sup>1</sup>[by March 1, 2006] pursuant to subsection b. of this  
10 section<sup>1</sup>, the requirement to sell only ultra-low sulfur diesel fuel in the  
11 State shall take effect only <sup>1</sup>[six months] 180 days<sup>1</sup> after the  
12 department issues a written determination that the supplies are  
13 sufficient.

14 <sup>1</sup>[c.] d.<sup>1</sup> The Department of Environmental Protection, in  
15 consultation with the Department of Law and Public Safety, the  
16 Department of Labor, and the Attorney General, shall adopt, pursuant  
17 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
18 et seq.), rules and regulations necessary for the implementation of this  
19 section.

20

21 26. (New section) No provision of P.L. , c. (C. )(now  
22 before the Legislature as this bill) shall be construed to apply to any  
23 vehicle or equipment used on, or in the course of the operation of, a  
24 farm or to any vehicle or equipment used for any agricultural  
25 purposes.

26

27 27. (New section) a. Whenever the Commissioner of  
28 Environmental Protection finds that a person has violated a provision  
29 of P.L. , c. (C. )(now before the Legislature as this bill), or  
30 any rule or regulation adopted pursuant thereto, the commissioner  
31 may:

32 (1) Levy a civil administrative penalty in accordance with  
33 subsection b. of this section; or

34 (2) Bring an action for a civil penalty in accordance with  
35 subsection c. of this section.

36 Recourse to any of the remedies available under this section shall  
37 not preclude recourse to any of the other remedies prescribed in this  
38 section or by any other applicable law.

39 b. The commissioner is authorized to assess a civil administrative  
40 penalty of not more than \$5,000 for each violation of P.L. , c.  
41 (C. )(now before the Legislature as this bill), or any rule or  
42 regulation adopted pursuant thereto. In adopting rules and regulations  
43 establishing the amount of any penalty to be assessed, the  
44 commissioner may take into account the type, seriousness, and  
45 duration of the violation and the economic benefits from the violation  
46 gained by the violator. No assessment shall be levied pursuant to this

1 section until after the party has been notified by certified mail or  
2 personal service. The notice shall: (1) identify the section of the law,  
3 rule, regulation, approval, or authorization violated; (2) recite the facts  
4 alleged to constitute a violation; (3) state the amount of the civil  
5 penalties to be imposed; and (4) affirm the rights of the alleged  
6 violator to a hearing. The ordered party shall have 20 days from  
7 receipt of the notice within which to deliver to the commissioner a  
8 written request for a hearing. After the hearing and upon finding that  
9 a violation has occurred, the commissioner may issue a final order  
10 after assessing the amount of the fine specified in the notice. If no  
11 hearing is requested, the notice shall become a final order after the  
12 expiration of the 20-day period. Payment of the assessment is due  
13 when a final order is issued or the notice becomes a final order. The  
14 authority to levy an administrative penalty is in addition to all other  
15 enforcement provisions in this act and in any other applicable law,  
16 rule, or regulation, and the payment of any assessment shall not be  
17 deemed to affect the availability of any other enforcement provisions  
18 in connection with the violation for which the assessment is levied.  
19 Any civil administrative penalty assessed under this section may be  
20 compromised by the commissioner upon the posting of a performance  
21 bond by the violator, or upon such terms and conditions as the  
22 commissioner may establish by regulation.

23 c. A person who violates any provisions of P.L. , c. (C. )(now  
24 before the Legislature as this bill), or any rule or regulation adopted  
25 pursuant thereto, or who fails to pay a civil administrative penalty in  
26 full pursuant to subsection b. of this section, shall be subject, upon  
27 order of a court, to a civil penalty for such violation of not more than  
28 \$5,000. Any civil penalty imposed pursuant to this subsection may be  
29 collected with costs in a summary proceeding pursuant to the "Penalty  
30 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In  
31 addition to any penalties, costs or interest charges, the court may  
32 assess against the violator the amount of actual economic benefit  
33 accruing to the violator from the violation. The Superior Court and  
34 the municipal court shall have jurisdiction to enforce the provisions of  
35 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
36 et seq.) in connection with the provisions of P.L. , c. (C. )  
37 (now before the Legislature as this bill).

38 d. Any person who knowingly, recklessly, or negligently makes a  
39 false statement, representation, or certification in any application,  
40 record, or other document filed or required to be maintained under  
41 P.L. , c. (C. )(now before the Legislature as this bill)  
42 shall be in violation of P.L. , c. (C. )(now before the  
43 Legislature as this bill) and shall be subject to the penalties assessed  
44 pursuant to subsections b. and c. of this section.

45

46 28. (New section) a. There is established in the Department of

1 the Treasury a special, nonlapsing fund to be known as the "Diesel  
2 Risk Mitigation Fund." The fund shall be administered by the State  
3 Treasurer and shall be credited with:

- 4 (1) constitutionally dedicated moneys;
- 5 (2) such moneys as are appropriated by the Legislature; and
- 6 (3) any return on investment of moneys deposited in the fund.

7 b. Moneys in the fund may be used by the Department of the  
8 Treasury solely for:

9 (1) reimbursements to owners of regulated vehicles or regulated  
10 equipment to reimburse the cost of required retrofit devices and the  
11 installation thereof;

12 (2) the administrative costs incurred by the Department of  
13 Environmental Protection to implement the provisions of P.L. , c.  
14 (C. )(now before the Legislature as this bill) up to \$900,000 per  
15 year; and

16 (3) the administrative costs incurred by the New Jersey Motor  
17 Vehicle Commission to implement the provisions of P.L. , c.  
18 (C. )(now before the Legislature as this bill) up to \$250,000 per  
19 year.

20 c. No moneys in the fund may be made available for any costs  
21 associated with requirements imposed by P.L. , c. (C. )(now  
22 before the Legislature as this bill), unless the State Treasurer certifies  
23 that the <sup>1</sup>[costs in a given year are fully funded] constitutionally  
24 dedicated moneys have been deposited in the fund<sup>1</sup> in that year.

25 <sup>1</sup>If the moneys provided for the administrative costs of the New  
26 Jersey Motor Vehicle Commission are not required by the commission  
27 in a given year because they exceed the amount of the administrative  
28 costs of the commission in that year, the State Treasurer shall provide  
29 those moneys unexpended for that purpose to the Department of  
30 Environmental Protection for administrative costs, provided that the  
31 administrative costs paid from the constitutionally dedicated moneys  
32 deposited in the fund do not exceed \$1,150,000.<sup>1</sup>

33 d. Any <sup>1</sup>owner of a regulated vehicle or piece of regulated  
34 equipment is eligible for reimbursement from the fund.  
35 Notwithstanding the provisions of the "Local Budget Law"  
36 (N.J.S.40A:4-1 et seq.) to the contrary, a<sup>1</sup> county, municipality, or an  
37 authority as defined in section 3 of P.L.1983, c.313 (C.40A:5A-3)  
38 required to comply with the provisions of P.L. , c. (C. )(now  
39 before the Legislature as this bill) may anticipate in its annual budget  
40 or any amendments or supplements thereto <sup>1</sup>[as a direct offset to the  
41 amount to be raised by taxation]<sup>1</sup> those sums to be reimbursed from  
42 the fund for the costs of retrofit devices and their installation that are  
43 required to be used in or on any regulated vehicle or piece of regulated  
44 equipment in a given year <sup>1</sup>[. Notwithstanding the provisions of the  
45 "Local Budget Law" (N.J.S.40A:4-1 et seq.), the county, municipality,  
46 or the authority as defined in section 3 of P.L.1983, c.313 (C.40A:5A-

1 3) which is due a payment pursuant to this section may anticipate the  
2 amount of the reimbursement in its local budget for the local budget  
3 year]<sup>1</sup> in which the county, municipality, or authority incurs the cost.  
4 <sup>1</sup>For the purposes of subsection 1. of section 3 of P.L.1976, c.68  
5 (C.40A:4-45.3) and subsection g. of section 4 of P.L.1976, c.68  
6 (C.40A:4-45.4), the costs of retrofit devices and their installation shall  
7 be considered an amount to be received from State funds in  
8 reimbursement for local expenditures and therefore exempt from the  
9 limitation on local budgets imposed pursuant to section 2 of P.L.1976,  
10 c.68 (C.40A:4-45.2).<sup>1</sup>

11

12 29. (New section) a. Moneys in the fund shall be allocated and  
13 used to provide reimbursement to the owners of regulated vehicles or  
14 regulated equipment for 100% of the costs of the purchase and  
15 installation of the retrofit device pursuant to P.L. , c. (C. )  
16 (now before the Legislature as this bill), other than fuel.

17 b. The owner or operator of a regulated vehicle or piece of  
18 regulated equipment seeking the reimbursement authorized in  
19 subsection a. of this section shall file an application on a form to be  
20 developed by the State Treasurer <sup>1</sup>and the Department of  
21 Environmental Protection, with the department<sup>1</sup>, with the  
22 documentation required by <sup>1</sup>the department and<sup>1</sup> the State Treasurer  
23 pursuant to section 30 of P.L. , c. (C. ) (now before the  
24 Legislature as this bill). <sup>1</sup>[The] Neither the<sup>1</sup> State Treasurer <sup>1</sup>nor the  
25 Department of Environmental Protection<sup>1</sup> may <sup>1</sup>[not]<sup>1</sup> charge an  
26 application fee.

27 c. Upon a determination that an application for reimbursement  
28 meets all established criteria for an award from the fund, <sup>1</sup>the  
29 Department of Environmental Protection and<sup>1</sup> the State Treasurer  
30 shall approve the application. Upon the department approval of an  
31 application for reimbursement from the fund, the State Treasurer shall  
32 award the reimbursement to an owner upon the availability of  
33 sufficient moneys in the fund. If moneys in the fund are not sufficient  
34 at any point to fund all applications for reimbursement that have been  
35 approved by the State Treasurer, the State Treasurer shall award  
36 reimbursement to approved owners based upon the date of approval  
37 of the application.

38

39 30. (New section) a. The State Treasurer shall adopt, <sup>1</sup>in  
40 consultation with the Department of Environmental Protection,<sup>1</sup>  
41 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
42 (C.52:14B-1 et seq.), rules and regulations:

43 (1) establishing the filing requirements for a complete application  
44 for reimbursement from the fund; and

45 (2) to require an owner:

46 (a) to submit documentation or other information demonstrating

1 that the retrofit device has been purchased and installed on a regulated  
2 vehicle, which shall include the vehicle identification number of the  
3 vehicle, or on regulated equipment the serial number;

4 (b) to submit documentation of the actual costs incurred for the  
5 purchase of the retrofit device required to be installed, the nature and  
6 scope of work performed to install the retrofit device, and the actual  
7 costs incurred to install the technology;

8 (c) to submit a certification that the owner has not engaged in any  
9 of the conduct described in subsection a. of section 31 of P.L. c.  
10 (C. ) (now before the legislature as this bill);

11 (d) to submit a certification that the retrofit device installed on a  
12 regulated vehicle or regulated equipment is in conformance with rules  
13 and regulations of the Department of Environmental Protection; and

14 (e) to provide access at reasonable times to the regulated vehicles  
15 or regulated equipment to determine compliance with the terms and  
16 conditions of the reimbursement award.

17 b. In establishing requirements for applications for reimbursement,  
18 the State Treasurer:

19 (1) may not impose conditions that interfere with the everyday  
20 normal operations of an owner's business activities, except to the  
21 extent necessary to ensure the owner has complied with the provisions  
22 of P.L. , c. (C. ) (now before the Legislature as this bill);

23 (2) shall strive to minimize the complexity and costs to owners of  
24 complying with such requirements; and

25 (3) shall expeditiously process all applications in accordance with  
26 a schedule established <sup>1</sup>[by the State Treasurer]<sup>1</sup>, in consultation with  
27 the Department of Environmental Protection, for the review  
28 <sup>1</sup>[thereof]<sup>1</sup> and the taking of final action <sup>1</sup>[, and shall process  
29 completed applications]<sup>1</sup> within 30 days after the receipt of the  
30 completed application.

31

32 31. (New section) a. The State Treasurer may deny an application  
33 for reimbursement from the fund, and any reimbursement from the  
34 fund may be recoverable by the State Treasurer, upon a finding that:

35 (1) the owner of a regulated vehicle or regulated equipment failed  
36 to commence or complete the purchase or installation of best available  
37 retrofit technology on the vehicle or equipment for which an  
38 application for reimbursement was filed in accordance with the  
39 applicable rules and regulations; or

40 (2) the owner of a regulated vehicle or regulated equipment  
41 provided false information or withheld information on an application  
42 that would render the owner ineligible for reimbursement from the  
43 fund, that resulted in the owner receiving a larger reimbursement than  
44 the owner would otherwise be eligible, or that resulted in payments  
45 from the fund in excess of the actual costs incurred by the owner or  
46 the amount to which the owner is legally eligible.

1 b. Nothing in this section shall be construed to require the State  
2 Treasurer, the Department of Environmental Protection, or any other  
3 State agency or department, to undertake an investigation or make any  
4 findings concerning the conduct described in subsection a. of this  
5 section.

6  
7 32. Section 4 of P.L.1966, c.16 (C.26:2C-8.4) is amended as  
8 follows:

9 4. [Such] Except as otherwise required pursuant to P.L. , c.  
10 (C. )(now before the Legislature as this bill) or other laws, codes,  
11 rules, and regulations concerning motor vehicles registered in the  
12 State, the codes, rules and regulations shall establish standards and  
13 requirements for control of air contaminants which can reasonably be  
14 attained by properly functioning motor vehicles without the addition  
15 of any air pollution control devices, systems, or engine modifications  
16 provided such vehicles were not manufactured with pollution control  
17 devices, systems or engine modifications in accordance with the  
18 "Motor Vehicle Air Pollution Control Act" (77 Stat. 392, 42 U.S.C.  
19 1857) , the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any  
20 subsequent federal laws controlling air contaminants from motor  
21 vehicles.

22 (cf: P.L.1966, c.16, s.4)

23  
24 33. Section 2 of P.L.1966, c.15 (C.39:3-70.2) is amended to read  
25 as follows:

26 2. Any person who operates a motor vehicle or owns a motor  
27 vehicle ,other than a school bus, which [he] the person permits to idle  
28 in violation of rules and regulations, or to be operated[,] upon the  
29 public highways of [this] the State [which emits] when the motor  
30 vehicle is emitting smoke and other air contaminants in excess of  
31 standards adopted by the [Air Pollution Control Commission]  
32 Department of Environmental Protection pursuant to the "Air  
33 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.)  
34 shall be liable to a penalty of not less than [\$25.00] \$250 nor more  
35 than [\$100.00] \$1,000 per day, per vehicle <sup>1, 1</sup> which shall be enforced  
36 in accordance with the provisions of chapter 5 of Title 39 of the  
37 Revised Statutes and P.L. , c. (C. )(now before the  
38 Legislature as this bill) .

39 The owner of any school bus that is operated or is permitted to idle  
40 in violation of rules and regulations adopted pursuant to the  
41 Department of Environmental Protection pursuant to the "Air  
42 Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or  
43 any applicable rules and regulations adopted pursuant to P.L. , c.  
44 (C. )(now before the Legislature as this bill) shall be liable for a  
45 penalty of not less than \$250 nor more than \$1,000 per day, per  
46 vehicle <sup>1, 1</sup> which shall be enforced in accordance with the provisions

1 of chapter 5 of Title 39 of the Revised Statutes, except that no penalty  
2 may be assessed against any driver of a school bus who is not the  
3 owner of the school bus.

4 <sup>1</sup>The provisions of this section shall not apply to a motor vehicle  
5 idling in traffic, or a motor vehicle other than a school bus idling in a  
6 queue of motor vehicles, that are intermittently motionless and moving  
7 because the progress of the motor vehicles in the traffic or the queue  
8 has been stopped or slowed by the congestion of traffic on the  
9 roadway or other conditions over which the driver of the idling motor  
10 vehicle has no control.<sup>1</sup>

11 (cf: P.L.1966, c.15, s.2)

12  
13 34. Section 9 of P.L.1995, c.157 (C.39:8-67) is amended to read  
14 as follows:

15 9. <sup>1</sup>[a.]<sup>1</sup> The Superintendent of the State Police, in consultation  
16 with and subject to the approval of the Attorney General, shall provide  
17 State Police officers to assist the commission in conducting the  
18 roadside enforcement program and the pilot roadside enforcement  
19 program. The State Police officers shall have authority to direct diesel  
20 buses, heavy-duty diesel trucks, or other diesel-powered motor  
21 vehicles from the roadway for the purpose of inspection, and shall  
22 perform other police duties necessary for or helpful to the  
23 implementation of the programs. The State Police officers shall  
24 maintain records of these inspections and shall forward the information  
25 concerning the number of inspections, and the type of violations and  
26 the number of each type of violation to the Department of  
27 Environmental Protection.

28 <sup>1</sup>[b. Any State Police officer may, in the course of conducting a  
29 roadside inspection pursuant to P.L.1995, c.157 (C.39:8-59 et al.)  
30 request the operator of a diesel bus, heavy-duty diesel truck, or other  
31 diesel-powered motor vehicle to produce the compliance form issued  
32 by the Department of Environmental Protection pursuant to section 6,  
33 section 7, or section 17 of P.L. , c. (C. )(now pending before  
34 the Legislature as this bill) for vehicles subject to compliance with a  
35 regulated fleet retrofit plan, combined regulated fleet retrofit plan, or  
36 fleet averaging plan, if the operator has such documentation on the  
37 diesel-powered motor vehicle. If the operator cannot produce the  
38 compliance form, the State Police officer shall record the vehicle  
39 identification number of the vehicle and shall report to the Department  
40 of Environmental Protection the vehicle identification number of the  
41 vehicle and that the vehicle did not have a compliance form in the  
42 vehicle at the time of the roadside inspection. Failure to have a  
43 compliance document shall not, in an of itself, constitute a violation.]<sup>1</sup>

44 (cf: P.L.2003, c.13, s.82)

45  
46 35. This act shall take effect immediately.

1

2

3

4 Establishes requirements for reducing fine particle diesel emissions  
5 from certain vehicles and equipment; creates fund for financing costs  
6 associated therewith; increases penalties for idling and authorizes DEP  
7 to establish additional restrictions on school bus idling.

# ASSEMBLY, No. 3182

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 24, 2004

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblyman LOUIS MANZO**

**District 31 (Hudson)**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Co-Sponsored by:**

**Assemblywoman Weinberg, Assemblymen Johnson, Gusciora,  
Assemblywoman Previte and Assemblyman Hackett**

**SYNOPSIS**

Establishes fine particle diesel emissions reduction program; establishes tax deduction for compliance; updates current diesel and bus programs; authorizes DOT oversight for truck routes; creates public outreach programs; appropriates \$24 million.

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 5/20/2005)

1 AN ACT concerning regulation of emissions from vehicles and  
2 equipment powered by diesel engines, amending and supplementing  
3 various parts of statutory law, and making an appropriation.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) The Legislature finds and declares that the  
9 emissions of fine particles into the air pose an extraordinary health risk  
10 to the people of the State; that studies repeatedly have found links  
11 between exposure to fine particles, and health effects including  
12 premature death and increased incidents of asthma, allergies, and other  
13 breathing disorders; that, based on these studies, the number of  
14 premature deaths attributable to exposure to fine particles may exceed  
15 the annual number of homicides or motor vehicle accident fatalities in  
16 the State; that exhaust emissions from diesel-powered vehicles and  
17 equipment contribute substantially to the fine particle problem, and  
18 pose both cardiovascular and cancer risks; that the United States  
19 Environmental Protection Agency has classified diesel exhaust as likely  
20 to be carcinogenic to humans by inhalation at environmental  
21 exposures; and that the United States Environmental Protection  
22 Agency has also identified diesel particle matter and diesel exhaust  
23 organic gases as a mobile source air toxic.

24 The Legislature further finds and declares that, although some new  
25 diesel-powered vehicles and equipment operate more cleanly and may  
26 contribute less to air quality problems than their predecessors, diesel-  
27 powered trucks, buses, and off-road equipment tend to remain in  
28 service a long time, sometimes as long as 20 years or more; that unless  
29 the emissions from diesel-powered trucks, buses, and off-road  
30 equipment currently operating in the State are controlled, these trucks,  
31 buses, and off-road equipment will continue to emit high levels of fine  
32 particles and contribute to air pollution in the State for many years to  
33 come; that filters and other devices and cleaner burning fuels are  
34 available to reduce emissions from older diesel vehicles and  
35 equipment; that retrofitting diesel-powered vehicles with emissions  
36 reducing devices, operating these vehicles on cleaner burning fuel, or  
37 both, could significantly improve air quality; that although such  
38 requirements impose costs, the costs are relatively small when  
39 compared with the costs of the vehicles or equipment they update or  
40 the cost of the impact on the public health from the air pollution that  
41 the requirements abate; and that, by exercising discretion in matching  
42 technologies to vehicles and equipment, the cost of installing and using  
43 pollution-reducing devices and fuels can be minimized.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 The Legislature therefore determines that it is of vital importance  
2 to the health of the people of the State to reduce fine particle  
3 emissions from vehicles and equipment powered by diesel engines; and  
4 that this reduction can be accomplished by establishing a program to  
5 require, in a cost-effective manner, the use of the best available  
6 technologies for pollution reduction in public and private fleets of  
7 diesel-powered vehicles and equipment, establishing a fund to finance  
8 the costs to local government units, and assisting businesses and  
9 private entities to meet the costs of the program through tax  
10 incentives.

11

12 2. (New section) As used in P.L. , c. (C. ) (now before the  
13 Legislature as this bill):

14 "Apportioned vehicle" means an apportioned vehicle as defined  
15 under section 21 of P.L.1995, c.157 (C.39:3-6.11);

16 "Best available retrofit technology" means the equipment, devices  
17 or fuel, or any combination thereof, that, as determined by the  
18 Department of Environmental Protection, is appropriate for a certain  
19 on-road diesel vehicle or piece of off-road diesel equipment and may  
20 be used for a reasonable cost on the on-road diesel vehicle or a piece  
21 of off-road diesel equipment to achieve substantial reduction of fine  
22 particle emissions, and may include, but is not limited to, particle  
23 filters, diesel oxidation catalysts, flow through filters, and modified  
24 diesel fuel;

25 "Commercial bus" means an autobus subject to regulation under  
26 Title 48 of the Revised Statutes or a motor bus operated by, or under  
27 contract to, the New Jersey Transit Corporation pursuant to P.L.1979,  
28 c.150 (C.27:25-1 et seq.);

29 "Diesel apportioned vehicle" means an apportioned vehicle powered  
30 by a diesel engine;

31 "Diesel engine" means an internal combustion engine with  
32 compression ignition using diesel fuel, including the fuel injection  
33 system but excluding the exhaust system;

34 "Fine particle" means a particle emitted directly into the atmosphere  
35 from exhaust produced by the combustion of diesel fuel and having an  
36 aerodynamic diameter of 2.5 micrometers or less;

37 "Fine particle diesel emissions" means emissions of fine particles  
38 from an on-road diesel vehicle or from off-road diesel equipment;

39 "Local government unit" means any county or municipality, or any  
40 agency, instrumentality, authority or corporation of any county or  
41 municipality, including, but not limited to, sewerage, utility and  
42 improvement authorities, or any public body having local or regional  
43 jurisdiction over solid waste disposal, including solid waste  
44 management districts, or any political subdivision of the State,  
45 authority or agency authorized pursuant to law to own or operate  
46 sanitary landfill facilities or to provide for the environmentally sound

1 disposal of solid waste;

2 "Off-road diesel equipment" means any equipment or vehicle  
3 powered by a diesel engine that is used primarily for construction,  
4 loading, and other off-road purposes and, when in use, is not  
5 commonly operated on a roadway except when used for roadway  
6 construction and repair, including, but not necessarily limited to,  
7 rollers, scrapers, excavators, rubber tire loaders, crawler/dozers, and  
8 off-highway trucks. The term "off-road diesel equipment" includes  
9 equipment and vehicles that are not used primarily for transportation  
10 and are considered off-road equipment and vehicles but, for purposes  
11 of moving the equipment and vehicles from place to place on the  
12 roadways of the State, have been registered with the New Jersey  
13 Motor Vehicle Commission;

14 "On-road diesel vehicle" means any vehicle, other than a private  
15 passenger automobile, that is powered by a diesel engine and operated  
16 on the roadways of the State, and shall include, but need not be limited  
17 to, diesel buses, diesel-powered motor vehicles, and heavy-duty diesel  
18 trucks as defined under section 2 of P.L.1995, c.157 (C.39:8-60);

19 "Regulated fleet" means any fleet of 10 or more regulated on-road  
20 diesel vehicles, registered or operated in the State and owned, leased,  
21 or contracted by any private or public entity;

22 "Regulated off-road diesel equipment" means any off-road diesel  
23 equipment operating in the State and designated as regulated off-road  
24 diesel equipment pursuant to section 4 of P.L. , c. (C. )  
25 (now before the Legislature as this bill);

26 "Regulated on-road diesel vehicle" means any on-road diesel vehicle  
27 registered and operating in the State and designated as a regulated on-  
28 road diesel vehicle pursuant to section 4 of P.L. , c. (C. )  
29 (now before the Legislature as this bill), and shall include, but need  
30 not be limited to, commercial buses, school buses, sanitation vehicles,  
31 on-road diesel vehicles greater than 14,000 pounds gross vehicle  
32 weight, apportioned vehicles registered, or with in-jurisdiction miles,  
33 in the State diesel bus, and any vehicles subject to the provisions of  
34 P.L.1995, c.157 (C.39:8-59 et al.);

35 "School bus" means a school bus as defined under R.S.39:1-1; and

36 "Technology" means any equipment, device, or fuel used alone or  
37 in combination to achieve the reductions in emissions required for best  
38 available retrofit technology.

39

40 3. (New section) The Department of Environmental Protection  
41 and the Department of Health and Senior Services shall develop and  
42 implement a public education and outreach program to alert and  
43 inform the public at large about the public health risks associated with  
44 fine particle emissions and other pollution from vehicles and equipment  
45 powered by diesel engines. Information shall be presented in a multi-  
46 lingual format and be made available to the sight and hearing impaired.

1 4. (New section) a. No later than 270 days after the effective date  
2 of P.L. , c. (C. ) (now before the Legislature as this bill),  
3 the Department of Environmental Protection shall adopt, pursuant to  
4 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
5 seq.), rules and regulations to establish and implement a fine particle  
6 diesel emissions reduction program.

7 The overall goal of the program shall be a 20-percent reduction of  
8 emissions from regulated on-road diesel vehicles and regulated off-  
9 road diesel equipment over the ten years after the date of enactment  
10 of P.L. , c. (C. ) (now before the Legislature as this bill),  
11 with a focus on the reduction of fine particle emissions from these  
12 vehicles. The program shall require best available retrofit technologies  
13 be used by:

14 (1) Regulated fleets of commercial buses, sanitation vehicles,  
15 school buses with diesel engines, diesel apportioned vehicles  
16 registered, or with in-jurisdiction miles, in the State, and on-road  
17 diesel vehicles greater than 14,000 pounds gross vehicle weight that  
18 are types and classes of vehicles equivalent to the regulated diesel  
19 apportioned vehicles whether apportioned vehicles or some other class  
20 of vehicle;

21 (2) Diesel apportioned vehicles registered, or with in-jurisdiction  
22 miles, in the State, that may not be part of a regulated fleet; and

23 (3) Off-road diesel equipment designated as regulated off-road  
24 diesel equipment under the rules and regulations adopted pursuant to  
25 this subsection.

26 b. The rules and regulations adopted pursuant to subsection a. of  
27 this section shall set forth:

28 (1) the designation, by vehicle or equipment types and class, of on-  
29 road diesel vehicles as regulated on-road diesel vehicles and off-road  
30 diesel equipment as regulated off-road diesel equipment, provided that  
31 all designations made pursuant to this paragraph shall be designed to  
32 produce substantial emissions reductions at a reasonable cost, and,  
33 provided that the rules and regulations shall designate as regulated on-  
34 road diesel vehicles commercial buses, sanitation vehicles, school  
35 buses with diesel engines, diesel apportioned vehicles registered, or  
36 with in-jurisdiction miles, in the State, and on-road diesel vehicles  
37 greater than 14,000 pounds gross vehicle weight that are types and  
38 classes of vehicles equivalent to the regulated diesel apportioned  
39 vehicles;

40 (2) the designation of best available retrofit technologies,  
41 including, but not limited to, specific types of fuel or equipment, for  
42 regulated on-road diesel vehicles and regulated off-road diesel  
43 equipment and the requirements for their use on regulated fleets and  
44 regulated off-road equipment, including, but not limited to, the  
45 designation of which technologies are to be used on, or in, which  
46 types, models, or other classification of vehicles or equipment,

1 provided that the designation made produces substantial emissions  
2 reductions at a reasonable cost;

3 (3) the requirements for developing the regulated fleet retrofit  
4 plans to be submitted pursuant to section 7 of P.L. , c. (C. )  
5 (now before the Legislature as this bill, including, but not limited to:  
6 (i) a description of the components that, at a minimum, are to be  
7 included in regulated fleet retrofit plans required to be prepared and  
8 submitted to the department pursuant to section 7 and consistent with  
9 the provisions of section 5 of P.L. , c. (C. ) (now before the  
10 Legislature as this bill);  
11 (ii) department guidelines for developing an inventory of regulated  
12 on-road diesel vehicles and the regulated fleet retrofit plan,  
13 determining which vehicles in the regulated fleet are regulated on-road  
14 diesel vehicles and the technology required for each vehicle, and  
15 providing information concerning obtaining the required technologies;  
16 and  
17 (iii) the procedures for contacting the department with questions  
18 about the requirements of and compliance with the provisions of P.L.,  
19 c. (C. ) (now before the Legislature as this bill), and obtaining  
20 any technical guidance needed in preparing the regulated fleet retrofit  
21 plans;

22 (4) the requirement that in accordance with the relevant regulated  
23 fleet retrofit plan, each owner, operator, or lessee of a regulated fleet  
24 install, operate, and maintain the appropriate best available retrofit  
25 technology on its regulated on-road diesel vehicles, as determined by  
26 the department, and that only the requirements provided for in a  
27 regulated fleet retrofit plan shall be required of owners, operators or  
28 lessees of regulated on-road diesel vehicles;

29 (5) any additional requirements or provisions that may pertain to  
30 the regulation of diesel apportioned vehicles pursuant to section 10 or  
31 any other provisions of P.L. , c. (C. ) (now before the  
32 Legislature as this bill);

33 (6) any additional requirements for regulated off-road diesel  
34 equipment, including, but not limited to:  
35 (i) department guidelines for developing an inventory of regulated  
36 off-road diesel equipment, determining which pieces of equipment are  
37 regulated off-road diesel equipment and the technology required for  
38 each piece of equipment, and information concerning obtaining the  
39 required technologies; and  
40 (ii) procedures for contacting the department with questions about  
41 the requirements of and compliance with the provisions of P.L. ,  
42 c. (C. ) (now before the Legislature as this bill), and obtaining  
43 any technical guidance needed in complying with those provisions;

44 (7) provisions to target and prioritize reduction of emissions of fine  
45 particles in densely populated urban areas of the State;

46 (8) guidelines and procedures for the provision of grants to county

1 and municipal local governments from the "Diesel Risk Mitigation  
2 Fund," established under section 21 of P.L. , c. (C. ) (now  
3 before the Legislature as this bill);

4 (9) provisions to ensure that the best available retrofit technology  
5 is installed correctly and is operating effectively, that the owners,  
6 operators, and lessees of regulated fleets and regulated off-road diesel  
7 equipment receive certification that required retrofits are performed  
8 and functioning correctly, and that recourse is available to the owners,  
9 operators, and lessees to correct any errors in retrofitting or the  
10 performance of the retrofit equipment;

11 (10) a penalty schedule for violations, providing for civil  
12 administrative penalties of up to \$1,000 per day per regulated on-road  
13 diesel vehicle or piece of regulated off-road diesel equipment; and

14 (11) any other provisions necessary for the department to establish,  
15 implement, and enforce the program established pursuant to subsection  
16 a. of this section.

17 c. The Department of Environmental Protection shall consult with  
18 the Department of Education, the New Jersey Motor Vehicle  
19 Commission, and the Department of Transportation when developing  
20 the provisions of the rules and regulations to be adopted pursuant to  
21 subsection a. of this section concerning school buses with diesel  
22 engines, and shall incorporate the use of any available technologies to  
23 reduce fine particle diesel emissions from school buses, including but  
24 not limited to, requiring the use of air filters, positive pressure  
25 systems, alternative tail pipe designs, modified diesel fuels, negotiating  
26 the replacement of school buses powered by diesel engines with school  
27 buses powered by engines with lower fine particle emissions, and other  
28 innovative approaches to reducing fine particle diesel emissions.

29 d. The Department of Environmental Protection shall consult with  
30 the New Jersey Motor Vehicle Commission and the New Jersey  
31 Transit Corporation when developing the provisions of the rules and  
32 regulations to be adopted pursuant to subsection a. of this section  
33 concerning commercial buses. The department shall incorporate  
34 wherever possible the use of improved pollution control or fuels other  
35 than conventional diesel fuel by the New Jersey Transit Corporation  
36 pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22), but may  
37 require additional controls or fuel use for commercial buses operated  
38 by, or under contract to, the New Jersey Transit Corporation. No  
39 provision of section 22 of P.L.1984, c.73 (C.27:1B-22) shall be  
40 construed to supersede, or exempt the New Jersey Transit Corporation  
41 from, any requirements the Department of Environmental Protection  
42 may establish pursuant to this section.

43

44 5. (New section) Notwithstanding the provisions of any section of  
45 P.L. , c. (C. ) (now before the Legislature as this bill), or any  
46 rule or regulation adopted pursuant thereto to the contrary, the use

1 of the best available retrofit technology shall not be required on any  
2 regulated on-road diesel vehicles manufactured to meet a federal  
3 standard of 0.01 grams per brake-horsepower-hour of fine particle  
4 emissions, or on any regulated off-road diesel equipment that emits no  
5 more than 0.015 grams per brake-horsepower-hour of fine particle  
6 emissions.

7  
8 6. (New section) The Department of Environmental Protection  
9 shall develop and implement, in consultation with the Department of  
10 Transportation and the New Jersey Motor Vehicle Commission, a  
11 public outreach program to notify and inform the owners, operators,  
12 and lessees of regulated fleets and the owners, operators, and lessees  
13 of regulated off-road diesel equipment under the provisions of P.L. ,  
14 c. (C. ) (now before the Legislature as this bill) and the rules  
15 and regulations adopted pursuant thereto. In developing and  
16 implementing the program, the Department of Environmental  
17 Protection shall include in this notification the owners, operators, and  
18 lessees of unregistered off-road diesel equipment and out-of-State  
19 companies that may provide off-road diesel equipment for operation  
20 in the State.

21  
22 7. (New section) a. (1) No later than 180 days after the effective  
23 date of the rules and regulations adopted pursuant to section 4 of P.L.,  
24 c. (C. )(now before the Legislature as this bill), each owner,  
25 operator, or lessee of a regulated fleet shall submit to the Department  
26 of Environmental Protection an inventory of the on-road diesel  
27 vehicles in the fleet, an indication by the owner, operator, or lessee of  
28 the vehicles the owner, operator, or lessee determines are regulated  
29 on-road diesel vehicles, and a regulated fleet retrofit plan for the  
30 regulated on-road diesel vehicles in the fleet. Any owner, operator, or  
31 lessee of a regulated fleet who commences operation of a regulated  
32 fleet after the effective date of the rules and regulations adopted  
33 pursuant to subsection a. of section 4 of P.L. , c. (C. )(now before  
34 the Legislature as this bill) shall submit the required materials no later  
35 than 180 days after the date on which the owner, operator, or lessee  
36 commenced operation of the regulated fleet. Any regulated fleet  
37 retrofit plan shall include a timetable for retrofitting regulated on-road  
38 diesel vehicles in the regulated fleet and commencing the use of any  
39 fuel required to be used in the regulated on-road diesel vehicle by rule  
40 or regulation.

41 (2) Any owner, operator, or lessee of a regulated fleet may  
42 coordinate or combine the development of a regulated fleet retrofit  
43 plan with the development of the regulated fleet retrofit plan of any  
44 other owner, operator, or lessee of a regulated fleet, or a group of  
45 owners, operators, or lessees of regulated fleets, and with the guidance  
46 of the department, submit a combined regulated fleet retrofit plan.

1 (3) The Department of Environmental Protection shall provide any  
2 technical guidance needed in preparing the regulated fleet retrofit plans  
3 required pursuant to this section.

4 (4) If the owner, operator, or lessee of any regulated on-road  
5 diesel vehicle determines that the best available retrofit technology at  
6 the levels designated by the rules and regulations adopted pursuant to  
7 subsection a. of section 4 of P.L. , c. (C. ) (now before  
8 the Legislature as this bill) is not feasible for a specific regulated on-  
9 road diesel vehicle, or the cost to comply with the requirements of the  
10 rules and regulations would be prohibitive for a specific regulated  
11 fleet, the owner or operator of the regulated fleet may document in the  
12 regulated fleet retrofit plan the use of the required best available  
13 retrofit technology is not feasible or the economic hardship the  
14 requirement represents, and request approval to use a lower best  
15 available retrofit technology level, or an exemption from the best  
16 available retrofit technology requirement. The owner, operator, or  
17 lessee of the regulated fleet may also propose and negotiate an  
18 enforceable commitment to retire the vehicle or equipment and replace  
19 it with a vehicle or equipment, or replace the engine of the vehicle or  
20 equipment, with an engine certified to fine particle emission levels at  
21 or below the emission levels that would have been achieved by the use  
22 of the required best available retrofit technology.

