

S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

May 15, 2009

Introduced by M. of A. ROSENTHAL -- read once and referred to the
Committee on Environmental Conservation

AN ACT to amend the state finance law and the public authorities law, in
relation to establishing the diesel emissions retrofit fund and
program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The state finance law is amended by adding a new section
2 97-tt to read as follows:
3 S 97-TT. DIESEL EMISSIONS RETROFIT FUND. 1. THERE IS HEREBY ESTAB-
4 LISHED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE
5 KNOWN AS "DIESEL EMISSIONS RETROFIT FUND."
6 2. THE DIESEL EMISSIONS RETROFIT FUND MAY CONSIST OF MONIES PAID TO
7 THE STATE:
8 (A) BY THE FEDERAL GOVERNMENT PURSUANT TO SECTIONS SEVEN HUNDRED NINE-
9 TY-ONE THROUGH SECTION SEVEN HUNDRED NINETY-SEVEN OF THE ENERGY POLICY
10 ACT OF TWO THOUSAND FIVE;
11 (B) BY THE FEDERAL GOVERNMENT PURSUANT TO SECTIONS ELEVEN HUNDRED ONE,
12 ELEVEN HUNDRED THREE, AND EIGHTEEN HUNDRED EIGHT OF THE SAFE, ACCOUNT-
13 ABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT OF TWO THOUSAND
14 FIVE: "A LEGACY FOR USERS";
15 (C) BY THE FEDERAL GOVERNMENT PURSUANT TO SUBSECTION THREE OF STATE
16 AND TRIBAL ASSISTANCE GRANTS INCLUDED IN TITLE VII OF THE AMERICAN
17 RECOVERY AND REINVESTMENT ACT OF TWO THOUSAND NINE; AND
18 (D) AS A RESULT OF ANY ENFORCEMENT ACTION.
19 3. MONIES OF THE FUND SHALL BE AVAILABLE ONLY FOR DISTRIBUTION TO
20 ELIGIBLE PROJECTS PURSUANT TO SECTION EIGHTEEN HUNDRED EIGHTY-FOUR OF
21 THE PUBLIC AUTHORITIES LAW.
22 4. MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF
23 THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE BOARD OF
24 NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, AS THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 CONTRACT ADMINISTRATOR OF THE DIESEL EMISSIONS RETROFIT PROGRAM, FOR
2 WHICH THE AUTHORITY WILL ENTER INTO CONTRACTS WITH QUALIFIED PARTIES TO
3 CARRY OUT THE PROGRAM.

4 5. ANY INCOME EARNED ON MONEYS IN SHALL BE ADDED TO DIESEL EMISSIONS
5 RETROFIT FUND AND USED FOR THE PURPOSES OF SUCH FUND.

6 S 2. The public authorities law is amended by adding a new section
7 1884 to read as follows:

8 S 1884. DIESEL EMISSIONS RETROFIT PROGRAM. 1. FOR PURPOSES OF THIS
9 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

10 (A) "HEAVY DUTY VEHICLE" OR "VEHICLE" MEANS ANY ON AND OFF-ROAD VEHI-
11 CLE POWERED BY DIESEL FUEL AND HAVING A GROSS VEHICLE WEIGHT OF GREATER
12 THAN EIGHT THOUSAND FIVE HUNDRED POUNDS, OR IN THE CASE OF A NON-ROAD
13 VEHICLE, A VEHICLE POWERED BY DIESEL FUEL AND AN ENGINE WITH A RATING OF
14 AT LEAST SEVENTY-FIVE HORSEPOWER.

15 (B) "BEST AVAILABLE RETROFIT TECHNOLOGY" MEANS TECHNOLOGY, VERIFIED BY
16 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR BY THE CALIFORNIA
17 AIR RESOURCES BOARD (CARB) FOR REDUCING THE EMISSION OF POLLUTANTS THAT
18 ACHIEVES REDUCTIONS IN PARTICULATE MATTER EMISSIONS AT THE HIGHEST
19 CLASSIFICATION LEVEL FOR DIESEL EMISSION CONTROL STRATEGIES THAT IS
20 APPLICABLE TO THE PARTICULAR ENGINE AND APPLICATION.

