

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-465
HOUSE BILL 1912**

AN ACT TO ESTABLISH A PILOT PROGRAM TO PROVIDE FUNDS FOR LOCAL SCHOOL ADMINISTRATIVE UNITS TO RETROFIT SCHOOL BUSES IN ORDER TO REDUCE DIESEL EMISSIONS FROM CERTAIN DIESEL SCHOOL BUSES REGISTERED IN COUNTIES LOCATED IN AREAS DESIGNATED AS NONATTAINMENT OR MAINTENANCE FOR OZONE OR PARTICULATE MATTER.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative Findings. – The General Assembly makes the following findings:

- (1) Diesel emissions, due in large part to their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of North Carolina, including increased risk of cancer, decreased lung function, aggravated asthma, heart attacks, and premature death.
- (2) The United States Environmental Protection Agency, recognizing the harmful effects of diesel emissions, issued new fuel and engine emission standards that will reduce particulate matter emissions from new engines ninety percent (90%) below previous levels, beginning with vehicle model year 2007.
- (3) The same technology that makes ninety percent (90%) reductions in diesel emissions possible for new engines can be retrofitted onto existing engines.
- (4) The Safe Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144, 23 U.S.C. § 149, clarified eligibility for diesel matter retrofit projects from federal congestion mitigation and air quality improvement program funds apportioned to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and establishes those projects as a priority for funding. North Carolina should act now to position itself to maximize eighty percent (80%) federal matching dollars available through this program as provided in 23 U.S.C. § 120.

SECTION 2.(a) Pilot Program to Retrofit Certain School Buses. – The Department of Environment and Natural Resources, in consultation with the Department of Public Instruction, the Department of Transportation, and stakeholders, shall develop a pilot program, to be administered by the Department of Environment and Natural Resources, to award grants to retrofit school buses in order to reduce diesel emissions from school buses in any county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter. A local school administrative unit may submit an application to the Department of Environment and Natural Resources for a grant to have any eligible school bus retrofitted in order to utilize an appropriate verified diesel emission control device as determined by the Department of Environment and Natural Resources. A school bus is eligible to have a diesel retrofit using grant funds if the school bus: (i) has a model year 1994 through model year 2006 engine; (ii) is registered

in a county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter; (iii) is capable of operating on diesel fuel and; (iv) is used for the transportation of public school students. The Department of Environment and Natural Resources may adopt guidelines and engineering standards as needed to implement this act. The Department of Environment and Natural Resources shall develop grant application procedures, the criteria and priorities for selecting grant recipients and further selection of which school buses of these grant recipients may use grant funds for diesel retrofits under this pilot program, and procedures for distribution of grant funds and federal-aid funds reimbursed under Section 7 of this act to a local school administrative unit selected as a grant recipient. The criteria that may be considered in grant recipient selection includes the remaining useful life of a school bus and the accumulated mileage and years of service of a school bus. Priority designation for selection of school buses for retrofits using grant funds may be given for a diesel retrofit that results in the greatest particulate matter reduction, considering the costs of operating, maintaining, and repairing the verified diesel emission control device, for the longest remaining useful life of the school bus.

SECTION 2.(b) Definitions. – As used in this act, the following definitions apply:

- (1) Diesel retrofit. – Defined in Chapter 149 of Title 23 of the United States Code.
- (2) Level 1 Control. – A verified diesel emission control device that achieves a particulate matter emission reduction of twenty-five percent (25%) or more but less than fifty percent (50%) from uncontrolled engine emissions levels.
- (3) Level 2 Control. – A verified diesel emission control device that achieves a particulate matter emission reduction of fifty percent (50%) or more but less than eighty-five percent (85%) from uncontrolled engine emissions levels.
- (4) Level 3 Control. – A verified diesel emission control device that achieves a particulate matter emission reduction of eighty-five percent (85%) or more from uncontrolled engine emission levels, or that reduces emissions to less than or equal to 0.01 grams of particulate matter per brake horsepower-hour. Level 3 Control includes repowering or replacing the existing diesel engine with an engine that meets the United States Environmental Protection Agency 2007 Heavy Duty Highway Diesel Standards set out in the Final Rule published on 18 January 2001 in the Federal Register, Volume 66, Number 12, Pages 5002 through 5193. Level 3 Control also includes new diesel engines for the 2007 model year or later that meet the emissions standards that achieve particulate matter emissions reductions that are ninety percent (90%) less than particulate matter emissions standards for diesel engines in the 2006 model year.
- (5) Verified diesel emission control device. – An emission control device or strategy that has been verified by the United States Environmental Protection Agency or the California Air Resources Board; the replacement or repowering of the vehicle with an engine that is certified to specific particulate matter emissions performance by the United States Environmental Protection Agency or the California Air Resources Board; or a device that reduces crankcase emissions by ninety percent (90%) or more from uncontrolled crankcase emissions levels, whether or not the device is verified by United States Environmental Protection Agency or the California Air Resources Board as an emission control device or strategy.