23 (5) In assisting schools, public school districts, private schools, and  
24 companies providing school bus service to any school in the State with  
25 developing regulated fleet retrofit plans to comply with this section,  
26 the Department of Environmental Protection shall give every  
27 consideration to the requirements of the contractual and leasing  
28 arrangements between the schools, public school districts, private  
29 schools, or companies providing school bus service to any school in  
30 establishing retrofit and other requirements and a timetable for  
31 compliance with the provisions of P.L. , c. (C. ) (now before  
32 the Legislature as this bill).

33 b. The Department of Environmental Protection shall review, and  
34 approve or disapprove all parts of any regulated fleet retrofit plan  
35 submitted pursuant to paragraph (1) of subsection a. of this section no  
36 later than one year after the submittal of the regulated fleet retrofit  
37 plan. The department may approve or disapprove any regulated fleet  
38 retrofit plan in part, and require the owner, operator, or lessee of the  
39 regulated fleet to comply with the approved part or parts of the  
40 regulated fleet retrofit plan prior to final approval of other parts of the  
41 regulated fleet retrofit plan. Whenever the department disapproves a  
42 regulated fleet retrofit plan or a part thereof, the department shall  
43 provide a detailed explanation to the owner, operator, or lessee of the  
44 regulated fleet indicating the deficiencies of the disapproved regulated  
45 fleet retrofit plan or part thereof, and the recommendations of the  
46 department to correct the deficiencies.

1 The owner, operator, or lessee of a regulated fleet or a group of  
2 owners, operators, or lessees of regulated fleet who receive  
3 disapproval of a regulated fleet retrofit plan, or any part thereof, shall  
4 make the recommended revisions to the disapproved regulated fleet  
5 retrofit plan or the disapproved part thereof within 60 days after the  
6 receipt of the disapproval notification from the department, and submit  
7 the final revised regulated fleet retrofit plan, or the final revised part  
8 that had been disapproved and revised, to the department. If the  
9 department does not take further action within 30 days after receipt of  
10 the final revised regulated fleet retrofit plan or the final revised part  
11 that had been disapproved, the regulated fleet retrofit plan or the part  
12 that had been disapproved and revised shall be considered approved  
13 and in effect. If the department finds within 30 days after the receipt  
14 of the final revised regulated fleet retrofit plan that the owner,  
15 operator or lessee has not complied with the recommended revisions,  
16 the department may take further action to require compliance with this  
17 subsection.

18 The date on which all parts of a regulated fleet retrofit plan have  
19 been approved shall serve as the anniversary date of the regulated fleet  
20 retrofit plan approval for the purposes of subsection c. of this section.  
21 At any time during the review process or prior to final approval of a  
22 regulated fleet retrofit plan, or the part thereof in question, the  
23 department may contact and enter into negotiations with the owner,  
24 operator, or lessee of the regulated fleet to resolve discrepancies  
25 between the rules and regulations adopted pursuant to subsection a. of  
26 section 4 of P.L. , c. (C. ) (now before the Legislature as this  
27 bill), the submitted regulated fleet retrofit plan, and the requests by the  
28 owner, operator or lessee pursuant to paragraph (5) of subsection a.  
29 of this section.

30 c. On each annual anniversary of the date of the regulated fleet  
31 retrofit plan approval, each owner, operator, or lessee of a regulated  
32 fleet shall submit a supplement to the regulated fleet retrofit plan  
33 indicating whether any changes to the regulated fleet have been made,  
34 including, but not limited to, the purchase of additional or replacement  
35 on-road diesel vehicles, since the submittal date of the original  
36 regulated fleet retrofit plan, or the most recent supplement, as  
37 applicable. The department shall review, and approve or disapprove  
38 all parts of the supplement no later than one year after its submittal  
39 date. The department may approve or disapprove any supplement to  
40 any regulated fleet retrofit plan in part, and require the owner,  
41 operator, or lessee of the regulated fleet to comply with the approved  
42 part or parts of the supplement prior to final approval of other parts  
43 of the supplement.

44 Whenever the department disapproves a supplement to a regulated  
45 fleet retrofit plan or a part thereof, the department shall provide a  
46 detailed explanation to the owner, operator, or lessee of the regulated

1 fleet indicating the deficiencies of the disapproved supplement or part  
2 thereof, and the recommendations of the department to correct the  
3 deficiencies. The owner, operator, or lessee of a regulated fleet or a  
4 group of owners, operators, or lessees of regulated fleets who receive  
5 disapproval of a supplement to a regulated fleet retrofit plan, or a part  
6 thereof, shall make the recommended revisions to the supplement  
7 within 60 days after the receipt of the disapproval notification from the  
8 department, and submit the final revised supplement, or the revised  
9 part that had been disapproved, to the department. If the department  
10 does not take further action within 30 days after receipt of the final  
11 revised supplement, or the revised part that had been disapproved, the  
12 revised supplement to the regulated fleet retrofit plan or the revised  
13 part that had been disapproved shall be considered approved and in  
14 effect. If the department finds within 30 days after the receipt of the  
15 final revised supplement or the final revised part that had been  
16 disapproved, that the owner, operator or lessee has not complied with  
17 the recommended revisions, the department may take further action to  
18 require compliance with this subsection.

19 d. Any part of a regulated fleet retrofit plan approved pursuant to  
20 subsection b. of this section, or any part of a supplement thereto,  
21 approved pursuant to subsection c. of this section, shall provide  
22 specific dates by which specific regulated on-road diesel vehicles are  
23 to be equipped with, or are to use, the best available retrofit  
24 technology specified in the regulated fleet retrofit plan, or supplement  
25 thereto, except that no owner, operator, or lessee of a regulated fleet  
26 shall be required to retrofit any regulated on-road diesel vehicle with  
27 the required best available retrofit technology any earlier than 180  
28 days after the approval date of the part of the regulated fleet retrofit  
29 plan or supplement thereto in which the best available retrofit  
30 technology is required for the vehicle. In the case of a regulated fleet  
31 owned, operated, or leased by a local government unit, no retrofit shall  
32 be required to be in place prior to the receipt by the local government  
33 unit of a grant from the "Diesel Risk Mitigation Fund" established  
34 under section 21 of P.L. ,c. (C. ) (now before the Legislature as  
35 this bill). No enforcement action may be taken against the owner of  
36 a regulated fleet or the operator of a regulated on-road diesel vehicle  
37 from a regulated fleet until after the date the best available retrofit  
38 technology is required to be installed on, or used in, the regulated on-  
39 road diesel vehicle pursuant to this section.

40 e. Each owner of a regulated fleet shall keep a record listing each  
41 regulated on-road diesel vehicle or piece of regulated off-road diesel  
42 equipment, as appropriate, in the fleet with the following identifying  
43 information and records for the vehicle or piece of equipment: (i) the  
44 license, identification number, or registration information; (ii) vehicle  
45 type, engine manufacturer, engine model and model year; (iii) the  
46 description of any installed diesel emissions control system or best

1 available retrofit technology, its serial number, manufacturer, model,  
2 best available retrofit technology level designation, and installation  
3 date; (iv) maintenance records for the emissions control system or  
4 best available retrofit technology; (v) the records of the two most  
5 recent calendar years of fuel purchases for each vehicle or piece of  
6 equipment required to use modified fuel or fuel additives under the  
7 approved regulated fleet retrofit plan or supplement thereto; (vi) the  
8 original, approved regulated fleet retrofit plan, any variance requests,  
9 exemption requests, and approvals or disapprovals of the requests,  
10 plan or supplements. The Department of Environmental Protection,  
11 the Department of Transportation, and the New Jersey Motor Vehicle  
12 Commission shall have the authority to inspect these records upon  
13 request.

14

15 8. (New section) No regulated on-road diesel vehicle required to  
16 use best available retrofit technology by a certain date pursuant to the  
17 approved regulated fleet retrofit plan, part thereof, approved  
18 supplement thereto, or part thereof, may be operated in the State after  
19 that date without the required best available retrofit technology  
20 installed or in use in the regulated on-road diesel vehicle.

21

22 9. (New section) a. On and after January 1, 2009, no regulated  
23 off-road diesel equipment may be operated in the State, or be issued  
24 any in-transit, county, municipal, or State vehicle registration for  
25 operation on any roadway of the State, or have its vehicle registration  
26 renewed, without verification of compliance with the requirements of  
27 P.L. , c. (C. ) (now before the Legislature as this bill) and  
28 the applicable rules and regulations adopted pursuant thereto. Any  
29 person who owns, leases, or intends to operate any regulated off-road  
30 diesel equipment in the State shall obtain the necessary verification of  
31 compliance from the Department of Environmental Protection prior to  
32 leasing or operating any regulated off-road diesel equipment in the  
33 State on and after January 1, 2009.

34 b. As soon as practicable after the date of enactment of P.L. ,  
35 c. (C. ), the New Jersey Motor Vehicle Commission and the  
36 Department of Transportation shall provide notice of the requirements  
37 of P.L. , c. (C. ) to any person issued any in-transit, county,  
38 municipal, or State vehicle registration for operation on any roadway  
39 of the State, or due for renewal of such vehicle registration, or any  
40 other person leasing or operating off-road diesel equipment in the  
41 State that the commission or Department of Transportation may be  
42 aware of through other means.

43 c. Each owner, operator, or lessee of regulated off-road diesel  
44 equipment shall keep a record listing each piece of regulated off-road  
45 diesel equipment, as appropriate, with the following identifying  
46 information and records for the vehicle or piece of equipment: (i) the

1 license, identification number, or registration information; (ii) vehicle  
2 or equipment type, engine manufacturer, engine model and model year;  
3 (iii) the description of any installed diesel emissions control system or  
4 best available retrofit technology, its serial number, manufacturer,  
5 model, best available retrofit technology level designation, and  
6 installation date; (iv) maintenance records for the emissions control  
7 system or best available retrofit technology; (v) the records of the two  
8 most recent calendar years of fuel purchases for each vehicle or piece  
9 of equipment required to use modified fuel or fuel additives under the  
10 approved regulated fleet retrofit plan or supplement thereto; (vi) the  
11 original, approved regulated fleet retrofit plan, any variance requests,  
12 exemption requests, and approvals or disapprovals of the requests,  
13 plan or supplements. The Department of Environmental Protection,  
14 the Department of Transportation, and the New Jersey Motor Vehicle  
15 Commission shall have the authority to inspect these records upon  
16 request.

17 d. The Department of Environmental Protection, the New Jersey  
18 Motor Vehicle Commission, the Department of Transportation, the  
19 Superintendent of State Police, and any State, county, or municipal  
20 law enforcement officer shall have the authority to enter upon any  
21 property where off-road diesel equipment is located or is being  
22 operated, and inspect any off-road diesel equipment in the State and  
23 the records maintained in connection therewith, to ascertain and  
24 enforce compliance with this section and any other provisions of P.L.,  
25 c. (C. ) (now before the Legislature as this bill) and the  
26 applicable rules and regulations adopted pursuant thereto. The  
27 inspection may include, but shall not necessarily be limited to,  
28 verifying records maintained on the equipment, the installation of the  
29 required retrofits, or the use of the required fuel in the equipment.  
30 Information concerning the compliance of the equipment with the  
31 requirements of the fine particle diesel emissions reduction program  
32 established pursuant to P.L. , c. (C. ) (now before the  
33 Legislature as this bill) shall be forwarded to the Department of  
34 Environmental Protection.

35

36 10. (New section) a. On and after January 1, 2009, no diesel  
37 apportioned vehicle registered in the State, or required to pay a  
38 percentage of a registration or related fees to the State because of  
39 vehicle miles operated in the State, may be registered or operate in the  
40 State without verification of compliance with the requirements of P.L.,  
41 c. (C. )(now before the Legislature as this bill) and the  
42 applicable rules and regulations adopted pursuant thereto. Any diesel  
43 apportioned vehicle that is part of a regulated fleet shall comply with  
44 this subsection under the regulated fleet retrofit plan developed and  
45 submitted pursuant to section 7 of P.L. , c. (C. ) (now  
46 before the Legislature as this bill), and pursuant to the requirements of

1 the regulated fleet retrofit plan, may be required to comply with the  
2 requirements of this subsection before January 1, 2009.

3 b. If the owner, operator, or lessee of any diesel apportioned  
4 vehicle that is not part of a regulated fleet determines that the best  
5 available retrofit technology at the levels designated by the rules and  
6 regulations adopted pursuant to subsection a. of section 4 of P.L. ,  
7 c. (C. ) (now before the Legislature as this bill) is not  
8 feasible for a specific diesel apportioned vehicle or the cost to comply  
9 with the requirements of the rules and regulations would be prohibitive  
10 for the specific owner, operator, or lessee of the diesel apportioned  
11 vehicle, the owner, operator, or lessee of the diesel apportioned  
12 vehicle may document to the department that the use of the required  
13 best available retrofit technology is not feasible or the requirement  
14 represents a serious economic hardship, and may request approval to  
15 use a lower best available retrofit technology level, or an exemption  
16 from the best available retrofit technology requirement. The owner,  
17 operator, or lessee of the diesel apportioned vehicle may also propose  
18 and negotiate an enforceable commitment to retire the vehicle and  
19 replace it with a vehicle, or replace the engine of the vehicle, with an  
20 engine certified to fine particle emission levels at or below the  
21 emission levels that would have been achieved by the use of the  
22 required best available retrofit technology.

23 c. The New Jersey Motor Vehicle Commission and the Department  
24 of Transportation, in consultation with the Department of  
25 Environmental Protection, shall adopt rules and regulations pursuant  
26 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
27 et seq.) to provide for compliance with the requirements of subsection  
28 a. this section.

29

30 11. (New section) On or after January 1, 2010, the State shall not  
31 award a contract to the owner or operator of a regulated fleet who has  
32 not complied with the requirements of P.L. , c. (C. ) (now  
33 before the Legislature as this bill) and the terms of any approved  
34 regulated fleet retrofit plan of the regulated fleet, any supplements  
35 thereto, and the approved parts thereof, or any person operating  
36 regulated off-road diesel equipment who has not complied with the  
37 provisions of section 9 of P.L. , c. (C. ) (now before the  
38 Legislature as this bill).

39

40 12. (New section) Notwithstanding any other provision of  
41 P.L.1995, c.157, or any rule or regulation adopted pursuant thereto,  
42 to the contrary, the New Jersey Motor Vehicle Commission, the  
43 Department of Law and Public Safety, the Department of  
44 Transportation, and any local or State law enforcement officer are  
45 authorized to include in a roadside inspection of a diesel bus, diesel-  
46 powered motor vehicle, heavy-duty diesel truck or other diesel-

1 powered motor vehicle as defined pursuant to section 2 of P.L.1995,  
2 c.157 (C.39:8-60), an inspection of the vehicle for compliance with the  
3 requirements of the fine particle diesel emissions reduction program,  
4 established pursuant to P.L. , c. (C. ) (now before the  
5 Legislature as this bill), including, but not limited to, verifying records  
6 maintained on the vehicle pursuant to section 7 of P.L. , c. (C. )  
7 (now before the Legislature as this bill), the installation of the required  
8 retrofits, or the use of the required fuel in the vehicle. Information  
9 concerning the compliance of the vehicle with the requirements of the  
10 fine particle diesel emissions reduction program established pursuant  
11 to P.L. , c. (C. ) (now before the Legislature as this bill) shall  
12 be forwarded to the Department of Environmental Protection.

13

14 13. (New section) The Department of Environmental Protection,  
15 the Department of Law and Public Safety, and the Department of  
16 Transportation, and the New Jersey Motor Vehicle Commission are  
17 authorized to take whatever action is necessary to enforce the  
18 requirements of the fine particle diesel emissions reduction program  
19 established pursuant to P.L. , c. (C. ) (now before the  
20 Legislature as this bill), which actions shall include, but need not be  
21 limited to, inspection of the regulated on-road diesel vehicles in  
22 regulated fleets at the place of business of the owner or wherever the  
23 owner, operator, or lessee of a regulated fleet houses the regulated on-  
24 road diesel vehicles and regulated off-road diesel equipment in the  
25 regulated fleet. The inspection may include, but is not necessarily  
26 limited to, verifying records maintained on the vehicle pursuant to  
27 section 7 of P.L. , c. (C. ) (now before the Legislature as this  
28 bill), the installation of the required retrofits, or the use of the required  
29 fuel in the vehicle. Information concerning the compliance of the  
30 vehicle with the requirements of the fine particle diesel emissions  
31 reduction program established pursuant to P.L. , c. (C. ) (now  
32 before the Legislature as this bill) shall be forwarded to the  
33 Department of Environmental Protection.

34

35 14. (New section) a. The Department of Environmental  
36 Protection, the New Jersey Motor Vehicle Commission, the  
37 Department of Law and Public Safety, and the Department of  
38 Transportation shall each review any rules and regulations each  
39 department or the commission have adopted pursuant to P.L.1995,  
40 c.157 (C.39:8-59 et al.) for the implementation and enforcement of the  
41 periodic inspection program and roadside inspection program for  
42 diesel buses, heavy duty diesel trucks, and other diesel-powered motor  
43 vehicles, established pursuant to P.L.1995, c.157 (C.39:8-59 et al.).  
44 Each department and the commission shall revise these rules and  
45 regulations, wherever appropriate, to ensure the proper coordination  
46 with and, if appropriate, integration of, these programs with the

1 implementation and enforcement of the fine particle diesel emissions  
2 reduction program established pursuant P.L. , c. (C. ) (now  
3 before the Legislature as this bill). The revisions may include, but  
4 shall not necessarily be limited to, establishing a training and  
5 certification program for persons who install best available retrofit  
6 technologies onto regulated on-road diesel vehicles and persons who  
7 test emissions or make emissions-related repairs on the vehicles, and  
8 requiring only persons trained and certified under the program to  
9 undertake the installation of best available retrofit technologies onto  
10 regulated on-road diesel vehicles or test emissions or make emissions-  
11 related repairs on the vehicles, as applicable.

12 b. As part of the review and revision required under subsection a.  
13 of this section, the Department of Environmental Protection shall  
14 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,  
15 c.410 (C.52:14B-1 et seq.) and as part of the rules and regulations  
16 adopted pursuant to section 3 of P.L.1995, c.157 (C.39:8-61), rules  
17 and regulations establishing exhaust emissions standards and test  
18 methods for regulated on-road diesel vehicles that have complied with  
19 the provisions of P.L. , c. (C. ) (now before the Legislature  
20 as this bill).

21

22 15. (New section) No later than three years after the effective date  
23 of P.L. , c. (C. ) (now before the Legislature as this bill), the  
24 Department of Transportation shall adopt, pursuant to the  
25 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et  
26 seq.), any rules or regulations necessary for the enforcement of the  
27 provisions of P.L. , c. (C. ) (now before the Legislature as  
28 this bill), including, but not limited to, a penalty schedule for  
29 violations, that are consistent with the rules and regulations adopted  
30 by the Department of Environmental Protection pursuant to section 4  
31 of P.L. , c. (C. ) (now before the Legislature as this bill).

32

33 16. (New section) No later than three years after the effective date  
34 of P.L. , c. (C. ) (now before the Legislature as this bill), the  
35 New Jersey Motor Vehicle Commission shall adopt, pursuant to the  
36 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et  
37 seq.), any rules or regulations necessary for the enforcement of the  
38 provisions of P.L. , c. (C. ) (now before the Legislature as  
39 this bill), including, but not limited to, a penalty schedule for  
40 violations, that are consistent with the rules and regulations adopted  
41 by the Department of Environmental Protection pursuant to section 4  
42 of P.L. , c. (C. ) (now before the Legislature as this bill).

43

44 17. (New section) No later than three years after the effective date  
45 of P.L. , c. (C. ) (now before the Legislature as this bill), the  
46 Department of Law and Public Safety shall adopt, pursuant to the

1 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et  
2 seq.), any rules or regulations necessary for the enforcement of the  
3 provisions of P.L. , c. (C. ) (now before the Legislature as  
4 this bill), including, but not limited to, a penalty schedule for  
5 violations, that are consistent with the rules and regulations adopted  
6 by the Department of Environmental Protection pursuant to section 4  
7 of P.L. , c. (C. ) (now before the Legislature as this bill).

8  
9 18. (New section) The Department of Education, in consultation  
10 with the Department of Environmental Protection, the Department of  
11 Health and Human Services, and the New Jersey Motor Vehicle  
12 Commission, shall adopt, pursuant to the "Administrative Procedures  
13 Act," P.L.1968, c.410 (c.52:14B-1 et seq.), rules and regulations  
14 concerning the idling and queuing of school buses and enforcement of  
15 violations thereof, and minimizing the exposure of children to fine  
16 particle and other diesel emissions, that are consistent with the rules  
17 and regulations adopted by the Department of Environmental  
18 Protection pursuant to section 4 of P.L. , c. (C. ) (now  
19 before the Legislature as this bill).

20  
21 19. (New section) The Department of Law and Public Safety, in  
22 consultation with local law enforcement, the Department of Education,  
23 the Department of Environmental Protection, the Department of  
24 Transportation, and the New Jersey Motor Vehicle Commission, shall  
25 adopt, pursuant to the "Administrative Procedures Act," P.L.1968,  
26 c.410 (c.52:14B-1 et seq.), any rules or regulations necessary to  
27 facilitate and ensure the enforcement of the rules and regulations  
28 adopted pursuant to section 18 of P.L. , c. (C. ) (now before  
29 the Legislature as this bill).

30  
31 20. (New section) a. On or after January 1, 2010, the Department  
32 of Environmental Protection, in conjunction with the Department of  
33 Education, the Department of Health and Senior Services, the  
34 Department of Transportation, and the New Jersey Motor Vehicle  
35 Commission, shall examine the progress and the efficacy of the  
36 programs required pursuant to P.L. , c. (C. ) (now before the  
37 Legislature as this bill). The Department of Environmental Protection  
38 shall determine the need for, the environmental and health benefits  
39 from, and the feasibility of, further regulation of diesel-powered  
40 vehicles and equipment operated in the State and the use of best  
41 available retrofit technology by vehicles or equipment in addition to  
42 those required pursuant to P.L. , c. (C. ) (now before the  
43 Legislature as this bill), and the reduction of fine particle emissions  
44 from these vehicles and equipment that could be attained by increased  
45 or revised regulation.

46 b. No later than January 1, 2011, the Department of

1 Environmental Protection shall submit its findings to the Governor and  
2 the Legislature, with any recommendations for legislation that may be  
3 required to address the findings.

4  
5 21. (New section) There is created in the Department of  
6 Environmental Protection a special nonlapsing fund to be known as the  
7 "Diesel Risk Mitigation Fund," hereinafter referred to as "the fund,"  
8 for the purposes of financing any costs to any local government unit  
9 incurred by complying with the requirements of P.L. , c. (C. )  
10 (now before the Legislature as this bill), and administrative costs  
11 incurred by the Department of Environmental Protection in the  
12 establishment and implementation of P.L. , c. (C. ) (now before  
13 the Legislature as this bill). The department shall administer the fund  
14 with whatever moneys are deposited in the fund and made available to  
15 it by law. The department shall establish criteria and procedures for  
16 the allocation of moneys in the fund to eligible entities for eligible  
17 costs.

18  
19 22. (New section) a. Receipts from sales of technology, other  
20 than fuel, purchased to comply with retrofits required for regulated  
21 diesel vehicles or regulated off-road diesel equipment in a regulated  
22 fleet retrofit plan or supplement thereto, approved pursuant to section  
23 4 of P.L. , c. (C. ) (now before the Legislature as this bill), are  
24 exempt from the tax imposed under the "Sales and Use Tax Act,"  
25 P.L.1966, c.30 (C.54:32B-1 et seq.).

26 b. The Treasurer shall adopt rules and regulations, pursuant to the  
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
28 seq.), in consultation with the Commissioner of Environmental  
29 Protection, necessary to implement this section, including rules and  
30 regulations specifying the sales of devices and equipment for  
31 retrofitting that qualify for the exemption provided under subsection  
32 a. of this section.

33  
34 23. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read  
35 as follows:

36 4. For the purposes of this act, unless the context requires a  
37 different meaning:

38 (a) "Commissioner" or "director" shall mean the Director of the  
39 Division of Taxation of the State Department of the Treasury.

40 (b) "Allocation factor" shall mean the proportionate part of a  
41 taxpayer's net worth or entire net income used to determine a measure  
42 of its tax under this act.

43 (c) "Corporation" shall mean any corporation, joint-stock company  
44 or association and any business conducted by a trustee or trustees  
45 wherein interest or ownership is evidenced by a certificate of interest  
46 or ownership or similar written instrument, any other entity classified

1 as a corporation for federal income tax purposes, and any state or  
2 federally chartered building and loan association or savings and loan  
3 association.

4 (d) "Net worth" shall mean the aggregate of the values disclosed  
5 by the books of the corporation for (1) issued and outstanding capital  
6 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
7 profits, and (4) surplus reserves which can reasonably be expected to  
8 accrue to holders or owners of equitable shares, not including  
9 reasonable valuation reserves, such as reserves for depreciation or  
10 obsolescence or depletion. Notwithstanding the foregoing, net worth  
11 shall not include any deduction for the amount of the excess  
12 depreciation described in paragraph (2)(F) of subsection (k) of this  
13 section. The foregoing aggregate of values shall be reduced by 50%  
14 of the amount disclosed by the books of the corporation for investment  
15 in the capital stock of one or more subsidiaries, which investment is  
16 defined as ownership (1) of at least 80% of the total combined voting  
17 power of all classes of stock of the subsidiary entitled to vote and (2)  
18 of at least 80% of the total number of shares of all other classes of  
19 stock except nonvoting stock which is limited and preferred as to  
20 dividends. In the case of investment in an entity organized under the  
21 laws of a foreign country, the foregoing requisite degree of ownership  
22 shall effect a like reduction of such investment from the net worth of  
23 the taxpayer, if the foreign entity is considered a corporation for any  
24 purpose under the United States federal income tax laws, such as (but  
25 not by way of sole examples) for the purpose of supplying deemed  
26 paid foreign tax credits or for the purpose of status as a controlled  
27 foreign corporation. In calculating the net worth of a taxpayer entitled  
28 to reduction for investment in subsidiaries, the amount of liabilities of  
29 the taxpayer shall be reduced by such proportion of the liabilities as  
30 corresponds to the ratio which the excluded portion of the subsidiary  
31 values bears to the total assets of the taxpayer.

32 In the case of banking corporations which have international  
33 banking facilities as defined in subsection (n), the foregoing aggregate  
34 of values shall also be reduced by retained earnings of the international  
35 banking facility. Retained earnings means the earnings accumulated  
36 over the life of such facility and shall not include the distributive share  
37 of dividends paid and federal income taxes paid or payable during the  
38 tax year.

39 If in the opinion of the commissioner, the corporation's books do  
40 not disclose fair valuations the commissioner may make a reasonable  
41 determination of the net worth which, in his opinion, would reflect the  
42 fair value of the assets, exclusive of subsidiary investments as defined  
43 aforesaid, carried on the books of the corporation, in accordance with  
44 sound accounting principles, and such determination shall be used as  
45 net worth for the purpose of this act.

46 (e) (Deleted by amendment, P.L.1998, c.114.)

1 (f) "Investment company" shall mean any corporation whose  
2 business during the period covered by its report consisted, to the  
3 extent of at least 90% thereof of holding, investing and reinvesting in  
4 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
5 other securities for its own account, but this shall not include any  
6 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
7 other securities, regularly engaged in buying the same and selling the  
8 same to customers; or (2) had less than 90% of its average gross  
9 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
10 mortgages, notes, patents, patent rights or other securities or  
11 consisting of cash on deposit during the period covered by its report;  
12 or (3) is a banking corporation, a savings institution, or a financial  
13 business corporation as defined in the Corporation Business Tax Act.

14 (g) "Regulated investment company" shall mean any corporation  
15 which for a period covered by its report, is registered and regulated  
16 under the Investment Company Act of 1940 (54 Stat. 789), as  
17 amended.

18 (h) "Taxpayer" shall mean any corporation, and any partnership  
19 required, or consenting, to report or to pay taxes, interest or penalties  
20 under this act. "Taxpayer" shall not include a partnership that is listed  
21 on a United States national stock exchange.

22 (i) "Fiscal year" shall mean an accounting period ending on any day  
23 other than the last day of December on the basis of which the taxpayer  
24 is required to report for federal income tax purposes.

25 (j) Except as herein provided, "privilege period" shall mean the  
26 calendar or fiscal accounting period for which a tax is payable under  
27 this act.

28 (k) "Entire net income" shall mean total net income from all  
29 sources, whether within or without the United States, and shall include  
30 the gain derived from the employment of capital or labor, or from both  
31 combined, as well as profit gained through a sale or conversion of  
32 capital assets.

33 For the purpose of this act, the amount of a taxpayer's entire net  
34 income shall be deemed prima facie to be equal in amount to the  
35 taxable income, before net operating loss deduction and special  
36 deductions, which the taxpayer is required to report, or, if the taxpayer  
37 is classified as a partnership for federal tax purposes, would otherwise  
38 be required to report, to the United States Treasury Department for  
39 the purpose of computing its federal income tax, provided however,  
40 that in the determination of such entire net income,

41 (1) Entire net income shall exclude for the periods set forth in  
42 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
43 to qualified mass commuting vehicles as described in section  
44 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
45 prior to January 1, 1984, which is included in a taxpayer's federal  
46 taxable income solely as a result of an election made pursuant to the

1 provisions of paragraph (8) of that section.

2 (2) Entire net income shall be determined without the exclusion,  
3 deduction or credit of:

4 (A) The amount of any specific exemption or credit allowed in any  
5 law of the United States imposing any tax on or measured by the  
6 income of corporations;

7 (B) Any part of any income from dividends or interest on any kind  
8 of stock, securities or indebtedness, except as provided in paragraph  
9 (5) of subsection (k) of this section;

10 (C) Taxes paid or accrued to the United States, a possession or  
11 territory of the United States, a state, a political subdivision thereof,  
12 or the District of Columbia, or to any foreign country, state, province,  
13 territory or subdivision thereof, on or measured by profits or income,  
14 or business presence or business activity, or the tax imposed by this  
15 act, or any tax paid or accrued with respect to subsidiary dividends  
16 excluded from entire net income as provided in paragraph (5) of  
17 subsection (k) of this section;

18 (D) (Deleted by amendment, P.L.1985, c.143.)

19 (E) (Deleted by amendment, P.L.1995, c.418.)

20 (F) (i) The amount by which depreciation reported to the United  
21 States Treasury Department for property placed in service on and after  
22 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
23 years beginning on and after the effective date of P.L.1993, c.172, for  
24 purposes of computing federal taxable income in accordance with  
25 section 168 of the Internal Revenue Code in effect after December 31,  
26 1980, exceeds the amount of depreciation determined in accordance  
27 with the Internal Revenue Code provisions in effect prior to January  
28 1, 1981, but only with respect to a taxpayer's accounting period ending  
29 after December 31, 1981; provided, however, that where a taxpayer's  
30 accounting period begins in 1981 and ends in 1982, no modification  
31 shall be required with respect to this paragraph (F) for the report filed  
32 for such period with respect to property placed in service during that  
33 part of the accounting period which occurs in 1981. The provisions  
34 of this subparagraph shall not apply to assets placed in service prior to  
35 January 1, 1998 of a gas, gas and electric, and electric public utility  
36 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
37 seq.) prior to 1998.

38 (ii) For the periods set forth in subparagraph (F)(i) of this  
39 subsection, any amount, except with respect to qualified mass  
40 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
41 Internal Revenue Code as in effect immediately prior to January 1,  
42 1984, which the taxpayer claimed as a deduction in computing federal  
43 income tax pursuant to a qualified lease agreement under paragraph  
44 (8) of that section.

45 The director shall promulgate rules and regulations necessary to  
46 carry out the provisions of this section, which rules shall provide,

1 among others, the manner in which the remaining life of property shall  
2 be reported.

3 (G) (i) The amount of any civil, civil administrative, or criminal  
4 penalty or fine, including a penalty or fine under an administrative  
5 consent order, assessed and collected for a violation of a State or  
6 federal environmental law, an administrative consent order, or an  
7 environmental ordinance or resolution of a local governmental entity,  
8 and any interest earned on the penalty or fine, and any economic  
9 benefits having accrued to the violator as a result of a violation, which  
10 benefits are assessed and recovered in a civil, civil administrative, or  
11 criminal action, or pursuant to an administrative consent order. The  
12 provisions of this paragraph shall not apply to a penalty or fine  
13 assessed or collected for a violation of a State or federal  
14 environmental law, or local environmental ordinance or resolution, if  
15 the penalty or fine was for a violation that resulted from fire, riot,  
16 sabotage, flood, storm event, natural cause, or other act of God  
17 beyond the reasonable control of the violator, or caused by an act or  
18 omission of a person who was outside the reasonable control of the  
19 violator.

20 (ii) The amount of treble damages paid to the Department of  
21 Environmental Protection pursuant to subsection a. of section 7 of  
22 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
23 department in removing, or arranging for the removal of, an  
24 unauthorized discharge upon failure of the discharger to comply with  
25 a directive from the department to remove, or arrange for the removal  
26 of, the discharge.

27 (H) The amount of any sales and use tax paid by a utility vendor  
28 pursuant to section 71 of P.L.1997, c.162.

29 (I) Interest paid, accrued or incurred for the privilege period to a  
30 related member , as defined in section 5 of P.L.2002, c.40  
31 (C.54:10A-4.4), except that a deduction shall be permitted to the  
32 extent that the taxpayer establishes by clear and convincing evidence,  
33 as determined by the director, that: (i) a principal purpose of the  
34 transaction giving rise to the payment of the interest was not to avoid  
35 taxes otherwise due under Title 54 of the Revised Statutes or Title  
36 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
37 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
38 the related member was subject to a tax on its net income or receipts  
39 in this State or another state or possession of the United States or in  
40 a foreign nation, (bb) a measure of the tax includes the interest  
41 received from the related member, and (cc) the rate of tax applied to  
42 the interest received by the related member is equal to or greater than  
43 a rate three percentage points less than the rate of tax applied to  
44 taxable interest by this State.

45 A deduction shall also be permitted if the taxpayer establishes by  
46 clear and convincing evidence, as determined by the director, that the

1 disallowance of a deduction is unreasonable, or the taxpayer and the  
2 director agree in writing to the application or use of an alternative  
3 method of apportionment under section 8 of P.L.1945, c.162 as a  
4 corporation for federal income tax purposes, and any state or federally  
5 chartered building and loan association or savings and loan  
6 association.

7 (d) "Net worth" shall mean the aggregate of the values disclosed  
8 by the books of the corporation for (1) issued and outstanding capital  
9 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
10 profits, and (4) surplus reserves which can reasonably be expected to  
11 accrue to holders or owners of equitable shares, not including  
12 reasonable valuation reserves, such as reserves for depreciation or  
13 obsolescence or depletion. Notwithstanding the foregoing, net worth  
14 shall not include any deduction for the amount of the excess  
15 depreciation described in paragraph (2)(F) of subsection (k) of this  
16 section. The foregoing aggregate of values shall be reduced by 50%  
17 of the amount disclosed by the books of the corporation for investment  
18 in the capital stock of one or more subsidiaries, which investment is  
19 defined as ownership (1) of at least 80% of the total combined voting  
20 power of all classes of stock of the subsidiary entitled to vote and (2)  
21 of at least 80% of the total number of shares of all other classes of  
22 stock except nonvoting stock which is limited and preferred as to  
23 dividends. In the case of investment in an entity organized under the  
24 laws of a foreign country, the foregoing requisite degree of ownership  
25 shall effect a like reduction of such investment from the net worth of  
26 the taxpayer, if the foreign entity is considered a corporation for any  
27 purpose under the United States federal income tax laws, such as (but  
28 not by way of sole examples) for the purpose of supplying deemed  
29 paid foreign tax credits or for the purpose of status as a controlled  
30 foreign corporation. In calculating the net worth of a taxpayer entitled  
31 to reduction for investment in subsidiaries, the amount of liabilities of  
32 the taxpayer shall be reduced by such proportion of the liabilities as  
33 corresponds to the ratio which the excluded portion of the subsidiary  
34 values bears to the total assets of the taxpayer.

35 In the case of banking corporations which have international  
36 banking facilities as defined in subsection (n), the foregoing aggregate  
37 of values shall also be reduced by retained earnings of the international  
38 banking facility. Retained earnings means the earnings accumulated  
39 over the life of such facility and shall not include the distributive share  
40 of dividends paid and federal income taxes paid or payable during the  
41 tax year.

42 If in the opinion of the commissioner, the corporation's books do  
43 not disclose fair valuations the commissioner may make a reasonable  
44 determination of the net worth which, in his opinion, would reflect the  
45 fair value of the assets, exclusive of subsidiary investments as defined  
46 aforesaid, carried on the books of the corporation, in accordance with

1 sound accounting principles, and such determination shall be used as  
2 net worth for the purpose of this act.

3 (e) (Deleted by amendment, P.L.1998, c.114.)

4 (f) "Investment company" shall mean any corporation whose  
5 business during the period covered by its report consisted, to the  
6 extent of at least 90% thereof of holding, investing and reinvesting in  
7 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
8 other securities for its own account, but this shall not include any  
9 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
10 other securities, regularly engaged in buying the same and selling the  
11 same to customers; or (2) had less than 90% of its average gross  
12 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
13 mortgages, notes, patents, patent rights or other securities or  
14 consisting of cash on deposit during the period covered by its report;  
15 or (3) is a banking corporation, a savings institution, or a financial  
16 business corporation as defined in the Corporation Business Tax Act.

17 (g) "Regulated investment company" shall mean any corporation  
18 which for a period covered by its report, is registered and regulated  
19 under the Investment Company Act of 1940 (54 Stat. 789), as  
20 amended.

21 (h) "Taxpayer" shall mean any corporation, and any partnership  
22 required, or consenting, to report or to pay taxes, interest or penalties  
23 under this act. "Taxpayer" shall not include a partnership that is listed  
24 on a United States national stock exchange.

