



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 8, 2011

The Honorable Sherman Packard, Chairman  
House Transportation Committee  
Legislative Office Building, Room 203  
Concord, NH 03301

**Re:** HB 539 repealing the state enforcement of OBD II requirements for motor vehicles.

Dear Chairman Packard and Members of the Committee:

The Department of Environmental Services (DES) appreciates the opportunity to offer testimony on proposed House Bill 539, which seeks to repeal the state enforcement of On Board Diagnostic (OBD II) requirements for motor vehicles. DES opposes this bill which, if passed, would place the state in violation of federal law.

The committee should be aware that the General Court has thoroughly reviewed both the need for and implementation of the state's OBD II program numerous times. In 1998, House Bill 1513 was passed after the Departments of Safety (DOS) and Environmental Services (DES) and representatives of the General Court reached an agreement with the Environmental Protection Agency (EPA) regarding the federal Clean Air Act requirement for emissions testing in New Hampshire. In 2005, the General Court debated House Bills 513 and 579, and Senate Bill 148. In 2006, House Bills 1356 and 1328, and Senate Bill 341, and in 2007, House Bill 449 continued the discussion. In all cases the General Court affirmed the need for the OBD II inspection to be implemented on a statewide basis. In order to ensure more thorough legislative oversight of this program, HB 513 (2005) also established a legislative advisory committee that meets regularly to review contracts and recommend legislation and rules relating to OBD II testing.

Under the Clean Air Act and the Clean Air Act Amendments of 1990 (collectively CAA), vehicle inspection and maintenance (I/M) programs are required in states or portions of states that are exceeding (i.e. are not in attainment with) the federal ozone National Ambient Air Quality Standard (NAAQS), as well as in all states that are in the Ozone Transport Region, regardless of their attainment status. Vehicle I/M programs can vary by test type depending on the region's air quality status and CAA requirements. Tailpipe testing programs, generally used for vehicles older than 1996, consist of placing a vehicle on a dynamometer and using a probe to sample the emissions from the exhaust. Tailpipe testing is time consuming, expensive, and does not detect excess vehicle emissions until they have reached relatively high levels. By comparison, OBD II testing is very quick, low cost, and can detect malfunctioning vehicles before they become gross emitters. OBD II programs can be utilized for 1996 and newer vehicles and consist of connecting to a vehicle's computer system to determine if any vehicle component whose failure could cause the vehicle's emission to increase by 50% or more has failed or malfunctioned. The OBD II system can also save consumers money through early identification of malfunctions that can cause vehicles to operate

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inefficiently, thus wasting fuel, or that may lead to substantial, costly repairs if left unattended. Most responsible citizens of the state already respond to the “check engine” light, getting necessary repairs as necessary. The current program ensures that at least annually everyone will be required to maintain their vehicle emission systems.

Southern and Seacoast New Hampshire are in non-attainment with the current ozone NAAQS, triggering the I/M requirement under Section 182 of the CAA. In addition, New Hampshire is located in the Ozone Transport Region and, therefore, an even more stringent requirement to implement a vehicle I/M program under CAA Section 184 is also applicable which, strictly interpreted, would require both OBD II and tailpipe testing in the southern four counties

New Hampshire’s I/M program is the result of extensive negotiations that occurred between the state and EPA over the time period of 1993 to 1998. These negotiations resulted in an agreement with EPA allowing implementation of the OBD II testing program for all 1996 and newer vehicles statewide, in lieu of inclusion of tailpipe testing for 1968 to 1995 vehicles solely in the southern four counties. This agreement was codified by House Bill 1513 in 1998 which amended RSA 266:59-b to include an OBD II testing program.

