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

6379

2011-2012 Regular Sessions

I N A S S E M B L Y

March 16, 2011

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

AN ACT to amend the environmental conservation law, in relation to reducing the emission of pollutants from diesel fuel-powered motor vehicles owned by agencies of cities with populations over 45,000

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

Section 1. The environmental conservation law is amended by adding a new section 19-0306-b to read as follows:

S 19-0306-B. USE OF ULTRA LOW SULFUR DIESEL FUEL AND BEST AVAILABLE RETROFIT TECHNOLOGY BY DIESEL FUEL-POWERED MOTOR VEHICLES IN CITIES WITH POPULATIONS OVER FORTY-FIVE THOUSAND.

1. DEFINITIONS. WHEN USED IN THIS SECTION:

A. "BEST AVAILABLE RETROFIT TECHNOLOGY" MEANS TECHNOLOGY, VERIFIED BY THE EPA OR THE CALIFORNIA AIR RESOURCES BOARD, FOR REDUCING THE EMISSION OF POLLUTANTS THAT ACHIEVES REDUCTIONS IN PARTICULATE MATTER EMISSIONS AT THE HIGHEST CLASSIFICATION LEVEL FOR DIESEL EMISSION CONTROL STRATEGIES, AS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION, THAT IS APPLICABLE TO THE PARTICULAR ENGINE AND APPLICATION. SUCH TECHNOLOGY SHALL ALSO, AT A REASONABLE COST, ACHIEVE THE GREATEST REDUCTION IN EMISSIONS OF NITROGEN OXIDES AT SUCH PARTICULATE MATTER REDUCTION LEVEL AND SHALL IN NO EVENT RESULT IN A NET INCREASE IN THE EMISSIONS OF EITHER PARTICULATE MATTER OR NITROGEN OXIDES.

B. "CITY AGENCY" MEANS A CITY, COUNTY, BOROUGH, ADMINISTRATION, DEPARTMENT, DIVISION, BUREAU, BOARD OR COMMISSION, OR A CORPORATION, INSTITUTION OR AGENCY OF GOVERNMENT, THE EXPENSES OF WHICH ARE PAID IN WHOLE OR IN PART FROM THE CITY TREASURY.

C. "GROSS VEHICLE WEIGHT RATING" MEANS THE VALUE SPECIFIED BY THE MANUFACTURER OF A MOTOR VEHICLE MODEL AS THE MAXIMUM DESIGN LOADED WEIGHT OF A SINGLE VEHICLE OF THAT MODEL.

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

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D. "MOTOR VEHICLE" MEANS A VEHICLE OPERATED OR DRIVEN UPON A PUBLIC HIGHWAY WHICH IS PROPELLED BY ANY POWER OTHER THAN MUSCULAR POWER, EXCEPT ELECTRICALLY-DRIVEN MOBILITY ASSISTANCE DEVICES OPERATED OR DRIVEN BY A PERSON WITH A DISABILITY, PROVIDED, HOWEVER, THAT THIS TERM SHALL NOT INCLUDE VEHICLES THAT ARE SPECIALLY EQUIPPED FOR EMERGENCY RESPONSE BY CITY FIRE, POLICE, SHERIFF OR RESCUE DEPARTMENTS.

E. "PERSON" MEANS ANY NATURAL PERSON, CO-PARTNERSHIP, FIRM, COMPANY, ASSOCIATION, JOINT STOCK ASSOCIATION, CORPORATION OR OTHER LIKE ORGANIZATION.

F. "REASONABLE COST" MEANS THAT SUCH TECHNOLOGY DOES NOT COST GREATER THAN THIRTY PERCENT MORE THAN OTHER TECHNOLOGY APPLICABLE TO THE PARTICULAR ENGINE AND APPLICATION THAT FALLS WITHIN THE SAME CLASSIFICATION LEVEL FOR DIESEL EMISSION CONTROL STRATEGIES, AS SET FORTH IN SUBDIVISION FOUR OF THIS SECTION, WHEN CONSIDERING THE COST OF THE STRATEGIES, THEMSELVES, AND THE COST OF INSTALLATION.

G. "ULTRA LOW SULFUR DIESEL FUEL" MEANS DIESEL FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN FIFTEEN PARTS PER MILLION.

2. A. EACH DIESEL FUEL-POWERED MOTOR VEHICLE OWNED OR OPERATED BY A CITY AGENCY SHALL BE POWERED BY ULTRA LOW SULFUR DIESEL FUEL.

