

# 26:2C-8.34

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2006 **CHAPTER:** 94

**NJSA:** 26:2C-8.34 (Extends date for certain submittals required pursuant to diesel emissions law; authorizes DEP to disapprove cost estimates for retrofit technology under certain conditions; and modifies requirement to sell, distribute, and use ultra low sulfur diesel fuel)

**BILL NO:** S1796 (Substituted for A3307)

**SPONSOR(S)** Smith and others

**DATE INTRODUCED:** May 8, 2006

**COMMITTEE:** **ASSEMBLY:**

**SENATE:** Environment

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** July 8, 2006

**SENATE:** June 26, 2006

**DATE OF APPROVAL:** August 22, 2006

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (1st reprint enacted)

**S1796**

[SPONSOR'S STATEMENT](#): (Begins on page 6 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** [Yes](#)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

**LEGISLATIVE FISCAL NOTE:** No

**A3307**

[SPONSOR'S STATEMENT](#): (Begins on page 6 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** [Yes](#)

**SENATE:** No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

RWH 3/12/08

P.L. 2006, CHAPTER 94, *approved August 22, 2006*  
Senate, No. 1796 (*First Reprint*)

1 AN ACT concerning regulation of fine particle emissions from  
2 certain vehicles and equipment powered by diesel engines, and  
3 amending P.L.2005, c.219.

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

7  
8 <sup>1</sup>1. Section 6 of P.L.2005, c.219 (C.26:2C-8.31) is amended to  
9 read as follows:

10 6. a. No later than two years after the effective date of  
11 P.L.2005, c.219 (C.26:2C-8.26 et al.), or two years after the date on  
12 or by which both certifications required in this subsection have been  
13 made, whichever is later, every owner of a regulated school bus  
14 shall have installed on the regulated school bus closed crankcase  
15 technology as specified by the rules and regulations adopted  
16 pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

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

19 (1) the State Treasurer certifies in each of the two years after the  
20 effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.) that the  
21 constitutionally dedicated moneys have been deposited in the Diesel  
22 Risk Mitigation Fund; and

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

27 Provided that the State Treasurer has issued the certification  
28 required under paragraph (1) of this subsection for that year, the  
29 department may determine the amount of moneys available in the  
30 fund for that year, require the purchase and installation of those  
31 retrofit devices in those regulated vehicles or pieces of regulated  
32 equipment for which sufficient moneys are available, and certify  
33 that sufficient moneys are available for those retrofit devices in  
34 those regulated vehicles or pieces of equipment.

35 b. The Department of Environmental Protection shall provide,  
36 and each owner of a regulated school bus shall obtain from the  
37 department, a compliance form for each regulated school bus. The  
38 owner of the regulated school bus shall submit a cost estimate to the  
39 department detailing the cost of any retrofit device to be installed as  
40 part of the closed crankcase technology and any cost associated  
41 with the installation of the closed crankcase technology prior to its  
42 purchase or installation. The department may determine whether  
43 the estimated costs are unreasonable, based upon criteria including,  
44 but not limited to, prevailing market rates and acquisition by the

**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>Senate floor amendments adopted June 22, 2006.

1 State of comparable technology. If the department makes such a  
2 determination, the department shall enter into negotiations with the  
3 owner of the regulated school bus to resolve the discrepancy.

4 The owner of the regulated school bus shall complete the  
5 compliance form, retain a copy for the owner's records, and return it  
6 to the department as soon as practicable after the installation of the  
7 closed crankcase technology to verify compliance with the  
8 requirements of subsection a. of this section and to seek  
9 reimbursement for the cost of the closed crankcase technology. The  
10 compliance form shall include the cost of any retrofit device  
11 installed as part of the closed crankcase technology and any cost  
12 associated with the installation of the closed crankcase technology.  
13 After the installation of the closed crankcase technology on a  
14 regulated school bus, a copy of the completed compliance form  
15 shall be kept on each regulated school bus at all times.

16 c. The department shall review the compliance forms submitted  
17 pursuant to subsection b. of this section and forward them to the  
18 State Treasurer. The State Treasurer shall reimburse each owner of  
19 a regulated school bus the cost of any retrofit device installed as  
20 part of the closed crankcase technology requirement and any cost  
21 associated with the installation of the closed crankcase technology  
22 indicated on the compliance form, in accordance with the provisions  
23 of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-  
24 8.53 through C.26:2C-8.56).

25 d. The Department of Environmental Protection shall provide  
26 any training necessary to implement the provisions of subsection d.  
27 of this section for any employees of, or persons contracted or  
28 licensed by, the New Jersey Motor Vehicle Commission, as  
29 determined necessary by the Chief Administrator of the New Jersey  
30 Motor Vehicle Commission.

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

45 f. If for any reason, the owner of the regulated school bus is  
46 unable to comply with the requirements specified in this section, the  
47 owner shall notify the department, as soon as practicable, of the  
48 inability to comply. The department shall resolve the situation with

1 the owner as soon as practicable, and the department shall issue any  
2 necessary documentation and other information to the owner of the  
3 regulated school bus.<sup>1</sup>

4 (cf: P.L.2005, c.219, s.6)

5

6 <sup>1</sup>**[1.]** 2.<sup>1</sup> Section 9 of P.L.2005, c.219 (C.26:2C-8.34) is  
7 amended to read as follows:

8 9. a. Except as otherwise provided for in this section, any  
9 owner of a regulated vehicle or regulated equipment shall submit to  
10 the Department of Environmental Protection:

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

13 (2) notice by the owner that the owner shall comply with the  
14 requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the  
15 use of the best available retrofit technologies as designated and  
16 provided for under the rules and regulations adopted pursuant to  
17 section 3 of P.L.2005, c.219 (C.26:2C-8.28), or that the owner  
18 cannot comply in that manner and is submitting a fleet retrofit plan,  
19 combined fleet retrofit plan, or fleet averaging plan; <sup>1</sup>**[and]**<sup>1</sup>

20 (3) the fleet retrofit plan, combined fleet retrofit plan, or fleet  
21 averaging plan being submitted in lieu of complying through the use  
22 of the best available retrofit technologies as designated and  
23 provided for under the rules and regulations adopted pursuant to  
24 section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the owner has  
25 elected to do so <sup>1</sup>**[.]**; and

26 (4) an estimate of the cost of any retrofit device and any cost  
27 associated with the installation of that retrofit device, in accordance  
28 with the rules and regulations adopted pursuant to section 3 of  
29 P.L.2005, c.219 (C.26:2C-8.28).