The state’s obligations under RSA 266:59-b are part of the federally required State Implementation Plan (SIP) that outlines steps a state will take to achieve and/or maintain compliance with the NAAQS. If EPA determines that a required SIP element (such as an I/M program) has not been submitted or not implemented for a particular area the CAA authorizes the EPA administrator to implement two forms of sanctions:

- 2:1 offset sanctions on new or modified emission sources (thereby limiting potential for economic development)
- Federal highway fund withholding

There are numerous instances in which states have been notified by EPA of the start of a “sanctions clock”, beginning an 18 month period in which a state must comply with requirements to avoid sanctions. Typically offset sanctions are imposed at the end of this 18 month clock, and highway fund sanctions are imposed 6 months later. New Hampshire was under a sanctions clock in 1997/98 due to the state’s failure to implement an I/M program as required by the CAA. States typically take action to avoid imposition of sanctions prior to the “clock” running out. Therefore relatively few states have had sanctions imposed.

Highway funding can also be “sanctioned” pursuant to separate provisions under the CAA as a result of a “conformity lapse.” States with non-attainment areas must meet federal transportation planning regulations referred to as “transportation conformity”. The conformity regulation is intended to ensure, through analysis of a state’s transportation plan, that the plan (which includes all highway projects) would not result in an increase in vehicle emissions that would either cause additional violations of the NAAQS or prevent attainment of it. Federal highway funds can be withheld if an area is unable to show that the transportation plans “conform” to a state’s air quality plan, the SIP. Elimination of the air quality benefits of the OBD II program would jeopardize the state’s ability to demonstrate this conformity. Failure to make this demonstration is known as a “conformity lapse.” Details on the implications of a conformity lapse are summarized in the attached letter to the Executive Council from the Department of Transportation. As with SIP-related sanctions, states tend to remedy conformity issues before sanctions are imposed.

However, there are many instances in which states or communities have had sanctions imposed, due either to a conformity lapse or to a failure to implement or comply with SIP requirements. The most notable of these is Atlanta, Georgia, which had highway funds worth \$1.9 billion withheld from 1998 to 2000 for a conformity lapse. Pennsylvania also had highway funds withheld in 1983 and 1984 for failure to implement an I/M program. Other areas, including New York City, Boston, MA, Burlington, VT, E. Helena, MT, Omaha, NE, St. Louis, MO, and Iron County, MO have also had sanctions imposed. New Hampshire has also had at least one instance in which highway funds were temporarily unavailable due to a conformity lapse. Highway fund sanctions were imposed at least 18 times in the 1990's and are currently pending in 23 jurisdictions.

While the OBD II program is primarily designed to help the state attain compliance with the ozone NAAQS, coverage in the portions of the state that are currently in attainment helps to ensure reduced emissions in these areas, thereby reducing the potential for expansion of the state's designated nonattainment areas. DES air quality monitoring data have shown that ozone levels are frequently elevated during the summer months in the White Mountains, resulting in health advisories to visitors in this region. Increased motor vehicle traffic contributes to and exacerbates this situation, and further expansion of nonattainment areas may have detrimental impacts on economic growth and anticipated transportation improvements in these areas.

Finally, the state is obligated to meet the newer, more stringent federal ozone standards that are anticipated to be announced this year, as well as federal requirements to protect visibility (reduce regional haze) in Class I wilderness areas, including the Presidential Range/Dry River and Great Gulf Wilderness Areas. The I/M program is critical to meeting these new standards and helps protect the health of our citizens and our visitors statewide by reducing emissions of and exposure to vehicular-related toxic pollutants. A clean environment is crucial to New Hampshire's tourism economy, particularly in the northern counties of the state.

Thank you for the opportunity to provide testimony on this bill. Should you have further questions or need additional information please feel free to contact Robert R. Scott, Director, Air Resources Division (271-1088, [robert.scott@des.nh.gov](mailto:robert.scott@des.nh.gov)) or Rebecca Ohler, Transportation and Energy Programs Manager (271-6749, [rebecca.ohler@des.nh.gov](mailto:rebecca.ohler@des.nh.gov)).

Sincerely,



Thomas S. Burack  
Commissioner

cc: HB 539 sponsors  
OBD II Advisory Committee  
John Barthelmes, Commissioner, DOS  
Richard Bailey, Director, DMV