SECTION 2.(c) Appropriate Retrofit Technology. – Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding that a model, model year, or any other category concerning the type or use of a school bus that is eligible for a grant under subsection (a) of this section cannot be retrofitted with Level 3 Control, and that the category may use grant funds to be retrofitted with Level 2 Control, if it is available and appropriate for the category, installed, and operational. Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding that a model, model year, or any other category concerning the type or use of a school bus that is eligible for a grant under subsection (a) of this section cannot be retrofitted with Level 2 Control, and that the category may use grant funds to be retrofitted with Level 1 Control, if it is available and appropriate for the category, installed, and operational. The Secretary of Environment and Natural Resources may require additional emissions control to be used for those school buses retrofitted with Level 1 Control using grant funds. Within one year of the effective date of this section, the Secretary of Environment and Natural Resources, in consultation with the Department of Public Instruction, may make a written finding regarding: the comparative economic impact, health benefits, and technological feasibility of using Level 1 Control, Level 2 Control, Level 3 Control, or other verified diesel emission control device under this pilot program; which device results in the greatest emissions reductions, considering the cost of operating, maintaining, and repairing the devices over their anticipated useful life; recommendations regarding the appropriate verified diesel emission control device to be used for retrofits under this pilot program consistent with these findings. In addition to any other issues of retrofit technology considered when making any finding under this subsection, the Secretary of Environment and Natural Resources and the Department of Public Instruction may consider the remaining useful life of a school bus and the accumulated mileage and years of service of a school bus.

SECTION 2.(d) Coordination Among Departments. – The Department of Environment and Natural Resources shall coordinate with the Department of Public Instruction, the Department of Transportation, and the Department of Administration to determine if the effective and efficient implementation of this pilot program requires any of these departments to have a role beyond any role specified in this act, and if so, the Department of Public Instruction, the Department of Transportation, and the Department of Administration, as applicable, may adopt guidelines and engineering standards as needed to implement this section. The Department of Transportation may amend its Transportation Improvement Program and otherwise satisfy any other requirement under federal law so that school bus retrofits under this pilot program qualify for reimbursement of federal-aid funds as provided under Section 6 of this act.

SECTION 3.(a) School Bus Diesel Emissions Reduction Account Established. – The School Bus Diesel Emissions Reduction Account is established as a nonreverting account within the Department of Environment and Natural Resources. The Account shall consist of funds appropriated to it by the General Assembly and any contributions or grants from public or private sources.

SECTION 3.(b) Permissible Uses of the School Bus Diesel Emissions Reduction Account. – The Department of Environment and Natural Resources shall distribute funds in the School Bus Diesel Emissions Reduction Account as grants to local school administrative units for retrofitting school buses under this pilot program. The distributed funds shall be in an amount that is equal to twenty percent (20%) of the costs of purchasing a diesel retrofit for each school bus selected for retrofitting, based upon the costs of purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources. The funds shall be used by the local school unit to match the federal-aid funds that are to be reimbursed under Section 6 of this act, provided the Metropolitan Planning Organization for the area in which that

local school administrative unit seeking grant funds under this pilot program has amended its Transportation Improvement Program and has otherwise satisfied any requirement under federal law so that the diesel retrofit as it applies to this local school administrative unit qualifies for reimbursement of federal-aid funds as provided under Section 6 of this act. Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any costs associated with any school bus retrofit in excess of the sum of the twenty-percent (20%) share the local school administrative unit received in grant funds under this section for each diesel retrofit and the eighty-percent (80%) share in federal-aid funds for each diesel retrofit. Costs associated with any school bus retrofit in excess of this sum, if any, shall be borne by the local school administrative unit that operates the school bus. Any funds in the School Bus Diesel Emissions Reduction Account that have not been used or obligated as of 1 July 2008 in accordance with this section may be used to make grants to local school administrative units for one hundred percent (100%) of the costs for purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources. Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any costs associated with any school bus retrofit in excess of one hundred percent (100%) of the costs for purchasing a diesel retrofit for a school bus as determined by the Department of Environment and Natural Resources, and excess costs associated with any school bus retrofit, if any, shall be borne by the local school administrative unit that operates the school bus.