30 The department may disapprove any notice submitted pursuant to  
31 paragraph (2) of this subsection by an owner complying with the  
32 requirements as designated and provided for under the rules and  
33 regulations adopted pursuant to section 3 of P.L.2005, c.219  
34 (C.26:2C-8.28), if the department determines that the costs or cost  
35 estimates, submitted pursuant to paragraph (4) of this subsection,  
36 for the best available retrofit technology described in the notice, are  
37 unreasonable based upon criteria including, but not limited to,  
38 prevailing market rates and acquisition by the State of comparable  
39 technology. If the department makes such a determination, the  
40 department shall enter into negotiations with the owner to resolve  
41 the discrepancy. For owners complying by submitting a fleet  
42 retrofit plan, combined fleet retrofit plan, or fleet averaging plan  
43 pursuant to this subsection, the department shall review any notice,  
44 plan, cost, or cost estimate in accordance with the provisions of  
45 section 10 of P.L.2005, c.219 (C.26:2C-8.35).<sup>1</sup>

- 1       b. Each owner of a regulated vehicle or regulated equipment  
2 shall make the submittals required pursuant to subsection a. in  
3 accordance with the following schedule:
- 4       (1) for regulated solid waste vehicles, no later than 180 days  
5 after the effective date of the rules and regulations adopted pursuant  
6 to section 3 of P.L.2005, c.219 (C.26:2C-8.28);
- 7       (2) for public regulated commercial buses, no later than one  
8 year after the effective date of the rules and regulations adopted  
9 pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);
- 10       (3) for private regulated commercial buses, no later than one  
11 year and 180 days after the effective date of the rules and  
12 regulations adopted pursuant to section 3 of P.L.2005, c.219  
13 (C.26:2C-8.28); and
- 14       (4) for regulated on-road diesel vehicles and regulated  
15 equipment other than regulated solid waste vehicles and regulated  
16 commercial buses, no later than **two** four years after the effective  
17 date of the rules and regulations adopted pursuant to section 3 of  
18 P.L.2005, c.219 (C.26:2C-8.28).
- 19       c. No owner of a private regulated commercial bus shall be  
20 required to make any submittal pursuant to subsection b. of this  
21 section until the owners of public regulated commercial buses have  
22 made their submittals required pursuant to that subsection, and no  
23 installation and use of a retrofit device on a private regulated  
24 commercial bus may be required earlier than 180 days after the  
25 owners of public regulated commercial buses have been required to  
26 install and have begun the use of retrofit devices on public  
27 regulated commercial buses.
- 28       d. The owner of regulated vehicles or regulated equipment who  
29 commences operation of a fleet after the effective date of the rules  
30 and regulations adopted pursuant to section 3 of P.L.2005, c.219  
31 (C.26:2C-8.28) shall make the submittals required pursuant to  
32 subsection a. of this section within 180 days after the date on which  
33 they began operations, or the date provided in subsection b. of this  
34 section, whichever is later.
- 35       e. The owner of regulated vehicles or regulated equipment may  
36 coordinate or combine the development of a fleet retrofit plan with  
37 the development of a fleet retrofit plan of any other owner, or a  
38 group of owners, of regulated vehicles or regulated equipment, and  
39 with the guidance of the Department of Environmental Protection  
40 submit a combined fleet retrofit plan.
- 41       f. The fleet retrofit plan submitted pursuant to subsection a. of  
42 this section shall include a description by the owner of the best  
43 available retrofit technology and the specific regulated vehicle or  
44 piece of regulated equipment on which the specific best available  
45 retrofit technology would be used, as determined by the owner  
46 pursuant to the rules and regulations adopted pursuant to section 3  
47 of P.L.2005, c.219 (C.26:2C-8.28).

1 g. If the owner of regulated vehicles or regulated equipment  
2 determines that the best available retrofit technology as required  
3 under the rules and regulations adopted pursuant to section 3 of  
4 P.L.2005, c.219 (C.26:2C-8.28) is not feasible for a specific  
5 regulated vehicle or pieces of regulated equipment, the owner may  
6 document this determination in the fleet retrofit plan and request the  
7 use of another level of best available retrofit technology to meet the  
8 requirement for that specific regulated vehicle or piece of regulated  
9 equipment, or provide documentation as to why the owner cannot  
10 use the best available retrofit technology that is required. The owner  
11 may also propose and negotiate an enforceable commitment to:

12 (1) retire the regulated vehicle or piece of regulated equipment  
13 and replace it with a vehicle or piece of equipment certified to fine  
14 particle emission levels at or below the emission levels that would  
15 have been achieved by the use of the required best available retrofit  
16 technology; or

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

19 h. The owner of 75 or more regulated vehicles or pieces of  
20 regulated equipment, or any group of owners who elect to develop a  
21 combined fleet retrofit plan pursuant to subsection d. of this section  
22 under which 75 or more regulated vehicles or pieces of regulated  
23 equipment would be regulated, may propose to the Department of  
24 Environmental Protection a fleet averaging plan, in lieu of a fleet  
25 retrofit plan or a combined fleet retrofit plan, for the fleet or fleets  
26 affected. The owner or owners may propose a fleet averaging plan  
27 provided that the total net percent reductions in fine particle  
28 emissions under the proposed fleet averaging plan are equivalent to  
29 the estimated reductions in fine particle emissions that would have  
30 been achieved by the owner if a fleet retrofit plan were submitted  
31 and implemented for the regulated vehicles or regulated equipment,  
32 or both, or by the owners if the owners had submitted and  
33 implemented a combined fleet retrofit plan for their regulated  
34 vehicles or regulated equipment, or both, as calculated pursuant to  
35 the provisions of the rules and regulations adopted pursuant to  
36 section 3 of P.L.2005, c.219 (C.26:2C-8.28). The owner or group  
37 of owners may propose achieving fine particle emissions reductions  
38 from any on-road diesel vehicle, off-road diesel equipment,  
39 regulated vehicle, or regulated equipment owned by the owner or  
40 group of owners, or the retirement of any of those vehicles or  
41 equipment, and shall submit the proposed fleet averaging plan to the  
42 department as required by the rules and regulations adopted  
43 pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

44 i. A fleet averaging plan proposed pursuant to subsection g. of  
45 this section that proposes the use of retrofit devices on any on-road  
46 diesel vehicle, off-road diesel equipment, regulated vehicle, or  
47 regulated equipment shall include: (1) a description by the owner of  
48 the best available retrofit technology and the specific vehicle or

1 equipment on which the specific best available retrofit technology  
2 would be used, the specific vehicle or equipment to be retired, and  
3 how the required fine particle reductions shall be achieved through  
4 a combination of the use of best available retrofit technology on the  
5 specific vehicles or equipment; and (2) other measures or  
6 applications of best available retrofit technology consistent with the  
7 provisions of the rules and regulations adopted pursuant to section 3  
8 of P.L.2005, c.219 (C.26:2C-8.28).