B. DIESEL FUEL-POWERED MOTOR VEHICLES HAVING A GROSS VEHICLE WEIGHT RATING OF MORE THAN EIGHTY-FIVE HUNDRED POUNDS THAT ARE OWNED OR OPERATED BY CITY AGENCIES SHALL UTILIZE THE BEST AVAILABLE RETROFIT TECHNOLOGY OR BE EQUIPPED WITH AN ENGINE CERTIFIED TO THE APPLICABLE TWO THOUSAND SEVEN EPA STANDARD FOR PARTICULATE MATTER AS SET FORTH IN SECTION 86.007-11 OF TITLE 40 OF THE CODE OF FEDERAL REGULATIONS OR TO ANY SUBSEQUENT EPA STANDARD FOR SUCH POLLUTANT THAT IS AT LEAST AS STRINGENT, PURSUANT TO THE FOLLOWING SCHEDULE:

(I) 7% OF ALL SUCH MOTOR VEHICLES BY JANUARY 1, 2012;
(II) 14% OF ALL SUCH MOTOR VEHICLES BY JANUARY 1, 2013;
(III) 30% OF ALL SUCH MOTOR VEHICLES BY JANUARY 1, 2014;
(IV) 50% OF ALL SUCH MOTOR VEHICLES BY JANUARY 1, 2015;
(V) 70% OF ALL SUCH MOTOR VEHICLES BY JANUARY 1, 2016;
(VI) 90% OF ALL SUCH MOTOR VEHICLES BY JANUARY 1, 2017;
(VII) 100% OF ALL SUCH MOTOR VEHICLES BY JULY 1, 2017.

3. A. THE COMMISSIONER SHALL MAKE DETERMINATIONS, AND SHALL PUBLISH A LIST CONTAINING SUCH DETERMINATIONS, AS TO THE BEST AVAILABLE RETROFIT TECHNOLOGY TO BE USED FOR EACH TYPE OF DIESEL FUEL-POWERED MOTOR VEHICLE TO WHICH THIS SECTION APPLIES. EACH SUCH DETERMINATION SHALL BE REVIEWED AND REVISED, AS NEEDED, ON A REGULAR BASIS, BUT IN NO EVENT LESS OFTEN THAN ONCE EVERY SIX MONTHS.

B. THE COMMISSIONER MAY DETERMINE THAT A TECHNOLOGY, WHETHER OR NOT IT HAS BEEN VERIFIED BY THE EPA OR THE CALIFORNIA AIR RESOURCES BOARD, MAY BE APPROPRIATE TO TEST, ON AN EXPERIMENTAL BASIS, ON A PARTICULAR TYPE OF DIESEL FUEL-POWERED MOTOR VEHICLE OWNED OR OPERATED BY A CITY AGENCY. THE COMMISSIONER MAY AUTHORIZE SUCH TECHNOLOGY TO BE INSTALLED ON UP TO FIVE PERCENT OR TWENTY-FIVE OF SUCH TYPE OF MOTOR VEHICLE, WHICHEVER IS LESS. ANY MOTOR VEHICLE ON WHICH SUCH TECHNOLOGY IS INSTALLED MAY BE COUNTED FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION. SUCH TECHNOLOGY SHALL NOT BE REQUIRED TO BE INSTALLED ON OTHER MOTOR VEHICLES OF THE SAME TYPE AND SHALL BE SUBJECT TO THE PROVISIONS OF PARAGRAPH C OF THIS SUBDIVISION.

C. NO CITY AGENCY SHALL BE REQUIRED TO REPLACE BEST AVAILABLE RETROFIT TECHNOLOGY OR EXPERIMENTAL TECHNOLOGY UTILIZED FOR A DIESEL FUEL-POWERED MOTOR VEHICLE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION WITHIN THREE YEARS OF HAVING FIRST UTILIZED SUCH TECHNOLOGY FOR SUCH VEHICLE, EXCEPT THAT TECHNOLOGY THAT FALLS WITHIN LEVEL FOUR, AS SET FORTH IN

SUBDIVISION FOUR OF THIS SECTION, SHALL NOT BE REQUIRED TO BE REPLACED UNTIL IT HAS REACHED THE END OF ITS USEFUL LIFE.

