

CHAPTER 266

AN ACT concerning implementation of the California Low Emission Vehicle program, supplementing P.L.1954, c.212 (C.26:2C-1 et seq.), amending and repealing various sections of P.L.1993, c.69, and supplementing P.L.1966, c.30 (C.54:32B-1 et seq).

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

C.26:2C-8.15 Findings, declarations relative to California Low Emissions Vehicle program.

1. The Legislature finds and declares that the implementation of the National Low Emission Vehicle program is a key component of the State's efforts to achieve on-time emissions reductions and to attain compliance with the national ambient air quality standards, as required pursuant to the federal "Clean Air Act Amendments of 1990," 42 U.S.C. s.7403 et seq.; that the State's attainment of the national ambient air quality standards will require further, more stringent reductions in emissions of pollutants; that the California Low Emission Vehicle program provides for greater reductions in pollutants than the National Low Emission Vehicle program; and that the State has committed to implementing the National Low Emission Vehicle program until 2006 but can implement the California Low Emission Vehicle program after that year.

The Legislature further finds and declares that in the summer of 2002, New Jersey had the highest number of smog violations per monitoring station in the nation; that in December 2003, the United States Environmental Protection Agency announced its intention to designate the entire State as out-of-compliance with the agency's health-based standard for ozone; and that this designation by the United States Environmental Protection Agency would require the State to adopt a stronger, more comprehensive clean air plan for the State.

The Legislature further finds and declares that a significant percentage of particulate emissions, smog-forming emissions, and airborne cancer risk comes from vehicle emissions; that pollution from automobiles is expected to increase with the projected population increase estimate of an additional 1,200,000 people in the State in the next decade; and that mobile sources of emissions have received less regulatory attention than industrial facilities and area sources of pollution.

The Legislature further finds and declares that ground-level ozone, or smog, is formed when automobile, industrial and other pollutants chemically react with bright sunshine and high temperatures; that ground-level ozone irritates the respiratory system and can cause coughing, wheezing, chest pain and headaches; that ozone especially aggravates chronic respiratory diseases such as asthma and bronchitis; that ground-level ozone and other air toxics have a substantial negative impact on the health and quality of life of residents of the State; and that reducing ground-level ozone pollution will help reduce these negative health effects.

The Legislature therefore determines that it is in the public interest to: implement the California Low Emission Vehicle program beginning January 1, 2009; establish a zero emission vehicle credit bank for manufacturers; establish a Low Emission Vehicle Review Commission charged with reviewing the implementation of the program, the availability and success of the incentive, and the technology of zero emission vehicles; and provide an incentive for the purchase or lease of zero emission vehicles.

C.26:2C-8.16 Definitions relative to low emissions vehicles.

2. As used in sections 1 through 7 of P.L.2003, c.266 (C.26:2C-8.15 et seq.):

"Advanced technology partial zero emission vehicle" means a vehicle certified as an advanced technology partial zero emission vehicle pursuant to the California Air Resources Board vehicle standards for the applicable model year;

"California Low Emission Vehicle program" means the second phase of the low emission vehicle program being implemented in the State of California, pursuant to the provisions of the Federal Clean Air Act and the California Code of Regulations;

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

"Federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent amendments or supplements to that act;

"Low Emission Vehicle Review Commission" means the commission established by subsection a. of section 5 of P.L.2003, c.266 (C.26:2C-8.19);

"Partial zero emission vehicle" means a vehicle certified as a partial zero emission vehicle pursuant to the California Air Resources Board vehicle standards for the applicable model year;

"State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act;

"Zero emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, but shall not include an advanced technology partial zero emission vehicle or a partial zero emission vehicle; and

"Zero emission vehicle requirement" means the percentage or number of those vehicles certified as zero emission vehicles pursuant to the California Air Resources Board vehicle standards and required to be delivered by a manufacturer for sale or lease for the applicable model year, and any additional percentages or numbers of advanced technology partial zero emission vehicles or partial zero emission vehicles that may be delivered by a manufacturer for sale or lease to satisfy the zero emission vehicle requirement established by the California Air Resources Board in lieu of vehicles that meet the pure zero emission vehicle standard.

C.26:2C-8.17 Implementation of California Low Emission Vehicle program; substantive changes.

