



Before the

Maryland General Assembly

Senate Finance Committee

Regarding Senate Bill 0412 (SB0412)

Consumer Protection, Right to Repair

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Statement of

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My name is Allen Schaeffer, and I am the executive director of the Diesel Technology Forum, and we are a not-for profit educational organization headquartered in Frederick MD, established in 2000. We are proud to represent manufacturers of diesel engines and equipment, components, petroleum, and renewable biofuel producers. A list of our members is attached.

Over the last two decades, the Diesel Technology Forum has been an active participant and consistent supporter of efforts to reduce in-use diesel emissions in Maryland.

- This includes working with the Maryland Department of the Environment, Maryland Port Authority, the Ozone Transport Commission and EPA Regional and EPA HQ efforts, and a Diesel Emissions Reduction dialogue lead by the Maryland Environmental Health Network to name a few.
- Three years ago, we were here in Annapolis in support of since enacted legislation from then delegate now Senator Clarence Lam that established higher fines and penalties for those found to be emitting excessive exhaust emissions from pick-up trucks – a practice known as rolling coal, that is facilitated by altering the programming of the truck engine and or modifying the emissions control systems, which is related to the subject of today's hearing.

I am here today in opposition to Senate Bill 0412 because if enacted, it has the potential to

- make Maryland's air dirtier, not cleaner,
- jeopardize heavy-equipment safety for both farmers, vehicle service technicians and the public that share roads, and
- facilitate a practice that is in clear violation of the federal Clean Air Act.

Diesel engines and fuel power nearly all farm tractors and machines thanks to its unique combination of efficiency, power, durability, and reliability. Over the last two decades, manufacturers of diesel engines and equipment have invested billions of dollars to reduce emissions and meet federal clean air requirements. As a result, today new diesel models of everything from highway tractor trailers to

construction machines, work boats and farm tractors now achieve near zero emissions for both nitrogen oxides and particulate matter, as you can see in the attached chart in my written testimony.

These advances in lower emissions are a key part of Maryland's clean air plan and achieving the national ambient air quality standards here in our state.

Achieving near-zero emissions in new diesel engines is accomplished thanks to a highly integrated system controlled by engine control units -- ensuring on a real time basis that the engine performance of the machine is meeting EPA emissions standards and is in compliance with safety requirements.

This legislation seeking to provide so called Right to Repair opportunities could also be titled "Right to Tamper," as it seeks to legitimize and facilitate the modifying of farm equipment software. Being sold as "boosting performance for pennies on the dollar compared to the cost of buying higher-capacity equipment." In fact, this practice may void the equipment's warranty along with insurance agreements and is illegal in the U.S.

The U.S. Clean Air Act requires equipment manufacturers to build in base level tampering safeguards in emissions control units/engine computers. Restricting access to software that defines the machine's emissions performance is part of these base level tampering safeguards put in place to meet the requirements of the Act.

A new development since this Committee heard testimony on this topic in March of 2020 is that US EPA Air Enforcement Division ("AED") released a substantial [report](#) in November of 2020 regarding the incidence of tampering with diesel engines and emissions controls.

- Based on EPA enforcement actions, they identified that a substantial portion of the subject vehicles identified by USEPA enforcement actions had software modifications to their engine emissions control units.
- As a result, USEPA AED estimates that the emissions controls have been removed from more than 550,000 diesel pickup trucks nationwide in the last decade. As a result of this tampering, more than 570,000 tons of excess oxides of nitrogen (NOx) and 5,000 tons of particulate matter (PM) will be emitted by these tampered trucks over the lifetime of the vehicles.
- The report did not directly quantify the extent of tampering in off road engines and equipment, but it notes that **...AED has reason to believe this conduct occurs within most or all categories of vehicles and engines , including commercial trucks, passenger vehicles , pickup trucks, motorcycles , forestry equipment, and agricultural equipment.**
- These findings highlight the challenging and real problem of what happens when there is tampering with engine emissions controls; passage of SB0412 would only further enable, facilitate, and encourage this practice.

We are also concerned with the impacts of modifying engine emission controls on the safety and reliability / durability of altered machines and how these alterations impact other machine functions that are controlled by software.

Beyond emissions concerns are those regarding safety. Modifying engine computers to boost performance can result in higher operating speeds, exhaust temperatures, overheating, accelerated

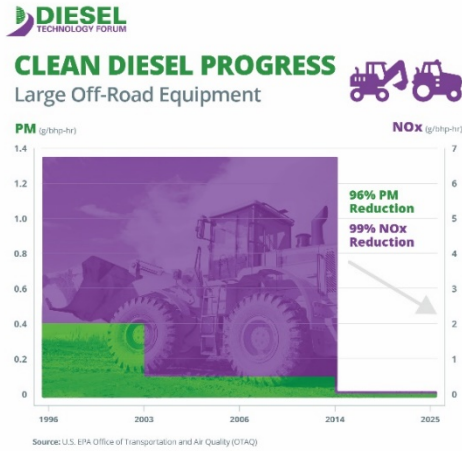
wear and stress on high-speed parts, like power take off's and hydraulic and belt-driven systems. There are also a number of documented cases of personal injury from tractors and machines where unauthorized engine programming modifications were made.

Summary

Manufacturers are implementing plans to facilitate more access to tools and documentation needed for repair. For all these reasons and others, we urge your vote in opposition to SB0412 because so-called Right to repair legislation takes us the wrong way for clean air and the wrong way on safety.

Thank you for the opportunity to appear today.

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