21 (C) "RETROFITTING" MEANS ADDITION OF NEW OR BETTER POLLUTION CONTROL
22 AFTER-TREATMENT EQUIPMENT TO DIESEL ENGINES, UPGRADING A DIESEL ENGINE
23 TO A CLEANER CONFIGURATION AND EARLY REPLACEMENT OF OLDER ENGINES WITH
24 NEWER CLEANER ENGINES.

25 2. THE AUTHORITY IS HEREBY AUTHORIZED TO ADMINISTER THE FUND CREATED
26 PURSUANT TO SECTION NINETY-SEVEN-TT OF THE STATE FINANCE LAW IN ACCORD-
27 ANCE WITH THE PROVISIONS OF THIS SECTION.

28 (A) NOTWITHSTANDING ANY PROVISIONS OF LAW TO THE CONTRARY, THE AUTHOR-
29 ITY SHALL:

30 (I) ESTABLISH PRIORITY CRITERIA FOR DISTRIBUTION OF MONIES CONTAINED
31 IN THE FUND CONSISTENT WITH THE PROVISIONS OF THIS SECTION; AND

32 (II) DISTRIBUTE MONIES CONTAINED IN THE FUND, BY WAY OF FULL OR
33 PARTIAL GRANTS, TO PROJECTS MEETING THE GOALS OF EMISSIONS REDUCTION IN
34 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, AND IN ACCORDANCE WITH
35 ANY APPLICABLE FEDERAL REQUIREMENTS. THE AUTHORITY SHALL, TO THE EXTENT
36 POSSIBLE, DISTRIBUTE THE MONIES THROUGH RELEVANT PROGRAMS IN EXISTENCE
37 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

38 3. MONIES IN THE FUND SHALL BE DISTRIBUTED SOLELY FOR THE RETROFITTING
39 OF HEAVY DUTY DIESEL ENGINE VEHICLES, OWNED AND OPERATED BY STATE MUNIC-
40 IPAL, OR PRIVATE ENTITIES, WITH THE BEST AVAILABLE RETROFIT TECHNOLOGY,
41 PROVIDED, HOWEVER, THAT AN AMOUNT OF UP TO TWO PERCENT OF THE FUND MAY
42 BE UTILIZED ANNUALLY BY THE AUTHORITY TO PAY FOR COSTS OF ADMINISTERING
43 THE FUND.

44 4. SUBJECT TO ANY APPLICABLE FEDERAL REQUIREMENTS OR STATE REQUIRE-
45 MENT, PRIORITY SHALL BE GIVEN TO THOSE PROJECTS THAT:

46 (A) ARE SUBJECT TO THE REQUIREMENTS OF THE NEW YORK STATE DIESEL EMIS-
47 SIONS REDUCTION ACT AS ESTABLISHED BY CHAPTER SIX HUNDRED TWENTY-NINE OF
48 THE LAWS OF TWO THOUSAND SIX;

49 (B) MAXIMIZE PUBLIC HEALTH BENEFITS;

50 (C) PROVIDE THE MOST COST-EFFECTIVE EXPENDITURE OF FUNDS, INCLUDING
51 REDUCTIONS IN DIESEL EMISSIONS PER DOLLAR EXPENDED; AND

52 (D) SERVE AREAS IN NEW YORK:

53 (I) IN NON-ATTAINMENT OF THE NATIONAL AMBIENT AIR QUALITY PRIMARY
54 STANDARDS ESTABLISHED FOR PARTICULATE MATTER AND OZONE;

55 (II) TRADITIONALLY ENVIRONMENTALLY DISENFRANCHISED;

(III) THAT RECEIVE A DISPROPORTIONATE AMOUNT OF AIR POLLUTION FROM DIESEL FLEETS INCLUDING BUT NOT LIMITED TO PORTS, TRUCK STOPS, RAIL YARDS, TERMINALS AND DISTRIBUTION CENTERS.