3. a. Notwithstanding any provision of a State implementation plan submitted by the Department of Environmental Protection to the United States Environmental Protection Agency pursuant to the requirements of the federal "Clean Air Act Amendments of 1990," 42 U.S.C. s.7403 et seq., to the contrary, the department shall implement the California Low Emission Vehicle program in the State beginning on January 1, 2009, except as provided pursuant to sections 6 and 7 of P.L.2003, c.266 (C.26:2C-8.20 and C.26:2C-8.21).

b. The Commissioner of Environmental Protection, within 30 days after a proposed major substantive change to the California Low Emission Vehicle program that, if adopted, would necessitate a corresponding substantive change to the program in New Jersey adopted pursuant to subsection a. of this section, shall provide written notice and a summary of the proposed substantive change to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly.

c. The commissioner shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement the California Low Emission Vehicle program in the State beginning on January 1, 2009.

C.26:2C-8.18 Zero emission vehicle credit bank.

4. a. The Commissioner of Environmental Protection shall establish a zero emission vehicle credit bank to allow manufacturers to earn and bank vehicle equivalent credits for any advanced technology partial zero emission vehicle or partial zero emission vehicle produced and delivered for sale or lease in the State on or after January 1, 1999 and through December 31, 2008.

(1) In establishing the credit bank required by this section, the commissioner shall use the highest multiplier used by the California Air Resources Board for determining the allowable vehicle equivalent credits for each advanced technology partial zero emission vehicle or partial zero emission vehicle delivered for sale or lease in the State by a manufacturer on or after January 1, 1999 until the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.).

(2) Beginning on the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.), the commissioner shall use the multiplier used by the California Air Resources Board for the applicable model year for each advanced technology partial zero emission vehicle or partial zero emission vehicle delivered for sale or lease in the State by a manufacturer on or after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.) and through December 31, 2008.

b. (1) Within 180 days after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.), the commissioner shall publish a list in the New Jersey Register of the make and model of those motor vehicles that qualify as advanced technology partial zero emission vehicles or partial zero emission vehicles for the 1999 through 2003 model years.

(2) Annually thereafter, the commissioner shall publish a list in the New Jersey

Register of the make and model of those motor vehicles that qualify as advanced technology partial zero emission vehicles or partial zero emission vehicles for that respective model year.

(3) The commissioner may revise any list published pursuant to this subsection as necessary to comply with the California Air Resources Board vehicle standards for the applicable model year.

c. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner shall, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary rules and regulations as necessary to establish a zero emission vehicle credit bank pursuant to subsection a. of this section. These rules and regulations may include, but need not be limited to, the documentation to be submitted by a manufacturer to determine eligibility and participation in the credit bank established pursuant to subsection a. of this section, and fees for administrative services provided to implement the zero emission vehicle credit bank to be assessed to those manufacturers seeking to earn and bank credits. The temporary rules and regulations shall be in effect for a period not to exceed 270 days after the date of the filing, except that in no case shall the temporary rules and regulations be in effect one year after the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.). The temporary rules and regulations shall thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act."

d. The provisions of this section shall expire upon the passage of a concurrent resolution by the Legislature directing the department to implement the National Low Emission Vehicle program pursuant to subsection a. of section 6 of P.L.2003, c.266 (C.26:2C-8.20).

C.26:2C-8.19 Low Emission Vehicle Review Commission.

5. a. There is established the Low Emission Vehicle Review Commission consisting of 15 members as follows: the Director of the Environmental and Occupational Health Sciences Institute at Rutgers, the State University of New Jersey, or the director's designee; a representative of the Department of Environmental Protection appointed by the commissioner; one member of the General Assembly appointed by the Speaker of the General Assembly; one member of the Senate appointed by the President of the Senate; and 11 public members.

The 11 public members, to be appointed by the Governor with the advice and consent of the Senate, shall be as follows: two members representing manufacturers of automobiles sold within the State; two members representing automotive retailers and recommended to the Governor by the New Jersey Coalition of Automotive Retailers; two members of recognized Statewide environmental organizations; one member representing the New Jersey Public Interest Research Group; one member representing the New Jersey Institute of Technology and recommended to the Governor by the President of the New Jersey Institute of Technology; one member representing the American Lung Association of New Jersey; one member representing the Northeast States for Coordinated Air Use Management; and one member representing a zero emission vehicle technology company.

b. Any vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

c. The Director of the Environmental and Occupational Health Sciences Institute at Rutgers, the State University of New Jersey, or the director's designee, shall serve as chairperson of the commission. The commission shall meet at the call of the chairperson, and the commission shall organize as soon as practicable after appointment of its members.

d. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties.

e. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

f. (1) The commission shall study advances made in zero emission vehicle and advanced

technology partial zero emission vehicle technologies. The commission shall also study the development of hydrogen fuel cell technology, the infrastructure required for its use in motor vehicles, the development of that infrastructure, and the availability of hydrogen fuel cell vehicles to the public. In studying these issues, the commission shall review any advice prepared by the independent expert review panel established to advise the California Air Resources Board concerning advances made in zero emission vehicle and advanced technology partial zero emission vehicle technologies.