9 j. The Department of Environmental Protection shall give due  
10 consideration in the application of the fleet retrofit plan, combined  
11 fleet retrofit plan, or fleet averaging plan requirements to any  
12 efforts or actions by owners of regulated vehicles or regulated  
13 equipment who voluntarily retrofit, retire, or repower vehicles or  
14 equipment prior to the adoption of rules and regulations pursuant to  
15 section 3 of P.L.2005, c.219 (C.26:2C-8.28), and may modify any  
16 of the requirements of this section for such an owner in order to  
17 provide such due consideration.

18 k. The Department of Environmental Protection shall provide  
19 any technical guidance needed in preparing the fleet retrofit plans,  
20 combined fleet retrofit plans, and fleet averaging plans required  
21 pursuant to this section and any revisions, supplements, or  
22 modifications thereto required pursuant to P.L.2005, c.219  
23 (C.26:2C-8.26 et al.).

24 l. No owner of regulated vehicles or regulated equipment shall  
25 be required to install or use a retrofit device on a regulated vehicle  
26 or regulated equipment as required pursuant to the rules and  
27 regulations adopted pursuant to section 3 of P.L.2005, c.219  
28 (C.26:2C-8.28) or under a plan submitted pursuant to this section in  
29 any year unless the State Treasurer certifies for that year that the  
30 constitutionally dedicated moneys have been deposited in the Diesel  
31 Risk Mitigation Fund and the Department of Environmental  
32 Protection certifies that sufficient moneys are available in the fund  
33 to pay the cost of purchase and installation of the retrofit devices  
34 required to be used by rule and regulation or under an approved  
35 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging  
36 plan or supplement or modification thereto, as applicable, by an  
37 owner in that year.

38 Provided that the State Treasurer has issued the certification that  
39 the constitutionally dedicated moneys have been deposited in the  
40 fund for that year, the department may determine the amount of  
41 moneys available in the fund for that year, require the purchase and  
42 installation of those retrofit devices in those regulated vehicles or  
43 pieces of regulated equipment for which sufficient moneys are  
44 available, and certify that sufficient moneys are available for those  
45 retrofit devices to be purchased for, and installed in, those regulated  
46 vehicles or pieces of regulated equipment.

47 (cf: P.L.2005, c.219, s.9)



1       <sup>1</sup>3. Section 10 of P.L.2005, c.219 (C.26:2C-8.35) is amended to  
2 read as follows:

3       10. a. The department shall review, and approve or disapprove  
4 all parts of any fleet retrofit plan, combined fleet retrofit plan, or  
5 fleet averaging plan submitted pursuant to section 9 of P.L.2005,  
6 c.219 (C.26:2C-8.34). The department may approve or disapprove  
7 any fleet retrofit plan, combined fleet retrofit plan, or the fleet  
8 averaging plan in part, and:

9       (1) may direct the owner to comply with the approved part or  
10 parts of the fleet retrofit plan, the combined fleet retrofit plan, or  
11 the fleet averaging plan, as applicable, prior to final approval of  
12 other parts of the fleet retrofit plan, the combined fleet retrofit plan,  
13 or the fleet averaging plan; or

14       (2) in the case of a fleet averaging plan, may determine that the  
15 owner or the group of owners cannot comply with the requirements  
16 of P.L.2005, c.219 (C.26:2C-8.26 et al.) by implementing the  
17 proposed fleet averaging plan, and may require the owner to submit  
18 a fleet retrofit plan, or the group of owners of the fleets to submit a  
19 combined fleet retrofit plan or individual fleet retrofit plans.

20       Any determination made, or requirement established, pursuant to  
21 paragraph (2) of this subsection shall be made in writing and shall  
22 be provided in writing to each owner affected by the determination  
23 or requirement.

24       The department may disapprove any fleet retrofit plan, combined  
25 fleet retrofit plan, or fleet averaging plan, or any part thereof,  
26 submitted pursuant to paragraph (3) of subsection a. of section 9 of  
27 P.L.2005, c.219 (C.26:2C-8.34), if the department determines that  
28 the costs or cost estimates, submitted pursuant to paragraph (4) of  
29 subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) for  
30 retrofit devices described in the fleet retrofit plan, combined fleet  
31 retrofit plan, or fleet averaging plan, as appropriate, are  
32 unreasonable based upon criteria including, but not limited to,  
33 prevailing market rates and acquisition by the State of comparable  
34 technology. If the department makes such a determination, the  
35 department shall enter into negotiations with the owner to resolve  
36 the discrepancy.

37       b. If the department exercises its authority under paragraph (2)  
38 of subsection a. of this section, the department shall issue a  
39 modified timetable for submittal of a fleet retrofit plan for the  
40 regulated vehicles or regulated equipment, a combined fleet retrofit  
41 plan for the group of owners, or individual fleet retrofit plans for  
42 the owners in the group. The department may require the submittal  
43 of these plans no earlier than 180 days after the date of the  
44 determination pursuant to paragraph (2) of subsection a. of this  
45 section, or the date on or by which both of the certifications  
46 required pursuant to subsection l. of section 9 of P.L.2005, c.219  
47 (C.26:2C-8.34) have been made, whichever is later. The  
48 department shall review, approve or disapprove any fleet retrofit

1 plan or combined fleet retrofit plan submitted in accordance with  
2 this modified timetable.

3 c. Whenever the department disapproves a fleet retrofit plan,  
4 combined fleet retrofit plan, or fleet averaging plan, or a part  
5 thereof, the department shall provide a detailed explanation to the  
6 owner indicating the deficiencies of the disapproved fleet retrofit  
7 plan, disapproved combined fleet retrofit plan, or the disapproved  
8 fleet averaging plan, or part thereof, and the recommendations of  
9 the department to correct the deficiencies.

10 d. During the review process or prior to final approval of a  
11 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging  
12 plan, or the part thereof in question, the department may contact  
13 and enter into negotiations with the owner to resolve discrepancies  
14 between the rules and regulations adopted pursuant to section 3 of  
15 P.L.2005, c.219 (C.26:2C-8.28), the submitted fleet retrofit plan,  
16 combined fleet retrofit plan, or fleet averaging plan, and any  
17 requests by the owner for alternatives pursuant to subsection g. of  
18 section 9 of P.L.2005, c.219 (C.26:2C-8.34).

19 e. The owner or a group of owners whose fleet retrofit plan,  
20 combined fleet retrofit plan, or fleet averaging plan, or any part  
21 thereof, is disapproved by the department shall make the  
22 recommended revisions to the disapproved fleet retrofit plan,  
23 combined fleet retrofit plan, or fleet averaging plan, or the  
24 disapproved part thereof, within 60 days after the receipt of the  
25 disapproval notification from the department, and shall submit to  
26 the department the final revised fleet retrofit plan, final revised  
27 combined fleet retrofit plan, or the final revised fleet averaging  
28 plan, or the final revised part thereof that had been disapproved and  
29 revised. If the department does not take further action within 30  
30 days after receipt of the final revised fleet retrofit plan, final revised  
31 combined fleet retrofit plan, the final fleet averaging plan, or the  
32 final revised part that had been disapproved, the fleet retrofit plan,  
33 combined fleet retrofit plan, or fleet averaging plan, or the part that  
34 had been disapproved and revised, shall be considered approved and  
35 in effect. If the department finds within 30 days after the receipt of  
36 the final revised fleet retrofit plan, final revised combined fleet  
37 retrofit plan, or the final revised fleet averaging plan, that the owner  
38 has not complied with the recommended revisions, the department  
39 may take further action to require compliance with this subsection,  
40 but the plan shall be in effect as of the date of the close of the 30-  
41 day period following the submittal of the final revised plan, or part  
42 thereof.