25 (i) "Fiscal year" shall mean an accounting period ending on any day  
26 other than the last day of December on the basis of which the taxpayer  
27 is required to report for federal income tax purposes.

28 (j) Except as herein provided, "privilege period" shall mean the  
29 calendar or fiscal accounting period for which a tax is payable under  
30 this act.

31 (k) "Entire net income" shall mean total net income from all  
32 sources, whether within or without the United States, and shall include  
33 the gain derived from the employment of capital or labor, or from both  
34 combined, as well as profit gained through a sale or conversion of  
35 capital assets.

36 For the purpose of this act, the amount of a taxpayer's entire net  
37 income shall be deemed prima facie to be equal in amount to the  
38 taxable income, before net operating loss deduction and special  
39 deductions, which the taxpayer is required to report, or, if the taxpayer  
40 is classified as a partnership for federal tax purposes, would otherwise  
41 be required to report, to the United States Treasury Department for  
42 the purpose of computing its federal income tax, provided however,  
43 that in the determination of such entire net income,

44 (1) Entire net income shall exclude for the periods set forth in  
45 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
46 to qualified mass commuting vehicles as described in section

1 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
2 prior to January 1, 1984, which is included in a taxpayer's federal  
3 taxable income solely as a result of an election made pursuant to the  
4 provisions of paragraph (8) of that section.

5 (2) Entire net income shall be determined without the exclusion,  
6 deduction or credit of:

7 (A) The amount of any specific exemption or credit allowed in any  
8 law of the United States imposing any tax on or measured by the  
9 income of corporations;

10 (B) Any part of any income from dividends or interest on any kind  
11 of stock, securities or indebtedness, except as provided in paragraph  
12 (5) of subsection (k) of this section;

13 (C) Taxes paid or accrued to the United States, a possession or  
14 territory of the United States, a state, a political subdivision thereof,  
15 or the District of Columbia, or to any foreign country, state, province,  
16 territory or subdivision thereof, on or measured by profits or income,  
17 or business presence or business activity, or the tax imposed by this  
18 act, or any tax paid or accrued with respect to subsidiary dividends  
19 excluded from entire net income as provided in paragraph (5) of  
20 subsection (k) of this section;

21 (D) (Deleted by amendment, P.L.1985, c.143.)

22 (E) (Deleted by amendment, P.L.1995, c.418.)

23 (F) (i) The amount by which depreciation reported to the United  
24 States Treasury Department for property placed in service on and after  
25 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
26 years beginning on and after the effective date of P.L.1993, c.172, for  
27 purposes of computing federal taxable income in accordance with  
28 section 168 of the Internal Revenue Code in effect after December 31,  
29 1980, exceeds the amount of depreciation determined in accordance  
30 with the Internal Revenue Code provisions in effect prior to January  
31 1, 1981, but only with respect to a taxpayer's accounting period ending  
32 after December 31, 1981; provided, however, that where a taxpayer's  
33 accounting period begins in 1981 and ends in 1982, no modification  
34 shall be required with respect to this paragraph (F) for the report filed  
35 for such period with respect to property placed in service during that  
36 part of the accounting period which occurs in 1981. The provisions  
37 of this subparagraph shall not apply to assets placed in service prior to  
38 January 1, 1998 of a gas, gas and electric, and electric public utility  
39 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
40 seq.) prior to 1998.

41 (ii) For the periods set forth in subparagraph (F)(i) of this  
42 subsection, any amount, except with respect to qualified mass  
43 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
44 Internal Revenue Code as in effect immediately prior to January 1,  
45 1984, which the taxpayer claimed as a deduction in computing federal  
46 income tax pursuant to a qualified lease agreement under paragraph

1 (8) of that section.

2 The director shall promulgate rules and regulations necessary to  
3 carry out the provisions of this section, which rules shall provide,  
4 among others, the manner in which the remaining life of property shall  
5 be reported.

6 (G) (i) The amount of any civil, civil administrative, or criminal  
7 penalty or fine, including a penalty or fine under an administrative  
8 consent order, assessed and collected for a violation of a State or  
9 federal environmental law, an administrative consent order, or an  
10 environmental ordinance or resolution of a local governmental entity,  
11 and any interest earned on the penalty or fine, and any economic  
12 benefits having accrued to the violator as a result of a violation, which  
13 benefits are assessed and recovered in a civil, civil administrative, or  
14 criminal action, or pursuant to an administrative consent order. The  
15 provisions of this paragraph shall not apply to a penalty or fine  
16 assessed or collected for a violation of a State or federal  
17 environmental law, or local environmental ordinance or resolution, if  
18 the penalty or fine was for a violation that resulted from fire, riot,  
19 sabotage, flood, storm event, natural cause, or other act of God  
20 beyond the reasonable control of the violator, or caused by an act or  
21 omission of a person who was outside the reasonable control of the  
22 violator.

23 (ii) The amount of treble damages paid to the Department of  
24 Environmental Protection pursuant to subsection a. of section 7 of  
25 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
26 department in removing, or arranging for the removal of, an  
27 unauthorized discharge upon failure of the discharger to comply with  
28 a directive from the department to remove, or arrange for the removal  
29 of, the discharge.

30 (H) The amount of any sales and use tax paid by a utility vendor  
31 pursuant to section 71 of P.L.1997, c.162.

32 (I) Interest paid, accrued or incurred for the privilege period to a  
33 related member , as defined in section 5 of P.L.2002, c.40  
34 (C.54:10A-4.4), except that a deduction shall be permitted to the  
35 extent that the taxpayer establishes by clear and convincing evidence,  
36 as determined by the director, that: (i) a principal purpose of the  
37 transaction giving rise to the payment of the interest was not to avoid  
38 taxes otherwise due under Title 54 of the Revised Statutes or Title  
39 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
40 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
41 the related member was subject to a tax on its net income or receipts  
42 in this State or another state or possession of the United States or in  
43 a foreign nation, (bb) a measure of the tax includes the interest  
44 received from the related member, and (cc) the rate of tax applied to  
45 the interest received by the related member is equal to or greater than  
46 a rate three percentage points less than the rate of tax applied to

1 taxable interest by this State.

2 A deduction shall also be permitted if the taxpayer establishes by  
3 clear and convincing evidence, as determined by the director, that the  
4 disallowance of a deduction is unreasonable, or the taxpayer and the  
5 director agree in writing to the application or use of an alternative  
6 method of apportionment under section 8 of P.L.1945, c.162 as a  
7 corporation for federal income tax purposes, and any state or federally  
8 chartered building and loan association or savings and loan  
9 association.

10 (d) "Net worth" shall mean the aggregate of the values disclosed  
11 by the books of the corporation for (1) issued and outstanding capital  
12 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
13 profits, and (4) surplus reserves which can reasonably be expected to  
14 accrue to holders or owners of equitable shares, not including  
15 reasonable valuation reserves, such as reserves for depreciation or  
16 obsolescence or depletion. Notwithstanding the foregoing, net worth  
17 shall not include any deduction for the amount of the excess  
18 depreciation described in paragraph (2)(F) of subsection (k) of this  
19 section. The foregoing aggregate of values shall be reduced by 50%  
20 of the amount disclosed by the books of the corporation for investment  
21 in the capital stock of one or more subsidiaries, which investment is  
22 defined as ownership (1) of at least 80% of the total combined voting  
23 power of all classes of stock of the subsidiary entitled to vote and (2)  
24 of at least 80% of the total number of shares of all other classes of  
25 stock except nonvoting stock which is limited and preferred as to  
26 dividends. In the case of investment in an entity organized under the  
27 laws of a foreign country, the foregoing requisite degree of ownership  
28 shall effect a like reduction of such investment from the net worth of  
29 the taxpayer, if the foreign entity is considered a corporation for any  
30 purpose under the United States federal income tax laws, such as (but  
31 not by way of sole examples) for the purpose of supplying deemed  
32 paid foreign tax credits or for the purpose of status as a controlled  
33 foreign corporation. In calculating the net worth of a taxpayer entitled  
34 to reduction for investment in subsidiaries, the amount of liabilities of  
35 the taxpayer shall be reduced by such proportion of the liabilities as  
36 corresponds to the ratio which the excluded portion of the subsidiary  
37 values bears to the total assets of the taxpayer.

38 In the case of banking corporations which have international  
39 banking facilities as defined in subsection (n), the foregoing aggregate  
40 of values shall also be reduced by retained earnings of the international  
41 banking facility. Retained earnings means the earnings accumulated  
42 over the life of such facility and shall not include the distributive share  
43 of dividends paid and federal income taxes paid or payable during the  
44 tax year.

45 If in the opinion of the commissioner, the corporation's books do  
46 not disclose fair valuations the commissioner may make a reasonable

1 determination of the net worth which, in his opinion, would reflect the  
2 fair value of the assets, exclusive of subsidiary investments as defined  
3 aforesaid, carried on the books of the corporation, in accordance with  
4 sound accounting principles, and such determination shall be used as  
5 net worth for the purpose of this act.

6 (e) (Deleted by amendment, P.L.1998, c.114.)

7 (f) "Investment company" shall mean any corporation whose  
8 business during the period covered by its report consisted, to the  
9 extent of at least 90% thereof of holding, investing and reinvesting in  
10 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
11 other securities for its own account, but this shall not include any  
12 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
13 other securities, regularly engaged in buying the same and selling the  
14 same to customers; or (2) had less than 90% of its average gross  
15 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
16 mortgages, notes, patents, patent rights or other securities or  
17 consisting of cash on deposit during the period covered by its report;  
18 or (3) is a banking corporation, a savings institution, or a financial  
19 business corporation as defined in the Corporation Business Tax Act.

20 (g) "Regulated investment company" shall mean any corporation  
21 which for a period covered by its report, is registered and regulated  
22 under the Investment Company Act of 1940 (54 Stat. 789), as  
23 amended.

24 (h) "Taxpayer" shall mean any corporation, and any partnership  
25 required, or consenting, to report or to pay taxes, interest or penalties  
26 under this act. "Taxpayer" shall not include a partnership that is listed  
27 on a United States national stock exchange.

28 (i) "Fiscal year" shall mean an accounting period ending on any day  
29 other than the last day of December on the basis of which the taxpayer  
30 is required to report for federal income tax purposes.

31 (j) Except as herein provided, "privilege period" shall mean the  
32 calendar or fiscal accounting period for which a tax is payable under  
33 this act.

34 (k) "Entire net income" shall mean total net income from all  
35 sources, whether within or without the United States, and shall include  
36 the gain derived from the employment of capital or labor, or from both  
37 combined, as well as profit gained through a sale or conversion of  
38 capital assets.

39 For the purpose of this act, the amount of a taxpayer's entire net  
40 income shall be deemed prima facie to be equal in amount to the  
41 taxable income, before net operating loss deduction and special  
42 deductions, which the taxpayer is required to report, or, if the taxpayer  
43 is classified as a partnership for federal tax purposes, would otherwise  
44 be required to report, to the United States Treasury Department for  
45 the purpose of computing its federal income tax, provided however,  
46 that in the determination of such entire net income,

1 (1) Entire net income shall exclude for the periods set forth in  
2 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
3 to qualified mass commuting vehicles as described in section  
4 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
5 prior to January 1, 1984, which is included in a taxpayer's federal  
6 taxable income solely as a result of an election made pursuant to the  
7 provisions of paragraph (8) of that section.

8 (2) Entire net income shall be determined without the exclusion,  
9 deduction or credit of:

10 (A) The amount of any specific exemption or credit allowed in any  
11 law of the United States imposing any tax on or measured by the  
12 income of corporations;

13 (B) Any part of any income from dividends or interest on any kind  
14 of stock, securities or indebtedness, except as provided in paragraph  
15 (5) of subsection (k) of this section;

16 (C) Taxes paid or accrued to the United States, a possession or  
17 territory of the United States, a state, a political subdivision thereof,  
18 or the District of Columbia, or to any foreign country, state, province,  
19 territory or subdivision thereof, on or measured by profits or income,  
20 or business presence or business activity, or the tax imposed by this  
21 act, or any tax paid or accrued with respect to subsidiary dividends  
22 excluded from entire net income as provided in paragraph (5) of  
23 subsection (k) of this section;

24 (D) (Deleted by amendment, P.L.1985, c.143.)

25 (E) (Deleted by amendment, P.L.1995, c.418.)

26 (F) (i) The amount by which depreciation reported to the United  
27 States Treasury Department for property placed in service on and after  
28 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
29 years beginning on and after the effective date of P.L.1993, c.172, for  
30 purposes of computing federal taxable income in accordance with  
31 section 168 of the Internal Revenue Code in effect after December 31,  
32 1980, exceeds the amount of depreciation determined in accordance  
33 with the Internal Revenue Code provisions in effect prior to January  
34 1, 1981, but only with respect to a taxpayer's accounting period ending  
35 after December 31, 1981; provided, however, that where a taxpayer's  
36 accounting period begins in 1981 and ends in 1982, no modification  
37 shall be required with respect to this paragraph (F) for the report filed  
38 for such period with respect to property placed in service during that  
39 part of the accounting period which occurs in 1981. The provisions  
40 of this subparagraph shall not apply to assets placed in service prior to  
41 January 1, 1998 of a gas, gas and electric, and electric public utility  
42 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
43 seq.) prior to 1998.

44 (ii) For the periods set forth in subparagraph (F)(i) of this  
45 subsection, any amount, except with respect to qualified mass  
46 commuting vehicles as described in section 168(f)(8)(D)(v) of the

1 Internal Revenue Code as in effect immediately prior to January 1,  
2 1984, which the taxpayer claimed as a deduction in computing federal  
3 income tax pursuant to a qualified lease agreement under paragraph  
4 (8) of that section.

5 The director shall promulgate rules and regulations necessary to  
6 carry out the provisions of this section, which rules shall provide,  
7 among others, the manner in which the remaining life of property shall  
8 be reported.

9 (G) (i) The amount of any civil, civil administrative, or criminal  
10 penalty or fine, including a penalty or fine under an administrative  
11 consent order, assessed and collected for a violation of a State or  
12 federal environmental law, an administrative consent order, or an  
13 environmental ordinance or resolution of a local governmental entity,  
14 and any interest earned on the penalty or fine, and any economic  
15 benefits having accrued to the violator as a result of a violation, which  
16 benefits are assessed and recovered in a civil, civil administrative, or  
17 criminal action, or pursuant to an administrative consent order. The  
18 provisions of this paragraph shall not apply to a penalty or fine  
19 assessed or collected for a violation of a State or federal  
20 environmental law, or local environmental ordinance or resolution, if  
21 the penalty or fine was for a violation that resulted from fire, riot,  
22 sabotage, flood, storm event, natural cause, or other act of God  
23 beyond the reasonable control of the violator, or caused by an act or  
24 omission of a person who was outside the reasonable control of the  
25 violator.

26 (ii) The amount of treble damages paid to the Department of  
27 Environmental Protection pursuant to subsection a. of section 7 of  
28 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
29 department in removing, or arranging for the removal of, an  
30 unauthorized discharge upon failure of the discharger to comply with  
31 a directive from the department to remove, or arrange for the removal  
32 of, the discharge.

33 (H) The amount of any sales and use tax paid by a utility vendor  
34 pursuant to section 71 of P.L.1997, c.162.

35 (I) Interest paid, accrued or incurred for the privilege period to a  
36 related member , as defined in section 5 of P.L.2002, c.40  
37 (C.54:10A-4.4), except that a deduction shall be permitted to the  
38 extent that the taxpayer establishes by clear and convincing evidence,  
39 as determined by the director, that: (i) a principal purpose of the  
40 transaction giving rise to the payment of the interest was not to avoid  
41 taxes otherwise due under Title 54 of the Revised Statutes or Title  
42 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
43 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
44 the related member was subject to a tax on its net income or receipts  
45 in this State or another state or possession of the United States or in  
46 a foreign nation, (bb) a measure of the tax includes the interest

1 received from the related member, and (cc) the rate of tax applied to  
2 the interest received by the related member is equal to or greater than  
3 a rate three percentage points less than the rate of tax applied to  
4 taxable interest by this State.

5 A deduction shall also be permitted if the taxpayer establishes by  
6 clear and convincing evidence, as determined by the director, that the  
7 disallowance of a deduction is unreasonable, or the taxpayer and the  
8 director agree in writing to the application or use of an alternative  
9 method of apportionment under section 8 of P.L.1945, c.162  
10 (C.54:10A-8); nothing in this subsection shall be construed to limit or  
11 negate the director's authority to otherwise enter into agreements and  
12 compromises otherwise allowed by law.

13 A deduction shall also be permitted to the extent that the taxpayer  
14 establishes by a preponderance of the evidence, as determined by the  
15 director, that the interest is directly or indirectly paid, accrued or  
16 incurred to (i) a related member in a foreign nation which has in force  
17 a comprehensive income tax treaty with the United States, provided  
18 however that the taxpayer shall disclose on its return for the privilege  
19 period the name of the related member, the amount of the interest, the  
20 relevant foreign nation, and such other information as the director may  
21 prescribe or (ii) to an independent lender and the taxpayer guarantees  
22 the debt on which the interest is required.

23 (3) The commissioner may, whenever necessary to properly reflect  
24 the entire net income of any taxpayer, determine the year or period in  
25 which any item of income or deduction shall be included, without  
26 being limited to the method of accounting employed by the taxpayer.

27 (4) There shall be allowed as a deduction from entire net income  
28 of a banking corporation, to the extent not deductible in determining  
29 federal taxable income, the eligible net income of an international  
30 banking facility determined as follows:

31 (A) The eligible net income of an international banking facility shall  
32 be the amount remaining after subtracting from the eligible gross  
33 income the applicable expenses;

34 (B) Eligible gross income shall be the gross income derived by an  
35 international banking facility, which shall include, but not be limited to,  
36 gross income derived from:

37 (i) Making, arranging for, placing or carrying loans to foreign  
38 persons, provided, however, that in the case of a foreign person which  
39 is an individual, or which is a foreign branch of a domestic corporation  
40 (other than a bank), or which is a foreign corporation or foreign  
41 partnership which is controlled by one or more domestic corporations  
42 (other than banks), domestic partnerships or resident individuals, all  
43 the proceeds of the loan are for use outside of the United States;

44 (ii) Making or placing deposits with foreign persons which are  
45 banks or foreign branches of banks (including foreign subsidiaries) or  
46 foreign branches of the taxpayers or with other international banking

1 facilities;

2 (iii) Entering into foreign exchange trading or hedging transactions  
3 related to any of the transactions described in this paragraph; or

4 (iv) Such other activities as an international banking facility may,  
5 from time to time, be authorized to engage in;

6 (C) Applicable expenses shall be any expense or other deductions  
7 attributable, directly or indirectly, to the eligible gross income  
8 described in subparagraph (B) of this paragraph.

9 (5) Entire net income shall exclude 100% of dividends which were  
10 included in computing such taxable income for federal income tax  
11 purposes, paid to the taxpayer by one or more subsidiaries owned by  
12 the taxpayer to the extent of the 80% or more ownership of investment  
13 described in subsection (d) of this section and shall exclude 50% of  
14 dividends which were included in computing such taxable income for  
15 federal income tax purposes, paid to the taxpayer by one or more  
16 subsidiaries owned by the taxpayer to the extent of 50% or more  
17 ownership of investment, such ownership of investment calculated in  
18 the same manner as the 80% or more of ownership of investment is  
19 calculated as described in subsection (d) of this section.

20 (6) (A) Net operating loss deduction. There shall be allowed as  
21 a deduction for the privilege period the net operating loss carryover to  
22 that period.

23 (B) Net operating loss carryover. A net operating loss for any  
24 privilege period ending after June 30, 1984 shall be a net operating  
25 loss carryover to each of the seven privilege periods following the  
26 period of the loss. The entire amount of the net operating loss for any  
27 privilege period (the "loss period") shall be carried to the earliest of  
28 the privilege periods to which the loss may be carried. The portion of  
29 the loss which shall be carried to each of the other privilege periods  
30 shall be the excess, if any, of the amount of the loss over the sum of  
31 the entire net income, computed without the exclusions permitted in  
32 paragraphs (4) and (5) of this subsection or the net operating loss  
33 deduction provided by subparagraph (A) of this paragraph, for each of  
34 the prior privilege periods to which the loss may be carried.

35 (C) Net operating loss. For purposes of this paragraph the term  
36 "net operating loss" means the excess of the deductions over the gross  
37 income used in computing entire net income without the net operating  
38 loss deduction provided for in subparagraph (A) of this paragraph and  
39 the exclusions in paragraphs (4) and (5) of this subsection.

40 (D) Change in ownership. Where there is a change in 50% or more  
41 of the ownership of a corporation because of redemption or sale of  
42 stock and the corporation changes the trade or business giving rise to  
43 the loss, no net operating loss sustained before the changes may be  
44 carried over to be deducted from income earned after such changes.  
45 In addition where the facts support the premise that the corporation  
46 was acquired under any circumstances for the primary purpose of the

1 use of its net operating loss carryover, the director may disallow the  
2 carryover.

3 (E) Notwithstanding the provisions of this paragraph (6) of  
4 subsection (k) of this section to the contrary, for privilege periods  
5 beginning during calendar year 2002 and calendar year 2003, no  
6 deduction for any net operating loss carryover shall be allowed. If and  
7 only to the extent that any net operating loss carryover deduction is  
8 disallowed by reason of this subparagraph (E), the date on which the  
9 amount of the disallowed net operating loss carryover deduction  
10 would otherwise expire shall be extended by two years.

11 Provided, that this subparagraph (E) shall not restrict the surrender  
12 or acquisition of corporation business tax benefit certificates pursuant  
13 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict  
14 the application of corporation business tax benefit certificates pursuant  
15 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

16 (7) The entire net income of gas, electric and gas and electric  
17 public utilities that were subject to the provisions of P.L.1940, c.5  
18 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
19 the New Jersey depreciation allowance for federal tax depreciation  
20 with respect to assets placed in service prior to January 1, 1998. For  
21 gas, electric, and gas and electric public utilities that were subject to  
22 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
23 the New Jersey depreciation allowance shall be computed as follows:  
24 All depreciable assets placed in service prior to January 1, 1998 shall  
25 be considered a single asset account. The New Jersey tax basis of this  
26 depreciable asset account shall be an amount equal to the carryover  
27 adjusted basis for federal income tax purposes on December 31, 1997  
28 of all depreciable assets in service on December 31, 1997, increased  
29 by the excess, of the "net carrying value," defined to be adjusted book  
30 basis of all assets and liabilities, excluding deferred income taxes,  
31 recorded on the public utility's books of account on December 31,  
32 1997, over the carryover adjusted basis for federal income tax  
33 purposes on December 31, 1997 of all assets and liabilities owned by  
34 the gas, electric, or gas and electric public utility as of December 31,  
35 1997. "Books of account" for gas, gas and electric, and electric public  
36 utilities means the uniform system of accounts as promulgated by the  
37 Federal Energy Regulatory Commission and adopted by the Board of  
38 Public Utilities. The following adjustments to entire net income shall  
39 be made pursuant to this section:

40 (A) Depreciation for property placed in service prior to January 1,  
41 1998 shall be adjusted as follows:

42 (i) Depreciation for federal income tax purposes shall be  
43 disallowed in full.

44 (ii) A deduction shall be allowed for the New Jersey depreciation  
45 allowance. The New Jersey depreciation allowance shall be computed  
46 for the single asset account described above based on the New Jersey

1 tax basis as adjusted above as if all assets in the single asset account  
2 were first placed in service on January 1, 1998. Depreciation shall be  
3 computed using the straight line method over a thirty-year life. A full  
4 year's depreciation shall be allowed in the initial tax year. No half-year  
5 convention shall apply. The depreciable basis of the single account  
6 shall be reduced by the adjusted federal tax basis of assets sold,  
7 retired, or otherwise disposed of during any year on which gain or loss  
8 is recognized for federal income tax purposes as described in  
9 subparagraph (B) of this paragraph.

10 (B) Gains and losses on sales, retirements and other dispositions  
11 of assets placed in service prior to January 1, 1998 shall be recognized  
12 and reported on the same basis as for federal income tax purposes.

13 (C) The Director of the Division of Taxation shall promulgate  
14 regulations describing the methodology for allocating the single asset  
15 account in the event that a portion of the utility's operations are  
16 separated, spun-off, transferred to a separate company or otherwise  
17 desegregated.

18 (8) In the case of taxpayers that are gas, electric, gas and electric,  
19 or telecommunication public utilities as defined pursuant to subsection  
20 (q) of this section, the director shall have authority to promulgate rules  
21 and issue guidance correcting distortions and adjusting timing  
22 differences resulting from the adoption of P.L.1997, c.162  
23 (C.54:10A-5.25 et al.).

24 (9) Notwithstanding paragraph (1) of this subsection, entire net  
25 income shall not include the income derived by a corporation  
26 organized in a foreign country from the international operation of a  
27 ship or ships, or from the international operation of aircraft, if such  
28 income is exempt from federal taxation pursuant to section 883 of the  
29 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

30 (10) Entire net income shall exclude all income of an alien  
31 corporation the activities of which are limited in this State to investing  
32 or trading in stocks and securities for its own account, investing or  
33 trading in commodities for its own account, or any combination of  
34 those activities, within the meaning of section 864 of the federal  
35 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on  
36 December 31, 1998. Notwithstanding the previous sentence, if an  
37 alien corporation undertakes one or more infrequent, extraordinary or  
38 non-recurring activities, including but not limited to the sale of  
39 tangible property, only the income from such infrequent, extraordinary  
40 or non-recurring activity shall be subject to the tax imposed pursuant  
41 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income  
42 subject to tax shall be determined without regard to the allocation to  
43 that specific transaction of any general business expense of the  
44 taxpayer and shall be specifically assigned to this State for taxation by  
45 this State without regard to section 6 of P.L.1945, c.162  
46 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"

1 means a corporation organized under the laws of a jurisdiction other  
2 than the United States or its political subdivisions.

3 (11) No deduction shall be allowed for research and experimental  
4 expenditures, to the extent that those research and experimental  
5 expenditures are qualified research expenses or basic research  
6 payments for which an amount of credit is claimed pursuant to section  
7 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
8 experimental expenditures are also used to compute a federal credit  
9 claimed pursuant to section 41 of the federal Internal Revenue Code  
10 of 1986, 26 U.S.C. s.41.

11 (12) (A) Notwithstanding the provisions of subsection (k) of  
12 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
13 s.168, and subsection (b) of section 1400L of the federal Internal  
14 Revenue Code of 1986, 26 U.S.C. s.1400L, for property acquired after  
15 September 10, 2001 and before September 11, 2004, the depreciation  
16 deduction otherwise allowed pursuant to section 167 of the federal  
17 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
18 pursuant to the requirements and limitations of section 168 of the  
19 federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and section  
20 280F of the federal Internal Revenue Code of 1986, 26 U.S.C. s.280F,  
21 as if that subsection (k) and that section 1400L were not in effect.

22 (B) The director shall prescribe the rules and regulations necessary  
23 to carry out the provisions of this paragraph, including, among others,  
24 those for determining the adjusted basis of the acquired property for  
25 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,  
26 c.162.

27 (13) (A) There shall be allowed as a deduction from entire net  
28 income the cost of the purchase and installation of any technology,  
29 except fuel, required to be purchased, installed or used pursuant to  
30 P.L. , c. (C. )(now before the Legislature as this bill) for the  
31 first privilege period in which the purchase and installation occur.

32 (B) Notwithstanding the provisions of section 167 of the federal  
33 Internal Revenue Code of 1986, 26 U.S.C. s.167, to the contrary, no  
34 depreciation on any technology may be deducted for any privilege  
35 period following the purchase of the technology for which a deduction  
36 was taken pursuant to subparagraph (A) of this paragraph.

37 (l) "Real estate investment trust" shall mean any corporation, trust  
38 or association qualifying and electing to be taxed as a real estate  
39 investment trust under federal law.

40 (m) "Financial business corporation" shall mean any corporate  
41 enterprise which is (1) in substantial competition with the business of  
42 national banks and which (2) employs moneyed capital with the object  
43 of making profit by its use as money, through discounting and  
44 negotiating promissory notes, drafts, bills of exchange and other  
45 evidences of debt; buying and selling exchange; making of or dealing  
46 in secured or unsecured loans and discounts; dealing in securities and

1 shares of corporate stock by purchasing and selling such securities and  
2 stock without recourse, solely upon the order and for the account of  
3 customers; or investing and reinvesting in marketable obligations  
4 evidencing indebtedness of any person, copartnership, association or  
5 corporation in the form of bonds, notes or debentures commonly  
6 known as investment securities; or dealing in or underwriting  
7 obligations of the United States, any state or any political subdivision  
8 thereof, or of a corporate instrumentality of any of them. This shall  
9 include, without limitation of the foregoing, business commonly  
10 known as industrial banks, dealers in commercial paper and  
11 acceptances, sales finance, personal finance, small loan and mortgage  
12 financing businesses, as well as any other enterprise employing  
13 moneyed capital coming into competition with the business of national  
14 banks; provided that the holding of bonds, notes, or other evidences  
15 of indebtedness by individual persons not employed or engaged in the  
16 banking or investment business and representing merely personal  
17 investments not made in competition with the business of national  
18 banks, shall not be deemed financial business. Nor shall "financial  
19 business" include national banks, production credit associations  
20 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
21 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
22 insurance companies duly authorized to transact business in this State,  
23 security brokers or dealers or investment companies or bankers not  
24 employing moneyed capital coming into competition with the business  
25 of national banks, real estate investment trusts, or any of the following  
26 entities organized under the laws of this State: credit unions, savings  
27 banks, savings and loan and building and loan associations,  
28 pawnbrokers, and State banks and trust companies.

29 (n) "International banking facility" shall mean a set of asset and  
30 liability accounts segregated on the books and records of a depository  
31 institution, United States branch or agency of a foreign bank, or an  
32 Edge or Agreement Corporation that includes only international  
33 banking facility time deposits and international banking facility  
34 extensions of credit as such terms are defined in section 204.8(a)(2)  
35 and section 204.8(a)(3) of Regulation D of the board of governors of  
36 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
37 1981. In the event that the United States enacts a law, or the board  
38 of governors of the Federal Reserve System adopts a regulation which  
39 amends the present definition of international banking facility or of  
40 such facilities' time deposits or extensions of credit, the Commissioner  
41 of Banking and Insurance shall forthwith adopt regulations defining  
42 such terms in the same manner as such terms are set forth in the laws  
43 of the United States or the regulations of the board of governors of the  
44 Federal Reserve System. The regulations of the Commissioner of  
45 Banking and Insurance shall thereafter provide the applicable  
46 definitions.

1 (o) "S corporation" means a corporation included in the definition  
2 of an "S corporation" pursuant to section 1361 of the federal Internal  
3 Revenue Code of 1986, 26 U.S.C. s.1361.

4 (p) "New Jersey S corporation" means a corporation that is an S  
5 corporation; which has made a valid election pursuant to section 4 of  
6 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
7 corporation continuously since the effective date of the valid election  
8 made pursuant to section 4 of P.L.1993, c.173 (C.54:10A-5.22).

9 (q) "Public Utility" means "public utility" as defined in  
10 R.S.48:2-13.

11 (r) "Qualified investment partnership" means a partnership under  
12 this act that has more than 10 members or partners with no member or  
13 partner owning more than a 50% interest in the entity and that derives  
14 at least 90% of its gross income from dividends, interest, payments  
15 with respect to securities loans, and gains from the sale or other  
16 disposition of stocks or securities or foreign currencies or  
17 commodities or other similar income (including but not limited to gains  
18 from swaps, options, futures or forward contracts) derived with  
19 respect to its business of investing or trading in those stocks,  
20 securities, currencies or commodities, but "investment partnership"  
21 shall not include a "dealer in securities" within the meaning of section  
22 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

23 (s) "Savings institution" means a state or federally chartered  
24 building and loan association, savings and loan association, or savings  
25 bank.

26 (t) "Partnership" means an entity classified as a partnership for  
27 federal income tax purposes.

28 (P.L.2002, c.40, s.3.)

29

30 24. (New section) a. Notwithstanding the provisions of  
31 N.J.S.54A:5-1 or any other law to the contrary, for the purposes of  
32 determining the amount of a category of income pursuant to  
33 N.J.S.54A:5-1, all the expenses for the purchase, installation, and use  
34 of any technology, except for fuel, required pursuant to P.L. , c.  
35 (C. ) (now before the Legislature as this bill) shall be deductible  
36 for the taxable year in which the technology is purchased.

37 b. Notwithstanding the provisions of R.S.54A:5-1 for calculating  
38 gross income, no deduction shall be allowed for the depreciation of the  
39 technology for which expenses were deducted pursuant subsection a.  
40 of this section.

41

42 25. R.S.39:4-8 is amended to read as follows:

43 R.S.39:4-8. a. Except as otherwise provided in this section, no  
44 ordinance or resolution concerning, regulating or governing traffic or  
45 traffic conditions, adopted or enacted by any board or body having  
46 jurisdiction over highways, shall be of any force or effect unless the

1 same is approved by the Commissioner of Transportation, according  
2 to law. The commissioner shall not be required to approve any [such]  
3 ordinance, resolution or regulation, unless, after investigation by [him,  
4 the same shall appear] the commissioner, the ordinance, resolution or  
5 regulation is determined to be in the interest of safety [and], the  
6 expedition of traffic on the public highways , and protection of public  
7 health.

8 b. In the case of totally self-contained streets under municipal  
9 jurisdiction which have no direct connection with any street in any  
10 other municipality, or in the case of totally self-contained streets under  
11 county jurisdiction which have no direct connection with any street in  
12 any other county, the municipality or county may, by ordinance or  
13 resolution, as appropriate, without the approval of the Commissioner  
14 of Transportation, designate parking restrictions, no passing zones,  
15 mid-block crosswalks and crosswalks at intersections, except that in  
16 the case of any streets under municipal jurisdiction, the municipality  
17 may, by ordinance, designate reasonable and safe speed limits and in  
18 the case of totally self-contained streets under county jurisdiction  
19 which have no direct connection with any street in any other county,  
20 the county may, by ordinance or resolution, as appropriate, designate  
21 reasonable and safe speed limits, and erect appropriate signs, designate  
22 any intersection as a stop or yield intersection and erect appropriate  
23 signs and place longitudinal pavement markings delineating the  
24 separation of traffic flows and the edge of the pavement, provided that  
25 the municipal or county engineer shall, under [his] seal as a licensed  
26 professional engineer, certify to the municipal or county governing  
27 body, as appropriate, that any designation or erection of signs or  
28 placement of markings: (1) has been approved by [him] the municipal  
29 or county engineer after investigation by [him] the engineer of the  
30 circumstances, (2) appears to [him] the engineer to be in the interest  
31 of safety and the expedition of traffic on the public highways and (3)  
32 conforms to the current standards prescribed by the Manual of  
33 Uniform Traffic Control Devices for Streets and Highways, as adopted  
34 by the Commissioner of Transportation.

35 A certified copy of the adopted ordinance or resolution, as  
36 appropriate, shall be transmitted by the clerk of the municipality or  
37 county, as appropriate, to the commissioner within 30 days after the  
38 date of adoption, together with a copy of the engineer's certification;  
39 a statement of the reasons for the engineer's decision; detailed  
40 information as to the location of streets, intersections and signs  
41 affected by any designation or erection of signs or placement of  
42 markings; and traffic count, accident and speed sampling data, when  
43 appropriate. The commissioner, at [his] the discretion of the  
44 commissioner , may invalidate the provisions of the ordinance or  
45 resolution within 90 days after the date of receipt of the certified copy

1 if [he] the commissioner reviews it and finds that the provisions of the  
2 ordinance or resolution are inconsistent with the Manual of Uniform  
3 Traffic Control Devices for Streets or Highways; are inconsistent with  
4 accepted engineering standards; are not based on the results of an  
5 accurate traffic and engineering survey; [or] place an undue traffic  
6 burden or impact on streets in an adjoining municipality or negatively  
7 affect the flow of traffic on the State highway system ; or adversely  
8 affects the protection of the public health.

9 Nothing in this subsection shall allow municipalities to designate  
10 any intersection with any highway under State or county jurisdiction  
11 as a stop or yield intersection or counties to designate any intersection  
12 with any highway under State or municipal jurisdiction as a stop or  
13 yield intersection.

14 c. Subject to the provisions of R.S.39:4-138, in the case of any  
15 street under municipal or county jurisdiction, a municipality or county  
16 may, without the approval of the Commissioner of Transportation, do  
17 the following:

18 By ordinance or resolution:

- 19 (1) prohibit or restrict general parking;  
20 (2) designate restricted parking under section 1 of P.L.1977, c.309  
21 (C.39:4-197.6);  
22 (3) designate time limit parking;  
23 (4) install parking meters.

24 By ordinance, resolution or regulation:

- 25 (1) designate loading and unloading zones and taxi stands;  
26 (2) approve street closings for periods up to 48 continuous hours;  
27 and  
28 (3) designate restricted parking under section 1 of P.L.1977, c.202  
29 (C.39:4-197.5);

30 Nothing in this subsection shall allow municipalities or counties to  
31 establish angle parking or to reinstate or add parking on any street, or  
32 approve the closure of streets for more than 48 continuous hours,  
33 without the approval of the Commissioner of Transportation.