(2) The commission shall evaluate any proposed or adopted changes made by the California Air Resources Board to the California Low Emission Vehicle program and the potential effects of these changes on the implementation of the program in this State. If the California Air Resources Board has not acted prior to the start of the 2008 model year to revise the requirements under the alternative compliance path for the amount of fuel cell vehicles required by a manufacturer beginning for the 2012 model year from a state-specific requirement to a nationwide requirement, the commission shall make a recommendation as to whether the State should implement the California Low Emission Vehicle program beginning on January 1, 2009 or if the State should instead continue with implementation of the National Low Emission Vehicle program.

(3) The commission shall determine whether the incentive provided by the State pursuant to section 11 of P.L.2003, c.266 (C.54:32B-8.55) is sufficient to encourage the purchase of zero emission vehicles. The commission shall make recommendations to the Governor and the Legislature setting forth any additional incentives determined to be necessary to encourage the purchase of zero emission vehicles or advanced technology partial zero emission vehicles in order to increase the effectiveness of the implementation of the California Low Emission Vehicle program in the State.

(4) The commission shall evaluate the feasibility of the zero emission vehicle requirement of the California Low Emission Vehicle program and make a determination whether the zero emission vehicle requirement is achievable in this State beginning on January 1, 2009. This evaluation shall include an examination of zero emission vehicle technology, price, performance, consumer acceptability, and implementation issues relating to the use of zero emission vehicles in the State.

g. Within one year after organizing, the commission shall submit a report to the Governor, the Commissioner of Environmental Protection, and the Legislature: (1) summarizing the activities and findings of the commission to date; (2) setting forth any recommendations for additional incentives determined to be necessary to encourage the purchase of zero emission vehicles or advanced technology partial zero emission vehicles; and (3) setting forth any recommendations that would increase the effectiveness of the implementation of the California Low Emission Vehicle program in the State.

h. No later than January 1, 2008, the commission shall submit a final report to the Governor, the Commissioner of Environmental Protection, and the Legislature:

(1) summarizing the studies and evaluations conducted pursuant to subsection f. of this section;

(2) setting forth any recommendations for additional incentives to encourage the purchase of zero emission vehicles or advanced technology partial zero emission vehicles; and

(3) setting forth a recommendation as to whether:

(a) pursuant to paragraph (2) of subsection f. of this section, the California Low Emission Vehicle program should be implemented in the State beginning on January 1, 2009 or if the State should instead continue with implementation of the National Low Emission Vehicle program; and

(b) if the commission recommends that the California Low Emission Vehicle program should be implemented in the State, the commission shall further set forth a recommendation as to whether the zero emission vehicle requirements of the program should be implemented in the State based on the evaluation conducted pursuant to paragraph (4) of subsection f. of this section.

6. a. If the low emission vehicle review commission, in the report required pursuant to subsection h. of section 5 of P.L.2003, c.266 (C.26:2C-8.19), recommends, pursuant to subparagraph (a) of paragraph (3) of subsection h. of section 5 of P.L.2003, c.266 (C.26:2C-8.19), that the State should not implement the California Low Emission Vehicle program and instead continue with implementation of the National Low Emission Vehicle program, the department shall implement the California Low Emission Vehicle program unless the Legislature by passage of a concurrent resolution directs the department to implement the National Low Emission Vehicle program.

b. Upon the passage of a concurrent resolution by the Legislature directing the department to implement the National Low Emission Vehicle program, the commissioner, notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, shall, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary rules and regulations as necessary to continue implementation of the National Low Emission Vehicle program.

The temporary rules and regulations shall be in effect for a period not to exceed 270 days after the date of the filing. The temporary rules and regulations shall thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act."

C.26:2C-8.21 Acceptance, rejection of commission's recommendation.

7. a. If the low emission vehicle review commission recommends in the report required pursuant to subsection h. of section 5 of P.L.2003, c.266 (C.26:2C-8.19) that the State should implement the California Low Emission Vehicle program without the zero emission vehicle requirement, the commissioner may make a determination to accept or reject the recommendation of the commission concerning the implementation of the zero emission vehicle requirement.

b. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Environmental Protection shall, immediately upon filing the proper notice with the Office of Administrative Law, adopt such temporary rules and regulations as necessary to implement the provisions of subsection a. of this section.

The temporary rules and regulations shall be in effect for a period not to exceed 270 days after the date of the filing. The temporary rules and regulations shall thereafter be amended, adopted or readopted by the commissioner as the commissioner determines is necessary in accordance with the requirements of the "Administrative Procedure Act."

c. The commissioner shall, in writing, notify the Governor and the Legislature of: (1) the determination made pursuant to subsection a. of this section; and (2) the filing of the temporary rules and regulations with the Office of Administrative Law pursuant to subsection b. of this section.

