

MODEL LAW ON MOTOR VEHICLE INSPECTION BY INDEPENDENT CONTRACTORS AND SELF INSPECTORS

Section 1. Definitions.-- As used in this act, the term:

- (1) "Contractor" means any person, corporation, or partnership with whom the department may enter into a contract for the purchase, lease, design, construction, equipment, maintenance, personnel, management, and operation of an inspection station.
- (2) "Department" means the Department of [name of agency in charge of inspections].
- (3) "Inspection" means the safety and exhaust emissions inspections required by this act.
- (4) "Inspection certificate" means a serially numbered form issued by an inspection station facility or self-inspector indicating that the identified motor vehicle has been inspected and passed inspection.
- (5) "Inspection station" means a facility, other than a self-inspection facility, situated in a permanent structure or a mobile unit, for the purpose of conducting emissions inspections of motor vehicles as required by this act.
- (6) "Motor vehicle" means any self-propelled vehicle required to be registered under [cite relevant state statute].

Section 2. Inspection stations; department contracts; inspection requirements; recordkeeping.--

- (1) The department shall direct the implementation, operation, and regulation of emissions and safety inspections required under this act. The department shall establish the requirements for inspection stations, enter into negotiated multiyear contracts with one or more private contractors for the operation of inspection stations with a state option for renewal, and supervise the performance of such contractors.
- (2) The department shall incorporate, as a provision of each contract, standards relating to maximum driving time to inspection stations and maximum waiting time at inspection stations and shall have the authority to impose penalties for failure of the contractor to meet such standards.
- (3) Such contracts are subject to competitive procurement requirements and shall provide for the design, construction, equipment, maintenance, and operation of inspection stations in such numbers and locations as required to provide motor vehicle owners with reasonably convenient access to inspection facilities for the purpose of compliance with this act.
- (4) To avoid conflicts of interest and ensure impartial inspections, the department may not enter into a contract to conduct emissions inspections with any contractor who:
 - (a) Engages in the business of manufacturing or selling motor vehicles in this state;
 - (b) Offers to the general public, for profit, motor vehicle maintenance or repair services in this state, except that a contractor may maintain or repair motor vehicles owned or leased by the contractor; or
 - (c) Lacks the capability, resources, or technical and management skills to adequately construct, equip, operate, and maintain a sufficient number of official emissions inspection stations to meet the demand for the inspection of every motor vehicle which is required to be inspected under the terms of the contract.
- (5) By its selection process for contractors, the department shall seek to obtain the highest quality service for the lowest cost. Accordingly, the department shall give balanced consideration during its selection process to the following:
 - (a) The public convenience of the inspection stations, including a calculation of lowest average driving time to an inspection facility applicable to 90 percent of motor vehicles within each contract zone;
 - (b) The inspection fee bid proposed by a contractor;
 - (c) The degree of technological content of the proposal, including test-accuracy specifications, and quality of testing services;