34 d. A municipality or county may, by ordinance or resolution, as  
35 appropriate, in any street under its jurisdiction, install or place an  
36 in-street pedestrian crossing right-of-way sign at a marked crosswalk  
37 or unmarked crosswalk at an intersection. The installation shall be  
38 subject to guidelines that shall be issued by the Commissioner of  
39 Transportation after consultation with the Director of the Office of  
40 Highway Traffic Safety in the Department of Law and Public Safety.  
41 The guidelines shall be aimed at ensuring safety to both pedestrians  
42 and motorists including, but not limited to, the proper method of sign  
43 installation, dimensions, composition of material, proper placement  
44 points and maintenance. A certified copy of the adopted ordinance or  
45 resolution shall be transmitted to the commissioner within 30 days of  
46 adoption. The commissioner, at [his] the discretion of the

1 commissioner, may invalidate the provisions of the ordinance or  
2 resolution within 90 days of receipt of the certified copy if [he] the  
3 commissioner reviews it and finds that the provisions of the ordinance  
4 or resolution are inconsistent with the guidelines issued pursuant to  
5 this subsection. A claim against the State or a municipality or county  
6 for damage or injury under this subsection for a wrongful act or  
7 omission shall be dismissed if the municipality or county is deemed to  
8 have conformed to the guidelines required hereunder.

9 e. A municipality or county may, by resolution, in any street under  
10 its jurisdiction, designate stops, stations or stands for omnibuses. The  
11 designation shall be subject to guidelines that shall be issued by the  
12 Commissioner of Transportation. The guidelines shall be aimed at  
13 ensuring safety to both pedestrians and motorists including, but not  
14 limited to, the proper method of sign installation, dimensions,  
15 composition of material, proper placement points and maintenance ,  
16 and the protection of the public health. A certified copy of the  
17 adopted resolution shall be transmitted to the commissioner within 30  
18 days after the date of adoption. The commissioner, at [his] the  
19 discretion of the commissioner, may invalidate the provisions of the  
20 ordinance or resolution within 90 days after the date of receipt of the  
21 certified copy if [he] the commissioner reviews it and finds that the  
22 provisions of the ordinance or resolution are inconsistent with the  
23 guidelines issued pursuant to this subsection. A claim against the  
24 State or a municipality or county for damage or injury under this  
25 subsection for a wrongful act or omission shall be dismissed if the  
26 municipality or county is deemed to have conformed to the guidelines  
27 required hereunder.

28 f. A municipality or county may, by resolution, designate routes for  
29 diesel-powered trucks and vehicles and restrict idling and queuing on  
30 certain streets or in certain areas on any street under its jurisdiction.  
31 The designation may entail minimizing congestion from diesel-powered  
32 vehicles and the excessive idling of these vehicles outside of schools,  
33 hospitals, or other locations that people with sensitive or compromised  
34 immune systems are known to frequent, and protecting residents of the  
35 municipality or county from unnecessary or prolonged exposure to  
36 emissions from diesel-powered vehicles. A certified copy of the  
37 adopted resolution shall be transmitted to the commissioner within 30  
38 days after the date of adoption. The commissioner, at the discretion  
39 of the commissioner, may invalidate the provisions of the ordinance or  
40 resolution within 90 days after the date of receipt of the certified copy  
41 if the commissioner reviews it and finds that the provisions of the  
42 ordinance or resolution are inconsistent with public safety, expedition  
43 of traffic on the public highways, or protection of the public health.  
44 (cf: P.L.2001, c.342, s.2.)

45

46 26. Section 4 of P.L.1966, c.16 (C.26:2C-8.4) is amended as

1 follows:

2 4. ~~【Such】 Except as otherwise required pursuant to P.L. , c.~~   
3 ~~(C. ) (now before the Legislature as this bill) or other laws, codes,~~  
4 ~~rules, and regulations concerning motor vehicles registered in the~~  
5 ~~State, the codes, rules and regulations shall establish standards and~~  
6 ~~requirements for control of air contaminants which can reasonably be~~  
7 ~~attained by properly functioning motor vehicles without the addition~~  
8 ~~of any air pollution control devices, systems, or engine modifications~~  
9 ~~provided such vehicles were not manufactured with pollution control~~  
10 ~~devices, systems or engine modifications in accordance with the~~  
11 ~~"Motor Vehicle Air Pollution Control Act" (77 Stat. 392, 42 U.S.C.~~  
12 ~~1857) , the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any~~  
13 ~~subsequent federal laws controlling air contaminants from motor~~  
14 ~~vehicles.~~

15 (cf: P.L.1966, c.16, s.4.)

16

17 27. Section 2 of P.L.1966, c.15 (C.39:3-70.2) is amended to read  
18 as follows:

19 2. Any person who operates a motor vehicle or owns a motor  
20 vehicle which ~~【he】 the person~~ permits to be operated, upon the public  
21 highways of this State which emits smoke and other air contaminants  
22 in excess of standards adopted by the ~~【Air Pollution Control~~  
23 ~~Commission】 Department of Environmental Protection~~ shall be liable  
24 to a penalty of not less than ~~【\$25.00】 \$250~~ nor more than ~~【\$100.00】~~  
25 ~~\$1,000 per day, per vehicle~~ which shall be enforced in accordance with  
26 the provisions of chapter 5 of Title 39 of the Revised Statutes ~~and~~  
27 ~~P.L., c. (C. )(now pending before the Legislature as this bill).~~

28 (cf: P.L.1966, c.15, s.2)

29

30 28. Section 6 of P.L.1995,c.157 (C.39:8-64) is amended to read as  
31 follows:

32 6. a. The commission, in consultation with the Department of  
33 Environmental Protection and the Department of Transportation and  
34 with the approval of the Attorney General, shall establish and  
35 implement a periodic inspection program and a roadside enforcement  
36 program to implement the standards and test methods adopted  
37 pursuant to section 3 of ~~【this act】 P.L.1995, c.157 (C.39:8-61).~~  
38 These programs shall be designed to measure exhaust emissions ~~【and】~~  
39 to inspect emission control apparatus and related items on diesel  
40 buses, heavy-duty diesel trucks, and other diesel-powered motor  
41 vehicles, ~~and to confirm compliance of on-road diesel vehicles from~~  
42 ~~regulated fleets under P.L. c. (C. ) (now before the Legislature is~~  
43 ~~this bill) with the provisions of that law.~~ The programs shall include,  
44 at a minimum, diesel buses and heavy-duty diesel trucks subject to the  
45 rules and regulations adopted pursuant to section 3 of ~~【this act】~~  
46 ~~P.L.1995, c.157 (C.39:8-61);~~ provided that the commission, in

1 consultation with the Department of Transportation, may exempt  
2 vehicles from either program for good cause, which may include that  
3 vehicles belonging to an exempted class are, by law, subject to  
4 emissions testing in another program. The commission, in consultation  
5 with the Department of Environmental Protection and with the  
6 approval of the Attorney General, may, by rule or regulation, expand  
7 the periodic inspection program and the roadside enforcement program  
8 to include other diesel-powered motor vehicles that are subject to the  
9 rules and regulations adopted pursuant to section 3 of [this act]  
10 P.L.1995, c.157 (C.39:8-61), and shall expand the periodic inspection  
11 program and the roadside enforcement program to include regulated  
12 on-road diesel vehicles that are subject to the fine particle diesel  
13 emissions reduction program established pursuant to P.L. .c. .  
14 (c. ) (now before the Legislature as this bill). The commission, in  
15 consultation with the Commissioner of Transportation, may, by rule or  
16 regulation, impose upon every owner and lessee of a diesel bus,  
17 heavy-duty diesel truck, or other diesel-powered motor vehicle subject  
18 to periodic inspection the obligation to have the vehicle periodically  
19 inspected in a manner determined by the commission in consultation  
20 with the Commissioner of Transportation, to effect repairs or to  
21 abstain from operating or to limit the operation of a rejected vehicle  
22 or a vehicle overdue for inspection, and may take other action  
23 necessary or appropriate for implementation of the periodic inspection  
24 program. The commission, in consultation with the Commissioner of  
25 Transportation, may, by rule or regulation, impose upon every owner  
26 and lessee of a diesel bus, heavy-duty diesel truck, or other  
27 diesel-powered motor vehicle subject to roadside inspection the  
28 obligation to abstain from operating or to limit the operation of a  
29 vehicle that has been tested and found to be in violation of the rules  
30 and regulations adopted pursuant to section 3 of [this act] P.L.1995,  
31 c.157 (C.39:8-61) or the provisions of P.L. .c. (C. ) (now before  
32 the Legislature is this bill), or to effect repairs, and may take other  
33 action necessary or appropriate for implementation of the roadside  
34 enforcement program. A school bus, as defined pursuant to  
35 R.S.39:1-1, shall be exempt from the roadside enforcement program.  
36 However, nothing in this subsection allowing or mandating exemptions  
37 from the periodic inspection program or the roadside enforcement  
38 program shall be construed to limit any other enforcement actions  
39 permitted by law.

40 b. The commission shall exercise all authority, including but not  
41 limited to administrative, implementation, enforcement, and penalty  
42 authority, in connection with the periodic inspection program for  
43 diesel buses and the roadside enforcement program for diesel buses  
44 that are under the jurisdiction of the commission pursuant to Titles 27  
45 and 48 of the Revised Statutes or any other law, rule, or regulation.  
46 The commission shall consult with the Department of Environmental

1 Protection and the Department of Transportation in conducting the  
2 periodic inspection program for diesel buses and the roadside  
3 enforcement program for diesel buses that are under the jurisdiction of  
4 the commission. Any periodic inspection that may be required  
5 pursuant to [this act] P.L.1995, c.157 (C.39:8-59 et al.) for a diesel  
6 bus under the jurisdiction of the commission shall be conducted only  
7 in conjunction with any periodic safety inspection required for that  
8 diesel bus pursuant to law, rule, or regulation. Any suspension of  
9 registration privileges with respect to diesel buses for a violation of  
10 [this act] P.L.1995, c.157 (C.39:8-59 et al.) or any rule or regulation  
11 adopted pursuant thereto shall be implemented by the commission.  
12 (cf: P.L.2003, c.13, s.79)

13

14 29. Section 9 of P.L.1995, c.157 (39:8-67) is amended to read as  
15 follows:

16 9. The Superintendent of the State Police, in consultation with and  
17 subject to the approval of the Attorney General, shall provide State  
18 Police officers to assist the commission in conducting the roadside  
19 enforcement program and the pilot roadside enforcement program.  
20 The State Police officers shall have authority to direct diesel buses,  
21 heavy-duty diesel trucks, or other diesel-powered motor vehicles from  
22 the roadway for the purpose of inspection, and shall perform other  
23 police duties necessary for or helpful to the implementation of the  
24 programs. The State Police officers shall maintain records of these  
25 inspections and shall forward the information concerning the number  
26 of inspections, and the type of violations and the number of each to the  
27 Department of Environmental Protection.

28 (cf: P.L.2003, c.13, s.82)

29

30 30. Section 11 of P.L.1995, c.157 (39:8-69) is amended to read as  
31 follows:

32 11. a. The commission, in consultation with the Department of  
33 Transportation and after appropriate inquiry and investigation, shall  
34 issue licenses to operate diesel emission inspection centers to as many  
35 qualified and properly equipped persons, including owners or lessees  
36 of diesel buses, heavy-duty diesel trucks, or other diesel-powered  
37 motor vehicles, as the commission determines shall be necessary to  
38 conduct periodic inspections. A licensee shall inspect and pass or  
39 reject a diesel bus, heavy-duty diesel truck, or other diesel-powered  
40 motor vehicle presented to the licensee for inspection. Passing shall  
41 indicate that the licensee or the licensee's employee has inspected the  
42 diesel bus, heavy-duty diesel truck, or other diesel-powered motor  
43 vehicle as prescribed by the commission and has found that the vehicle  
44 conforms to the standards established by law and rule or regulation  
45 including but not limited to, the provisions of P.L. .c. (C. ) (now  
46 before the Legislature as this bill) and any rules or regulations adopted

1 pursuant thereto consultation with the Department of Transportation  
2 and with the approval of the Attorney General, may establish by rule  
3 or regulation adopted pursuant to the "Administrative Procedure Act,"  
4 P.L.1968, c.410 (C.52:14B-1 et seq.) an application fee for the  
5 licensing of diesel emission inspection centers, which fee shall not  
6 exceed \$250 per year.

7 b. For the purpose of documenting compliance with periodic  
8 inspection requirements, the commission shall furnish official  
9 inspection forms to licensed diesel emission inspection centers. The  
10 commission shall require each diesel emission inspection center and  
11 each owner or lessee of a diesel bus, heavy-duty diesel truck, or other  
12 diesel-powered motor vehicle subject to periodic inspection to keep  
13 such records and file such reports regarding these inspections as the  
14 commission shall deem necessary. The commission may conduct such  
15 audits or inspections of these centers as the commission deems  
16 appropriate and shall forward information concerning the number of  
17 inspections, and the type of violations and the number of each to the  
18 Department of Environmental Protection.

19 c. The commission may deny, suspend or revoke a diesel emission  
20 inspection center license or refuse renewal thereof for cause, including,  
21 but not limited to, one or more of the following:

22 (1) Violation of any provision of [this act] P.L.1995, c.157  
23 (C.39:8-59 et al.) or of any rule or regulation adopted pursuant  
24 thereto; or

25 (2) Fraud or misrepresentation in securing a license or in the  
26 conduct of the licensed activity; or

27 (3) Conviction of a crime demonstrating that the applicant or  
28 licensee is unfit; or

29 (4) Improper, negligent, or fraudulent inspection of a diesel bus,  
30 heavy-duty diesel truck, or other diesel-powered motor vehicle; or

31 (5) Other good cause.

32 d. In addition to any other civil or criminal penalties that may be  
33 applicable, a person licensed by the commission to operate a diesel  
34 emission inspection center who commits fraud or misrepresentation in  
35 securing a license or in the conduct of the licensed activity or who  
36 improperly or negligently or fraudulently conducts an inspection of a  
37 diesel bus, heavy-duty diesel truck, or other diesel-powered motor  
38 vehicle shall be liable for a civil penalty of \$1,500. In addition to any  
39 other civil or criminal penalties that may be applicable, a person  
40 licensed by the commission to operate a diesel emission inspection  
41 center who otherwise violates any provision of [this act] P.L.1995,  
42 c.157 (C.39:8-59 et al.) or of any rule or regulation adopted pursuant  
43 thereto shall be liable for a civil penalty of \$500.

44 (cf: P.L.2003, c.13, s.84)

45

46 31. Section 17 of P.L.1995, c.157 (39:8-75) is amended to read as

1 follows:

2 17. a. There is established in the General Fund a separate,  
3 nonlapsing, dedicated account to be known as the "Commercial  
4 Vehicle Enforcement Fund." The Commercial Vehicle Enforcement  
5 Fund shall be administered by the commission. All fees and other  
6 monies collected pursuant to [this act] P.L.1995, c.157 (C.39:8-59 et  
7 al.) or any rule or regulation adopted pursuant thereto shall be  
8 forwarded to the State Treasury for deposit into the Commercial  
9 Vehicle Enforcement Fund account. The commission shall receive 40  
10 percent of this fund annually, which monies shall be considered  
11 revenue of the commission. The Department of Environmental  
12 Protection shall receive 11 percent of this fund annually for the  
13 administrative costs of the department associated with the periodic  
14 inspection program and the roadside enforcement program established  
15 pursuant to section 6 of P.L.1995, c.157 (C.39:8-64), and the fine  
16 particle diesel emissions reduction program established pursuant to  
17 P.L. , c. (C. ) (now before the Legislature as this bill). All  
18 remaining fees and other monies deposited in the Commercial Vehicle  
19 Enforcement Fund account shall be used to fund the costs of  
20 administering the programs and activities of the Department of Law  
21 and Public Safety, the Department of Transportation, and the  
22 commission [and the Department of Environmental Protection]  
23 established or specified in [this act] P.L.1995, c.157 (C.39:8-59 et  
24 al.), P.L. , c. (C. ) (now before the Legislature as this bill), and  
25 in subsection f. of R.S.39:3-20, subject to the approval of the Director  
26 of the Division of Budget and Accounting in the Department of the  
27 Treasury.

28 b. A municipality may be eligible for periodic grants from the fund  
29 in such amounts as the commission, in consultation with the  
30 Commissioner of Transportation, may determine pursuant to rule or  
31 regulation to subsidize costs of prosecuting and trying actions  
32 pursuant to [this act] P.L.1995, c.157 C.39:8-59 et al.).

33 (cf: P.L.2003, c.13, s.106)

34

35 32. (New section) a. No on-road diesel vehicle or off-road diesel  
36 equipment may operate in the State with any fuel other than ultra-low  
37 sulfur diesel fuel, as defined by the Department of Environmental  
38 Protection and the United States Environmental Protection Agency.

39 b. No diesel fuel other than ultra-low sulfur diesel fuel, as defined  
40 by the Department of Environmental Protection and the United States  
41 Environmental Protection Agency, may be sold in the State.

42 c. The Department of Environmental Protection, in consultation  
43 with the New Jersey Motor Vehicle Commission, the Department of  
44 Law and Public Safety, and the Attorney General, shall adopt,  
45 pursuant to the "Administrative Procedures Act," P.L.1968, c.410  
46 (C.52:14B-1 et seq.), rules and regulations necessary for the  
47 implementation of this section.

1 33. There is hereby appropriated from the General Fund to the  
2 "Diesel Risk Mitigation Fund," established pursuant to section 21 of  
3 P.L. , c. (C. ) (now before the Legislature as this bill), a  
4 sum in the amount of \$24,000,000 for the purposes set forth in that  
5 section.

6  
7 34. This act shall take effect immediately, except for section 32  
8 which shall take effect one year after the date of enactment.

9  
10  
11 STATEMENT

12  
13 This bill establishes a program to reduce fine particle emissions  
14 from certain vehicles and equipment powered by diesel engines and the  
15 exposure of the public to these emissions, relieve congestion of diesel  
16 truck traffic in residential neighborhoods, and examine and establish  
17 policies to minimize the exposure of children to diesel emissions.

18 This bill prohibits the operation in the State of any regulated on-  
19 road diesel vehicle that is not in compliance with the provisions of the  
20 bill concerning regulated fleets, and, on or after January 1, 2009, the  
21 operation in the State of any regulated off-road equipment or any  
22 diesel apportioned vehicle that does not comply with the provisions of  
23 the bill and the rules and regulations establishing the fine particle diesel  
24 emissions reduction program. The bill also prohibits the operation of  
25 any on-road diesel vehicle or off-road diesel equipment with fuel other  
26 than ultra-low sulfur diesel fuel, and prohibits the sale of any diesel  
27 fuel other than ultra-low sulfur diesel fuel, as of one year after the date  
28 of enactment of this bill.

29 The bill also creates a fund to finance the retrofitting required under  
30 the bill, and appropriates \$24 million from the General Fund to the  
31 fund. The monies in the fund would be used to finance the county and  
32 municipal costs and administrative costs incurred by the Department  
33 of Environmental Protection (DEP) in connection with the  
34 requirements and implementation of the program established by the  
35 bill.

36 Specifically, the bill directs the DEP and the Department of Health  
37 and Senior Services to develop and implement a public education and  
38 outreach program, to inform the public about the public health risks  
39 associated with fine particle emissions and other pollution from  
40 vehicles and equipment powered by diesel engines. The bill further  
41 directs the DEP to adopt rules and regulations, no later than nine  
42 months after the effective date of the bill, to establish and implement  
43 a fine particle diesel emissions program, with an overall goal of the  
44 program to be a 20-percent reduction of emissions from regulated on-  
45 road diesel vehicles and regulated off-road diesel equipment over the  
46 ten years after the date of enactment of the bill.

1 The program established by the rules and regulations would require  
2 that best available retrofit technologies be installed on and used by:

3 (1) Regulated fleets of commercial buses, sanitation vehicles,  
4 school buses with diesel engines, diesel apportioned vehicles  
5 registered, or with in-jurisdiction miles, in the State, and on-road  
6 diesel vehicles greater than 14,000 pounds gross vehicle weight that  
7 are types and classes of vehicles equivalent to the regulated diesel  
8 apportioned vehicles whether apportioned vehicles or some other class  
9 of vehicle;

10 (2) Diesel apportioned vehicles registered, or with in-jurisdiction  
11 miles, in the State that may not be part of a regulated fleet; and

12 (3) Off-road diesel equipment designated as regulated off-road  
13 diesel equipment under the rules and regulations.

14 The bill also directs the DEP to consult with the Department of  
15 Education, the New Jersey Motor Vehicle Commission, and the  
16 Department of Transportation concerning the provisions that would  
17 affect school buses, and with the New Jersey Motor Vehicle  
18 Commission and the New Jersey Transit Corporation concerning the  
19 provisions that would affect commercial buses. Furthermore, the DEP  
20 is directed to develop and implement a public outreach program to  
21 notify and inform the owners, operators, and lessees affected by the  
22 requirements of the bill about the requirements and how to comply,  
23 including notification of owners, operators, and lessees of unregistered  
24 off-road diesel equipment and out-of-State companies that may  
25 provide off-road diesel equipment for operation in the State.

26 Regulated fleets under the bill must have regulated fleet retrofit  
27 plans approved by DEP. The bill requires that each owner, operator,  
28 or lessee of a regulated fleet submit to the DEP, no later than six  
29 months after the effective date of the rules and regulations adopted  
30 pursuant to section 4 of the bill, an inventory of the on-road diesel  
31 vehicles in the fleet, an indication by the owner, operator, or lessee of  
32 the vehicles the owner, operator, or lessee believes are regulated on-  
33 road diesel vehicles, and a regulated fleet retrofit plan for the regulated  
34 on-road diesel vehicles in the fleet. Any owner, operator, or lessee of  
35 a regulated fleet who begins operating a regulated fleet after the  
36 effective date of the rules and regulations is required to submit the  
37 required materials no later than six months after the date on which the  
38 operation began.

39 The bill directs the DEP to review, and approve or disapprove all  
40 parts of any submitted regulated fleet retrofit plan, or a supplement  
41 thereto, no later than one year after the submittal of the regulated fleet  
42 retrofit plan or the supplement, and provides for partial approval and  
43 disapproval by the department. The bill requires the owner, operator,  
44 or lessee of a regulated fleet to submit supplements to the regulated  
45 fleet retrofit plan on the annual anniversary of the date of the regulated  
46 fleet retrofit plan approval.

1 The amendatory sections of the bill expand the current periodic  
2 inspection and roadside enforcement programs for diesel vehicles,  
3 established by P.L.1995, c.157 (C.39:8-58 et seq.) to include  
4 enforcement of the fine particle diesel emissions reduction program.  
5 These sections also provide an income tax deduction for the cost of  
6 the purchase and the installation of any technology, other than fuel,  
7 required by the bill, allow for the consideration of air pollution issues  
8 related to diesel emissions when setting and approving truck routes  
9 through counties and municipalities, and make other amendatory  
10 changes to incorporate the provisions of the bill into related current  
11 State laws and allow for the implementation of the program  
12 established by the bill. Finally, the bill amends the provision of  
13 P.L.1995, c.157 that established the "Commercial Vehicle  
14 Enforcement Fund" to provide that the DEP would receive 11 percent  
15 of the fund annually. The DEP has estimated that at least 11 percent  
16 of the diesel fleet in the State would be regulated under the bill. The  
17 current law provides that the "Commercial Vehicle Enforcement Fund"  
18 be used for administering the current diesel programs. The bill  
19 includes the fine particle diesel emissions reduction program under  
20 these programs.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 3182**

**STATE OF NEW JERSEY**

DATED: MAY 19, 2005

The Assembly Environment and Solid Waste Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 3182.

The committee substitute establishes requirements for specific types of vehicles and off-road equipment powered by diesel engines that would reduce significantly the amount of fine particle diesel emissions from these diesel vehicles and equipment and would diminish the exposure of school children to these harmful emissions. The committee substitute would also provide for stricter enforcement of idling standards for all motor vehicles, and would impose stricter requirements and stricter enforcement for school bus idling. Furthermore, the committee substitute establishes the Diesel Risk Mitigation Fund for the reimbursement of the cost of retrofits required pursuant to the committee substitute. This fund would receive constitutionally dedicated moneys for this purpose, and no owner of regulated vehicles or regulated equipment would be required to comply with the provisions of the committee substitute concerning the retrofitting of vehicles and equipment, unless the State Treasurer has certified that the constitutionally dedicated moneys have been deposited in the fund for the year in which the requirement is imposed. Also, owners of regulated vehicles or regulated equipment cannot be required to comply with the retrofit provisions of the committee substitute, and the DEP cannot require any retrofit device to be installed, unless it has been certified that there are sufficient moneys in the fund in a given year to cover the costs of the retrofits and their installation required in that year.

Specifically, the committee substitute requires:

- 1) the retrofitting of all diesel school buses used to transport children in primary and secondary schools in the State with closed crankcase technology designed to reduce fine particle diesel emissions in the cabin of the school bus;
- 2) the use of best available retrofit technologies, including

retrofitting, on publicly owned diesel solid waste vehicles, privately owned diesel solid waste vehicles under public contract, publicly owned on-road diesel vehicles and off-road diesel equipment, and all diesel commercial buses;

3) the Department of Environmental Protection (DEP) study emissions reduction technology for diesel school buses, and determine if further retrofitting of school buses is indicated by the results of the study;

4) the adoption of rules and regulations by the DEP, no less stringent than the restrictions on idling under DEP rules and regulations in effect on the effective date of the bill, concerning the idling of school buses and the development of policies and procedures by the DEP, in consultation with the Department of Education, school districts and school administrators, to achieve compliance with those rules and regulations;

5) enforcement of school bus idling violations against the school district serviced by the school bus operated in violation of the idling restrictions;

6) increased penalties of \$250 to \$1,000 per day, per vehicle for violations of any motor vehicle idling restrictions, except that no penalties may be assessed against the driver of a school bus who is not the owner of the school bus; and

7) the use of ultra-low sulfur diesel fuel in all on-road diesel vehicles and off-road diesel equipment as of September 1, 2006, if a DEP determines that sufficient supplies are available following a public hearing and not until the DEP issues a written determination that sufficient supplies are available.

The committee substitute provides that the regulated school buses have the closed crankcase technology installed no later than two years after the date of enactment. During that time, the DEP would study the health issues involved with school bus emissions and if the results of the study warrant further retrofit requirements, the committee substitute authorizes the DEP to establish and impose those requirements.

The committee substitute provides that the owners of regulated vehicles or regulated equipment are required to use the best available retrofit technologies in or on their regulated vehicles or regulated equipment as provided in DEP regulations, or submit plans proposing alternatives for the use of best available retrofit technologies in or on the vehicles and equipment that they own. The DEP is required to adopt rules and regulations no later than 270 days after the effective date of the act. The DEP would prescribe the level of fine particle emissions reduction for each type of regulated vehicle or piece of regulated equipment, but an owner could request and negotiate alternatives with the department to attain compliance.

"Best available retrofit technology," as defined in the committee substitute, includes particle filters, diesel oxidation catalysts, flow through filters, and other retrofit devices, modified diesel fuel and

other special fuels. It cannot include repowering of a vehicle or equipment. The United States Environmental Protection Agency or the California Air Resources Board must have designated the technology as a verified technology.

The committee substitute requires each owner of a regulated vehicle or regulated equipment to submit an inventory of all diesel vehicles and equipment owned, operated, or leased by the owner, and either a notice of intent to follow the requirements prescribed by DEP regulation or a fleet retrofit plan. The timing of these submittals is to be as follows:

(1) for regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted by the DEP pursuant to section 3 of the committee substitute;

(2) for regulated commercial buses owned and operated by the New Jersey Transit Corporation, no later than one year after the effective date of the rules and regulations;

(3) for private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations; and

(4) for publicly owned regulated vehicles and regulated equipment other than regulated solid waste vehicles or regulated commercial buses, no later than two years after the effective date of the rules and regulations.

After the submittals are made and any plans receive final approval, the owners of regulated vehicles or regulated equipment would receive compliance forms for each vehicle or piece of equipment required to use best available retrofit technologies. After any required installations were made, the compliance form would be completed, a copy of it would remain with the vehicle or piece of equipment at all times thereafter, and copies would be submitted to the DEP and the State Treasurer. The installation of any required retrofit devices as part of this use of best available retrofit technologies would be confirmed at an inspection of the regulated vehicle under New Jersey Motor Vehicle inspection programs currently in effect under current law, or, for regulated off-road equipment, through the submittal of a compliance form issued by the department.

The committee substitute provides that the State Treasurer would administer reimbursements for the cost of complying with these requirements in accordance with the procedures and requirements established by the State Treasurer pursuant to the committee substitute.

Finally, the committee substitute amends current law to allow for retrofitting of vehicles to be required, and establishes civil and civil administrative penalties of not more than \$5,000 for violations of the act.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3182**

with Assembly committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 22, 2005

The Assembly Budget Committee reports favorably Assembly Bill No. 3182 (ACS), with committee amendments.

Assembly Bill No. 3182 (ACS), as amended, establishes requirements for specific types of vehicles and off-road equipment powered by diesel engines that will reduce significantly the amount of fine particle diesel emissions from these diesel vehicles and equipment and will diminish the exposure of school children to these harmful emissions.

The bill also provides for stricter enforcement of idling standards for all motor vehicles, and imposes stricter requirements and stricter enforcement for school bus idling. Further, the bill establishes the Diesel Risk Mitigation Fund for the reimbursement of the cost of retrofits required pursuant to the bill. This fund would receive constitutionally dedicated moneys for this purpose.

No owner of regulated vehicles or regulated equipment will be required to comply with the provisions of the bill concerning the retrofitting of vehicles and equipment unless the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the fund for the year in which the requirement to install the retrofit devices is imposed. Also, owners of regulated vehicles or regulated equipment cannot be required to comply with the retrofit provisions of the bill unless the Department of Environmental Protection (DEP) certifies that there are sufficient moneys in the fund in a given year to cover the costs of the retrofits and their installation required in that year. Under the bill the DEP is authorized to determine that sufficient moneys are in the fund to cover the costs of some of the retrofits and their installation that are required in that year, and if the State Treasurer has made the other required certification, the DEP may determine which retrofits can be funded, require those retrofits, and certify that sufficient moneys are in the fund to reimburse the cost of those retrofits and their installation.

Specifically, the bill, as amended, requires:

- 1) the retrofitting of all diesel school buses used to transport

children in primary and secondary schools in the State with closed crankcase technology designed to reduce fine particle diesel emissions in the cabin of the school bus;

2) the use of best available retrofit technologies, including retrofitting, on publicly owned diesel solid waste vehicles, privately owned diesel solid waste vehicles under public contract, publicly owned on-road diesel vehicles and off-road diesel equipment, and all diesel commercial buses;

3) the DEP to study emissions reduction technology for diesel school buses, and determine if further retrofitting of school buses is indicated by the results of the study;

4) certain warranties and assurances from manufacturers of best available retrofit technologies to ensure against damage to regulated vehicles and regulated equipment and pay for any damage that may be caused;

5) the adoption of rules and regulations by the DEP, no less stringent than the restrictions on idling under DEP rules and regulations in effect on the effective date of the bill, concerning the idling of school buses and the development of policies and procedures by the DEP, in consultation with the Department of Education, school districts and school administrators, to achieve compliance with those rules and regulations;

6) enforcement of school bus idling violations against the school district serviced by the school bus operated in violation of the idling restrictions;

7) increased penalties of \$250 to \$1,000 per day, per vehicle for violations of any motor vehicle idling restrictions, except that no penalties may be assessed against the driver of a school bus who is not the owner of the school bus; and

8) a determination by DEP of whether supplies of ultra-low sulfur diesel fuel would be sufficient to avoid certain problems in the fuel markets before only ultra-low sulfur diesel fuel is required to be sold in the State.

The bill requires that the regulated school buses have the closed crankcase technology installed no later than two years after the date of enactment, unless the required funding certifications are not made, in which case, the requirement should be met within the two years after the certification. During that time, the DEP will study the health issues involved with school bus emissions and, if the results of the study warrant further retrofit requirements, the bill authorizes the DEP to establish and impose those requirements.

The bill requires the owners of regulated vehicles or regulated equipment to use the best available retrofit technologies in or on their regulated vehicles or regulated equipment as provided in DEP regulations, or submit plans proposing alternatives for the use of best available retrofit technologies in or on the vehicles and equipment that they own. The DEP is required to adopt rules and regulations no later than 270 days after the effective date of the act. The DEP will prescribe the level of fine particle emissions reduction for each type of

regulated vehicle or piece of regulated equipment, but an owner could request and negotiate alternatives with the DEP to attain compliance.

The bill defines "best available retrofit technology" to include particle filters, diesel oxidation catalysts, flow through filters, and other retrofit devices, modified diesel fuel and other special fuels; "best available retrofit technology" cannot include repowering of a vehicle or equipment. The bill requires that the United States Environmental Protection Agency or the California Air Resources Board must have designated the technology as a verified technology.

The bill requires each owner of a regulated vehicle or regulated equipment to submit an inventory of all diesel vehicles and equipment owned, operated, or leased by the owner, and either a notice of intent to follow the requirements prescribed by DEP regulation or a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan. A combined fleet retrofit plan allows several owners to coordinate compliance together, and a fleet averaging plan allows an owner to attain reductions by implementing alternative measures and retrofitting vehicles and equipment that may not be designated to get a certain amount of reduction from across the owner's fleet.

The timing of these submittals are to be as follows:

(1) for regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted by the DEP pursuant to section 3 of the bill;

(2) for regulated commercial buses owned and operated by the New Jersey Transit Corporation, no later than one year after the effective date of the rules and regulations;

(3) for private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations; and

(4) for publicly owned regulated vehicles and regulated equipment other than regulated solid waste vehicles or regulated commercial buses, no later than two years after the effective date of the rules and regulations.

Under the bill, no owner of a private regulated commercial bus is required to make the submittals before New Jersey Transit does, and New Jersey Transit must have begun retrofitting its buses and using those retrofits at least six months before any owner of a private regulated commercial bus is required to retrofit a bus.

After the submittals are made and any plans receive final approval, the owners of regulated vehicles or regulated equipment would receive compliance forms for each vehicle or piece of equipment required to use best available retrofit technologies. After any required installations were made, the compliance form will be completed, a copy of it will remain with the vehicle or piece of equipment at all times thereafter, and copies will be submitted to the DEP and the State Treasurer. The installation of any required retrofit devices as part of this use of best available retrofit technologies will be confirmed at an inspection of the regulated vehicle under New Jersey Motor Vehicle inspection programs currently in effect under current law, or, for regulated off-road equipment, through the submittal of a compliance

form issued by the DEP.

Under the bill the State Treasurer, in consultation with DEP, will administer reimbursements for the cost of complying with these requirements in accordance with the procedures and requirements established by the State Treasurer and the DEP pursuant to the bill. However, the bill provides for 100% of retrofit device and installation costs be covered.

Finally, the bill amends current law to allow for retrofitting of vehicles to be required, and establishes civil and civil administrative penalties of not more than \$5,000 for violations of the act.

FISCAL IMPACT:

The bill establishes the Diesel Risk Mitigation Fund for the reimbursement of the cost of retrofits required pursuant to the bill and administrative costs not to exceed \$1,150,000 annually.

This fund would receive constitutionally dedicated moneys for this purpose. Currently pending before the Legislature are Senate Concurrent Resolution No. 113 and Assembly Concurrent Resolution No. 228 (1R) which propose amendments to the State Constitutional provision that dedicates 4% of the corporation business tax revenue to environmental purposes.

That proposed amendment to the Constitution would change the allocation of the funding for 10 years as follows: The allocation for State funded hazardous site cleanup would be reduced from 50% to 33% for ten years, and for that period, 17% of the dedicated funding would be used to provide grants for the costs of air pollution control equipment to reduce the levels of particulate matter emissions from diesel-powered engines, and funding for other measures to reduce human exposure to those emissions. After January 1, 2016, any unexpended amounts dedicated for air pollution control would be dedicated for State funded hazardous site cleanup.

That proposed amendment to the Constitution would authorize the use of no more than \$1,150,000 per year of the amount dedicated for funding grants for particulate matter emission control equipment to be expended for the associated program administrative costs.

That proposed amendment to the Constitution would also allow for the enactment after January 1, 2006 of a one-time appropriation of up to \$10,000,000 from preceding unexpended balances dedicated and appropriated for the underground storage tank program to provide grants for cost of air pollution control equipment to reduce particulate matter emissions from diesel-powered engines, and funding for other measures to reduce human exposure to those emission.