43 f. Upon the date of final approval of the fleet retrofit plan,  
44 combined fleet retrofit plan, or fleet averaging plan, or any part  
45 thereof, the owner shall be subject to the provisions of the fleet  
46 retrofit plan, combined fleet retrofit plan, fleet averaging plan, or  
47 that part thereof, and shall be required to comply with these  
48 provisions on or after the final approval date or the date on or by

1 which both certifications required pursuant to subsection 1. of  
2 section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made,  
3 whichever is later.<sup>1</sup>

4 (cf: P.L.2005, c.219, s.10)

5  
6 <sup>1</sup>**[2.] 4.**<sup>1</sup> Section 25 of P.L.2005, c.219 (C.26:2C-8.50) is  
7 amended to read as follows:

8 25. a. **[No on-road diesel vehicle may operate in the State using**  
9 **any fuel other than ultra-low sulfur diesel fuel, on or after October**  
10 **15, 2006, or the date set by the United States Environmental**  
11 **Protection Agency as the retail compliance date for the sale of ultra-**  
12 **low sulfur diesel for use in on-road diesel vehicles pursuant to**  
13 **federal law and regulation.]** (Deleted by amendment <sup>1,1</sup> P.L. \_\_\_\_\_,  
14 c. ) (pending before the Legislature as this bill)

15 b. No sooner than July 15, 2006, and following a public  
16 hearing held by the Department of Environmental Protection on the  
17 availability of ultra-low sulfur diesel fuel in the State <sup>1</sup>for use in on-  
18 road diesel vehicles and off-road diesel equipment<sup>1</sup>, the department  
19 shall determine and issue a written notice of its determination as to  
20 whether sufficient supplies of ultra-low sulfur diesel fuel are  
21 available in the State to require <sup>1</sup>**[only] a minimum of 80 percent of**  
22 **all diesel fuel annually sold, distributed, or used in the State to be<sup>1</sup>**  
23 **ultra-low sulfur diesel fuel <sup>1</sup>**[to be sold in the State] for use in on-****  
24 **road diesel vehicles or off-road diesel equipment,<sup>1</sup>** on and  
25 after January 15, 2007, without significant disruption of, or  
26 significant price increases in, the wholesale and retail fuel market.  
27 If the department determines that supplies would be sufficient, <sup>1</sup>**[no**  
28 **diesel fuel other than ultra-low sulfur diesel fuel may be sold in the**  
29 **State] the department shall require a certain percentage, to be**  
30 **determined by the department, of all diesel fuel annually sold,**  
31 **distributed, or used in the State to be ultra-low sulfur diesel fuel for**  
32 **use in on-road diesel vehicles or off-road diesel equipment, or**  
33 **both,<sup>1</sup>** on or after the 180th day after the date on which the  
34 department issues a written determination that supplies would be  
35 sufficient, <sup>1</sup>**[or three months after the retail compliance date for the**  
36 **sale of ultra-low sulfur diesel fuel for use in on-road diesel vehicles**  
37 **as implemented by the United States Environmental Protection**  
38 **Agency, whichever is later] provided that this percentage shall be**  
39 **the highest percentage that can practicably be required without**  
40 **significant disruption of, or significant price increases in, the**  
41 **wholesale and retail fuel market, but shall be no less than 80**  
42 **percent of all diesel fuel annually sold, distributed, or used in the**  
43 **State<sup>1</sup>.**

44 c. If the department determines that sufficient supplies are not  
45 available pursuant to subsection b. of this section, the requirement  
46 to sell <sup>1</sup>, distribute, or use<sup>1</sup> only ultra-low sulfur diesel fuel in the

1 State shall take effect only 180 days after the department issues a  
2 written determination that the supplies are sufficient <sup>1</sup>to sell,  
3 distribute, or use only ultra-low sulfur diesel fuel in the State<sup>1</sup>.

4 d. The Department of Environmental Protection, in  
5 consultation with the Department of Law and Public Safety, the  
6 Department of Labor and Workforce Development, and the  
7 Attorney General, shall adopt, pursuant to the "Administrative  
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
9 regulations necessary for the implementation of this section.  
10 (cf: P.L.2005, c.219, s.25)

11

12 <sup>1</sup>**[3.] 5.**<sup>1</sup> This act shall take effect immediately.

13

14

15

16

17 Extends date for certain submittals required pursuant to diesel  
18 emissions law; authorizes DEP to disapprove cost estimates for  
19 retrofit technology under certain conditions; and modifies  
20 requirement to sell, distribute, and use ultra low sulfur diesel fuel.

# SENATE, No. 1796

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 8, 2006

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator ANDREW R. CIESLA**

**District 10 (Monmouth and Ocean)**

**SYNOPSIS**

Extends the date for certain submittals required pursuant to P.L.2005, c.219; repeals ultra low sulfur diesel fuel requirement for motor vehicles.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/16/2006)**

1 AN ACT concerning regulation of fine particle emissions from  
2 certain vehicles and equipment powered by diesel engines, and  
3 amending P.L.2005, c.219.

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

7  
8 1. Section 9 of P.L.2005, c.219 (C.26:2C-8.34) is amended to  
9 read as follows:

10 9. a. Except as otherwise provided for in this section, any owner  
11 of a regulated vehicle or regulated equipment shall submit to the  
12 Department of Environmental Protection:

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

15 (2) notice by the owner that the owner shall comply with the  
16 requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the  
17 use of the best available retrofit technologies as designated and  
18 provided for under the rules and regulations adopted pursuant to  
19 section 3 of P.L.2005, c.219 (C.26:2C-8.28), or that the owner  
20 cannot comply in that manner and is submitting a fleet retrofit plan,  
21 combined fleet retrofit plan, or fleet averaging plan; and

22 (3) the fleet retrofit plan, combined fleet retrofit plan, or fleet  
23 averaging plan being submitted in lieu of complying through the use  
24 of the best available retrofit technologies as designated and  
25 provided for under the rules and regulations adopted pursuant to  
26 section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the owner has  
27 elected to do so.