- (d) The experience of the contractor, and the probability of successful performance of the contract;
 - (e) The financial stability of the contractor; and
 - (f) The economic impact of the contract to the state during construction and operation of the inspection stations.
- (6) All persons employed by a contractor are deemed to be employees of the contractor and not of the state. An officer, director, or employee of a contractor may not be an employee of the state.
- (7) Any contract authorized under this section shall contain:
- (a) A contract term of not less than [5 years] of actual test operations.
 - (b) A clause stating that nothing in the contract requires the state to purchase any asset or assume any liability if such contract is not renewed.
 - (c) Minimum requirements for adequate staff, equipment, management, and operating hours which may include evening or weekend hours or both.
 - (d) Provisions for surveillance by the department of the contractor to ensure compliance with emissions test standards and applicable procedures, rules, regulations, and laws.
 - (e) Provision for the state, upon default of the contractor, to terminate the contract with the contractor and assume operation of the motor vehicle emissions inspection station.
 - (f) Provision for the state, upon termination of the term of the contract or upon assumption of the operation of the program pursuant to paragraph (e), to have transferred or assigned to it, for reasonable compensation, any interest in land, buildings, improvements, services, and equipment used by the contractor in the operation of an inspection station.
 - (g) Provision for the state, upon termination of the term of the contract or upon assumption of the operation of the program, to have transferred and assigned to it, for reasonable compensation, any contract rights and related obligations for land, buildings, improvements, and equipment used by the contractor in the operation of the inspection station.
 - (h) A requirement that the contractor, in any agreement executed by him or her for land, buildings, improvements, and equipment used in the operation of the inspection stations, reserve the right to assign to the state any of his or her rights and obligations under such contract.
 - (j) Any other provision, including periodic audits of inspection fees collected, deemed necessary by the department for the administration or enforcement of the emissions inspection contract.
 - (l) A provision requiring a performance bond of [\$1 million].
- (9) Inspection stations shall collect, maintain, and report data as the department requires. The department may enter and inspect the premises and equipment and audit the records of inspection fees collected at each inspection station at all reasonable times.
- (10) The department shall maintain records of each inspection station and investigate bona fide complaints regarding inspection stations.
- (11) Before accepting proposals, the department shall divide the state into three or more contract zones. The department shall contract with a private contractor for the exclusive right to conduct vehicle inspections in each zone. However, any contractor may bid on more than one zone, and the department may contract with a contractor to conduct vehicle inspections in more than one contract zone.
- (12)(a) Information received in a sealed bid or proposal that would indicate the locating of proposed inspection sites, or property sought to be acquired for such sites, is exempt from the provisions of [citation to state public records or open records act], as follows:
- 1. For an unsuccessful bidder, from the time the bid or proposal is received, until 30 days after notice of intent to award a bid or proposal.
 - 2. For successful bidders, from the time the bid or proposal is received, until completion of purchases or leases of real property required to carry out the contract provisions.
- (13)(a) The department and the Department of [name of state environmental protection agency] shall have reasonable access to all records of the contractor pertaining to the contract or duties imposed or undertaken pursuant to this chapter. Except as to information provided for in

subsection (12), upon request of the contractor, any records received by the department or the Department of [name of state environmental protection agency] which are shown to be proprietary confidential business information shall be kept confidential and shall be exempt from [citation to state public records or open records act].

(b) Proprietary confidential business information includes, and is limited to:

1. Trade secrets as defined in [citation to relevant state statute].
2. Security measures, systems, or procedures.

(c) Proprietary confidential business information does not include information received by the department or the Department of [name of state environmental protection agency] in carrying out the duties of the department under subsection (6), except such information which, if disclosed, would reveal:

1. Specifications pertaining to process or design;
2. The identity of or information about a person or entity not engaged or proposed to be engaged in providing services in connection with the proposal or contract, and not a party to, nor the subject of, the proposal or contract;
3. Specific financial assets of the contractor or contracts of the contractor other than the contract provided for in this section.

(d) In any administrative proceeding brought under this chapter, upon a showing by the contractor and a finding by the hearing officer that such protection is necessary, the hearing officer shall issue protective orders protecting the contractor from discovery of proprietary confidential business information. If the hearing officer determines that discovery of proprietary confidential business information is necessary to preserve justice or to protect the public interest, however, the hearing officer shall enter an order limiting such discovery in the manner provided for in Rule _____ of the _____ Rules of Civil Procedure.

(14) Any contract entered into by the department pursuant to this section may be amended by mutual consent of the parties, by a writing executed with the same degree of formality as the original contract.

Section 3. Administrative remedies for motorist inconvenience.--

(1) The reduction of vehicle exhaust emissions and the convenience of the emissions inspection program to the public are paramount goals of this act. To ensure that motorist convenience is a primary component of the inspection program, the department, if it determines that the waiting times at the inspection stations exceed the provisions of the contract, resulting in motorist inconvenience, may order the contractor to change its operating procedures, increase number of inspection personnel on duty, increase the operating hours of the inspection station, or make any other necessary changes to reduce waiting times. Such changes may include, but not be limited to:

(a) The establishment and operation of additional test lanes as the department determines are necessary to reduce waiting times;

(b) The establishment and operation of additional inspection stations, upon determination by the department that other efforts to reduce waiting times have been exhausted.