SECTION 3.(c) Prohibited Uses of the School Bus Diesel Emissions Reduction Account. – Funds in the School Bus Diesel Emissions Reduction Account shall not be used for any school bus with tampered, nonconforming, or defective emission control components.

SECTION 4.(a) Transfer of Information. – On or before 1 August 2008, the Department of Public Instruction shall submit to the Department of Environment and Natural Resources the following information:

- (1) The total number of school buses that are eligible for grants under Section 2(a) of this act.
- (2) The number of school buses that are equipped with an engine certified to the applicable United States Environmental Protection Agency standard for particulate matter as set out in 40 Code of Federal Regulations §§ 86.007-11 (1 July 2006 Edition).

SECTION 4.(b) Annual Report Required. – On or before 1 September 2008, and again on or before 1 September 2009, the Department of Environment and Natural Resources shall submit a report to the Department of Public Instruction, the Department of Transportation, and the Environmental Review Commission on the pilot program under this act. This report shall include the information submitted under subsection (a) of this section and shall also include:

- (1) The total number of school buses that have the retrofit technology installed and operational under this pilot program, including a breakdown by location, vehicle model year, engine year, and the type of verified diesel emission control device used for each school bus.
- (2) The anticipated emissions reductions based on the emissions certification of the verified diesel emission control devices used and the annual miles the school buses are expected to drive.
- (3) Any recommendations to further reduce diesel emissions from school buses and whether the program to retrofit certain school buses registered in a county that is located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter is accomplishing its purpose to reduce diesel emissions, improve air quality, and protect students' health.

- (4) The feasibility and the cost of expanding the funding for this pilot program for all eligible school buses for local school administrative units in counties that are located in an area that is designated by the United States Environmental Protection Agency as nonattainment or maintenance for ozone or particulate matter.
- (5) The feasibility and the cost of expanding this pilot program statewide.

SECTION 5. Credit for Emissions Reductions. – The Department of Environment and Natural Resources shall work together with federal, State, and local air quality and transportation agencies to determine how emissions reductions achieved through implementation of this act may be quantified and credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the State Implementation Plan or Transportation Conformity determinations.

SECTION 6. Reimbursement of Federal-Aid Funds. – The Department of Transportation may reimburse up to two million dollars (\$2,000,000) for the 2007-2008 fiscal year from the federal congestion mitigation and air quality improvement program funds apportioned to the State of North Carolina by the United States pursuant to 23 U.S.C. § 104(b)(2), to the Department of Environment and Natural Resources for the costs of purchasing diesel retrofits for school buses under the pilot program under this act. This reimbursement may provide the eighty percent (80%) in federal-aid funds, as provided in 23 U.S.C. § 120, for the costs of purchasing diesel retrofits for school buses to supplement the funds awarded as grants under Section 3(b) of this act. The Department of Transportation and the Department of Environment and Natural Resources may enter into a contract that provides for the terms and method by which the Department of Environment and Natural Resources bills the Department of Transportation for reimbursement of eligible costs of purchasing diesel retrofits for school buses and submits itemized invoices with proper supporting documentation. This contract may provide a reimbursement schedule.

SECTION 7. Effective Dates. – Section 6 of this act becomes effective 1 July 2007, and the remainder of this act is effective when this act becomes law, but Sections 1 through 6 of this act become effective only if the 2007 General Assembly appropriates funds for the 2007-2008 fiscal year to the School Bus Diesel Emissions Reduction Account established in Section 3(a) of this act to be used for grants to local school administrative units for the purchase of diesel retrofits for school buses consistent with the pilot program under this act.

In the General Assembly read three times and ratified this the 28th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:02 a.m. this 29th day of August, 2007