(E) CONSIDERATION SHALL ALSO BE GIVEN FOR NON-ROAD VEHICLES DEMONSTRATING A SIGNIFICANT REDUCTION IN DIESEL EMISSIONS IN THE SHORT TERM OVER THE USE OF THE HEAVY DUTY DIESEL ENGINE.

5. PROPOSED PROJECTS MUST MEET ALL REQUIREMENTS OF APPLICABLE FEDERAL LAWS.

6. APPLICATIONS:

(A) ALL ELIGIBLE PARTIES MAY SUBMIT APPLICATIONS TO THE AUTHORITY IN SUCH MANNER AS THE AUTHORITY DIRECTS;

(B) ALL APPLICATIONS SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:

(I) ANY INFORMATION REQUIRED FOR ELIGIBILITY TO RECEIVE FEDERAL FUNDS UNDER ANY APPLICABLE FEDERAL PROGRAM;

(II) CALCULATION OF THE EXTENT TO WHICH COMPLETION OF THE PROPOSED PROJECT WILL REDUCE DIESEL EMISSIONS;

(III) MEASUREMENT OF THE AIR QUALITY IN THE AREA IN WHICH VEHICLES PROPOSED TO BE RETROFITTED OPERATE;

(IV) EXTENT TO WHICH THE PROPOSED PROJECT MEETS THE PRIORITY CRITERIA OF SUBDIVISIONS FOUR AND FIVE OF THIS SECTION; AND

(V) ANY OTHER INFORMATION THAT THE AUTHORITY REQUIRES.

7. THE AUTHORITY IS AUTHORIZED TO:

(A) CONSULT WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF TRANSPORTATION, AND ANY OTHER AGENCY OR PUBLIC AUTHORITY WHICH THE AUTHORITY DEEMS APPROPRIATE IN THE DEVELOPMENT OF DIESEL RETROFIT PROGRAM DEVELOPED PURSUANT TO THIS SECTION;

(B) PREPARE, IN CONSULTATION WITH SUCH AGENCIES AND AUTHORITIES, AND TO MAKE AVAILABLE TO THE PUBLIC, DIESEL RETROFIT PROGRAM MANUALS AND BROCHURES FOR THE PURPOSE OF ENSURING THAT THE STANDARDS AND CRITERIA APPLICABLE TO SUCH PROGRAM ARE AVAILABLE TO PERSONS WHO MAY WISH TO PARTICIPATE IN THE PROGRAM, TO FACILITATE THE GOALS OF THE PROGRAM.

8. NO LATER THAN JANUARY THIRTY-FIRST OF EACH CALENDAR YEAR, THE AUTHORITY SHALL SUBMIT TO THE GOVERNOR, THE LEGISLATURE AND THE STATE COMPTROLLER A DETAILED REPORT OF EXPENDITURES OF THE FUND. SUCH REPORT SHALL INCLUDE AT A MINIMUM:

(A) AN ACCOUNTING OF MONIES PAID INTO THE FUND FROM STATUTORY SOURCES;

(B) AN ACCOUNTING OF MONIES EXPENDED FOR PURPOSES OF ADMINISTERING THE FUND;

(C) AN ACCOUNTING OF ALL MONIES PAID OUT OF THE FUND TO PROJECTS, ARRANGED BY PROJECT, STATUTORY PRIORITY LEVEL AND AREA OF THE STATE;

(D) AN ESTIMATION OF THE AMOUNT OF DIESEL EMISSIONS REDUCED BY THE COMPLETION OF PROJECTS FINANCED BY THE FUND; AND

(E) ANY DISCERNIBLE OR ESTIMATED PUBLIC HEALTH BENEFIT BROUGHT ABOUT BY REDUCTIONS.

S 3. This act shall take effect immediately.