4. THE CLASSIFICATION LEVELS FOR DIESEL EMISSION CONTROL STRATEGIES ARE AS FOLLOWS, WITH LEVEL FOUR BEING THE HIGHEST CLASSIFICATION LEVEL:

A. LEVEL FOUR - STRATEGY REDUCES DIESEL PARTICULATE MATTER EMISSIONS BY EIGHTY-FIVE PERCENT OR GREATER OR REDUCES ENGINE EMISSIONS TO LESS THAN OR EQUAL TO 0.01 GRAMS DIESEL PARTICULATE MATTER PER BRAKE HORSE-POWER-HOUR;

B. LEVEL THREE - STRATEGY REDUCES DIESEL PARTICULATE MATTER EMISSIONS BY BETWEEN FIFTY AND EIGHTY-FOUR PERCENT;

C. LEVEL TWO - STRATEGY REDUCES DIESEL PARTICULATE MATTER EMISSIONS BY BETWEEN TWENTY-FIVE AND FORTY-NINE PERCENT;

D. LEVEL ONE - STRATEGY REDUCES DIESEL PARTICULATE MATTER EMISSIONS BY BETWEEN TWENTY AND TWENTY-FOUR PERCENT.

5. THE COMMISSIONER SHALL ISSUE A WRITTEN DETERMINATION THAT PERMITS THE USE OF DIESEL FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN THIRTY PARTS PER MILLION TO FULFILL THE REQUIREMENTS OF THIS SECTION IF ULTRA LOW SULFUR DIESEL FUEL IS NOT AVAILABLE TO MEET THE NEEDS OF CITY AGENCIES TO FULFILL THE REQUIREMENTS OF THIS SECTION. SUCH DETERMINATION SHALL EXPIRE AFTER SIX MONTHS AND SHALL BE RENEWED IN WRITING EVERY SIX MONTHS IF SUCH LACK OF AVAILABILITY PERSISTS, BUT IN NO EVENT SHALL BE IN EFFECT AFTER SEPTEMBER FIRST, TWO THOUSAND TWELVE.

6. THE COMMISSIONER MAY ISSUE A WAIVER FOR THE USE OF ULTRA LOW SULFUR DIESEL FUEL WHERE A CITY AGENCY MAKES A WRITTEN FINDING, WHICH IS APPROVED, IN WRITING, BY THE COMMISSIONER, THAT A SUFFICIENT QUANTITY OF ULTRA LOW SULFUR DIESEL FUEL, OR DIESEL FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN THIRTY PARTS PER MILLION WHERE A DETERMINATION IS IN EFFECT PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, IS NOT AVAILABLE TO MEET THE REQUIREMENTS OF THIS SECTION, PROVIDED THAT SUCH AGENCY, TO THE EXTENT PRACTICABLE, SHALL USE WHATEVER QUANTITY OF ULTRA LOW SULFUR DIESEL FUEL OR DIESEL FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN THIRTY PARTS PER MILLION IS AVAILABLE FOR ITS DIESEL FUEL-POWERED MOTOR VEHICLES. ANY WAIVER ISSUED PURSUANT TO THIS SUBDIVISION SHALL EXPIRE AFTER TWO MONTHS, UNLESS THE CITY AGENCY RENEWS THE FINDING, IN WRITING, AND THE COMMISSIONER APPROVES SUCH RENEWAL, IN WRITING.

7. A. NOT LATER THAN JANUARY FIRST, TWO THOUSAND THIRTEEN, AND NOT LATER THAN JANUARY FIRST OF EACH YEAR THEREAFTER, THE COMMISSIONER SHALL SUBMIT A REPORT TO THE LEGISLATURE REGARDING, AMONG OTHER THINGS, THE USE OF ULTRA LOW SULFUR DIESEL FUEL AND THE USE OF THE BEST AVAILABLE RETROFIT TECHNOLOGY BY DIESEL FUEL-POWERED MOTOR VEHICLES OWNED OR OPERATED BY CITY AGENCIES DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR. THE INFORMATION CONTAINED IN THE REPORT REQUIRED BY THIS SUBDIVISION SHALL INCLUDE, BUT NOT BE LIMITED TO, FOR EACH CITY AGENCY:

(I) THE TOTAL NUMBER OF DIESEL FUEL-POWERED MOTOR VEHICLES OWNED OR OPERATED BY SUCH AGENCY;

(II) THE NUMBER OF SUCH MOTOR VEHICLES THAT WERE POWERED BY ULTRA LOW SULFUR DIESEL FUEL;