COMMITTEE AMENDMENTS:

The amendments:

1) provide that rules and regulations to be adopted concerning the installation, verification, and inspection of crankcase technology and training of personnel involved with the emissions testing of diesel vehicles would be adopted jointly by the DEP and the New Jersey

Motor Vehicle Commission (MVC);

2) provide that, concerning all required use of retrofit devices under the bill, if the State Treasurer makes the required certification, the DEP may determine that moneys in the fund are sufficient to reimburse only part of the retrofits required in a given year pursuant to rules and regulations and approved plans under the bill, and may determine which retrofits are sufficiently funded, require those retrofits, and certify that moneys are sufficient to reimburse the costs of those retrofits and their installation;

3) clarify that inventories and plans are required to be submitted in accordance with the bill's provisions, regardless of the funding certifications;

4) specify that, if the approval of plans submitted under the bill are delayed, no supplement or modification to the plan, as applicable, would have to be submitted until 90 days after the approval of the plan or its most recent supplement or modification;

5) specify that owners of private regulated commercial buses will not be required under any circumstances to make the required submittals under the bill until the owners of public regulated commercial buses have made the required submittals;

6) specify that owners of private regulated commercial buses will not be required to install and use a retrofit device in their buses any earlier than 180 days after the owners of public regulated commercial buses have begun to use retrofit devices in their buses;

7) provide that municipal and county expenditures pursuant to this bill are not subject to spending caps currently established by law;

8) allow DEP to establish by rule and regulation an alternative approach to the reimbursement procedures under the bill, as amended, provided that the protections under the bill, as amended, and the requirements concerning funding being available for the required retrofits under the bill are not circumvented;

9) include an exemption from idling regulation for motor vehicles idling in traffic and motor vehicles other than school buses idling in a queue of motor vehicles, that are intermittently motionless and moving because the progress of the motor vehicles in the traffic or the queue has been stopped or slowed by the congestion of traffic on the roadway or other conditions over which the driver of the idling motor vehicle has no control;

10) provide that school bus idling penalties will be imposed after the first offense on school bus owners and the school district, and for the first offense on school bus owners, but the school district and principal and administrator will get a warning for the first offense;

11) clarify that applications for reimbursement for the cost of retrofit devices and their installation will be submitted to the DEP, reviewed by the DEP, and the reimbursement will be issued by the State Treasurer, and the process would take place within 30 days after submitting a complete application;

12) allow the State Treasurer to provide funding for administrative costs to DEP from unexpended administrative cost funding to the

MVC;

13) provide that the DEP determination concerning the sufficiency of ultra-low sulfur diesel fuel supplies cannot be made before July 15, 2006, and the determination will consider the sufficiency of supplies on and after January 15, 2007;

14) provide that, if the DEP determination concerning the sufficiency of ultra-low sulfur diesel fuel is that supplies would be sufficient, the requirement to sell only ultra-low sulfur diesel fuel in the State will go into effect 180 days after that determination or three months after the federal retail compliance date for the sale of ultra-low sulfur diesel fuel for use in on-road diesel vehicles;

15) specify that the only retrofit devices or fuel that could be used in the State as best available retrofit technologies are those retrofit devices and fuel for which the retrofit device manufacturer or fuel manufacturer agrees, in a manner determined appropriate by the DEP, that the installation and use of the retrofit device or the use of the special fuel would not jeopardize the original engine warranty in effect at the time of the installation or the commencement of use of the retrofit device or fuel, and those for which the retrofit device manufacturer or fuel manufacturer has provided a warranty pursuant to the rules and regulations adopted under the bill as amended;

16) require that the rules and regulations require the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment the full repair and replacement cost of the best available retrofit technology, including parts and labor, if the best available retrofit technology fails to perform as verified;

17) require that the rules and regulations require the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment, if the installation or use of the best available retrofit technology damages the engine or the engine components of the regulated vehicle or piece of regulated equipment, the repair or replacement of engine components to return the engine components of the regulated vehicle or piece of regulated equipment to the condition they were in prior to damage caused by the best available retrofit technology;

18) require that the rules and regulations to require the manufacturers of best available retrofit technology authorize installers of best available retrofit technology other than fuel as authorized installers of the best available retrofit technology;

19) require the rules and regulations to require only authorized installers of best available retrofit technology install best available retrofit technology other than fuel in the State; and

20) allow DEP under rules and regulations to establish other specific provisions of the warranty and installation requirements and the specific provisions of any warranty, including but not limited to, the period of time during which a warranty would be in effect.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 3182**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: JUNE 28, 2005

**SUMMARY**

- Synopsis:** Establishes requirements for reducing fine particle diesel emissions from certain vehicles and equipment; creates fund for financing costs associated therewith; increases penalties for idling and authorizes Department of Environmental Protection to establish additional restrictions on school bus idling.
- Type of Impact:** Reallocation of constitutionally dedicated Corporation Business Tax revenues to the Diesel Risk Mitigation Fund.
- Agencies Affected:** Departments of Environmental Protection, Treasury, Law and Public Safety, and Education; N.J. Motor Vehicle Commission; NJ Transit; and local governments.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Cost</b>	\$107 million over 10 years		
<b>Local Cost</b>	\$0		

- ! The committee substitute establishes requirements to significantly reduce the amount of fine particle diesel emissions from diesel vehicles and equipment through retrofitting and other measures. The Diesel Risk Mitigation Fund is established to support these provisions.
- ! The Diesel Risk Mitigation Fund would be supported by a partial reallocation of constitutionally dedicated Corporation Business Tax (CBT) monies that are now dedicated for hazardous substance site remediation and underground storage tank upgrades. Separate legislation is pending that would authorize a referendum to approve these changes.
- ! The Department of Environmental Protection (DEP) is directed to administer this program and to conduct a study on emissions reduction technology for diesel vehicles and equipment.
- ! The Office of Legislative Services (OLS) estimates that at least \$107 million in CBT funding will be required over 10 years to manage this program.

## **BILL DESCRIPTION**

Assembly Committee Substitute for Assembly Bill No. 3182 of 2004 establishes requirements to significantly reduce the amount of fine particle diesel emissions from diesel vehicles and equipment. The committee substitute establishes the Diesel Risk Mitigation Fund to fully reimburse public and private owners of such vehicles and equipment for engine retrofitting costs required under the bill. This fund would be capitalized by a reallocation of constitutionally dedicated CBT monies that are currently used for hazardous substance discharge site remediation and underground storage tank upgrades.

The reallocation of CBT funding would be contingent upon the enactment of pending legislation authorizing a Statewide referendum in November, 2005, on amendments to the State Constitution to reallocate such funds for retrofit reimbursement costs and related administrative expenses. A one-time \$10 million allocation from the CBT dedication for underground storage tank remediation would also be authorized under the referendum.

Specifically, the committee substitute requires the retrofitting of all diesel school buses, publicly and privately owned (under public contract) diesel solid waste vehicles, publicly owned on-road and off-road diesel equipment, and all diesel commercial buses using the best available retrofit technologies. In designating the DEP as the lead agency in administering this program, it also requires the DEP to conduct a study on emissions reduction technology for diesel school buses; adopt rules and regulations to reduce the idling of school buses and the level of fine particle emissions reduction for each type of regulated vehicle or equipment; and receive and review plans from all owners of diesel vehicles and equipment regarding compliance with retrofit requirements prescribed by the DEP.

Last, the committee substitute provides that the State Treasurer administer reimbursements for the cost of complying with these requirements. If the State Treasurer certifies that there are insufficient balances in the Diesel Risk Mitigation Fund in any given year, all retrofit and regulatory requirements under the committee substitute would be suspended.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

Assuming the passage of legislation authorizing a referendum to amend the State Constitution to reallocate CBT dedicated funds for the purposes outlined in the committee substitute, and assuming the referendum is approved, the OLS estimates that the committee substitute will not adversely affect General Fund balances. It will, however, reduce the amount of dedicated CBT revenues heretofore appropriated annually to the DEP for hazardous substance discharge site remediation. Under the referendum, the current 50 percent allocation of CBT dedicated revenues for site remediation will be reduced to 33 percent, with the remaining 17 percent going to the Diesel Risk Mitigation Fund over a ten year period. Thus, less money will be available for site remediation projects at the expense of the new program. In FY 2005, \$45.4 million in CBT funds was allocated for this purpose.

Based on FY 2005 revenue projections, the amended CBT allocation under the referendum would provide approximately \$15.5 million annually over the authorized 10 year period. Of this sum, \$1.15 million would be annually designated for administrative expenses, the DEP receiving \$900,000 and the Treasury Department receiving \$250,000. The referendum also provides for a one-time allocation of \$10 million, over and above the annual \$15 million dedication, from CBT monies dedicated for underground storage tank upgrades and remediation. Since this program has a substantial reserve balance, it should not be adversely affected by this allocation.

The **State Cost** estimate on the preceding page was calculated as follows: During committee deliberations on the substitute, the DEP estimated retrofitting reimbursement costs at \$85.7 million. This was based on the retrofitting of 30,400 vehicles and equipment. Although the DEP and the Treasury Department did not provide cost estimates for administrative responsibilities, the OLS estimates that the \$1.15 million provided under the constitutional amendments to the CBT dedication should be sufficient to meet most if not all program costs.

Hence, the **State Cost** estimate encompasses the DEP retrofit costs plus 10 years of administrative costs at \$1.15 million annually, and the \$10 million allocation from the underground storage tank dedication that will be used for other program costs. The OLS estimates that the average CBT dedication of \$15.5 million annually should be more than sufficient to cover these costs. It should be noted, however, that the annual CBT allocation could be substantially lower or higher depending on the total CBT revenues generated in any given year.

The OLS further notes that local governments or other public entities subject to the program should not be adversely affected as long as full retrofit reimbursement claims can be met. This contention is supported by the substitute's provision concerning the funding of such claims. It states that if claim reimbursement costs cannot be met due to insufficient CBT fund balances, affected jurisdictions are not required to comply with the program until sufficient CBT monies are collected for this purpose.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*  
*Senior Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

**SENATE, No. 1759**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED JUNE 24, 2004

**Sponsored by:**  
**Senator BOB SMITH**  
**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Establishes fine particle diesel emissions reduction program; establishes tax deduction for compliance; updates current diesel and bus programs; authorizes DOT oversight for truck routes; creates public outreach programs; appropriates \$24 million.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning regulation of emissions from vehicles and  
2 equipment powered by diesel engines, amending and supplementing  
3 various parts of statutory law, and making an appropriation.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) The Legislature finds and declares that the  
9 emissions of fine particles into the air pose an extraordinary health risk  
10 to the people of the State; that studies repeatedly have found links  
11 between exposure to fine particles, and health effects including  
12 premature death and increased incidents of asthma, allergies, and other  
13 breathing disorders; that, based on these studies, the number of  
14 premature deaths attributable to exposure to fine particles may exceed  
15 the annual number of homicides or motor vehicle accident fatalities in  
16 the State; that exhaust emissions from diesel-powered vehicles and  
17 equipment contribute substantially to the fine particle problem, and  
18 pose both cardiovascular and cancer risks; that the United States  
19 Environmental Protection Agency has classified diesel exhaust as likely  
20 to be carcinogenic to humans by inhalation at environmental  
21 exposures; and that the United States Environmental Protection  
22 Agency has also identified diesel particle matter and diesel exhaust  
23 organic gases as a mobile source air toxic.

24 The Legislature further finds and declares that, although some new  
25 diesel-powered vehicles and equipment operate more cleanly and may  
26 contribute less to air quality problems than their predecessors, diesel-  
27 powered trucks, buses, and off-road equipment tend to remain in  
28 service a long time, sometimes as long as 20 years or more; that unless  
29 the emissions from diesel-powered trucks, buses, and off-road  
30 equipment currently operating in the State are controlled, these trucks,  
31 buses, and off-road equipment will continue to emit high levels of fine  
32 particles and contribute to air pollution in the State for many years to  
33 come; that filters and other devices and cleaner burning fuels are  
34 available to reduce emissions from older diesel vehicles and  
35 equipment; that retrofitting diesel-powered vehicles with emissions  
36 reducing devices, operating these vehicles on cleaner burning fuel, or  
37 both, could significantly improve air quality; that although such  
38 requirements impose costs, the costs are relatively small when  
39 compared with the costs of the vehicles or equipment they update or  
40 the cost of the impact on the public health from the air pollution that  
41 the requirements abate; and that, by exercising discretion in matching  
42 technologies to vehicles and equipment, the cost of installing and using  
43 pollution-reducing devices and fuels can be minimized.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 The Legislature therefore determines that it is of vital importance  
2 to the health of the people of the State to reduce fine particle  
3 emissions from vehicles and equipment powered by diesel engines; and  
4 that this reduction can be accomplished by establishing a program to  
5 require, in a cost-effective manner, the use of the best available  
6 technologies for pollution reduction in public and private fleets of  
7 diesel-powered vehicles and equipment, establishing a fund to finance  
8 the costs to local government units, and assisting businesses and  
9 private entities to meet the costs of the program through tax  
10 incentives.

11

12 2. (New section) As used in P.L. , c. (C. ) (now before the  
13 Legislature as this bill):

14 "Apportioned vehicle" means an apportioned vehicle as defined  
15 under section 21 of P.L.1995, c.157 (C.39:3-6.11);

16 "Best available retrofit technology" means the equipment, devices  
17 or fuel, or any combination thereof, that, as determined by the  
18 Department of Environmental Protection, is appropriate for a certain  
19 on-road diesel vehicle or piece of off-road diesel equipment and may  
20 be used for a reasonable cost on the on-road diesel vehicle or a piece  
21 of off-road diesel equipment to achieve substantial reduction of fine  
22 particle emissions, and may include, but is not limited to, particle  
23 filters, diesel oxidation catalysts, flow through filters, and modified  
24 diesel fuel;

25 "Commercial bus" means an autobus subject to regulation under  
26 Title 48 of the Revised Statutes or a motor bus operated by, or under  
27 contract to, the New Jersey Transit Corporation pursuant to P.L.1979,  
28 c.150 (C.27:25-1 et seq.);

29 "Diesel apportioned vehicle" means an apportioned vehicle powered  
30 by a diesel engine;

31 "Diesel engine" means an internal combustion engine with  
32 compression ignition using diesel fuel, including the fuel injection  
33 system but excluding the exhaust system;

34 "Fine particle" means a particle emitted directly into the atmosphere  
35 from exhaust produced by the combustion of diesel fuel and having an  
36 aerodynamic diameter of 2.5 micrometers or less;

37 "Fine particle diesel emissions" means emissions of fine particles  
38 from an on-road diesel vehicle or from off-road diesel equipment;

39 "Local government unit" means any county or municipality, or any  
40 agency, instrumentality, authority or corporation of any county or  
41 municipality, including, but not limited to, sewerage, utility and  
42 improvement authorities, or any public body having local or regional  
43 jurisdiction over solid waste disposal, including solid waste  
44 management districts, or any political subdivision of the State,  
45 authority or agency authorized pursuant to law to own or operate  
46 sanitary landfill facilities or to provide for the environmentally sound

1 disposal of solid waste;

2 "Off-road diesel equipment" means any equipment or vehicle  
3 powered by a diesel engine that is used primarily for construction,  
4 loading, and other off-road purposes and, when in use, is not  
5 commonly operated on a roadway except when used for roadway  
6 construction and repair, including, but not necessarily limited to,  
7 rollers, scrapers, excavators, rubber tire loaders, crawler/dozers, and  
8 off-highway trucks. The term "off-road diesel equipment" includes  
9 equipment and vehicles that are not used primarily for transportation  
10 and are considered off-road equipment and vehicles but, for purposes  
11 of moving the equipment and vehicles from place to place on the  
12 roadways of the State, have been registered with the New Jersey  
13 Motor Vehicle Commission;

14 "On-road diesel vehicle" means any vehicle, other than a private  
15 passenger automobile, that is powered by a diesel engine and operated  
16 on the roadways of the State, and shall include, but need not be limited  
17 to, diesel buses, diesel-powered motor vehicles, and heavy-duty diesel  
18 trucks as defined under section 2 of P.L.1995, c.157 (C.39:8-60);

19 "Regulated fleet" means any fleet of 10 or more regulated on-road  
20 diesel vehicles, registered or operated in the State and owned, leased,  
21 or contracted by any private or public entity;

22 "Regulated off-road diesel equipment" means any off-road diesel  
23 equipment operating in the State and designated as regulated off-road  
24 diesel equipment pursuant to section 4 of P.L. , c. (C. )  
25 (now before the Legislature as this bill);

26 "Regulated on-road diesel vehicle" means any on-road diesel vehicle  
27 registered and operating in the State and designated as a regulated on-  
28 road diesel vehicle pursuant to section 4 of P.L. , c. (C. )  
29 (now before the Legislature as this bill), and shall include, but need  
30 not be limited to, commercial buses, school buses, sanitation vehicles,  
31 on-road diesel vehicles greater than 14,000 pounds gross vehicle  
32 weight, apportioned vehicles registered, or with in-jurisdiction miles,  
33 in the State diesel bus, and any vehicles subject to the provisions of  
34 P.L.1995, c.157 (C.39:8-59 et al.);

35 "School bus" means a school bus as defined under R.S.39:1-1; and

36 "Technology" means any equipment, device, or fuel used alone or  
37 in combination to achieve the reductions in emissions required for best  
38 available retrofit technology.

39

40 3. (New section) The Department of Environmental Protection  
41 and the Department of Health and Senior Services shall develop and  
42 implement a public education and outreach program to alert and  
43 inform the public at large about the public health risks associated with  
44 fine particle emissions and other pollution from vehicles and equipment  
45 powered by diesel engines. Information shall be presented in a multi-  
46 lingual format and be made available to the sight and hearing impaired.

1 4. (New section) a. No later than 270 days after the effective date  
2 of P.L. , c. (C. ) (now before the Legislature as this bill),  
3 the Department of Environmental Protection shall adopt, pursuant to  
4 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
5 seq.), rules and regulations to establish and implement a fine particle  
6 diesel emissions reduction program.

7 The overall goal of the program shall be a 20-percent reduction of  
8 emissions from regulated on-road diesel vehicles and regulated off-  
9 road diesel equipment over the ten years after the date of enactment  
10 of P.L. , c. (C. ) (now before the Legislature as this bill),  
11 with a focus on the reduction of fine particle emissions from these  
12 vehicles. The program shall require best available retrofit technologies  
13 be used by:

14 (1) Regulated fleets of commercial buses, sanitation vehicles,  
15 school buses with diesel engines, diesel apportioned vehicles  
16 registered, or with in-jurisdiction miles, in the State, and on-road  
17 diesel vehicles greater than 14,000 pounds gross vehicle weight that  
18 are types and classes of vehicles equivalent to the regulated diesel  
19 apportioned vehicles whether apportioned vehicles or some other class  
20 of vehicle;

21 (2) Diesel apportioned vehicles registered, or with in-jurisdiction  
22 miles, in the State, that may not be part of a regulated fleet; and

23 (3) Off-road diesel equipment designated as regulated off-road  
24 diesel equipment under the rules and regulations adopted pursuant to  
25 this subsection.

26 b. The rules and regulations adopted pursuant to subsection a. of  
27 this section shall set forth:

28 (1) the designation, by vehicle or equipment types and class, of on-  
29 road diesel vehicles as regulated on-road diesel vehicles and off-road  
30 diesel equipment as regulated off-road diesel equipment, provided that  
31 all designations made pursuant to this paragraph shall be designed to  
32 produce substantial emissions reductions at a reasonable cost, and,  
33 provided that the rules and regulations shall designate as regulated on-  
34 road diesel vehicles commercial buses, sanitation vehicles, school  
35 buses with diesel engines, diesel apportioned vehicles registered, or  
36 with in-jurisdiction miles, in the State, and on-road diesel vehicles  
37 greater than 14,000 pounds gross vehicle weight that are types and  
38 classes of vehicles equivalent to the regulated diesel apportioned  
39 vehicles;

40 (2) the designation of best available retrofit technologies,  
41 including, but not limited to, specific types of fuel or equipment, for  
42 regulated on-road diesel vehicles and regulated off-road diesel  
43 equipment and the requirements for their use on regulated fleets and  
44 regulated off-road equipment, including, but not limited to, the  
45 designation of which technologies are to be used on, or in, which  
46 types, models, or other classification of vehicles or equipment,

- 1 provided that the designation made produces substantial emissions  
2 reductions at a reasonable cost;
- 3 (3) the requirements for developing the regulated fleet retrofit  
4 plans to be submitted pursuant to section 7 of P.L. , c. (C. )  
5 (now before the Legislature as this bill, including, but not limited to:  
6 (i) a description of the components that, at a minimum, are to be  
7 included in regulated fleet retrofit plans required to be prepared and  
8 submitted to the department pursuant to section 7 and consistent with  
9 the provisions of section 5 of P.L. , c. (C. )(now before the  
10 Legislature as this bill);  
11 (ii) department guidelines for developing an inventory of regulated  
12 on-road diesel vehicles and the regulated fleet retrofit plan,  
13 determining which vehicles in the regulated fleet are regulated on-road  
14 diesel vehicles and the technology required for each vehicle, and  
15 providing information concerning obtaining the required technologies;  
16 and  
17 (iii) the procedures for contacting the department with questions  
18 about the requirements of and compliance with the provisions of P.L.,  
19 c. (C. ) (now before the Legislature as this bill), and obtaining  
20 any technical guidance needed in preparing the regulated fleet retrofit  
21 plans;
- 22 (4) the requirement that in accordance with the relevant regulated  
23 fleet retrofit plan, each owner, operator, or lessee of a regulated fleet  
24 install, operate, and maintain the appropriate best available retrofit  
25 technology on its regulated on-road diesel vehicles, as determined by  
26 the department, and that only the requirements provided for in a  
27 regulated fleet retrofit plan shall be required of owners, operators or  
28 lessees of regulated on-road diesel vehicles;
- 29 (5) any additional requirements or provisions that may pertain to  
30 the regulation of diesel apportioned vehicles pursuant to section 10 or  
31 any other provisions of P.L. , c. (C. ) (now before the  
32 Legislature as this bill);
- 33 (6) any additional requirements for regulated off-road diesel  
34 equipment, including, but not limited to:  
35 (i) department guidelines for developing an inventory of regulated  
36 off-road diesel equipment, determining which pieces of equipment are  
37 regulated off-road diesel equipment and the technology required for  
38 each piece of equipment, and information concerning obtaining the  
39 required technologies; and  
40 (ii) procedures for contacting the department with questions about  
41 the requirements of and compliance with the provisions of P.L. ,  
42 c. (C. ) (now before the Legislature as this bill), and obtaining  
43 any technical guidance needed in complying with those provisions;
- 44 (7) provisions to target and prioritize reduction of emissions of fine  
45 particles in densely populated urban areas of the State;
- 46 (8) guidelines and procedures for the provision of grants to county

1 and municipal local governments from the "Diesel Risk Mitigation  
2 Fund," established under section 21 of P.L. , c. (C. ) (now  
3 before the Legislature as this bill);

4 (9) provisions to ensure that the best available retrofit technology  
5 is installed correctly and is operating effectively, that the owners,  
6 operators, and lessees of regulated fleets and regulated off-road diesel  
7 equipment receive certification that required retrofits are performed  
8 and functioning correctly, and that recourse is available to the owners,  
9 operators, and lessees to correct any errors in retrofitting or the  
10 performance of the retrofit equipment;

11 (10) a penalty schedule for violations, providing for civil  
12 administrative penalties of up to \$1,000 per day per regulated on-road  
13 diesel vehicle or piece of regulated off-road diesel equipment; and

14 (11) any other provisions necessary for the department to establish,  
15 implement, and enforce the program established pursuant to subsection  
16 a. of this section.

17 c. The Department of Environmental Protection shall consult with  
18 the Department of Education, the New Jersey Motor Vehicle  
19 Commission, and the Department of Transportation when developing  
20 the provisions of the rules and regulations to be adopted pursuant to  
21 subsection a. of this section concerning school buses with diesel  
22 engines, and shall incorporate the use of any available technologies to  
23 reduce fine particle diesel emissions from school buses, including but  
24 not limited to, requiring the use of air filters, positive pressure  
25 systems, alternative tail pipe designs, modified diesel fuels, negotiating  
26 the replacement of school buses powered by diesel engines with school  
27 buses powered by engines with lower fine particle emissions, and other  
28 innovative approaches to reducing fine particle diesel emissions.

29 d. The Department of Environmental Protection shall consult with  
30 the New Jersey Motor Vehicle Commission and the New Jersey  
31 Transit Corporation when developing the provisions of the rules and  
32 regulations to be adopted pursuant to subsection a. of this section  
33 concerning commercial buses. The department shall incorporate  
34 wherever possible the use of improved pollution control or fuels other  
35 than conventional diesel fuel by the New Jersey Transit Corporation  
36 pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22), but may  
37 require additional controls or fuel use for commercial buses operated  
38 by, or under contract to, the New Jersey Transit Corporation. No  
39 provision of section 22 of P.L.1984, c.73 (C.27:1B-22) shall be  
40 construed to supersede, or exempt the New Jersey Transit Corporation  
41 from, any requirements the Department of Environmental Protection  
42 may establish pursuant to this section.

43

44 5. (New section) Notwithstanding the provisions of any section of  
45 P.L. , c. (C. ) (now before the Legislature as this bill), or any  
46 rule or regulation adopted pursuant thereto to the contrary, the use

1 of the best available retrofit technology shall not be required on any  
2 regulated on-road diesel vehicles manufactured to meet a federal  
3 standard of 0.01 grams per brake-horsepower-hour of fine particle  
4 emissions, or on any regulated off-road diesel equipment that emits no  
5 more than 0.015 grams per brake-horsepower-hour of fine particle  
6 emissions.

7  
8 6. (New section) The Department of Environmental Protection  
9 shall develop and implement, in consultation with the Department of  
10 Transportation and the New Jersey Motor Vehicle Commission, a  
11 public outreach program to notify and inform the owners, operators,  
12 and lessees of regulated fleets and the owners, operators, and lessees  
13 of regulated off-road diesel equipment under the provisions of P.L. ,  
14 c. (C. ) (now before the Legislature as this bill) and the rules  
15 and regulations adopted pursuant thereto. In developing and  
16 implementing the program, the Department of Environmental  
17 Protection shall include in this notification the owners, operators, and  
18 lessees of unregistered off-road diesel equipment and out-of-State  
19 companies that may provide off-road diesel equipment for operation  
20 in the State.

21  
22 7. (New section) a. (1) No later than 180 days after the effective  
23 date of the rules and regulations adopted pursuant to section 4 of P.L.,  
24 c. (C. )(now before the Legislature as this bill), each owner,  
25 operator, or lessee of a regulated fleet shall submit to the Department  
26 of Environmental Protection an inventory of the on-road diesel  
27 vehicles in the fleet, an indication by the owner, operator, or lessee of  
28 the vehicles the owner, operator, or lessee determines are regulated  
29 on-road diesel vehicles, and a regulated fleet retrofit plan for the  
30 regulated on-road diesel vehicles in the fleet. Any owner, operator, or  
31 lessee of a regulated fleet who commences operation of a regulated  
32 fleet after the effective date of the rules and regulations adopted  
33 pursuant to subsection a. of section 4 of P.L. , c. (C. ) (now  
34 before the Legislature as this bill) shall submit the required materials  
35 no later than 180 days after the date on which the owner, operator, or  
36 lessee commenced operation of the regulated fleet. Any regulated  
37 fleet retrofit plan shall include a timetable for retrofitting regulated on-  
38 road diesel vehicles in the regulated fleet and commencing the use of  
39 any fuel required to be used in the regulated on-road diesel vehicle by  
40 rule or regulation.

41 (2) Any owner, operator, or lessee of a regulated fleet may  
42 coordinate or combine the development of a regulated fleet retrofit  
43 plan with the development of the regulated fleet retrofit plan of any  
44 other owner, operator, or lessee of a regulated fleet, or a group of  
45 owners, operators, or lessees of regulated fleets, and with the guidance  
46 of the department, submit a combined regulated fleet retrofit plan.

1 (3) The Department of Environmental Protection shall provide any  
2 technical guidance needed in preparing the regulated fleet retrofit plans  
3 required pursuant to this section.

4 (4) If the owner, operator, or lessee of any regulated on-road  
5 diesel vehicle determines that the best available retrofit technology at  
6 the levels designated by the rules and regulations adopted pursuant to  
7 subsection a. of section 4 of P.L. , c. (C. ) (now before  
8 the Legislature as this bill) is not feasible for a specific regulated on-  
9 road diesel vehicle, or the cost to comply with the requirements of the  
10 rules and regulations would be prohibitive for a specific regulated  
11 fleet, the owner or operator of the regulated fleet may document in the  
12 regulated fleet retrofit plan the use of the required best available  
13 retrofit technology is not feasible or the economic hardship the  
14 requirement represents, and request approval to use a lower best  
15 available retrofit technology level, or an exemption from the best  
16 available retrofit technology requirement. The owner, operator, or  
17 lessee of the regulated fleet may also propose and negotiate an  
18 enforceable commitment to retire the vehicle or equipment and replace  
19 it with a vehicle or equipment, or replace the engine of the vehicle or  
20 equipment, with an engine certified to fine particle emission levels at  
21 or below the emission levels that would have been achieved by the use  
22 of the required best available retrofit technology.

23 (5) In assisting schools, public school districts, private schools, and  
24 companies providing school bus service to any school in the State with  
25 developing regulated fleet retrofit plans to comply with this section,  
26 the Department of Environmental Protection shall give every  
27 consideration to the requirements of the contractual and leasing  
28 arrangements between the schools, public school districts, private  
29 schools, or companies providing school bus service to any school in  
30 establishing retrofit and other requirements and a timetable for  
31 compliance with the provisions of P.L. , c. (C. ) (now before  
32 the Legislature as this bill).

33 b. The Department of Environmental Protection shall review, and  
34 approve or disapprove all parts of any regulated fleet retrofit plan  
35 submitted pursuant to paragraph (1) of subsection a. of this section no  
36 later than one year after the submittal of the regulated fleet retrofit  
37 plan. The department may approve or disapprove any regulated fleet  
38 retrofit plan in part, and require the owner, operator, or lessee of the  
39 regulated fleet to comply with the approved part or parts of the  
40 regulated fleet retrofit plan prior to final approval of other parts of the  
41 regulated fleet retrofit plan. Whenever the department disapproves a  
42 regulated fleet retrofit plan or a part thereof, the department shall  
43 provide a detailed explanation to the owner, operator, or lessee of the  
44 regulated fleet indicating the deficiencies of the disapproved regulated  
45 fleet retrofit plan or part thereof, and the recommendations of the  
46 department to correct the deficiencies.

1 The owner, operator, or lessee of a regulated fleet or a group of  
2 owners, operators, or lessees of regulated fleet who receive  
3 disapproval of a regulated fleet retrofit plan, or any part thereof, shall  
4 make the recommended revisions to the disapproved regulated fleet  
5 retrofit plan or the disapproved part thereof within 60 days after the  
6 receipt of the disapproval notification from the department, and submit  
7 the final revised regulated fleet retrofit plan, or the final revised part  
8 that had been disapproved and revised, to the department. If the  
9 department does not take further action within 30 days after receipt of  
10 the final revised regulated fleet retrofit plan or the final revised part  
11 that had been disapproved, the regulated fleet retrofit plan or the part  
12 that had been disapproved and revised shall be considered approved  
13 and in effect. If the department finds within 30 days after the receipt  
14 of the final revised regulated fleet retrofit plan that the owner,  
15 operator or lessee has not complied with the recommended revisions,  
16 the department may take further action to require compliance with this  
17 subsection.

18 The date on which all parts of a regulated fleet retrofit plan have  
19 been approved shall serve as the anniversary date of the regulated fleet  
20 retrofit plan approval for the purposes of subsection c. of this section.  
21 At any time during the review process or prior to final approval of a  
22 regulated fleet retrofit plan, or the part thereof in question, the  
23 department may contact and enter into negotiations with the owner,  
24 operator, or lessee of the regulated fleet to resolve discrepancies  
25 between the rules and regulations adopted pursuant to subsection a. of  
26 section 4 of P.L. , c. (C. )(now before the Legislature as this  
27 bill), the submitted regulated fleet retrofit plan, and the requests by the  
28 owner, operator or lessee pursuant to paragraph (5) of subsection a.  
29 of this section.

30 c. On each annual anniversary of the date of the regulated fleet  
31 retrofit plan approval, each owner, operator, or lessee of a regulated  
32 fleet shall submit a supplement to the regulated fleet retrofit plan  
33 indicating whether any changes to the regulated fleet have been made,  
34 including, but not limited to, the purchase of additional or replacement  
35 on-road diesel vehicles, since the submittal date of the original  
36 regulated fleet retrofit plan, or the most recent supplement, as  
37 applicable. The department shall review, and approve or disapprove  
38 all parts of the supplement no later than one year after its submittal  
39 date. The department may approve or disapprove any supplement to  
40 any regulated fleet retrofit plan in part, and require the owner,  
41 operator, or lessee of the regulated fleet to comply with the approved  
42 part or parts of the supplement prior to final approval of other parts  
43 of the supplement.

44 Whenever the department disapproves a supplement to a regulated  
45 fleet retrofit plan or a part thereof, the department shall provide a  
46 detailed explanation to the owner, operator, or lessee of the regulated

1 fleet indicating the deficiencies of the disapproved supplement or part  
2 thereof, and the recommendations of the department to correct the  
3 deficiencies. The owner, operator, or lessee of a regulated fleet or a  
4 group of owners, operators, or lessees of regulated fleets who receive  
5 disapproval of a supplement to a regulated fleet retrofit plan, or a part  
6 thereof, shall make the recommended revisions to the supplement  
7 within 60 days after the receipt of the disapproval notification from the  
8 department, and submit the final revised supplement, or the revised  
9 part that had been disapproved, to the department. If the department  
10 does not take further action within 30 days after receipt of the final  
11 revised supplement, or the revised part that had been disapproved, the  
12 revised supplement to the regulated fleet retrofit plan or the revised  
13 part that had been disapproved shall be considered approved and in  
14 effect. If the department finds within 30 days after the receipt of the  
15 final revised supplement or the final revised part that had been  
16 disapproved, that the owner, operator or lessee has not complied with  
17 the recommended revisions, the department may take further action to  
18 require compliance with this subsection.

19 d. Any part of a regulated fleet retrofit plan approved pursuant to  
20 subsection b. of this section, or any part of a supplement thereto,  
21 approved pursuant to subsection c. of this section, shall provide  
22 specific dates by which specific regulated on-road diesel vehicles are  
23 to be equipped with, or are to use, the best available retrofit  
24 technology specified in the regulated fleet retrofit plan, or supplement  
25 thereto, except that no owner, operator, or lessee of a regulated fleet  
26 shall be required to retrofit any regulated on-road diesel vehicle with  
27 the required best available retrofit technology any earlier than 180  
28 days after the approval date of the part of the regulated fleet retrofit  
29 plan or supplement thereto in which the best available retrofit  
30 technology is required for the vehicle. In the case of a regulated fleet  
31 owned, operated, or leased by a local government unit, no retrofit shall  
32 be required to be in place prior to the receipt by the local government  
33 unit of a grant from the "Diesel Risk Mitigation Fund" established  
34 under section 21 of P.L. 2011, c. 100 (now before the Legislature as  
35 this bill). No enforcement action may be taken against the owner of  
36 a regulated fleet or the operator of a regulated on-road diesel vehicle  
37 from a regulated fleet until after the date the best available retrofit  
38 technology is required to be installed on, or used in, the regulated on-  
39 road diesel vehicle pursuant to this section.

40 e. Each owner of a regulated fleet shall keep a record listing each  
41 regulated on-road diesel vehicle or piece of regulated off-road diesel  
42 equipment, as appropriate, in the fleet with the following identifying  
43 information and records for the vehicle or piece of equipment: (i) the  
44 license, identification number, or registration information; (ii) vehicle  
45 type, engine manufacturer, engine model and model year; (iii) the  
46 description of any installed diesel emissions control system or best

1 available retrofit technology, its serial number, manufacturer, model,  
2 best available retrofit technology level designation, and installation  
3 date; (iv) maintenance records for the emissions control system or  
4 best available retrofit technology; (v) the records of the two most  
5 recent calendar years of fuel purchases for each vehicle or piece of  
6 equipment required to use modified fuel or fuel additives under the  
7 approved regulated fleet retrofit plan or supplement thereto; (vi) the  
8 original, approved regulated fleet retrofit plan, any variance requests,  
9 exemption requests, and approvals or disapprovals of the requests,  
10 plan or supplements. The Department of Environmental Protection,  
11 the Department of Transportation, and the New Jersey Motor Vehicle  
12 Commission shall have the authority to inspect these records upon  
13 request.

14

15 8. (New section) No regulated on-road diesel vehicle required to  
16 use best available retrofit technology by a certain date pursuant to the  
17 approved regulated fleet retrofit plan, part thereof, approved  
18 supplement thereto, or part thereof, may be operated in the State after  
19 that date without the required best available retrofit technology  
20 installed or in use in the regulated on-road diesel vehicle.

21

22 9. (New section) a. On and after January 1, 2009, no regulated  
23 off-road diesel equipment may be operated in the State, or be issued  
24 any in-transit, county, municipal, or State vehicle registration for  
25 operation on any roadway of the State, or have its vehicle registration  
26 renewed, without verification of compliance with the requirements of  
27 P.L. , c. (C. ) (now before the Legislature as this bill) and  
28 the applicable rules and regulations adopted pursuant thereto. Any  
29 person who owns, leases, or intends to operate any regulated off-road  
30 diesel equipment in the State shall obtain the necessary verification of  
31 compliance from the Department of Environmental Protection prior to  
32 leasing or operating any regulated off-road diesel equipment in the  
33 State on and after January 1, 2009.

34 b. As soon as practicable after the date of enactment of P.L. ,  
35 c. (C. ), the New Jersey Motor Vehicle Commission and the  
36 Department of Transportation shall provide notice of the requirements  
37 of P.L. , c. (C. ) to any person issued any in-transit, county,  
38 municipal, or State vehicle registration for operation on any roadway  
39 of the State, or due for renewal of such vehicle registration, or any  
40 other person leasing or operating off-road diesel equipment in the  
41 State that the commission or Department of Transportation may be  
42 aware of through other means.

43 c. Each owner, operator, or lessee of regulated off-road diesel  
44 equipment shall keep a record listing each piece of regulated off-road  
45 diesel equipment, as appropriate, with the following identifying  
46 information and records for the vehicle or piece of equipment: (i) the

1 license, identification number, or registration information; (ii) vehicle  
2 or equipment type, engine manufacturer, engine model and model year;  
3 (iii) the description of any installed diesel emissions control system or  
4 best available retrofit technology, its serial number, manufacturer,  
5 model, best available retrofit technology level designation, and  
6 installation date; (iv) maintenance records for the emissions control  
7 system or best available retrofit technology; (v) the records of the two  
8 most recent calendar years of fuel purchases for each vehicle or piece  
9 of equipment required to use modified fuel or fuel additives under the  
10 approved regulated fleet retrofit plan or supplement thereto; (vi) the  
11 original, approved regulated fleet retrofit plan, any variance requests,  
12 exemption requests, and approvals or disapprovals of the requests,  
13 plan or supplements. The Department of Environmental Protection,  
14 the Department of Transportation, and the New Jersey Motor Vehicle  
15 Commission shall have the authority to inspect these records upon  
16 request.