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

31 (1) for regulated solid waste vehicles, no later than 180 days  
32 after the effective date of the rules and regulations adopted pursuant  
33 to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

34 (2) for public regulated commercial buses, no later than one  
35 year after the effective date of the rules and regulations adopted  
36 pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

37 (3) for private regulated commercial buses, no later than one  
38 year and 180 days after the effective date of the rules and  
39 regulations adopted pursuant to section 3 of P.L.2005, c.219  
40 (C.26:2C-8.28); and

41 (4) for regulated on-road diesel vehicles and regulated  
42 equipment other than regulated solid waste vehicles and regulated  
43 commercial buses, no later than **[ two ]** four years after the effective  
44 date of the rules and regulations adopted pursuant to section 3 of  
45 P.L.2005, c.219 (C.26:2C-8.28).

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

10 d. The owner of regulated vehicles or regulated equipment who  
11 commences operation of a fleet after the effective date of the rules  
12 and regulations adopted pursuant to section 3 of P.L.2005, c.219  
13 (C.26:2C-8.28) shall make the submittals required pursuant to  
14 subsection a. of this section within 180 days after the date on which  
15 they began operations, or the date provided in subsection b. of this  
16 section, whichever is later.

17 e. The owner of regulated vehicles or regulated equipment may  
18 coordinate or combine the development of a fleet retrofit plan with  
19 the development of a fleet retrofit plan of any other owner, or a  
20 group of owners, of regulated vehicles or regulated equipment, and  
21 with the guidance of the Department of Environmental Protection  
22 submit a combined fleet retrofit plan.

23 f. The fleet retrofit plan submitted pursuant to subsection a. of  
24 this section shall include a description by the owner of the best  
25 available retrofit technology and the specific regulated vehicle or  
26 piece of regulated equipment on which the specific best available  
27 retrofit technology would be used, as determined by the owner  
28 pursuant to the rules and regulations adopted pursuant to section 3  
29 of P.L.2005, c.219 (C.26:2C-8.28).

30 g. If the owner of regulated vehicles or regulated equipment  
31 determines that the best available retrofit technology as required  
32 under the rules and regulations adopted pursuant to section 3 of  
33 P.L.2005, c.219 (C.26:2C-8.28) is not feasible for a specific  
34 regulated vehicle or pieces of regulated equipment, the owner may  
35 document this determination in the fleet retrofit plan and request the  
36 use of another level of best available retrofit technology to meet the  
37 requirement for that specific regulated vehicle or piece of regulated  
38 equipment, or provide documentation as to why the owner cannot  
39 use the best available retrofit technology that is required. The owner  
40 may also propose and negotiate an enforceable commitment to:

41 (1) retire the regulated vehicle or piece of regulated equipment  
42 and replace it with a vehicle or piece of equipment certified to fine  
43 particle emission levels at or below the emission levels that would  
44 have been achieved by the use of the required best available retrofit  
45 technology; or

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

1 h. The owner of 75 or more regulated vehicles or pieces of  
2 regulated equipment, or any group of owners who elect to develop a  
3 combined fleet retrofit plan pursuant to subsection d. of this section  
4 under which 75 or more regulated vehicles or pieces of regulated  
5 equipment would be regulated, may propose to the Department of  
6 Environmental Protection a fleet averaging plan, in lieu of a fleet  
7 retrofit plan or a combined fleet retrofit plan, for the fleet or fleets  
8 affected. The owner or owners may propose a fleet averaging plan  
9 provided that the total net percent reductions in fine particle  
10 emissions under the proposed fleet averaging plan are equivalent to  
11 the estimated reductions in fine particle emissions that would have  
12 been achieved by the owner if a fleet retrofit plan were submitted  
13 and implemented for the regulated vehicles or regulated equipment,  
14 or both, or by the owners if the owners had submitted and  
15 implemented a combined fleet retrofit plan for their regulated  
16 vehicles or regulated equipment, or both, as calculated pursuant to  
17 the provisions of the rules and regulations adopted pursuant to  
18 section 3 of P.L.2005, c.219 (C.26:2C-8.28). The owner or group  
19 of owners may propose achieving fine particle emissions reductions  
20 from any on-road diesel vehicle, off-road diesel equipment,  
21 regulated vehicle, or regulated equipment owned by the owner or  
22 group of owners, or the retirement of any of those vehicles or  
23 equipment, and shall submit the proposed fleet averaging plan to the  
24 department as required by the rules and regulations adopted  
25 pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

26 i. A fleet averaging plan proposed pursuant to subsection g. of  
27 this section that proposes the use of retrofit devices on any on-road  
28 diesel vehicle, off-road diesel equipment, regulated vehicle, or  
29 regulated equipment shall include: (1) a description by the owner of  
30 the best available retrofit technology and the specific vehicle or  
31 equipment on which the specific best available retrofit technology  
32 would be used, the specific vehicle or equipment to be retired, and  
33 how the required fine particle reductions shall be achieved through  
34 a combination of the use of best available retrofit technology on the  
35 specific vehicles or equipment; and (2) other measures or  
36 applications of best available retrofit technology consistent with the  
37 provisions of the rules and regulations adopted pursuant to section 3  
38 of P.L.2005, c.219 (C.26:2C-8.28).

39 j. The Department of Environmental Protection shall give due  
40 consideration in the application of the fleet retrofit plan, combined  
41 fleet retrofit plan, or fleet averaging plan requirements to any  
42 efforts or actions by owners of regulated vehicles or regulated  
43 equipment who voluntarily retrofit, retire, or repower vehicles or  
44 equipment prior to the adoption of rules and regulations pursuant to  
45 section 3 of P.L.2005, c.219 (C.26:2C-8.28), and may modify any  
46 of the requirements of this section for such an owner in order to  
47 provide such due consideration.



1 k. The Department of Environmental Protection shall provide  
2 any technical guidance needed in preparing the fleet retrofit plans,  
3 combined fleet retrofit plans, and fleet averaging plans required  
4 pursuant to this section and any revisions, supplements, or  
5 modifications thereto required pursuant to P.L.2005, c.219  
6 (C.26:2C-8.26 et al.).

7 l. No owner of regulated vehicles or regulated equipment shall  
8 be required to install or use a retrofit device on a regulated vehicle  
9 or regulated equipment as required pursuant to the rules and  
10 regulations adopted pursuant to section 3 of P.L.2005, c.219  
11 (C.26:2C-8.28) or under a plan submitted pursuant to this section in  
12 any year unless the State Treasurer certifies for that year that the  
13 constitutionally dedicated moneys have been deposited in the Diesel  
14 Risk Mitigation Fund and the Department of Environmental  
15 Protection certifies that sufficient moneys are available in the fund  
16 to pay the cost of purchase and installation of the retrofit devices  
17 required to be used by rule and regulation or under an approved  
18 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging  
19 plan or supplement or modification thereto, as applicable, by an  
20 owner in that year.