(III) THE TOTAL NUMBER OF DIESEL FUEL-POWERED MOTOR VEHICLES OWNED OR OPERATED BY SUCH AGENCY HAVING A GROSS VEHICLE WEIGHT RATING OF MORE THAN EIGHTY-FIVE HUNDRED POUNDS;

(IV) THE NUMBER OF SUCH MOTOR VEHICLES THAT UTILIZED THE BEST AVAILABLE RETROFIT TECHNOLOGY, INCLUDING A BREAKDOWN BY MOTOR VEHICLE MODEL, ENGINE YEAR AND THE TYPE OF TECHNOLOGY USED FOR EACH VEHICLE;

(V) THE NUMBER OF SUCH MOTOR VEHICLES THAT ARE EQUIPPED WITH AN ENGINE CERTIFIED TO THE APPLICABLE TWO THOUSAND SEVEN EPA STANDARD FOR PARTICULATE MATTER AS SET FORTH IN SECTION 86.007-11 OF TITLE 40 OF THE CODE OF

FEDERAL REGULATIONS OR TO ANY SUBSEQUENT EPA STANDARD FOR PARTICULATE MATTER THAT IS AT LEAST AS STRINGENT;

(VI) THE NUMBER OF SUCH MOTOR VEHICLES THAT UTILIZED TECHNOLOGY IN ACCORDANCE WITH PARAGRAPH B OF SUBDIVISION THREE OF THIS SECTION AND THE RESULTS AND ANALYSES REGARDING THE TESTING OF SUCH TECHNOLOGY; AND

(VII) ALL WAIVERS, FINDINGS, AND RENEWALS OF SUCH FINDINGS, ISSUED PURSUANT TO SUBDIVISION SIX OF THIS SECTION, WHICH, FOR EACH WAIVER, SHALL INCLUDE, BUT NOT BE LIMITED TO, THE QUANTITY OF DIESEL FUEL NEEDED TO POWER DIESEL FUEL-POWERED MOTOR VEHICLES OWNED OR OPERATED BY SUCH AGENCY; SPECIFIC INFORMATION CONCERNING THE AVAILABILITY OF ULTRA LOW SULFUR DIESEL FUEL OR DIESEL FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN THIRTY PARTS PER MILLION WHERE A DETERMINATION IS IN EFFECT PURSUANT TO SUBDIVISION FIVE OF THIS SECTION; AND DETAILED INFORMATION CONCERNING THE AGENCY'S EFFORTS TO OBTAIN ULTRA LOW SULFUR DIESEL FUEL OR DIESEL FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN THIRTY PARTS PER MILLION WHERE A DETERMINATION IS IN EFFECT PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

B. WHERE A DETERMINATION IS IN EFFECT PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, INFORMATION REGARDING DIESEL FUEL THAT HAS A SULFUR CONTENT OF NO MORE THAN THIRTY PARTS PER MILLION SHALL BE REPORTED WHEREVER INFORMATION IS REQUESTED FOR ULTRA LOW SULFUR DIESEL FUEL PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION.

C. THE REPORT DUE JANUARY FIRST, TWO THOUSAND THIRTEEN, IN ACCORDANCE WITH PARAGRAPH A OF THIS SUBDIVISION SHALL ONLY INCLUDE THE INFORMATION REQUIRED PURSUANT TO SUBPARAGRAPHS (I), (II) AND (VII) OF SUCH PARAGRAPH.

8. THIS SECTION SHALL NOT APPLY:

A. WHERE FEDERAL OR STATE FUNDING PRECLUDES A CITY FROM IMPOSING THE REQUIREMENTS OF THIS SECTION; OR

B. TO PURCHASES THAT ARE EMERGENCY PROCUREMENTS PURSUANT TO LOCAL LAW.

9. IF ANY SUBDIVISION, PARAGRAPH, CLAUSE, PHRASE OR OTHER PORTION OF THIS SECTION IS, FOR ANY REASON, DECLARED UNCONSTITUTIONAL OR INVALID, IN WHOLE OR IN PART, BY ANY COURT OF COMPETENT JURISDICTION SUCH PORTION SHALL BE DEEMED SEVERABLE, AND SUCH UNCONSTITUTIONALITY OR INVALIDITY SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS SECTION, WHICH REMAINING PORTIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately the commissioner of environmental conservation is authorized to add, amend, and/or repeal any rule or regulation necessary for the implementation of this act on its effective date.