17 d. The Department of Environmental Protection, the New Jersey  
18 Motor Vehicle Commission, the Department of Transportation, the  
19 Superintendent of State Police, and any State, county, or municipal  
20 law enforcement officer shall have the authority to enter upon any  
21 property where off-road diesel equipment is located or is being  
22 operated, and inspect any off-road diesel equipment in the State and  
23 the records maintained in connection therewith, to ascertain and  
24 enforce compliance with this section and any other provisions of P.L.,  
25 c. (C. ) (now before the Legislature as this bill) and the  
26 applicable rules and regulations adopted pursuant thereto. The  
27 inspection may include, but shall not necessarily be limited to,  
28 verifying records maintained on the equipment, the installation of the  
29 required retrofits, or the use of the required fuel in the equipment.  
30 Information concerning the compliance of the equipment with the  
31 requirements of the fine particle diesel emissions reduction program  
32 established pursuant to P.L. , c. (C. )(now before the  
33 Legislature as this bill) shall be forwarded to the Department of  
34 Environmental Protection.

35  
36 10. (New section) a. On and after January 1, 2009, no diesel  
37 apportioned vehicle registered in the State, or required to pay a  
38 percentage of a registration or related fees to the State because of  
39 vehicle miles operated in the State, may be registered or operate in the  
40 State without verification of compliance with the requirements of P.L.,  
41 c. (C. )(now before the Legislature as this bill) and the  
42 applicable rules and regulations adopted pursuant thereto. Any diesel  
43 apportioned vehicle that is part of a regulated fleet shall comply with  
44 this subsection under the regulated fleet retrofit plan developed and  
45 submitted pursuant to section 7 of P.L. , c. (C. )(now  
46 before the Legislature as this bill), and pursuant to the requirements of

1 the regulated fleet retrofit plan, may be required to comply with the  
2 requirements of this subsection before January 1, 2009.

3 b. If the owner, operator, or lessee of any diesel apportioned  
4 vehicle that is not part of a regulated fleet determines that the best  
5 available retrofit technology at the levels designated by the rules and  
6 regulations adopted pursuant to subsection a. of section 4 of P.L. ,  
7 c. (C. )(now before the Legislature as this bill) is not  
8 feasible for a specific diesel apportioned vehicle or the cost to comply  
9 with the requirements of the rules and regulations would be prohibitive  
10 for the specific owner, operator, or lessee of the diesel apportioned  
11 vehicle, the owner, operator, or lessee of the diesel apportioned  
12 vehicle may document to the department that the use of the required  
13 best available retrofit technology is not feasible or the requirement  
14 represents a serious economic hardship, and may request approval to  
15 use a lower best available retrofit technology level, or an exemption  
16 from the best available retrofit technology requirement. The owner,  
17 operator, or lessee of the diesel apportioned vehicle may also propose  
18 and negotiate an enforceable commitment to retire the vehicle and  
19 replace it with a vehicle, or replace the engine of the vehicle, with an  
20 engine certified to fine particle emission levels at or below the  
21 emission levels that would have been achieved by the use of the  
22 required best available retrofit technology.

23 c. The New Jersey Motor Vehicle Commission and the Department  
24 of Transportation, in consultation with the Department of  
25 Environmental Protection, shall adopt rules and regulations pursuant  
26 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
27 et seq.) to provide for compliance with the requirements of subsection  
28 a. this section.

29

30 11. (New section) On or after January 1, 2010, the State shall not  
31 award a contract to the owner or operator of a regulated fleet who has  
32 not complied with the requirements of P.L. , c. (C. )(now  
33 before the Legislature as this bill) and the terms of any approved  
34 regulated fleet retrofit plan of the regulated fleet, any supplements  
35 thereto, and the approved parts thereof, or any person operating  
36 regulated off-road diesel equipment who has not complied with the  
37 provisions of section 9 of P.L. , c. (C. )(now before the  
38 Legislature as this bill).

39

40 12. (New section) Notwithstanding any other provision of  
41 P.L.1995, c.157, or any rule or regulation adopted pursuant thereto,  
42 to the contrary, the New Jersey Motor Vehicle Commission, the  
43 Department of Law and Public Safety, the Department of  
44 Transportation, and any local or State law enforcement officer are  
45 authorized to include in a roadside inspection of a diesel bus, diesel-  
46 powered motor vehicle, heavy-duty diesel truck or other diesel-

1 powered motor vehicle as defined pursuant to section 2 of P.L.1995,  
2 c.157 (C.39:8-60), an inspection of the vehicle for compliance with the  
3 requirements of the fine particle diesel emissions reduction program,  
4 established pursuant to P.L. , c. (C. )(now before the  
5 Legislature as this bill), including, but not limited to, verifying records  
6 maintained on the vehicle pursuant to section 7 of P.L. , c. (C. )  
7 (now before the Legislature as this bill), the installation of the required  
8 retrofits, or the use of the required fuel in the vehicle. Information  
9 concerning the compliance of the vehicle with the requirements of the  
10 fine particle diesel emissions reduction program established pursuant  
11 to P.L. , c. (C. )(now before the Legislature as this bill) shall  
12 be forwarded to the Department of Environmental Protection.

13

14 13. (New section) The Department of Environmental Protection,  
15 the Department of Law and Public Safety, and the Department of  
16 Transportation, and the New Jersey Motor Vehicle Commission are  
17 authorized to take whatever action is necessary to enforce the  
18 requirements of the fine particle diesel emissions reduction program  
19 established pursuant to P.L. , c. (C. )(now before the  
20 Legislature as this bill), which actions shall include, but need not be  
21 limited to, inspection of the regulated on-road diesel vehicles in  
22 regulated fleets at the place of business of the owner or wherever the  
23 owner, operator, or lessee of a regulated fleet houses the regulated on-  
24 road diesel vehicles and regulated off-road diesel equipment in the  
25 regulated fleet. The inspection may include, but is not necessarily  
26 limited to, verifying records maintained on the vehicle pursuant to  
27 section 7 of P.L. , c. (C. )(now before the Legislature as this  
28 bill), the installation of the required retrofits, or the use of the required  
29 fuel in the vehicle. Information concerning the compliance of the  
30 vehicle with the requirements of the fine particle diesel emissions  
31 reduction program established pursuant to P.L. , c. (C. )(now  
32 before the Legislature as this bill) shall be forwarded to the  
33 Department of Environmental Protection.

34

35 14. (New section) a. The Department of Environmental  
36 Protection, the New Jersey Motor Vehicle Commission, the  
37 Department of Law and Public Safety, and the Department of  
38 Transportation shall each review any rules and regulations each  
39 department or the commission have adopted pursuant to P.L.1995,  
40 c.157 (C.39:8-59 et al.) for the implementation and enforcement of the  
41 periodic inspection program and roadside inspection program for  
42 diesel buses, heavy duty diesel trucks, and other diesel-powered motor  
43 vehicles, established pursuant to P.L.1995, c.157 (C.39:8-59 et al.).  
44 Each department and the commission shall revise these rules and  
45 regulations, wherever appropriate, to ensure the proper coordination  
46 with and, if appropriate, integration of, these programs with the

1 implementation and enforcement of the fine particle diesel emissions  
2 reduction program established pursuant P.L. , c. (C. )(now  
3 before the Legislature as this bill). The revisions may include, but  
4 shall not necessarily be limited to, establishing a training and  
5 certification program for persons who install best available retrofit  
6 technologies onto regulated on-road diesel vehicles and persons who  
7 test emissions or make emissions-related repairs on the vehicles, and  
8 requiring only persons trained and certified under the program to  
9 undertake the installation of best available retrofit technologies onto  
10 regulated on-road diesel vehicles or test emissions or make emissions-  
11 related repairs on the vehicles, as applicable.

12 b. As part of the review and revision required under subsection a.  
13 of this section, the Department of Environmental Protection shall  
14 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,  
15 c.410 (C.52:14B-1 et seq.) and as part of the rules and regulations  
16 adopted pursuant to section 3 of P.L.1995, c.157 (C.39:8-61), rules  
17 and regulations establishing exhaust emissions standards and test  
18 methods for regulated on-road diesel vehicles that have complied with  
19 the provisions of P.L. , c. (C. )(now before the Legislature as  
20 this bill).

21  
22 15. (New section) No later than three years after the effective date  
23 of P.L. , c. (C. )(now before the Legislature as this bill), the  
24 Department of Transportation shall adopt, pursuant to the  
25 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et  
26 seq.), any rules or regulations necessary for the enforcement of the  
27 provisions of P.L. , c. (C. )(now before the Legislature as  
28 this bill), including, but not limited to, a penalty schedule for  
29 violations, that are consistent with the rules and regulations adopted  
30 by the Department of Environmental Protection pursuant to section 4  
31 of P.L. , c. (C. )(now before the Legislature as this bill).

32  
33 16. (New section) No later than three years after the effective date  
34 of P.L. , c. (C. )(now before the Legislature as this bill), the  
35 New Jersey Motor Vehicle Commission shall adopt, pursuant to the  
36 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et  
37 seq.), any rules or regulations necessary for the enforcement of the  
38 provisions of P.L. , c. (C. )(now before the Legislature as  
39 this bill), including, but not limited to, a penalty schedule for  
40 violations, that are consistent with the rules and regulations adopted  
41 by the Department of Environmental Protection pursuant to section 4  
42 of P.L. , c. (C. )(now before the Legislature as this bill).

43  
44 17. (New section) No later than three years after the effective date  
45 of P.L. , c. (C. )(now before the Legislature as this bill), the  
46 Department of Law and Public Safety shall adopt, pursuant to the

1 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et  
2 seq.), any rules or regulations necessary for the enforcement of the  
3 provisions of P.L. , c. (C. )(now before the Legislature as  
4 this bill), including, but not limited to, a penalty schedule for  
5 violations, that are consistent with the rules and regulations adopted  
6 by the Department of Environmental Protection pursuant to section 4  
7 of P.L. , c. (C. )(now before the Legislature as this bill).  
8

9 18. (New section) The Department of Education, in consultation  
10 with the Department of Environmental Protection, the Department of  
11 Health and Human Services, and the New Jersey Motor Vehicle  
12 Commission, shall adopt, pursuant to the "Administrative Procedures  
13 Act," P.L.1968, c.410 (c.52:14B-1 et seq.), rules and regulations  
14 concerning the idling and queuing of school buses and enforcement of  
15 violations thereof, and minimizing the exposure of children to fine  
16 particle and other diesel emissions, that are consistent with the rules  
17 and regulations adopted by the Department of Environmental  
18 Protection pursuant to section 4 of P.L. , c. (C. )(now  
19 before the Legislature as this bill).  
20

21 19. (New section) The Department of Law and Public Safety, in  
22 consultation with local law enforcement, the Department of Education,  
23 the Department of Environmental Protection, the Department of  
24 Transportation, and the New Jersey Motor Vehicle Commission, shall  
25 adopt, pursuant to the "Administrative Procedures Act," P.L.1968,  
26 c.410 (c.52:14B-1 et seq.), any rules or regulations necessary to  
27 facilitate and ensure the enforcement of the rules and regulations  
28 adopted pursuant to section 18 of P.L. , c. (C. )(now before  
29 the Legislature as this bill).  
30

31 20. (New section) a. On or after January 1, 2010, the Department  
32 of Environmental Protection, in conjunction with the Department of  
33 Education, the Department of Health and Senior Services, the  
34 Department of Transportation, and the New Jersey Motor Vehicle  
35 Commission, shall examine the progress and the efficacy of the  
36 programs required pursuant to P.L. , c. (C. )(now before the  
37 Legislature as this bill). The Department of Environmental Protection  
38 shall determine the need for, the environmental and health benefits  
39 from, and the feasibility of, further regulation of diesel-powered  
40 vehicles and equipment operated in the State and the use of best  
41 available retrofit technology by vehicles or equipment in addition to  
42 those required pursuant to P.L. , c. (C. )(now before the  
43 Legislature as this bill), and the reduction of fine particle emissions  
44 from these vehicles and equipment that could be attained by increased  
45 or revised regulation.

46 b. No later than January 1, 2011, the Department of Environmental

1 Protection shall submit its findings to the Governor and the  
2 Legislature, with any recommendations for legislation that may be  
3 required to address the findings.

4  
5 21. (New section) There is created in the Department of  
6 Environmental Protection a special nonlapsing fund to be known as the  
7 "Diesel Risk Mitigation Fund," hereinafter referred to as "the fund,"  
8 for the purposes of financing any costs to any local government unit  
9 incurred by complying with the requirements of P.L. , c. (C. )  
10 (now before the Legislature as this bill), and administrative costs  
11 incurred by the Department of Environmental Protection in the  
12 establishment and implementation of P.L. , c. (C. )(now before  
13 the Legislature as this bill). The department shall administer the fund  
14 with whatever moneys are deposited in the fund and made available to  
15 it by law. The department shall establish criteria and procedures for  
16 the allocation of moneys in the fund to eligible entities for eligible  
17 costs.

18  
19 22. (New section) a. Receipts from sales of technology, other than  
20 fuel, purchased to comply with retrofits required for regulated diesel  
21 vehicles or regulated off-road diesel equipment in a regulated fleet  
22 retrofit plan or supplement thereto, approved pursuant to section 4 of  
23 P.L. , c. (C. )(now before the Legislature as this bill), are  
24 exempt from the tax imposed under the "Sales and Use Tax Act,"  
25 P.L.1966, c.30 (C.54:32B-1 et seq.).

26 b. The Treasurer shall adopt rules and regulations, pursuant to the  
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
28 seq.), in consultation with the Commissioner of Environmental  
29 Protection, necessary to implement this section, including rules and  
30 regulations specifying the sales of devices and equipment for  
31 retrofitting that qualify for the exemption provided under subsection  
32 a. of this section.

33  
34 23. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read  
35 as follows:

36 4. For the purposes of this act, unless the context requires a  
37 different meaning:

38 (a) "Commissioner" or "director" shall mean the Director of the  
39 Division of Taxation of the State Department of the Treasury.

40 (b) "Allocation factor" shall mean the proportionate part of a  
41 taxpayer's net worth or entire net income used to determine a measure  
42 of its tax under this act.

43 (c) "Corporation" shall mean any corporation, joint-stock company  
44 or association and any business conducted by a trustee or trustees  
45 wherein interest or ownership is evidenced by a certificate of interest  
46 or ownership or similar written instrument, any other entity classified

1 as a corporation for federal income tax purposes, and any state or  
2 federally chartered building and loan association or savings and loan  
3 association.

4 (d) "Net worth" shall mean the aggregate of the values disclosed  
5 by the books of the corporation for (1) issued and outstanding capital  
6 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
7 profits, and (4) surplus reserves which can reasonably be expected to  
8 accrue to holders or owners of equitable shares, not including  
9 reasonable valuation reserves, such as reserves for depreciation or  
10 obsolescence or depletion. Notwithstanding the foregoing, net worth  
11 shall not include any deduction for the amount of the excess  
12 depreciation described in paragraph (2)(F) of subsection (k) of this  
13 section. The foregoing aggregate of values shall be reduced by 50%  
14 of the amount disclosed by the books of the corporation for investment  
15 in the capital stock of one or more subsidiaries, which investment is  
16 defined as ownership (1) of at least 80% of the total combined voting  
17 power of all classes of stock of the subsidiary entitled to vote and (2)  
18 of at least 80% of the total number of shares of all other classes of  
19 stock except nonvoting stock which is limited and preferred as to  
20 dividends. In the case of investment in an entity organized under the  
21 laws of a foreign country, the foregoing requisite degree of ownership  
22 shall effect a like reduction of such investment from the net worth of  
23 the taxpayer, if the foreign entity is considered a corporation for any  
24 purpose under the United States federal income tax laws, such as (but  
25 not by way of sole examples) for the purpose of supplying deemed  
26 paid foreign tax credits or for the purpose of status as a controlled  
27 foreign corporation. In calculating the net worth of a taxpayer entitled  
28 to reduction for investment in subsidiaries, the amount of liabilities of  
29 the taxpayer shall be reduced by such proportion of the liabilities as  
30 corresponds to the ratio which the excluded portion of the subsidiary  
31 values bears to the total assets of the taxpayer.

32 In the case of banking corporations which have international  
33 banking facilities as defined in subsection (n), the foregoing aggregate  
34 of values shall also be reduced by retained earnings of the international  
35 banking facility. Retained earnings means the earnings accumulated  
36 over the life of such facility and shall not include the distributive share  
37 of dividends paid and federal income taxes paid or payable during the  
38 tax year.

39 If in the opinion of the commissioner, the corporation's books do  
40 not disclose fair valuations the commissioner may make a reasonable  
41 determination of the net worth which, in his opinion, would reflect the  
42 fair value of the assets, exclusive of subsidiary investments as defined  
43 aforesaid, carried on the books of the corporation, in accordance with  
44 sound accounting principles, and such determination shall be used as  
45 net worth for the purpose of this act.

46 (e) (Deleted by amendment, P.L.1998, c.114.)

1 (f) "Investment company" shall mean any corporation whose  
2 business during the period covered by its report consisted, to the  
3 extent of at least 90% thereof of holding, investing and reinvesting in  
4 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
5 other securities for its own account, but this shall not include any  
6 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
7 other securities, regularly engaged in buying the same and selling the  
8 same to customers; or (2) had less than 90% of its average gross  
9 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
10 mortgages, notes, patents, patent rights or other securities or  
11 consisting of cash on deposit during the period covered by its report;  
12 or (3) is a banking corporation, a savings institution, or a financial  
13 business corporation as defined in the Corporation Business Tax Act.

14 (g) "Regulated investment company" shall mean any corporation  
15 which for a period covered by its report, is registered and regulated  
16 under the Investment Company Act of 1940 (54 Stat. 789), as  
17 amended.

18 (h) "Taxpayer" shall mean any corporation, and any partnership  
19 required, or consenting, to report or to pay taxes, interest or penalties  
20 under this act. "Taxpayer" shall not include a partnership that is listed  
21 on a United States national stock exchange.

22 (i) "Fiscal year" shall mean an accounting period ending on any day  
23 other than the last day of December on the basis of which the taxpayer  
24 is required to report for federal income tax purposes.

25 (j) Except as herein provided, "privilege period" shall mean the  
26 calendar or fiscal accounting period for which a tax is payable under  
27 this act.

28 (k) "Entire net income" shall mean total net income from all  
29 sources, whether within or without the United States, and shall include  
30 the gain derived from the employment of capital or labor, or from both  
31 combined, as well as profit gained through a sale or conversion of  
32 capital assets.

33 For the purpose of this act, the amount of a taxpayer's entire net  
34 income shall be deemed prima facie to be equal in amount to the  
35 taxable income, before net operating loss deduction and special  
36 deductions, which the taxpayer is required to report, or, if the taxpayer  
37 is classified as a partnership for federal tax purposes, would otherwise  
38 be required to report, to the United States Treasury Department for  
39 the purpose of computing its federal income tax, provided however,  
40 that in the determination of such entire net income,

41 (1) Entire net income shall exclude for the periods set forth in  
42 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
43 to qualified mass commuting vehicles as described in section  
44 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
45 prior to January 1, 1984, which is included in a taxpayer's federal  
46 taxable income solely as a result of an election made pursuant to the

1 provisions of paragraph (8) of that section.

2 (2) Entire net income shall be determined without the exclusion,  
3 deduction or credit of:

4 (A) The amount of any specific exemption or credit allowed in any  
5 law of the United States imposing any tax on or measured by the  
6 income of corporations;

7 (B) Any part of any income from dividends or interest on any kind  
8 of stock, securities or indebtedness, except as provided in paragraph  
9 (5) of subsection (k) of this section;

10 (C) Taxes paid or accrued to the United States, a possession or  
11 territory of the United States, a state, a political subdivision thereof,  
12 or the District of Columbia, or to any foreign country, state, province,  
13 territory or subdivision thereof, on or measured by profits or income,  
14 or business presence or business activity, or the tax imposed by this  
15 act, or any tax paid or accrued with respect to subsidiary dividends  
16 excluded from entire net income as provided in paragraph (5) of  
17 subsection (k) of this section;

18 (D) (Deleted by amendment, P.L.1985, c.143.)

19 (E) (Deleted by amendment, P.L.1995, c.418.)

20 (F) (i) The amount by which depreciation reported to the United  
21 States Treasury Department for property placed in service on and after  
22 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
23 years beginning on and after the effective date of P.L.1993, c.172, for  
24 purposes of computing federal taxable income in accordance with  
25 section 168 of the Internal Revenue Code in effect after December 31,  
26 1980, exceeds the amount of depreciation determined in accordance  
27 with the Internal Revenue Code provisions in effect prior to January  
28 1, 1981, but only with respect to a taxpayer's accounting period ending  
29 after December 31, 1981; provided, however, that where a taxpayer's  
30 accounting period begins in 1981 and ends in 1982, no modification  
31 shall be required with respect to this paragraph (F) for the report filed  
32 for such period with respect to property placed in service during that  
33 part of the accounting period which occurs in 1981. The provisions  
34 of this subparagraph shall not apply to assets placed in service prior to  
35 January 1, 1998 of a gas, gas and electric, and electric public utility  
36 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
37 seq.) prior to 1998.

38 (ii) For the periods set forth in subparagraph (F)(i) of this  
39 subsection, any amount, except with respect to qualified mass  
40 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
41 Internal Revenue Code as in effect immediately prior to January 1,  
42 1984, which the taxpayer claimed as a deduction in computing federal  
43 income tax pursuant to a qualified lease agreement under paragraph  
44 (8) of that section.

45 The director shall promulgate rules and regulations necessary to  
46 carry out the provisions of this section, which rules shall provide,

1 among others, the manner in which the remaining life of property shall  
2 be reported.

3 (G) (i) The amount of any civil, civil administrative, or criminal  
4 penalty or fine, including a penalty or fine under an administrative  
5 consent order, assessed and collected for a violation of a State or  
6 federal environmental law, an administrative consent order, or an  
7 environmental ordinance or resolution of a local governmental entity,  
8 and any interest earned on the penalty or fine, and any economic  
9 benefits having accrued to the violator as a result of a violation, which  
10 benefits are assessed and recovered in a civil, civil administrative, or  
11 criminal action, or pursuant to an administrative consent order. The  
12 provisions of this paragraph shall not apply to a penalty or fine  
13 assessed or collected for a violation of a State or federal  
14 environmental law, or local environmental ordinance or resolution, if  
15 the penalty or fine was for a violation that resulted from fire, riot,  
16 sabotage, flood, storm event, natural cause, or other act of God  
17 beyond the reasonable control of the violator, or caused by an act or  
18 omission of a person who was outside the reasonable control of the  
19 violator.

20 (ii) The amount of treble damages paid to the Department of  
21 Environmental Protection pursuant to subsection a. of section 7 of  
22 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
23 department in removing, or arranging for the removal of, an  
24 unauthorized discharge upon failure of the discharger to comply with  
25 a directive from the department to remove, or arrange for the removal  
26 of, the discharge.

27 (H) The amount of any sales and use tax paid by a utility vendor  
28 pursuant to section 71 of P.L.1997, c.162.

29 (I) Interest paid, accrued or incurred for the privilege period to a  
30 related member , as defined in section 5 of P.L.2002, c.40  
31 (C.54:10A-4.4), except that a deduction shall be permitted to the  
32 extent that the taxpayer establishes by clear and convincing evidence,  
33 as determined by the director, that: (i) a principal purpose of the  
34 transaction giving rise to the payment of the interest was not to avoid  
35 taxes otherwise due under Title 54 of the Revised Statutes or Title  
36 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
37 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
38 the related member was subject to a tax on its net income or receipts  
39 in this State or another state or possession of the United States or in  
40 a foreign nation, (bb) a measure of the tax includes the interest  
41 received from the related member, and (cc) the rate of tax applied to  
42 the interest received by the related member is equal to or greater than  
43 a rate three percentage points less than the rate of tax applied to  
44 taxable interest by this State.

45 A deduction shall also be permitted if the taxpayer establishes by  
46 clear and convincing evidence, as determined by the director, that the

1 disallowance of a deduction is unreasonable, or the taxpayer and the  
2 director agree in writing to the application or use of an alternative  
3 method of apportionment under section 8 of P.L.1945, c.162 as a  
4 corporation for federal income tax purposes, and any state or federally  
5 chartered building and loan association or savings and loan  
6 association.

7 (d) "Net worth" shall mean the aggregate of the values disclosed  
8 by the books of the corporation for (1) issued and outstanding capital  
9 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
10 profits, and (4) surplus reserves which can reasonably be expected to  
11 accrue to holders or owners of equitable shares, not including  
12 reasonable valuation reserves, such as reserves for depreciation or  
13 obsolescence or depletion. Notwithstanding the foregoing, net worth  
14 shall not include any deduction for the amount of the excess  
15 depreciation described in paragraph (2)(F) of subsection (k) of this  
16 section. The foregoing aggregate of values shall be reduced by 50%  
17 of the amount disclosed by the books of the corporation for investment  
18 in the capital stock of one or more subsidiaries, which investment is  
19 defined as ownership (1) of at least 80% of the total combined voting  
20 power of all classes of stock of the subsidiary entitled to vote and (2)  
21 of at least 80% of the total number of shares of all other classes of  
22 stock except nonvoting stock which is limited and preferred as to  
23 dividends. In the case of investment in an entity organized under the  
24 laws of a foreign country, the foregoing requisite degree of ownership  
25 shall effect a like reduction of such investment from the net worth of  
26 the taxpayer, if the foreign entity is considered a corporation for any  
27 purpose under the United States federal income tax laws, such as (but  
28 not by way of sole examples) for the purpose of supplying deemed  
29 paid foreign tax credits or for the purpose of status as a controlled  
30 foreign corporation. In calculating the net worth of a taxpayer entitled  
31 to reduction for investment in subsidiaries, the amount of liabilities of  
32 the taxpayer shall be reduced by such proportion of the liabilities as  
33 corresponds to the ratio which the excluded portion of the subsidiary  
34 values bears to the total assets of the taxpayer.

35 In the case of banking corporations which have international  
36 banking facilities as defined in subsection (n), the foregoing aggregate  
37 of values shall also be reduced by retained earnings of the international  
38 banking facility. Retained earnings means the earnings accumulated  
39 over the life of such facility and shall not include the distributive share  
40 of dividends paid and federal income taxes paid or payable during the  
41 tax year.

42 If in the opinion of the commissioner, the corporation's books do  
43 not disclose fair valuations the commissioner may make a reasonable  
44 determination of the net worth which, in his opinion, would reflect the  
45 fair value of the assets, exclusive of subsidiary investments as defined  
46 aforesaid, carried on the books of the corporation, in accordance with

1 sound accounting principles, and such determination shall be used as  
2 net worth for the purpose of this act.

3 (e) (Deleted by amendment, P.L.1998, c.114.)

4 (f) "Investment company" shall mean any corporation whose  
5 business during the period covered by its report consisted, to the  
6 extent of at least 90% thereof of holding, investing and reinvesting in  
7 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
8 other securities for its own account, but this shall not include any  
9 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
10 other securities, regularly engaged in buying the same and selling the  
11 same to customers; or (2) had less than 90% of its average gross  
12 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
13 mortgages, notes, patents, patent rights or other securities or  
14 consisting of cash on deposit during the period covered by its report;  
15 or (3) is a banking corporation, a savings institution, or a financial  
16 business corporation as defined in the Corporation Business Tax Act.

17 (g) "Regulated investment company" shall mean any corporation  
18 which for a period covered by its report, is registered and regulated  
19 under the Investment Company Act of 1940 (54 Stat. 789), as  
20 amended.

21 (h) "Taxpayer" shall mean any corporation, and any partnership  
22 required, or consenting, to report or to pay taxes, interest or penalties  
23 under this act. "Taxpayer" shall not include a partnership that is listed  
24 on a United States national stock exchange.

25 (i) "Fiscal year" shall mean an accounting period ending on any day  
26 other than the last day of December on the basis of which the taxpayer  
27 is required to report for federal income tax purposes.

28 (j) Except as herein provided, "privilege period" shall mean the  
29 calendar or fiscal accounting period for which a tax is payable under  
30 this act.

31 (k) "Entire net income" shall mean total net income from all  
32 sources, whether within or without the United States, and shall include  
33 the gain derived from the employment of capital or labor, or from both  
34 combined, as well as profit gained through a sale or conversion of  
35 capital assets.

36 For the purpose of this act, the amount of a taxpayer's entire net  
37 income shall be deemed prima facie to be equal in amount to the  
38 taxable income, before net operating loss deduction and special  
39 deductions, which the taxpayer is required to report, or, if the taxpayer  
40 is classified as a partnership for federal tax purposes, would otherwise  
41 be required to report, to the United States Treasury Department for  
42 the purpose of computing its federal income tax, provided however,  
43 that in the determination of such entire net income,

44 (1) Entire net income shall exclude for the periods set forth in  
45 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
46 to qualified mass commuting vehicles as described in section

1 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
2 prior to January 1, 1984, which is included in a taxpayer's federal  
3 taxable income solely as a result of an election made pursuant to the  
4 provisions of paragraph (8) of that section.

5 (2) Entire net income shall be determined without the exclusion,  
6 deduction or credit of:

7 (A) The amount of any specific exemption or credit allowed in any  
8 law of the United States imposing any tax on or measured by the  
9 income of corporations;

10 (B) Any part of any income from dividends or interest on any kind  
11 of stock, securities or indebtedness, except as provided in paragraph  
12 (5) of subsection (k) of this section;

13 (C) Taxes paid or accrued to the United States, a possession or  
14 territory of the United States, a state, a political subdivision thereof,  
15 or the District of Columbia, or to any foreign country, state, province,  
16 territory or subdivision thereof, on or measured by profits or income,  
17 or business presence or business activity, or the tax imposed by this  
18 act, or any tax paid or accrued with respect to subsidiary dividends  
19 excluded from entire net income as provided in paragraph (5) of  
20 subsection (k) of this section;

21 (D) (Deleted by amendment, P.L.1985, c.143.)

22 (E) (Deleted by amendment, P.L.1995, c.418.)

23 (F) (i) The amount by which depreciation reported to the United  
24 States Treasury Department for property placed in service on and after  
25 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
26 years beginning on and after the effective date of P.L.1993, c.172, for  
27 purposes of computing federal taxable income in accordance with  
28 section 168 of the Internal Revenue Code in effect after December 31,  
29 1980, exceeds the amount of depreciation determined in accordance  
30 with the Internal Revenue Code provisions in effect prior to January  
31 1, 1981, but only with respect to a taxpayer's accounting period ending  
32 after December 31, 1981; provided, however, that where a taxpayer's  
33 accounting period begins in 1981 and ends in 1982, no modification  
34 shall be required with respect to this paragraph (F) for the report filed  
35 for such period with respect to property placed in service during that  
36 part of the accounting period which occurs in 1981. The provisions  
37 of this subparagraph shall not apply to assets placed in service prior to  
38 January 1, 1998 of a gas, gas and electric, and electric public utility  
39 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
40 seq.) prior to 1998.

41 (ii) For the periods set forth in subparagraph (F)(i) of this  
42 subsection, any amount, except with respect to qualified mass  
43 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
44 Internal Revenue Code as in effect immediately prior to January 1,  
45 1984, which the taxpayer claimed as a deduction in computing federal  
46 income tax pursuant to a qualified lease agreement under paragraph

1 (8) of that section.

2 The director shall promulgate rules and regulations necessary to  
3 carry out the provisions of this section, which rules shall provide,  
4 among others, the manner in which the remaining life of property shall  
5 be reported.

6 (G) (i) The amount of any civil, civil administrative, or criminal  
7 penalty or fine, including a penalty or fine under an administrative  
8 consent order, assessed and collected for a violation of a State or  
9 federal environmental law, an administrative consent order, or an  
10 environmental ordinance or resolution of a local governmental entity,  
11 and any interest earned on the penalty or fine, and any economic  
12 benefits having accrued to the violator as a result of a violation, which  
13 benefits are assessed and recovered in a civil, civil administrative, or  
14 criminal action, or pursuant to an administrative consent order. The  
15 provisions of this paragraph shall not apply to a penalty or fine  
16 assessed or collected for a violation of a State or federal  
17 environmental law, or local environmental ordinance or resolution, if  
18 the penalty or fine was for a violation that resulted from fire, riot,  
19 sabotage, flood, storm event, natural cause, or other act of God  
20 beyond the reasonable control of the violator, or caused by an act or  
21 omission of a person who was outside the reasonable control of the  
22 violator.

23 (ii) The amount of treble damages paid to the Department of  
24 Environmental Protection pursuant to subsection a. of section 7 of  
25 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
26 department in removing, or arranging for the removal of, an  
27 unauthorized discharge upon failure of the discharger to comply with  
28 a directive from the department to remove, or arrange for the removal  
29 of, the discharge.

30 (H) The amount of any sales and use tax paid by a utility vendor  
31 pursuant to section 71 of P.L.1997, c.162.

32 (I) Interest paid, accrued or incurred for the privilege period to a  
33 related member , as defined in section 5 of P.L.2002, c.40  
34 (C.54:10A-4.4), except that a deduction shall be permitted to the  
35 extent that the taxpayer establishes by clear and convincing evidence,  
36 as determined by the director, that: (i) a principal purpose of the  
37 transaction giving rise to the payment of the interest was not to avoid  
38 taxes otherwise due under Title 54 of the Revised Statutes or Title  
39 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
40 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
41 the related member was subject to a tax on its net income or receipts  
42 in this State or another state or possession of the United States or in  
43 a foreign nation, (bb) a measure of the tax includes the interest  
44 received from the related member, and (cc) the rate of tax applied to  
45 the interest received by the related member is equal to or greater than  
46 a rate three percentage points less than the rate of tax applied to

1 taxable interest by this State.

2 A deduction shall also be permitted if the taxpayer establishes by  
3 clear and convincing evidence, as determined by the director, that the  
4 disallowance of a deduction is unreasonable, or the taxpayer and the  
5 director agree in writing to the application or use of an alternative  
6 method of apportionment under section 8 of P.L.1945, c.162 as a  
7 corporation for federal income tax purposes, and any state or federally  
8 chartered building and loan association or savings and loan  
9 association.

10 (d) "Net worth" shall mean the aggregate of the values disclosed  
11 by the books of the corporation for (1) issued and outstanding capital  
12 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
13 profits, and (4) surplus reserves which can reasonably be expected to  
14 accrue to holders or owners of equitable shares, not including  
15 reasonable valuation reserves, such as reserves for depreciation or  
16 obsolescence or depletion. Notwithstanding the foregoing, net worth  
17 shall not include any deduction for the amount of the excess  
18 depreciation described in paragraph (2)(F) of subsection (k) of this  
19 section. The foregoing aggregate of values shall be reduced by 50%  
20 of the amount disclosed by the books of the corporation for investment  
21 in the capital stock of one or more subsidiaries, which investment is  
22 defined as ownership (1) of at least 80% of the total combined voting  
23 power of all classes of stock of the subsidiary entitled to vote and (2)  
24 of at least 80% of the total number of shares of all other classes of  
25 stock except nonvoting stock which is limited and preferred as to  
26 dividends. In the case of investment in an entity organized under the  
27 laws of a foreign country, the foregoing requisite degree of ownership  
28 shall effect a like reduction of such investment from the net worth of  
29 the taxpayer, if the foreign entity is considered a corporation for any  
30 purpose under the United States federal income tax laws, such as (but  
31 not by way of sole examples) for the purpose of supplying deemed  
32 paid foreign tax credits or for the purpose of status as a controlled  
33 foreign corporation. In calculating the net worth of a taxpayer entitled  
34 to reduction for investment in subsidiaries, the amount of liabilities of  
35 the taxpayer shall be reduced by such proportion of the liabilities as  
36 corresponds to the ratio which the excluded portion of the subsidiary  
37 values bears to the total assets of the taxpayer.

38 In the case of banking corporations which have international  
39 banking facilities as defined in subsection (n), the foregoing aggregate  
40 of values shall also be reduced by retained earnings of the international  
41 banking facility. Retained earnings means the earnings accumulated  
42 over the life of such facility and shall not include the distributive share  
43 of dividends paid and federal income taxes paid or payable during the  
44 tax year.

45 If in the opinion of the commissioner, the corporation's books do  
46 not disclose fair valuations the commissioner may make a reasonable

1 determination of the net worth which, in his opinion, would reflect the  
2 fair value of the assets, exclusive of subsidiary investments as defined  
3 aforesaid, carried on the books of the corporation, in accordance with  
4 sound accounting principles, and such determination shall be used as  
5 net worth for the purpose of this act.

6 (e) (Deleted by amendment, P.L.1998, c.114.)

7 (f) "Investment company" shall mean any corporation whose  
8 business during the period covered by its report consisted, to the  
9 extent of at least 90% thereof of holding, investing and reinvesting in  
10 stocks, bonds, notes, mortgages, debentures, patents, patent rights and  
11 other securities for its own account, but this shall not include any  
12 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
13 other securities, regularly engaged in buying the same and selling the  
14 same to customers; or (2) had less than 90% of its average gross  
15 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
16 mortgages, notes, patents, patent rights or other securities or  
17 consisting of cash on deposit during the period covered by its report;  
18 or (3) is a banking corporation, a savings institution, or a financial  
19 business corporation as defined in the Corporation Business Tax Act.

20 (g) "Regulated investment company" shall mean any corporation  
21 which for a period covered by its report, is registered and regulated  
22 under the Investment Company Act of 1940 (54 Stat. 789), as  
23 amended.

24 (h) "Taxpayer" shall mean any corporation, and any partnership  
25 required, or consenting, to report or to pay taxes, interest or penalties  
26 under this act. "Taxpayer" shall not include a partnership that is listed  
27 on a United States national stock exchange.

28 (i) "Fiscal year" shall mean an accounting period ending on any day  
29 other than the last day of December on the basis of which the taxpayer  
30 is required to report for federal income tax purposes.

31 (j) Except as herein provided, "privilege period" shall mean the  
32 calendar or fiscal accounting period for which a tax is payable under  
33 this act.