21 Provided that the State Treasurer has issued the certification that  
22 the constitutionally dedicated moneys have been deposited in the  
23 fund for that year, the department may determine the amount of  
24 moneys available in the fund for that year, require the purchase and  
25 installation of those retrofit devices in those regulated vehicles or  
26 pieces of regulated equipment for which sufficient moneys are  
27 available, and certify that sufficient moneys are available for those  
28 retrofit devices to be purchased for, and installed in, those regulated  
29 vehicles or pieces of regulated equipment.

30 (cf: P.L.2005, c.219, s.9.)

31

32 2. Section 25 of P.L.2005, c.219 (C.26:2C-8.50) is amended to  
33 read as follows:

34 25. a. **[No on-road diesel vehicle may operate in the State using**  
35 **any fuel other than ultra-low sulfur diesel fuel, on or after October**  
36 **15, 2006, or the date set by the United States Environmental**  
37 **Protection Agency as the retail compliance date for the sale of ultra-**  
38 **low sulfur diesel for use in on-road diesel vehicles pursuant to**  
39 **federal law and regulation.] (Deleted by amendment P.L. \_\_\_\_\_,**  
40 **c. \_\_\_\_ ) (pending before the Legislature as this bill)**

41 b. No sooner than July 15, 2006, and following a public hearing  
42 held by the Department of Environmental Protection on the  
43 availability of ultra-low sulfur diesel fuel in the State, the  
44 department shall determine and issue a written notice of its  
45 determination as to whether sufficient supplies of ultra-low sulfur  
46 diesel fuel are available in the State to require only ultra-low sulfur  
47 diesel fuel to be sold in the State on and after January 15, 2007,  
48 without significant disruption of, or significant price increases in,

1 the wholesale and retail fuel market. If the department determines  
2 that supplies would be sufficient, no diesel fuel other than ultra-low  
3 sulfur diesel fuel may be sold in the State on or after the 180th day  
4 after the date on which the department issues a written  
5 determination that supplies would be sufficient, or three months  
6 after the retail compliance date for the sale of ultra-low sulfur diesel  
7 fuel for use in on-road diesel vehicles implemented by the United  
8 States Environmental Protection Agency, whichever is later.

9 c. If the department determines that sufficient supplies are not  
10 available pursuant to subsection b. of this section, the requirement  
11 to sell only ultra-low sulfur diesel fuel in the State shall take effect  
12 only 180 days after the department issues a written determination  
13 that the supplies are sufficient.

14 d. The Department of Environmental Protection, in consultation  
15 with the Department of Law and Public Safety, the Department of  
16 Labor and Workforce Development, and the Attorney General, shall  
17 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,  
18 c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the  
19 implementation of this section.  
20 (cf: P.L.2005, c.219, s.25)

21

22 3. This act shall take effect immediately.

23

24

25

#### STATEMENT

26

27 This bill extends the deadline for submission of inventories,  
28 notice of intent to comply, and any plan required because of the  
29 method of compliance by owners of publicly owned vehicles and  
30 off-road diesel equipment. Current law specifies two years from the  
31 effective date of regulations required pursuant to P.L.2005, c. 219.  
32 The bill extends this date to four years after that effective date.

33 The bill also repeals the prohibition on motor vehicles operating  
34 on diesel fuel other than ultra low sulfur diesel after October 15,  
35 2006 or the retail compliance date set by the United States  
36 Environmental Protection Agency.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

**SENATE, No. 1796**

**STATE OF NEW JERSEY**

DATED: MAY 15, 2006

The Senate Environment Committee reports favorably Senate Bill No. 1796.

This bill extends the deadline for submission of the inventory, notice of intent to comply, and fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as appropriate, by owners of publicly owned vehicles and off-road diesel equipment pursuant to section 9 of P.L.2005, c.219 (C.26:2C-8.34). Current law requires the above submission of plans two years after the effective date of rules and regulations adopted pursuant to P.L.2005, c.219. This bill extends the date to four years after the effective date of the rules and regulations.

The bill also repeals the prohibition on the operation of motor vehicles on diesel fuel other than ultra low sulfur diesel after October 15, 2006 or the retail compliance date set by the United States Environmental Protection Agency.

STATEMENT TO  
**SENATE, No. 1796**

with Senate Floor Amendments  
(Proposed By Senator SMITH)

ADOPTED: JUNE 22, 2006

These floor amendments would require regulated school bus owners to submit cost estimates to the Department of Environmental Protection (DEP) for the costs of purchase and installation of closed crankcase technology and would require the owners of regulated vehicles and equipment to submit a cost estimate for the purchase and installation of retrofit devices.

The floor amendments would provide the DEP with the authority to:

1) determine the estimated costs are unreasonable costs based on criteria including, but not limited to, prevailing market rates and State acquisition of comparable technology; and

2) disapprove, in the case of owners of regulated vehicles or regulated equipment other than school buses, the submittals required to comply with the provisions of P.L.2005, c.219 (the diesel emissions law).

If the DEP makes the determination that the costs or cost estimates are unreasonable, the department shall enter into negotiations with the regulated school bus owner or the owner of the regulated vehicles or regulated equipment, as appropriate, to resolve the discrepancy.

Finally, the floor amendment modifies the provision addressing the sale, distribution, and use of ultra-low sulfur diesel fuel to provide that:

1) the DEP would determine if supplies are sufficient to require at least 80 percent of all diesel fuel annually sold, distributed, and used in the State be ultra-low sulfur diesel fuel without significant disruption of, or significant price increases in, the wholesale and retail fuel market;

2) the DEP would require, if the determination is made that supplies are sufficient, a certain percentage, to be determined by the DEP, of all diesel fuel sold, distributed, or used in the State be ultra low sulfur diesel fuel, provided the percentage is not less than 80 percent; and

3) the percentage would be set as the highest percentage practicable without significant disruption of, or significant price increases in, the wholesale and retail fuel market.

# ASSEMBLY, No. 3307

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 12, 2006

**Sponsored by:**

**Assemblyman ROBERT M. GORDON**

**District 38 (Bergen)**

**Assemblyman JOHN E. ROONEY**

**District 39 (Bergen)**

**SYNOPSIS**

Extends the date for certain submittals required pursuant to P.L.2005, c.219; repeals ultra low sulfur diesel fuel requirement for motor vehicles.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning regulation of fine particle emissions from  
2 certain vehicles and equipment powered by diesel engines, and  
3 amending P.L.2005, c.219.