(2) As used in this section, the terms, "motorist inconvenience" and "waiting time" shall have the same meaning as in the contract document for each contract zone. The department shall exercise its discretion under this section in a reasonable manner.

Section 4. Protests of contract awards and requests for proposals.--

(1) The provisions of s. [cite to state bid protest statute] shall control all protests of requests for proposals and contract awards, except that any person who wishes to file an action protesting the specifications or requirements of the request for proposals may do so within 10 days after publication of the request for proposals and may not file any other protest with respect to requests for proposals, and any subsequent protest action shall be filed in response to the contract award only and in accordance with the provisions of chapter [cite to state administrative procedure act].

(2) Any person who files an action protesting a contract awarded under this act shall post with the department, at the time of filing the formal written protest, a bond payable to the department in the amount of [\$500,000]. The bond shall be conditioned upon the payment of all costs which may be adjudged against him or her in the administrative hearing in which the action is brought and any subsequent appellate court proceeding. If, after completion of the administrative hearing and any subsequent appellate court proceedings, the department prevails, it shall recover all costs and charges included in the final order of judgment. Such costs and charges include the cost to the state of any delays caused by the award protest and are not limited to the amount of the bond. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to that person.

Section 6. Self-inspectors.--

(1) Any person who owns or leases [25] or more motor vehicles that are subject to inspection under this act, including motor vehicles held for resale by a motor vehicle dealer licensed under chapter _____, may apply to the department for a license as a self-inspector. The department shall prescribe by rule the form and content of the application. The application for licensure under this section shall be verified by oath or affirmation and shall contain:

(a) The name and birth date of the applicant; the name of the firm or partnership, with the names and places of residence of all members thereof, if such applicant is a firm or partnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former places of residence of the applicant; and any prior businesses in which the applicant has engaged and the location thereof;

(b) Certification that the applicant's business location provides an adequate location for the repair, maintenance, and inspection of the applicant's fleet of vehicles, that the location is not a residence, and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business. All such files and records relating to motor vehicles inspected by the self-inspector shall be available at all reasonable hours to inspection by the department or any of its inspectors or other employees;

(c) Certification that the applicant has obtained the machinery, tools, and equipment, approved by the [name of state environmental protection agency], to adequately conduct the required emissions inspections;

(d) Certification that the applicant employs properly trained personnel to perform the necessary emissions inspections. Criteria for such training of inspection personnel shall be developed by the Department of Environmental Protection; and

(e) Other relevant information as may be required by the department.

(2) Any applicant shall pay to the department a nonrefundable fee of \$_____ in addition to any other fees required by law. Upon making a renewal application, the applicant shall pay to the department a nonrefundable fee of \$_____ in addition to any other fees required by law. If the applicant is a motor vehicle or mobile home dealer licensed under [citation to relevant state statute], or a recreational vehicle dealer licensed under [citation to relevant state statute], the nonrefundable application fee and subsequent nonrefundable renewal application fee is \$_____, in addition to any other fees required by law.

(3) The department shall, in the case of every application for licensure as a self-inspector, except an application by a state or local government agency, verify certain facts set forth in the application. The department shall verify those items in the application relating to the applicant's past criminal record by way of, but not limited to, the complete records available through the state crime information centers and the applicant's financial references. The actual cost of such processing must be borne by the applicant and is to be in addition to the fee for licensing. The department may not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

(4) Each self-inspector license issued by the department is valid for the year of issue and shall expire annually on December 31 unless revoked or suspended prior to that date. The self-inspector license for a motor vehicle, mobile home dealer, and recreational vehicle dealer shall expire annually on the same date that the dealer license issued pursuant to the provisions of [citation to relevant state statute] expires. A renewal application made subsequent to the expiration date must be accompanied by a delinquency fee of \$_____ in addition to the renewal application fee prescribed in subsection (2).

(5) The department may deny, suspend, or revoke any self-inspector license issued under this section for any violation of this section or for:

(a) Commission of fraud or willful misrepresentation in application for or in obtaining a self-inspector license.