34 (k) "Entire net income" shall mean total net income from all  
35 sources, whether within or without the United States, and shall include  
36 the gain derived from the employment of capital or labor, or from both  
37 combined, as well as profit gained through a sale or conversion of  
38 capital assets.

39 For the purpose of this act, the amount of a taxpayer's entire net  
40 income shall be deemed prima facie to be equal in amount to the  
41 taxable income, before net operating loss deduction and special  
42 deductions, which the taxpayer is required to report, or, if the taxpayer  
43 is classified as a partnership for federal tax purposes, would otherwise  
44 be required to report, to the United States Treasury Department for  
45 the purpose of computing its federal income tax, provided however,  
46 that in the determination of such entire net income,

1 (1) Entire net income shall exclude for the periods set forth in  
2 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
3 to qualified mass commuting vehicles as described in section  
4 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
5 prior to January 1, 1984, which is included in a taxpayer's federal  
6 taxable income solely as a result of an election made pursuant to the  
7 provisions of paragraph (8) of that section.

8 (2) Entire net income shall be determined without the exclusion,  
9 deduction or credit of:

10 (A) The amount of any specific exemption or credit allowed in any  
11 law of the United States imposing any tax on or measured by the  
12 income of corporations;

13 (B) Any part of any income from dividends or interest on any kind  
14 of stock, securities or indebtedness, except as provided in paragraph  
15 (5) of subsection (k) of this section;

16 (C) Taxes paid or accrued to the United States, a possession or  
17 territory of the United States, a state, a political subdivision thereof,  
18 or the District of Columbia, or to any foreign country, state, province,  
19 territory or subdivision thereof, on or measured by profits or income,  
20 or business presence or business activity, or the tax imposed by this  
21 act, or any tax paid or accrued with respect to subsidiary dividends  
22 excluded from entire net income as provided in paragraph (5) of  
23 subsection (k) of this section;

24 (D) (Deleted by amendment, P.L.1985, c.143.)

25 (E) (Deleted by amendment, P.L.1995, c.418.)

26 (F) (i) The amount by which depreciation reported to the United  
27 States Treasury Department for property placed in service on and after  
28 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
29 years beginning on and after the effective date of P.L.1993, c.172, for  
30 purposes of computing federal taxable income in accordance with  
31 section 168 of the Internal Revenue Code in effect after December 31,  
32 1980, exceeds the amount of depreciation determined in accordance  
33 with the Internal Revenue Code provisions in effect prior to January  
34 1, 1981, but only with respect to a taxpayer's accounting period ending  
35 after December 31, 1981; provided, however, that where a taxpayer's  
36 accounting period begins in 1981 and ends in 1982, no modification  
37 shall be required with respect to this paragraph (F) for the report filed  
38 for such period with respect to property placed in service during that  
39 part of the accounting period which occurs in 1981. The provisions  
40 of this subparagraph shall not apply to assets placed in service prior to  
41 January 1, 1998 of a gas, gas and electric, and electric public utility  
42 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
43 seq.) prior to 1998.

44 (ii) For the periods set forth in subparagraph (F)(i) of this  
45 subsection, any amount, except with respect to qualified mass  
46 commuting vehicles as described in section 168(f)(8)(D)(v) of the

1 Internal Revenue Code as in effect immediately prior to January 1,  
2 1984, which the taxpayer claimed as a deduction in computing federal  
3 income tax pursuant to a qualified lease agreement under paragraph  
4 (8) of that section.

5 The director shall promulgate rules and regulations necessary to  
6 carry out the provisions of this section, which rules shall provide,  
7 among others, the manner in which the remaining life of property shall  
8 be reported.

9 (G) (i) The amount of any civil, civil administrative, or criminal  
10 penalty or fine, including a penalty or fine under an administrative  
11 consent order, assessed and collected for a violation of a State or  
12 federal environmental law, an administrative consent order, or an  
13 environmental ordinance or resolution of a local governmental entity,  
14 and any interest earned on the penalty or fine, and any economic  
15 benefits having accrued to the violator as a result of a violation, which  
16 benefits are assessed and recovered in a civil, civil administrative, or  
17 criminal action, or pursuant to an administrative consent order. The  
18 provisions of this paragraph shall not apply to a penalty or fine  
19 assessed or collected for a violation of a State or federal  
20 environmental law, or local environmental ordinance or resolution, if  
21 the penalty or fine was for a violation that resulted from fire, riot,  
22 sabotage, flood, storm event, natural cause, or other act of God  
23 beyond the reasonable control of the violator, or caused by an act or  
24 omission of a person who was outside the reasonable control of the  
25 violator.

26 (ii) The amount of treble damages paid to the Department of  
27 Environmental Protection pursuant to subsection a. of section 7 of  
28 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
29 department in removing, or arranging for the removal of, an  
30 unauthorized discharge upon failure of the discharger to comply with  
31 a directive from the department to remove, or arrange for the removal  
32 of, the discharge.

33 (H) The amount of any sales and use tax paid by a utility vendor  
34 pursuant to section 71 of P.L.1997, c.162.

35 (I) Interest paid, accrued or incurred for the privilege period to a  
36 related member, as defined in section 5 of P.L.2002, c.40  
37 (C.54:10A-4.4), except that a deduction shall be permitted to the  
38 extent that the taxpayer establishes by clear and convincing evidence,  
39 as determined by the director, that: (i) a principal purpose of the  
40 transaction giving rise to the payment of the interest was not to avoid  
41 taxes otherwise due under Title 54 of the Revised Statutes or Title  
42 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to  
43 arm's length contracts at an arm's length rate of interest, and (iii)(aa)  
44 the related member was subject to a tax on its net income or receipts  
45 in this State or another state or possession of the United States or in  
46 a foreign nation, (bb) a measure of the tax includes the interest

1 received from the related member, and (cc) the rate of tax applied to  
2 the interest received by the related member is equal to or greater than  
3 a rate three percentage points less than the rate of tax applied to  
4 taxable interest by this State.

5 A deduction shall also be permitted if the taxpayer establishes by  
6 clear and convincing evidence, as determined by the director, that the  
7 disallowance of a deduction is unreasonable, or the taxpayer and the  
8 director agree in writing to the application or use of an alternative  
9 method of apportionment under section 8 of P.L.1945, c.162  
10 (C.54:10A-8); nothing in this subsection shall be construed to limit or  
11 negate the director's authority to otherwise enter into agreements and  
12 compromises otherwise allowed by law.

13 A deduction shall also be permitted to the extent that the taxpayer  
14 establishes by a preponderance of the evidence, as determined by the  
15 director, that the interest is directly or indirectly paid, accrued or  
16 incurred to (i) a related member in a foreign nation which has in force  
17 a comprehensive income tax treaty with the United States, provided  
18 however that the taxpayer shall disclose on its return for the privilege  
19 period the name of the related member, the amount of the interest, the  
20 relevant foreign nation, and such other information as the director may  
21 prescribe or (ii) to an independent lender and the taxpayer guarantees  
22 the debt on which the interest is required.

23 (3) The commissioner may, whenever necessary to properly reflect  
24 the entire net income of any taxpayer, determine the year or period in  
25 which any item of income or deduction shall be included, without  
26 being limited to the method of accounting employed by the taxpayer.

27 (4) There shall be allowed as a deduction from entire net income  
28 of a banking corporation, to the extent not deductible in determining  
29 federal taxable income, the eligible net income of an international  
30 banking facility determined as follows:

31 (A) The eligible net income of an international banking facility shall  
32 be the amount remaining after subtracting from the eligible gross  
33 income the applicable expenses;

34 (B) Eligible gross income shall be the gross income derived by an  
35 international banking facility, which shall include, but not be limited to,  
36 gross income derived from:

37 (i) Making, arranging for, placing or carrying loans to foreign  
38 persons, provided, however, that in the case of a foreign person which  
39 is an individual, or which is a foreign branch of a domestic corporation  
40 (other than a bank), or which is a foreign corporation or foreign  
41 partnership which is controlled by one or more domestic corporations  
42 (other than banks), domestic partnerships or resident individuals, all  
43 the proceeds of the loan are for use outside of the United States;

44 (ii) Making or placing deposits with foreign persons which are  
45 banks or foreign branches of banks (including foreign subsidiaries) or  
46 foreign branches of the taxpayers or with other international banking

1 facilities;

2 (iii) Entering into foreign exchange trading or hedging transactions  
3 related to any of the transactions described in this paragraph; or

4 (iv) Such other activities as an international banking facility may,  
5 from time to time, be authorized to engage in;

6 (C) Applicable expenses shall be any expense or other deductions  
7 attributable, directly or indirectly, to the eligible gross income  
8 described in subparagraph (B) of this paragraph.

9 (5) Entire net income shall exclude 100% of dividends which were  
10 included in computing such taxable income for federal income tax  
11 purposes, paid to the taxpayer by one or more subsidiaries owned by  
12 the taxpayer to the extent of the 80% or more ownership of investment  
13 described in subsection (d) of this section and shall exclude 50% of  
14 dividends which were included in computing such taxable income for  
15 federal income tax purposes, paid to the taxpayer by one or more  
16 subsidiaries owned by the taxpayer to the extent of 50% or more  
17 ownership of investment, such ownership of investment calculated in  
18 the same manner as the 80% or more of ownership of investment is  
19 calculated as described in subsection (d) of this section.

20 (6) (A) Net operating loss deduction. There shall be allowed as  
21 a deduction for the privilege period the net operating loss carryover to  
22 that period.

23 (B) Net operating loss carryover. A net operating loss for any  
24 privilege period ending after June 30, 1984 shall be a net operating  
25 loss carryover to each of the seven privilege periods following the  
26 period of the loss. The entire amount of the net operating loss for any  
27 privilege period (the "loss period") shall be carried to the earliest of  
28 the privilege periods to which the loss may be carried. The portion of  
29 the loss which shall be carried to each of the other privilege periods  
30 shall be the excess, if any, of the amount of the loss over the sum of  
31 the entire net income, computed without the exclusions permitted in  
32 paragraphs (4) and (5) of this subsection or the net operating loss  
33 deduction provided by subparagraph (A) of this paragraph, for each of  
34 the prior privilege periods to which the loss may be carried.

35 (C) Net operating loss. For purposes of this paragraph the term  
36 "net operating loss" means the excess of the deductions over the gross  
37 income used in computing entire net income without the net operating  
38 loss deduction provided for in subparagraph (A) of this paragraph and  
39 the exclusions in paragraphs (4) and (5) of this subsection.

40 (D) Change in ownership. Where there is a change in 50% or more  
41 of the ownership of a corporation because of redemption or sale of  
42 stock and the corporation changes the trade or business giving rise to  
43 the loss, no net operating loss sustained before the changes may be  
44 carried over to be deducted from income earned after such changes.  
45 In addition where the facts support the premise that the corporation  
46 was acquired under any circumstances for the primary purpose of the

1 use of its net operating loss carryover, the director may disallow the  
2 carryover.

3 (E) Notwithstanding the provisions of this paragraph (6) of  
4 subsection (k) of this section to the contrary, for privilege periods  
5 beginning during calendar year 2002 and calendar year 2003, no  
6 deduction for any net operating loss carryover shall be allowed. If and  
7 only to the extent that any net operating loss carryover deduction is  
8 disallowed by reason of this subparagraph (E), the date on which the  
9 amount of the disallowed net operating loss carryover deduction  
10 would otherwise expire shall be extended by two years.

11 Provided, that this subparagraph (E) shall not restrict the surrender  
12 or acquisition of corporation business tax benefit certificates pursuant  
13 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict  
14 the application of corporation business tax benefit certificates pursuant  
15 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

16 (7) The entire net income of gas, electric and gas and electric  
17 public utilities that were subject to the provisions of P.L.1940, c.5  
18 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
19 the New Jersey depreciation allowance for federal tax depreciation  
20 with respect to assets placed in service prior to January 1, 1998. For  
21 gas, electric, and gas and electric public utilities that were subject to  
22 the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998,  
23 the New Jersey depreciation allowance shall be computed as follows:  
24 All depreciable assets placed in service prior to January 1, 1998 shall  
25 be considered a single asset account. The New Jersey tax basis of this  
26 depreciable asset account shall be an amount equal to the carryover  
27 adjusted basis for federal income tax purposes on December 31, 1997  
28 of all depreciable assets in service on December 31, 1997, increased  
29 by the excess, of the "net carrying value," defined to be adjusted book  
30 basis of all assets and liabilities, excluding deferred income taxes,  
31 recorded on the public utility's books of account on December 31,  
32 1997, over the carryover adjusted basis for federal income tax  
33 purposes on December 31, 1997 of all assets and liabilities owned by  
34 the gas, electric, or gas and electric public utility as of December 31,  
35 1997. "Books of account" for gas, gas and electric, and electric public  
36 utilities means the uniform system of accounts as promulgated by the  
37 Federal Energy Regulatory Commission and adopted by the Board of  
38 Public Utilities. The following adjustments to entire net income shall  
39 be made pursuant to this section:

40 (A) Depreciation for property placed in service prior to January 1,  
41 1998 shall be adjusted as follows:

42 (i) Depreciation for federal income tax purposes shall be  
43 disallowed in full.

44 (ii) A deduction shall be allowed for the New Jersey depreciation  
45 allowance. The New Jersey depreciation allowance shall be computed  
46 for the single asset account described above based on the New Jersey

1 tax basis as adjusted above as if all assets in the single asset account  
2 were first placed in service on January 1, 1998. Depreciation shall be  
3 computed using the straight line method over a thirty-year life. A full  
4 year's depreciation shall be allowed in the initial tax year. No half-year  
5 convention shall apply. The depreciable basis of the single account  
6 shall be reduced by the adjusted federal tax basis of assets sold,  
7 retired, or otherwise disposed of during any year on which gain or loss  
8 is recognized for federal income tax purposes as described in  
9 subparagraph (B) of this paragraph.

10 (B) Gains and losses on sales, retirements and other dispositions  
11 of assets placed in service prior to January 1, 1998 shall be recognized  
12 and reported on the same basis as for federal income tax purposes.

13 (C) The Director of the Division of Taxation shall promulgate  
14 regulations describing the methodology for allocating the single asset  
15 account in the event that a portion of the utility's operations are  
16 separated, spun-off, transferred to a separate company or otherwise  
17 desegregated.

18 (8) In the case of taxpayers that are gas, electric, gas and electric,  
19 or telecommunication public utilities as defined pursuant to subsection  
20 (q) of this section, the director shall have authority to promulgate rules  
21 and issue guidance correcting distortions and adjusting timing  
22 differences resulting from the adoption of P.L.1997, c.162  
23 (C.54:10A-5.25 et al.).

24 (9) Notwithstanding paragraph (1) of this subsection, entire net  
25 income shall not include the income derived by a corporation  
26 organized in a foreign country from the international operation of a  
27 ship or ships, or from the international operation of aircraft, if such  
28 income is exempt from federal taxation pursuant to section 883 of the  
29 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

30 (10) Entire net income shall exclude all income of an alien  
31 corporation the activities of which are limited in this State to investing  
32 or trading in stocks and securities for its own account, investing or  
33 trading in commodities for its own account, or any combination of  
34 those activities, within the meaning of section 864 of the federal  
35 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on  
36 December 31, 1998. Notwithstanding the previous sentence, if an  
37 alien corporation undertakes one or more infrequent, extraordinary or  
38 non-recurring activities, including but not limited to the sale of  
39 tangible property, only the income from such infrequent, extraordinary  
40 or non-recurring activity shall be subject to the tax imposed pursuant  
41 to P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income  
42 subject to tax shall be determined without regard to the allocation to  
43 that specific transaction of any general business expense of the  
44 taxpayer and shall be specifically assigned to this State for taxation by  
45 this State without regard to section 6 of P.L.1945, c.162  
46 (C.54:10A-6). For the purposes of this paragraph, "alien corporation"

1 means a corporation organized under the laws of a jurisdiction other  
2 than the United States or its political subdivisions.

3 (11) No deduction shall be allowed for research and experimental  
4 expenditures, to the extent that those research and experimental  
5 expenditures are qualified research expenses or basic research  
6 payments for which an amount of credit is claimed pursuant to section  
7 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
8 experimental expenditures are also used to compute a federal credit  
9 claimed pursuant to section 41 of the federal Internal Revenue Code  
10 of 1986, 26 U.S.C. s.41.

11 (12) (A) Notwithstanding the provisions of subsection (k) of  
12 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
13 s.168, and subsection (b) of section 1400L of the federal Internal  
14 Revenue Code of 1986, 26 U.S.C. s.1400L, for property acquired after  
15 September 10, 2001 and before September 11, 2004, the depreciation  
16 deduction otherwise allowed pursuant to section 167 of the federal  
17 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
18 pursuant to the requirements and limitations of section 168 of the  
19 federal Internal Revenue Code of 1986, 26 U.S.C. s.168, and section  
20 280F of the federal Internal Revenue Code of 1986, 26 U.S.C. s.280F,  
21 as if that subsection (k) and that section 1400L were not in effect.

22 (B) The director shall prescribe the rules and regulations necessary  
23 to carry out the provisions of this paragraph, including, among others,  
24 those for determining the adjusted basis of the acquired property for  
25 the purposes of the "Corporation Business Tax Act (1945)", P.L.1945,  
26 c.162.

27 (13) (A) There shall be allowed as a deduction from entire net  
28 income the cost of the purchase and installation of any technology,  
29 except fuel, required to be purchased, installed or used pursuant to  
30 P.L. , c. (C. )(now before the Legislature as this bill) for the  
31 first privilege period in which the purchase and installation occur.

32 (B) Notwithstanding the provisions of section 167 of the federal  
33 Internal Revenue Code of 1986, 26 U.S.C. s.167, to the contrary, no  
34 depreciation on any technology may be deducted for any privilege  
35 period following the purchase of the technology for which a deduction  
36 was taken pursuant to subparagraph (A) of this paragraph.

37 (l) "Real estate investment trust" shall mean any corporation, trust  
38 or association qualifying and electing to be taxed as a real estate  
39 investment trust under federal law.

40 (m) "Financial business corporation" shall mean any corporate  
41 enterprise which is (1) in substantial competition with the business of  
42 national banks and which (2) employs moneyed capital with the object  
43 of making profit by its use as money, through discounting and  
44 negotiating promissory notes, drafts, bills of exchange and other  
45 evidences of debt; buying and selling exchange; making of or dealing  
46 in secured or unsecured loans and discounts; dealing in securities and

1 shares of corporate stock by purchasing and selling such securities and  
2 stock without recourse, solely upon the order and for the account of  
3 customers; or investing and reinvesting in marketable obligations  
4 evidencing indebtedness of any person, copartnership, association or  
5 corporation in the form of bonds, notes or debentures commonly  
6 known as investment securities; or dealing in or underwriting  
7 obligations of the United States, any state or any political subdivision  
8 thereof, or of a corporate instrumentality of any of them. This shall  
9 include, without limitation of the foregoing, business commonly  
10 known as industrial banks, dealers in commercial paper and  
11 acceptances, sales finance, personal finance, small loan and mortgage  
12 financing businesses, as well as any other enterprise employing  
13 moneyed capital coming into competition with the business of national  
14 banks; provided that the holding of bonds, notes, or other evidences  
15 of indebtedness by individual persons not employed or engaged in the  
16 banking or investment business and representing merely personal  
17 investments not made in competition with the business of national  
18 banks, shall not be deemed financial business. Nor shall "financial  
19 business" include national banks, production credit associations  
20 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
21 of 1971, Pub.L. 92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
22 insurance companies duly authorized to transact business in this State,  
23 security brokers or dealers or investment companies or bankers not  
24 employing moneyed capital coming into competition with the business  
25 of national banks, real estate investment trusts, or any of the following  
26 entities organized under the laws of this State: credit unions, savings  
27 banks, savings and loan and building and loan associations,  
28 pawnbrokers, and State banks and trust companies.

29 (n) "International banking facility" shall mean a set of asset and  
30 liability accounts segregated on the books and records of a depository  
31 institution, United States branch or agency of a foreign bank, or an  
32 Edge or Agreement Corporation that includes only international  
33 banking facility time deposits and international banking facility  
34 extensions of credit as such terms are defined in section 204.8(a)(2)  
35 and section 204.8(a)(3) of Regulation D of the board of governors of  
36 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
37 1981. In the event that the United States enacts a law, or the board  
38 of governors of the Federal Reserve System adopts a regulation which  
39 amends the present definition of international banking facility or of  
40 such facilities' time deposits or extensions of credit, the Commissioner  
41 of Banking and Insurance shall forthwith adopt regulations defining  
42 such terms in the same manner as such terms are set forth in the laws  
43 of the United States or the regulations of the board of governors of the  
44 Federal Reserve System. The regulations of the Commissioner of  
45 Banking and Insurance shall thereafter provide the applicable  
46 definitions.

1 (o) "S corporation" means a corporation included in the definition  
2 of an "S corporation" pursuant to section 1361 of the federal Internal  
3 Revenue Code of 1986, 26 U.S.C. s.1361.

4 (p) "New Jersey S corporation" means a corporation that is an S  
5 corporation; which has made a valid election pursuant to section 4 of  
6 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
7 corporation continuously since the effective date of the valid election  
8 made pursuant to section 4 of P.L.1993, c.173 (C.54:10A-5.22).

9 (q) "Public Utility" means "public utility" as defined in  
10 R.S.48:2-13.

11 (r) "Qualified investment partnership" means a partnership under  
12 this act that has more than 10 members or partners with no member or  
13 partner owning more than a 50% interest in the entity and that derives  
14 at least 90% of its gross income from dividends, interest, payments  
15 with respect to securities loans, and gains from the sale or other  
16 disposition of stocks or securities or foreign currencies or  
17 commodities or other similar income (including but not limited to gains  
18 from swaps, options, futures or forward contracts) derived with  
19 respect to its business of investing or trading in those stocks,  
20 securities, currencies or commodities, but "investment partnership"  
21 shall not include a "dealer in securities" within the meaning of section  
22 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

23 (s) "Savings institution" means a state or federally chartered  
24 building and loan association, savings and loan association, or savings  
25 bank.

26 (t) "Partnership" means an entity classified as a partnership for  
27 federal income tax purposes.

28 (P.L.2002, c.40, s.3.)

29  
30 24. (New section) a. Notwithstanding the provisions of  
31 N.J.S.54A:5-1 or any other law to the contrary, for the purposes of  
32 determining the amount of a category of income pursuant to  
33 N.J.S.54A:5-1, all the expenses for the purchase, installation, and use  
34 of any technology, except for fuel, required pursuant to P.L. , c.  
35 (C. )(now before the Legislature as this bill) shall be deductible  
36 for the taxable year in which the technology is purchased.

37 b. Notwithstanding the provisions of R.S.54A:5-1 for calculating  
38 gross income, no deduction shall be allowed for the depreciation of the  
39 technology for which expenses were deducted pursuant subsection a.  
40 of this section.

41  
42 25. R.S.39:4-8 is amended to read as follows:

43 R.S.39:4-8. a. Except as otherwise provided in this section, no  
44 ordinance or resolution concerning, regulating or governing traffic or  
45 traffic conditions, adopted or enacted by any board or body having  
46 jurisdiction over highways, shall be of any force or effect unless the

1 same is approved by the Commissioner of Transportation, according  
2 to law. The commissioner shall not be required to approve any [such]  
3 ordinance, resolution or regulation, unless, after investigation by [him,  
4 the same shall appear] the commissioner, the ordinance, resolution or  
5 regulation is determined to be in the interest of safety [and], the  
6 expedition of traffic on the public highways , and protection of public  
7 health.

8 b. In the case of totally self-contained streets under municipal  
9 jurisdiction which have no direct connection with any street in any  
10 other municipality, or in the case of totally self-contained streets under  
11 county jurisdiction which have no direct connection with any street in  
12 any other county, the municipality or county may, by ordinance or  
13 resolution, as appropriate, without the approval of the Commissioner  
14 of Transportation, designate parking restrictions, no passing zones,  
15 mid-block crosswalks and crosswalks at intersections, except that in  
16 the case of any streets under municipal jurisdiction, the municipality  
17 may, by ordinance, designate reasonable and safe speed limits and in  
18 the case of totally self-contained streets under county jurisdiction  
19 which have no direct connection with any street in any other county,  
20 the county may, by ordinance or resolution, as appropriate, designate  
21 reasonable and safe speed limits, and erect appropriate signs, designate  
22 any intersection as a stop or yield intersection and erect appropriate  
23 signs and place longitudinal pavement markings delineating the  
24 separation of traffic flows and the edge of the pavement, provided that  
25 the municipal or county engineer shall, under [his] seal as a licensed  
26 professional engineer, certify to the municipal or county governing  
27 body, as appropriate, that any designation or erection of signs or  
28 placement of markings: (1) has been approved by [him] the municipal  
29 or county engineer after investigation by [him] the engineer of the  
30 circumstances, (2) appears to [him] the engineer to be in the interest  
31 of safety and the expedition of traffic on the public highways and (3)  
32 conforms to the current standards prescribed by the Manual of  
33 Uniform Traffic Control Devices for Streets and Highways, as adopted  
34 by the Commissioner of Transportation.

35 A certified copy of the adopted ordinance or resolution, as  
36 appropriate, shall be transmitted by the clerk of the municipality or  
37 county, as appropriate, to the commissioner within 30 days after the  
38 date of adoption, together with a copy of the engineer's certification;  
39 a statement of the reasons for the engineer's decision; detailed  
40 information as to the location of streets, intersections and signs  
41 affected by any designation or erection of signs or placement of  
42 markings; and traffic count, accident and speed sampling data, when  
43 appropriate. The commissioner, at [his] the discretion of the  
44 commissioner, may invalidate the provisions of the ordinance or  
45 resolution within 90 days after the date of receipt of the certified copy

1 if [he] the commissioner reviews it and finds that the provisions of the  
2 ordinance or resolution are inconsistent with the Manual of Uniform  
3 Traffic Control Devices for Streets or Highways; are inconsistent with  
4 accepted engineering standards; are not based on the results of an  
5 accurate traffic and engineering survey; [or] place an undue traffic  
6 burden or impact on streets in an adjoining municipality or negatively  
7 affect the flow of traffic on the State highway system ; or adversely  
8 affects the protection of the public health.

9 Nothing in this subsection shall allow municipalities to designate  
10 any intersection with any highway under State or county jurisdiction  
11 as a stop or yield intersection or counties to designate any intersection  
12 with any highway under State or municipal jurisdiction as a stop or  
13 yield intersection.

14 c. Subject to the provisions of R.S.39:4-138, in the case of any  
15 street under municipal or county jurisdiction, a municipality or county  
16 may, without the approval of the Commissioner of Transportation, do  
17 the following:

18 By ordinance or resolution:

- 19 (1) prohibit or restrict general parking;  
20 (2) designate restricted parking under section 1 of P.L.1977, c.309  
21 (C.39:4-197.6);  
22 (3) designate time limit parking;  
23 (4) install parking meters.

24 By ordinance, resolution or regulation:

- 25 (1) designate loading and unloading zones and taxi stands;  
26 (2) approve street closings for periods up to 48 continuous hours;  
27 and  
28 (3) designate restricted parking under section 1 of P.L.1977, c.202  
29 (C.39:4-197.5);

30 Nothing in this subsection shall allow municipalities or counties to  
31 establish angle parking or to reinstate or add parking on any street, or  
32 approve the closure of streets for more than 48 continuous hours,  
33 without the approval of the Commissioner of Transportation.

34 d. A municipality or county may, by ordinance or resolution, as  
35 appropriate, in any street under its jurisdiction, install or place an  
36 in-street pedestrian crossing right-of-way sign at a marked crosswalk  
37 or unmarked crosswalk at an intersection. The installation shall be  
38 subject to guidelines that shall be issued by the Commissioner of  
39 Transportation after consultation with the Director of the Office of  
40 Highway Traffic Safety in the Department of Law and Public Safety.  
41 The guidelines shall be aimed at ensuring safety to both pedestrians  
42 and motorists including, but not limited to, the proper method of sign  
43 installation, dimensions, composition of material, proper placement  
44 points and maintenance. A certified copy of the adopted ordinance or  
45 resolution shall be transmitted to the commissioner within 30 days of  
46 adoption. The commissioner, at [his] the discretion of the

1 commissioner, may invalidate the provisions of the ordinance or  
2 resolution within 90 days of receipt of the certified copy if [he] the  
3 commissioner reviews it and finds that the provisions of the ordinance  
4 or resolution are inconsistent with the guidelines issued pursuant to  
5 this subsection. A claim against the State or a municipality or county  
6 for damage or injury under this subsection for a wrongful act or  
7 omission shall be dismissed if the municipality or county is deemed to  
8 have conformed to the guidelines required hereunder.

9 e. A municipality or county may, by resolution, in any street under  
10 its jurisdiction, designate stops, stations or stands for omnibuses. The  
11 designation shall be subject to guidelines that shall be issued by the  
12 Commissioner of Transportation. The guidelines shall be aimed at  
13 ensuring safety to both pedestrians and motorists including, but not  
14 limited to, the proper method of sign installation, dimensions,  
15 composition of material, proper placement points and maintenance ,  
16 and the protection of the public health . A certified copy of the  
17 adopted resolution shall be transmitted to the commissioner within 30  
18 days after the date of adoption. The commissioner, at [his] the  
19 discretion of the commissioner, may invalidate the provisions of the  
20 ordinance or resolution within 90 days after the date of receipt of the  
21 certified copy if [he] the commissioner reviews it and finds that the  
22 provisions of the ordinance or resolution are inconsistent with the  
23 guidelines issued pursuant to this subsection. A claim against the  
24 State or a municipality or county for damage or injury under this  
25 subsection for a wrongful act or omission shall be dismissed if the  
26 municipality or county is deemed to have conformed to the guidelines  
27 required hereunder.

28 f. A municipality or county may, by resolution, designate routes for  
29 diesel-powered trucks and vehicles and restrict idling and queuing on  
30 certain streets or in certain areas on any street under its jurisdiction.  
31 The designation may entail minimizing congestion from diesel-powered  
32 vehicles and the excessive idling of these vehicles outside of schools,  
33 hospitals, or other locations that people with sensitive or compromised  
34 immune systems are known to frequent, and protecting residents of the  
35 municipality or county from unnecessary or prolonged exposure to  
36 emissions from diesel-powered vehicles. A certified copy of the  
37 adopted resolution shall be transmitted to the commissioner within 30  
38 days after the date of adoption. The commissioner, at the discretion  
39 of the commissioner, may invalidate the provisions of the ordinance or  
40 resolution within 90 days after the date of receipt of the certified copy  
41 if the commissioner reviews it and finds that the provisions of the  
42 ordinance or resolution are inconsistent with public safety, expedition  
43 of traffic on the public highways, or protection of the public health.  
44 (cf: P.L.2001, c.342, s.2.)

45

46 26. Section 4 of P.L.1966, c.16 (C.26:2C-8.4) is amended as

1 follows:

2 4. ~~【Such】 Except as otherwise required pursuant to P.L. , c.~~  
3 ~~(C. ) (now before the Legislature as this bill) or other laws, codes,~~  
4 ~~rules, and regulations concerning motor vehicles registered in the~~  
5 ~~State, the codes, rules and regulations shall establish standards and~~  
6 ~~requirements for control of air contaminants which can reasonably be~~  
7 ~~attained by properly functioning motor vehicles without the addition~~  
8 ~~of any air pollution control devices, systems, or engine modifications~~  
9 ~~provided such vehicles were not manufactured with pollution control~~  
10 ~~devices, systems or engine modifications in accordance with the~~  
11 ~~"Motor Vehicle Air Pollution Control Act" (77 Stat. 392, 42 U.S.C.~~  
12 ~~1857) , the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any~~  
13 ~~subsequent federal laws controlling air contaminants from motor~~  
14 ~~vehicles.~~

15 (cf: P.L.1966, c.16, s.4.)

16

17 27. Section 2 of P.L.1966, c.15 (C.39:3-70.2) is amended to read  
18 as follows:

19 2. Any person who operates a motor vehicle or owns a motor  
20 vehicle which ~~【he】 the person~~ permits to be operated, upon the public  
21 highways of this State which emits smoke and other air contaminants  
22 in excess of standards adopted by the ~~【Air Pollution Control~~  
23 ~~Commission】 Department of Environmental Protection~~ shall be liable  
24 to a penalty of not less than ~~【\$25.00】 \$250~~ nor more than ~~【\$100.00】~~  
25 ~~\$1,000 per day, per vehicle~~ which shall be enforced in accordance with  
26 the provisions of chapter 5 of Title 39 of the Revised Statutes ~~and~~  
27 ~~P.L., c. (C. )(now pending before the Legislature as this bill).~~

28 (cf: P.L.1966, c.15, s.2)

29

30 28. Section 6 of P.L.1995,c.157 (C.39:8-64) is amended to read as  
31 follows:

32 6. a. The commission, in consultation with the Department of  
33 Environmental Protection and the Department of Transportation and  
34 with the approval of the Attorney General, shall establish and  
35 implement a periodic inspection program and a roadside enforcement  
36 program to implement the standards and test methods adopted  
37 pursuant to section 3 of ~~【this act】 P.L.1995, c.157 (C.39:8-61).~~  
38 These programs shall be designed to measure exhaust emissions ~~【and】~~  
39 to inspect emission control apparatus and related items on diesel  
40 buses, heavy-duty diesel trucks, and other diesel-powered motor  
41 vehicles, ~~and to confirm compliance of on-road diesel vehicles from~~  
42 ~~regulated fleets under P.L. c. (C. ) (now before the Legislature is~~  
43 ~~this bill) with the provisions of that law.~~ The programs shall include,  
44 at a minimum, diesel buses and heavy-duty diesel trucks subject to the  
45 rules and regulations adopted pursuant to section 3 of ~~【this~~

1 act]P.L.1995, c.157 (C.39:8-61); provided that the commission, in  
2 consultation with the Department of Transportation, may exempt  
3 vehicles from either program for good cause, which may include that  
4 vehicles belonging to an exempted class are, by law, subject to  
5 emissions testing in another program. The commission, in consultation  
6 with the Department of Environmental Protection and with the  
7 approval of the Attorney General, may, by rule or regulation, expand  
8 the periodic inspection program and the roadside enforcement program  
9 to include other diesel-powered motor vehicles that are subject to the  
10 rules and regulations adopted pursuant to section 3 of [this act]  
11 P.L.1995, c.157 (C.39:8-61), and shall expand the periodic inspection  
12 program and the roadside enforcement program to include regulated  
13 on-road diesel vehicles that are subject to the fine particle diesel  
14 emissions reduction program established pursuant to P.L. .c. .  
15 (c. ) (now before the Legislature as this bill). The commission, in  
16 consultation with the Commissioner of Transportation, may, by rule or  
17 regulation, impose upon every owner and lessee of a diesel bus,  
18 heavy-duty diesel truck, or other diesel-powered motor vehicle subject  
19 to periodic inspection the obligation to have the vehicle periodically  
20 inspected in a manner determined by the commission in consultation  
21 with the Commissioner of Transportation, to effect repairs or to  
22 abstain from operating or to limit the operation of a rejected vehicle  
23 or a vehicle overdue for inspection, and may take other action  
24 necessary or appropriate for implementation of the periodic inspection  
25 program. The commission, in consultation with the Commissioner of  
26 Transportation, may, by rule or regulation, impose upon every owner  
27 and lessee of a diesel bus, heavy-duty diesel truck, or other  
28 diesel-powered motor vehicle subject to roadside inspection the  
29 obligation to abstain from operating or to limit the operation of a  
30 vehicle that has been tested and found to be in violation of the rules  
31 and regulations adopted pursuant to section 3 of [this act] P.L.1995,  
32 c.157 (C.39:8-61) or the provisions of P.L. .c. (C. ) (now before  
33 the Legislature is this bill), or to effect repairs, and may take other  
34 action necessary or appropriate for implementation of the roadside  
35 enforcement program. A school bus, as defined pursuant to  
36 R.S.39:1-1, shall be exempt from the roadside enforcement program.  
37 However, nothing in this subsection allowing or mandating exemptions  
38 from the periodic inspection program or the roadside enforcement  
39 program shall be construed to limit any other enforcement actions  
40 permitted by law.

41 b. The commission shall exercise all authority, including but not  
42 limited to administrative, implementation, enforcement, and penalty  
43 authority, in connection with the periodic inspection program for  
44 diesel buses and the roadside enforcement program for diesel buses  
45 that are under the jurisdiction of the commission pursuant to Titles 27  
46 and 48 of the Revised Statutes or any other law, rule, or regulation.

1 The commission shall consult with the Department of Environmental  
2 Protection and the Department of Transportation in conducting the  
3 periodic inspection program for diesel buses and the roadside  
4 enforcement program for diesel buses that are under the jurisdiction of  
5 the commission. Any periodic inspection that may be required  
6 pursuant to [this act] P.L.1995, c.157 (C.39:8-59 et al.) for a diesel  
7 bus under the jurisdiction of the commission shall be conducted only  
8 in conjunction with any periodic safety inspection required for that  
9 diesel bus pursuant to law, rule, or regulation. Any suspension of  
10 registration privileges with respect to diesel buses for a violation of  
11 [this act] P.L.1995, c.157 (C.39:8-59 et al.) or any rule or regulation  
12 adopted pursuant thereto shall be implemented by the commission.  
13 (cf: P.L.2003, c.13, s.79)

14

15 29. Section 9 of P.L.1995, c.157 (39:8-67) is amended to read as  
16 follows:

17 9. The Superintendent of the State Police, in consultation with and  
18 subject to the approval of the Attorney General, shall provide State  
19 Police officers to assist the commission in conducting the roadside  
20 enforcement program and the pilot roadside enforcement program.  
21 The State Police officers shall have authority to direct diesel buses,  
22 heavy-duty diesel trucks, or other diesel-powered motor vehicles from  
23 the roadway for the purpose of inspection, and shall perform other  
24 police duties necessary for or helpful to the implementation of the  
25 programs. The State Police officers shall maintain records of these  
26 inspections and shall forward the information concerning the number  
27 of inspections, and the type of violations and the number of each to the  
28 Department of Environmental Protection.

