

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

### Memorandum in Support of State and Local Clean Fleet Legislation

In the United States, the transportation sector accounts for 28% of the total energy consumed, 72% of petroleum usage and about 33% of GHGs emissions.<sup>1</sup> Cars and trucks use about half the total energy consumed by the transportation sector, which also includes trains, subways, planes, ships and other water craft.

To reduce the United States' greenhouse gas emissions by at least 80% from 1990 levels by 2050 will require the implementation of legal pathways that achieve a fuel economy level for light duty vehicles such as cars and sport utility vehicles in excess of 100 miles per gallon, and deployment of approximately 300 million alternative fuel vehicles, specifically hydrogen fuel cell vehicles, battery electric vehicles, plug-in hybrid vehicles and simple hybrid electric vehicles that recharge predominantly through regenerative braking. All of these categories of vehicles are described as Alternative Fuel Vehicles ("AFVs") for the purpose of this model legislation. "The goal is to shift 80%-95% of the miles driven from gasoline to lower carbon energy sources like electricity and hydrogen."<sup>2</sup>

State and local governments have a critical role to play in the implementation of several of the legal pathways for the increased utilization of AFVs. Among other things, they can exercise the "power of the purse" to procure AFVs to replace internal combustion engine-powered vehicles ("ICE vehicles") in state and municipal fleets, thereby contributing significantly to the creation of a more viable market for AFVs.

More particularly, legislation can be enacted on the state or local level to establish a "Green Fleet Transition" program in the enacting jurisdiction. The model legislation accompanying this memorandum would establish an orderly process for the transition of a governmental fleet from one that consists exclusively of ICE vehicles to one populated by a specified level of battery electric vehicles, plug-in hybrid vehicles and hydrogen fuel cell vehicles. It is drafted to allow each jurisdiction to design the legislation to fit its unique needs, goals and policy choices with respect to AFV procurement.

The centerpiece of the legislation is a mandate directed to the entity responsible for vehicle procurement, which would require such department to develop a plan to procure specified AFVs

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<sup>1</sup> U.S. Energy Information Agency: Annual Energy Review: 2011 (2012). Available at: <http://www.eia.gov/totalenergy/data/annual/> (accessed: June 10, 2016). See, also, <http://www.eia.gov/todayinenergy/detail.php?id=29612>.

<sup>2</sup> Michael Gerrard and John Dernbach, *Legal Pathways to Deep Decarbonization in the United States* (Environmental Law Institute, 2019)

in accordance with a specified timetable.<sup>3</sup> That plan also would, among other things: (i) require procurement to follow lawful and fiscally responsible procedures; (ii) allow for cooperative procurement with other governmental entities; (iii) require the identification of available governmental incentives and cooperative procurement programs; (iv) accommodate the special needs of Police and other departments requiring vehicles with particular performance capabilities; (v) require the procurement and installation of the infrastructure needed for convenient recharging of the electric vehicles added to the fleet; and (vi) require periodic reporting and program adjustments. Operating agencies would be required to procure their vehicles in accordance with such plan, once it is adopted.

It should be noted that the legislation is aimed only at the procurement of vehicles by the enacting governmental entity. It is not designed to create a state mandate for the procurement of vehicles by localities. State legislators seeking to impose any such mandate could adapt the model legislation to do so, but first should consult legal counsel to determine whether such legislation would run afoul of the home rule rights of localities under the constitution or laws of the state.

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<sup>3</sup> Simple hybrid vehicles have not been included in the definition of “AFVs” covered by the model legislation, since: (i) they are widely used and no longer require special governmental attention for the development of a market; and (ii) the mileage improvements they achieve are not of a magnitude needed to make a significant contribution to deep decarbonization.