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

7  
8 1. Section 9 of P.L.2005, c.219 (C.26:2C-8.34) is amended to  
9 read as follows:

10 9. a. Except as otherwise provided for in this section, any owner  
11 of a regulated vehicle or regulated equipment shall submit to the  
12 Department of Environmental Protection:

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

15 (2) notice by the owner that the owner shall comply with the  
16 requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the  
17 use of the best available retrofit technologies as designated and  
18 provided for under the rules and regulations adopted pursuant to  
19 section 3 of P.L.2005, c.219 (C.26:2C-8.28), or that the owner  
20 cannot comply in that manner and is submitting a fleet retrofit plan,  
21 combined fleet retrofit plan, or fleet averaging plan; and

22 (3) the fleet retrofit plan, combined fleet retrofit plan, or fleet  
23 averaging plan being submitted in lieu of complying through the use  
24 of the best available retrofit technologies as designated and  
25 provided for under the rules and regulations adopted pursuant to  
26 section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the owner has  
27 elected to do so.

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

31 (1) for regulated solid waste vehicles, no later than 180 days  
32 after the effective date of the rules and regulations adopted pursuant  
33 to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

34 (2) for public regulated commercial buses, no later than one year  
35 after the effective date of the rules and regulations adopted pursuant  
36 to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

37 (3) for private regulated commercial buses, no later than one  
38 year and 180 days after the effective date of the rules and  
39 regulations adopted pursuant to section 3 of P.L.2005, c.219  
40 (C.26:2C-8.28); and

41 (4) for regulated on-road diesel vehicles and regulated equipment  
42 other than regulated solid waste vehicles and regulated commercial  
43 buses, no later than **two** four years after the effective date of the  
44 rules and regulations adopted pursuant to section 3 of P.L.2005,  
45 c.219 (C.26:2C-8.28).

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

10 d. The owner of regulated vehicles or regulated equipment who  
11 commences operation of a fleet after the effective date of the rules  
12 and regulations adopted pursuant to section 3 of P.L.2005, c.219  
13 (C.26:2C-8.28) shall make the submittals required pursuant to  
14 subsection a. of this section within 180 days after the date on which  
15 they began operations, or the date provided in subsection b. of this  
16 section, whichever is later.

17 e. The owner of regulated vehicles or regulated equipment may  
18 coordinate or combine the development of a fleet retrofit plan with  
19 the development of a fleet retrofit plan of any other owner, or a  
20 group of owners, of regulated vehicles or regulated equipment, and  
21 with the guidance of the Department of Environmental Protection  
22 submit a combined fleet retrofit plan.

23 f. The fleet retrofit plan submitted pursuant to subsection a. of  
24 this section shall include a description by the owner of the best  
25 available retrofit technology and the specific regulated vehicle or  
26 piece of regulated equipment on which the specific best available  
27 retrofit technology would be used, as determined by the owner  
28 pursuant to the rules and regulations adopted pursuant to section 3  
29 of P.L.2005, c.219 (C.26:2C-8.28).

30 g. If the owner of regulated vehicles or regulated equipment  
31 determines that the best available retrofit technology as required  
32 under the rules and regulations adopted pursuant to section 3 of  
33 P.L.2005, c.219 (C.26:2C-8.28) is not feasible for a specific  
34 regulated vehicle or pieces of regulated equipment, the owner may  
35 document this determination in the fleet retrofit plan and request the  
36 use of another level of best available retrofit technology to meet the  
37 requirement for that specific regulated vehicle or piece of regulated  
38 equipment, or provide documentation as to why the owner cannot  
39 use the best available retrofit technology that is required. The owner  
40 may also propose and negotiate an enforceable commitment to:

41 (1) retire the regulated vehicle or piece of regulated equipment  
42 and replace it with a vehicle or piece of equipment certified to fine  
43 particle emission levels at or below the emission levels that would  
44 have been achieved by the use of the required best available retrofit  
45 technology; or

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

1 h. The owner of 75 or more regulated vehicles or pieces of  
2 regulated equipment, or any group of owners who elect to develop a  
3 combined fleet retrofit plan pursuant to subsection d. of this section  
4 under which 75 or more regulated vehicles or pieces of regulated  
5 equipment would be regulated, may propose to the Department of  
6 Environmental Protection a fleet averaging plan, in lieu of a fleet  
7 retrofit plan or a combined fleet retrofit plan, for the fleet or fleets  
8 affected. The owner or owners may propose a fleet averaging plan  
9 provided that the total net percent reductions in fine particle  
10 emissions under the proposed fleet averaging plan are equivalent to  
11 the estimated reductions in fine particle emissions that would have  
12 been achieved by the owner if a fleet retrofit plan were submitted  
13 and implemented for the regulated vehicles or regulated equipment,  
14 or both, or by the owners if the owners had submitted and  
15 implemented a combined fleet retrofit plan for their regulated  
16 vehicles or regulated equipment, or both, as calculated pursuant to  
17 the provisions of the rules and regulations adopted pursuant to  
18 section 3 of P.L.2005, c.219 (C.26:2C-8.28). The owner or group  
19 of owners may propose achieving fine particle emissions reductions  
20 from any on-road diesel vehicle, off-road diesel equipment,  
21 regulated vehicle, or regulated equipment owned by the owner or  
22 group of owners, or the retirement of any of those vehicles or  
23 equipment, and shall submit the proposed fleet averaging plan to the  
24 department as required by the rules and regulations adopted  
25 pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

26 i. A fleet averaging plan proposed pursuant to subsection g. of  
27 this section that proposes the use of retrofit devices on any on-road  
28 diesel vehicle, off-road diesel equipment, regulated vehicle, or  
29 regulated equipment shall include: (1) a description by the owner of  
30 the best available retrofit technology and the specific vehicle or  
31 equipment on which the specific best available retrofit technology  
32 would be used, the specific vehicle or equipment to be retired, and  
33 how the required fine particle reductions shall be achieved through  
34 a combination of the use of best available retrofit technology on the  
35 specific vehicles or equipment; and (2) other measures or  
36 applications of best available retrofit technology consistent with the  
37 provisions of the rules and regulations adopted pursuant to section 3  
38 of P.L.2005, c.219 (C.26:2C-8.28).

39 j. The Department of Environmental Protection shall give due  
40 consideration in the application of the fleet retrofit plan, combined  
41 fleet retrofit plan, or fleet averaging plan requirements to any  
42 efforts or actions by owners of regulated vehicles or regulated  
43 equipment who voluntarily retrofit, retire, or repower vehicles or  
44 equipment prior to the adoption of rules and regulations pursuant to  
45 section 3 of P.L.2005, c.219 (C.26:2C-8.28), and may modify any  
46 of the requirements of this section for such an owner in order to  
47 provide such due consideration.



1 k. The Department of Environmental Protection shall provide  
2 any technical guidance needed in preparing the fleet retrofit plans,  
3 combined fleet retrofit plans, and fleet averaging plans required  
4 pursuant to this section and any revisions, supplements, or  
5 modifications thereto required pursuant to P.L.2005, c.219  
6 (C.26:2C-8.26 et al.).