29 (cf: P.L.2003, c.13, s.82)

30

31 30. Section 11 of P.L.1995, c.157 (39:8-69) is amended to read as  
32 follows:

33 11. a. The commission, in consultation with the Department of  
34 Transportation and after appropriate inquiry and investigation, shall  
35 issue licenses to operate diesel emission inspection centers to as many  
36 qualified and properly equipped persons, including owners or lessees  
37 of diesel buses, heavy-duty diesel trucks, or other diesel-powered  
38 motor vehicles, as the commission determines shall be necessary to  
39 conduct periodic inspections. A licensee shall inspect and pass or  
40 reject a diesel bus, heavy-duty diesel truck, or other diesel-powered  
41 motor vehicle presented to the licensee for inspection. Passing shall  
42 indicate that the licensee or the licensee's employee has inspected the  
43 diesel bus, heavy-duty diesel truck, or other diesel-powered motor  
44 vehicle as prescribed by the commission and has found that the vehicle  
45 conforms to the standards established by law and rule or regulation  
46 including but not limited to, the provisions of P.L. .c. (C. )(now

1 before the Legislature as this bill) and any rules or regulations adopted  
2 pursuant thereto consultation with the Department of Transportation  
3 and with the approval of the Attorney General, may establish by rule  
4 or regulation adopted pursuant to the "Administrative Procedure Act,"  
5 P.L.1968, c.410 (C.52:14B-1 et seq.) an application fee for the  
6 licensing of diesel emission inspection centers, which fee shall not  
7 exceed \$250 per year.

8 b. For the purpose of documenting compliance with periodic  
9 inspection requirements, the commission shall furnish official  
10 inspection forms to licensed diesel emission inspection centers. The  
11 commission shall require each diesel emission inspection center and  
12 each owner or lessee of a diesel bus, heavy-duty diesel truck, or other  
13 diesel-powered motor vehicle subject to periodic inspection to keep  
14 such records and file such reports regarding these inspections as the  
15 commission shall deem necessary. The commission may conduct such  
16 audits or inspections of these centers as the commission deems  
17 appropriate, and shall forward information concerning the number of  
18 inspections, and the type of violations and the number of each to the  
19 Department of Environmental Protection.

20 c. The commission may deny, suspend or revoke a diesel emission  
21 inspection center license or refuse renewal thereof for cause, including,  
22 but not limited to, one or more of the following:

23 (1) Violation of any provision of [this act] P.L.1995, c.157  
24 (C.39:8-59 et al.) or of any rule or regulation adopted pursuant  
25 thereto; or

26 (2) Fraud or misrepresentation in securing a license or in the  
27 conduct of the licensed activity; or

28 (3) Conviction of a crime demonstrating that the applicant or  
29 licensee is unfit; or

30 (4) Improper, negligent, or fraudulent inspection of a diesel bus,  
31 heavy-duty diesel truck, or other diesel-powered motor vehicle; or

32 (5) Other good cause.

33 d. In addition to any other civil or criminal penalties that may be  
34 applicable, a person licensed by the commission to operate a diesel  
35 emission inspection center who commits fraud or misrepresentation in  
36 securing a license or in the conduct of the licensed activity or who  
37 improperly or negligently or fraudulently conducts an inspection of a  
38 diesel bus, heavy-duty diesel truck, or other diesel-powered motor  
39 vehicle shall be liable for a civil penalty of \$1,500. In addition to any  
40 other civil or criminal penalties that may be applicable, a person  
41 licensed by the commission to operate a diesel emission inspection  
42 center who otherwise violates any provision of [this act] P.L.1995,  
43 c.157 (C.39:8-59 et al.) or of any rule or regulation adopted pursuant  
44 thereto shall be liable for a civil penalty of \$500.

45 (cf: P.L.2003, c.13, s.84)

1 31. Section 17 of P.L.1995, c.157 (39:8-75) is amended to read  
2 as follows:

3 17. a. There is established in the General Fund a separate,  
4 nonlapsing, dedicated account to be known as the "Commercial  
5 Vehicle Enforcement Fund." The Commercial Vehicle Enforcement  
6 Fund shall be administered by the commission. All fees and other  
7 monies collected pursuant to [this act] P.L.1995, c.157 (C.39:8-59 et  
8 al.) or any rule or regulation adopted pursuant thereto shall be  
9 forwarded to the State Treasury for deposit into the Commercial  
10 Vehicle Enforcement Fund account. The commission shall receive 40  
11 percent of this fund annually, which monies shall be considered  
12 revenue of the commission. The Department of Environmental  
13 Protection shall receive 11 percent of this fund annually for the  
14 administrative costs of the department associated with the periodic  
15 inspection program and the roadside enforcement program established  
16 pursuant to section 6 of P.L.1995, c.157 (C.39:8-64), and the fine  
17 particle diesel emissions reduction program established pursuant to  
18 P.L. , c. (C. )(now before the Legislature as this bill). All  
19 remaining fees and other monies deposited in the Commercial Vehicle  
20 Enforcement Fund account shall be used to fund the costs of  
21 administering the programs and activities of the Department of Law  
22 and Public Safety, the Department of Transportation, and the  
23 commission [and the Department of Environmental Protection]  
24 established or specified in [this act] P.L.1995, c.157 (C.39:8-59 et  
25 al.), P.L. , c. (C. )(now before the Legislature as this bill), and  
26 in subsection f. of R.S.39:3-20, subject to the approval of the Director  
27 of the Division of Budget and Accounting in the Department of the  
28 Treasury.

29 b. A municipality may be eligible for periodic grants from the fund  
30 in such amounts as the commission, in consultation with the  
31 Commissioner of Transportation, may determine pursuant to rule or  
32 regulation to subsidize costs of prosecuting and trying actions  
33 pursuant to [this act] P.L.1995, c.157 (C.39:8-59 et al.).

34 (cf: P.L.2003, c.13, s.106)

35

36 32. (New section) a. No on-road diesel vehicle or off-road diesel  
37 equipment may operate in the State with any fuel other than ultra-low  
38 sulfur diesel fuel, as defined by the Department of Environmental  
39 Protection and the United States Environmental Protection Agency.

40 b. No diesel fuel other than ultra-low sulfur diesel fuel, as defined  
41 by the Department of Environmental Protection and the United States  
42 Environmental Protection Agency, may be sold in the State.

43 c. The Department of Environmental Protection, in consultation  
44 with the New Jersey Motor Vehicle Commission, the Department of  
45 Law and Public Safety, and the Attorney General, shall adopt,  
46 pursuant to the "Administrative Procedures Act," P.L.1968, c.410

1 (C.52:14B-1 et seq.), rules and regulations necessary for the  
2 implementation of this section.

3  
4 33. There is hereby appropriated from the General Fund to the  
5 "Diesel Risk Mitigation Fund," established pursuant to section 21 of  
6 P.L. , c. (C. )(now before the Legislature as this bill), a  
7 sum in the amount of \$24,000,000 for the purposes set forth in that  
8 section.

9  
10 34. This act shall take effect immediately, except for section 32  
11 which shall take effect one year after the date of enactment.

12  
13  
14 STATEMENT

15  
16 This bill establishes a program to reduce fine particle emissions  
17 from certain vehicles and equipment powered by diesel engines and the  
18 exposure of the public to these emissions, relieve congestion of diesel  
19 truck traffic in residential neighborhoods, and examine and establish  
20 policies to minimize the exposure of children to diesel emissions.

21 This bill prohibits the operation in the State of any regulated on-  
22 road diesel vehicle that is not in compliance with the provisions of the  
23 bill concerning regulated fleets, and, on or after January 1, 2009, the  
24 operation in the State of any regulated off-road equipment or any  
25 diesel apportioned vehicle that does not comply with the provisions of  
26 the bill and the rules and regulations establishing the fine particle diesel  
27 emissions reduction program. The bill also prohibits the operation of  
28 any on-road diesel vehicle or off-road diesel equipment with fuel other  
29 than ultra-low sulfur diesel fuel, and prohibits the sale of any diesel  
30 fuel other than ultra-low sulfur diesel fuel, as of one year after the date  
31 of enactment of this bill.

32 The bill also creates a fund to finance the retrofitting required under  
33 the bill, and appropriates \$24 million from the General Fund to the  
34 fund. The monies in the fund would be used to finance the county and  
35 municipal costs and administrative costs incurred by the Department  
36 of Environmental Protection (DEP) in connection with the  
37 requirements and implementation of the program established by the  
38 bill.

39 Specifically, the bill directs the DEP and the Department of Health  
40 and Senior Services to develop and implement a public education and  
41 outreach program, to inform the public about the public health risks  
42 associated with fine particle emissions and other pollution from  
43 vehicles and equipment powered by diesel engines. The bill further  
44 directs the DEP to adopt rules and regulations, no later than nine  
45 months after the effective date of the bill, to establish and implement  
46 a fine particle diesel emissions program, with an overall goal of the

1 program to be a 20-percent reduction of emissions from regulated on-  
2 road diesel vehicles and regulated off-road diesel equipment over the  
3 ten years after the date of enactment of the bill.

4 The program established by the rules and regulations would require  
5 that best available retrofit technologies be installed on and used by:

6 (1) Regulated fleets of commercial buses, sanitation vehicles,  
7 school buses with diesel engines, diesel apportioned vehicles  
8 registered, or with in-jurisdiction miles, in the State, and on-road  
9 diesel vehicles greater than 14,000 pounds gross vehicle weight that  
10 are types and classes of vehicles equivalent to the regulated diesel  
11 apportioned vehicles whether apportioned vehicles or some other class  
12 of vehicle;

13 (2) Diesel apportioned vehicles registered, or with in-jurisdiction  
14 miles, in the State that may not be part of a regulated fleet; and

15 (3) Off-road diesel equipment designated as regulated off-road  
16 diesel equipment under the rules and regulations.

17 The bill also directs the DEP to consult with the Department of  
18 Education, the New Jersey Motor Vehicle Commission, and the  
19 Department of Transportation concerning the provisions that would  
20 affect school buses, and with the New Jersey Motor Vehicle  
21 Commission and the New Jersey Transit Corporation concerning the  
22 provisions that would affect commercial buses. Furthermore, the DEP  
23 is directed to develop and implement a public outreach program to  
24 notify and inform the owners, operators, and lessees affected by the  
25 requirements of the bill about the requirements and how to comply,  
26 including notification of owners, operators, and lessees of unregistered  
27 off-road diesel equipment and out-of-State companies that may  
28 provide off-road diesel equipment for operation in the State.

29 Regulated fleets under the bill must have regulated fleet retrofit  
30 plans approved by DEP. The bill requires that each owner, operator,  
31 or lessee of a regulated fleet submit to the DEP, no later than six  
32 months after the effective date of the rules and regulations adopted  
33 pursuant to section 4 of the bill, an inventory of the on-road diesel  
34 vehicles in the fleet, an indication by the owner, operator, or lessee of  
35 the vehicles the owner, operator, or lessee believes are regulated on-  
36 road diesel vehicles, and a regulated fleet retrofit plan for the regulated  
37 on-road diesel vehicles in the fleet. Any owner, operator, or lessee of  
38 a regulated fleet who begins operating a regulated fleet after the  
39 effective date of the rules and regulations is required to submit the  
40 required materials no later than six months after the date on which the  
41 operation began.

42 The bill directs the DEP to review, and approve or disapprove all  
43 parts of any submitted regulated fleet retrofit plan, or a supplement  
44 thereto, no later than one year after the submittal of the regulated fleet  
45 retrofit plan or the supplement, and provides for partial approval and  
46 disapproval by the department. The bill requires the owner, operator,

1 or lessee of a regulated fleet to submit supplements to the regulated  
2 fleet retrofit plan on the annual anniversary of the date of the regulated  
3 fleet retrofit plan approval.

4 The amendatory sections of the bill expand the current periodic  
5 inspection and roadside enforcement programs for diesel vehicles,  
6 established by P.L.1995, c.157 (C.39:8-59 et al.) to include  
7 enforcement of the fine particle diesel emissions reduction program.  
8 These sections also provide an income tax deduction for the cost of  
9 the purchase and the installation of any technology, other than fuel,  
10 required by the bill, allow for the consideration of air pollution issues  
11 related to diesel emissions when setting and approving truck routes  
12 through counties and municipalities, and make other amendatory  
13 changes to incorporate the provisions of the bill into related current  
14 State laws and allow for the implementation of the program  
15 established by the bill. Finally, the bill amends the provision of  
16 P.L.1995, c.157 that established the "Commercial Vehicle  
17 Enforcement Fund" to provide that the DEP would receive 11 percent  
18 of the fund annually. The DEP has estimated that at least 11 percent  
19 of the diesel fleet in the State would be regulated under the bill. The  
20 current law provides that the "Commercial Vehicle Enforcement Fund"  
21 be used for administering the current diesel programs. The bill  
22 includes the fine particle diesel emissions reduction program under  
23 these programs.

# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1759**

# **STATE OF NEW JERSEY**

DATED: MARCH 7, 2005

The Senate Environment Committee favorably reports a committee substitute for Senate Bill No. 1759.

The committee substitute for Senate Bill No. 1759 would establish a goal to reduce the emission of fine particles from diesel powered on-road vehicles and off-road equipment by 20 percent over ten years. The reductions would be achieved in large part by the use of "best available retrofit technology" on certain on-road diesel vehicles and off-road diesel equipment. "Best available retrofit technology" includes particle filters, diesel oxidation catalysts, flow through filters, modified diesel fuel, and other retrofit devices. It cannot include repowering of a vehicle or equipment.

The committee substitute would require:

1) The owners or operators of regulated fleets to reduce the percentage of fine particle diesel emissions through the use of a choice of best available retrofit technologies on regulated on-road diesel vehicles under a regulated fleet retrofit plan or the use of other measures in lieu of, or in tandem with, best available retrofit technologies under a fleet averaging plan;

2) Persons awarded public contracts to reduce the percentage of fine particle diesel emissions from regulated off-road equipment used for those public contracts through the use of a choice of best available retrofit technologies or an alternative compliance plan submitted to and approved by the Department of Environmental Protection;

3) The increased enforcement of current idling standards against diesel-powered on-road vehicles with increased penalties; and

4) That fine particle emissions from school buses be reduced through the development of policies, programs and initiatives developed by the department in consultation with the Department of Education, the Motor Vehicle Commission and local school districts.

The committee substitute would require the State Treasurer to issue a request for proposals to contract with persons to operate State authorized retrofit centers. The State authorized retrofit centers would perform the retrofitting services on regulated on-road diesel vehicles in regulated fleets in accordance with the terms of the State contract. The State Treasurer would pay the contract costs to the

State authorized diesel retrofit centers from the Diesel Risk Mitigation Fund established pursuant to section 3 of the committee substitute. The fund would be credited with the revenues annually dedicated for air pollution control pursuant to an amendment to the State Constitution as provided in Senate Concurrent Resolution No. 113.

Regulated fleets are defined under the committee substitute as fleets of ten or more regulated vehicles. The on-road diesel vehicles regulated by the committee substitute are diesel commercial buses, diesel solid waste vehicles, diesel construction trucks, and diesel local trucks from model years 2004, 2005, and 2006. The requirements of the committee substitute would apply to all regulated on-road diesel vehicles in a regulated fleet or regulated off-road diesel vehicles used for public contracts, whether the vehicle is owned or leased. The committee substitute authorizes the DEP to designate additional on-road diesel vehicles as regulated on-road diesel vehicles, and to eliminate a vehicle designation established in the committee substitute.

However, the committee substitute would prohibit the department from imposing retrofit requirements on additional vehicles unless the State Treasurer certifies the costs associated with retrofits otherwise required in a given year are fully funded for that year.

More specifically, this committee substitute directs the DEP to adopt, no later than 270 days after the effective date, rules and regulations to implement the committee substitute. The committee substitute provides that diesel commercial buses, diesel solid waste vehicles, diesel construction trucks, and diesel local trucks, as defined in the committee substitute, would be designated as regulated on-road diesel vehicles, and the owners, operators, or lessees of regulated fleets of these regulated on-road vehicles would be required to submit to the DEP regulated fleet retrofit plans or fleet averaging plans. If a regulated fleet consists of 75 vehicles or more, that fleet owner or operator may submit a fleet averaging plan.

The committee substitute provides a timetable for submitting regulated fleet retrofit plans as follows:

(1) for diesel solid waste vehicles in a regulated fleet, no later than 180 days after the effective date of the rules and regulations adopted pursuant to the committee substitute;

(2) for diesel commercial buses in a regulated fleet, no later than one year after the effective date of the rules and regulations adopted pursuant to the committee substitute;

(3) for diesel construction trucks in a regulated fleet, no later than one year and 180 days after the effective date of the rules and regulations adopted pursuant to the committee substitute; and

(4) for diesel local trucks from model years 2004, 2005, 2006 in a regulated fleet, no later than two years after the effective date of the rules and regulations adopted pursuant to the committee substitute; and

(5) for other on-road diesel vehicles that are designated by DEP regulations as regulated on-road diesel vehicles, no earlier than 180 days after the adoption of those regulations making that designation.

The committee substitute would provide that no owner or operator of a regulated fleet shall be required to submit a regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, or any modification or supplement thereto, in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund.

The committee substitute requires the DEP to adopt, by rule or regulation, the specific requirements for regulated fleet retrofit plans and fleet averaging plans.

The committee substitute requires the department to adopt rules and regulations that establish the procedures, criteria, and requirements for the owners, operators or lessees of regulated off-road diesel equipment that is used in public contracts. The regulations would establish guidelines for developing an inventory of regulated off-road diesel equipment and determining the technology that may be used to retrofit that equipment. The regulations would also establish criteria for alternative compliance plans if 10 or more pieces of equipment are used to perform a contract. On and after January 1, 2008, no public contract may awarded unless the party to whom the contract is awarded certifies that the regulated off-road diesel equipment to be used has been retrofitted, or that the person has entered into an alternative compliance plan with the department.

The committee substitute prohibits, on and after January 1, 2007, any person from selling an on-road diesel vehicle without first disclosing to the purchaser if the requirement to install best available retrofit technology applies to the vehicle and whether a retrofit device has been installed. If the purchaser is provided with any false or misleading information, the purchaser is entitled to recoup required retrofit costs and court and attorney fees.

The committee substitute provides for increased enforcement of idling violations, directs the DEP to adopt rules and regulations concerning the idling and queuing of school buses, and provides civil enforcement powers to the Commissioner of Environmental Protection to enforce the provisions of the committee substitute.

Finally, the committee substitute provides that on or after January 1, 2010, the DEP, in conjunction with the Department of Education, the Department of Health and Senior Services, and the New Jersey Motor Vehicle Commission, is required to:

- 1) examine the progress and the efficacy of the requirements of the program established under the committee substitute;
- 2) determine the need for, the environmental and health benefits from, and the feasibility of, further regulation of vehicles and equipment powered by diesel engines and operated in the State; and
- 3) whether more regulation of more vehicles or equipment is necessary.

No later than January 1, 2011, the committee substitute requires the DEP to submit its findings to the Governor and the Legislature, with any recommendations for legislation that may be required to address the findings.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 1759**

# **STATE OF NEW JERSEY**

DATED: MAY 19, 2005

The Senate Budget and Appropriations Committee favorably reports a Senate Committee Substitute for Senate Bill No. 1759 SCS.

The committee substitute establishes requirements for specific types of vehicles and off-road equipment powered by diesel engines that would reduce significantly the amount of fine particle diesel emissions from these diesel vehicles and equipment and would diminish the exposure of school children to these harmful emissions. The committee substitute would also provide for stricter enforcement of idling standards for all motor vehicles, and would impose stricter requirements and stricter enforcement for school bus idling. Furthermore, the committee substitute establishes the Diesel Risk Mitigation Fund for the reimbursement of the cost of retrofits required pursuant to the committee substitute. This fund would receive constitutionally dedicated moneys for this purpose, and no owner of regulated vehicles or regulated equipment would be required to comply with the provisions of the committee substitute concerning the retrofitting of vehicles and equipment, unless the State Treasurer has certified that the constitutionally dedicated moneys have been deposited in the fund for the year in which the requirement is imposed. Also, owners of regulated vehicles or regulated equipment cannot be required to comply with the retrofit provisions of the committee substitute, and the DEP cannot require any retrofit device to be installed, unless it has been certified that there are sufficient moneys in the fund in a given year to cover the costs of the retrofits and their installation required in that year.

Specifically, the committee substitute requires:

- 1) the retrofitting of all diesel school buses used to transport children in primary and secondary schools in the State with closed crankcase technology designed to reduce fine particle diesel emissions in the cabin of the school bus;

- 2) the use of best available retrofit technologies, including

retrofitting, on publicly owned diesel solid waste vehicles, privately owned diesel solid waste vehicles under public contract, publicly owned on-road diesel vehicles and off-road diesel equipment, and all diesel commercial buses;

3) the Department of Environmental Protection (DEP) study emissions reduction technology for diesel school buses, and determine if further retrofitting of school buses is indicated by the results of the study;

4) the adoption of rules and regulations by the DEP, no less stringent than the restrictions on idling under DEP rules and regulations in effect on the effective date of the bill, concerning the idling of school buses and the development of policies and procedures by the DEP, in consultation with the Department of Education, school districts and school administrators, to achieve compliance with those rules and regulations;

5) enforcement of school bus idling violations against the school district serviced by the school bus operated in violation of the idling restrictions;

6) increased penalties of \$250 to \$1,000 per day, per vehicle for violations of any motor vehicle idling restrictions, except that no penalties may be assessed against the driver of a school bus who is not the owner of the school bus; and

7) the use of ultra-low sulfur diesel fuel in all on-road diesel vehicles and off-road diesel equipment as of September 1, 2006, if a DEP determines that sufficient supplies are available following a public hearing and not until the DEP issues a written determination that sufficient supplies are available.

The committee substitute provides that the regulated school buses have the closed crankcase technology installed no later than two years after the date of enactment. During that time, the DEP would study the health issues involved with school bus emissions and if the results of the study warrant further retrofit requirements, the committee substitute authorizes the DEP to establish and impose those requirements.

The committee substitute provides that the owners of regulated vehicles or regulated equipment are required to use the best available retrofit technologies in or on their regulated vehicles or regulated equipment as provided in DEP regulations, or submit plans proposing alternatives for the use of best available retrofit technologies in or on the vehicles and equipment that they own. The DEP is required to adopt rules and regulations no later than 270 days after the effective date of the act. The DEP would prescribe the level of fine particle emissions reduction for each type of regulated vehicle or piece of regulated equipment, but an owner could request and negotiate alternatives with the department to attain compliance.

"Best available retrofit technology," as defined in the committee substitute, includes particle filters, diesel oxidation catalysts, flow through filters, and other retrofit devices, modified diesel fuel and

other special fuels. It cannot include repowering of a vehicle or equipment. The United States Environmental Protection Agency or the California Air Resources Board must have designated the technology as a verified technology.

The committee substitute requires each owner of a regulated vehicle or regulated equipment to submit an inventory of all diesel vehicles and equipment owned, operated, or leased by the owner, and either a notice of intent to follow the requirements prescribed by DEP regulation or a fleet retrofit plan. The timing of these submittals is to be as follows:

(1) for regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted by the DEP pursuant to section 3 of the committee substitute;

(2) for regulated commercial buses owned and operated by the New Jersey Transit Corporation, no later than one year after the effective date of the rules and regulations;

(3) for private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations; and

(4) for publicly owned regulated vehicles and regulated equipment other than regulated solid waste vehicles or regulated commercial buses, no later than two years after the effective date of the rules and regulations.

After the submittals are made and any plans receive final approval, the owners of regulated vehicles or regulated equipment would receive compliance forms for each vehicle or piece of equipment required to use best available retrofit technologies. After any required installations were made, the compliance form would be completed, a copy of it would remain with the vehicle or piece of equipment at all times thereafter, and copies would be submitted to the DEP and the State Treasurer. The installation of any required retrofit devices as part of this use of best available retrofit technologies would be confirmed at an inspection of the regulated vehicle under New Jersey Motor Vehicle inspection programs currently in effect under current law, or, for regulated off-road equipment, through the submittal of a compliance form issued by the department.

The committee substitute provides that the State Treasurer would administer reimbursements for the cost of complying with these requirements in accordance with the procedures and requirements established by the State Treasurer pursuant to the committee substitute.

Finally, the committee substitute amends current law to allow for retrofitting of vehicles to be required, and establishes civil and civil administrative penalties of not more than \$5,000 for violations of the act.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, No. 1759**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: JUNE 14, 2005

**SUMMARY**

- Synopsis:** Establishes requirements for reducing fine particle diesel emissions from certain vehicles and equipment; creates fund for financing costs associated therewith; increases penalties for idling and authorizes the Department of Environmental Protection (DEP) to establish additional restrictions on school bus idling.
- Type of Impact:** Reallocation of constitutionally dedicated Corporation Business Tax (CBT) revenues to the Diesel Risk Mitigation Fund.
- Agencies Affected:** Departments of Environmental Protection, Treasury, Law and Public Safety, and Education; New Jersey Motor Vehicle Commission; New Jersey Transit; and local governments.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	\$107 million over 10 years		
<b>Local Cost</b>	\$0		

- ! The committee substitute establishes requirements to significantly reduce the amount of fine particle diesel emissions from diesel vehicles and equipment through retrofitting and other measures. The Diesel Risk Mitigation Fund is established to support these provisions.
- ! The Diesel Risk Mitigation Fund would be supported by a partial reallocation of constitutionally dedicated CBT monies that are now dedicated for hazardous substance site remediation and underground storage tank upgrades. Separate legislation is pending that would authorize a referendum to approve these changes.
- ! The DEP is directed to administer this program and to conduct a study on emissions reduction technology for diesel vehicles and equipment.
- ! The Office of Legislative Services (OLS) estimates that at least \$107 million in CBT funding will be required over 10 years to manage this program.

## **BILL DESCRIPTION**

Senate Committee Substitute for Senate Bill No.1759 of 2004 establishes requirements to significantly reduce the amount of fine particle diesel emissions from diesel vehicles and equipment. The committee substitute establishes the Diesel Risk Mitigation Fund to fully reimburse public and private owners of such vehicles and equipment for engine retrofitting costs required under the bill. This fund would be capitalized by a reallocation of constitutionally dedicated CBT monies that are currently used for hazardous substance discharge site remediation and underground storage tank upgrades.

The reallocation of CBT funding would be contingent upon the enactment of pending legislation authorizing a Statewide referendum in November, 2005, on amendments to the State Constitution to reallocate such funds for retrofit reimbursement costs and related administrative expenses. A one-time \$10 million allocation from the CBT dedication for underground storage tank remediation would also be authorized under the referendum.

Specifically, the committee substitute requires the retrofitting of all diesel school buses, publicly and privately owned (under public contract) diesel solid waste vehicles, publicly owned on-road and off-road diesel equipment, and all diesel commercial buses using the best available retrofit technologies. In designating the DEP as the lead agency in administering this program, it also requires the DEP to conduct a study on emissions reduction technology for diesel school buses; adopt rules and regulations to reduce the idling of school buses and the level of fine particle emissions reduction for each type of regulated vehicle or equipment; and receive and review plans from all owners of diesel vehicles and equipment regarding compliance with retrofit requirements prescribed by the DEP.

Last, the committee substitute provides that the State Treasurer administer reimbursements for the cost of complying with these requirements. If the State Treasurer certifies that there are insufficient balances in the Diesel Risk Mitigation Fund in any given year, all retrofit and regulatory requirements under the committee substitute would be suspended.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

Assuming the passage of legislation authorizing a referendum to amend the State Constitution to reallocate CBT dedicated funds for the purposes outlined in the committee substitute, and assuming the referendum is approved, the OLS estimates that the committee substitute will not adversely affect General Fund balances. It will, however, reduce the amount of dedicated CBT revenues heretofore appropriated annually to the DEP for hazardous substance discharge site remediation. Under the referendum, the current 50 percent allocation of CBT dedicated revenues for site remediation will be reduced to 33 percent, with the remaining 17 percent going to the Diesel Risk Mitigation Fund over a ten year period. Thus, less money will be available for site remediation projects at the expense of the new program. In FY 2005, \$45.4 million in CBT funds was allocated for this purpose.

Based on FY 2005 revenue projections, the amended CBT allocation under the referendum

would provide approximately \$15.5 million annually over the authorized 10 year period. Of this sum, \$1.15 million would be annually designated for administrative expenses, the DEP receiving \$900,000 and the Treasury Department receiving \$250,000. The referendum also provides for a one-time allocation of \$10 million, over and above the annual \$15 million dedication, from CBT monies dedicated for underground storage tank upgrades and remediation. Since this program has a substantial reserve balance, it should not be adversely affected by this allocation.

The **State Cost** estimate on the preceding page was calculated as follows: During committee deliberations on the substitute, the DEP estimated retrofitting reimbursement costs at \$85.7 million. This was based on the retrofitting of 30,400 vehicles and equipment. Although the DEP and the Treasury Department did not provide cost estimates for administrative responsibilities, the OLS estimates that the \$1.15 million provided under the constitutional amendments to the CBT dedication should be sufficient to meet most if not all program costs.

Hence, the **State Cost** estimate encompasses the DEP retrofit costs plus 10 years of administrative costs at \$1.15 million annually, and the \$10 million allocation from the underground storage tank dedication that will be used for other program costs. The OLS estimates that the average CBT dedication of \$15.5 million annually should be more than sufficient to cover these costs. It should be noted, however, that the annual CBT allocation could be substantially lower or higher depending on the total CBT revenues generated in any given year.

The OLS further notes that local governments or other public entities subject to the program should not be adversely affected as long as full retrofit reimbursement claims can be met. This contention is supported by the substitute's provision concerning the funding of such claims. It states that if claim reimbursement costs cannot be met due to insufficient CBT fund balances, affected jurisdictions are not required to comply with the program until sufficient CBT monies are collected for this purpose.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*  
*Senior Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 1759**

with Senate Floor Amendments  
(Proposed By Senator SMITH)

ADOPTED: JUNE 20, 2005

These floor amendments make technical and clarifying amendments to the bill and provide that:

1) rules and regulations to be adopted concerning the installation, verification, and inspection of crankcase technology would be adopted jointly by the Department of Environmental Protection (DEP) and the New Jersey Motor Vehicle Commission;

2) concerning all required use of retrofit devices under the bill, if the State Treasurer makes the required certification, the DEP may determine that moneys in the fund are sufficient to reimburse only part of the retrofits required in a given year pursuant to rules and regulations and approved plans under the bill, and may determine which retrofits are sufficiently funded, require those retrofits, and certify that moneys are sufficient to reimburse the costs of those retrofits and their installation;

3) inventories and plans are required to be submitted in accordance with the bill's provisions, regardless of the funding certifications;

4) if the approval of plans submitted under the bill are delayed, no supplement or modification to the plan, as applicable, would have to be submitted until 90 days after the approval of the plan or its most recent supplement or modification;

5) owners of private regulated commercial buses would not be required under any circumstances to make the required submittals under the bill until the owners of public regulated commercial buses had made the required submittals;

6) owners of private regulated commercial buses would not be required to install and use a retrofit device in their buses any earlier than 180 days after the owners of public regulated commercial buses had begun to use retrofit devices in their buses;

7) municipal and county expenditures pursuant to this bill are not subject to spending caps currently established by law;

8) DEP may establish by rule and regulation an alternative approach to the reimbursement procedures under the bill, provided that the protections under the bill and the requirements concerning funding being available for the required retrofits under the bill are not

circumvented;

9) motor vehicles idling in traffic and motor vehicles other than school buses idling in a queue of motor vehicles, that are intermittently motionless and moving because the progress of the motor vehicles in the traffic or the queue has been stopped or slowed by the congestion of traffic on the roadway or other conditions over which the driver of the idling motor vehicle has no control, are exempted from the idling enforcement provisions under Title 39 of the Revised Statutes in section 33 of the bill;

10) school bus idling penalties would be imposed after the first offense on school bus owners and the school district, and for the first offense on school bus owners, but the school district and principal and administrator would get a warning for the first offense;

11) the State Treasurer may provide funding for administrative costs to DEP from unexpended administrative cost funding to the New Jersey Motor Vehicle Commission;

12) warranties must be provided concerning the best available retrofit technologies and installation thereof, by the manufacturers thereof, including but not limited to paying for any damage to engines that may result;

13) the DEP determination concerning the sufficiency of ultra-low sulfur diesel fuel supplies cannot be made before July 15, 2006, and the determination would consider the sufficiency of supplies on and after January 15, 2007; and

14) if the DEP determination is that supplies would be sufficient, the requirement to sell only ultra-low sulfur diesel fuel in the State would go into effect 180 days after that determination or three months after the federal retail compliance date for the sale of ultra-low sulfur diesel fuel for use in on-road diesel vehicles.

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RELEASE: September 07, 2005

## **Codey Signs Landmark Legislation to Protect Public Health**

### *New Law Reducing Diesel Pollution Will Save Lives and Lower Health Care Costs*

(TRENTON)—Acting Governor Richard J. Codey today signed landmark legislation to cut exposure to harmful diesel emissions from school buses, garbage trucks, transit buses and publicly owned diesel vehicles. New Jersey is the first state in the nation to place diesel emission controls on all public and privately owned transit buses and garbage trucks.

"Today marks an important milestone in protecting the health of New Jersey residents," said Codey. "Pollution from diesel engines is linked to hundreds of premature deaths and thousands of serious respiratory illnesses in New Jersey every year. By taking action to reduce dangerous diesel emissions, we are prolonging and improving the lives of all New Jerseyans, including those most vulnerable to the harmful effects of air pollution -- children, seniors and those who live or work in urban areas."

Codey signed the bill during a news conference at NJ Transit's Hilton Garage in Maplewood. He was joined by bill sponsors Assemblymen John McKeon and Robert Gordon. Twenty other legislators signed on as cosponsors to this important bill.

"Diesel emissions are one of the most dangerous airborne pollutants that are quite literally choking us out of our homes," said Senator Bob Smith, D-Middlesex and Somerset.

"Where we see increased levels of diesel pollution in our skies, we see some of the worst concentrations of respiratory illness, cardiac arrest and early death. This cannot be the legacy we leave to future generations, and by acting today, we will reverse trends in increased diesel pollution and ensure cleaner air for tomorrow."

"Pollution and black soot emitted from exhaust pipes of trucks, buses, and construction equipment is cause for great concern in this densely populated state," said McKeon (D-Essex). "While new vehicles are being developed to burn cleaner fuel, an endless supply of soot is pumped into the air everyday by older diesel engines already on the road. The environment cannot wait 20 years for these engines to die out. For the sake of public safety, replacement must begin today."

"A steady transition from diesel engines to cleaner non-diesel alternatives is mandatory to reduce pollution, public health concerns, and cancer risks," said Manzo (D-Hudson). "The technology exists right now to ensure lower engine emission. There is no reason to delay the process of ensuring cleaner air for New Jersey residents."

On Election Day on November 8, voters will be asked to approve a constitutional amendment that would fund the diesel reduction program by reallocating revenue already generated by the state's Corporate Business Tax. The program would reimburse fleet owners for 100 percent of the cost of installing the emission-reducing equipment over the next 10 years. The diesel program outlined in the bill signed today is contingent upon voter approval of Ballot Question No. 2 on Election Day.

Under the new law, diesel-powered school buses would be fitted with closed crankcase technology in their engines to prevent diesel exhaust from seeping into the cabin and threatening the health of New Jersey's school children. At the same time, the Department of Environmental Protection (DEP) will undertake a study to determine if emissions from the bus tailpipe are affecting the air quality inside the school bus. If the study shows that a reduction in tailpipe emissions will lower the health risks to children, DEP would require emission controls on tailpipes as well as crankcases.

Because their immune and respiratory systems are still developing, children are especially vulnerable to asthma attacks, bronchitis and other illnesses caused by the soot in diesel emissions. Asthma is the leading serious chronic illness among children and a leading cause of school absenteeism.

"The asthma rate among children has increased 160 percent over the last 20 years, with urban asthma rates even higher," said DEP Commissioner Bradley M. Campbell. "It is important that we take action now to protect the health of our children. The future of this major air quality initiative soon will be in voter's hands. It is up to all of us to help make an informed decision on November 8."

In addition to school buses, the diesel retrofit program would fund the installation of particulate traps and other emissions-control devices in the tailpipes of garbage trucks, transit buses and publicly owned on-road and off-road diesel vehicles and equipment.

"NJ TRANSIT has worked very hard--particularly in the last three years--to ensure that our bus fleet meets both state and federal guidelines," said NJ TRANSIT Executive Director George D. Warrington. "Public support of this constitutional amendment would allow us and the state to continue to be ahead of the curve."

The new law extends the authority to enforce existing idling laws to local police. New Jersey law already prohibits the idling of diesel vehicles for more than three minutes.

Today's bill also expands the requirements pertaining to the use of ultra-low sulfur fuel. Reducing sulfur in diesel fuel directly reduces emissions of fine particles, and also makes it possible to use air pollution technologies that cut emissions even further.

Diesel exhaust ranks among the air pollutants that pose the greatest risk to public health. Diesel exhaust is likely to cause cancer, and includes fine particles, commonly called soot.

Fine-particle pollution can be inhaled into the deepest parts of the lungs where it can accumulate over time and enter the bloodstream, obstructing oxygen transfer to the blood leading to health problems.

If approved by voters on November 8, the new program would reduce diesel emissions by more than 500 tons per year. It is estimated that New Jerseyans can save up to \$1.4 billion each year for health care and related costs due to exposure from fine particle pollution.