(b) Conviction of a felony.

(c) Improper testing of motor vehicles owned or leased by the self-inspector.

(d) Inspection of any motor vehicle for which the self-inspector is not the registered owner or lessee unless otherwise previously authorized by the department.

(e) Improper use or misrepresentation of certificates of inspection issued by the department.

(6)(a) Prior to the issuance of a self-inspector license, the applicant shall deliver to the department a good and sufficient surety bond, executed by the applicant as principal, in the sum of [\$5,000]. If the applicant is a motor vehicle dealer, a mobile home dealer, or a recreational vehicle dealer licensed by the department, this requirement shall be waived in lieu of the surety bond required under [citation to relevant state statute]. A surety bond is not required if the applicant is a state or local government agency.

(b) Surety bonds shall be in a form approved by the department. Such bonds and letters of credit shall be assigned to the department and in favor of any person who suffers any loss as a result of any violation of this section.

(c) Surety bonds shall be executed by a surety company authorized to do business in the state as surety.

(d) The department shall, upon denial, suspension, or revocation of any self-inspector license, notify the surety company of the licensee, or bank issuing an irrevocable letter of credit for the licensee, in writing, that the license has been denied, suspended, or revoked and shall state the reason for such denial, suspension, or revocation.

(e) Any surety company which cancels the bond of any self-inspector licensee shall notify the department in writing of such cancellation giving the reason for the cancellation.

(7) Any self-inspector shall, upon filing an application in the manner and form prescribed by this section with the department and paying the prescribed application fee, receive a sufficient number of certificates of inspection for each motor vehicle in the applicant's fleet. The department shall prescribe a fee for each inspection certificate not to exceed _____. A certificate of inspection may not be issued to any fleet vehicle until it has been inspected and passes inspection in compliance with this act.

(8) The holder of a self-inspector license may not inspect any motor vehicle or provide a certificate of inspection to any motor vehicle for which the licensee is not the registered owner or lessee, unless otherwise authorized by the department. Any county as defined in [citation to relevant state statute], that is licensed as a self-inspector by the department, may contract for motor vehicle safety inspections and related services directly with the contractor that has been granted the exclusive right to inspect motor vehicles in that contract zone.

(9) In addition to the exercise of other powers provided in this section, the department may levy and collect a civil fine, not to exceed [\$1,000] for each violation, against any self-inspector licensee if it finds that the licensee has violated any provision of this chapter or any other law of this state related to motor vehicle emissions inspections or has failed to comply with any administrative rule adopted under this chapter by the department or the Department of Environmental Protection. The licensee shall be entitled to a hearing pursuant to [citation to

relevant state administrative procedures act] to contest the fine levied or about to be levied upon him or her.

Section 7 Motor vehicle inspection; fees; disposition of fees.--

(1) The department shall set an inspection fee not to exceed \$____. The department shall set a regulatory amount to be included in the fee which is commensurate with the cost of administering and enforcing the inspection program. It is the intent of the Legislature that the program be self-supporting.

(2) Each inspection station shall collect an inspection fee for every inspection; provided, however, the owner of a motor vehicle which fails inspection shall be entitled to one reinspection without charge.

(3) Motor vehicles inspected after the expiration of the motor vehicle registration date shall be subject to an additional delinquency charge of \$__, which shall be collected by the inspection station.

(4) By the [15th of each month], each inspection station shall remit to the department for deposit into the [appropriate trust fund, operating fund, etc.] the regulatory amount of every inspection fee and the delinquency charges collected for the preceding month. The inspection station contractor shall retain the remainder of the fee.

Section 8. Inspection not a warranty of mechanical condition.-- The inspection of a motor vehicle and the issuance of an inspection certificate does not constitute a warranty of the mechanical condition of the motor vehicle. Neither the state, nor an inspector, nor an inspection station which inspects a motor vehicle and issues an inspection certificate shall be held liable for damages for any defect, failure, or improper functioning of any item of equipment on such motor vehicle.

Section 9. Rules.-- The department may adopt any rules and regulations necessary to implement this chapter.