7 l. No owner of regulated vehicles or regulated equipment shall  
8 be required to install or use a retrofit device on a regulated vehicle  
9 or regulated equipment as required pursuant to the rules and  
10 regulations adopted pursuant to section 3 of P.L.2005, c.219  
11 (C.26:2C-8.28) or under a plan submitted pursuant to this section in  
12 any year unless the State Treasurer certifies for that year that the  
13 constitutionally dedicated moneys have been deposited in the Diesel  
14 Risk Mitigation Fund and the Department of Environmental  
15 Protection certifies that sufficient moneys are available in the fund  
16 to pay the cost of purchase and installation of the retrofit devices  
17 required to be used by rule and regulation or under an approved  
18 fleet retrofit plan, combined fleet retrofit plan, or fleet averaging  
19 plan or supplement or modification thereto, as applicable, by an  
20 owner in that year.

21 Provided that the State Treasurer has issued the certification that  
22 the constitutionally dedicated moneys have been deposited in the  
23 fund for that year, the department may determine the amount of  
24 moneys available in the fund for that year, require the purchase and  
25 installation of those retrofit devices in those regulated vehicles or  
26 pieces of regulated equipment for which sufficient moneys are  
27 available, and certify that sufficient moneys are available for those  
28 retrofit devices to be purchased for, and installed in, those regulated  
29 vehicles or pieces of regulated equipment.

30 (cf: P.L.2005, c.219, s.9.)

31

32 2. Section 25 of P.L.2005, c.219 (C.26:2C-8.50) is amended to  
33 read as follows:

34 25. a. **【No on-road diesel vehicle may operate in the State using**  
35 **any fuel other than ultra-low sulfur diesel fuel, on or after October**  
36 **15, 2006, or the date set by the United States Environmental**  
37 **Protection Agency as the retail compliance date for the sale of ultra-**  
38 **low sulfur diesel for use in on-road diesel vehicles pursuant to**  
39 **federal law and regulation.】** (Deleted by amendment P.L. , c. )  
40 (pending before the Legislature as this bill)

41 b. No sooner than July 15, 2006, and following a public hearing  
42 held by the Department of Environmental Protection on the  
43 availability of ultra-low sulfur diesel fuel in the State, the  
44 department shall determine and issue a written notice of its  
45 determination as to whether sufficient supplies of ultra-low sulfur  
46 diesel fuel are available in the State to require only ultra-low sulfur  
47 diesel fuel to be sold in the State on and after January 15, 2007,  
48 without significant disruption of, or significant price increases in,

1 the wholesale and retail fuel market. If the department determines  
2 that supplies would be sufficient, no diesel fuel other than ultra-low  
3 sulfur diesel fuel may be sold in the State on or after the 180th day  
4 after the date on which the department issues a written  
5 determination that supplies would be sufficient, or three months  
6 after the retail compliance date for the sale of ultra-low sulfur diesel  
7 fuel for use in on-road diesel vehicles implemented by the United  
8 States Environmental Protection Agency, whichever is later.

9 c. If the department determines that sufficient supplies are not  
10 available pursuant to subsection b. of this section, the requirement  
11 to sell only ultra-low sulfur diesel fuel in the State shall take effect  
12 only 180 days after the department issues a written determination  
13 that the supplies are sufficient.

14 d. The Department of Environmental Protection, in consultation  
15 with the Department of Law and Public Safety, the Department of  
16 Labor and Workforce Development, and the Attorney General, shall  
17 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,  
18 c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the  
19 implementation of this section.  
20 (cf: P.L.2005, c.219, s.25)

21

22 3. This act shall take effect immediately.

23

24

25

#### STATEMENT

26

27 This bill extends the deadline for submission of inventories,  
28 notice of intent to comply, and any plan required because of the  
29 method of compliance by owners of publicly owned vehicles and  
30 off-road diesel equipment. Current law specifies two years from the  
31 effective date of regulations required pursuant to P.L.2005, c.219.  
32 The bill extends this date to four years after that effective date.

33 The bill also repeals the prohibition on motor vehicles operating  
34 on diesel fuel other than ultra low sulfur diesel after October 15,  
35 2006 or the retail compliance date set by the United States  
36 Environmental Protection Agency.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3307**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 15, 2006

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 3307.

As amended, this bill makes changes to P.L.2005, c.219 (C.26:2C-8.26 et seq.), the law establishing requirements for reducing fine particle diesel emissions from certain vehicles and equipment.

The bill extends the deadline for submission of the inventory, notice of intent to comply, and fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as appropriate, by owners of publicly owned vehicles and off-road diesel equipment pursuant to section 9 of P.L.2005, c.219 (C.26:2C-8.34). Current law requires the above submission of plans two years after the effective date of rules and regulations adopted pursuant to P.L.2005, c.219. This bill extends the date to four years after the effective date of the rules and regulations.

The bill also repeals the prohibition on the operation of motor vehicles on diesel fuel other than ultra low sulfur diesel after October 15, 2006 or the retail compliance date set by the United States Environmental Protection Agency.

Lastly, the bill as amended provides the Department of Environmental Protection (DEP) with the authority to disapprove unreasonable costs or cost estimates for reimbursement from the "Diesel Risk Mitigation Fund" for closed crankcase technology or best available retrofit technology based on criteria including, but not limited to, prevailing market rates and State acquisition of comparable technology.

COMMITTEE AMENDMENTS:

The committee amendments to the bill provide the DEP with the authority to disapprove unreasonable costs or cost estimates for reimbursement from the "Diesel Risk Mitigation Fund" for closed crankcase technology or best available retrofit technology based on criteria including, but not limited to, prevailing market rates and State acquisition of comparable technology.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 3307**

with Assembly Floor Amendments  
(Proposed By Assemblyman GORDON)

ADOPTED: JUNE 22, 2006

These floor amendments clarify that the Department of Environmental Protection (DEP) in reviewing the costs of purchase and installation of closed crankcase technology and retrofits for owners of regulated vehicles and equipment would have the authority to:

1) determine the estimated costs are unreasonable costs based on criteria including, but not limited to, prevailing market rates and State acquisition of comparable technology; and

2) disapprove, in the case of owners of regulated vehicles or regulated equipment other than school buses, the submittals required to comply with the provisions of P.L.2005, c.219 (the diesel emissions law).

The floor amendment also modifies the provision addressing the sale, distribution, and use of ultra-low sulfur diesel fuel to provide that:

1) the DEP would determine if supplies are sufficient to require at least 80 percent of all diesel fuel annually sold, distributed, and used in the State be ultra-low sulfur diesel fuel without significant disruption of, or significant price increases in, the wholesale and retail fuel market;

2) the DEP would require, if the determination is made that supplies are sufficient, a certain percentage, to be determined by the DEP, of all diesel fuel sold, distributed, or used in the State be ultra low sulfur diesel fuel, provided the percentage is not less than 80 percent; and

3) the percentage would be set as the highest percentage practicable without significant disruption of, or significant price increases in, the wholesale and retail fuel market.