8. Section 5 of P.L.1993, c.69 (C.26:2C-8.10) is amended to read as follows:

C.26:2C-8.10 Sale, use of reformulated gasoline; program expiration.

5. The department shall not adopt rules and regulations requiring, for gasoline-fueled motor vehicles, the sale and use of reformulated gasoline other than that certified therefor by the United States Environmental Protection Agency pursuant to subsection (k) of 42 U.S.C. s.7545 for sale and use in states other than the State of California. If the sale and use of reformulated gasoline other than that so certified is required by federal law, rule, regulation, agency ruling, order, opinion, or other action or court order to be sold for use, and used, in gasoline-fueled motor vehicles in New Jersey because the State has implemented the California Low Emission Vehicle program pursuant to subsection a. of section 3 of P.L.2003, c.266 (C.26:2C-8.17), the California Low Emission Vehicle program implemented in New Jersey pursuant to P.L.2003, c.266 (C.26:2C-8.15 et al.) shall expire 180 days from the date of enactment of the federal law, adoption of the federal rule or regulation, issuance of the agency ruling, order, opinion, or other action, or issuance of the court order, as the case may be.

9. Section 6 of P.L.1993, c.69 (C.26:2C-8.11) is amended to read as follows:

C.26:2C-8.11 Air pollution control rules, regulations.

6. a. The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations implementing the following mandated air pollution control measures identified in the federal Clean Air Act and consistent with any rules, regulations, or guidelines that may be promulgated therefor by the United States Environmental Protection Agency:

- (1) Enhanced vehicle inspection and maintenance program;
- (2) Correction of reasonably available control technology rules for volatile organic compounds;
- (3) Reasonably available control technology rules for volatile organic compounds;
- (4) Reasonably available control technology rules for oxides of nitrogen;
- (5) New source review regulations for volatile organic compounds, oxides of nitrogen, and carbon monoxide;
- (6) Criteria and procedures for determining conformity between the State implementation plan and transportation plans; and
- (7) Use in ozone nonattainment areas of federal reformulated gasoline that meets the requirements of subsection (k) of 42 U.S.C. s.7545 for sale and use in states other than the State of California.

b. As used in this section:

"Department" means the Department of Environmental Protection;

"Federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent amendments or supplements to that act; and

"State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act.

10. Section 10 of P.L.1993, c.69 (C.26:2C-8.14) is amended to read as follows:

C.26:2C-8.14 Written report, list, inventory.

10. a. The Department of Environmental Protection, in consultation with the Commissioner of Transportation and the Chief Administrator of the New Jersey Motor Vehicle Commission, shall prepare and submit on a semi-annual basis to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly, a written report that shall:

- (1) summarize the State implementation plan and any amendments, alterations, or supplements to that plan that have been made or proposed since the last semi-annual report was issued; and
- (2) analyze the progress and effectiveness of the State implementation plan with respect to ensuring that the State shall be, and shall remain, in compliance with all applicable requirements, standards, and deadlines set forth in the federal Clean Air Act.

As used in this subsection: "federal Clean Air Act" means the federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent amendments or supplements to that act; and "State implementation plan" means the State implementation plan for national ambient air quality standards adopted for New Jersey pursuant to the federal Clean Air Act.

b. (Deleted by amendment, P.L.2003, c.266).

c. (Deleted by amendment, P.L.2003, c.266).

C.54:32B-8.55 Exemption from sales tax for zero emissions vehicles.

11. a. Receipts from sales of zero emission vehicles sold on or after the first day of the fourth month following the effective date of P.L.2003, c.266 (C.26:2C-8.15 et al.) are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

b. The Commissioner of Environmental Protection shall certify to the State Treasurer the make and model of those motor vehicles that are zero emission vehicles and eligible for the

exemption provided pursuant to subsection a. of this section.

c. As used in this section, "zero emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, but shall not include any other type of vehicle that may be delivered by a manufacturer for sale or lease to satisfy the zero emission vehicle requirement established by the California Air Resources Board in lieu of a vehicle that qualifies as a pure zero emission vehicle.

Repealer.

12. The following are repealed:

Sections 1 through 4 inclusive of P.L.1993, c.69 (C.26:2C-8.6 through 26:2C-8.9); and Sections 7 and 8 of P.L.1993, c.69 (C.26:2C-8.12 and 26:2C-8.13).

13 This act shall take effect immediately.

Approved January 14, 2004.